

**THE HUMAN RIGHTS CONTEXT OF NORTH KOREAN MOVEMENT TO
CHINA: RIGHTS, LAW, AND DIPLOMACY**

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This thesis examines the geostrategic contexts that influence China's policy decisions to not recognize North Korean escapees in China as refugees. Due to China's unwillingness to recognize the rights of North Korean escapees, the international community criticizes China for its violations of international refugee laws. However, public censure has failed to persuade China to reconsider its treatment of North Korean escapees. This thesis argues that the complicated diplomatic relationships and entangled national interests between China, North Korea, and other concerned countries has resulted in the Chinese government not recognizing North Koreans in China as refugees. The author contends that rather than merely condemning or taking a hardline policy against China, the other states that want China to comply with refugee laws should maintain a dialogue and pursue cooperation to solve this refugee problem. Chapter 1 defines important terms regarding the North Korean refugee crisis¹ and provides relevant background information.

¹ The author uses "refugee crisis" to refer to exodus of North Koreans to China. Although the Chinese government's intertwined diplomatic and contextual conflicts prevent China from recognizing these North Koreans as refugees, the author uses this term because other countries commonly use this term to describe similar situations, and the author personally believes that North Korean escapees should be recognized as refugees. In order to be more encompassing and as neutral as possible, the author later introduces her new term "North Korean Escapees in China (NKEC)," and uses it

Chapter 2 analyzes conflicting views about this issue among key members of the international community such as the Statute of Office of the United Nations High Commissioner for Refugees (UNHCR), North Korea and China. Chapter 3 illustrates China's violations of international human rights laws while maintaining regional security and its economic benefits, despite international criticism. Chapters 4 to 6 demonstrate where the United States, South Korea, and China, respectively, stand on this issue in a geopolitical context. Along with literature from the west regarding China's violations, this thesis incorporates China's perspective based on literature from Korea and China to present more diverse perspectives on this matter. A new term to describe this particular group of North Koreans in China is proposed and used throughout this thesis: "North Korean Escapees in China (NKEC)," with consideration of their unique situation. This thesis hopes to speak on behalf of the many voiceless NKEC, and increase awareness among the international community of the deplorable situations that NKEC have to endure.

throughout the thesis to refer to the North Korean escapees. Although the author uses the term refugee crisis, instead of escapee crisis the thesis is still referring to the issue of NKEC.

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PREFACE

After I graduated high school in South Korea, I did an internship with a NGO that helped refugees. I helped the asylum seekers from Congo, Liberia, Chad, Ethiopia, and Eritria to attain their legal refugee status. They fled their countries in fear of persecution. They could face public execution if they failed to get the refugee status and were deported to their home countries. At that time, I thought these life-threatening situations might only happen in Africa, without realizing that unbelievably inhumane stories were unfolding everyday with my brethren on the other side of the border of my country, Korea. Due to the separation over sixty years, most South Korean people, including me, became numb to North Korea's occasional provocations and did not pay any serious attention to the people in North Korea. This changed dramatically for me after I first met a North Korean escapee.

My initial impression from the first North Korean I ever met in my life was "Wow, he looks normal." Growing up with hearing devastating stories of North Korea, I unconsciously had thought they would look different from us. This is how much I did not know about North Koreans. His story was absolutely terrifying, although I had heard many heartbreaking stories previously from other refugees. He had the most deplorable life. He lost his father by starvation when he was seven, and his mother and sister became victims of human trafficking in China. I felt shame about my ignorance. I was content with my good deeds of helping others, while many of my brethren in the north were agonizing from severe persecution and dying of starvation. The meeting with this North Korean escapee became a turning point in my life, and I changed to advocate for North Korean human rights.

While studying International Relations and Global Studies at UT Austin, I became more interested in helping voiceless refugees on a global scale. Advanced education through various classes, discussions with my colleagues, and meaningful instruction from professors have helped me to develop better knowledge of the theoretical concepts and complicated dynamics among countries regarding North Korean human rights issues. I wanted to see how far I could explore in this field based on the knowledge that I have obtained throughout my college years and my direct experiences with North Koreans. I was motivated to develop and conduct my research by my desire to help improve the situation of North Korean escapees in China. I had the privilege to meet outstanding professors who have guided me to think and imagine in ways I had never before. I also interviewed a number of human rights activists who have devoted their lives to researching and rescuing North Koreans. While the scholars helped me to develop my ability to think critically and carefully, the North Korean human rights activists inspired my passion. The journey of thesis writing was quite challenging at times as I developed my knowledge of this topic, but it reinforced my passion in advocating for North Korean human rights.

While conducting this yearlong thesis project, I have committed more seriously to addressing human rights issues. I want to be a voice of the voiceless people from North Korea who are oppressed and persecuted. After I graduate this year, I plan to pursue graduate study in this field. I would like to become a professor who teaches her students to learn more diverse and neutral perspectives about human rights issues not only in North Korea but also around the world. I want to help my students to become empathic with people and their needs and pains. As a scholar, I would be able to develop better

knowledge and policy to help these North Korean refugees, and educate the next generation to have more interest and compassion. My ultimate career goal is to become a North Korea specialist for the National Security affairs team at the White House. As an expert, I would like to contribute systematically to harmonizing the practical diplomatic interests and humanitarian needs and developing a remedy for the two Koreas, which have suffered from war-torn wounds for more than sixty years. I believe this thesis is a starting point of my lifelong journey to become someone who can contribute to unification of the two Koreas.

INTRODUCTION

In May of 2013, the author gathered with a group of people in front of the City Hall of Seoul in South Korea with a picket sign in one hand and a candle in the other. The sign read, “Can’t You Hear the Cries of Nine Brothers and Sisters?” The demonstration was held right after nine young North Korean escapees had been forcefully repatriated to North Korea from Laos.² These nine young escapees were on their way to South Korea, their final destination, and were going through Laos as their transit country, but they were caught by Laotian border guards and quickly deported back to North Korea. This was the first time the Laos government handed over North Korean escapees to North Korea. It is important to note, these nine escapees, however, were not the first North Koreans to be repatriated. There had been countless numbers of voiceless North Korean escapees who had been coercively deported to North Korea.

This particular event drew the public’s attention because the majority of these nine escapees were orphans who had lost their parents due to the severe famine in North Korea. They ranged in age from 15 to 23, and they were protected and guided by South Korean Christian missionaries during this journey. The escapees, who contact South Koreans, especially if they are Christian groups, would be punished significantly harsher once they were deported to North Korea. For these reasons, if the young escapees were returned, they would inevitably face hard labor, imprisonment, or more likely the death penalty. However, the South Korean embassy’s passivity in Laos incited the South Korean public’s demonstrations. The South Korean embassy was expected to take a more

² Jeyup S. Kwaak, “Laos Returns Refugees to North Korea,” *Wall Street Journal*, May 31, 2013, sec. Asia, <http://www.wsj.com/articles/SB10001424127887324682204578514772761682396>.

assertive role in rescuing these nine escapees, who are interpreted as South Korea citizens by its constitution, when they were caught in Laos.³ Due to the South Korean government's "Quiet Diplomacy"⁴ however, the embassy was idle and inactive, which, in part, contributed to the refoulement of these nine escapees back to North Korea.

After receiving harsh criticism from the enraged South Korean public for its inadequacy, the South Korean government only then demanded that North Korea ensure the safety of those nine escapees. Along with South Korea, the United States strongly expressed its concerns about the human rights violations for these escapees, criticizing North Korea's previous inhumane punishment to escapees. The United States and South Korea were certain that these nine young North Koreans would face public execution for the crime of treason. Corresponding to this international pressure, North Korea extraordinarily released videos of these nine escapees annually— 2013, 2014, and 2015— to prove that they were not executed, but rather they were very content with their lives in North Korea.⁵ Featuring these children on state-run television, where they claim to have been tricked to leave North Korea and expressed thanks to their leader Kim Jong

³ Jethro Mullen, "Outcry over Young North Korean Refugees Handed back to Regime by Laos - CNN.com," June 2, 2013, <http://www.cnn.com/2013/05/31/world/asia/laos-north-korea-refugees/>.

⁴ YongKeum Kim, "북한 난민 대책에 대한 연구 - 동독, 베트남 사례를 중심으로 [A Study on the Strategy for North Korean Defectors with a Focus on the Eastern Germany and Vietnam's Cases, translated by Jane H. Lee]" (MS Thesis, Chungnam National University, 2011); Chun-Koo Jeong, "제 7 장 조선족, 탈북자 그리고 한중관계 [Korean Chinese and North Korean Defectors in Korea-China Relations, translated by Jane H. Lee]," *Unification Strategy* 6, no. 1 (2006): 189–214; Ki-Hyun Lee, "중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]," *Unification Policy Studies* 21, no. 2 (2012): 119.

⁵ Kwaak, "Laos Returns Refugees to North Korea"; By Paula Hancocks and KJ Kwon CNN, "North Korean Defectors Sent Back Agonizingly close to Freedom - CNN.com," *CNN*, accessed March 14, 2016, <http://www.cnn.com/2013/09/30/world/asia/north-korea-laos-defectors-hancocks/index.html>; "N. Korea Releases Video of Repatriated Young Refugees," *Mail Online*, December 9, 2014, <http://www.dailymail.co.uk/wires/afp/article-2866976/N-Korea-releases-video-repatriated-young-refugees.html>; Hyo-jin Kwon and Mi-jin Kang, "North Korea Releases Video of Defectors Forced to Return," *The Guardian*, December 11, 2014, sec. World news, <http://www.theguardian.com/world/2014/dec/11/north-korea-releases-video-defectors-forced-return>.

Un for saving them by bringing them back to their home country, North Korea has used these children as propaganda.⁶ People in South Korea and the United States were relieved to know that these escapees were alive, but highly skeptical about the treatments toward these escapees behind the scenes.

Although this story had a happy ending, this is only one of countless incidents of refolement of North Korean escapees, and most are not as fortunate. Many refolement cases are conducted covertly in China even before these escapees can reach Laos or other transit nations in the Southeast Asia. After this frustrating incident, the United States and South Korean governments strongly urged China to stop the refolement and demanded them to acknowledge North Korean escapees as refugees. However, the Chinese government refused the request and firmly maintained its usual practices of refolement of North Korean escapees when they are caught.

The reasons why China wholeheartedly supports North Korea are numerous and complicated. China wants to keep North Korea as its geostrategic buffer zone, against the direct influence of the United States at the border.⁷ China would do anything in order to prevent North Korea from collapsing. If it collapses, the aftermath would significantly threaten China's economy, social structure, and overall security.⁸ A massive influx of North Korean escapees to China may accelerate the collapse of North Korea. North

⁶ CNN, "North Korean Defectors Sent Back Agonizingly close to Freedom - CNN.com."

⁷ Lee, "중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]"; Joel Wuthnow, "Warning: Is China Pivoting Back to North Korea?" Text, *The National Interest*, accessed April 25, 2016, <http://nationalinterest.org/feature/warning-china-pivoting-back-north-korea-15427>.

⁸ Lee, "중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]"; BongKu Lee, "북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee]" (PhD Dissertation, HanYang University, 2011).

Koreans do not know the objective reality of their dire situation because its government has been blocking outside information from them. However, people escaping from North Korea would witness the outside world, and learn about how prosperous capitalist and democratic societies are. They would spread the word to their families and friends back in North Korea, and this may inspire them to escape by crossing the border to China as well.

Despite the long history of mass exodus of North Koreans into China, there is not a proper term that accurately describes the characteristics of these unprotected and fleeing North Korean citizens. They have generally been referred to as migrants, defectors, refugees or asylum seekers, but none of these terms alone can fully capture the complicated nature of their motivations, purposes, and circumstances for leaving their country and seeking shelter in China. Perhaps not having an accurate term to fully encompass the fleeing North Koreans in China reflects the bitter reality of them not belonging. Before exploring in detail the dynamic of these North Koreans' situations in China, this thesis will analyze reasons why preexisting terms are not sufficient, as well as introduce a new descriptive term, North Korean Escapees in China (NKEC), that serves to capture all the unique circumstances of this particular group. The new descriptive term will be used throughout the thesis.

The first term to examine is “migrants.” Migrants are people who “choose to move in order to improve the future prospects of themselves and their families.”⁹ Migrants are not necessarily people who have to flee to secure their lives from harsh persecution. Rather, they are people who simply move to different locations to live a

⁹ “UNHCR - Refugees,” accessed March 22, 2016, <http://www.unhcr.org/pages/49c3646c125.html>.

better life. The purpose of their movements is closely related to economic reasons in general. During the early 1990s, the term “migrants” was proper for the migrating North Koreans, because the main reason for their movement to China was to avoid starvation from famine. Since the mid-1990s, however, the purpose of their movements has become more diverse than the economic reasons alone. North Koreans do not have freedom in movement for travel or relocation. Leaving the country without the state’s permission is punishable. Once they are out of the country without an official document, they are labeled as political criminals by the North Korean government, and they face a great risk of being persecuted. Moreover, migrants are excluded from the protection for refugees defined by the UNHCR, according to the 1951 Refugee Convention. For this reason, the term “migrants” is not accurate to describe the North Koreans who are fleeing and hiding in China.

Probably the most commonly used term to describe the fleeing North Koreans in China is “defectors.” The definition of “defectors” is “[people who] consciously abandon their home or default party [to] switch sides.”¹⁰ International community, such as the United Nations, commonly refers to the migrating North Koreans in China as defectors. In their news reports, international media generally mentions this term within the context of “human rights violations for North Korean defectors.”¹¹ The majority of the undocumented North Koreans who cross the border to enter China are ordinary citizens who have no particular political conflicts or disagreements. Rather, these people expect their life might be better off economically in China, although entangled political reasons

¹⁰ “Defector,” *Urban Dictionary*, accessed April 22, 2016, <http://www.urbandictionary.com/define.php?term=defector>.

¹¹ Human Rights Watch, “World Report 2015: North Korea Events of 2014,” *Human Rights Watch*, January 9, 2015, <https://www.hrw.org/world-report/2015/country-chapters/north-korea>.

are also becoming increasingly common. The term “defector” may convey the North Korean government’s negative perspective by labeling these people as betrayers who abandon their country. However, this term does not fully account for North Koreans’ motivation of escape.

The third term is “refugees.” According to the UNHCR’s definition, a refugee is a person who “[has] a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion,” and “is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country.”¹² The fundamental differences between “refugees” and “migrants” are spontaneity and persecution. Migrants may voluntarily move to seek for better lives, whereas refugees generally “have to move [in order to] save their lives or preserve their freedom.”¹³ Normally, refugees are not protected by their home nation, which is occasionally the main agent of persecution. In the sense that they are at high risk of being persecuted, the fleeing North Koreans to China are similar to refugees. The UNHCR evaluates refugee applicants based on their situation and if they have profound reasons to be recognized, the UNHCR will legally recognize them as refugees. However, whether or not they are accepted to the country is a different matter. The UNHCR does not have authority to place refugees in a country of their choice. If the individual country decides to accept refugees, they can freely practice their rights under the protection of that country. But in the case of North Koreans fleeing to China, they do not have the freedom to practice their rights. They desire to be recognized as refugees, but they do not receive such recognition.

¹² “UNHCR - Refugees.”

¹³ Ibid.

According to the definition of the UNHCR, an “asylum seeker” is a person “who says he or she is a refugee, but whose claim has not yet been definitively evaluated.”¹⁴ Generally, national asylum systems in the refugee-seeking nation decide which asylum-seekers actually qualify for international protection. Those judged not to be refugees, nor to be in need of any other form of international protection, could be sent back to their home countries. Asylum seekers are not refugees yet, but are seeking protection from another state. In this sense, the North Koreans in China, who desperately need international protection but are (intentionally) not recognized as refugees yet, can be considered as asylum seekers. Asylum seekers are usually in the process or waiting to be recognized as refugees. It is not even feasible for the fleeing North Koreans in China to ask for international protection. Although possible in theory, they cannot request protection publically, because that may place them in a great danger, possible refoulement. For this reason, they do not seek international protection, but rather endure severe human rights violations, while trying to find a change to escape to other transit countries.

Conceptually, it is difficult to label North Koreans fleeing from their country with existing terms. We might use the more neutral and broader term “escapees” to avoid any misunderstanding and improper labeling. “Escapees” are those who escape from their home country to another for whatever reason, whether it is temporarily or permanently. However, the term, escapees, does not clearly convey the desperate needs of legal and humanitarian protections for the fleeing North Koreans in China. North Koreans in need of international protection in China display the following conditions, according to the

¹⁴ “UNHCR - Asylum-Seekers,” accessed April 23, 2016, <http://www.unhcr.org/pages/49c3646c137.html>.

scholarly articles and government reports reviewed and interviews conducted by the author, that make them distinct from other escapees, migrants, defectors, refugees, and asylum seekers:

1. Their unique circumstance is mostly bounded within China
2. Most of them crossed the North Korea-China border after the 1990s
3. The purpose of their escape is not only because of economic reasons, but also political and cultural ones
4. Regardless of their purposes, they risk their lives to cross the border. Once they are caught, they are in great danger of being imprisoned, forced into hard labor, tortured, or executed
5. They have great fear of refoulement
6. The majority of them stay in China temporarily as a transit country
7. They are in need of international protection
8. They are not legally protected and their freedom of practicing their rights is deprived in China
9. They are *voiceless*. Either they are not aware of what rights they have, or they choose not to exercise for their rights in China due to their vulnerable situations

It is important to recognize that most North Koreans in this situation are *voiceless*. They cannot freely express their rights and oftentimes they do not even know about their own basic human rights due to North Korea's biased education system. Even the fleeing North Koreans in China are entitled to universal human rights, but having those rights respected and practicing them freely is a completely different matter. Due to the fear of

refoulement, they endure deprivation of their rights, and they cannot settle in any one place for long.

A myriad of Korean scholars use *talbukja* (A Korean word meaning people who escaped from North Korea) to refer North Koreans escapees. However, the English translation of *talbukja* varies with multiple implications. For example, in his English abstract, Ki-hyun Lee translated *talbukja* to North Korean defectors,¹⁵ whereas Jung-hyun Cho translated it to North Korean escapees.¹⁶ *Talbukja* in Korean generally refers to North Koreans who have escaped their country, not including any other ethnicities. While neither of these articles went into any detailed discussion about the translation of *talbukja*, it appears that both authors use the term for a very general purpose to encompass all different causes and to collectively identify those people who fled North Korea and who are in harsh circumstances, whether it be survival from starvation, political dissension, or simply seeking a better life. This is rather common among Korean scholars and media to use both terms, defectors and escapees, interchangeably. Chinese scholars have also recently adopted this expression from Korean scholarship. Since the scholarly meaning of *talbukja* may lead to multiple definitions and understandings, it is essential to come up with a new and neutral term that is exclusively representative of North Korean escapees in China.

¹⁵ Lee, “중국의 탈북자 정책 동향과 한국의 대응전략 [Strategic Approaches to China’s North Korean Defector Policy, translated by Jane H. Lee].”

¹⁶ JungHyun Cho, “국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee],” *The Korean Journal of International Law* 54, no. 1 (2009): 183–206.

Taking these special traits into consideration, the author proposes a new term for this particular group of the North Koreans in China: “North Korean Escapees in China (NKEC),” and this term is used throughout the remainder of the thesis.

The number of NKEC who cross the Tumen River has constantly increased until recently when the new regime started in North Korea.¹⁷ Since then, the percentage has dropped because North Korea’s new regime strengthened border control to keep people from escaping.¹⁸ However, people still cross the border, risking their lives. Even if these people arrive safely in China, their security is not guaranteed at all. China and North Korea have bilateral treaties ensuring that China would unconditionally deport NKEC back to North Korea.¹⁹ Although China has obligations to abide by the international human rights laws as a member state of the Refugee Convention and Protocol,²⁰ China has given a higher priority to the bilateral treaties with North Korea.²¹ It therefore refuses to treat NKEC as refugees according to the United Nations High Commissioner for Refugees (UNHCR)’s suggestions.²² Due to the lapse of observing the ordinary

¹⁷ YoungSoo Kim, “1. 탈북자 문제의 발생 원인과 현황 [1. The Cause of the North Korean Defector Issues and Its Status, translated by Jane H. Lee],” Report of Korean Association for Broadcasting & Telecommunication Seminar (Korean Association for Broarding & Telecommunication, December 2003), <http://www.dbpia.co.kr/Article/NODE01104505>.

¹⁸ Lee, “중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China’s North Korean Defector Policy, translated by Jane H. Lee].”

¹⁹ YoonJung Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee]” (MS Thesis, Hankuk University of Foreign Studies, 2006).

²⁰ Lee, “중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China’s North Korean Defector Policy, translated by Jane H. Lee].”

²¹ Bilateral Treaties between China and North Korea are following: PRC-DPRK Escaped Criminals Reciprocal Extradition Treaty (1960), Frontier Service Agreement (1986), Regulations for the Border Area in the Province of Jilin (1998)

²² Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

international human rights laws and treaties, serious human rights crises tend to occur with NKEC. Placed in such a horrific and vulnerable situation, many NKEC, regardless of their age and gender, tend to become targets of human trafficking.²³ Once they are caught by Chinese police and sent back to North Korea, their entire families are in great danger of collective punishment. Due to these seemingly intentional oversights regarding human rights abuses and violations of international laws and treaties, China is subject to harsh criticism by international community.

It is also important to recognize, however, that China has certain reasons and its own justifications for interpreting international human rights in different ways than its allies.²⁴ China has a particular interpretation of human rights, which is different from that of the West and South Korea. Historically, China has prioritized national interests over individual human rights, which causes international criticism. Acting in the interest of its sovereignty and non-intervention policy, China, however, refuses to reform its human rights policies. The North Korean refugee crisis clearly represents China's difficulties in balancing its national interest and its responsibilities as a global leader. This thesis will consider why the Chinese government does not recognize NKEC as refugees. This research will also broaden the scope of the issue and demonstrate that this seemingly regional and relatively unwatched refugee crisis actually also affects several counties' interests.

²³ Kyung-Ok Do et al., *White Paper on Human Rights in North Korea 2015* (Seoul, Korea: Korea Institute for National Unification (KINU), 2015), www.kinu.or.kr; Kim, "중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee]."

²⁴ Lee, "중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]"; Sonya Sceats and Shaun Breslin, "China and the International Human Rights System" (Chatham House: The Royal Institute of International Affairs, October 2012), <https://www.chathamhouse.org/node/6674>.

To deliver broader and more diverse observations regarding the North Korean refugee crisis, this thesis compares international human rights laws with international refugee laws. It also discusses many unconventional perspectives from South Korean scholars, which are not discussed as much in Western society, in addition to insights from Western scholars and the Chinese government. Examining various sources with different international perspectives demonstrates the complexity of the North Korean refugee crisis, and this thesis proposes such a methodology that leads to a possible solution to improve the problem. Attention is paid to somewhat different and rather neutral perspectives of Korean scholars' research about China's conduct.

Since Korea and China have shared a similar cultural background over their long history, Korean scholars have a unique and keen understanding of China's complex perspective. For example, Ki-hyun Lee, researcher of Korean Institute for National Unification, offers readers a broad scope of contextual background about China's politics, economics and diplomacy to help understand and interpret China's non-cooperative behavior. Lee does not necessarily support China's stand on its human rights policy, but he objectively demonstrates the distinct characteristics of China's human rights interpretation.²⁵

Western countries tend to condemn China's non-cooperative behavior before attempting to understand its intention, and this is probably because China's rapid growth is deemed threatening to the United States' de facto superpower status. As Aaron L. Friedberg, a professor of politics and international affairs at Princeton University, insists, "The United States and the People's Republic of China are locked in a quiet

²⁵ Lee, "중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]."

but increasingly intense struggle for power and influence, not only in Asia, but around the world...For as long as China continues to be governed as it is today, its growing strength will pose a deepening challenge to American interests.”²⁶ South Korea, on the other hand, may be more neutral toward China’s rise to power because it is not as threatening to Korea’s security at the moment. By referring to both Western and non-Western perspectives on China’s policies towards North Korea, this thesis attempts to offer a more complete picture of the situation of NKEC and the viewpoints of the interested countries. It should also be noted that this thesis does not condone the Chinese government’s human rights violations; instead, the author hopes to take China’s political and diplomatic concerns seriously and try to understand China’s passivity toward international criticism.

Since China is a key component of the North Korean refugee crisis, a profound understanding of China’s intention of treating NKEC and interpretation of their North Korea policy are vital to devise practical and effective measures to protect NKEC. It is necessary to comprehend China’s perspective not only as an involved country in the NKEC problem, but also as a rapidly growing power in the region. Assimilating China’s perspective on North Korean refugee crisis will help the Western countries, including the United States, smoothly open up a dialogue to discuss universal human rights beyond NKEC issues.

The author thinks that it is important to incorporate scholarship written in Korean by various South Korean scholars and institutions. The division between North and South Korea has prolonged for more than 60 years. Since the beginning of the

²⁶ Aaron L. Friedberg, “Hegemony with Chinese Characteristics,” *The National Interest*, no. 114 (2011): 18–27.

separation, South Korea has done the most profound and sophisticated research on unification and also about North Korea in various fields. South Korea has highly specialized government institutions that have strategized for unification, such as *Korean Institute for National Unification*, *Ministry of Unification*, *Institute for Unification Education*, and government led settlement institution such as *Hanawon* (the settlement Support Center for North Korean Refugees in South Korea). Not only the South Korean government institutions have put great efforts in this matter, but also countless South Korean NGOs and organizations have conducted first hand research and cooperated with the government in China.

The collaboration between South Korean government institutions and their non-government sectors have produced rich and well founded data about North Korean human rights violations, especially in China. Their annual reports contain the most detailed and up-to-date testimonies and researchers are well trained to catch even the slightest changes. The author wants to acquire various perspectives from resources that include the most prompt information reported. As a result, some of the research is so new that it is yet to be translated in English, and therefore, it was read in the original language.

The author extensively refers to the Ki-hyun Lee's interpretation of China's strategy for keeping North Korea as its geopolitical strategic purpose, and the reason why China maintains such a treatment policy for the North Korean escapees in the thesis.²⁷ The author also adopts the Lee's main framework in categorizing the North Korean escapees by different times: early 1990's, mid-1990's and early 2000's. The Jung-hyun

²⁷ Lee, "중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]."

Cho's study²⁸ is specifically referred to in sections 3.3-3.5 where several International Human Rights Commissions and their Committees are discussed. The author adopts the Cho's main argument that certain parts of International Human Rights Law can be effectively used to overcome the limitations of the International Refugee Law, particularly for the North Korean escapees in China. The author also adopts the view of Cho on how the recommendations and interpretations of Committee Against Torture (CAT), Committee on the Elimination of Racial Discrimination (CERD), Committee on the Elimination of Discrimination Against Women (CEDAW), Committee on the Rights of the Child (CRC), and Committee on Economic, Social and Cultural Rights (CESCR) can be specifically used in helping the cases of North Korean escapees in China.²⁹

In order to analyze these different perspectives and their implications for international relations, this thesis will proceed in the following sequence: (1) Chapter 1 primarily defines some important terms that readers need to be aware of and will explore the background of the massive movement and difficult circumstances of North Koreans in China; (2) Chapter 2 lays out conflicting views regarding the recognition of NKEC as refugees and human rights abuses toward NKEC in China; (3) Chapter 3 analyzes what kind of international obligations China is expected to comply with; (4) Chapter 4 illustrates the tense relationship between the United States and China regarding North Korean refugee crisis and the new international responsibilities China needs to assume as a newly emerging global leader; (5) Chapters 5 discusses the South Korean government's

²⁸ Cho, "국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee]."

²⁹ Ibid.

stand on the crisis; (6) Lastly, Chapter 6 examines China's different interpretation on human rights and reasons of its violations of international treaties.

CHAPTER ONE

Background Information of the North Korean Refugee Crisis

The year 2015 raised the world's awareness about refugees, as well as the conditions that force them away from their homes. The massive influx of refugees from Syria and other Middle Eastern countries revitalized the discussion of refugees' political status and differentiated the concept of refugee and economic migrant. However, there has been another ongoing refugee crisis for more than half a century in China: refugees from North Korea have failed to achieve legal status in China because of China's restrictive views of NKEC. The Chinese government recognizes them as economic migrants and not as refugees, whereas the South Korean government and the Statute of Office of the United Nations High Commissioner for Refugees (UNHCR) view them as refugees.³⁰

Before the author dives into the main theme of this thesis—China's responsibilities in respecting international refugee laws—it is important to define a few related terms, key concepts, and background information. In the following section, the author will define the concept of refugee, explain the principle of non-refoulement as one of the most important principles of the Refugee Convention, and demonstrate the reported reasons for mass refugee movement from North Korea.

³⁰ Kim, “북한 난민 대책에 대한 연구 - 동독, 베트남 사례를 중심으로 [A Study on the Strategy for North Korean Defectors with a Focus on the Eastern Germany and Vietnam's Cases, translated by Jane H. Lee]”; Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

1.1. Definition of Refugee

After World War II, the International Refugee Organization (IRO) was temporarily established in order to systematically resolve the large number of refugees who were looking for a safer place to live.³¹ The more permanent UNHCR would soon replace IRO. Today, the UNHCR is the sole international institution that holds the important responsibility of providing aid for refugees. In 1951, the UNHCR published the “Convention Relating to the Status of Refugees” and a few years later, it published another refugee agreement, “The 1967 Protocol Relating to the Status of Refugees.”³² These two documents define “refugee” as a person who has a well-founded fear of being persecuted because of one’s race, religion, nationality, membership of a particular social group, or political opinion. Along with this justifiable fear, the conditions for being recognized as a refugee include: a refugee cannot be protected by his or her country; is not willing to get assistance from one’s own country out of fear; became stateless by being outside of one’s country; or is not willing to return to one’s country.³³

Before we move on to consider the concept of “non-refoulement”, we must first clarify the definition of refugee. There are three basic requirements that refugee applicants must meet to be recognized as refugee. The first is well-founded fear.³⁴ The refugee applicant has to have well-founded fear, whether it is subjective or objective, of being persecuted. The subjective principle is mainly based on the refugee applicant’s

³¹ “UNHCR - About Us,” accessed March 19, 2016, <http://www.unhcr.org/pages/49c3646c2.html>.

³² UNHCR, “Convention and Protocol Relating to the Status of Refugees,” 1951.

³³ Lee, “북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee].”

³⁴ Ibid.

psychological status. When determining what constitutes well-founded fear, how much the refugee has suffered and to what extent the refugee feels threatened by the event are considered. One's ethnicity, religious, social, and political background and personal experience should also be taken into account as subjective principle of well-founded fear. As for the objective principle, the applicant's testimony should be assessed with the applicant's country's situation in mind. Understanding the actual situation is a key factor in reliable estimation.

The well-founded fear is closely associated with persecution.³⁵ The 1951 Convention considers the limiting or threatening of one's freedom or rights of one's ethnic, religion, nationality, political opinion, or membership of a particular social group as persecution.³⁶ However, according to article 33 of the Convention it is deducible that those who flee their country because of a natural disaster or starvation would not be able to achieve the refugee status. Even if one suffers life threatening hunger or danger due to disaster or starvation, it is still not considered persecution.³⁷

The third concept concerns race, religion, nationality, and the membership of a particular social group or political opinion.³⁸ Race includes every race without any exception. Persecution regarding religion means prohibiting one's personal expression of belief, preventing religious education, or discriminating against one's religion.

Nationality is not only confined to "citizenship" but also includes every ethnicity,

³⁵ Ibid.

³⁶ UNHCR, "Convention and Protocol Relating to the Status of Refugees."

³⁷ Kim, "북한 난민 대책에 대한 연구 - 동독. 베트남 사례를 중심으로 [A Study on the Strategy for North Korean Defectors with a Focus on the Eastern Germany and Vietnam's Cases, translated by Jane H. Lee]."

³⁸ Lee, "북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee]."

religion, culture, and group of language. The membership of a particular social group is a group of people who have similar background or social class. Membership of a particular social group has significant overlap with the previous three factors: race, religion and nationality. Lastly, political opinion means everyone has freedom of expressing one's political stance and no one can interfere with one's expression of beliefs.

However, the UNHCR has traditionally accepted refugees in broader terms beyond the definition ratified by the 1951 Convention and the 1967 Protocol. Today, the UNHCR considers the motivation of escape and classifies refugees in four different categories: political, economic, wartime and humanitarian.³⁹ Political refugees are the same as what the other two Convention and Protocol define. Economic refugees are people who flee their country to escape starvation and economic hardships. Wartime refugees are people who escaped their country due to war or political unrest within the country. Humanitarian refugees are people who are threatened by natural disaster or massive human rights violation within the country. The conventional definition of refugee that only refers to political refugees is differing from the actual practice of recognizing refugees by the UNHCR.⁴⁰ Since the actual interpretation is broader, this causes controversial discussion regarding refugee recognition.

Despite UNHCR's broader interpretation of the Convention and Protocol, some strict rule followers and concerned countries do not follow the practice of UNHCR. Some rule followers view people who flee for non-political reasons such as starvation and

³⁹ Kim, “북한 난민 대책에 대한 연구 - 동독. 베트남 사례를 중심으로 [A Study on the Strategy for North Korean Defectors with a Focus on the Eastern Germany and Vietnam's Cases, translated by Jane H. Lee].”

⁴⁰ Ibid.

natural disasters as immigrants, not as refugees. Therefore, these “immigrants” are excluded from refugee protection. In other words, they are not protected under the *non-refoulement* law. This puts many asylum seekers in danger of getting deported. They are frequently sent back to the countries from where they flee. Once people obtain official refugee status, they are not only protected from coercive refoulement but they also can receive a new citizenship. However, when they fail to be recognized as refugee, they are at a high risk of refoulement.

1.2. Non-refoulement

The Article 33 of the 1951 Convention clearly articulates that no one should be forced to return to the country where there is a risk of persecution:

“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.”⁴¹

The principle of non-refoulement is both stated in the 1951 Convention and in the 1967 Protocol, which is one of the internationally agreed upon principles. As stated above, refugees defined by both Convention and Protocol are considered political refugees. However, according to UNHCR’s practice, the asylum seekers who flee from their country to avoid war, military occupation, disaster, human rights violations, and severe starvation are considered humanitarian refugees. Political refugees are guaranteed non-refoulement under the Convention, but there is no written document to protect

⁴¹ UNHCR, “Convention and Protocol Relating to the Status of Refugees.”

humanitarian refugees from non-refoulement.⁴² This exclusion makes NKEC vulnerable, because they are considered as economic migrants. However, in 1981 the executive board of UNHCR, the Executive Committee of the High Commissioner's Programme (EXCOM) concluded that in all cases, the principle of non-refoulement should be strictly abided by.

Once again in 1997, EXCOM broadened the concept of non-refoulement beyond that of both Convention and Protocol.⁴³ Regardless whether an asylum-seeker is recognized as a refugee or not, the person should not be forcefully sent to the place where there is well-founded fear of being persecuted. Based on EXCOM's interpretation of the principle of non-refoulement in 1997, even though NKEC are yet to be recognized as refugees, what China is doing is an apparent violation of international law.⁴⁴ It is clear that when North Koreans are sent back they are treated as political prisoners who are at risk of losing their lives, as seen from Table 1.1.

However, China selectively chose to comply with the bilateral repatriation treaties in 1960 and in 1986 over the Refugee Convention and Protocol.⁴⁵ Even if NKEC are viewed as refugees globally, since China is complying with the two bilateral treaties with

⁴² Lee, “북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee].”

⁴³ Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

⁴⁴ JungHyun Cho, “국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee],” *The Korean Journal of International Law* 54, no. 1 (2009): 183–206; Lee, “북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee].”

⁴⁵ Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

North Korea,⁴⁶ it would not help North Koreans get refugee status in China. Therefore, the principle of non-refoulement is not applied to NKEC due to China's persistent insistence.⁴⁷

Table 1.1. Punishments for Defections

Testimonies	Testifier ID
<ul style="list-style-type: none"> • Deported from China in 2009 • Sentenced to five years or correctional labor penalty after a pre-trial and trial • Sent to the Jongori <i>kyohwaso</i> in Hoeryeong, North Hamgyoung Province in 2010 • Released thanks to a special pardon celebrating the 65th anniversary of the Party's creation (detained for 2.5 years) 	NKHR2014000048 May, 13, 2014
<ul style="list-style-type: none"> • Deported from China in 2009 • Sentenced to five years of correctional labor after a pre-trial and trial • Sent to the Hamhung <i>kyohwaso</i> in September 2010 • Released thanks to a special pardon celebrating Kim Il-sung's 100th birthday 	NKHR2014000064 June, 03, 2014
<ul style="list-style-type: none"> • Deported from China in August 2009 • Sentenced to five years of correctional labor penalty after a pre-trial and trial • Sent to the Jongori <i>kyohwaso</i> in Hoeryeong, North Hamgyoung Province in April 2010 • Released thanks to a special pardon (served two years) 	NKHR2014000090 July, 15, 2015

(adopted from White Paper on Human Rights in North Korea 2015, p 463)⁴⁸

1.3. Origin of NKEC

The collapse of the Union of Soviet Socialist Republics (USSR or Soviet Union) at the end of the Cold War era enormously threatened North Korea's leader Kim Il-Sung's dictatorship. Until the early 1990s, North Korea was highly dependent upon the

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Do et al., *White Paper on Human Rights in North Korea 2015*.

Soviet Union's economic support. The breaking down of the Soviet Union was not only a bitter blow to North Korea's politics, but also it adversely affected its already frail economy. In order to maintain its dictatorship and to self-sustain its economy, Kim Il-sung had totally isolated North Korea from the outside world. Due to a combination of losing the Soviet Unions' economic support and external assistance from other countries, North Korea had to stop its food distribution abruptly, which severely affected the life of North Koreans.⁴⁹ However, the exodus of North Koreans out of their country did not immediately happen at the cease of food distribution in 1994. People individually found their own ways to survive, hoping that their government may establish a contingency plan to provide food. People who had relatives in China temporarily moved to China, but once they were able to attain food, they soon moved back to North Korea.

The tipping point that triggered a massive movement of North Koreans to China occurred in 1995 after the extraordinarily devastating flood. The flood swept across North Korea's most fertile region, South Hwanghae (Hwanghae Namdo) and North Hwanghae (Hwanghae Bukdo). This damage absolutely dashed North Koreans' little hope for food. After the flood, the movement of people grew in larger scale, and once they were in China, their stay became nearly permanent. This situation that drove the North Koreans in limbo in China is, in part, is due to the mismanagement of economic plan by the North Korean government. The North Korean regime did not come up with appropriate measures for survival for its people, but rather left them alone. Myriads of civilians were not familiar with a self-sustaining system after living in the communist's

⁴⁹ Michael J. Deane, "The Collapse of North Korea: A Prospect to Celebrate or Fear?" (Johns Hopkins University Applied Physics Laboratory, 2005), <http://www.jhuapl.edu/newscenter/publications/nsapublications.asp>.

system for five decades. The only options they had were to either starve to death or to flee.

Only high officials and military had access to food resources at this time. These groups siphoned out all remaining scarce food supply in North Korea and sold them with an exorbitant price on black markets. The classes between the rich and the poor became extremely stratified, causing tens of thousands of people starve to death. According to the Korean Chinese that were living in China at that moment, the North Korean migrations to China reached its peak in 1997. The refugee influx raised about 10 times in 1997 compared to that of 1996, and another 10 times in 1998 compared to that of 1997. After the flood damage slowly recovered and international aids were provided, the migration of North Koreans slowed down. However the North Koreans escape to China has yet to cease.

1.4. Changes of North Korean Exodus Phenomena Over Time and China's Different Policies About NKEC

Generally, NKEC flee through China because the majority of North Korea's northern boarder is shared with China (see Figure 1). The Chinese government has changed its policies dealing with these NKEC over time. It is hard to say that China has been consistent with its North Korean policies. Rather, China has repeatedly strengthened and eased its intensive border control based on its diplomatic relationship with two Koreas.⁵⁰ For example, when China has a good relationship with North Korea, or when high officials from North Korea visit China, China starts to intensify its border control,

⁵⁰ Lee, "중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]."

increase the frequency of refoulement, or conduct intense crackdown search for North Koreans illegally residing in China. In contrast, when China has to build a favorable relationship with South Korea, they tend to overlook North Koreans' escapes and allow them to transit countries through China.

Due to limited access to accurate information, it is almost impossible to estimate the exact number of North Koreans staying in China. However, according to the indirect and informal data collected from NGOs, human rights activists and researchers, it is safe to estimate that the North Korean population of NKEC rapidly increased during the 1990s and dropped significantly in the 2000s. As the population of NKEC has changed, the Chinese government's policies toward North Koreans have also changed accordingly. There were no significant incidents of North Koreans' migrations across the border to China before the 1990s except for the Japanese annexation (1910-1945) and Korean War (1950-1953) periods. The current thesis focuses on the North Korean refugee crisis and its changes during the recent twenty years: 1990s-2010s.



Figure 1. Regional Map of North Korea and Northern China⁵¹

1.4.A. Before the 1990s

During the Japanese colonial period (1910-1945), the industrial facilities were concentrated in the northern part of Korea, while the southern part of the Korean peninsula was mostly agrarian. For this reason, the northern part of Korea experienced industrial development even before the Korean War. North Korea was economically better off in terms of industry and natural resources at that time. The economic situation was quite the opposite from today. South Korea was worse off than North Korea.

⁵¹ “Korea Maps - Perry-Castañeda Map Collection - UT Library Online,” accessed March 18, 2016, <https://www.lib.utexas.edu/maps/korea.html>.

Even after the Korean War, when both North and South Korea were devastated by the War, North Korea could rapidly overcome its economic hardships because of large amounts of aid from other communist countries such as the Soviet Union and China.

North Korea's prosperity, however, soon crumbled when North Korea's economic development plans kept failing during the 1960s-1970s, and when it started to experience economic crisis particularly when the Soviet Union began to deteriorate in the late 1980s.

Due to this situation, the term to describe North Koreans who fled to China was first discussed only in the 1990s, when there was the first massive emigration of people from North Korea since the Korean War.⁵²

1.4.B. Early 1990s: Escape for Survival Purpose & Connivance Policy

The main reason for the escapes of for North Koreans in the early 1990s is to survive.⁵³ During this period, most of the NKEC were residing in the border area in China, and they crossed the border to search for food. Many of them temporarily stayed with their relatives in China. Once they were able to obtain sufficient food for their families back in North Korea, they left China shortly after. Even though China had ratified treaties with North Korea in the 1960s and again in 1986 to control NKEC and deport them back to North Korea, China acquiesced them from residing in China for a short time.

China was relatively friendly to NKEC because during China's economic recession after the Great Leap Movement and Cultural Revolution, North Koreans helped

⁵² Victor Cha, *The Impossible State: North Korea, Past and Future* (Random House, 2012).

⁵³ Lee, "중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]."

China to overcome the hardship as a brother socialist country and showed fraternity. During this period, North Korea assisted China with food, and Chinese, including Korean ethnicities, escaped to North Korea to avoid starvation. Since China had a similar experience in the past, Chinese in the early 1990s were more sympathetic to North Koreans. The Chinese government as well did not pay too much attention to the small amount of North Korean population at that time. The government believed they would leave as soon as the situation in North Korea is recovered.⁵⁴

1.4.C. Mid-1990s: Mass Influx of North Koreans & Strengthening of the Policies

Towards the mid-1990s, the economic situation in North Korea did not get any better, rather got worsen. To make the matter worse, in 1995, the extreme flood destroyed breadbasket of North Korea, wiping out most of the crops, which was the last hope for North Koreans. Due to this extreme famine, massive amount of people started to cross the border again. It is important to note that the features of fleeing in the mid-1990s are significantly different from those of the early 1990s.

First of all, the regions where people escape were expanded. In the early 1990s, most of the NKEC were people who resided in the boarder region. However, in the mid-1990s, not only people from the border region, but also people from all around the country gathered around the Yalu and Tumen River to cross the border to China. The scope of people who escape significantly expanded in the mid-1990s. Secondly, the age range of NKEC varied in the mid-1990s. Contrary to the early 1990s when most of NKEC's age range was highly concentrated from 20s to 40s, in the mid-1990s, the

⁵⁴ Ibid.

number of children, teenagers, and elders increased. Also the social class of people who escaped diversified as well. In the early 1990s, common laborers consisted in the majority of NKEC, whereas in the mid-1990s, people from various social classes—teachers, professor, doctors, and even high government officials— fled North Korea. Lastly, the duration of stay in China increased in the mid-1990s. Compared to the early 1990s when most NKEC stayed just for the short period of time in China, in the mid-1990s, people stayed longer or even started to settle down in China.

Due to this change of escape pattern, the Chinese government changed its policy on NKEC to a more vigorous and aggressive policy from connive and relatively friendly one. On top of two other treaties that China had with North Korea, China passed criminal law regarding NKEC in 1997. In its amendment of criminal law, China expanded its punishment objects to its own people, Chinese as well.⁵⁵ It says whoever helps North Koreans in the process of escape shall be punished accordingly. In 1998, China also strengthened the crack down on North Koreans' illegal migration. Along with strengthening its intensive border control, the Chinese government extensively carried out refoulements during the mid-1990s.⁵⁶

1.4.D. After the 2000s: Increase of Orchestrated Escapes & Tightening Control

Beginning of the 2000s, the dramatic change in fleeing phenomena is a significant decrease of the number of escapees from North Korea. Due to the China's strengthening border control, and its reformation of domestic laws and policies that adversely affected

⁵⁵ Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

⁵⁶ Lee, “중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee].”

North Koreans, the population of North Korean escapees decreased significantly in the 2000s. In response, the fleeing phenomena have changed into more orchestrated efforts. Since the border control intensified, it is hard for individuals to cross the border individually and avoid being caught. Through the orchestrated fleeing aided by help groups or brokers, the form of illegal migration became more systematic. The brokers who organized the fleeing gathered the group of people and conducted the flight process with a careful plan. Brokers usually had close relationship with border guards, and they bribed them prior to the escape.⁵⁷ The border guards would overlook the group of escapees, and let them cross the border. In the 2000s, despite the decrease of individual fleeing, the orchestrated fleeing actually increased. And the purpose of escape changed as well. People crossed the border not merely for survival, but for pursuing better lives.⁵⁸

1.5. Reasons of NKEC Movement from North Korea

In the 1990s, the predominant reason for refugees' influx to China from North Korea is to avoid dying from dire starvation. Starting at the end of the regime of Kim Il-Sung, the founder of DPRK, North Korea could not sustain its food distribution policy due to the great famine. This led to the unprecedented chronic and nation-wide starvation called "Go-Nan-eui-Hang-Gun (*Arduous March*).” During this period, hundreds of thousands of people died of starvation in North Korea, causing a massive refugee influx

⁵⁷ Keum-Soon Lee, “북한주민의 국경이동 실태- 변화와 전망 [Status of North Korean Migration Across the National Border - Changes and Prospects, translated by Jane H. Lee],” *Research of Korea Institute for National Unification* 05-06 (December 2005): 1-134.

⁵⁸ Lee, “중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee].”

to China.⁵⁹ In the 2000s, however, the motivations of escape have become more diverse. Contrary to previous cases, more and more high officials escaped over the North Korea-China border, which implies that people escaped not only because of economic reasons, but also political reasons.⁶⁰

Gum-Soon Lee analyzes the motivations of flight and classifies those into two categories: push factors and pull factors.⁶¹ Push factors are the factors that make residents (e.g. North Koreans who live in North Korea) dissent about their living conditions and lead them to escape from their home country. Pull factors, on the other hand, are more related to external causes. For example, favorable living conditions in China or South Korea may trigger North Koreans to migrate to China or South Korea. Lee subcategorized these further to five push factors and six pull factors.

1.5.A. Five Push Factors

i. Starvation

Starvation is the typical motivation of North Korean exodus. During the *Arduous March* period in the mid-1990s, the number of people who starved to death increased tremendously in North Korea.⁶² Seeing family members helplessly die of starvation, the remaining family members decided to escape the

⁵⁹ Kim, “1. 탈북자 문제의 발생 원인과 현황 [1. The Cause of the North Korean Defector Issues and Its Status, translated by Jane H. Lee].”

⁶⁰ Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

⁶¹ Lee, “북한주민의 국경이동 실태- 변화와 전망 [Status of North Korean Migration Across the National Border - Changes and Prospects, translated by Jane H. Lee].”

⁶² Ibid.; Rhoda Margesson, Emma Chanlett-Avery, and Andorra Bruno, “North Korean Refugees in China and Human Rights Issues: International Response and US Policy Options” (DTIC Document, 2007), <http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA473619>.

country to seek food. The halt of government food distribution in 1994 worsened the situation. Initially, North Koreans sold their household items to earn money to buy food, but since the whole nation was starving, people could not last long in this manner. More and more people living near the border of places like North Hamgyeong Province escaped to three provinces in Northeast China — Liaoning, Jilin and Heilongjiang.⁶³ A large number of ethnic Koreans traditionally reside in these three northeastern provinces (東北三省). Many North Koreans have relatives in these three provinces so they could sustain their lives at least temporarily. However, increases in the North Korean population in Northeast China led to a higher unemployment rate in the region.⁶⁴ Moreover, a number of NKEC were involved in criminal organizations causing social problems such as human trafficking, organs trafficking, and prostitution.⁶⁵

ii. Sense of Deprivation

Previously, it was possible for the North Korean government to control outside information from spreading to its people. In order to prevent civilians from becoming dissatisfied when comparing North Korean regime with other democratic countries, the government manipulated the limited information. With the advent of the digital age, the North Koreans began to have better access to

⁶³ Lee, “북한주민의 국경이동 실태- 변화와 전망 [Status of North Korean Migration Across the National Border - Changes and Prospects, translated by Jane H. Lee]”; Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

⁶⁴ Lee, “북한주민의 국경이동 실태- 변화와 전망 [Status of North Korean Migration Across the National Border - Changes and Prospects, translated by Jane H. Lee].”

⁶⁵ Ibid.

information compared to the previous decades⁶⁶. However, after seeing Arab Spring break down fellow dictatorships,⁶⁷ the North Korean government prohibited the use of the Internet through devices, such as computers or cell phones to block access to outside information. Only a handful of high officials had access to the prohibited information. However, ever since the exodus to China due to starvation, more and more people saw what the outside world was like. People witnessed the incomparable development of China and South Korea. North Koreans felt betrayed by their own regime, which had been brainwashing them to believe that North Korea is the most developed and well-off country in the world.⁶⁸ However, once they see the reality they started to admire the developments of China and South Korea and feel comparative deprivation of their own lives. This emotional effect acts as an important motivation for people to re-escape if they are deported back to North Korea.

iii. **Fear of Punishment**

The crime rate has increased in North Korea since the mid-1990s due to the unprecedented starvation.⁶⁹ The regime responded to the social disorder by strengthening the punishment for crimes such as bribery, smuggling drugs, counterfeiting, and robbery. Selling household items in the black market (*Jangma-dang*) is considered an anti-socialism act and can also be punished. The

⁶⁶ Suzanne Choney, "North Korea's Internet? What Internet? For Most, Online Access Doesn't Exist," *NBC News*, March 29, 2013, <http://www.nbcnews.com/technology/north-koreas-internet-what-internet-most-online-access-doesnt-exist-1c9143426>.

⁶⁷ "China and the International Human Rights System," *Chatham House*, accessed April 22, 2016, <https://www.chathamhouse.org/node/6674>.

⁶⁸ Lee, "북한주민의 국경이동 실태- 변화와 전망 [Status of North Korean Migration Across the National Border - Changes and Prospects, translated by Jane H. Lee]."

⁶⁹ *Ibid.*

punishment against human trafficking is the most severe, resulting in execution. Also, even if one has not committed any crime, the person's family member is suspected as an escapee, the entire family is degraded to underclass and forcefully exported to harsh living condition and placed under constant surveillance.⁷⁰ For these reasons, people flee the country when they feel that they are at risk of being punished.

iv. **Intense Refoulement Investigation Process**

Even though the punishment for fleeing has recently been eased, NKEC still go through an intense refoulement investigation process that frequently makes them feel humiliated. This process includes beating, torture, and intense body search.⁷¹

In the 1990s, all NKEC were considered political criminals and punished by being sent to political prisoner camps, forced to do hard labor, tortured, degraded to underclass, or forcibly exported.⁷² However, since the escapes became much more prevalent, the punishment was applied less severely. The North Korean government differentiated the punishments according to the NKEC's length of stay, motivation of flight, contact with South Korean or Christian organizations, involvement in human trafficking, and so on.⁷³ However, regardless of differentiating the punishments, the process of investigation is still conducted in an inhumane manner. Even after NKEC return to North Korea, they

⁷⁰ Rhoda Margesson, Emma Chanlett-Avery, and Andorra Bruno, "North Korean Refugees in China and Human Rights Issues: International Response and U.S. Policy Options," September 26, 2007.

⁷¹ Lee, "북한주민의 국경이동 실태- 변화와 전망 [Status of North Korean Migration Across the National Border - Changes and Prospects, translated by Jane H. Lee]."

⁷² Ibid.

⁷³ Ibid.

go through discrimination and stereotype among the society. The continual scrutiny makes it hard for them to resettle and would eventually lead them to re-escape, risking heavier consequences than before.

v. Contemporary Aspect of Transition

Beginning in 1998, humanitarian assistance from abroad has helped to relieve the economic crisis in North Korea.⁷⁴ In the 1990s, people escaped due to more desperate life threatening situations. However, since the 2000s, people escape to earn more money and to seek for better living conditions.⁷⁵ In other words, these days North Koreans voluntarily choose to flee to manage a better lifestyle.

In the early stage of exodus, North Koreans who did not know the Chinese language became the easy target of exploitation.⁷⁶ Learning Chinese helps NKEC to obtain higher opportunities of getting employed as cheap laborers. This motivating factor demonstrates similarity with illegal immigrants, rather than that with refugees. A lot of NKEC who work as cheap laborers in China earn money in order to send it to their families in North Korea and to help them make their way ultimately to South Korea. Since this phenomenon has become more prominent, the broker groups that help North Koreans cross the border became

⁷⁴ Kim, “1. 탈북자 문제의 발생 원인과 현황 [1. The Cause of the North Korean Defector Issues and Its Status, translated by Jane H. Lee].”

⁷⁵ Lee, “중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China’s North Korean Defector Policy, translated by Jane H. Lee].”

⁷⁶ Lee, “북한주민의 국경이동 실태- 변화와 전망 [Status of North Korean Migration Across the National Border - Changes and Prospects, translated by Jane H. Lee].”

more professional and systematic.⁷⁷ These broker groups bribe two sides (China and North Korea) of border guards and coax them with connivance about flight.

1.5.B. Six Pull Factors

i. Protection and Support from Ethnic Korean Society Living in China

A myriad of ethnic Koreans in China have relatives in North Korea. Ethnic Koreans in China were sympathetic to North Koreans during the early stage of refugee influx in the mid-1990s. Ethnic Koreans, on a personal level, acted in the capacity of protectors of NKEC.⁷⁸ The NKEC were able to receive significant help from ethnic Koreans during the 1990s, particularly after the economic crisis of North Korea in 1994.

On a broader scale, South Korea's religious organizations continue to be major supporters in assisting North Koreans to safely arrive to their final destination, South Korea. However, as the North Koreans prolonged their stay, crimes involving NKEC increased, which made it harder for the aid groups to help North Koreans.⁷⁹ Due to the treaties between China's and North Korea's government, and social problems caused by some NKEC, the Chinese government prohibited all kinds of assistance to North Koreans. The Chinese government has strictly punished individuals and organizations that help North Koreans' illegal entry to China according to articles 318 and 321 of China's

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

criminal law.⁸⁰ These stronger regulations created obstacles, which makes ethnic Koreans difficult to provide support to NKEC.

ii. **Relief Activities by Non Government Organizations (NGOs)**

NGOs that are helping NKEC are conducting various relief activities. Internationally, NGOs focus on raising awareness of North Koreans' human rights violation to the outside world. Their ultimate goal by raising awareness is to help North Koreans achieve legal refugee status so that they are protected by international laws.⁸¹ Regionally, NGOs provide food aids to North Korea. At the same time, they offer food, shelter, and clothes to NKEC who are living in hostile conditions scattered around Southeast Asia, and in some cases, help NKEC arrive safely to South Korea.

The role of international NGOs is essential for NKEC these days because assistance from ethnic Koreans and religious organizations within China is decreasing due to the Chinese government's strengthening punishments. International NGOs that are conducting relief activities can effectively raise awareness of human rights violations, and the importance and necessity of recognizing NKEC as refugees globally. They are trying to stop the inhumane treatment that NKEC encounter due to the lack of appropriate legal status.

Many religious NGOs in South Korea protect NKEC and offer them food and shelters, while conducting mission work at the same time. They established Mission Home (orphanage, house church, shelters, etc.) in China's three northeastern provinces and informally protect, educate, and nurture North Korean

⁸⁰ Ibid.

⁸¹ Ibid.

orphans. Despite support from various NGOs and missionaries, these relief activities only provide temporary assistance in the aid processes. These supports are far from solving fundamental and structural problems of the North Korean refugee crisis.

iii. **Higher Job Opportunities in China**

There are far more ways to earn money in China compared to North Korea. For example, there is high demand of cheap labor in China's farmland and other job markets. When North Koreans first arrive, they are not used to the new environment and they cannot speak Chinese. Some Chinese employers may take advantage of NKEC's illegal status, and exploit them without paying for their labor. However, when North Koreans adapt to the new environment and learn Chinese, they have more employment opportunities with higher wages. It is unconstitutional for Chinese employers to hire NKEC, and if they are caught while hiring North Koreans as their laborers, they face punishment. Despite this risk, some Chinese still demand North Koreans as cheap labor force by exploiting their vulnerable status.

iv. **High Demand for Brides in China**

There is a high demand for North Korean women as wives of Chinese rural men. Due to the one child policy in China during the last several decades, the gender ratio between male and female has been severely skewed so that there are more men than women in China.⁸² In addition, since the onset of China's open market era and accelerating industrialization, many Chinese women have moved

⁸² Ibid.

to urban areas or abroad for better work opportunities. This demographical shift and the fact that some of these Chinese farmers are struggling with physical or mental disabilities, or alcohol addictions make it difficult to find brides.

Injunction with Chinese males in need of brides, female NKEC endure the situation of being victims of human trafficking in order to avoid refoulement. A myriad of these North Korean women are in high demand as sex partners of Chinese rural men, and are sold to them through the hands of human traffickers.⁸³ In order to prevent the female NKEC from fleeing, Chinese men threaten NKEC by using their vulnerable situations. Many female NKEC helplessly endure the sexual harassments and domestic violence to avoid refoulement. North Korean women have no legal protection to prevent them from being abused.

Chinese males do not usually care whether the female NKEC are already married. Therefore, the age range of female NKEC who are sold by human traffickers as brides is fairly broad, from teenagers to women in their sixties, with women in their twenties to thirties being in the highest demand. Due to their dire situation, North Korean females comply with this unofficial human trafficking trend. However, China's excessive biased gender ratio excludes North Korean males. Therefore, it is more common for North Korean females to stay in China compared to North Korean males.

⁸³ Ibid.; Kim, "중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee]."

v. **Reunion with Other Family Members who are in China or South Korea**

Many North Koreans attempt to re-escape the country after their refoulement to North Korea. Many NKEC who are hiding in China are, once captured by Chinese law enforcement, forcefully returned to North Korea, while their family members may be left behind in China. Risking their lives, these people attempt to cross the North Korea-China border again to meet their family members they've been separated from.⁸⁴

Some North Korean brides who had been sold to Chinese rural males are returned to North Korea. However, like NKEC who re-escape from North Korea after their refoulement, it is possible that these women would attempt to cross the border once again to be united with their families.⁸⁵ Many of them have children with Chinese men. Even though the marriage itself was not voluntary, and many of those women are not content in their marriage, the North Korean females still try to re-escape from North Korea to reunite with their children left in China. Reunion with family works as a major reason for North Korean females to cross the border again after their refoulements. For this reason, the North Korean law enforcement investigates whether the returned female is pregnant or not after her refoulement. It has been reported that if North Korean women are pregnant, the law enforcement conducts forceful abortions on these women.⁸⁶

⁸⁴ Kim, "1. 탈북자 문제의 발생 원인과 현황 [1. The Cause of the North Korean Defector Issues and Its Status, translated by Jane H. Lee]."

⁸⁵ Lee, "북한주민의 국경이동 실태- 변화와 전망 [Status of North Korean Migration Across the National Border - Changes and Prospects, translated by Jane H. Lee]."

⁸⁶ Do et al., *White Paper on Human Rights in North Korea 2015*.

Along with the increase of family reunions in China, the population of NKEC who have reunited with their separated families in South Korea, their final destination, has also recently increased. This trend demonstrates that many of NKEC who have first settled down in South Korea try to help their other family members who are still in the process of fleeing by sending money. The settling NKEC receive the resettlement funds from South Korean government and they use this as resources for this effort. Many of them succeed and are able to reunite with one another in South Korea. Recently, the communication with family members who are living in North Korea has become possible through the brokers in China. Consequently, it got easier for family members in South Korea to get in contact with other family members in North Korea to plan their flight together.⁸⁷

vi. **South Korean Government's Protection and Support Policy of NKEC**

In 1997, the South Korean congress ratified "The Law of Protection and Resettlement of North Korean Refugees." According to this law, the South Korean government has legal responsibility to protect North Koreans who request protection at any South Korean diplomatic offices in the foreign countries, with the exception of criminals. Once they enter South Korea, the government also guarantees to provide resettlement funds, rental houses, free education, living wages if necessary, health care, social adaptation education, employment education, fair employment and so on. In their early stages of exodus, North Koreans are hesitant to go to South Korea due to their stereotyped perception of South Korea that they had learned from North Korea's propagandistic education.

⁸⁷ Lee, "북한주민의 국경이동 실태- 변화와 전망 [Status of North Korean Migration Across the National Border - Changes and Prospects, translated by Jane H. Lee]."

However, once they hear more and more about the reality of South Korea during their stay in China, they begin to see South Korea as a land of hope and opportunity, and attempt to go to the country.

1.6. Summary

Understanding these push and pull factors is essential to comprehend the motivation of NKEC to determine their escape, which endures harsh consequences. At first, the Chinese government overlooked their entry to China, but due to the North Koreans' constant influx to the country, the Chinese government could no longer handle a large amount of refugees crossing their borders. China is apprehensive of North Korea's collapse, which also concerns North Korea. In order to prevent this refugee movement that might possibly cause the breakdown of the North Korean regime, the two countries made bilateral treaties. However, these bilateral treaties constantly cause conflicts for China because of its multilateral treaties that it signed as a member state of international community. Some of China's behaviors, in order to comply with the bilateral treaties with North Korea, contradict China's responsibility as a member of multilateral treaties. China has been prioritizing the bilateral treaties with North Korea, violating multilateral treaties. This led China to be harshly criticized by international community. Now that we know why there is a constant flow of refugees from North Korea, and why China had to make the treaties with North Korea, it is important to examine China's intention of remaining as a sole ally with North Korea, disregarding other countries' dissuasions.

CHAPTER TWO

Causes and Results of the Problem: Conflicting Views and Human Rights Violations

In the previous chapter, this thesis defined a few terminologies and reasons for the North Korean refugee exodus. This background information is essential for understanding the complex diplomatic and domestic concerns intertwined with the NKEC problem in China. In this chapter, the author will accomplish the following: (1) demonstrate conflicting opinions in relation to recognizing NKEC; (2) specifically compare the positions of China and North Korea in viewing NKEC; and lastly; (3) describe the background discussion of NKEC's lives in China.

2.1. Views of Recognizing NKEC as Refugees

2.1.A. NKEC Advocates

Advocate groups that support NKEC rights, such as UNHCR, the South Korean government, and international NGOs, among others, argue that China should no longer avoid recognizing NKEC as refugees. These groups contend that it is rash judgment to assess one's refugee status by only looking at one aspect of motivation.⁸⁸ They view North Koreans crossing the border as not only fleeing from hunger but also from the totalitarian government. Although outer motivation of escape may be directly related to starvation, it is oversimplifying North Koreans' motivations to say that they are crossing

⁸⁸ Bok-Hee Chang, “중국에서의 UN 인권조약 이행 : 탈북자 보호문제를 중심으로 [Implementation of UN Human Rights Treaty in China: On Protection of North Korean Defectors, translated by Jane H. Lee],” *WonKwang Law Research* 26, no. 2 (2010): 201–22.

the border simply because of starvation, risking their own lives and even families' lives. These groups helping NKEC perceive that their motivations for escape not only come from economic reasons, but also considerably political reasons. NKEC advocates see that NKEC are hiding their political motivation because any subversive action is considered a serious felony that might cause negative consequences for the entire family, as seen from Table 2.1.

Table 2.1. Cases of Discrimination due to Detentions or Political Prison Camps (*kwanliso*)

Testimonies	Testifier ID
My uncle went to a political prison camp (<i>kwanliso</i>), and my cousin went missing, and so I could not advance to graduate school.	NKHR2013000164 July, 12, 2011
I was discriminated because I had been to a ordinary prison camp (<i>kyohwaso</i>) and my brother was detained in a political prison camp (<i>kwanliso</i>)	NKHR201100244 November, 22, 2011
Since my uncle had an ordinary prison camp (<i>kyohwaso</i>) detention record, I was dropped after having been selected by the Party Section 5 (which selects pretty girls to work for Kim Il-sung/ Kim Jong-il).	NKHR2013000183 October, 01, 2013
One cannot work at Gaeseong Industrial Complex if one had been to a labor training camp (<i>rodongdanryundae</i>)	NKHR2013000194 October, 29, 2013
I was selected by Section 5 of the Party, but because my father defected after detention in an ordinary prison camp (<i>kyohwaso</i>), my case was not processed. I gave up on college education, because I could not expect a good assignment even if I graduated from college.	NKHR2013000223 December, 10, 2013
The defector sought to get into college, but he was not admitted on the grounds that he was a family member of a political prisoner. He was eventually assigned to a farm.	NKHR2014000036 April, 15, 2014
As the defector's aunt was sent to a political prison camp (<i>kwanliso</i>), the family background of the entire family was downgraded. As a result, one of his relatives, who was working as an officer at the Wisu Military Police in Pyongyang, was reassigned to an ordinary military unit in Nampo.	NKHR2014000077 July, 01, 2014
The defector's brother could not become Party staff because their grandfather was detained at a political	NKHR2014000084 July, 01, 2014

prison camp (*kwanliso*).

(adopted from White Paper on Human Rights in North Korea 2015, p 185)⁸⁹

Even UNHCR, in which China is a member state, agitates that those who flee their countries in order to seek food may claim to be refugees *sur place*, because they may face persecution once they return.⁹⁰ UNHCR's broader interpretation beyond the Refugee Convention implies that economic and political motivations are so closely intertwined that it is hard to define refugee applicants' motivations as one of the two.

Treason against the Fatherland (Article 63)

Those who betray the Fatherland by fleeing and surrendering to another country; those who betray the Fatherland or turn over secrets to the enemy; applies to extremely serious cases.

(*The 2009 revision of the Criminal Law of North Korea included the death penalty as the maximum punishment)⁹¹

According to the constitution of North Korea, any action that is against the socialist regime, such as escaping the country, or even attempting to do so is considered as treason.⁹² The lightest punishment is hard labor for 5 years of imprisonment, and in some severe cases, execution. Similarly, Sung-ho Jae also supports the idea that defection in North Korea is a foremost direct expression of challenging the regime and the representation of discontent with the political ideology⁹³. He emphasizes, that even if the

⁸⁹ Do et al., *White Paper on Human Rights in North Korea 2015*.

⁹⁰ Margesson, Chanlett-Avery, and Bruno, "North Korean Refugees in China and Human Rights Issues," September 26, 2007.

⁹¹ Do et al., *White Paper on Human Rights in North Korea 2015*.

⁹² Kim, "중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee]."

⁹³ Sung-ho Jae, "해외 탈북자의 법적 지위와 처리방향 [Legal Status of North Korean Defectors Abroad and Some Possible Solutions for their Fair Treatment, translated by Jane H. Lee]," *Seoul International Law Research* 9, no. 1 (June 2002): 21–32.

primary motivation of escape is a result the starvation, the political meaning of escape in North Korea qualifies all NKEC as political refugees.

Lastly, according to the United Nation’s annual report, *Human Rights Report of Democratic People’s Republic of Korea*⁹⁴, it is apparent that once NKEC are returned, they will suffer detainment, hard labor, persecution, torture, and, in extreme cases, execution.⁹⁵ And as seen from Table 2.2, the female NKEC often face severe sexual harassment in the process of investigation once they are deported. Based on both Refugee Convention and Protocol,⁹⁶ the country should not send asylum seekers back to their country if it is clear that they will face persecution.

Table 2.2. Sex-Violence in the Investigation Process of Repatriation to North Korea

Testimonies	Testifier ID
A North Korean defector* testified that without exception, the agents examined the uterus of all women deported from China.	North Korea defector XXX, October 11, 2012 Interview in Seoul
A defector testified at Onsung SSD in 2011, the agents beat eight female inmates and inspected their uterus wearing surgical gloves. They would rub the gloves off the clothes before checking another inmate. XXX said inmates had to undergo the procedure again at Chongjin holding centers (jipkyulso). A young woman in her 20s had bled heavily after the uterus inspection, but agents did not give her proper treatment.	North Korean defector XXX, October 5, 2012 Interview in Seoul
A defector testified that she had a uterus inspection at a border guard outpost.	North Korean defector XXX, October 22, 2012 Interview in Seoul
When I was detained in the local SSD holding centers	NKHR201300038

⁹⁴ “Report of the Commission of Inquiry on HR in the Democratic People S Republic of Korea” (United Nations General Assembly, 2014), <http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/ReportoftheCommissionofInquiryDPRK.aspx>.

⁹⁵ Lee, “북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee].”

⁹⁶ UNHCR, “Convention and Protocol Relating to the Status of Refugees.”

(jipkyulso) in Hyesan, Yanggang Province, the female agent pulled off my clothes completely, and checked my uterus without wearing sanitation gloves. She did not appear to be a military agent or jipkyulso agent. As she conducted the body-check, she said “If I don’t do it now, a man will do it later on, so be patient.”	February, 19, 2013
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When I was forcible deported back to North Korea, a female agent checked my body on the first day of detention, both at local SSD detention center in Onsung County and at Onsung labor training camp (rodongdanryundae). She checked my uterus and forced me to do several sit-ups (so-called ‘pumping’).	NKHR2013000198 October 29, 2013
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* Though the author tries to avoid using the term “defector,” because the thesis argues that the term does not fully encompass North Korean escapees’ situation in China, the word is retained in quotation to accurately represent sources material.

(adopted from White Paper on Human Rights in North Korea 2015, p 368)⁹⁷

For these reasons, even if the primary reason of escaping is economic, given North Korea’s situation, an in-depth understanding of other significant motivating factors and the aftermath of the refoulement should be considered.

2.1.B. Opposing Opinions

The governments of China and North Korea, and several political scientists from China and South Korea, oppose recognizing NKEC as refugees. Even though there are several testimonies of previous detainees suggesting that once NKEC are sent back to North Korea they face severe torture and persecution, Tae-geun Lim, South Korean law expert regarding North Korean refugee, reports it is hard to prove.⁹⁸ Lim says, “Since North Korea is one of the most isolated countries in the world, it is hard to secure positive evidence based on first-hand testimonies.”⁹⁹ He observes that NKEC who were involved

⁹⁷ Do et al., *White Paper on Human Rights in North Korea 2015*.

⁹⁸ TaeGeun Lim, “탈북자의 국제적 보호 [International Protection of North Korean Defectors, translated by Jane H. Lee],” *Journal of the Democratic Legal Studies Association* 17 (2000): 131–147.

⁹⁹ Ibid.

in a political party or a bureaucratic cabinet in North Korea are probable to be recognized as refugees since they qualify as “member[s] of a particular social group,” but it is hard to regard the rest as refugees.¹⁰⁰ China considers recognizing all NKEC as political refugees as stretching the concept of the legal refugee principles based on the Convention and Protocol.¹⁰¹

Along with China and North Korea’s opposition, numerous scholars from China and South Korea argue that broadening the interpretation of refugee status is a distortion of the Convention.¹⁰² They interpret the text of the Convention and Protocol literally, and believe introducing outside factors can distort the original criteria of refugee. The opposing side thinks that no matter what North Korean refugees’ hidden intentions are, since their primary and the foremost reason for escaping is economic, they should not be acknowledged as refugees.

Moreover, China and North Korea argue that the processes of investigating NKEC and transporting them back to their country have undergone improvements.¹⁰³ Based on what the oppositions says, the process is conducted more humanely (see Table 2.3). As Table 2.3 shows, the severity of punishment has been lessened and the amount of time of incarceration has been shortened. Therefore, they see that it is hard to say that NKEC have a fear of being punished when they are deported.¹⁰⁴

¹⁰⁰ Lee, “북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee].”

¹⁰¹ Lim, “탈북자의 국제적 보호 [International Protection of North Korean Defectors, translated by Jane H. Lee].”

¹⁰² Lee, “북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee].”

¹⁰³ Ibid.

¹⁰⁴ Ibid.

According to testimonies of NKEC conducted by Korea Institute for National Unification, there is no such thing as due process or rule of law in North Korea despite the existence of the constitution.¹⁰⁵ People are arbitrarily dragged to gulags, tortured, and treated inhumanely without any legal process. In some cases, the victim's whole family becomes political prisoners and is sent to the gulags or coercively deported to hostile living conditions.¹⁰⁶ South Korean scholars such as Lim are not entirely contradicting the fact that North Koreans will face danger or persecution once they are sent back. However, since the end of 1996 North Korea has eased its punishments in its constitution against NKEC who escaped because of economic reasons as seen from Table 2.3. Although there is no way to assure its practice, it is hard to find sufficient proof that North Koreans would still be severely persecuted when they are returned. Despite a myriad of testimonies, these allegations are hard to prove without objective evidences. A lack of openness of the regime makes it difficult to recognize NKEC as refugees.

Table 2. 3. Comparisons of Penalty Provisions on Defection

Old Criminal Law (October 19, 2009)	Revised Criminal Law (May 14, 2012)
Article 62 (Treason against Father land) If a citizen betrayed fatherland, fled or surrendered, or turned over state secrets to another state, he shall be sentenced to over five years of correctional labor penalty or capital punishment, plus confiscation of all personal property.	Article 63 (Treason against Fatherland) If a citizen betrayed fatherland, fled or surrendered, or turned over state secrets to another state, he shall be sentenced to over five years of unlimited term correctional labor penalty; in more serious cases the penalty shall be life-term correctional labor penalty or capital punishment, plus confiscation of all personal property.
Article 233 (Crime of Illegal Border Exit/Entry) The crime of illegally entering/ exiting the border shall be given up to 2 years of labor	Article 221 (Crime of Illegal Border Exit/Entry) The crime of illegally entering/ exiting the border shall be given up to 1 year of labor

¹⁰⁵ Do et al., *White Paper on Human Rights in North Korea 2015*.

¹⁰⁶ Ibid.

training penalty; in more serious cases the penalty shall be up to 5 years of correctional labor penalty.	training; in more serious cases the penalty shall be up to 5 years of correctional labor penalty.
Article 234 (Crime of Assisting Exit/Entry) In case a worker in the border management sector assisted in an illegal border crossing (exit/entry), he shall be penalized with up to 2 years of labor training; in repeated cases or in case bribery was involved, the penalty shall be up to 5 years of correctional labor penalty.	Article 222 (Crime of Illegal Assistance) Illegally assisting anyone hostile to the Republic shall be penalized with up to 1 year of labor training; in more serious cases, the penalty shall be up to 2 years of correctional labor penalty.

(adopted from White Paper on Human Rights in North Korea 2015, p 450)¹⁰⁷

2.2. China's Reasons for Not Recognizing NKEC as Refugees

Determining whether an applicant is a refugee or not is decided by UNHCR.¹⁰⁸ Whether a country will accept the refugee as its citizen is outside of UNHCR's authority. In other words, UNHCR does not have enforcement power to let North Korean refugees stay in China. Even if UNHCR acknowledges NKEC, if China denies their presence and residency, then there is nothing UNHCR can do.¹⁰⁹ Russia has a history of accepting several North Koreans as refugees. Contrary to other countries, China has profound reasons for not recognizing North Koreans as refugees.¹¹⁰

First of all, China made bilateral repatriation treaties with North Korea in 1960 and in 1986.¹¹¹ In those treaties, China guarantees that it would unconditionally return

¹⁰⁷ Ibid.

¹⁰⁸ Kim, "북한 난민 대책에 대한 연구 - 동독, 베트남 사례를 중심으로 [A Study on the Strategy for North Korean Defectors with a Focus on the Eastern Germany and Vietnam's Cases, translated by Jane H. Lee]."

¹⁰⁹ Ibid.

¹¹⁰ Lee, "북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee]."

¹¹¹ Cho, "국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms,

NKEC whenever they are found.¹¹² China promises to even punish Chinese who help North Koreans to escape or let them hide in their homes.¹¹³

Even though China has been criticized for its inhumane treatment to NKEC, China has been abiding by these bilateral treaties ever since 1960 due to its political entanglement with North Korea. Not only China is a communist ally for North Korea, but also it values the geostrategic significance of North Korea for China's security. North Korea acts as a buffer against direct contact with the United States' allied countries, South Korea and Japan. China wants to prevent the United States' influence from bordering directly with China, and North Korea is acting as a crucial fence against that.¹¹⁴

Secondly, numerous scholars have interpreted China's adhering to its repatriation policy as stemming from fear of North Korea's possible collapse.¹¹⁵ If the North Korean regime collapses, there is a possibility of mass influx of North Korean escapees into Chinese territory.¹¹⁶ This will trigger more complicated dynamics of social, political and

translated by Jane H. Lee]; Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

¹¹² Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

¹¹³ Ibid.; Lee, “중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee].”

¹¹⁴ Lee, “중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]; Wuthnow, “Warning.”

¹¹⁵ Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee]; Lee, “중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee].”

¹¹⁶ Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

economic problems to the Chinese government. Politically, if North Korea collapses, all the hidden practices of the human rights violations conducted by both North Korea and China would likely be revealed publically.

Domestic economic confusion would be enormous as well. For instance, when Vietnamese were migrating out of the country to avoid the Vietnam War from the 1970's to the late 1990's, neighboring countries accepted them as refugees. The UNHCR was actively involved in distributing a large number of Vietnamese refugees to Malaysia, Thailand, Indonesia, the Philippines, Hong Kong and others. These neighboring countries contributed the financial aids to support refugees' temporary stays until the situation in Vietnam settled down.¹¹⁷ If China has to recognize North Koreans as refugees, China would need to provide a similar sort of assistance for them to settle down, which might burden the Chinese government's national finance. The domestic unemployment rate of the Chinese population is already very high¹¹⁸ and if China accepts the mass amount of NKEC as part of its population, the unemployment would soar. The low wage job opportunities in China would be taken by lots of North Koreans because their vulnerable status as "illegal migrants" enable themselves to be exploited by Chinese employers at a very low payment (sometimes even without any payment). Since low wage jobs are filled up with numerous NKEC, the local Chinese who are looking for jobs have narrower job opportunities, facing further unemployment. Socially, the Chinese government assumes that the crime rate related to North Koreans would increase.¹¹⁹ Chinese criminal organizations would likely take advantage of NKEC's defenseless situation and use them to commit crimes or in many cases exploit NKEC for human and organ trafficking. China

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

predicts that a lot of North Korean escapees who fail to integrate to Chinese society would get involved in criminal organizations.¹²⁰ This would negatively affect China's domestic security.

Thirdly, the Vietnamese refugee case illustrates that the country where refugees are staying has an obligation to provide refugee camps or has to at least bear cost for refugees to stay in the country until they find another place to move.¹²¹ Almost without an exception, any country where refugees are dwelling, the country has to let UNHCR staff or other international NGOs come to the country. It is inevitable for China to face criticism for violating global human rights during the process of their involvement.

As a member country of the United Nations and a state that signed the 1951 Convention and the 1967 Protocol, China has a moral obligation to abide by international refugee laws.¹²² However China is not willing to accept NKEC as refugees in order to avoid these consequences.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² "Convention and Protocol Relating to the Status of Refugees," 2010, <http://www.unhcr.org/3b66c2aa10.html>.

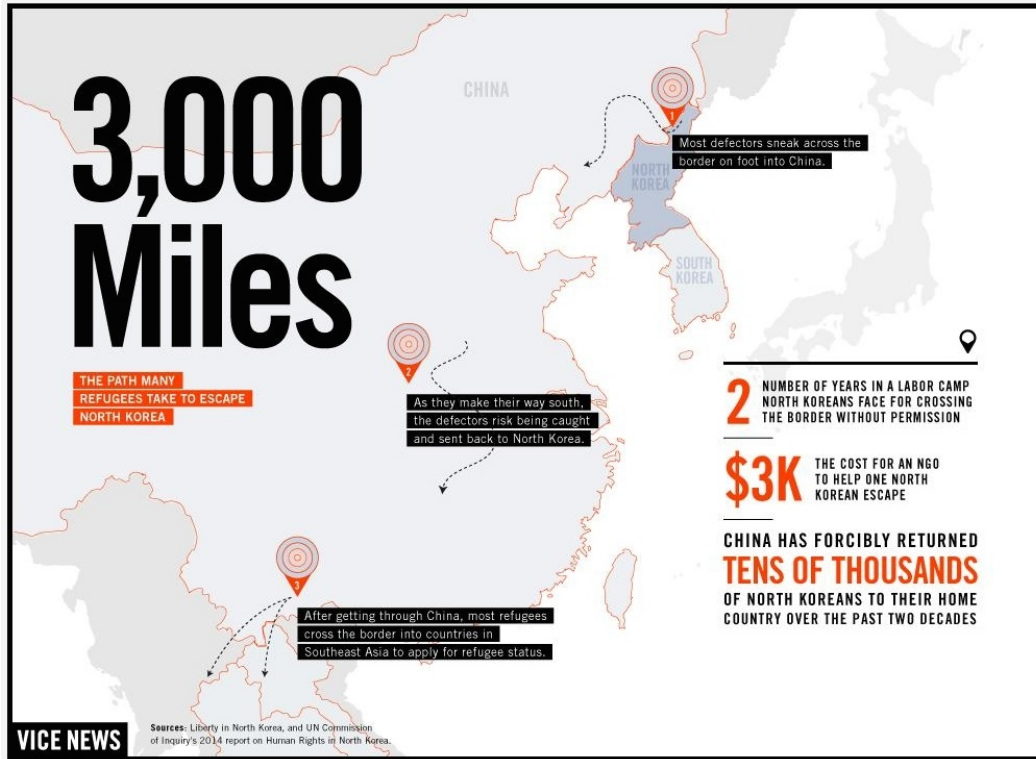


Figure 2. A Typical Escape Route for NKEC ¹²³

2.3. North Korea's Reasons for Stopping the Refugee Exodus

As stated above, two treaties were ratified between North Korea and China that state China will not let North Koreans stay in its territory, and will send them back to North Korea.¹²⁴ Instead of finding a solution to relieve famine during the 1990's, the North Korean regime has taken even tougher measures to punish NKEC and to prevent potential escapees. North Korea has strengthened surveillance of its people, tightened

¹²³ "How a 19-Year-Old North Korean Escaped and Became a Sushi Chef in America," *VICE News*, accessed March 18, 2016, <https://news.vice.com/article/how-a-19-year-old-north-korean-escaped-and-became-a-sushi-chef-in-america>.

¹²⁴ Kim, "중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee]."

border guards, and also spread the fear that whoever goes to South Korea will be publically executed as seen from Table 2.4.

Table 2.4. Cases of Firing upon Defectors*

Testimonies	Testifier ID
<ul style="list-style-type: none"> • 2009 • Customs Bridge, Hyesan, Yanggang Province • Advance Warning : 3 times 	NKHR2012000154 July 31, 2012
<ul style="list-style-type: none"> • 2010 • Hyesan, Yanggang Province • Victims: Two teenage boys from Hyesan, Yanggang Province • Assailant: Unknown • While the defector was held at a detention center, two of his fellows inmates, aged 17 and 18, tried to cross the border while at work. One of them was shot to death on the spot; the other managed to cross the river after being shot in one of his legs. One month later, he ended up being deported and suffered inhumane treatment at the detention center. 	NKHR201400068 June 03, 2014
<ul style="list-style-type: none"> • January 16, 2012 • Wonjong Customs Office in Wonjong-ri, Rason (Sonbong County), North Hamkyoung Province • Victims: A 38-year-old woman (the defector) and two others • Assailant: Security agent (presumed) • While the defector and two friends of hers were crossing the river, a man believed to be a security agent fired at them from three meters away and followed them all the way to China. 	NKHR2014000020 March 18, 2014
<ul style="list-style-type: none"> • Victim: 1 male (37, a friend of witness) • Assailant: Border guards • There were warnings; and no resistance from the victim. He was killed. 	NKHR2013000231 December 24, 2013
<ul style="list-style-type: none"> • August 15, 2013 • China • Victim: A man in his 40s (from Bocheon County, Yanggang Province) • Assailant: Border security guards • A group of 12 men and women crossed the river to collect blueberries in China. The border security guards shot at them immediately, although it is 	NKHR201400055 May 20, 2014

unclear whether they fired live rounds or blanks.

* Though the author tries to avoid using the term “defector,” because the thesis argues that the term does not fully encompass North Korean escapees’ situation in China, the word is retained in quotation to accurately represent sources material.

(adopted White Paper on Human Rights in North Korea 2015, p 434)¹²⁵

In the 1990’s, NKEC were considered political criminals and the regime sent them to political prisoner camps. Not only was the person punished, but also his entire family was degraded to underclass and deported against their wills as seen from Table 2.5.

Table 2.5. Cases of Forced Deportation

Testimonies	Testifier ID
A neighbor was expelled from Hyesan, Yanggang Province in 2009 to Woonyoung County because his daughter crossed the river. Until June 2005, defectors* and their families were not linked. As permits increased and non-returnees increased, families were expelled since 2007	NKHR201200046 March 23, 2012
My son was sent to a labor training camp (rodongdanryundae) since he was caught using mobile phones in Hoeryeong in 2010. For this reason, we were forcibly banished from Gungsimdong, Hoeryeong, to Hwadae County, North Hamkyoung Province.	NKHR201300048 March 05, 2013
Served at an ordinary prison camp (<i>kyohwaso</i>) on charge of economic crime. Upon returning home, we were forcibly banished from Samjiyon County, Yanggang Province to Kim Hyung-jik County.	NKHR2013000187 October 17, 2013
In 2011, the families of defectors, workers in the border areas, and families of human traffickers were deported from Musan County, North Hamgyoung Province. In Musan, more than 70 percent were the families of defectors. Had heard about the ‘Open Musan County Plan’ to expel all the families of defectors from Musan, and fill the city with people unfamiliar with border regions.	NKHR201200043 March 20, 2012
About 10 neighboring families were expelled in 2011 alone. Most of them were economic crime cases. Expulsion was a one-sided order. They were sent from Hyesan to Shinhung-ri, Bocheon County, or Yanggang Province	NKHR2012000155 July 31, 2012

¹²⁵ Do et al., *White Paper on Human Rights in North Korea 2015*.

In April 2014, the nephew of Jang Song-taek and his family were deported from Sohung-dong, Chonjin, North Hamgyong Province to Hwadae County, North Hamgyong Province.	NKHR2012000077 July 01, 2014
Samjiyon County is Kim Jong il's hometown. So, the families of defectors there and those who served at ordinary prison camps (<i>kyohwaso</i>) are forcibly banished.	NKHR2012000226 December 10, 2013
Kim Jong-il pledged to make Wonsan as a second city next to Pyongyang. All the senior citizens, the disabled, and criminals were expelled. People who were rich in the provinces bribed officials to remain in Wonsan, utilizing the registry of the expelled people.	NKHR2012000134 July 10, 2012
* Though the author tries to avoid using the term "defector," because the thesis argues that the term does not fully encompass North Korean escapees' situation in China, the word is retained in quotation to accurately represent sources material. (adopted from White Paper on Human Rights in North Korea 2015, p 204) ¹²⁶	

Contrary to what the North Korean regime expected, people kept escaping the country despite massive risk. The regime attempted to display a softer image to prevent North Koreans from being acknowledged as refugees by outside countries. The regime eased the degree of punishment to convince other countries that NKEC will not face persecution once they are returned.¹²⁷

2.4. Human Rights Crisis of NKEC in China

Most NKEC have to pass China in order to reach South Korea, their likely final destination (see Figure 2. on page 55). The reason that North Koreans have to go through China despite a huge risk of refoulement is because a high-voltage electric fence line runs between North and South Korea. It is nearly impossible to cross it without being electrocuted. Although it is called DMZ (De-Militarized Zone), the borderline is the most

¹²⁶ Ibid.

¹²⁷ Kim, "중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee]."

heavily militarized zone in the Korean peninsula. For these reasons, the majority of NKEC cross the Tumen River to go to China.

The NKEC are at a high risk of being exploited during their escape. Not only does the Chinese government not recognize NKEC as refugees, but they also regard efforts to help NKEC in Chinese territory as illegal. There are myriads of horrible testimonies from NKEC about infringement of their human rights in the escape process.¹²⁸

Yoon-jeong Kim categorizes commonly happening human rights violations in China into three major areas: human trafficking, forced labor, and refoulement.¹²⁹ Kim divides human trafficking into smaller categories: forced marriage, prostitution, and organ trafficking.¹³⁰ As previously mentioned in Chapter 1, there is high demand for brides in China due to the gender imbalance caused by the One Child policy, with overwhelming preference of sons to daughters during the last several decades.¹³¹ In order to solve a lack of brides in China, a lot of young North Korean girls become targets of bride selling. Most of these women are in their teens or early twenties. They are sold to old, mentally ill, or disabled Chinese men almost as sex slaves.¹³² This kind of

¹²⁸ Do et al., *White Paper on Human Rights in North Korea 2015*.

¹²⁹ Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

¹³⁰ Ibid.

¹³¹ Lee, “북한주민의 국경이동 실태- 변화와 전망 [Status of North Korean Migration Across the National Border - Changes and Prospects, translated by Jane H. Lee]”; Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

¹³² Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee]”; Lee, “북한주민의 국경이동 실태- 변화와 전망 [Status of North Korean Migration Across the National Border - Changes and Prospects, translated by Jane H. Lee].”

arrangement is against most North Koreans' wills. Some of them even have husbands and children back in North Korea. Middlemen who conduct human trafficking usually threaten young North Korean girls to obey their demands or else they will hand them over to Chinese law enforcement so they will send them back to North Korea. Since these girls are outside of legal protection, a lot of them endure mental and physical abuses.¹³³ Even after they are married to Chinese, they are still not free from fear of being deported to North Korea.

Although most women are sold as brides, some women are sold as prostitutes. These arrangements are certainly against their will but conducted coercively by many middlemen, due to their illegal status in China. These voiceless women are forced to work as sex slaves and are often fettered to do hard labor. It is not only through sex trafficking, but also organ trafficking that these refugees are abused. Although there is no definite evidence that proves illegal organ trafficking has been revealed, based on some testimonies and given the hostile treatment to NKEC,¹³⁴ it is highly possible that coercive organ trafficking happens in China targeting NKEC.

Forced labor is another human rights violations in China.¹³⁵ Human trafficking is mostly targeted to certain aged female NKEC, but forced labor abuses span across genders and age spectrum including children. Once they are sold, NKEC have to yield submission to the owner, trying to earn at least a minimum amount of money they need to get through the escaping process, but most of them are not paid fairly for their hard labor.

¹³³ Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

¹³⁴ Ibid.

¹³⁵ Ibid.

Since they are not protected by the Chinese government, but rather considered as illegal migrants, even if they are treated unfairly or are abused, they cannot report to the police. Reporting can put them in danger, possibly deportation. Because of this hopeless situation, a lot of North Koreans become victims of sweatshops in China.

The last, but not least, is the problem of human rights violations after deportation. Once NKEC are handed to the Chinese security police, the process of deportation is often inhumanly conducted.¹³⁶ Interrogators deliberately do an excessive strip search, sometimes involving sexual harassments, and torture to degrade human dignity. Women are generally targeted with severe human rights violations.¹³⁷ Even though protection of pregnant women is guaranteed by international law¹³⁸ and also in the North Korean constitution,¹³⁹ in practice, this right is clearly violated. Interrogators would force pregnant women to do hard labor, beat them up or even inject drugs to cause abortion.¹⁴⁰ In cases of women giving a birth, mothers are not allowed to take care of their infants but they are rather forced to let infants die naturally.¹⁴¹ As seen from Table 2.6, children are not an exception in this ruthless deportation process. They are treated same as adult detainees. Regardless of gender, age, and health condition, NKEC, once they are sent back, would face severe human rights violations in North Korea.¹⁴²

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

Table 2.6. Cases of Children in Detention

Testimonies	Testifier ID
A North Korean defector* testifies that in 2008, he saw adults and children thrown into the same room at Group 6.20 in Pyongsung, South Pyongan Province.	NKHR2011000101 April 26, 2011
A North Korean defector testified that in 2010, he/she saw a 15-year-old boy who was mobilized for forced labor while detained at an ordinary prison camp (<i>kyohwaso</i>).	NKHR2011000247 December 20, 2011
A North Korean defector testified that in 2010, he was only 17 years old, but he was detained in detention facilities of border guard, Local branch of MPS, and “inspectors agency.” At these facilities he was severely beaten.	NKHR2012000187 May 22, 2012
A North Korean defector testified that in 2009 a 13-year-old boy was given a labor-training penalty for having watched a South Korean video.	NKHR2012000095 May 29, 2012
A North Korean defector testified that in February 2010 in a local SSD detention center in Musan County, North Hamgyoung Province, his/ her 16-year old son was detained for 15 days on charges of receiving remittance by his parents from China. He was often beaten and put to forced labor before he was able to escape from the center.	NKHR2011000134 June 07, 2011
A North Korean defector testified that in 2011 in Sakju County, North Pyongan Province, he/she saw a 14-year-old boy detained on charge of using a USB on his computer. He was beaten while detained in a rooming house, and about 40 other boys underwent similar punishment.	NKHR2011000105 May 03, 2011
A North Korean defector testified that he was forcibly deported from China and detained in a local SSD detention center in Hyesan, Yanggang Province. He was only 16 at the time but was thrown into an adult detention facility.	NKHR2011000142 June 14, 2012
I was born in 1997, and in 2011 I was detained in a holding center (<i>jipkyulso</i>) in Shinuiju, North Pyongan Province. During the interrogation, the agent struck me.	NKHR2013000032 February 19, 2013

* Though the author tries to avoid using the term “defector,” because the thesis argues that the term does not fully encompass North Korean escapees’ situation in China, the word is retained in quotation to accurately represent sources material.

(adopted from White Paper on Human Rights in North Korea 2015, p 397)¹⁴³

¹⁴³ Do et al., *White Paper on Human Rights in North Korea 2015*.

2.5. Summary

In this chapter, this thesis has explored two conflicting views of recognizing NKEC as refugees, and each of China and North Korea's reasons for violating the international refugee laws. Lastly, it briefly demonstrated how human trafficking, labor exploitation, and refoulement, among other human rights violations, are harming NKEC.

Even though China is a member state and has a moral obligation to abide by UNHCR's Refugee Convention and Protocol,¹⁴⁴ China continues to violate UNHCR's Convention and Protocol by deporting North Korean escapees that flee to China. The UN's lack of enforcement contributes in part to China's violations of the international treaties and laws. In order to grasp a comprehensive understanding of the complexity of China's violations of treaties and laws, it is important to understand the United Nations' effort to persuade China to abide by the international refugee laws. It is also essential to evaluate what kind of legal conflicts and informal relationships are intertwined among the United Nations, China, and North Korea. In the next chapter, the author will discuss potential solutions to compensate for the weakness of both Refugee Convention and Protocol.

¹⁴⁴ "Convention and Protocol Relating to the Status of Refugees."

CHAPTER THREE

China's Lack of Compliance with International Treaties

: Compensating International Refugee Laws with International Human Rights Laws

The North Korean refugee crisis is not only a regional problem, but also an international problem involving various countries. North Korean escapees are citizens of North Korea based on international law, but South Korea's constitution also defines them as South Korean citizens.¹⁴⁵ China and Russia contain the largest number of North Korean asylum seekers in their territories.¹⁴⁶ Transit countries, such as Mongolia, Thailand, Laos, Myanmar and Vietnam have to deal with NKEC as well. The North Korean refugee crisis adds challenges to the international human rights and refugee protection issues for major Western countries like the United States and EU member states are involved in.¹⁴⁷

In this matter, the author is greatly inspired by Jung hyun Cho's work.¹⁴⁸ This thesis adopts Cho's main interpretation about NKEC issues. Cho discusses how the North Korean escapee issues have resulted in the question of enforcement issues of international law, the lack of enforcement of international refugee law, compensating international

¹⁴⁵ Lee, "북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee]."

¹⁴⁶ Ibid.

¹⁴⁷ JaeChun Won, "비차별 원칙과 북한인권 [Nondiscriminatory Principle and North Korean Human Rights, translated by Jane H. Lee]," *Korea Institute for National Unification*, 2013, 221–265; Cho, "국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee]."

¹⁴⁸ Cho, "국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee]."

human rights law in order to overcome the weakness of international refugee law, and China's obligations of five human rights commissions. These are discussed in this chapter.

Due to this interrelationship among various countries, international community such as the United Nations (UN) stepped forward to grapple with the problem, using international refugee laws.¹⁴⁹ However because of the international refugee laws' lack of enforcement, China continues to violate treaties. In this chapter, the author will explore what the UN has done to solve the issue in its own way, and discuss the possible solutions in utilizing international human rights laws to complement international refugee laws' weaknesses. After, the author will list the human rights laws in which China is obligated to comply with, and analyze each of the human rights committee's concerns and suggestions regarding China's human rights abuses towards NKEC.

3.1. The United Nations' Adoption of the North Korea Resolution

Contrary to the 59.5 million refugees worldwide who are protected under the refugee laws, North Korean asylum seekers in China are excluded from legal protection of international institutions.¹⁵⁰ In reality, it is hard for NKEC to request for their legal protection to Chinese public institutions because this can lead them to arrest, imprisonment, and refoulement. Chinese government considers more than 10,000 of NKEC as illegal immigrants^{151, 152} and rules them out of attaining legal refugee status.

¹⁴⁹ Lee, "북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee]."

¹⁵⁰ "Worldwide Displacement Hits All-Time High as War and Persecution Increase," *UNHCR*, accessed March 12, 2016, <http://www.unhcr.org/558193896.html>.

¹⁵¹ Do et al., *White Paper on Human Rights in North Korea 2015*.

This makes NKEC's status vulnerable, leading them to become victims of human rights violations such as refoulement, labor exploitation, and human trafficking.¹⁵³

The United Nations' Sub-Commission on Human Rights adopted International Protection of Refugees in 2001 and in 2002.¹⁵⁴ In this resolution, the United Nations applied broader interpretation beyond the Refugee Convention's criteria. The UN also emphasized outlawing refoulement is the obligation of member states of the Universal Declaration of Human Rights and the International Human Rights Covenant.¹⁵⁵ Besides these legal compulsions, the United Nations underscored the necessity for special protection of women and children asylum seekers who flee their countries because of starvation and poverty.¹⁵⁶

The United Nations Commission on Human Rights also passed resolutions regarding the North Korean human rights situation in 2003, 2004, and 2005.¹⁵⁷ Subsequently, the United Nations Human Rights Council passed resolutions in 2008, 2009 and 2010. In these resolutions, the United Nations criticized North Korea's inhumane treatments toward NKEC who had been returned. The UN expressed its

¹⁵² Practically, it is almost impossible to estimate the exact number of North Korean refugees residing in China. Chinese government controls any kind of field research related to North Korean defectors' situation in China. Due to this restriction, different institutions have significantly different population census reports from one another. For example, one of the prominent NGOs in South Korea, Good Friends, estimated that there are about 300,000 North Korean defectors hiding in China in 1998~1999. However, researcher Yeo-sang Yoon announced that there are about 100,000 North Koreans on that very same time period. However, recently, due to Chinese government's constant refoulement the population has been decreased significantly. Dr. Robinson of Johns Hopkins University stated that in 2009, the population had decreased about 90% compare to that of 1990s. So he estimates that there are about 10,000 to 15,000 defectors in China nowadays.

¹⁵³ Lee, "북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee]."

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Won, "비차별 원칙과 북한인권 [Nondiscriminatory Principle and North Korean Human Rights, translated by Jane H. Lee]."

¹⁵⁷ Lee, "북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee]."

concerns of the absence of human rights in concentration camps where prisoners constantly suffer from severe torture, humiliation and, in extreme cases, execution.¹⁵⁸ In addition, the UN General Assembly constantly urges North Korea to stop the inhumane punishment and induce China and North Korea to follow the principle of non-refoulement.¹⁵⁹

In 2002's Resolution, the United Nations Commission on Human Rights assigned specialists who mainly focus on the North Korean human rights situation.¹⁶⁰ The UN requested the specialists to thoroughly investigate and report the situation annually.

Despite all these efforts, the North Korean government does not acknowledge these resolutions and refuses to cooperate with the UN.¹⁶¹ Also, notwithstanding the fact the China signed both Refugee Convention and Protocol, the Chinese government persistently violates the principle of non-refoulement. China has exercised vigilance toward UNHCR's intentions and disallowed the access of UNHCR to monitor the human rights situation of North Korean asylum seekers in China,¹⁶² fearing potential establishment of refugee camps. Therefore it is difficult for UNHCR to assist the North Korean refugees publically in a transparent manner. This is why it is hard for UNHCR to attain detailed and first-hand information about NKEC.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Wuthnow, "Warning."

¹⁶² Margesson, Chanlett-Avery, and Bruno, "North Korean Refugees in China and Human Rights Issues," September 26, 2007.

3.2. China and International Human Rights Law

Whenever China faces international criticism of violating the principle of non-refoulement, the government insists that it has been managing North Korean asylum seekers in compliance with the domestic law, international law, and humanitarian principles.¹⁶³ The International laws that China is referencing are the Refugee Convention, the Refugee Protocol, and bilateral treaties⁴ with North Korea. However, multilateral international refugee treaties and bilateral treaties with North Korea have conflicting views of recognizing North Korean asylum seekers as refugees. These conflicting views lead China to pick one treaty to abide by, while violating the other one. China is prioritizing bilateral treaties and sending NKEC back to from where they fled.¹⁶⁴

Based on the United Nations' interpretation of the Refugee Convention in 1951 and the Refugee Protocol in 1967,¹⁶⁵ more than 10,000 North Korean asylum seekers in China have well-founded fears of being persecuted based on political opinion, religion and their memberships in political social groups. At the very least, if the Chinese government were to grant NKEC humanitarian status, it would begin to obviate the fear of persecution that NKEC suffer. The NKEC meet the qualifications to be recognized as refugees, but the Chinese government is denying this interpretation, despite its duty as a member state of UNHCR.

¹⁶³ Jonathan Kaiman, "China Rejects UN Report on North Korea's Crimes against Humanity," *The Guardian*, February 18, 2014, sec. World news, <http://www.theguardian.com/world/2014/feb/18/china-rejects-un-report-north-korea-crimes-humanity>; Lee, "중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]."

¹⁶⁴ Kim, "중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee]."

¹⁶⁵ Cho, "국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee]."

Due to the deficiency of domestic refugee recognition procedures and the absence of an international institution to monitor China's implementation processes for recognizing refugees, it is unlikely for NKEC to be recognized as refugees even if they have profound reasons to be seen as such. The absence of a commission to monitor compliance situations in China is the major weakness of the international refugee laws. To strengthen this deficiency, utilizing the International Human Rights Law that has specific commissions can be an effective alternative to the international refugee laws. Commissions of the international human rights treaties have greater ability to enforce the law than the international refugee law, which does not have any commission.¹⁶⁶

3.3. International Human Rights Law vs. International Refugee Law

As other international laws have weaknesses in monitoring member states' performance, International Human Rights Law also has flaws. Despite having a better system of monitoring countries' compliance with treaties, the International Human Rights Laws' commissions do not fully guarantee compliance.¹⁶⁷ However, international human rights law certainly is strong enough to make up for the shortcomings of international refugee laws.¹⁶⁸

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

3.3.A. Expanded Protection of International Human Rights

In order to obtain legal protection under refugee law, the person has to be recognized as a refugee. If the person fails to achieve legal refugee status despite the clear evidence, he or she is excluded from the protection.

Realistically, refugee status only has a declaratory effect. Attaining refugee status and finding a place to live is, again, a different matter. Even after the person is officially acknowledged as a refugee, if the country did not want to accept him or her in its country, the person might not find a place to live. Specifically, if China refuses to accept NKEC by considering NKEC as illegal immigrants or economic migrants, then Refugee Convention and refugee law are ineffective.

However, according to international human rights law,¹⁶⁹ even if the asylum seekers are not refugees but illegal migrants who escaped because of economic reasons, they are still protected just because they are human. Of course, it should be acknowledged that International human rights law is not perfect. Although it purports to protect every human being's rights regardless of whether the person is recognized as refugee or not, international human rights law lacks strong enforcement. However, compared to international refugee law, which has no law-binding mechanisms, international human rights law has at least some power to enforce its authority and offers a broader scope of protection.

¹⁶⁹ Ibid.

i. Stronger Enforcement of International Human Rights Law

International Refugee Law originated from the 1951 Refugee Convention, which is its sole foundation.¹⁷⁰ However, International Human Rights Law not only includes the two human rights treaties of 1966¹⁷¹ but also has specific and detailed treaties about racial discrimination, torture, women, children and more. In terms of content, human rights law offers broader and stronger protection compare to the refugee law. For example, the Convention Against Torture¹⁷² also has the principle of non-refoulement as in the Refugee Convention. The major difference is that the international human rights law has a broader scope of eligibility and stronger enforcement compared to that of the Refugee Convention.

ii. Various Monitoring Commissions of the International Human Rights Law

The monitoring commission system is the most prominent strength of international human rights law. In China's case where the government is apparently violating international law, international refugee law does not have any commission to mandate the country to abide by the law. However, international human rights law has a myriad of monitoring commissions to pressure the country to follow the law.¹⁷³ By using these monitoring commissions of human rights law, it is possible to overcome the weaknesses of refugee law.¹⁷⁴

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² United Nations Committee Against Torture, "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," December 12, 2008, <http://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx>.

¹⁷³ Cho, "국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee]."

¹⁷⁴ Ibid.

3.4. Types of International Human Rights Commissions and Their Roles

There are six major human rights treaties and they all have monitoring commissions:¹⁷⁵

- A. International Covenant on Economic, Social and Cultural Rights (ICESCR 66) - Committee on Economic, Social and Cultural Rights (CESCR)¹⁷⁶
- B. International Covenant on Civil and Political Rights (ICCPR 66)- Human Rights Committee (CCPR)¹⁷⁷
- C. International Convention on the Elimination of All Forms of Racial Discrimination (ICEPR 66)- Committee on the Elimination of Racial Discrimination (CERD)¹⁷⁸
- D. Conventional on the Elimination of All Forms Discrimination Against Women (CEDAW 79)- Committee on the Elimination of Discrimination Against Women (CEDAW)¹⁷⁹
- E. Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CAT 84)- Committee Against Torture (CAT)¹⁸⁰
- F. Convention on the Rights of the Child (CRC 89)- Committee on the Rights of the Child (CRC)¹⁸¹

¹⁷⁵ Ibid.

¹⁷⁶ “International Covenant on Economic, Social and Cultural Rights,” accessed April 29, 2016, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

¹⁷⁷ “International Covenant on Civil and Political Rights,” accessed April 29, 2016, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

¹⁷⁸ “International Convention on the Elimination of All Forms of Racial Discrimination, General Assembly Resolution 2106,” December 21, 1965, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

¹⁷⁹ “Convention on the Elimination of All Forms of Discrimination against Women,” accessed April 29, 2016, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>.

¹⁸⁰ United Nations, CAT, “Convention against Torture,” *United Nations Human Rights Office of the High Commissioner*, December 10, 1984, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

Each committee has its own monitoring mechanisms in order to oversee the member states' compliance situation. Regularly member states of these conventions have to submit periodic national reports to every committee, and then each committee reviews the reports and announces concluding observations or comments. Usually, the committees pinpoint violations and wrongdoings of the country and adduce improvements and suggestions.

Some of these committees have petition procedures, with each one having different methods. CCPR, ICEPR and CAT have inter-state communication systems, whereas committees like ICCPR, ICERD, CEDAW and CAT have individual communication systems. Furthermore, CEDAW and CAT conduct confidential investigations on inquiries when they find out credential reports of systematic and organized human rights violations. Moreover, in CAT's optional protocol in 2006, CAT newly introduced periodic visits of confinement places.¹⁸² Both inter-state and individual communication systems have a quasi-judicial function, which makes international human rights committees far more influential compared to international refugee laws.

Theoretically, CAT's principle of non-refoulement can be particularly useful to mitigate the North Korean refugee crisis. However, in reality, these committees have a hard time exerting their influence over the North Korean refugee crisis in China. This is because China has been effectively blocking the access of these committees, including CAT, and is preventing them from investigating China's compliance with international

¹⁸¹ "Convention on the Rights of the Child," November 20, 1989, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

¹⁸² Cho, "국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee]."

human rights conventions. China did not ratify the necessary procedures to make individual communication systems feasible for CERD, CEDAW and CAT. Therefore, inter-state and individual communication systems are not practicable in China.

Despite China's effort to block the access of committees, China is still obliged to submit periodic national reports to five of the conventions except for ICCPR 66.¹⁸³ Without exception, all five of these committees have expressed their concerns over China's inhumane treatment of NKEC and its violation of the principle of non-refoulement.^{184, 185} China is a member state of these five committees, who pressured China to comply with human rights law and offer humanitarian treatment to NKEC. Even though these committees' concluding observations or comments are not legally binding, at the very least, China has to come up with reasonable justification of its international law violations. During its preparation of response to those international criticisms, China would possibly reform its domestic laws, policies, and customs corresponding to international human rights laws.

The country normally submits its response report to the committee within 4 to 5 years after receiving concluding observations or comments. Nevertheless, China has not responded back to those comments after the committees' denunciation of the exploitation of NKEC.¹⁸⁶

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ CERD has expressed this issue in 2001, CESCR and CRC in 2005, CEDAW in 2006 and CAT in 2008.

¹⁸⁶ Cho, "국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee]."

3.5. Suggestions of International Human Rights Treaties to China

3.5.A. Committee Against Torture (CAT)

The Committee Against Torture (CAT) announced the following concluding observations on December 2008 after reviewing China's 2008 periodic report:

“The Committee is greatly concerned by allegations that many individuals have been forcibly returned to the Democratic People’s Republic of Korea, without any examination of the merits of each individual case, and subsequently been subjected to torture or cruel, inhuman or degrading treatment or punishment by the authorities. The Committee notes with concern that these individuals are referred to by the State part as “illegal immigrants” or “snakeheads” and that such label presume that these individuals are not deserving of any protection. Under no circumstances should the States party expel, return or extradite a person to a State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In the light of the large numbers of citizens of the above State who have crossed into China, the State party needs to be more active in ensuring that the obligations of article 3 are fully met. ...”¹⁸⁷

-CAT, “Concluding Observations: China” 2008

As seen from the periodic report, the CAT rejected China's perspective of seeing NKEC as illegal immigrants.¹⁸⁸ The CAT insisted that NKEC had well-founded fears of being persecuted once they were deported. Considering this fact, the CAT condemned China's refoulement of NKEC. Along with this, the CAT pressured China to conform to Article 3 of the General Assembly Resolution, which was ratified on 10 December

¹⁸⁷ United Nations Committee Against Torture, “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”

¹⁸⁸ Cho, “국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee].”

1984.¹⁸⁹ The CAT explicitly clarified that China's refoulement of NKEC is a violation of Article 3, and emphasized that China should adopt Article 3 into its domestic law as well.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

-United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984¹⁹⁰

Even though the Refugee Convention in 1951¹⁹¹ also has the principle of non-refoulement, CAT's principle of non-refoulement¹⁹² is far more influential for the following reasons:

- i. As with human rights treaties, the CAT covers not only refugees but also every human being without an exception. The CAT has broader applicability than the Refugee Convention.
- ii. The Refugee Convention requires the applicant to fulfill all the criteria for refugees in order to be protected Human rights treaties, however, do not require

¹⁸⁹ United Nations, CAT, "Convention against Torture."

¹⁹⁰ Ibid.

¹⁹¹ Cho, "국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee]."

¹⁹² Ibid.

- the applicant to satisfy certain requirements. The dignity of man qualifies as reason enough to be protected under the human rights treaties.
- iii. The CAT prohibits the exception of returning or expelling criminals in the Refugee Convention.¹⁹³ The CAT fully protects every human being regardless of criminal background.

The significance of this convention is the CAT comes before the bilateral treaties between China and North Korea if these two conflict. It is ideal to avoid conflict between multilateral treaties (in this case the Convention Against Torture) and bilateral treaties (treaty between China and North Korea), but if this is unavoidable, multilateral treaties that have *jus cogens*¹⁹⁴ should be prioritized. China is fully aware of this and even acknowledged that the Article 3 of the Convention Against Torture should be prioritized before the bilateral treaties with North Korea.¹⁹⁵ In reality, however, China has been doing the adverse of what it has promised.

¹⁹³ Clause 2 of the Article 33, The 1951 Refugee Convention. “*The benefit of the present provision may not be, however, 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 judgment of a particularly serious crime, constitutes a danger to the community of that country.*”

¹⁹⁴ Cho, “국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee].”

¹⁹⁵ Ibid.

3.5.B. Committee on the Elimination of Racial Discrimination (CERD)

The Committee on the Elimination of Racial Discrimination (CERD) announced the following concluding observations in 2001 after reviewing China's periodic report in 2001:

“ While noting the State party’s effort to facilitate integration and naturalization of Indo-Chinese refugees in mainland China, the Committee is concerned that different standards of treatment are applied to Indo-Chinese asylum-seekers, on the one hand, and asylum-seekers of other national origins on the other, notable with regard to the right to work and education. Particular concern is expressed regarding the treatment of asylum-seekers from the People’s Democratic Republic of Korea [sic], who are reportedly systematically refused asylum and returned, even in the cases when they have been considered to be refugees by UNHCR. The Committee recommends that the State party take the necessary measures to ensure that all refugees and asylum-seekers receive equal treatment. To this end, the Committee recommends that the State party consider pursuing the adoption of formal legislative or administrative provisions in order to implement objective criteria for the determination of refugee status.”

- CERD, “Concluding Observations: China” 2001¹⁹⁶

The CERD criticized China's unequal treatment towards asylum seekers based on their ethnicity. The CERD particularly pinpointed China's discrimination against North Koreans. The CERD denounced China's systematic refoulement because it defies UNHCR's mandate to accept NKEC as refugees.¹⁹⁷ In a stunning display of hypocrisy, China is accepting more than thirty million Chinese-Vietnamese as refugees and offering relatively generous treatment.¹⁹⁸ Moreover, the Chinese government has partially allowed UNHCR's access to individual evaluation of legal refugee status for Pakistani,

¹⁹⁶ United Nations CERD, “Report of the Committee on the Elimination of Racial Discrimination Fifty-eighth/Fifty-Ninth Sessions,” 2001, <http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx>.

¹⁹⁷ Cho, “국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee].”

¹⁹⁸ Ibid.

Somali, Iranian, Afghani and other asylum seekers,¹⁹⁹ but entirely blocked the access to North Koreans. This is the violation of Article 1 of International Convention on the Elimination of All Forms of Racial Discrimination.²⁰⁰

Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

- International Convention on the Elimination of All Forms of Racial Discrimination, General Assembly resolution 2106, 21 December 1965²⁰¹

China has cooperated with UNHCR and offered relatively lenient treatment to other asylum-seekers such as Vietnamese, but none of this treatment was offered to NKEC. The CERD insisted China guarantee equal protection to all the asylum-seekers regardless of their ethnicity and nationality.²⁰²

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ "International Convention on the Elimination of All Forms of Racial Discrimination, General Assembly Resolution 2106."

²⁰² Cho, "국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee]."

3.5.C. Committee on the Elimination of Discrimination Against Women (CEDAW)

After reviewing China's periodic report in 2006,²⁰³ the Committee on the Elimination of Discrimination Against Women (CEDAW) announced the following concluding observations:

“ 33. While noting that the State party is also party to the 1951 Convention relating to the Status of Refugees, it is concerned at the lack of laws or regulations for the protection of women refugees and asylum-seekers. The Committee expresses particular concern at the situation of North Korean women, whose status remains precarious and who are particularly vulnerable to being or becoming victims of abuse, trafficking, forced marriage and virtual slavery. 34. The Committee calls upon the State party to adopt laws and regulations relating to the status of refugees and asylum-seekers, in line with international standards, in order to ensure protection also for women. The Committee recommends that the State party fully integrate a gender-sensitive approach throughout the process of granting asylum/refugee status in close cooperation with the Office of the United Nations High Commissioner for Refugees. It specifically encourages the State party to review the situation of North Korean women refugees and asylum-seekers in the State party and to ensure that they do not become victims of trafficking and marriage enslavement because of their status as illegal aliens.”

-CEDAW, “Concluding Comments: China” 25 August 2006²⁰⁴

The CEDAW is attentive that more than three-fourth of NKEC are women and majority of them are enduring their hostile conditions to avoid refoulement.

Among the serious concerns addressed were human trafficking, abuse, and forced marriage targeting female NKEC.²⁰⁵ The CEDAW is aware of North Korean females' deplorable exploitation and has admonished the Chinese government to actively step forward to stop the human rights violations.

²⁰³ Ibid.

²⁰⁴ United Nations, CEDAW, “Concluding Comments of the Committee on the Elimination of Discrimination against Women, CEDAW 36th Session, 2006,” August 25, 2006, <http://www.un.org/womenwatch/daw/cedaw/36sess.htm>.

²⁰⁵ Lee, “중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee].”

The CEDAW suggested China affiliate with UNHCR to make more a women-friendly environment for asylum-seekers.²⁰⁶ The CEDAW also recommended China reform its domestic law in more humanitarian ways and stop the refoulement.²⁰⁷ Along with the CEDAW's instructions, punishing local human traffickers and operators of sex industries exploiting NKEC and renouncing refoulement policy can make a huge difference.

3.5.D. Committee on the Rights of the Child (CRC)

The Committee on the Rights of the Child (CRC) reviewed China's periodic report in 2005 and announced the following concluding observations in November of that year:

“ 80. [The Committee] is further concerned that children entering mainland China from the Democratic People's Republic of Korea are categorically considered as economic migrants and returned to the Democratic People's Republic of Korea without consideration of whether there are risks of irreparable harm to the child upon return.

82. The Committee recommends that the State party extended all human rights guarantees in its Constitutions and in the Convention to all Children within its jurisdiction on both the mainland and the SARs [Hong Kong and Macao], including refugees, asylum-seekers and other undocumented migrants. In particular, the Committee recommends that the State party: ... (b) Ensure that no unaccompanied child, including those from the Democratic People's Republic of Korea, is returned to a country where there are substantial grounds for believing that there is a risk of irreparable harm to the child, for instance through disproportionate punishment for violating immigration laws, in accordance with the Committee's general comment No. 2 (2005) on unaccompanied minors; ... ”.

²⁰⁶ Cho, “국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee].”

²⁰⁷ Ibid.

-CRC, “*Concluding Observations: China (including Hong Kong and Macau Special Administrative Regions)*” 24 November 2005²⁰⁸

The CRC prohibited refoulement of children by all means regardless of their legal status.²⁰⁹ The CRC was worried about the situation regarding North Korean children’s refoulement. It was aware that once they were returned to North Korea, they would face “a risk of irreparable harm” even at their young age. The CRC recommended that China extend its protection of human rights in its Constitutions to offer full assurance of children’s security.²¹⁰

Children are one of the most vulnerable social groups of NKEC besides women. Myriads of North Korean orphans escape the country by themselves after losing their parents by starvation or refoulement in the process of escaping. They sustain their lives through begging and stealing and cannot get proper education and care.

Recently, as the population of female NKEC who are forcibly married with local Chinese men has increased, the children born between them have raised a new issue.²¹¹ The Chinese government does not legally acknowledge forced marriage between NKEC and Chinese men. To make the matter worse, their children are excluded from birth registration, effectively rendering them invisible in the eyes of the government.²¹² This prevents them from getting an education even if they become school-aged children. In

²⁰⁸ United Nations Convention on the Rights of the Child, “Committee on the Rights of the Child, Fortieth Session, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention. Concluding Observations: China (Including Hong Kong and Macau Special Administrative Regions),” November 24, 2005, <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>.

²⁰⁹ Cho, “국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee].”

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid.

this sense, China has been overtly violating Article 22 of the Convention on the Rights of the Child.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

- Convention on the Rights of the Child, General Assembly resolution 44/25, 20 November 1989²¹³

Per article 22, regardless of Children’s legal status as refugee, the country should offer them protection and humanitarian assistance.²¹⁴ China, however, has been deporting North Korean children, knowing the human rights abuses that they will face once they are back.

3.5.E. Committee on Economic, Social and Cultural Rights (CESCR)

Following China’s periodic report in 2005,²¹⁵ the Committee on Economic, Social and Cultural Rights (CESCR) announced the following concluding observations in May:

“ 14. ... The Committee notes that some asylum-seekers are excluded by the refugee determination procedure of the State party, in particular those coming from the Democratic People’s Republic of Korea, who are regarded by the State

²¹³ “Convention on the Rights of the Child.”

²¹⁴ Cho, “국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee].”

²¹⁵ Ibid.

party as economic migrants and are thus compelled to return to their countries.

...
 45.*the Committee urges the State party to ensure that its asylum procedures do not discriminate, in purpose or in effect, against asylum-seekers on the basis of race, colour or ethnic or national origins, as provided for under article 2, paragraph 2, of the Covenant. The Committee recommends that the State party consider adopting subsidiary forms of protection to guarantee the right to remain for persons who are not formally recognized as refugees but are seeking asylum and nevertheless require protection during that period, and granting the United Nations High Commissioner for Refugees and humanitarian organizations access to them. ...*”

-CESCR, “Concluding Observations: People’s Republic of China (including Hong Kong and Macao) 13 May 2005²¹⁶

In this observation, the CESCR pinpointed NKEC’s being entirely excluded from consideration as potential refugees and forcefully deported.²¹⁷ The CESCR banned China from discriminating against asylum-seekers based on their ethnicity and nationality. It also emphasized that China is violating Clause 2 of Article 2 of the General Assembly.

Article 2

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

- International Covenant on Economic, Social and Cultural Rights, General Assembly resolution 2200A (XXI), 16 December 1966²¹⁸

Article 2 emphasizes the equal protection of rights regardless of a person’s race, ethnicity, religion, and more. The CESCR also suggested the Chinese government to collaborate with UNHCR, provide humanitarian protection to those asylum-seekers who

²¹⁶ United Nations Convention on the Rights of the Child, “Committee on the Rights of the Child, Fortieth Session, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention. Concluding Observations: China (Including Hong Kong and Macau Special Administrative Regions).”

²¹⁷ Cho, “국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee].”

²¹⁸ “International Covenant on Economic, Social and Cultural Rights.”

fail to achieve legal refugee status, and establish certain policies to enforce this resolution.²¹⁹ Moreover, it insisted China allow the access of UNHCR to these asylum-seekers.²²⁰

3.6. China's Response to International Criticism

China's compliance records with conventions are satisfactory in terms of procedure. Despite its frequent late submissions, China has regularly submitted its periodic reports. After the UN reviews China's periodic report, they give China suggestions and recommendations to meet the standard of UN membership. Ideally China has to adopt those recommendations; however, China has neglected those comments, insisting on their sovereignty. The UN conventions have criticized China's mistreatment of North Koreans and recommended ways to mitigate violations of North Koreans' rights. In China's replies to CAT's comments, China refused the committee's suggestion by saying that CAT's recommendation "runs counter to the principle of impartiality and objectivity, [and] therefore is not acceptable to the Chinese side."²²¹ China also has objected to further examination by the UN monitoring system insisting that the convention's comments are "vilifying and baseless." Instead of adopting those recommendations or opening dialogue with its critics, China tends to respond in one of two ways: either with hostility towards public censure or an unwillingness to

²¹⁹ Cho, "국제인권법상 탈북자의 보호가능성 및 그 실행 [The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms, translated by Jane H. Lee]."

²²⁰ Ibid.

²²¹ "China and the International Human Rights System."

communicate, often to the point of completely withdrawing from the international community.²²²

For example, on February 17, 2014, the UN's Commission of Inquiry on Human Rights in North Korea published a 400-page report criticizing North Korea's "widespread rape, torture, forced abortions, and other atrocities in its network of labor camps."²²³

Along with the publication of the landmark report, the UN also raised the possibility of accusing Supreme Leader Kim Jong Un in the International Criminal Court.²²⁴ As a response to this public criticism, the North Korean ambassador to the UN, So Se Pyong, insisted that this report was a fabrication by hostile powers including the United States to tarnish the image of North Korea. Not only was North Korea enraged after the publication of the report, but also China was outraged and protested the UN commission in an effort to defend North Korea.²²⁵ Contrary to the UN's accusations, China insisted that North Korea did not commit "crimes against humanity." China's representative, Chen Chuandong, a counselor at China's mission in Geneva, denounced this unprecedented indictment of North Korea as "divorced from reality."²²⁶ He concluded that the report is unreliable because of "the inability of the Commission to get support and cooperation from the country concerned."²²⁷ China has been shielding its ally from condemnation for its human rights violations.

²²² Ibid.

²²³ Kaiman, "China Rejects UN Report on North Korea's Crimes against Humanity."

²²⁴ "China Rejects U.N. Criticism in North Korea Report, No Comment on Veto," *Reuters*, February 18, 2014, <http://www.reuters.com/article/us-china-korea-north-idUSBREA1H0E220140218>.

²²⁵ By Madison Park CNN, "China, North Korea Slam U.N. Human Rights Report - CNN.com," *CNN*, accessed April 24, 2016, <http://www.cnn.com/2014/03/18/world/asia/north-korea-human-rights-response/index.html>.

²²⁶ Ibid.

²²⁷ Ibid.; "UN Report Criticizes China for Treatment of North Korean Refugees Amid Worsening Situation | Congressional-Executive Commission on China," March 19, 2014,

The UN commission is aware that many deported North Koreans are sent to prison camps or even publically executed.²²⁸ Moreover, the UN denounces China's repatriation of North Korean escapees is also a crime against humanity.²²⁹ Chinese officials denied allegations related to China's human rights violations toward North Korean refugees²³⁰ and accused the UN Commission's report of leveling "unreasonable criticism." Chen defended China's repatriation saying that "The Koreans who enter illegally, they have breached China's laws and border administration," adding that "They enter illegally, they are not refugees."²³¹ At another press briefing, Ministry of Foreign Affairs spokeswoman Hua Chunying also defended China's repatriation policy by referring to North Korean refugees as "illegal border-crossers" and insisting they should be exempt from refugee protections.²³² She went on to add that China treats them "in accordance with international and domestic laws and the humanitarian principles."²³³ She continued, "We believe that politicizing human rights issues is not conducive towards improving a country's human rights. We believe that taking human rights issues to the international criminal court is not helpful to improving a country's human rights situation."²³⁴ Hua did not reply to any other questions regarding China's disallowance of

<http://www.cecc.gov/publications/commission-analysis/un-report-criticizes-china-for-treatment-of-north-korean-refugees>.

²²⁸ CNN, "China, North Korea Slam U.N. Human Rights Report - CNN.com."

²²⁹ "UN Report Criticizes China for Treatment of North Korean Refugees Amid Worsening Situation | Congressional-Executive Commission on China."

²³⁰ Ibid.

²³¹ CNN, "China, North Korea Slam U.N. Human Rights Report - CNN.com."

²³² "UN Report Criticizes China for Treatment of North Korean Refugees Amid Worsening Situation | Congressional-Executive Commission on China."

²³³ Kaiman, "China Rejects UN Report on North Korea's Crimes against Humanity."

²³⁴ Ibid.

UN investigators to the Northeastern border area where many North Koreans enter China illegally.²³⁵

Due to the absence of an international human rights court, the monitoring system of each convention is the sole means of holding each country accountable to international human rights treaties that it has signed.²³⁶ Until recently, the UN conventions have been trying newer and stronger methods of enforcement, but China continues to resist complying.

According to the UN Commission's chairman Michael Kirby, the Chinese government has blocked the access of the Commission's entry into China several times, thoroughly banning the access to regions where lots of North Korean refugees are residing. China also opposed the establishment of the Commission and refused to cooperate with the UN commission to investigate the situation of North Koreans.²³⁷ The Chinese government also refused to allow UN staff to meet and interview "representatives of churches and other organizations" that help NKEC.²³⁸

Scott Snyder, a North Korea expert at the Council of Foreign Relations, said "[The UN report] is very strong indictment of North Korea, but China is clearly right there in the mix, and that's the reason why they were reluctant to co-operate."²³⁹ Encouraging China to be more transparent and cooperative with the UN Commission is an essential step to mitigate human rights violations of NKEC, but China has a tendency to remain silent; as Snyder states, "And so the main purpose of the report, beyond making

²³⁵ Ibid.

²³⁶ "China and the International Human Rights System."

²³⁷ "UN Report Criticizes China for Treatment of North Korean Refugees Amid Worsening Situation | Congressional-Executive Commission on China."

²³⁸ Ibid.

²³⁹ Kaiman, "China Rejects UN Report on North Korea's Crimes against Humanity."

the case for a continued international responses to North Korea through the international criminal court, is to move China.”²⁴⁰ Even though China has remained silence as it has been criticized for its non-cooperation with the UN Commission, some observers still think this report could pressure China to reform its North Korea policy. Human rights advocates noted that increasing support from numerous countries of the UN action on human rights violations in North Korea would demand China to abandon its custom of supporting North Korea.²⁴¹

3.7. Summary

It is notable that all five human rights committees voiced their concerns specifically over the NKEC’s human rights violations in China. Five committees commonly urged China to come up with appropriate measures to resolve its wrongdoings. Regarding its abuses of human rights, China is receiving massive pressure from international society. Above all, the North Korean refugee crisis in particular is much more complicated compared to other domestic human rights abuses in China, because the issue is entangled with other international laws. Even though China has obligations to abide by international laws, it constantly violates the international refugee laws and deports North Koreans back to the place from where they fled.

It is possible to devise effective solutions by complementing international human rights laws with international refugee laws to persuade China to comply with international law. Both international refugee laws and human rights laws do not fully

²⁴⁰ Ibid.

²⁴¹ “UN Report Criticizes China for Treatment of North Korean Refugees Amid Worsening Situation | Congressional-Executive Commission on China.”

guarantee China's compliance, but using various methods and approaches would lead to desirable changes in China's treatment toward NKEC.

China's violation of international treaties would tarnish its international prestige as a superpower. Practically, however, international reputation seems intangible, which would not directly harm tangible matters like China's economy or policy. However, in the diplomatic arena, myriads of sectors are intertwined with one another, and breaking treaties would eventually harm states' other diplomatic sectors in the long-term.

CHAPTER FOUR

Geopolitical Context of North Korean Refugee Crisis

: Relationship between the United States and China

4.1. China Caught between Cooperation and Competition

China's numerous violations of multilateral treaties of human rights would likely demean China's image as a trustworthy diplomatic partner. And this may hinder other Western world countries from making treaties with China due to its irresponsibility of not complying with human rights and refugee treaties. In the long-term, China may lose its potential partners that might otherwise enhance China's economic and international status in the future. In conforming to multilateral treaties, China can build trust among other neighboring countries. They would eventually yield greater profit.

The United States and China are two superpowers often referred to as G2. These two countries constantly compete with each other in the international arena to achieve ultimate hegemony in global arena. China's "String of Pearls"²⁴² allows China to exert influence over the Indian Ocean. In order to counter China's expansion, the United States contains China through its "Asian Pivot Strategy".²⁴³ However, these two countries are major economic partners, exchanging massive amounts of imports and exports. The United States is a number one importer of Chinese merchandise, and China imports the

²⁴² Virginia Marantidou, "Revisiting China's 'String of Pearls' Strategy," *Issues & Insights* 14, no. 7 (2014): 1–43.

²⁴³ Gilbert Rozman, "Reassessing the US Rebalance to Northeast Asia," *Orbis* 59, no. 3 (2015): 348–360.

largest amount of US' agricultural products.²⁴⁴ The United States and China walk a fine line between competition and cooperation.

This complex relationship causes China's and the United States' diplomatic bonds to fluctuate every time they hold conflicting opinions.²⁴⁵ In this regard, the disagreements on human rights issues, specifically the recognition of NKEC as refugees, might create a new arena of confrontation. If the exodus of NKEC keeps increasing to the point where it catches enough attention from international community, the United States will be pressured to act on its responsibilities as a superpower to resolve the problem. Regardless of the United States' motivation for taking action, whether voluntary or compulsory, the United States will oppose China, demanding China to comply with the treaties that it signed. This dispute could cause a strain between these two countries that might possibly adversely affect other diplomatic sectors. In this regard, China's noncompliance to the international treaties and continued biased support for North Korea might seem beneficial in the short term, but would harm China's reputation as a trustworthy superpower and hinder China from becoming a leading country on the world's stage.

4.2. China Prioritizing its Economy as an Emerging Superpower

China has become a world's superpower at an unprecedented pace, challenging the status of the current de facto superpower, the United States. This emerging state has gone the extra mile to attain hard power and economic competitiveness, but its soft power has yet to catch up with its hard power. China is keenly conscious of its international

²⁴⁴ "USDA Economic Research Service - Agricultural Trade," accessed March 22, 2016, <http://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/agricultural-trade.aspx>.

²⁴⁵ Friedberg, "Hegemony with Chinese Characteristics."

prestige. Considering China's past unpredictable foreign policy, however, it is likely that China is having a hard time chasing two hares at once.²⁴⁶ The Chinese government has put its economic development at the top of its national political agenda.²⁴⁷ Given that China's primary goal is its national economic development, if China cannot pursue both hard and soft power, it would probably prioritize economic growth over prestige. Unlike the United States, China has been passively reacting to international criticism about its human rights violations and blocking outside information that might instigate civil discontent.²⁴⁸

After the Chinese economic recession in the 1980s, former Chairman Deng Xiaoping created a unique domestic policy that is called "Chinese capitalism," which allows communism and capitalism to coexist.²⁴⁹ Devastated by China's economic downturn, Deng made this new policy to restore the economy and the policy clearly implied China's strong willingness to grow its economy at any cost. Despite international criticism, China may put human rights issues aside. It is not likely that China would give up its economic interests. China has been actively developing its economy, becoming the world's new economic powerhouse.

China's reluctance to respond to the international community's criticism on human rights issue implies that public censure might not be an effective tool to urge China to change. Approaching China in more practical and tangible ways might be a

²⁴⁶ David Shambaugh, "China's Soft-Power Push," *Foreign Affairs* 94 (2015): 99.

²⁴⁷ Susan L. Shirk, *China: Fragile Superpower* (Oxford University Press, USA, 2008), [https://books.google.com/books?hl=en&lr=lang_en|lang_ko&id=eQ1rAAAAQBAJ&oi=fnd&pg=PP2&dq=Susan+Shirk,+China:+Fragile+Superpower+\(2008\)+2&ots=1Af7NVAbFB&sig=YgZ-RTImuKf-bMpW6RKZdco9OEs](https://books.google.com/books?hl=en&lr=lang_en|lang_ko&id=eQ1rAAAAQBAJ&oi=fnd&pg=PP2&dq=Susan+Shirk,+China:+Fragile+Superpower+(2008)+2&ots=1Af7NVAbFB&sig=YgZ-RTImuKf-bMpW6RKZdco9OEs).

²⁴⁸ Ibid.

²⁴⁹ Lee, "중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]."

better way to persuade this newly emerging superpower. Bearing in mind that the public's criticism has shown to be ineffective, the international community should find a new diplomatic approach to persuade China.

4.3. Denuclearization and the United States' Diplomatic Engagement with

North Korea

Despite the truce of the Korean War in 1953, the United States is still technically at war with North Korea. Although the United States and North Korea have been trying to achieve respectful relations for more than half a century after the War, the two countries have yet to establish a stable relationship. This challenge is in part due to North Korea's unpredictable provocations as well as the United States' sanctions that follow.²⁵⁰ The complicated diplomatic and military problems between North Korea and the United States must be resolved for the international security of the region. The experience of arduous and inconsistent progress between the two countries for such a long time suggests that perhaps it is time for the United States to change its approach towards North Korea.

North Korea's totalitarian regime has been passed down through three generations, isolating itself further from outside engagement. It is unlikely that its leadership will surrender and dismantle the most effective tool to maintain its regime and to guard against foreign aggression: nuclear weapons.²⁵¹ Despite this expectation, the United States foreign policy with North Korea has remained primarily focused on

²⁵⁰ Cha, *The Impossible State*.

²⁵¹ Evans JR Revere, "Facing the Facts: Towards a New US North Korea Policy," *The Brookings Institution Center For North-East Asian Policy Studies*, 2013.

“denuclearization” and “disarmament.”²⁵² Although it may be a rational goal to promote world peace, this is an unfair and unacceptable demand in North Korea’s perspective unless there is a significant incentive to counter their loss and risk. Emphasizing the denuclearization issue alone can discourage North Korea from participating in negotiations. It may be the time for the United States to evaluate other diplomatic approaches that do not focus solely on sanctions and denuclearization.

There are many areas outside of denuclearization that the two countries can engage in negotiation, such as improving human rights issues. Recently, the winds of change have been blowing in terms of the United States’ approach towards North Korea. Since the beginning of the 2010s, the United States has started to speak out about North Korean human rights issues, actively advocating the UN’s North Korean human rights resolution. Making progress in this area not only opens up the floor for discussion, but can also further the goals of both countries.

4.4. The United States’ Active Measures to Mitigate North Korean Human Rights

Abuse

Compared to other Middle Eastern refugee crisis, the North Korean refugee crisis was out of general attention, even though the violation lasted more than a half a century and abuse that the refugees have to endure is indescribably severe. One of the reasons why North Korean refugees are relatively unwatched is because North Korean refugees are ‘voiceless’. They cannot actively voice for their rights partly because they were not aware of what rights they have due to the totalitarian education received in North Korea.

²⁵² Jayshree Bajoria and Beina Xu, “The Six Party Talks on North Korea’s Nuclear Program,” Council on Foreign Relations, *Council on Foreign Relations*, (2013), <http://www.cfr.org/proliferation/six-party-talks-north-koreas-nuclear-program/p13593>.

Their rights have been neglected throughout their lives in DPRK. Moreover the tight relationship between China and DPRK put North Korean refugees extremely dangerous condition, which will halt them from advocating for their rights. Since NKEC do not have legal status in China, their residing in China is considered “illegal.” Once NKEC are caught by Chinese police, they are likely to be repatriated. This is why even if NKEC are aware of universal rights that they have, they tend not to advocate for them because doing so would expose their vulnerable status.

Given this NKEC’s deplorable situation, it is important for the United States to conduct appropriate measures to mitigate the problem as human rights advocate country. According to the United States Department of State, the United States has been actively stepping forward to resolve North Korean human rights abuse.²⁵³ Ever since the release of the UN Commission of Inquiry report in February 2014,²⁵⁴ the United States pressured DPRK further in order to stop its human rights abuse, by raising international awareness. The United States’ DPRK human rights policy has focused on giving voice to the voiceless by collecting substantial amount of first-hand data by conducting interviews with North Korean refugees.²⁵⁵

Robert R. King, Special Envoy for North Korean Human Rights Issues, announced in his special envoy for North Korean human rights issues before the committee on Foreign Relations of the United States senate that the United States has met with many NKEC and collected their testimonies and used them as living evidence to prove DPRK’s serious human rights violation. NKEC are deemed to represent the

²⁵³ Bureau of Public Affairs Department Of State. The Office of Website Management, “US Policy on North Korean Human Rights,” Testimony, *U.S. Department of State*, (October 20, 2015), <http://www.state.gov/p/eap/rls/rm/2015/10/248374.htm>.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

millions of North Koreans who are denied enjoyment of Human Rights and fundamental freedoms.²⁵⁶ Collecting the first hand data is not only to increase international attention for the ongoing Human Rights violations, but also “to record the violations committed by the regime, in order to hold those perpetrators accountable for their abuses.”

Moreover, the United States continues to cooperate with a number of international community and NGOs. The most important step that the United States has taken is establishing the Office of the High Commission for Human Rights (OHCHR) in Seoul, South Korea to closely monitor and investigate the human rights situation in the DPRK.

It seems like the United States’ increasing pressure on North Korean human rights has been fruitful. After constant international pressure in response to its human rights abuse, North Korea sent its foreign minister to the high level session of the UN General Assembly in September 2014 for the first time in 16 years.²⁵⁷ Senior DPRK officials frequently visited other UN member states to compel them to vote against resolutions that condemn North Korea’s human rights abuses. Also, the United States has put an effort to increase information accessibility in DPRK. Even though it is extremely difficult to interact directly with North Korea, the United States has recently seen indications that information from the outside is becoming more accessible in North Korea.²⁵⁸ Although it is illegal to listen to foreign radio or watch a television show besides pre-set or state-controlled information channels, testimonies by many NKEC prove that the increased number of people have experiences of listening or watching foreign radio or videos.²⁵⁹ The United States believes that international media are among the most effective means

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

of sharing information about the outside world and enlighten the residents of North Korea. The United States claimed that it would continuously be a strong supporter to encourage the free flow of information in North Korea.²⁶⁰

Solving the NKEC problem, however, is not a bilateral issue between the United States and North Korea. China is a major stakeholder who has complicated security and economic interests entangled with North Korea. Therefore, the United States cannot disregard China's stand on this issue, but should rather try to understand the main diplomatic issues and various interests and intentions of China. However in reality, getting these two superpowers to cooperate is not as easy as it sounds, because NKEC problem is intertwined with other diplomatic concerns.

4.5. Human Rights Issues Entangled with Other Diplomatic Sectors

Even though violating international refugee laws seems separate from diplomatic, political and economic relations, diplomacy by its nature is much more complicated and entangled with various factors.²⁶¹ In 2012, the tense relationship between China and the United States developed after the United States accepted the blind Chinese human rights advocate, Chen Guangcheng, in their embassy in Beijing. Chen was a well-known human rights lawyer who was imprisoned for four years after he criticized the government's "One Child Policy." He insisted that the Chinese policy coerced women to have forced abortions, which was a violation of their human rights. Even after his discharge from jail,

²⁶⁰ Ibid.

²⁶¹ Hyung Sup Lee, "천광청 사건은 무슨 난리래요 [What is This Uproar with the Chen KuangCheng's Incident?, translated by Jane H. Lee]," *The HanKyoreh News*, May 4, 2012, http://www.hani.co.kr/arti/international/international_general/531332.html; Josh Chin, "'The Barefoot Lawyer': Q&A With Blind Chinese Activist Chen Guangcheng," *WSJ Blogs - China Real Time Report*, HKTMar 2015, <http://blogs.wsj.com/chinarealtime/2015/03/18/the-barefoot-lawyer-qa-with-blind-chinese-activist-chen-guangcheng/>.

Chen was under house arrest. The Chinese government conducted heavy surveillance of him and his family every day and every night. Chen managed to remove himself from the eyes of surveillance and fled to the United States embassy in Beijing to ask for an allowance for his exile to the United States.

After hearing this news, the Chinese government insisted the United States hand over Chen, claiming it as a domestic matter. The United States did not immediately allow Chen's exile to the United States. The United States hesitated to make any decision that would force it to choose between the favorable diplomatic relationship with China and the responsibility as a country to advocate for human rights. The United States did not want to hurt its diplomatic relationship with China by allowing Chen's exile, but at the same time, the whole world was watching the United States' decision. After the United States changed its focus from practical national profits to upholding an international image as a human rights advocate, it cautiously chose to fulfill its responsibility as a superpower by prioritizing human rights. The United States eventually allowed Chen's exile to the United States.²⁶²

The United States' decision of accepting Chen sparked diplomatic crisis between the two countries. Even though this example is different in nature, Chen's case does have some similarities with the NKEC issue; both illustrate that when refugee issues are entangled with human rights, the concerned countries' positions are complicated, which also hurts other diplomatic sectors. Chen's case and the NKEC case share similarities in terms of involving diplomatic tension between China and the United States regarding human rights issues, but there are significant differences too. Chen's case did not require

²⁶² Lee, “천광청 사건은 무슨 난리래요 [What is This Uproar with the Chen KuangCheng's Incident?], translated by Jane H. Lee”; Chin, “The Barefoot Lawyer.”

compliance with a treaty, whereas the NKEC case did. Also, in Chen's case, the United States had the final say regarding the issue, whereas the decision of the NKEC case resides with China. The fact that China does not abide by the international treaties and China has the final say in the circumstance make the situation more complex and more unpredictable.

4.6. China's Changing Attitude Concerning the United States

Chinese elites are very conscious about tension with the United States. In order to improve their relationship, the Chinese elites desire to establish a strong bilateral connection with the United States.²⁶³ Through this bilateral affiliation, Chinese leaders want to alleviate the aggressive and tense relationship with the United States, and avoid the Thucydides trap.²⁶⁴

The fact that China has become one of the fastest growing superpowers assigns greater responsibility to China. With growing in stature and international recognition, China is expected to be a global leader for other countries by respecting international regulations, and to cooperate with international community to solve the North Korean refugee crisis, which can potentially cause instability in the region. It would be desirable for China to reform its domestic laws and customs in accordance with international laws, and show active participation in restoring peace to the region by respecting human rights.

²⁶³ Jonathan Pollack, “한반도 통일에 대한 중국의 시각과 미중관계 [China's Views on the Unification of the Korean Peninsula and US-China Relations, translated by Jane H. Lee],” *The Journal of Strategic Studies*, February 2014, 259–68.

²⁶⁴ Ibid.

4.7. North Korea's Provocations in 2016

On January 6, 2016, North Korea conducted its fourth nuclear test.²⁶⁵ Enraged international community including the United States quickly condemned North Korea for its provocative conduct. The United States is particularly sensitive to this issue because North Korea's provocation threatens its national strategic interests and the security of its allies, South Korea and Japan. The United States not only furiously criticized North Korea's thoughtless action, but it also directly demanded China to play a more serious role in stopping North Korea from committing further provocations, as they threaten international security.²⁶⁶ Aside from the United States' demand to China, China also had its own serious national interest issue because of its new global leadership.

The United States has been urging China, North Korea's sole ally, to take a hardline policy by restricting exports of oil that help sustain North Korea's military. China has refused the United States' requests and continued to support North Korea to

²⁶⁵ JoonHo Bae, “오 수소탄 쇼크: 외신, 북한 핵실험 미국·중국에 미통보 주목 [North Korean Hydrogen Bomb Shock: International Media Notice That North Korea Did Not Notify China and US About the Nuclear Test in Advance, translated by Jane H. Lee],” *eToday news*, January 6, 2016, <http://www.etoday.co.kr/news/section/newsview.php?idxno=1265165>; YeJin Kim, “북한 수소탄실험: 미국 대선주자들 대북제재 강화 촉구... ‘대선쟁점 이슈화’ [North Korean Hydrogen Bomb Test: Presidential Candidates Request Strengthening North Korea Sanctions... ‘Becomes a Presidential Debate Issue,’ translated by Jane H. Lee],” *Asia Today*, January 7, 2016, <http://www.asiatoday.co.kr/view.php?key=20160107010003431>; JinAh Koh, “북한 수소탄실험: 중국 ‘미국 탓’ 주장... 미국 ‘북한 선박, 금융 제재’ 초안 마련 [North Korea's Hydrogen Bomb Test: China Claims the US's Responsibility...US Prepares Draft of Sanction for North Korean Vessels and Finance Sector, translated by Jane H. Lee],” *Asia Today*, January 9, 2016, <http://www.asiatoday.co.kr/view.php?key=20160109010004795>; Somini Sengupta, “U.S. and China Agree on Proposal for Tougher North Korea Sanctions,” *The New York Times*, February 25, 2016, <http://www.nytimes.com/2016/02/26/world/asia/north-korea-sanctions.html>; SungYoon Won, “‘수소탄’ 들고 나온 북한을 향한 중국의 선택은? [What Would Be a Choice for China About North Korea with Hydrogen Bomb?, translated by Jane H. Lee],” *The Huffingtonpost Korea*, January 7, 2016, http://www.huffingtonpost.kr/2016/01/07/story_n_8927466.html.

²⁶⁶ Jane Perlez and David E. Sanger, “John Kerry Urges China to Curb North Korea's Nuclear Pursuits,” *The New York Times*, January 27, 2016, <http://www.nytimes.com/2016/01/28/world/asia/us-china-north-korea.html>.

ensure it does not collapse. Because of China's inaction, the United States announced in early 2016 that it would consider deploying the Terminal High Altitude Area Defense (THAAD) missile defense system to South Korea to defend it from North Korea's nuclear threat. China reacted harshly to this measure as they view the deployment of the THAAD system in South Korea as a clear threat to the stability in the Western Pacific region and also to the security of China.²⁶⁷ Although China opposes North Korea's nuclear test, it cannot turn its back on North Korea, despite harsh international criticism about its position. North Korea's confidence in China's continuous support incites North Korea's constant provocations because of the impunity the alliance affords North Korea. Due to this complex and tangled dynamic, tension between China and the United States has recently built up to a serious level.

However, on February 23rd 2016, the U.S. Secretary of State John Kerry and Chinese Foreign Minister Wang Yi met in Washington D.C. and agreed upon a resolution for tougher sanctions against North Korea.²⁶⁸ After having seven weeks of intense discussion, the United States and China agreed to cooperate together rather than staying in bitter opposition. The agreement on the oil sanctions and THAAD deployment are yet to be compromised, but the meeting ended with meaningful results. The U.S. accepted China's proposal to consider a dialogue about a peace treaty with North Korea, while China agreed not to export certain resources to North Korea and inspect North Korean cargo entering or leaving its ports for the banned items.²⁶⁹ Even though there are still more discussions to be had, China and the United States have begun to collaborate,

²⁶⁷ “[Analysis] US and China Seeking Compromise on THAAD and N. Korea Issues,” accessed March 9, 2016, http://english.hani.co.kr/arti/english_edition/e_international/732065.html.

²⁶⁸ Sengupta, “U.S. and China Agree on Proposal for Tougher North Korea Sanctions.”

²⁶⁹ Ibid.

working toward a dialogue for negotiations. Although China and the United States have not directly discussed the North Korean refugee crisis yet, the hope is that this first step in cooperation may lead to negotiations that would grant NKEC the basic human rights of life, which they have been denied for so long.

4.8. Summary

Even though the United States does not experience the North Korean refugee crisis at its border, it is still related to its national interest because of the complicated and entangled diplomatic relationships with North Korea, South Korea, and China.

North Korea's continuous provocations are a great concern for the United States, as they affect the United States' regional strategic interests in the Far East region. The unpredictable military conduct of North Korea not only threatens the United States' allies, South Korea and Japan, but also it can destabilize the international security in the region, which even China opposes. The United States has been using various diplomatic tactics to persuade North Korea to give up its nuclear programs. The United States has also condemned human rights violations in North Korea and China, and established an institution to exclusively monitor the North Korean human rights situation.

The United States and South Korea are close allies, while the United States and North Korea technically have been still at war since the truce in 1953. The United States still has a keen strategic interest in the security of South Korea, with more than 37,000 United States' armed forces along with their families stationed in South Korea, and great investments in many economic and industrial sectors in South Korea. For these reasons,

despite its physical remoteness, the United States is deeply related to political and diplomatic issues in East Asia.

Lastly, the United States and China, two powerful countries, have recently engaged in a tug-of-war on many issues due to their many different perspectives and interests. The North Korean human rights issue is one of them the United States and China face each other to negotiate and settle. Both countries are yet to narrow the gap of their extreme opposite views: the United States condemns China's noncompliance of international laws and China insists on its sovereignty, criticizing the United States' intervention. Most recent military provocations by North Korea, however, resulted in a dialogue between China and the United States for potential collaboration.

CHAPTER FIVE

Geopolitical Context of North Korean Refugee Crisis

: Relationships Between Two Koreas and China

Since China has been vocal about North Korean refugee issues, it is easy to focus solely on China. South Korea, however, has dealt with these issues even longer than China. South Korea is one of the countries most immediately affected by the influx of NKEC. The South Korean government, however, was not as bold about its policy toward the North Korean refugees, but rather it has used a reserved “Quiet Diplomacy” when it comes to refugee issues in China.²⁷⁰ Not that the South Korean government is indifferent about the issue, but it carries much more complex diplomatic burdens. Therefore, the South Korean government is in the tight spot between maintaining a favorable diplomatic relationship with China and protecting its citizens by confronting China. In this section, the author articulates the South Korean government’s stand on the North Korean refugee crisis, the diplomatic complexity of dealing with the issue, and the necessity of cooperating with international NGOs and neighboring countries.

5.1. South Korea’s Quiet Diplomacy and the North Korean Refugee Issue

In 1997, the South Korean government enacted “The Protection of North Korean Defectors²⁷¹ and Resettlement Support Act,”²⁷² but this law was to provide benefits

²⁷⁰ Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

²⁷¹ Though the author tries to avoid using the term “defector,” because the thesis argues that the term does not fully encompass North Korean escapees’ situation in China, the word is retained in quotation to accurately represent sources material.

mainly to North Korean escapees who are settled in South Korea, not elsewhere. In the constitution of South Korea, it is clearly stated that North Koreans are also acknowledged as South Korean citizens.²⁷³ Despite what is written in the constitution, South Korea has been passive to solve the North Korean refugee crisis in China. South Korea does not recognize North Koreans as citizens of the Republic of Korea (ROK), whereas China sees them as citizens of the Democratic People Republic of Korea (DPRK). The conflicting views of NKEC between these two countries make this issue difficult to solve.

The South Korean government has abided by “Quiet Diplomacy,”²⁷⁴ which means it will not publically express its official position regarding North Korean refugee issues in China. The South Korean public has criticized its government for not having an appropriate policy of saving fellow NKEC.²⁷⁵

5.2. South Korea’s Passivity and Diplomatic Complexity

It is not that South Korea has been violating its constitution; rather, the government does provide a significant amount of assistance to the North Koreans once they are in South Korea. However, if the issue is an international conflict, meaning more than one country is involved, it is difficult for the government to actively take an action to solve the situation. If the government does so, it might cause a diplomatic conflict among countries. In particular, a conflict with China might severely affect South Korea’s

²⁷² Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

²⁷³ Lee, “북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee].”

²⁷⁴ Lee, “중국의 탈북자 정책 동향과 한국의 대응전략 [Strategic Approaches to China’s North Korean Defector Policy, translated by Jane H. Lee].”

²⁷⁵ Ibid.

economy since China is one of its major trade partners. Due to intertwined diplomacy and interest concerns, the South Korean government evades any kind of affair that can possibly provoke China.²⁷⁶

5.3. The Necessity of Cooperation between South Korea and International NGOs

Given that the South Korean government is in this difficult predicament, collaborating with various non-government organizations is an effective way to share its burden. Contrary to the government, NGOs do not have any restrictions or diplomatic concerns to consider.²⁷⁷ NGOs, therefore, have broader boundaries and fewer restrictions to determine how they can help, alongside the governments. Even today, domestic and international NGOs are the ones who actively work in the field to help North Korean refugees and collect useful firsthand data.²⁷⁸ However, NGOs have adversities, such as a shortage of financial support and lack of authority to protect them from potential punishment by law enforcement. NGOs' helping North Koreans in Chinese territory is illegal, and if the action is caught by the Chinese government, NGOs themselves do not have any authority to negotiate with the Chinese government for an exemption.²⁷⁹ In order to let NGOs do the work that the government cannot do, the government could support them directly and indirectly with a substantial amount of financial aid and

²⁷⁶ Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee]”; Do et al., *White Paper on Human Rights in North Korea 2015*.

²⁷⁷ Lee, “북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee].”

²⁷⁸ Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

²⁷⁹ Ibid.

guarantee their protection from potential risk by having favorable diplomatic relationships with neighboring countries, especially China. Governments and NGOs have different boundaries that determine their roles, so that each has a different task to perform. If these two entities cooperate, solving the refugee crisis in China will be much more efficient. In this case, two heads are better than one.²⁸⁰

5.4. The Necessity of Cooperating with International Institutions and Allying with Neighboring Countries

China has been reluctant to discuss human rights affairs. Therefore, it is critical to approach China cautiously in terms of the refugee problem. Rash action would negatively affect South Korea's diplomatic relationship with China and cut off dialogue. In order to prevent this risk, utilizing a multilateral conference would be effective.²⁸¹ To make this multilateral talk feasible, one option the South Korean government could do is to raise the North Korean refugee issue to international institutions, such as the United Nations and ask for their cooperation.

Not only is the help from international institutions necessary, the help from neighboring countries is essential. Having more direct, detailed, and legally binding treaties with neighboring countries will prevent one country from risking its diplomatic relationship with China, but it will also lessen the burden. Countries directly and indirectly affected by the North Korean refugee crisis such as South Korea, China, Russia, Japan, Thailand, Vietnam, the Philippines, Indonesia, Malaysia and more can come up

²⁸⁰ Ibid.

²⁸¹ Lee, "중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]."

with an agreement that matches well to the particular culture of southeast Asia by establishing southeast Asian refugee treaties. Although Europe nowadays is struggling with distributing refugees among the EU members, having their own agreement helps them to communicate and cooperate effectively.²⁸² Asia, too, could establish legally binding agreements to encourage countries to abide by international treaties.²⁸³

This regional cooperation has proven to be effective in history. In the 1970s, many Vietnamese refugees fled to other countries in order to run away from the bloody war. Neighboring countries immediately came together to discuss the Vietnamese refugee exodus. They cooperatively distributed refugees and let them stay in each country until the situation in Vietnam settled down.²⁸⁴ Once the war ended, each country, with help from UNHCR, helped the Vietnamese refugees to go back to their home country. The South Korean government can also apply this case study in order to deal with the problem of excessive refugee population increase and the potential social disorder caused by NKEC seeking refuge.

The possibility of economic, political and sociological burden on China is one of the main reasons for China's deportation of North Korean refugees. However, by sharing the burden with neighboring countries, China would not have to take all the responsibility. In addition, financial aid should also be considered. As seen in the case of Vietnam, it

²⁸² "Communication on a State of Play on the Implementation of the Priority Actions under the European Agenda on Migration," European Agenda on Migration: (Brussels: European Commission, 2016), http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index_en.htm.

²⁸³ Lee, "중국의 탈북자 정책 동향과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]."

²⁸⁴ Kim, "북한 난민 대책에 대한 연구 - 동독, 베트남 사례를 중심으로 [A Study on the Strategy for North Korean Defectors with a Focus on the Eastern Germany and Vietnam's Cases, translated by Jane H. Lee]"; Lee, "북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee]."

would be ideal for the other countries to encourage North Koreans to go back to their motherland once the situation is all settled. Establishing temporary residences or refugee camps in each of these countries might require an immense sum of money.²⁸⁵ If the consignment countries have to pay this cost, they would not want to receive refugees. However, by having a strong southeast regional agreement, which contains numerous leading economic countries, it would be easier to ask for the financial assistance from Western countries. To make this collaboration attainable, the role of the South Korean government should become more significant.²⁸⁶

Not only does the government have to establish a favorable diplomatic relationship with China, but it also has to reach out to other neighboring countries and form alliances with them. Contrary to its long-lasting custom of deportation to North Korea, there have been some exceptional cases when the Chinese government did allow some North Koreans to go to South Korea. During President Myung-bak Lee's administration of South Korea, China let some North Koreans flee to South Korea before the president's official visit to China.²⁸⁷ Since such an act was an exceptional case, public discourse was heated to figure out what China's intentions were, and the discussion came to the conclusion that China had been pressured by international criticism of its human rights violations regarding North Koreans. China wanted to prove that it is not as bad as its fellow members of the international community think. Whenever the issue receives international attention, China occasionally takes humanitarian actions and lets NKEC flee

²⁸⁵ Kim, “중국 내 탈북자 문제 해결방안에 대한 연구: 독일과 베트남의 경험을 중심으로 [Problems and Solutions of the North Korean Asylum Seekers in China: Focusing on the Experiences of Germany and Vietnam, Translated by Jane H. Lee].”

²⁸⁶ Lee, “중국의 탈북자 정책 동향과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee].”

²⁸⁷ Ibid.

to other countries according to their will.²⁸⁸ These exceptional yet hopeful cases demonstrate that if countries work cooperatively in one accord to persuade China, they can make a difference.²⁸⁹

5.5. Summary

In order to prevent diplomatic conflicts with China, South Korea has been keeping a low profile regarding the North Korean refugee issue in China. However, the “Quiet Diplomacy” has not been effective. It neither improved the living situation of NKEC nor stopped the human rights violations. Rather than passively react to what China has done, the South Korean government should take initiative to propose a new dialogue to eradicate ongoing and potential human rights violations to its citizens. Moreover, due to the better access to the information, the South Korean public is more attentive to North Korean issues than ever before. Whenever there is news about the refugee crisis in China, the enraged South Korean public and various human rights activists demand the government to take active countermeasures. The public’s pressure on the government compels it to discard its long standing “Quiet Diplomacy.”

It is important for the South Korean government to perform its obligation to protect its citizens, North Koreans. The South Korean government’s selective actions based on diplomatic and power relations with concerned countries are against its own constitution. As written in the constitution, all citizens should be treated equally, and the South Korean government should go the extra mile to secure its citizens who are in

²⁸⁸ Ibid.

²⁸⁹ Complementary forms of protection are occasionally available, usually negotiated on a case-by-case basis, such as granting humanitarian status temporarily or arranging political asylum in third countries (CRS Report).

danger of severe human rights abuses. Rather than pursuing “Quiet Diplomacy,” the South Korean government could be more active and persuade the Chinese government to recognize NKEC as refugees or at least provide humanitarian assistance and stop deportation through diplomatic discussion.

The South Korean government could also broaden the scope of communication so it can cooperate with China.²⁹⁰ Rather than expecting China to immediately reform the North Korea policy, the South Korean government could build a strong and constructive relationship with China in various aspects. Pushing China to a defensive side would not help, but exercising South Korea’s soft power would increase the possibility for China to engage in collaborative dialogue with South Korea. South Korea has had a close relationship with China in terms of economy, but South Korea could also broaden the relationship in cultural aspects. While approaching China in a more communal way, respecting China’s space and time can help South Korea create an even closer relationship with China. Recently, China clearly expressed its disagreement with and opposition to North Korea’s provocative military practices. North Korea’s surprise offensive moves put China in a difficult position since it’s the only ally of the country. It is likely the benefits that China is earning from North Korea weigh less than the cost it has to endure. This shifting dynamic is the golden opportunity for the South Korean government to establish a firm and favorable diplomatic relationship that will possibly lead to North Korean refugee reformation in China.

²⁹⁰ Lee, “중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China’s North Korean Defector Policy, translated by Jane H. Lee].”

CHAPTER SIX

Geopolitical Context of North Korean Refugee Crisis

: The Chinese Government's Position on the North Korean Refugee Crisis

In previous sections, the author explained China's violations of international refugee laws and responsibility to abide by those laws. Before coming to a conclusion regarding China's actions, it is essential to understand why China remains North Korea's only ally despite international criticism and China's intention behind it. Therefore, in this section, the author will introduce: the relationship between China-North Korea, the reasons why China retains this fragile relationship, China's new responsibility as a growing superpower, and lastly the Chinese government's stand regarding the North Korean refugee crisis.

In this chapter, the author discusses the Ki-hyun Lee's work²⁹¹ extensively. Lee's analysis and interpretation are not quite biased towards the western perspective and are crucial to understanding why China is not willing to recognize North Korean escapees as refugees. The author adopts Lee's interpretation throughout the thesis, and his observation is cited frequently in this chapter.

6.1. North Korea's Dependent Relationship with China

Today, China is the only ally of North Korea. Even after North Korea's food distribution system had been halted, China's support is the main reason that North Korea has survived today. China has not only affected North Korea's economy, but it also plays a critical role in its survival. China deeply embedded its mining and resource extraction

²⁹¹ Ibid.

businesses in North Korea and has been expanding its scope, gaining valuable natural resources in return for financial support. Energy, food, and consumer goods, including luxuries for the elite class, are all imported from China. The usage of the Yuan (Chinese currency) is prevailing in North Korea over the dollar.²⁹² China's vast material support is apparent in the capital city of North Korea, Pyongyang. Unlike different provinces, Pyongyang is an extremely exclusive city where only the elite can live. For example, high-end foreign automobiles, luxurious buildings, and expensive restaurants are frequent in the city. The life of Pyongyang citizens cannot be sustained without China's financial and material support.²⁹³

Even though China and North Korea have remained allies for more than half a century, their diplomatic relationship is not quite equal. It seems like North Korea is the only benefiting side, whereas China does not gain as much. On top of North Korea not providing China with a substantial amount of benefit, China's relationship with North Korea also causes China to lose favor with other international committees whenever North Korea provokes the world by carrying out nuclear tests. Despite China's seemingly short end of the deal, China has maintained an alliance with North Korea by using conciliatory policy. Contrary to China's appeasing policy, North Korea has not corresponded with what China has expected.

North Korea continued to provoke China and other countries by attacking the South Korean vessel Cheonan and Yeonpyeong Island in 2010.²⁹⁴ Before conducting such attacks, North Korea did not give prior notice to China. These surprising attacks are still

²⁹² Pollack, “한반도 통일에 대한 중국의 시각과 미중관계 [China's Views on the Unification of the Korean Peninsula and US-China Relations, translated by Jane H. Lee].”

²⁹³ Ibid.

²⁹⁴ Ibid.

ongoing today. North Korea tested its newly developed hydrogen bomb and missile in 2016. Moreover, the recent purge of pro-China politician Sung-teak Jang in 2013 blocked communication channels between China and North Korea. Mr. Jang and his men were cooperative with China, but ever since North Korea took a hardline policy in 2011, along with a regime change, the relationship between the two countries has crumbled.²⁹⁵

6.2. Why has this Fragile Relationship Lasted this Long?

From an outsider's perspective, it may seem irrational to sustain an alliance in which one side (North Korea) is gaining and the other side (China) is losing. The author already explained China's intention and motive in Chapter 2, but since this is a crucial concept to be aware of in order to understand the relationship between China and North Korea, the author will briefly review the points.

6.2.A. China's Containment Plan Against the United States

China wants North Korea to maintain its status quo and prevent it from collapsing. China is concerned about the United States coming right up to its border, absorbing its buffer zone—North Korea—and placing it under US influence.²⁹⁶ China predicts that power shifts between it and the United States would trigger the United States to broaden its influence to East Asia in order to stop China from growing.²⁹⁷ Since the power of the United States is relatively declining, whereas China is growing at an unprecedented speed, China believes that the United States is eager to build strong alliances with East Asian

²⁹⁵ Ibid.

²⁹⁶ Lee, “북한 이탈 주민의 국제적 보호에 관한 연구 [A Study on International Protection for the North Korean Defectors, translated by Jane H. Lee].”

²⁹⁷ Ibid.; Marantidou, “Revisiting China's ‘String of Pearls’ Strategy.”

countries in order to isolate China from its neighboring states.²⁹⁸ As a result of these phenomena, China embraces North Korea as a way to balance the power structure against the United States. By building as many allies as possible and keeping North Korea as a geostrategic region, China plans to block the United States' influence from coming directly into China.²⁹⁹

6.2.B. Maintaining North Korea's Stability for China's Economic Development

Ever since Deng Xiaoping's economic reformation, China has been putting its effort into building up a strong market-oriented economy. For this reason, China wants to focus solely on its economic development and does not want to be involved in neighboring countries' conflicts that might halt its economic development.³⁰⁰ China predicts that once North Korea collapses or if conflict occurs between North and South Korea, China has to inevitably become involved and pay the vast amount of expenses in the process of confrontation and reconstruction. China does not want its rapidly growing economy to be interrupted by external conflicts. Maintaining North Korea as it is now is China's reason for preventing war or the fall of North Korea.

6.2.C. Preventing Social Disorder in China

China believes that acknowledging North Koreans as refugees will trigger a mass influx of NKEC from North Korea. Today even without giving NKEC legal status, there are already social disorders involving NKEC, such as human trafficking, robbery,

²⁹⁸ Marantidou, "Revisiting China's 'String of Pearls' Strategy."

²⁹⁹ Lee, "중국의 탈북자 정책 동향과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]."

³⁰⁰ Ibid.

unemployment, and so on. China would not want these social problems to be amplified. Moreover, China is unwilling to pay probationary expenses, which might also negatively affect its fast growing economic development.³⁰¹

6.2.D. China's Dilemma Regarding Human Rights Issues

China could not speak about North Korea's human rights violation because China also has been targeted when it comes to abusing the human rights of minorities. International human rights advocates have criticized China for its inhumane treatment of minorities. If China acknowledges North Koreans as refugees and provides humanitarian assistance to them, minorities such as Tibetans and Uighurs would trigger social riots, demanding better treatment and their independence.³⁰² Moreover, China is afraid of chaotic situations in border areas where myriads of ethnic Koreans are residing. Since ethnic Koreans share cultural and national commonalities with North Koreans, they might ally with NKEC and gain power and arise, demanding independence from China as well. China believes one small exception can trigger uncontrollable chaotic social disorder, so no exception shall be allowed.

6.3. China's Changing Attitude Towards North Korea

China's modernist camp sees North Korea as a permanent nuisance and an embarrassment. The camp thinks the remaining alliance with North Korea is a bigger loss than a gain. They see that previously North Korea may have been a geostrategic asset for

³⁰¹ Ibid.

³⁰² Margesson, Chanlett-Avery, and Bruno, "North Korean Refugees in China and Human Rights Issues," September 26, 2007.

China, but it no longer plays an important role.³⁰³ Currently, North Korea's provoking attacks are rather disturbing to China's international image and are negatively affecting China's interests. They see China as being exploited by North Korea, giving economic and political support almost unconditionally. The modernist camps argue that the world has changed significantly, therefore, China should get rid of no-longer-profitable North Korea, and adhere to what the international community is suggesting.³⁰⁴

Contrary to the deteriorated relationship with North Korea, China has been developing a friendly relationship with South Korea. Enduring harsh criticism from North Korea, who condemns China as a betrayer, China established a firm diplomatic relationship with South Korea, consolidating their alliance by enhancing their economic relationship.³⁰⁵ Their partnership greatly benefited both sides. In 2015, China became South Korea's number one trade partner.³⁰⁶ In addition, current president Geun-hye Park was recently invited to China and received with great enthusiasm, whereas the leader of North Korea, Jeong-un Kim has not even been invited.³⁰⁷

6.4. China's Different Interpretation of Human Rights

On the grounds of human rights violations, international community has been pressuring North Korea and China. However, China has remained immovable against international community's pressuring on the North Korea issues. China is in the dilemma

³⁰³ Pollack, "한반도 통일에 대한 중국의 시각과 미중관계 [China's Views on the Unification of the Korean Peninsula and US-China Relations, translated by Jane H. Lee]."

³⁰⁴ Ibid.

³⁰⁵ Lee, "중국의 탈북자 정책 동향과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]."

³⁰⁶ "무역통계 [K-Stat, Translated by Jane H. Lee]," accessed March 11, 2016, <http://stat.kita.net/>.

³⁰⁷ Pollack, "한반도 통일에 대한 중국의 시각과 미중관계 [China's Views on the Unification of the Korean Peninsula and US-China Relations, translated by Jane H. Lee]."

between acquitting its responsibility as a global leader and holding onto its national interests by supporting North Korea. The North Korean refugee issue is directly related to China's nonnegotiable interest. China argues that the requests from developed countries and responsibilities that have been put on China are too excessive. Some camps of Chinese elites are reluctant to establish G2 or *Chimerica* relationships because China does not have an obligation to follow Western-made international regulations.³⁰⁸

The reason why China is pursuing this stand is, of course, related to the geostrategic importance of North Korea for China, but another factor is that China has a different interpretation of human rights. China has been asserting its distinctive interpretation of human rights, differentiating itself from that of the Western interpretation. International human rights are not a standalone foreign policy issue for China.³⁰⁹ Human rights are entangled with numerous national core interests, "which include ensuring favorable international conditions for its economic growth, preservation of its political system and social stability, and defense of its territorial integrity."³¹⁰ Based on this argument, it appears that the Chinese leadership prioritizes maximizing national profit over human rights, rather than viewing human rights as inalienable and fully guaranteeing safety for its people.³¹¹ China is prioritizing its sovereignty over human rights and putting socioeconomic policy before people's political rights.³¹² China sees 'survival' as the core of human rights, and in order to guarantee its citizens' survival,

³⁰⁸ Lee, "중국의 탈북자 정책 동향과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]."

³⁰⁹ Sceats and Breslin, "China and the International Human Rights System."

³¹⁰ Ibid.

³¹¹ "China and the International Human Rights System."

³¹² Sceats and Breslin, "China and the International Human Rights System."

economic development is the key.³¹³ Therefore, it is inevitable that the government will sometimes overlook individuals' rights for the greater good, economic development.

Moreover, China believes the importance and the concept of human rights varies according to each country's cultural, historical, sociological, and economic background, so it might not be fair to force China to adopt the Western standard of human rights. China emphasized that forcing it to follow the Western human rights regulations is an interference of internal affairs.³¹⁴ According to the logic that China has been insisting on, international community should not pressure China to recognize NKEC as refugees.³¹⁵

Although human rights policies do not appear to be one of China's primary concerns, they are important priority issues for Western states. Out of fear of China's non-cooperation, despite its massive influence as a rapidly growing superpower, the Western states harshly criticize China for its disappointing responses. Even though Beijing resists this criticism, some Chinese officials in charge of foreign policy recognize that disputes over human rights issues are "damaging the country's global image at a time when it is seeking to reassure the world that there is nothing to fear from its 'peaceful development'"³¹⁶ The Western states remain strongly committed to the international human rights system, because they view it as a source of "moral legitimacy for the post-Second World War liberal international order that they are seeking to protect in the

³¹³ Ibid.

³¹⁴ Ibid.; Lee, "중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]."

³¹⁵ Lee, "중국의 탈북자 정책 동학과 한국의 대응전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]."

³¹⁶ Sceats and Breslin, "China and the International Human Rights System."

transition to a multipolar world.”³¹⁷ This idea is not only shared by Western states but by other “developing and developed countries.”

6.5. China’s Non-Intervention Policy

The Chinese government has a tendency of placing socio-economic rights and the rights to development before individual rights, insisting that the exercise of individual rights could be altered based on the conditions of a country. Whenever China is criticized for its undervaluing of its citizens’ individual rights, China steels itself against public censure by insisting on its sovereignty and non-interference, which makes other UN member states less willing to challenge China. As Chatham House observes, “China has participated in the international human rights system for over three decades but close scrutiny of its role has been limited, especially in more recent years.” As demonstrated throughout this thesis, the UN has constantly criticized China for its non-cooperation and resistance to UN’s careful investigation within China about its human rights conditions. However, China blocked UN members from investigating its abuses of human rights by obscuring information and hindering access. China rebuked public censure, claiming that excessive investigation is an infringement of its sovereignty. China’s commitment to non-interference causes the international community to question China’s responsibility as a global power. Rather than cooperating with the international community, China has resisted the UN’s “interference on human rights grounds in its internal affairs.” For example, as seen in “Position Paper of the People’s Republic of China on the United

³¹⁷ Ibid.

Nations Reform,” published on June 7th 2005, “Internal unrest in a country is often caused by complex factors...No reckless intervention should be allowed.”

Within China as well, debate has been growing between the traditional party and the modern party. On the one hand, the traditional party holds on to non-interference in order to reinforce international economic and strategic interest. While on the other hand, the modern party insists on more impactful foreign policies to match China’s growth as an international superpower. Particularly, Chinese foreign policy and international legal communities have insisted China abandon its traditional custom of non-interference policy, and instead demonstrate a more approachable and responsible image as a growing power. Since the 2010 Olympics held in Shanghai, this voice has been prevailing within civilians as well. Following the Olympic games, China showed its cutting-edged technologies and manifested its financial success worldwide. The idea of abolishing China’s non-intervention policy has been raised to meet the corresponding image of a global leader, not only in economic fields but also in different arenas. According to the Chatham House report, Chinese analysts predicted that China’s long-standing non-intervention policy would inevitably change, “as its increasingly complex investments and other interests aboard generate new imperatives that rub up against this principle.”

6.6. Summary

It is not true that China does not feel responsible for the North Korean refugee crisis, rather China is acutely conscious about the possible deterioration of the diplomatic relationship with the United States and South Korea. China would want to maintain a favorable relationship with both South Korea and North Korea, stabilizing the region. North Korea, however, is constantly provoking South Korea, the United States, and Japan, which are the three major trade partners of China. This dilemma keeps pushing China in a difficult position where it has to choose either its responsibility or its profit.³¹⁸

It is crucial for the international community to understand China's problematic situation. Rather than solely condemning China for its irresponsible conduct, the international community could collaborate to find a solution. Every state prioritizes its national interest in diplomacy. However, there has to be a clear line where the state can insist on its sovereignty. The dignity of humanity is a universal concept. It is not justifiable to neglect a universal concept under any circumstances. Therefore, China using sovereignty and different interpretation excuses in order to justify its human rights violations is not acceptable. It could be problematic if the international community unilaterally demands China's compliance, and China shirks its responsibility, insisting on its distorted interpretation of a universal concept. Profound understanding of the other side's intentions and actively finding common ground is one way to stop the human rights abuse against North Koreans.

³¹⁸ Lee, "중국의 탈북자 정책 동학과 한국의 대응 전략 [Strategic Approaches to China's North Korean Defector Policy, translated by Jane H. Lee]."

CONCLUSION

This thesis discusses the following five topics: (1) the Chinese government's obligations of protecting NKEC based on international human rights laws; (2) the international community's suggestions for China to adopt broader interpretation of the international refugee laws for NKEC; (3) China's new responsibilities as a new global leader; (4) the complexity of universal values such as human rights when they are intertwined with political and diplomatic issues; and lastly, (5) need for cooperation from the international community to convince China to comply with the broader international refugee standards and provide necessary support.

International institutions such as the United Nations emphasize the responsibilities of nations in complying with universal values. For this reason, they have criticized China for neglecting its duties. China, however, has numerous national interests factors got entangled with human rights issues, and it causes apparent noncompliance with the international human rights treaties. Until recently, China has prioritized stabilizing North Korea for national benefits over complying with international order and regulations as its responsibility. This decision is reflected in their domestic policy in treating NKEC. Although China is aware of its responsibility in observing human rights protection as a leading nation, it is not easy for China to give up one of its crucial strategic interests that might significantly affect its domestic security concerns. This is why China intentionally treats NKEC as illegal migrants, instead of refugees. Since NKEC are viewed as economic migrants, China asserts that their refoulement action is justifiable, and international community's demands interfere with its sovereignty. China's

noncompliance is not a matter of unawareness of international standards. Hence, the international community's criticism and pressure are not always efficient and effective.

As explained in chapter 4, in the aspect of China's future diplomatic relationship with the Western nations, particularly the United States, it is beneficial for China in the long run to cooperate with the international community in human rights issues. China is likely aware of the long-term benefits it will receive. China cannot comply with this expectation immediately, however, due to its complicated relationship with North Korea. China has so many internal and external factors that hinder it from collaborating with international community in human rights issues: North Korea's geostrategic role as a buffer zone for national security, China's vulnerability regarding human rights issues, and potential social disorder caused by NKEC. If the international community expects China to be more responsible as a global leader, instead of condemning China and demand it to bear this burden alone, they should rather try to find a way to solve the North Korean refugee problem together. It is important to understand China's intention of stabilizing neighboring countries to maintain its rapidly growing economic development and also its especially difficult situation of being the sole ally of one of the most isolated countries, North Korea. Because of China's complex relationship with North Korea, the international community should understand the rationale of China's support of North Korea. After assessing China's situation, international institutions, NGOs, and neighboring countries such as South Korea should collaborate with China by setting a friendlier environment and providing financial support for establishing temporary residence for refugees to China, for example. China can learn from other countries, such as Germany, Vietnam and Syria, by seeking their information and advice. Korea has a

similar background to Germany, which experienced separation and unification between East and West Germany. Not only North and South Korea but also China could learn from Germany's example. Although the refugee situations in Vietnam and Syria do not perfectly resemble North Korea's refugee crisis, both countries have previously dealt with and are dealing with refugee crises. They could offer insightful advice regarding cooperating with neighboring countries and dealing with massive numbers of refugees. By joining hands with the international community and NGOs, China could share its burden with other countries. In order to attract China to follow the international standards, collective effort is essential and each member state of the international community should cooperate to encourage China to be more responsible. Holding fast to one's views without finding room for compromise leads continuing conflicts with one another.

On the part of China, besides depending on external assistance, China should show its willingness to actively put its earnest effort to solve North Korean refugee crisis as a global leader. Distorting the interpretation of universal values such as human rights by arguing that the human rights issues may compromise its sovereignty, and violating the international laws for the sake of imminent economic benefits would not yield the long-term benefits for China. Its myopic decision would likely damage its credibility and its international image, which may ultimately cause deterioration of diplomatic relationships with other countries. If China at least shows its earnest effort to resolve the human rights problems and assume its responsibilities as a global leader, it will gain support from many countries.

Lastly, the author wants to alert the readers that the refugee issue is not necessarily a remote issue that happens in distant time and is limited to the third world

countries' predicaments. In this fast-changing and unpredictable world, perhaps none of us are safe from war, terror and even from natural disasters. Anyone can become stateless at anytime. Globalization has transformed a regional issue to a transnational issue. Once there is a massive refugee influx in neighboring countries, it is no longer "their" problem, but it can be "our" problem, as seen in the North Korean and Syrian refugee crisis.

Nobody was born to be a refugee, and no one should be deprived of the basic human right to gain a refugee status. For this reason, we all should be keenly aware of refugee crises abroad, and thoroughly think about how the world as a whole should deal with refugee crises cooperatively. The author would like to invite the readers to consider three serious questions about the human rights and refugees issue: First, how do we determine if a case may be exceptional enough to apply different interpretations of universal human rights values? Second, to what extent should the exceptions or different interpretations be acceptable and be allowed? And finally, where is the clear line between protecting universal values and compromising national sovereignty?

The author believes that despite China's complicated and dilemmatic situation, China still has to comply with the treaties. China's national interests should not be traded off with millions of North Korean people's lives. China shall find a new way to stop its infringement upon North Korean's rights through cooperation with international community. The NKEC have the same basic human rights to be respected and protected as any other human being. It would be unjust to let them risk their lives only to pursue those entitled human rights due to other nations' interest issues and peoples' ignorance. The author sincerely hopes this thesis speaks on behalf of many voiceless NKEC and enlightens readers to understand deplorable situations that NKEC have to endure. It is

time that we all should listen to their voice and let them receive the basic human rights they deserve.

POSTSCRIPT

Evolution of Perspectives about North Korea by the United States and South Korean Government During the Past Few Decades

It seems like that the United States is having difficulty in negotiating with North Korea. Given that the North Korea's extremely isolated condition, it is hard for the United States to predict North Korea's intention of potential provocations and persuade North Korea to cooperate with international community. On top of North Korea's unpredictability, the United States' inconsistency of diplomatic approaches toward North Korea during the different United States' administration periods, make the relationship between the United States and Democratic People's Republic of Korea (DPRK: North Korea) deteriorated overtime. In the following section, the characteristics of power strategies following the transitions of past and current US- the Republic of Korea (ROK: South Korea) administrations are analyzed, as an example, and what consequences each power strategy has caused to DPRK is demonstrated.

- *Clinton Administration & Kim Dae Jung Administration*

Out of all the United States administrations in the last fifty years, the Clinton Administration has made the greatest improvement in creating an open dialogue with North Korea. In 1994, Clinton made the "US-North Korea Agreed Framework" to normalize the political and economic relationship with North Korea.³¹⁹ On the condition that North Korea freezes its further processing of the plutonium fuel rods that may lead to

³¹⁹ Cha, *The Impossible State*.

a production of nuclear weapons, the United States agreed to build light water reactor plants by 2003. Along with Clinton, South Korea's President Kim Dae Jung, who won the Nobel Peace prize through his peaceful Inter-Korea policy, practiced the "Sunshine Policy" for promoting dialogue with North Korea.³²⁰ Kim worked cooperatively with the Clinton administration and actively engaged with North Korea. However, both the United States and ROK yielded to despair when they found out that DPRK was secretly proceeding with its nuclear weapon production. Both Clinton and Kim were discouraged by North Korea's breach of promise, but did continue to keep a continuous 'dialogue-and-engagement.'

Regardless of Clinton's consistent usage of soft power, it failed to maintain its legitimacy after the September 11 incident in the United States. The United States immediately changed its diplomacy tactic from soft power to hard power. The United States' sudden change in foreign policy not only led its national security to become vulnerable but also made its international image unattractive.

- *Bush Administration & Roh Moo Hyun Administration*

The culmination of conflicts between the United States and two Koreas happened during the Bush Administration. All three countries had confronting ideas and strategies toward one another. The Bush Administration's diplomatic skill was drastically in opposition to Clinton's. Whereas the Clinton administration kept an open dialogue between the United States and North Korea, even if North Korea breached a treaty, the Bush administration was hostile. According to Victor Cha, during his first term, Bush

³²⁰ Ibid.

was unwilling to engage North Korea, but during his second term, Bush aggressively engaged in “tough talk” and enraged North Korea by conducting adversarial sanctions on it.³²¹ But North Korea was not the only one that conflicted with the Bush Administration. Because South Korea’s President Roh Moo Hyun actively tried to work with DPRK following up on the previous administration’s “Sunshine policy,” Bush and Roh faced sharp disagreement on diplomacy with DPRK. Two strong allies were deeply divided. DPRK’s regime, which had maintained the same administration for over a half-century, became irritated by this inconsistency, creating further strife between the two countries.

Before the Bush administration took over, North Korea somewhat displayed cooperative attitude of making progress by refraining from conducting missile tests and keeping an open dialogue with the United States and South Korea. However, soon after the United States showed its iron fist to North Korea, it also reacted aggressively, resuming long-range missile tests and declining to appear at the Six Party talks.³²² Depending solely on hard power can produce highly unpredicted and unwanted responses from the enforcer’s counterpart.

- Obama Administration & Lee Myung Bak Administration

The Obama Administration and combination of Lee Myung Bak’s “Inter-Korea Relations” was very fickle.³²³ Revere analyzes that, at first, Obama followed Clinton’s engaging, soft-power diplomatic strategy.³²⁴ Despite the Obama administration’s

³²¹ Bajoria and Xu, “The Six Party Talks on North Korea’s Nuclear Program.”

³²² Ibid.

³²³ Hong Nak Kim, “The Lee Myung-Bak Government’s North Korea Policy and the Prospects for Inter-Korean Relations - CIAO,” *International Journal of Korean Studies* 12, no. 1 (Fall/Winter 2008): 1–24.

³²⁴ Cha, *The Impossible State*.

reconciliation approach, ROK's new president Lee Myung Bak chose the opposite route, somewhat similar to that of Bush's, thus the United States and ROK again did not get along as strong allies. North Korea was frustrated by this discrepancy and continued to not care about how the other parties reacted and refused to participate in the Six Party talks, and continued to conduct its long-range rockets and missiles tests.³²⁵ The Obama administration counteracted this by imposing tough sanctions on North Korea. However, on February 2012, Obama created the "Leap Day Agreement" to provide North Korea with food aid on the condition that North Korea froze its missile and nuclear weapon tests, a program similar to Clinton's reward and incentives policy.³²⁶ However, this peaceful agreement failed within two months when North Korea conducted another missile test. Predictably, Obama stopped the United States' dialogue with North Korea, and furthermore, President Lee also cut off the active supply of aids to North Korea. The Lee's Inter-Korea Relations wholly destroyed the long-built credibility between ROK and DPRK in short period of time.

As we have seen, each administration of ROK and the United States has had different diplomatic approaches, using various power tactics that made it extremely hard for DPRK to respond accordingly. However, the one thing remains the same amongst all US administrations, regardless of the type of diplomatic strategies it chooses, is that every administration has pursued the same goal of denuclearization of DPRK. This may be a rational goal to preserve world peace, but in DPRK's perspective, this is an unfair demand. Denuclearization can adversely affect the stability of the Kim's regime and thus DPRK is unwilling to participate in all kinds of negotiations. Especially in a country

³²⁵ Ibid.

³²⁶ Ibid.

where its dictatorship has been passed down for generations, it is unlikely that the North Korean regime is going to surrender its power and dismantle the most effective tool to maintain its regime: nuclear weapons. Therefore, it is almost impossible to urge North Korea to denuclearize, as it would imply yielding its own sovereignty, unless there is a worthwhile incentive to counter their existential concern. After seeing Libya and Romania's collapses, Kim's regime cut off his country from the outside world in order to hold onto their dictatorship. If the United States keeps its sanction and maintains its hard power diplomacy, the situation will never get better but deteriorate.

It is not surprising that the United States is tired of the stop-and-go diplomacy act with North Korea. The United States' foreign affairs officials might be frustrated by North Korea's violation of its treaties with the United States when it has been doing everything in its power to keep a dialogue with North Korea. Despite the limited understanding of complicated diplomatic conflicts, it is cautiously assumed that the reason why the United States has constantly suffered from inconsistent diplomatic communication with North Korea is because the United States has put so much effort in "denuclearizing" and "disarming" the country. However, the United States has yet to find a common ground in which North Korea is willing to negotiate. Instead of pushing North Korea into a dead end, the United States could readjust its diplomatic approach. Not that the United States should recognize North Korea as a nuclear weapon state, but slowing down its sanction actions while constantly set a friendly environment to set up dialogue with North Korea will improve its attempts to take comprehensive diplomatic approaches. Harsh sanctions alone will not help to build a better US-North Korea relationship, as North Korea has survived the extreme hardship over half a century without substantial

outside supplies and trade. Instead, the United States should understand the true motivation and intentions of Kim's regime and approach the problem practically and more strategically.

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