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# Crossing the line

Chinese policy towards North Korean border crossers

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# Abstract

In the mid-90s, a nation-wide famine broke out in North Korea, driving people across the border into China in search of food. This was the start of a slow and steady exodus.

China claims that these people are illegal migrants, and that a treaty with North Korea obligates it to return them. Others argue that they are refugees that should be protected against refolement, because of the harsh punishments facing those that are returned.

The purpose of this study is to explain why China, despite international outrage, repatriates North Koreans who enter the country illegally. Utilizing information from a variety of sources, I argue that the reasons have little to do with the treaty, but are instead motivated by other concerns.

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# Abbreviations

UNHCR      United Nations High Commissioner for Refugees

# 1 Introduction

Since the mid-90s, a steady trickle of North Koreans has poured out of the country, bringing with them horrific stories of life in the secluded state. There's been a great deal of international interest in the suffering of these people, much anger at China for sending them back, and a lot of policy recommendations aimed at various governments. However, there has been little interest in examining why China repatriates North Koreans.

This I believe to be a mistake. Great concern for North Koreans is not enough to change China's policy towards those who enter its territory illegally. In order to change a behavior, you first have to understand it.

My purpose in this essay is not to take sides, but rather to understand and explain a behavior which I have found to be peculiar. I'm aiming to find an answer to the question of why China repatriates these North Koreans in spite of international outrage, and my hope is that these insights will prove useful to someone in the ongoing work to bring about a change.

## 1.1 Material and Theory

There's been a great deal of interest in China, and many topics have been covered to various degrees. In spite of this, the specific area that I've been examining has not garnered much attention. For this reason, much of the material I use is only indirectly related to my question, and often touches upon the topic only briefly. It has been necessary to piece together information from a variety of books, articles, NGO reports, treaties, and official policy statements from China's Ministry of Foreign Affairs.

For my theoretical framework I have used books with two somewhat different but related approaches. One side examines Asian values in general, the other Chinese policy specifically. My intention here has been to construct a theoretical pincer, which I hope will prove useful to help explain my conclusion at the end of the essay.

Asian values is something of a controversial topic, and at times amounts to nothing but political rhetoric used to justify policies that the West does not approve of. Because that kind of material doesn't explain what these values are and how policy is based on them, it's of little use here. Instead, I have chosen a book that doesn't approach Asian values as justification of policy, but rather examines the underlying cultures and values and attempt to explain how these are connected to and expressed in policy. The book I'm using here is looking at economic policies and behavior specifically, which is an area that I don't go into, but I believe that the underlying values are still useful as an explanatory tool. If values can explain one set of policies, they should be able to offer something to explain other sets of policies as well. Correspondingly, if there is no connection between values and one set of policies, then my suspicion is that there is at best a negligible connection between values and other sets of policies as well.

According to Francis Fukuyama, Confucianism lacks the idea that the government has a

responsibility to protect the individual's right, even if mutual obligations are otherwise present in hierarchies. His focus is largely on what he considers the two main flaws of common Asian values arguments, in order to extract the parts that are still sound. Starting with addressing the common mistake of disregarding the diversity of Asian culture, he centers his attention on the values based in Confucianism. He then goes on to elaborate on his opinion that values only have an effect on behavior if they are filtered through institutions, something he feels others overlook. Problems that are present in this region, such as personalism, are in other words not a result of values but of a lack of mechanisms for checking this behavior.<sup>1</sup>

While I agree with him that Asian values are too diverse to be generalized for the entire region in the way they often are, I disagree with him somewhat on the second point. Values are surely an important factor in creating these institutions and the institutions help regulate behavior. However, I don't believe this is the only way in which value has an impact on behavior. When problems such as personalism are present, it is in my opinion not simply because there is a lack of institutions to prevent it. I believe values create both the behavior and the institutions meant to check it.

The second author on Asian values, Jong-Keun You, also expresses the opinion that problems such as personalism is because of institutional short-comings. However, he does not disregard the importance of values outside of institutions, but instead argues that while many Asian cultures share in the same values as the West, they also hold values that are not as common in Western cultures. Problems arise when these latter values override the former ones, and institutions based on these latter values fail to prevent it. Specifically, he argues that because extended family culture is given great importance and the significance of the rule of law is not recognized, this prevents the realization of other values that Asia shares with the West.<sup>2</sup> This position corresponds quite well to my own opinion on the subject.

Ming Wan provides a deeper perspective into Chinese human rights policy and the interests that shape them. According to Wan, the first priority for China, as well as for its citizens, is economic growth. Social stability is considered a necessary condition for growth, and some go so far as to claim that the Chinese Communist Party leadership is necessary for stability. China's national interests are in other words dominated by economic development and maintaining party control. Western pressure, even if motivated by genuine concern for the human rights situation in China, is perceived as an attempt to weaken China for the sake of advancing the interests of the West. This Wan explains as a result of the necessity to use power in order to apply pressure on human rights issues, making it difficult for the receiving state to separate it from traditional power politics. To defend against this kind of pressure, China has held a firm position on the importance of respecting sovereignty and rejected the idea that human rights are more important.<sup>3</sup>

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<sup>1</sup> Fukuyama, Francis, 'Asian Values in the Wake of the Asian Crisis', in Farrukh Iqbal and Jong-Il You (ed), *Democracy, Market Economics & Development: An Asian Perspective*, p.149-165.

<sup>2</sup> You, Jong-Keun, 'Values, Culture, and Democracy: A Korean Perspective', in Farrukh Iqbal and Jong-Il You (ed), *Democracy, Market Economics & Development: An Asian Perspective*, p. 169-180.

<sup>3</sup> Wan, Ming, *Human Rights in Chinese Foreign Relations: Defining & Defending National Interests*, p. 1-39, 129-146.

My understanding of the underlying motives that shape Chinese policy is largely confirmed by the reasoning that Wan presents, although Wan of course delves much deeper into the subject than I have been able to do. This is one of the books I have been most impressed with, and as such, this text has held the most influence over my way of approaching the subject.

## 1.2 Method

In the first section, I have examined the motives for North Koreans to cross the border, and analyzed refugee criteria and China's stand on North Koreans' status. After this, I compared the two views to the situation of the North Korean border crossers in order to determine if they are migrants or not. The second section then rests on the determination that they cannot simply be disregarded as migrants.

I have then proceeded to synthesize different reasons, tracing backwards from the end result of Chinese policy of sending back North Koreans by building causality chains that I connected to the starting point, national objectives, in the conclusion. For the sake of simplicity, the chains have been presented start to end rather than end to start, because these lines of reasoning are sometimes complex and often interconnected. I believe presenting the chains in this way, instead of consistently going backwards, will make them more accessible.

## 1.3 Terminology

While I personally prefer "Democratic People's Republic of Korea" and "Republic of Korea", I have chosen to use "North Korea" & "South Korea" in this essay. This is to make it easier on the reader, as many people are a little confused as to which Korean republic is the northern one and which is the southern one. Perhaps the "Democratic People's" prefix adds to this confusion, as many assume this must be the south - understandable, since the south is the half with a democratic system of governing, but nonetheless wrong. Almost everybody, however, can tell north from south with very little difficulty.

Many publications employ a whole slew of terminology to refer to North Koreans that are outside of their country, and while this is certainly quite informative if one can keep them all straight, it makes for somewhat complex reading. Also, to be honest, I don't quite see the point in denoting by label the little facets that no doubt are very important for the North Koreans in question but has no impact on the purpose of the text. Like everybody else, I too have my own strong feelings and opinions on what status exactly these North Koreans should have, but in an attempt to not get ahead of myself when examining their status determination, I have stayed away from the obvious terms. I have after some consideration chosen a term I'm hoping is somewhat neutral; border crossers. No matter how we feel about their status as defectors, refugees or migrants, we can agree on one thing; they did all cross the border.

North Korea has a rather complex system of incarceration camps that vary considerably in name, purpose and severity of punishment. Some are intended for people with punishments that last for a few weeks, others for life-long incarceration. Some are meant to "quarantine" dangerous criminals from ordinary ones, some to re-educate deviants in socialist ideology, and so on. What they all have in common is that prisoners have to work, and for this reason I've chosen to gather

the variety of camps under the term "prison labor camp", which for the purpose of this essay is descriptive enough.

The expression "sur place" is French for "on site", in this context a phrase used to denote refugees that qualify for their status after the fact as opposed to already when crossing the border.

Juche is the national ideology of North Korea that advocates a steady self-reliance, which will be achieved by a strong military among other things.

## 2 Migrants or Refugees?

All countries have the right to control the inflow of non-citizens into their territory, to whatever extent they can. The exception to this would be when there are humanitarian reasons for considering the right of the individuals that crossed the border rather than the rights of the state. From a human rights perspective, because refugees are in a very vulnerable position their right to seek protection takes priority over the state's right to protect its sovereignty. The rights of people who are not refugees can and should be fulfilled by their country of nationality, and because of this the decision to extend rights to these non-citizens is at the discretion of the state. While neither migrants nor refugees have a right to enter without permission, a refugee has the right to not be repatriated, and must be allowed to stay or to leave for another country. A migrant, on the other hand, may be sent back since he or she at least in theory faces no danger from being returned to his or her country of origin.

In order to explain why China repatriates North Koreans who have crossed the border, it is therefore necessary to first examine if they are refugees or migrants. If they are migrants, China has every right to send them back, but if they are refugees it has an obligation to not return them to North Korea.

### 2.1 Motives for crossing the border

Estimates of the number of North Koreans illegally in China vary greatly depending on the source. Some estimates put the number as high as 300 000, while more conservative ones land at a much lower 10 000.<sup>4</sup> The true number is probably somewhere in between, closer to the higher end during times of harder economic conditions in North Korea and toward the lower end during those times when "crack-down" policies are being enforced.

There are a variety of reasons for why North Koreans cross the border into China. Dominant among them is starvation, but incarceration in prison labor camps and disillusionments with the government are also prominent motives. Many also cross in the hopes of reuniting with family members that went before them.<sup>5</sup>

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<sup>4</sup> Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002.; International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, Asia Report N°122 26 October 2006.; Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.

<sup>5</sup> Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002.; International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, Asia Report N°122 26 October 2006.; Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.; 2002, "Starved N Koreans eating grass to survive"; Amnesty International, *China: Crackdown on "illegal immigrants" likely to target North Korean refugees*, Amnesty International News Service Nr. 56 2002, ASA 17/013/2002.; Amnesty International, *North Korea: Persecuting the starving*, Amnesty International News Service Nr. 234 2000, ASA 24/004/2000.; Hawk, David, *The hidden Gulag: Exposing North Korea's Prison Camps*, U.S. Committee for Human Rights in North Korea 2003; The "Seo" Family Testimony in North Korea Freedom Coalition, *Testimonies of North Korean Defectors*, North Korea Freedom Coalition 2009

In the early to mid-90s, a combination of the fall of the Soviet Union and a series of floods and droughts led to a nation-wide famine that still persists. The North Korean agricultural industry relied heavily on supplies which had previously been provided by the Soviet Union at friendly prices, and without them production slowed down considerably. Heavy rain created floods that washed out the arable terraces on the mountain sides, leaving very little land left to grow food on.<sup>6</sup>

As state-sponsored food rations decreased and eventually stopped completely<sup>7</sup>, people were forced to sell everything they had in an attempt to raise enough money to buy food<sup>8</sup>, and as children became too weak to attend school they instead spent their days scavenging for edible grass, roots and bark to fill their stomachs with or begging for and stealing food at markets<sup>9</sup>. Eventually, many found themselves with no choice left but to cross the border into China in the hopes of being able to earn a living and bring back money, food and medicine<sup>10</sup>. Some managed to travel back and forth several times undetected, while others have been caught and either executed or sent to prison labor camps where most perish.<sup>11</sup>

Travel in North Korea is severely restricted. It's illegal to travel without permission, which has contributed to the lethality of the famine as people are unable to move freely between neighboring areas in search of food. Leaving the country without proper permission is punishable by several years in a prison labor camp, or even death, depending on the reason for leaving.<sup>12</sup>

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<sup>6</sup> Kristof, Nicholas D., 1996. "U.N. Says North Korea Will Face Famine as Early as This Summer"; 2002, "Starved N Koreans eating grass to survive"; Lankov, Andrei, 2007. "Famine: A Disaster Waiting to Happen"; 1999, "North Korea 'loses 3 million to famine'"; 1996, "Isolated North Korea forced to seek help to fight famine"; 1996, "Isolated North Korea forced to seek help to fight famine"; 1998, "US aid for 'starving' North Koreans"

<sup>7</sup> International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, Asia Report N°122 26 October 2006.; Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.

<sup>8</sup> Kristof, Nicholas D., 1996. "U.N. Says North Korea Will Face Famine as Early as This Summer"; Testimony of Mrs. Hae-Nam Ji

<sup>9</sup> 2002, "Starved N Koreans eating grass to survive"; Mr. Kim's Testimony in North Korea Freedom Coalition, *Testimonies of North Korean Defectors*, North Korea Freedom Coalition 2009; International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, Asia Report N°122 26 October 2006.; Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002.

<sup>10</sup> Scobell, Andrew, *CHINA AND NORTH KOREA: FROM COMRADES-IN-ARMS TO ALLIES AT ARM'S LENGTH*, Strategic Studies Institute 2004.; International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, Asia Report N°122 26 October 2006.; Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.; Klingner, Bruce, 2004. "The tortuous North Korean refugee triangle"

<sup>11</sup> Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.; Hawk, David, *The hidden Gulag: Exposing North Korea's Prison Camps*, U.S. Committee for Human Rights in North Korea 2003; The "Seo" Family Testimony in North Korea Freedom Coalition, *Testimonies of North Korean Defectors*, North Korea Freedom Coalition 2009; Mr. Kim's Testimony in North Korea Freedom Coalition, *Testimonies of North Korean Defectors*, North Korea Freedom Coalition 2009; Testimony of Ms. Helie Lee, 2002.

<sup>12</sup> Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.; International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, Asia Report N°122 26 October 2006.; Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002.; Amnesty International, *North Korea: Human rights under scrutiny at the UN*, Amnesty International News Service Nr. 121 2001, ASA 24/001/2001.

In North Korean society, all people are categorized into 3 different groups according to perceived loyalty; core, wavering and hostile. Rights are afforded or withheld, depending on which group a person belongs to. Unsurprisingly, only the most loyal citizens are given permission to travel outside of North Korea. Unfortunately for those in the wavering and hostile groups, aside from being unable to travel they are also highly unlikely to receive any of the food aid donated by foreign countries. In addition, since their loyalty is deemed questionable, they are already suspected of being against socialism.<sup>13</sup>

The North Korean prison labor camps not only contain people who have crossed the border into China. Any crime which is considered contrary to socialism is severely punished.<sup>14</sup> One border crosser tells of how she was sentenced to 3 years of labor in a camp for the crime of singing a South Korean song<sup>15</sup>, another of the 5 years she spent in one as the result of a disagreement between government departments<sup>16</sup>. Others have been sent to the camps for stealing food, or are imprisoned along with their entire families because relatives have been suspected of treason.<sup>17</sup> The camps subject the prisoners to hard labor under extremely difficult conditions.<sup>18</sup> Prisoners are expected to work anywhere between 16<sup>19</sup> to 22<sup>20</sup> hours a day, however long is needed for them to fulfill their work quota<sup>21</sup>. Failure to reach these quotas results in punishment in the form of reduction of the already meager rations, beatings, or other forms of brutal treatment.<sup>22</sup> Numerous reports detail the torture in these camps, where prisoners are subjected to sexual assault, electric shocks, water boarding, stress positions, mutilation, and so on.<sup>23</sup> As the prisoners die, they are replaced by new arrivals so that the camp can reach its production goals.<sup>24</sup> Those that survive long enough to be released or escape have few options left but to leave the country illegally. Since hardly anyone wants to associate with former prisoners, those released are shunned.<sup>25</sup> Those that escape must remain in hiding for fear of being

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<sup>13</sup> Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002.; International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, Asia Report N°122 26 October 2006.; Hawk, David, *The hidden Gulag: Exposing North Korea's Prison Camps*, U.S. Committee for Human Rights in North Korea 2003; Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.

<sup>14</sup> Human Rights Watch, *Universal Periodic Review of North Korea*, Human Rights Watch 2009.

<sup>15</sup> Testimony of Mrs. Hae-Nam Ji

<sup>16</sup> Testimony of Sun-Ok Lee

<sup>17</sup> Hawk, David, *The hidden Gulag: Exposing North Korea's Prison Camps*, U.S. Committee for Human Rights in North Korea 2003; Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002.; The "Seo" Family Testimony in North Korea Freedom Coalition, *Testimonies of North Korean Defectors*, North Korea Freedom Coalition 2009.

<sup>18</sup> Testimony of Sun-Ok Lee

<sup>19</sup> Testimony of Sun-Ok Lee

<sup>20</sup> Testimony of Mrs. Hae-Nam Ji

<sup>21</sup> Testimony of Sun-Ok Lee

<sup>22</sup> Testimony of Sun-Ok Lee

<sup>23</sup> Testimony of Sun-Ok Lee; Testimony of Mrs. Hae-Nam Ji; Democracy Network against North Korea Gulag, *A Report on a Survey of Torture on North Korean Defectors Deported Back to North Korea*, Democracy Network against North Korea Gulag.

<sup>24</sup> Testimony of Sun-Ok Lee

<sup>25</sup> Testimony of Mrs. Hae-Nam Ji

discovered and sent back or executed. This leaves them with very little possibility to survive if they stay in North Korea.

## 2.2 Refugee law

The definition of refugee, as well as the rights that come with this status, is outlined in the 1951 Convention Relating to the Status of Refugees. This convention has a temporal and geographical restriction on who is to be considered a refugee, but this was removed by the 1967 Protocol<sup>26</sup> accompanying the 1951 Convention. There are other conventions that expand the refugee definition to become more inclusive, but since China is not a party to those they will not be examined here.

According to the 1951 Convention, a person is a refugee if he or she has left his or her country of origin, and has done so because of a well-founded fear of persecution. Because of this fear, a refugee is unable or unwilling to receive protection from his or her own country. The grounds of persecution are unfortunately quite few, covering only race, religion, nationality, membership of a social group, and political opinion.<sup>27</sup>

This means that anyone fearing for his or her life and freedom for reasons other than these is not a refugee, nor is a person that is not specifically targeted because he or she belongs to one of these groups. In other words, people whose lives are in danger because of a general state of violence that is not directed specifically at them fall outside of the 1951 Convention's definition of refugee, as do those that flee because of other circumstances under which they cannot survive. Although a lot could possibly be made to fit under social group, the uncertainty that leaves room for interpretation can be used to exclude just as easily as to include, making it more difficult to protect those that are persecuted for less clear-defined reasons than for example religion. In addition, people who are not afraid or who have no well-founded reason for being afraid are not considered as refugees.<sup>28</sup>

Furthermore, there are grounds for refusing someone that would otherwise qualify as a refugee; Article 1 section F stipulates that the 1951 Convention is not applicable to persons that there is reason to believe have committed certain types of crimes, such as war crimes. In addition, people who have committed serious crimes of a non-political nature may be denied their rights as refugees, although the 1951 Convention does not offer a definition of what is to be considered a serious crime.

Those that have been or are in the process of being determined as refugees enjoy a certain measure of rights from the country of refuge, most notably the right to non-refoulement found in Article 33. Because a refugee by definition lacks the protection of his or her country of origin he or she may not be sent back there, nor to another country where he or she risks facing similar persecution<sup>29</sup>.

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<sup>26</sup> Protocol Relating to the Status of Refugees

<sup>27</sup> Convention Relating to the Status of Refugees, Article 1

<sup>28</sup> Janice Lyn Marshall, UNHCR Liaison, 081023

<sup>29</sup> Commentary of the Refugee Convention 1951, Article 33

The article regarding non-refoulement does not apply to two categories of people; those who there is valid reason to believe would be a danger to national security, and those that because they have been convicted of a serious crime pose a danger to the population's ability to lead a peaceful life.<sup>30</sup> Although this provision may seem redundant, since these persons have most likely already been excluded from this right by Article 1 section F, there are some differences in wording of the exclusion criteria between the two articles. In my interpretation, the right of non-refoulement may only be denied in cases where a reasonable danger arises from allowing a person to stay and that it may require a conviction to show this, whereas Article 1 section F allows the denial of other rights to anyone, dangerous or not, if this person is honestly suspected of a serious crime. As the granting of asylum is in international law generally considered to not be an unfriendly act, any political disturbance that may arise from refusing to return a refugee does not constitute a legitimate danger.<sup>31</sup>

Article 31 states that refugees may not be punished for entering the country of refuge without having first obtained permission, as long as they present themselves to the relevant authorities as soon as possible to account for their reasons for being in the country. This means that the right to not be punished doesn't apply to those that do not make themselves known to the authorities of the country they have entered. Even though some countries would usually consider deportation or expulsion as punishment, the 1951 Convention does not.<sup>32</sup> In other words, a state is within its right to expel refugees that have entered illegally, just as long as it doesn't send them to a place where they risk persecution.

While refugees may not be sent home or punished for entering illegally, they may still be prevented from entering the state's territory.<sup>33</sup> It may be a practical impossibility for a state to prevent refugees from entering, but it is nonetheless not required to admit them. It only has to afford certain rights to those already within its borders.

## 2.3 China's position

The Chinese Ministry of Foreign Affairs' spokespersons have persistently stated that the North Koreans that cross the border into China are not refugees but economic migrants, and that each case is handled in accordance with international law, domestic law and in a humanitarian spirit. Quite often, they also like to point out that this is a question of sovereignty; how to handle these people is China's business and nobody else's.<sup>34</sup>

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<sup>30</sup> Commentary of the Refugee Convention 1951, Article 33

<sup>31</sup> Commentary of the Refugee Convention 1951, Article 33

<sup>32</sup> Commentary of the Refugee Convention 1951, Article 31

<sup>33</sup> Commentary of the Refugee Convention 1951, Article 33

<sup>34</sup> Ministry of Foreign Affairs, Foreign Minister Tang Jiaxuan Holding Talks with the Foreign Minister of ROK, 001115; Ministry of Foreign Affairs, Spokesperson's comment on the reported turning over of 7 DPRK illegal immigrants by Russia, 001115; Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on March 14, 2002, 020315; Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on March 19, 2002, 020321; Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on March 21, 2002, 020325; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on May 14, 2002, 020516; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on May 16, 2002, 020517; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on May 21, 2002, 020522; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on May 23, 2002, 020524; Ministry of Foreign

China's domestic law touches upon the question of asylum only briefly. Article 32 of the Constitution recognizes the right to seek asylum for political reasons, and correspondingly the same right can be found expressed in slightly different words in article 15 of the Law of Entry and Exit of Aliens. China's domestic law, it appears, only recognizes asylum on grounds of political opinion, which excludes many that would be considered refugees under the 1951 Convention. As party to the 1951 Convention and 1967 Protocol, however, it is obligated to recognize refugees in accordance with the definition therein, the only exception being that it may expand its own definition to become more inclusive.<sup>35</sup> China has itself pointed out the importance of strict adherence to the convention, and possibly it does recognize refugees for all grounds in the convention even if domestic law does not reflect this.

There has, however, been at least one disturbing account of China not observing the right to political asylum either, at least as far as North Korean border crossers are concerned. In an interview with Human Rights Watch, one man reports that when he asked for political asylum, he was told that political asylum seekers were not recognized.<sup>36</sup>

Ministry spokespersons do not indicate how the status of North Korean border crossers is determined. Assuming the directives from the 1951 Convention are being applied, it is possible to discern some of the reasoning behind the denial of refugee status. As most North Korean border crossers have not been directly persecuted, they would fall outside of the 1951 Convention's definition for that reason alone.<sup>37</sup> Their main reason for leaving can be considered purely economic, and as such the Convention would not be applicable to them. It is quite possible to make a strong case for North Korean border crossers actually qualifying for refugee status, but denying them this status enables China to evade any obligations the 1951 Convention would otherwise impose<sup>38</sup>.

It's easy to assume that when the Ministry spokespersons say that China handles the North Korean border crossers in accordance with international law they are referring to the 1951 Convention, but this might not be the case. In some statements, they have referred to an international consensus on combating illegal immigration, and that this consensus is relevant for

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Affairs, Foreign Ministry Spokesman's Press Conference on May 30, 2002, 020604; Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on the Break-in of the South Korean Embassy, 020617; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on June 13, 2002, 020618; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on September 5, 2002, 020909; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on September 17, 2002, 020919; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on September 19, 2002, 020920; Ministry of Foreign Affairs, Foreign Ministry Spokeswoman's Press Conference on September 26, 2002, 020928; Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on October 8, 2002, 021010; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on November 21, 2002, 021128; Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on January 7, 2003, 030110; Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on January 16, 2003, 030122

<sup>35</sup> Ms. Kate Jastram and Ms. Marilyn Achiron, *Refugee Protection: A Guide to International Refugee Law*, UNHCR 2001.

<sup>36</sup> Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002.

<sup>37</sup> Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.

<sup>38</sup> Kim, Mikiyoung, 2007. "Political Construction of Human Rights: North Korean Refugees in China", *Paper presented at the annual meeting of the American Political Science Association, Hyatt Regency Chicago and the Sheraton Chicago Hotel and Towers, Chicago, IL, Aug 30, 2007.*

the question of North Korean border crossers.<sup>39</sup> As international consensus may translate into customary law, this may possibly be the international law that is spoken of.

It is also possible that they are referring to treaty provisions from bilateral agreements with North Korea, as is sometimes mentioned.<sup>40</sup> Two agreements specifically are referred to in these circumstances. There are different accounts of the name of the first one from early 1960s; sometimes it's called the Illegal Immigrants Repatriation Agreement and other times the Escaped Criminals Reciprocal Extradition Treaty. It is of course possible that there exists two separate agreements with these names, but I have only ever come across reports of one treaty from the early 60s in relation to repatriation policy. The discrepancy in name is quite likely just a result of the translation. The second agreement, from 1986, is consistently called the Border Area Affairs Agreement.

The text of these agreements is, it seems, a secret.<sup>41</sup> It is however possible to piece together picture of their content. The first agreement followed close to the famine cause by the Great Leap Forward, when many Chinese went into North Korea in search of food.<sup>42</sup> From the name of the agreement it is possible to guess that China wanted North Korea to return these people. Even today, China demonstrates an acute keenness on having its citizens returned when these have entered other countries illegally<sup>43</sup>; for example, the bilateral agreements that China has entered typically include an article concerning the mutual return of illegal migrants. Assuming the agreements with North Korea concerns the return of Chinese border crossers, they would most likely in turn obligate China to repatriate any North Koreans that enter its territory illegally.

China relies heavily on these agreements for justification of its forced repatriation of North Korean border crossers<sup>44</sup>, but it would be hasty to assume that the true motivations is an honest belief that the agreement should be honored. During the famine especially, China was willing to pretend it didn't notice North Koreans crossing its border, just as long as everybody else pretended not to notice either.<sup>45</sup> The true reason why China sends back North Korean border crossers is probably not so much out of heart-felt obligation as of political motivation.

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<sup>39</sup> Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on June 5, 2003, 030609; Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on June 17, 2003, 030620

<sup>40</sup> Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002.; International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, Asia Report N°122 26 October 2006.; Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.; Testimony of Ms. Helie Lee, 2002.

<sup>41</sup> Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002.

<sup>42</sup> Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002.; International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, Asia Report N°122 26 October 2006.

<sup>43</sup> Ministry of Foreign Affairs, Frequently Asked Questions on Consular Affairs, 020418

<sup>44</sup> Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.; Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002.; Testimony of Ms. Elisa Massimino, 2002.

<sup>45</sup> Klingner, Bruce, 2004. "The tortuous North Korean refugee triangle"

## 2.4 Determining status and rights

At first glance, it may appear as if those North Koreans that cross the border into China do not qualify for refugee status under the 1951 Convention's definition, as the main motive for their crossing is to make a living. China has regularly declared that because the majority of North Koreans come into the country for this reason, they are to be considered as economic migrants.<sup>46</sup> Unlike refugees, who have to leave, migrants choose to leave their country of origin, and they have the option of receiving protection from that country.<sup>47</sup> Because of this, they are not entitled to the rights afforded to refugees. Those that cross the border with the additional reason of having been sent to a prison labor camp would appear to be disqualified for reason of having committed a serious crime; it would take little effort to argue that the North Korean government considered their crimes quite serious, and possibly China agrees with this.

However, this doesn't necessarily mean that North Korean border crossers do not satisfy the conditions for being refugees. Even if the circumstances prompting people to leave their country of origin do not amount to persecution, they can still become refugees "sur place" if they risk persecution in the case that they return to their country of origin.<sup>48</sup> This means that regardless of if their border-crossing was economically motivated, they may nonetheless become refugees after leaving their country.

Those that have been incarcerated in prison labor camps for crimes contrary to socialism would still qualify for reasons of their crimes having been political, the only kind of serious crime that is not considered a valid reason to deny someone his or her rights as a refugee. Others have been imprisoned for crimes that seem rather trivial, such as visiting a black market to buy a blanket<sup>49</sup>, and cannot be considered as having committed a serious crime.

As there are no numbers available on how many people are imprisoned and for what crimes, we can only guess at the proportions using NGO interviews. This is of course not a source to draw reliable conclusions from concerning how many are imprisoned and for what crimes, as it can only tell us how many people have escaped North Korea and been interviewed, and what reason they were given for their imprisonment. It's altogether possible that people who have committed serious crimes of the nature that would disqualify them for refugee status do not survive their time in the prison labor camps, or that they do not wish to be interviewed. The reason they are presented with for their imprisonment, if indeed they are informed of it at all, may not be the true reason. However, the NGO reports can give us a partial view, and this is the best that is available at the moment. It would appear that among former prisoners that leave the country, their crimes have been either political or trivial. Of course, there are those whose crime can be considered both, such as in the case of the woman that was convicted of singing a South

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<sup>46</sup> Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on October 8, 2002, 021010; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on November 21, 2002, 021128; Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on January 16, 2003, 030122; Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on February 25, 2003, 030303; Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on July 1, 2003, 030704.

<sup>47</sup> Ms. Kate Jastram and Ms. Marilyn Achiron, *Refugee Protection : A Guide to International Refugee Law*, UNHCR 2001.

<sup>48</sup> Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002.

<sup>49</sup> Testimony of Sun-Ok Lee

Korean song. As mentioned already, this is of course unlikely to be a true representation of the prison labor population, but it can serve as a guide. The main point, however, is that the fact that a North Korean border crosser has committed a crime does not automatically disqualify him or her from being considered a refugee. After all, just the act of crossing the border has made them all criminals in North Korea.

A case can also be made for the imprisonment itself amounting to persecution on grounds of belonging to the wrong social group or having the wrong political opinion. This would mean that those crossing into China because they are disillusioned with the government should be afforded refugee status; if their disillusionment were to be discovered while they were in North Korea, they would probably be considered guilty of crimes contrary to socialism, and sent to a prison labor camp. Those that belong to the two more vulnerable groups of loyalty ranking in North Korea are more likely to be suspected and convicted of a crime, regardless of if they have committed one or not. They are also more likely to be starving when times are dismal, as Kim Jong-Il is notorious for diverting food aid to benefit his inner circle. It's not a far stretch to imagine that they are also the ones most likely to become disillusioned with the government; it treats them like criminals and starves them. This increased risk of disillusionment may also be a factor in them being more likely to be suspected and convicted of a crime. In addition, because of their situation they are more likely than the loyal group to be driven to actually committing one. Also, as leaving North Korea without permission is a crime for which people are sent to the prison labor camps, the mere act of crossing the border into China would make them refugees "sur place".<sup>50</sup>

Furthermore, this means that the reason for crossing the border could in fact be persecution, even though it appears to be economically motivated.<sup>51</sup> Crossing the border because of hunger would normally not qualify someone for refugee status. However, if the reason that this person is hungry is because of persecution, as is often the case in North Korea, he or she would be a refugee after all.

Nevertheless, China may still have grounds for refusing North Korean border crossers status as refugees. Because South Korea defines its territory as the entire peninsula, North Koreans can in effect be considered as having dual nationality.<sup>52</sup> The 1951 Convention requires that in order for someone to be a refugee, that person must be without the protection of his or her country of origin, and in the case of dual nationality this condition extends to both countries<sup>53</sup>. In other words, as long as North Korean border crossers can receive protection from South Korea it's possible for China to deny them refugee status, as well as the right of non-refoulement that comes with this status. On the other hand, if China argues that North Korean

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<sup>50</sup> International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, Asia Report N°122 26 October 2006.; Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002.; Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.

<sup>51</sup> Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002.

<sup>52</sup> International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, Asia Report N°122 26 October 2006.

<sup>53</sup> Convention Relating to the Status of Refugees, Article 1

border crossers are not entitled to refugee status on the ground of them also being South Korean, it should then be required to repatriate them to the South. All this may be mostly a technical point of dispute, however, as most North Korean border crossers aren't able to ask the South Korean government for protection.

The fact that most North Korean border crossers hide themselves while in China might also be held against them. The 1951 Convention does not allow for the punishing of refugees that enter illegally, but this exemption is conditional on the refugees presenting themselves to the authorities as soon as possible to give reason for being in the country. Despite this, it could be argued that because of their circumstances, North Korean border crossers do present themselves to the authorities as soon as they can; just as soon as they're in a country that won't send them back. Even if one does not agree with this line of arguing, the 1951 Convention does not consider refolement acceptable punishment. China could of course claim that not returning North Korean border crossers would cause serious political disturbance, and it probably would, but this is not considered acceptable grounds for refolement either.

The Ministry spokespersons often point out that a number of the North Korean border crossers travel back and forth several times.<sup>54</sup> It's easy to understand their line of thinking here; if the North Koreans were fleeing, they wouldn't go back voluntarily.

The voluntary nature of their return can be contested, though. Some have families whose lives may depend on their return, either because the whole family risks imprisonment if a single member is discovered to have left, or because they have to bring food back for them. Others return for lack of a better choice, as they are unable to receive protection in China or to travel to a country that would offer them refuge. Returning to North Korea undiscovered means they can at least escape the punishment they would face if they were found outside of the country.<sup>55</sup>

Regardless of if North Korean border crossers are acknowledged as refugees or considered as migrants, they have one last recourse for protection against refolement. China is a party to the Convention Against Torture and Other Cruel, Inhumane or Degrading Punishment, which forbids refolement of a person that is at risk for torture or excessive punishment if returned. The provisions of this convention do not take into consideration the legal status of a person; refugee or migrant doesn't matter, as everyone is equally protected against refolement.<sup>56</sup>

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<sup>54</sup> Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on the Break-in of the South Korean Embassy, 020617; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on September 5, 2002, 020909; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on September 17, 2002.

<sup>55</sup> International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, Asia Report N°122 26 October 2006.

<sup>56</sup> Ms. Kate Jastram and Ms. Marilyn Achiron, *Refugee Protection : A Guide to International Refugee Law*, UNHCR 2001.

## 3 Reasons

As mentioned in the previous section, China's reasons for repatriation are most likely politically motivated. The possible reasons are many, and quite a few of them are connected to each other in some way.

### 3.1 More will come

One of the reasons presented for returning North Korean border crossers is that if they're not returned, this will encourage more to come. This in turn has two undesirable consequences; it undermines the social stability of China<sup>57</sup> and threatens to destabilize the North Korea regime<sup>58</sup>.

#### 3.1.1 *Social instability in China*

North Korea borders on 3 northeastern provinces in China; Jilin, Liaoning & Heilongjiang. These 3 provinces have great importance to China, as a lot of the country's economic activity is located in this region, making them crucial to political stability.<sup>59</sup> Most North Koreans come to Yanbian, a prefecture of Jilin that has a large Korean-Chinese population.<sup>60</sup>

As there are no legal means for the North Koreans to support themselves in China, many resort to crime in order to survive, robbing people and breaking into houses to steal. Others rely on the mercy and generosity of the local population, and as much of the people in the area are ethnically Korean they have been sympathetic. Many also remember the famine following the great leap forward and the help they or their relatives received from North Korea.<sup>61</sup>

However, the sympathy has faded over the years. This is mainly because of the social instability North Korean border crossers cause with their criminal activities, but partly also because anyone caught helping a border crosser may be fined or arrested.<sup>62</sup> The Chinese government fears that the Korean-Chinese population may develop loyalties that lie with Korea rather than with China.<sup>63</sup> What's more important, though, is the fear that allowing North

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<sup>57</sup> Scobell, Andrew, *CHINA AND NORTH KOREA: FROM COMRADES-IN-ARMS TO ALLIES AT ARM'S LENGTH*, Strategic Studies Institute 2004.; Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.

<sup>58</sup> Glosserman, Brad & Snyder, Scott, 2002. "Borders and Boundaries: The North Korean Refugee Crisis", *Pacific Forum* No 21.

<sup>59</sup> Wang, Fei-Ling, 'Chinese Security Policy in Northeast Asia', p. 41-68 in Tae-Hwan Kwak & Edward A. Olsen (ed), *The major powers of Northeast Asia: Seeking Peace and Security*. Boulder: Lynne Rienner Publishers Inc.

<sup>60</sup> Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.

<sup>61</sup> Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.

<sup>62</sup> Charny, Joel R., *Acts of Betrayal. The Challenge of Protecting North Koreans in China*, Refugees International April 2005.; Human Rights Watch, *THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE'S REPUBLIC OF CHINA*, Human Rights Watch 2002

<sup>63</sup> Scobell, Andrew, *CHINA AND NORTH KOREA: FROM COMRADES-IN-ARMS TO ALLIES AT ARM'S LENGTH*, Strategic Studies Institute 2004.; Eberstadt, Nicholas & Ellings, Richard J., "Assessing Interests and Objectives of Major Actors in the Korean Drama", p. 315-340

Koreans to stay will cause a flood of more to cross the border<sup>64</sup>, creating an increase in social problems as they come.

### 3.1.2 *Destabilization of North Korea*

Destabilization of the North Korean regime is most undesirable to China, as a collapse would lead to problems of political legitimacy, cause massive floods of refugees, and effectively put American troops at China's border.

To China, the continued survival of the North Korean regime is vital for its own political legitimacy, as very few communist states still remain. The Chinese Communist Party's right to rule is justified by its ideology, and if these states continue to crumble, it will become increasingly difficult for China to prop up its own validity. While allowing refugee status for North Korean border crossers and thereby threaten to collapse the North Korean regime is in itself harmful to China's political legitimacy, refugee status could also be construed as criticism of the regime as politically repressive.<sup>65</sup>

Although one could argue that North Korea is no longer a communist state because it at least officially follows Juche ideology instead of communist ideology since the revision of the Constitution in 1998, this is a rather insignificant difference. The shift in ideological adherence seems to have been more formal than actual, as the constitution reflects this only by an added emphasis of Juche in the preamble. Also, North Korea is still perceived as a communist state. A collapse of the North Korean regime would be seen as another communist state falling, and criticism of North Korea as politically repressive would translate as communism being politically repressive. Communist or not, either collapse or criticism of North Korea damages the legitimacy of an ideology that keeps the Chinese Communist Party in power.

Korea has the dubious honor of being the path historically taken to invade china. With the division of the peninsula and establishment of American support in South Korea, China has felt keenly the need to maintain a buffer zone between its border and American forces. If North Korea was to collapse and the peninsula re-unify, this could mean American presence above the 38th parallel. Even though China and the U.S. enjoy a relationship that is if not friendly then at least amicable, China still sees the potential of American forces on its border as a threat to its security. For China, maintaining stability on the peninsula by preserving the viability of North Korea is crucial to keeping U.S. troops at a distance. A reunified Korea could also cause an upsurge in nationalistic feeling among the Korean-Chinese population, swaying their loyalties in the wrong direction.<sup>66</sup>

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<sup>64</sup> Platt, Kevin, 2000. "N. Korea gets China's cooperation on refugee returns.", *Christian Science Monitor* Vol. 92, No. 139, p.7.

<sup>65</sup> Scobell, Andrew, *CHINA AND NORTH KOREA: FROM COMRADES-IN-ARMS TO ALLIES AT ARM'S LENGTH*, Strategic Studies Institute 2004.

<sup>66</sup> Scobell, Andrew, *CHINA AND NORTH KOREA: FROM COMRADES-IN-ARMS TO ALLIES AT ARM'S LENGTH*, Strategic Studies Institute 2004.; Scalapino, Robert A. , "China and Korean Reunification - A Neighbor's Concerns", p. 107-122; Eberstadt, Nicholas & Ellings , Richard J. , "Assessing Interests and Objectives of Major Actors in the Korean Drama", p. 315-340

Another effect of a potential collapse of the North Korean regime would be a huge amount of refugees flowing into China. If the regime collapse were to happen without the south absorbing the north and thus opening the demilitarized zone, the entire torrent of refugees would have no choice but to flee in the other direction. This kind of massive refugee movement could end up drowning China's northeast region which, as noted earlier, is one of the more important regions for China. Aside from the burden that a humanitarian crisis of this magnitude pose to any society, the chaos it would create could prove disastrous to China's economy.<sup>67</sup>

This would also mean that there would be no way for China to avoid UNHCR presence in the area, which it has been fighting vigorously.<sup>68</sup> Admittedly, this struggle to prevent UNHCR from setting up refugee camps on the border has been because it would provide an incentive for more North Koreans to cross<sup>69</sup>, which could trigger a regime collapse. An already collapsed regime would seemingly offer no reason to want to keep UNHCR out, but China may still feel that this international presence within its borders is an infringement on its sovereignty.

## 3.2 Offending North Korea

A failure from China to return North Korean border crossers, aside from encouraging more to come, would not sit well with North Korea. The severe travel restrictions clearly demonstrate that it wants its citizens to stay within its borders, as does the harsh punishment for leaving without permission

The prospect of offending North Korea would seem to be of little consequence to country with the size and power that China has. Even the best implemented Juche principles would not put North Korea in a position to be much more than an annoyance to China. If we assumed that North Korea has acquired nuclear capabilities, China still has a significant head start in that area. Their relationship is regularly described as long-standing and friendly, and it is certainly true that during the reign of Kim Il-Sung the two countries were "as close as lips and teeth". However, the warm feelings have cooled considerably since Kim Jong-Il came to power. In short, it would seem that to China, antagonizing North Korea shouldn't be that big of a deal.

### 3.2.1 *Falling out*

Nonetheless, a falling out with North Korea could have serious effects for China. As noted earlier, China has a great interest in ensuring the survival of the North Korean regime. To this effect, China has been making sizable donations in the form of food and fuel aid, keeping the government afloat. Simultaneously, it has been applying light pressure to try to persuade North

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<sup>67</sup> Human Rights Watch, *Denied Status, Denied Education: Children of North Korean Women in China*, Human Rights Watch 2008.; Scobell, Andrew, *CHINA AND NORTH KOREA: FROM COMRADES-IN-ARMS TO ALLIES AT ARM'S LENGTH*, Strategic Studies Institute 2004.; Kim, Mikyoung, 2007. "Political Construction of Human Rights: North Korean Refugees in China", *Paper presented at the annual meeting of the American Political Science Association, Hyatt Regency Chicago and the Sheraton Chicago Hotel and Towers, Chicago, IL, Aug 30, 2007.*

<sup>68</sup> Scobell, Andrew, *CHINA AND NORTH KOREA: FROM COMRADES-IN-ARMS TO ALLIES AT ARM'S LENGTH*, Strategic Studies Institute 2004.; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on May 14, 2002, 020516.

<sup>69</sup> Glosserman, Brad & Snyder, Scott, 2002. "Borders and Boundaries: The North Korean Refugee Crisis", *Pacific Forum* No 21.

Korea to implement economic reforms similar to those in China. If successful, this would stabilize the regime and eventually ensure that North Korea became self-sufficient.<sup>70</sup>

In the event that the relationship should turn sour, as would most likely happen if China stopped complying with North Korea's demands to have its citizens back, there is a possibility that North Korea would cut ties with China. The reforms that China is hoping to see in North Korea would then be unlikely to be actualized, leaving the regime precariously unstable. Food and fuel donations might also stop, and without them a collapse of the North Korean regime would be almost certain.

### 3.2.2 *Nuclearization of the Peninsula*

Although China has insisted that the issue of North Korea's nuclear capabilities is separate from the question of North Korean border crossers, there is nonetheless a link between the two. China has been instrumental in the attempts to prevent nuclearization of the peninsula, even though the success of these efforts remains unclear.

While restricting North Korea's ability to attain nuclear weapons has been an important goal for China, its primary goal has been to ensure the continued stability of the Korean peninsula. Put differently, the nuclear weapons themselves may not be so much of a problem to China as the threat these weapons pose to peninsular peace and stability - nuclearization could cause social turmoil in North Korea. This in turn would result in North Koreans pouring into China.<sup>71</sup>

In addition, if North Korea acquires nuclear capabilities, the U.S. might feel forced to intervene militarily. This in itself would be inconvenient, as China would like to keep U.S. troops at a safe distance from its borders. It would also make the task of preventing North Korea from collapsing that much more difficult, as the U.S. may well take the opportunity to remove the North Korean regime.<sup>72</sup>

Some would also point out that in the event of a U.S. intervention, China would be forced to help North Korea defend itself. The infamous Article 2 of the Sino-Korean Treaty on Friendship, Cooperation and Mutual Assistance states that if one of them is under attack, the other must come to its assistance. This agreement doesn't carry much weight anymore, however. Although China has not officially broken off the agreement, it has made it clear to North Korea that if it gets itself into trouble it will have to get itself out of it.<sup>73</sup>

In any event, it's in China's interest to maintain cordial relations with North Korea. Should the relationship between the two deteriorate, China would be unable to prevent nuclearization of the peninsula, which could have dire consequences in the form of refugee floods and a North Korean regime collapse.

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<sup>70</sup> Kim, Mikiyoung, 2007. "Political Construction of Human Rights: North Korean Refugees in China", *Paper presented at the annual meeting of the American Political Science Association, Hyatt Regency Chicago and the Sheraton Chicago Hotel and Towers, Chicago, IL, Aug 30, 2007.*

<sup>71</sup> Scobell, Andrew, *CHINA AND NORTH KOREA: FROM COMRADES-IN-ARMS TO ALLIES AT ARM'S LENGTH*, Strategic Studies Institute 2004.

<sup>72</sup> Scobell, Andrew, *CHINA AND NORTH KOREA: FROM COMRADES-IN-ARMS TO ALLIES AT ARM'S LENGTH*, Strategic Studies Institute 2004.

<sup>73</sup> Scobell, Andrew, *CHINA AND NORTH KOREA: FROM COMRADES-IN-ARMS TO ALLIES AT ARM'S LENGTH*, Strategic Studies Institute 2004.

### 3.2.3 *Repeating History*

There are grounds for believing that to China, preventing the outflow of its citizens is not a trivial matter. As conditions in North Korea are presently abysmal the illegal border-crossing of Chinese citizens into North Korea is at this time highly unlikely. Nevertheless, it has happened before and it could happen again. With the proper economic reforms, perhaps just the ones that China is suggesting, North Korea could turn into a flourishing country. Even though natural disasters are unlikely to cripple China's food production in the way that happened in North Korea, the situation in China could still take a turn for the worse. It would probably be unlikely to again reach the extent that it did after the Great Leap Forward, but nonetheless Chinese people might feel motivated to leave for North Korea again. Should this happen, and China has not been returning North Korean border crossers when asked to, it's not a far stretch to imagine that North Korea wouldn't feel particularly compelled to give China its citizens back either.

Admittedly, this may be one of those eventualities that are so improbable that one might overlook the possibility that China is thinking along these lines. However, China allegedly has a long memory, and may not be as quick to disregard the past.

### 3.2.4 *Sovereignty issues*

China has been on the receiving end of a great deal of international criticism for its decision to repatriate North Korean border crossers. In response, China has frequently asserted that this issue falls under its internal affairs, and that outsiders have no right to interfere in this matter.<sup>74</sup> The protection of sovereignty is perhaps the most important concern for China.

If China does not repatriate North Korean border crossers, this could be construed as interfering in North Korea's internal affairs. By China's reasoning, what happens to these people when they are in North Korea falls within North Korea's sovereignty. While the border crossers are on Chinese territory, the handling of them may fall exclusively under China's sovereignty, but what is to happen to them when they are returned is for North Korea to decide. Not returning them is, in other words, denying North Korea its sovereign right to make this decision. If China was to give itself the right to violate North Korea's sovereignty, it would essentially be inviting outsiders to violate China.

This line of reasoning may seem absurd in the West, where the idea that the right of sovereignty is curtailed by individual rights is widely accepted. However, to countries that have had their sovereignty frequently violated, often by the West, such reasoning is not as far-fetched.

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<sup>74</sup> Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on May 21, 2002, 020522; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on May 23, 2002, 020524; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on June 13, 2002, 020618; Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on October 8, 2002, 021010; Ministry of Foreign Affairs, Foreign Ministry Spokesman's Press Conference on November 21, 2002, 021128; Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on January 7, 2003, 030110; Ministry of Foreign Affairs, Foreign Ministry Spokesperson's Press Conference on January 16, 2003, 030122.

## 4 Conclusion and Discussion

As shown in the essay, there is a multitude of reasons behind China's decision to repatriate North Korean border crossers. At times the connection between them and Chinese policy may seem confusing, a situation that is not helped by the way in which the reasons themselves are often related to each other. They all have one aspect in common, however, no matter which line of reasoning you chose to follow; not repatriating could potentially be harmful to China's national interests.

In answering the question of why China repatriates North Koreans that cross the border, another question naturally arises; why do these reasons matter to China?

Some of them offer up an answer more easily than others. As economic growth is the first priority in terms of national interests<sup>75</sup>, and social as well as political stability is viewed as a necessary condition for this, the instability caused by crimes committed by North Korean border crossers is a threat to this. A massive flood of refugees could also be a hindrance to this goal. This underlying motive can also be related to the problems of legitimacy. Maintaining party power is in itself a goal, but also at times seen as another precondition for economic growth.<sup>76</sup>

As for the desire to avoid a collapse of the North Korean regime, as well as not wanting to offend North Korea, the values of extended family culture could be plausible motivation here. You explains that while siblings in the West are expected to compete, in the East they are obligated to help each other. This does not only apply to actual families, but to the family-like groups such as colleagues as well. This behavior can be observed in for example corporate structures, where stronger subsidiaries keep weaker ones afloat at great cost.<sup>77</sup> The behavior is strikingly similar to the one China displays in regard to North Korea.

The strong presence of these values could also matter for the issues of ethnic loyalty that China fears may rise among Korean-Chinese in the Yanbian prefecture. If these people were to view Koreans rather than Chinese as their extended family, their obligations as citizens would be toward Korea rather than China.

China's reasons of not wanting to lose North Korea as a buffer zone, as well as the protection of its sovereignty, can both be related to the need to defend against Western pressure<sup>78</sup>. Sovereignty is quite directly connected to this, as it has been a defense that China has utilized for this purpose on many occasions. China has also argued that the assumption made by the West that human rights are more important than sovereignty is wrong, and that since this is the justification for humanitarian intervention this kind of interference in internal issues is not

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<sup>75</sup> Wan, Ming, *Human Rights in Chinese Foreign Relations: Defining & Defending National Interests*, p. 1-39, 129-146.

<sup>76</sup> Wan, Ming, *Human Rights in Chinese Foreign Relations: Defining & Defending National Interests*, p. 1-39, 129-146.

<sup>77</sup> You, Jong-Keun, 'Values, Culture, and Democracy: A Korean Perspective', in Farrukh Iqbal and Jong-Il You (ed), *Democracy, Market Economics & Development: An Asian Perspective*, p. 169-180.

<sup>78</sup> Wan, Ming, *Human Rights in Chinese Foreign Relations: Defining & Defending National Interests*, p. 1-39, 129-146.

valid either.<sup>79</sup> The prevailing view in the West, however, is that the violation of human rights can provide a legitimate reason to intervene. The West may not be too inclined to intervene in a country of the size and resources of China, but should it nonetheless decide to do so North Korea would be a convenient route. The buffer zone provides China with the means to protect itself from Western pressure in the form of intervention, at least to some degree.

At this point one may ask why China values sovereignty more than individual rights, a question to which the authors offer different answers. Wan points out that the kind of political freedom that comes with recognition of individual rights would in effect end the Chinese Communist Party's political monopoly, which it is guarding quite carefully. Fukuyama would most likely attribute it to cultural values, as Confucianism does not recognize individual rights but only duties.

The question I posed has some rather complex answers, and each seems to generate new questions in turn. In retrospect, I might have chosen a less ambitious topic that would have allowed me to work through it in a more in-depth way. On the other hand, since it is such a complicated issue it has kept my interest high through-out the process, and I have discovered new reasons all the way until the end. Had I continued working on this for a longer period of time, I would no doubt have found more.

Looking back at my chosen methods, I could possibly have skipped the first section where I analyzed and compared the different perspectives to determine the status of North Korean border crossers, but I felt that this was an important enough precondition for the rest of the essay to warrant its inclusion. As for the second section, I believe I honestly could not have answered my question by any other method. The information I gathered was only available in little pieces and often without apparent connection to the answer I was trying to find. The fragmented nature of the information was such that the only workable method at that point was synthesis. After the pieces had been put together other methods would have been viable, but to use any of those I would have to write a second essay. In addition, these methods might not have been appropriate to answer my question.

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<sup>79</sup> Wan, Ming, *Human Rights in Chinese Foreign Relations: Defining & Defending National Interests*, p. 1-39, 129-146.

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