

NO DOORS OPEN: DISPLACED NORTH KOREANS AND ASIAN GEOPOLITICS

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I. INTRODUCTION

In 2007, the steady stream of North Koreans leaving their country continued, bringing increased international attention to the human rights violations of Kim Jong Il's regime and exacerbating the many difficulties regarding how to cope with those who leave the Democratic People's Republic of Korea (DPRK) and hope to settle elsewhere. At the heart of this unresolved humanitarian quandary lies the uncertainty about the legal status and thus the appropriate treatment of displaced North Koreans. Few of the major countries and nongovernmental organizations (NGOs) involved appeared to take appreciable steps toward forming a coherent international strategy (or even bilateral approaches) on the issue over the past year. South Korea is the desired final destination for the great majority of North Koreans wishing to resettle abroad permanently, but a small number of North Koreans have requested transfer to the U.S. since the passage of the North Korean Human Rights Act by the U.S. Congress in 2004.

The predicament of displaced North Koreans is a flashpoint that illustrates the divergent and often contradictory political agendas of the nations involved: North Korea, South Korea (ROK), China (PRC) and the United States. North Koreans often travel through China to Thailand, Vietnam, Mongolia and Laos, so those countries are also parties to the problem. The increasingly publicized, politicized and international nature of the dilemma has caused a kind of paralysis, with no one nation or aid organization able to single-handedly change the status quo.

II. LEGAL STATUS

During 2007, neither the countries involved nor the United Nations (UN) significantly altered their respective positions on the legal status of displaced North Koreans. Owing to the lack of direct land routes on the Korean peninsula, North Koreans hoping to resettle outside the DPRK often travel through third-party countries before petitioning for transfer to the ROK or the U.S. Others manage to travel to South Korea on their own and then turn themselves in to custody. The transit countries' positions regarding the legal status of displaced North Koreans within their borders are often the deciding factor in determining which route North Koreans choose to take in order to reach their desired destinations.

Because most of the northern border of the DPRK is shared with China, almost all those leaving North Korea must stay in China for some period of time. (The border with Russia is only 17 km long and consists of much rougher terrain to cross. Far fewer people attempt to leave the DPRK by this route.) The decisions of Beijing regarding the legal status of North Koreans within Chinese borders are of paramount importance. Beijing continues to designate North Koreans without valid travel permits as “economic migrants” and honors its two bilateral agreements with the DPRK—the Escaped Criminals Reciprocal Extradition Treaty of 1960 and the Border Area Affairs Agreement of 1986—which call for the repatriation of North Koreans found to be illegally on Chinese soil. Though no official numbers are released by either the PRC or the DPRK, the South Korean government estimates that some 6,000 North Koreans are repatriated by China to North Korea every year. Tim Peters of the NGO, Helping Hands Korea, puts the estimate much higher, at 150–300 North Koreans a week, for a total of 7,800–15,600 a year.

Further complicating the situation in China is that, short of a thorough screening process, there is no way to determine whether any North Koreans on Chinese soil are fleeing the DPRK for reasons that would qualify them under international law as refugees or asylum seekers. The PRC's stance hinges on the fact that it considers displaced North Koreans to have entered the country for purely economic reasons. During the severe floods and famines in the DPRK in the mid-to-late 1990s, many North Koreans crossed the border into China in search of food and work, often with the intent of returning home eventually. In addition, many North Korean women, voluntarily or otherwise, enter into marriage-like arrangements with Chinese men in the border region. Chinese law does not recognize these marriages, and the women are considered illegals, as are their children. It can also be argued that some North Koreans in China are not actually in transit and would stay indefinitely if they could, making them

illegal immigrants. North Koreans in China—whether aspiring immigrants or transients—thus remain in an extremely difficult position, vulnerable to labor exploitation, sex trafficking and, of course, expulsion. There is no evidence that the Chinese government intends to change its position or allow the UN High Commission on Refugees (UNHCR) access to displaced North Koreans to determine whether they meet international legal standards that would disallow their forced return to the DPRK.

The UNHCR did not make any public statements in 2007 to radically alter its previous position regarding the legal status of displaced North Koreans. The often-cited UN 1951 Convention on the Status of Refugees and its 1967 Protocol designate refugee status on the basis of “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” The sharp increase in the number of North Koreans leaving the DPRK during the 1990s seems to have been motivated by sheer survival, and while it was undoubtedly a humanitarian emergency, it is unclear whether economic hardship alone would confer refugee status on North Koreans outside the DPRK. Nonetheless, among advocates for the displaced, there is almost universal agreement that China (which signed the convention and its protocol in 1982) is in violation of its international duties by declaring all illegal North Korean nationals to be economic migrants without providing any form of due process to ascertain possible qualification of refugee status.

In 2005, Vitit Muntarbhorn, the UN special rapporteur on the situation of human rights in North Korea to the Commission on Human Rights, raised the possibility that displaced North Koreans—though not necessarily refugees based on the criteria in the convention and the protocol—may qualify as refugees “sur place.” A person outside his home country can become a refugee even if his initial motivation for leaving would not qualify him as such; if a foreign national has a reasonable fear of unjust persecution should he return to his home country, he has a claim to the “sur place” designation. In his 2007 follow-up report to the UN, Muntarbhorn went so far as to say that “many” displaced North Koreans qualify as “sur place.” But regardless of the developing legal arguments, until China (and in fact, all transit nations for displaced North Koreans) allows regular, internationally recognized and sanctioned access to North Koreans on its soil so that determinations of legal status can be made on a case-by-case basis, these debates will remain theoretical.

III. STATISTICS

Almost all North Koreans leaving the DPRK do so without legal permits or visas, and they live in hiding. This prevents an exact count of the number of displaced North Koreans in other countries, particularly in China, where the

majority of the displaced are believed to be located. Throughout 2007, the PRC maintained a high level of border security and a policy of monetary rewards for those who turn in illegal immigrants and incarceration for those caught helping North Koreans. China's tighter internal monitoring has also discouraged and limited the activities of NGOs as well as Chinese citizens, often of Korean descent, who are sympathetic to North Koreans. Under these conditions, estimates of the displaced North Korean population are extremely difficult to formulate.

The estimated number of North Koreans illegally residing in China is now generally believed to be in the range of 10,000 to 100,000. The estimates of governments and the UN tend to be on the lower end, while advocacy groups and NGOs tend to estimate higher. The official Chinese estimate of North Koreans inside its borders is the lowest, at 10,000, and the official U.S. State Department and UN estimates are the same: 30,000–50,000. The International Crisis Group's latest reported figure is 100,000, and Good Friends, a prominent and highly respected South Korean NGO working on the issue, also estimates the number to be 100,000.

IV. THE NORTH KOREAN PERSPECTIVE

In 2004, the DPRK began to harden its position on those who leave the country without permission, and this trend continues. Coinciding with the repatriation of 468 North Koreans from Vietnam into South Korea in July 2004 and the passage of the North Korean Human Rights Act in the U.S. later that same year, the DPRK instituted significantly heavier security measures and punishments for those leaving the country illegally, and these policies stayed in effect through 2007. The measures include increased border patrols (though the government's available resources and ability to put more bodies on the ground have been called into question); guaranteed jail time, from six months to five years, even for first-time offenders; and increased penalties for border guards who take bribes. These punishments are a considerable departure from the previous sentences, which did not often mandate jail time, particularly for first-time offenders who had had no contact with foreigners during their time abroad.

Despite the harsher punishments, there is a strong possibility of an increased outflow of North Koreans as a result of severe summer flooding in 2007. This latest round of floods followed the previous summer's, which resulted in major crop damage. According to the World Food Program, torrential rains seriously damaged a wide swath of the southern section of the country, damaging infrastructure and the nation's key farming regions. The rains were reported to be the worst the country had sustained in 40 years, and nearly one million people

have been directly affected and are in need of emergency assistance. This scenario is strongly reminiscent of the floods that ravaged the northern provinces in the mid-1990s that pushed the first large wave of border crossers out of the country in search of food and work. The DPRK government requested international assistance; in response, the World Food Program mobilized a three-month-long emergency effort in late 2007. Neither the NGOs involved nor the DPRK government has yet reported fully on the effects of the rains and the current food situation, but the outlook for the 2008 food supply is poor.

This potential spike in the number of citizens attempting to leave the country does not bode well for the North Korean government, which feels increasingly threatened by large, internationally publicized numbers of its citizens seeking refuge abroad, particularly to South Korea. The DPRK characterizes the repatriation of North Korean refugees to the South as “kidnapping” to imply that the North Koreans went there unwillingly, but it is questionable whether its own citizens believe this propaganda. However, although the continued outflow of citizens is undoubtedly embarrassing for Kim Jong Il's regime, the regime has been able to use the situation to accuse the ROK of deliberately trying to undermine the DPRK government. Because of South Korea's policy of engagement and its fervent desire to prevent a German-style reunification scenario, the ROK government has held firm on its stance of discouraging defection from the North. The primacy of the denuclearization issue in the international arena, spearheaded by the U.S. government, kept the refugee and human rights issue off the table during the Six-Party Talks in 2007. Both the U.S. and the ROK have made the clear decision, at least for now, not to push North Korea on the issue of its displaced citizens and its human rights record.

V. THE SOUTH KOREAN PERSPECTIVE

The ROK government maintained its policy of engagement with the DPRK throughout 2007. South Korea continued to try to avoid any appearance of encouraging further defections by North Korean citizens. The most significant challenge to this policy occurred in the spring, when 414 North Koreans in custody in Thailand went on a hunger strike to protest the detention center's unsanitary conditions and call for speedy resettlement in South Korea. South Korea pointedly avoided a repeat of the airlifting of 468 North Koreans out of Vietnam in July 2004 that had so angered the DPRK. Instead, the ROK government negotiated the end of the strike by promising to airlift the detainees in small groups every few weeks. The negotiation also managed to avoid receiving coverage in the major U.S. newspapers.

South Korea's engagement approach goes hand-in-hand with its "soft-landing" approach to future reunification. The South Korean Ministry of Foreign Affairs and Trade, high-level members of conservative president Lee Myung-bak's Grand National Party, and prominent South Korean intellectuals all strongly support a very gradual and steadily managed path to reunification. The hard-line position favoring North Korean regime change and immediate reunification seems to have fallen out of favor: according to a 2005 survey of the South Korean public cited by the U.S. Committee for Human Rights in North Korea, only 6 percent of those polled advocated "speedy unification." Cost estimates for the immediate integration of the North into the South generally range from \$600B to \$1,200B. As the difference between the DPRK and ROK economies is much larger than that between the East and West German economies before unification, economists predict that the impact of sudden reunification could be painfully detrimental to the South Korean economy. It is not surprising that ROK national assemblyman Jin Pak stated that the engagement policy would continue when Lee Myung-bak takes office in February 2008, though with a greater emphasis on concrete policy concessions by the DPRK.

VI. THE CHINESE PERSPECTIVE

Despite pressure from international aid organizations, China did not make any significant policy changes in 2007 that would adjust the political calculus for its position on displaced North Koreans. Much like South Korea, China has a vested interest in the stability of the DPRK regime. Both countries wish to forestall the extremely costly mass migrations of refugees over their borders that could result from the political or economic collapse of North Korea. China remains the DPRK's staunchest ally and has so far been unwilling to use its economic leverage over the DPRK regime as strongly as some in the international community would like. Policy experts also speculate that the Chinese regime wants to maintain the strategic benefit of the buffer provided by North Korea against the huge number of ROK and U.S. forces on the southern half of the Korean peninsula. China has no desire to have U.S. army bases close to its borders. Given the current U.S. strategy of taking human rights-related issues off the table during the Six-Party Talks, there is no international actor capable of compelling China to change course.

VII. OTHER THIRD-PARTY NATIONS

In addition to the hunger strike of North Koreans detained in Thailand, one of the most publicized refugee situations of 2007 was the arrest and detainment of three young North Koreans in Laos, which itself has a very repressive and corrupt government. Several aspects of this case are emblematic of the shifting dynamics of the displaced North Korean situation. First, it reflects the steady

push of North Koreans out of China because of increased pressure from the PRC government. Second, it highlights the role NGOs and publicity continue to play. Displaced North Koreans have often sought shelter in foreign consulates and international schools, particularly in China, in the hope that employees will deliver them safely to the South Korean Embassy for repatriation. Various human rights groups often assist the displaced in planning these attempts, which often involve evading security guards. The success of many of these attempts, a number of which garnered widespread news coverage, has led many such facilities to increase security measures around their property. Thus, these types of organized, internationally publicized events are much more difficult to execute successfully, especially in China. But after several advocates for displaced North Koreans—including Helping Hands Korea, Life Funds and Sang-Hun Kim—intervened to publicize the three children's situation to international media organizations, the South Korean government negotiated their transfer to Thailand and finally to the ROK for resettlement. Another significant feature of this case is that, according to some reports, the children petitioned for access not to South Korea but to the U.S. Details about the screening process and the decision to send them to the ROK remain unclear. The State Department has made several public statements supporting the increased settlement of North Koreans onto U.S. soil, but the situation appears to be complicated by the requisite screening process—the U.S. does not have formal diplomatic ties with the DPRK, and so background checks are very difficult to execute.

VIII. THE U.S. PERSPECTIVE

The change from the former U.S. strategy of linking North Korean human rights abuses and the situation of the displaced to nuclear dismantlement efforts has elicited some accusations of flip-flopping. President Bush prominently advocated the linking strategy from the beginning of his administration, and it became a significant principle in the text of the North Korean Human Rights Act, signed into law in October 2004. The act was intended to facilitate the processing of North Korean refugees into the U.S. and to provide federal funding for refugee-related support activities.

The U.S. government's seemingly equivocal support for North Korean refugees is emblematic of the Americans' current state of indecision regarding two mutually exclusive strategies toward the DPRK—engagement on discrete issues or general pressure and issue linkage. This is a problem faced by all countries and advocacy groups involved in the situation of displaced North Koreans, but the influence of the U.S. in the Far East amplifies any changes in its policy. South Korea and China have clearly chosen engagement and, depending on the progress of the Six-Party Talks in 2008, the U.S. may have the opportunity to choose whether or not to make its policy change permanent.

IX. CONCLUSION

The strategic decision by the U.S. to delink the issue of displaced North Koreans and human rights in the DPRK from the nuclear issue, at least temporarily, risks the appearance that the U.S. government has sold out the displaced for broader geopolitical security concerns. As is the case for South Korea, however, there exists a basic logic to the attempt to pursue quieter diplomacy on the human rights front in order not to jeopardize the already precarious position of displaced North Koreans living outside the DPRK. This effort requires the political will to continue addressing the situation even without large media events to attract attention and a public outcry: storming embassies worked for some of the North Koreans involved, but it adversely affected the possibilities for those still at large. More countries might be willing to look the other way, if not actually condone the transit of North Korean refugees, if the issue did not cause significant political friction with the DPRK.

That said, it is difficult to argue with the humanitarian effort to call attention to the cause of North Korean human rights in general and to individual cases of the displaced in the hope of improving their condition or helping them get to their desired destination. At the end of 2007, the tension was far from resolved between short-term and long-term goals; between the will to aid the displaced immediately and the hope for the eventual transformation of North Korea into a more humane regime to the benefit of all its citizens; and between the desire to end North Korean human rights abuses as quickly as possible and the development of a carefully controlled unification process.

AFTER NORTH KOREA: REBUILDING THE HERMIT KINGDOM AND THE TRANSFORMATION OF A COMMAND ECONOMY

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I. INTRODUCTION

It comes as no surprise that the Democratic People's Republic of Korea (DPRK) has been labeled as the most autarkic industrial economy in the world. It has also earned the title of the most militarized country in the world. The policies of the DPRK have allowed this small country of approximately the same size and population of New York State to be cited as a textbook example of what can result from an isolated command economy. Compared with the performance of its southern neighbor, North Korea has served, in effect, as a self-selected control group in an economic experiment. With the DPRK's 60th anniversary drawing near, the country remains a curious oddity in the global system, and the international community nervously waits to see what will become of North Korea after Kim Jong Il.

The purpose of this paper is not to speculate on political change; rather, it is to analyze the development of the current economic conditions of the DPRK and draw conclusions about how these conditions could change. Referencing the direct correlation between infrastructure and economic development, the paper looks at the current condition of the transport and energy infrastructure, and suggests what investments would be prerequisites for growth. Finally, the paper evaluates the actors, both public and private, who could provide those investments and describes the roles they could play.