



US-KOREA 2012
YEARBOOK

JOHNS HOPKINS
UNIVERSITY

SAIS | US-KOREA 2012 YEARBOOK

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INTRODUCTION

This 2012 edition of the SAIS U.S.-Korea Yearbook is a product of extensive research and study by SAIS students in the course, “The Two Koreas: Contemporary Research and Record,” offered in the 2012 fall semester. The Two Koreas course was created with multiple objectives – to provide students with a strong theoretical and historical context of U.S.-Korea relations, an expert understanding of current events in North and South Korea, and an opportunity to construct theories and analyze a contemporary issue related to the peninsula for a student publication. After drafting reports, students traveled to Seoul in November 2012 to participate in various briefings and interviews with Korean government officials, scholars, and politicians. The authors’ insights are not only based on extensive reading, as well as interviews conducted with experts in Seoul and Washington, DC.

This yearbook is divided into five chapters. The first chapter focuses on South Korea’s trade agreements. While Abigail Trenhaile illuminates the effects of the Korea-U.S. Free Trade Agreement (KORUS FTA) on future trade integration in the Asia Pacific, Yesel Lee examines the interplay of trade and geostrategic power between China and South Korea in Southeast Asia. Economic policies and diplomacy are analyzed in the second chapter, where Trevor Clark presents an insightful discussion on the economic relationship between China and North Korea, and Alison Evans uses case studies of South Korea’s energy-related investments in Kazakhstan and Uzbekistan to highlight complementary interests between South Korea and Central Asian states. In the third chapter, Sean Nelson analyzes the construction of North Korean national identity and prospects for social and political reform, and Dianna Bai offers suggestions for the international community to help North Korean escapees who continue to face social struggles in even after leaving the DPRK. The fourth chapter hones in on regional stability as authors Kyle Johnson, Taylor Washburn, and Alexander Bellah analyze South Korea’s relations in East Asia, highlighting different points of tension such as territorial disputes, historical revisionism, and competing interests. To conclude this scholarly compilation, Mark Kulish focuses on the implementation of ROK-U.S. Status of Forces Agreement and its influence on two presidential elections in South Korea.

We hope that readers will find this 2012 Yearbook to be informative on contemporary affairs on the Korean peninsula and a useful contribution to current U.S.-Korea scholarship.

ACKNOWLEDGEMENTS

The publication of the 2012 Yearbook, a product of the “Two Koreas: Contemporary Research and Record” class taught at the Johns Hopkins School of Advanced International Studies (SAIS) would not have been possible without the help and support of many individuals. First and foremost, we would like to express sincere gratitude to the U.S.-Korea Institute Chairman Emeritus Don Oberdorfer, Deputy Chairman Yong Shik Choo, and Director Jae H. Ku for their unsparing support for the Korea Studies Program, the “Two Koreas” class, and the Yearbook. We would also like to acknowledge the many officials and scholars in Washington and Seoul who helped arrange professional meetings and took the time to meet with the Two Koreas students to discuss their research topics of interest. Thanks to the insight, knowledge, and generosity of these officials and scholars, the student authors were able to produce excellent scholarly works presented in this year’s publication.

Most of all, we would like to recognize the students of the “Two Koreas” class for their efforts throughout the fall of 2012. Special thanks are directed to Korea Studies Program Coordinator Angela Choi for managing the administrative and logistical details of the research trip, and USKI Assistant Director Jenny Town for overseeing the production of the Yearbook.

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Yesel Lee is a first-year M.A. student at SAIS, concentrating in Korea Studies. She graduated from the University of California, Berkeley with a B.S. in Business Administration and a B.A. in Political Science. While studying at Berkeley, she studied abroad in Paris, where she deepened her interest in international affairs and relations. As an undergraduate, she assisted with research on diplomatic relations in Asia and the Middle East, which cemented her interest in Asia. Previously, she worked as a consultant for an NGO in Mumbai dedicated to empowering and motivating youth to participate in societal development.

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Abigail Trenhaile is a first-year M.A. student at SAIS, concentrating in Korea Studies. She graduated from the University of Hawaii at Manoa in 2011 with a B.A. in Economics and Political Science. She has worked in various levels of government, including the legislature and prosecutor's office in Honolulu and the U.S. House of Representatives. During her undergraduate study, she worked on issues related to the Asia Pacific Economic Cooperation (APEC) and studied in Korea and Taiwan. As a 2012 U.S. State Department Rangel Fellow, she will enter the Foreign Service as an economic officer upon graduation from SAIS.

Taylor Washburn is a first-year M.A. student at SAIS, concentrating in Korea Studies. Before coming to SAIS, he was a visiting professor at the Korea Advanced Institute of Science & Technology (KAIST) in Daejeon and Seoul. After graduating from Columbia Law School, Taylor began his career as a securities and litigation associate with a Boston law firm and subsequently clerked for a federal district judge. His interests include American foreign policy in Northeast Asia and U.S.-Korea relations. He is a graduate of Bowdoin College.

YEARBOOK OVERVIEW

TRADE AGREEMENTS

The Impact of KORUS on the Future of Asia Pacific Trade Integration, by Abigail Trenhaile

Abigail Trenhaile discusses how the 2011 Korea-U.S. Free Trade Agreement represents the future of trade agreements, with its high standards to address the concerns of ever increasing global connectivity and rapidly changing economic conditions. Trenhaile then examines the provisions that make KORUS a forward-looking agreement and how these provisions tie into the negotiation of the TPP, as well as the barriers to trade integration in the Asia Pacific region and the feasibility of the passage of the TPP.

South Korea and China's Power Plays Through Free Trade Agreements with ASEAN, by Yesel Lee

Yesel Lee analyzes the free trade agreements (FTAs) proposed by South Korea and China with ASEAN countries to understand their economic growth strategies. Lee suggests that South Korea's trade policy are not necessarily created to counteract China's influence or to compete with China, but to expand its own economic cooperation in the region.

BUSINESS AND INVESTMENT

Lips and Teeth: Chinese-North Korean Trade and FDI and its Impact, by Trevor Clark

Trevor Clark explores the economic relationship between North Korea and China, focusing on how foreign direct investment and trade. Clark notes that there is a disparity between the significance of China's economic aid and the media's portrayal of China's leverage over North Korea's actions. His research concludes that China's desire to maintain the geopolitical status quo and keep a buffer between it and U.S.-ally South Korea has forced China to continue to support the Kim regime and develop the economic relationship.

South Korea's "New Silk Road" to Central Asia: Diplomacy and Business in the Context of Energy Security, by Alison Evans

Alison Evans outlines the South Korea's energy vulnerabilities, discusses Central Asian states' unique opportunities to mitigate ROK energy insecurities. Evans

explores the ROK's comparative advantages and "New Silk Road" to the region, specifically contrasting the case studies of South Korea's interactions with Kazakhstan and Uzbekistan.

IDENTITY AND SOCIETY

Negotiating away the bloodline: North Korean national identity and the implications for reunification, by Sean Nelson

Sean Nelson uses a constructivist approach towards understanding North Korean domestic and peninsular politics through the lens of national identity. Nelson examines how North Korean political actors cannot implement key political, social or economic reforms that would bring the country closer to the South Korean model without violating a key component of national identity.

Unwelcome Migrants: The Plight of North Korean Refugees in China, by Dianna Bai

Dianna Bai provides an overview of North Korean escapees' experiences in China, highlighting the vulnerabilities and challenges escapees encounter due to China's refusal to recognize North Korean migrants as legal refugees. Bai offers recommendations for actions the international community could take in order to help North Korean refugees in China, through the help of public pressure and civil society organizations.

HISTORICAL DISPUTES AND REGIONAL STABILITY

Asia's Multilateral Cooperation and Bilateral Tensions: Finding a Way Forward, by Kyle Johnson

Kyle Johnson discusses the historical and territorial disputes that have negatively impacted multilateral cooperation between China, Japan, and South Korea. Johnson then suggests a broad policy course the countries could take to disengage the thorny disputes from the positive benefits of enhanced cooperation.

Goguryeo Ghosts: China's History Dilemma and the Future of Sino-Korean Relations, by Taylor Washburn

Taylor Washburn writes on recent Chinese efforts to revise Northeast Asia's ancient past that have sparked tension with South Korea, focusing on China's claim that the Goguryeo kingdom, which once ruled parts of the Korean

Peninsula and Manchuria, falls within “local Chinese history.” Washburn analyzes the effects and significance of China’s Goguryeo revisionism in Sino-Korean relations.

Uncertainty in the Shadow of a Rising China, by Alexander Bellah

Alexander Bellah reviews contemporary Sino-Korean relations to assess how they have been affected by core concerns related to security, economy, and values. Bellah’s analysis concludes with a discussion of future events that might suggest a change in Korea’s course, such as its willingness to join security initiatives fiercely opposed by China, like ballistic missile defense, or a closer trilateral security relationship with Japan and the U.S. that is meant to deter Chinese revanchism.

LEGAL DILEMMAS AND ELECTIONS

American Legal Dilemmas and Korean Elections, by Mark Kulish

Mark Kulish examines the operation of the ROK-U.S. Status of Forces Agreement, which placed the U.S. in a position where its resolution of a legal issue likely had a substantial impact on the outcomes of two ROK presidential elections, in 2002 and 2007. Kulish describes the chains of events, focusing on the critical junctures where U.S. officials made decisions demanded by each legal process, and argues that legal decisions in such charged and volatile circumstances should hew to three criteria: decision-making based on the intrinsic merits of a case, without regard to external consequences; following settled procedures; and ensuring the maximum level of transparency permitted by those procedures.

CHAPTER I: TRADE AGREEMENTS



The Impact of KORUS on the Future of Asia Pacific Trade Integration

By Abigail Healani Trenhaile

I. INTRODUCTION

In 2011, the Korea-U.S. Free Trade Agreement (KORUS) was ratified after seven years of negotiations despite difficult domestic challenges on both sides. The passage of KORUS, the most significant U.S. trade agreement since the North American Free Trade Agreement (NAFTA), is a testament to both governments' perseverance, political will, and attention to detail. According to the 2012 World Bank *Doing Business* rankings, the U.S. and Korea already rank as the fourth and eighth best places to do business respectively. With KORUS's tariff and tariff-rate quote (TRQ) provisions alone, U.S. Gross Domestic Product (GDP) is expected to increase by \$10 billion, according to a study by the International Trade Commission (ITC). Similarly, the U.S. Trade Representative predicts Korea's GDP to rise by 0.42 percent to 0.59 percent.

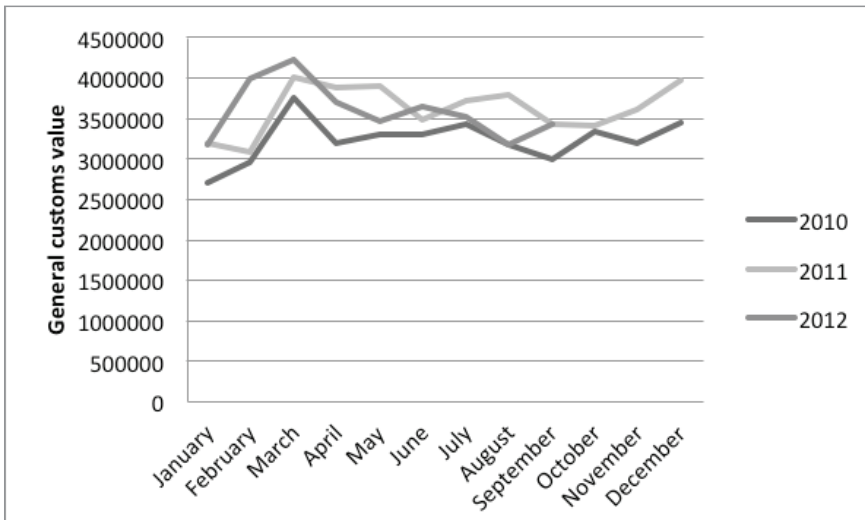
In many ways, KORUS is representative of the future of trade agreements. While the United States already possesses some of the lowest traditional trade barriers in the world, agreements must address elements beyond tariffs in the 21st century. In the context of the failure of the World Trade Organization's Doha round, bilateral and regional trade agreements will play an even more important role in free trade promotion, and KORUS was the first step in the U.S. government's strategy of pivoting toward the Asia Pacific region. At the heart of this greater strategy is the Trans-Pacific Partnership (TPP), which would create a free trade area between nine Asia Pacific economies, with more expected to join. According to the American Chamber of Commerce, sections of KORUS have already been used as U.S. proposals for the TPP. This incorporation is thanks to the comprehensive scope and detailed rights and provisions of KORUS. Thus, KORUS is a technically sophisticated agreement that changed the paradigm through which the U.S. and Korea view trade and provides a model for greater trade integration in the Asia Pacific region. This paper examines factors that make KORUS forward-looking and different from current trade agreements and regimes, and how KORUS can be an example for TPP negotiations and further Asia Pacific trade integration.

II. BACKGROUND ON KORUS

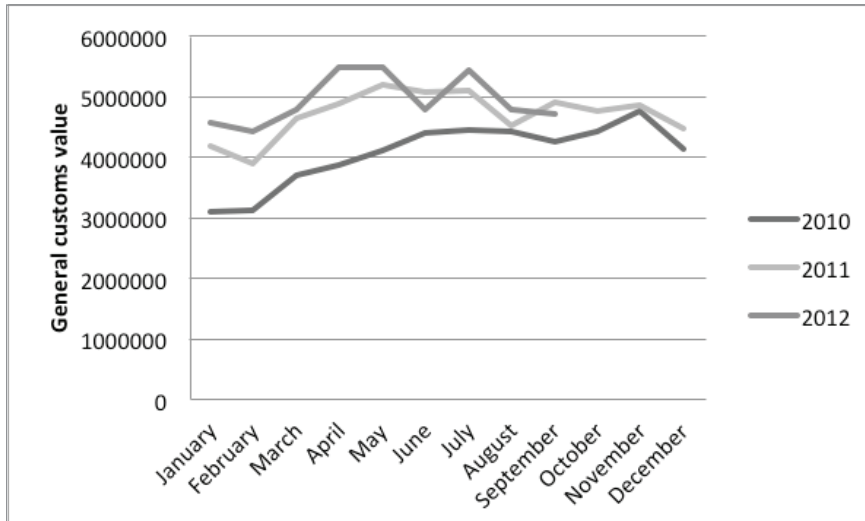
Since KORUS came into effect in March 2012, trade between the U.S. and Korea increased markedly. The FTA utilization rate, which measures the increase in

exports covered by the agreement, increased from 44 percent in April to 65 percent in September, rates much higher than those of other Korea FTAs in the first year of their enactments, according to the Korea International Trade Association (KITA). The utilization rate for the Korea-ASEAN agreement was 3.5 percent, while the Korea-India rate was 17.6 percent. For the U.S., the most dramatic benefits have been for agriculture, thanks to the lowering of Korean tariffs and TRQs, which were over 30 percent before the agreement according to ITC. U.S.-Korea Connect also reports that 56.8 percent of U.S. exports to Korea benefited from KORUS, with orange, walnut, and almond exports increasing by 32.8, 54.3, and 75.9 percent respectively. While overall Korea exports decreased due to decreased demand from China and the European Union, Korean exports to the U.S. increased. From April to September of 2012, Korean exports to the U.S. totaled \$30.6 billion, increasing 2.9 percent from 2011, according to KITA. Specifically, Korean exports to the U.S. in automobiles, machineries, and petroleum products increased by 20.1, 10.6, and 25 percent, respectively. In examining the statistics since KORUS came into effect, the overall U.S. exports to and from Korea did not change markedly as shown in Figure 1 and 2. However, the utilization rates suggest that certain goods covered under the agreement did experience increases in demand, despite an overall globally depressed economy.

Figure 1. U.S. Exports to Korea



Source: U.S. International Trade Commission, 2012

Figure 2. U.S. Imports from Korea

Source: Data courtesy of U.S. International Trade Commission, 2012

III. KEY ELEMENTS OF KORUS

However substantial these tariff benefits are, the greatest gains will come from the agreement's non-traditional elements—services liberalization, regulatory transparency, intellectual property rights, and trade facilitation. KORUS is an agreement that is forward looking in that it creates a framework to prevent non-tariff barriers and a mechanism to address future grievances.

Services

Perhaps the area of most promise for the U.S. is the liberalization of Korea's \$580 billion services market. While the U.S. services market is already open, the Korea market will gradually liberalize, creating opportunities in exports, such as legal and financial services, where the U.S. holds a comparative advantage. In 2008, U.S. exports of services to Korea totaled \$15.4 billion, making Korea the seventh largest U.S. market for cross-border trade in services. U.S. imports of \$9.6 billion in services are considerably less allowing for services to be one of the few areas where the U.S. maintains a trade surplus, according to a 2010 congressional

report. Thus, reducing barriers to U.S. exports in services—particularly in the professional, financial, and telecommunications sectors—is a key advantage of KORUS that moves the agreement beyond simplistic tariff reductions.

Under KORUS, commitments between the U.S. and Korea increase beyond the World Trade Organization (WTO)'s General Agreement on Trade in Services (GATS). While Korea under the GATS affords to WTO members most-favored nation treatment (MFN), national treatment, and market access commitments, these commitments are still relatively limited with many sectors still restricted, such as insurance, telecommunication, financial and business services, and tourism. Other sectors are completely excluded from the GATS schedule, such as legal services, education, and health care.

However, KORUS makes unprecedented steps toward services liberalization, granting MFN and national treatment to all services sectors and providing for market access without local presence requirements, according to a 2012 working paper by the Peterson Institute for International Economics. An innovative aspect of KORUS is its “negative list” approach to services, in which the agreement automatically includes all services unless specifically exempted. Under GATS, Korea has a schedule of specific commitments, in which Korea “identifies the services sectors to which it will apply the market access and national treatment obligations of the GATS and any exceptions from those obligations it wishes to maintain,” according to the WTO. Thus, the negative list approach covers considerably more ground. Another innovative element to KORUS is its ratcheted approach, in which new services that emerge are automatically covered by the agreement. Also, automatic preference is given to service providers if either the U.S. or Korea provides preferential treatment to service providers from a third country under another FTA. Before KORUS, new services that wanted to enter the market may have faced barriers, such as excessive regulations or requirements for service. These barriers would not be lifted unless industry lobbied for change and raised it as an issue between both governments. Now, new service providers are considered covered by the FTA from fruition and can expect to receive non-discriminatory treatment. As for preferential treatment, for example, if Korea lowered barriers for EU service providers, they would be required to lower barriers for U.S. providers as well.

KORUS responds to concerns in the services market in several areas. In general, besides the GATS commitments, Korea and the U.S. commit “to prohibit limits on market access, such as caps on the number of service providers, on the total value of services provided, on the total quantity of services provided, and on the total number of persons that can be employed; (and to) prohibit foreign direct

investment requirements, such as export and local content requirements and employment mandates,” according to the Congressional Research Service (CRS). These commitments can also be analyzed at a sectoral level.

First, cross-border services offer the broadest definition of services, and therefore liberalization, in the agreement. Although these exclude financial services, which will be discussed later in this paper, the FTA commits the U.S. and Korea to prevent unnecessary barriers to trade in services. Because defining barriers in services is complex and sometimes indiscernible, KORUS is groundbreaking in that it creates a framework for addressing possible barriers. Regulations will be transparent and based on objective criteria, and mechanisms will be established to respond to inquiries relating to regulations.

Within cross-border services are professional services, an area severely ignored under former trade regimes. While KORUS does not immediately liberalize professional services, it takes important steps toward greater mutual recognition of professional service credentials (e.g. licensing, education, or certification). First, the FTA creates a Professional Services Working Group to recommend procedures for temporary licensing arrangements, which are then sent to a joint committee for approval. Each party would commit to keeping their recognition procedures transparent and to allow for further negotiation. Although difficult to quantify, greater exchange in professional services should increase competition in the domestic market, allowing for the development of diversified and innovative services and increased efficiency, according to the Peterson Institute. A professional service that would almost immediately make inroads in the Korean domestic market is legal services, which were formerly excluded from the GATS. Korea will now allow U.S. law firms to establish offices and joint ventures with Korean firms. The opening of legal services is expected to help revive the U.S. legal market, and also open the door for increased U.S. legal expertise in Asia.

Second, the U.S. is expected to increase its cross-border exports in financial services, according to the International Trade Commission. Under the GATS, Korea kept all of its financial services “unbound,” meaning Korea maintained measures inconsistent with market access and national treatment under the WTO. For financial institutions, Korea restricted the management and operation of assets, requiring that they be kept within the country. Similarly, trust services and loan and related services were unbound across all supply modes. Financial leasing businesses, securities services, and actuarial businesses were also unbound, but with additional restrictions, including provisions requiring top executives to reside in Korea. Under the GATS agreement in securities specifically, Korea implemented ceilings and required certain operating conditions

KORUS on the other hand, offers almost a complete reversal of the GATS conditions. According to the Peterson Institute, Korea, under KORUS, allows “U.S. financial services companies 100 percent ownership of Korean financial institutions, including the establishment of bank branches and insurance companies.” Under the GATS, only minority stake joint ventures are allowed in select sectors, the establishment of branches is restricted, and foreign investment is restricted to 49 percent of total voting shares.

A provision that will be implemented in 2014 is the ability to transfer information electronically by U.S. financial service providers located in Korea. Firms will be able to transfer information, like accounting and human resources data, that is currently restricted because of the host government’s concerns over violations of domestic privacy laws. This new provision allows companies to improve efficiency in information sharing through electronic transfer, rather than having to process and keep information at separate locations, according to a 2012 CRS report.

While KORUS reduces barriers in the financial and cross-border service sectors, it also recognizes the need for regulation in order to prevent another financial crisis. Neither the U.S. nor Korea would give up its sovereignty to monitor transactions that may be harmful. While transfers and payments under cross-border services are to be made freely and without delay, each party may still prevent or delay payments if such payments could be harmful to financial markets—such as dealings in securities, futures, or derivatives, or to investigate criminal or penal offences. Likewise, the agreement states that under financial services, each party is allowed to intervene to protect investors and depositors, and “to ensure the integrity and stability of the financial system.”

In addition to financial services, the FTA addresses investment-related concerns. In the World Bank’s *Doing Business* Rankings, Korea ranks forty-ninth for protecting investors, as opposed to the U.S. which stands at sixth. This is largely because Korea ranks below average on the director liability index; that is, it is harder to hold directors accountable for violating plaintiffs’ rights in Korea. KORUS, therefore, outlines investors’ rights for companies and provides a way for them to enforce their rights. Such rights are expanded through “minimum standard treatment,” meaning Korea and the U.S. cannot deny plaintiffs due process and must provide protections to investors. Possible protections include restitutions or compensations for investments that are destroyed or requisitioned. Investors’ rights are strengthened also through the institutionalization of an investment dispute procedure. If an investor charges the other country’s government with violating its investor rights under the FTA, KORUS delineates arbitration procedures and provides for the establishment of a tribunal. By creating a process for the resolution of disputes, KORUS lowers technical barriers

to trade, which could be a significant deterrent for businesses in deciding whether or not to expand operations. Besides the increased protection and enforcement of investor rights, the FTA prohibits performance requirements, disallowing barriers like export ratios, import limits, and domestic content requirements.

Intellectual Property

Intellectual Property (IP) is of particular importance to the U.S., where IP accounts for more than half of U.S. exports, according to the ROK Embassy in the United States. Like the GATS, KORUS builds on the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS). According to a 2010 CRS Report, additional commitments include provisions that extend national treatment to IPR holders; facilitate the registration and protection of trademarks; protect the right of authors, performers, and producers to determine use of copyrighted products; increase copyright protections to U.S. standards for a minimum of 70 years; combat piracy through penalties; and protect copyrighted performances on the internet. Furthermore, the agreements address patents, requiring each party to make patents available for any invention, standardizing procedures for patent applications, and aspiring toward increased cooperation between each party's patent office. For the U.S., where \$200 billion per year is lost in sales due to IP theft, enforcement of IPR is of particular interest. In the FTA, both countries pledge to aid IPR holders by increasing transparency for civil and administrative procedures related to IPR and outlining remedies for those whose rights have been infringed upon. Criminal procedures and penalties would be mutually applied for cases of willful IP infringement on a commercial scale, meaning each country would treat trade in counterfeit or pirated goods as illegal and subject to criminal penalties, such as imprisonment and monetary fines, or both.

Transparency

According to the World Bank, transparency is perhaps one of the greatest complaints among U.S. exporters to Korea, as its legal system can be difficult to navigate, especially in trade and regulatory systems. Hence, lack of transparency acts as a barrier to trade by increasing the transaction costs of doing business and discouraging exporters. Responding to these criticisms, KORUS negotiators made increasing transparency a priority. In almost every chapter of the agreement, there is a section on transparency, most notably in key sectors such as intellectual property, financial services, and investment. The transparency sections commit each party to ensuring that laws and regulations, as well as administrative decisions, are easily accessible and clearly written. As part of this endeavor, the U.S. and Korea also committed to make trade administration

documents electronically available. Moreover, other parties are allowed to comment on administrative proceedings and request to review and to appeal administrative decisions.

E-Commerce

Korea possesses some of the most advanced IT infrastructure in the world and therefore provides a framework for policies in e-commerce, an area with great potential for economic growth. Outlining rights in the new frontier of e-commerce facilitates trade by lowering barriers to entry. While other sections in the services emphasize the importance of unrestricted cross-border information, the agreement in the section on e-commerce particularly provides for duty free treatment and non-discriminatory treatment for digital products sent electronically or on a carrier medium. These include computer programs, text, video, images, and sound recordings. The agreement also includes a section for enhancing online consumer protection through increased cooperation between U.S. and Korean consumer protection enforcement agencies.

IV. BACKGROUND ON THE TRANS-PACIFIC PARTNERSHIP

In the era of a failed Doha round, regional and bilateral trade agreements are the mechanism of choice for trade liberalization. Especially when traditional barriers are already low in Organization of Economic Cooperation and Development (OECD) countries, the more complex issues, such as services and logistics, are easier to negotiate and pass politically if liberalization occurs at an incremental level, according to a 2011 study by the East West Center. The TPP is perhaps the main instrument of the Asia Pacific Economic Cooperation (APEC)'s goal of a free trade area for the Asia Pacific region. While TPP negotiations currently include only nine economies—Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and the U.S.—the agreement, with the U.S. at the helm, encompasses countries with a combined GDP of \$21 trillion and provides the most realistic pathway for greater Asia Pacific trade integration, according to a 2012 article by the Center for Strategic and International Studies (CSIS). The TPP offers significant economic and strategic potential. According to a 2011 working paper at the East West Center, if the projected thirteen members (with Canada, Japan, Korea, and Mexico as additions) were to enter the agreement, the countries involved would account for 50 percent of U.S. trade. Also, the TPP would give the U.S. an important voice in Asia, where regional free trade agreements, especially among ASEAN countries, have proliferated within the past decade. Thus, the agreement would allow the U.S. to retain its competitiveness in Asia while also helping to consolidate what a trade economist Jagdish Bhagwati called the “noodle bowl” of agreements, which describes the hundreds of FTAs that often overlap and create inconsistent rules of origin.

V. KORUS AS AN EXAMPLE FOR THE TRANS-PACIFIC PARTNERSHIP

The TPP is the most comprehensive FTA currently under negotiation, and, like KORUS, targets new areas for negotiation: services, investment, competition rules, and regulatory coherence. This comprehensiveness can be attributed partly to KORUS. Among Asian FTAs, KORUS is the most wide-ranging agreement for services. Services are the most difficult aspect of negotiating a free trade agreement, as their intangibility makes them difficult to quantify, complicating what counts as discriminatory or as having protectionist intent.

KORUS, however, made great strides in defining and addressing protectionist measures in services, as well as in creating a framework to address future barriers. KORUS is comprehensive in both its breadth and depth in that it covers unprecedented services through its negative list and offers unconditional MFN and national treatment, the features which will be included in the TPP. KORUS, above all, is a high standard agreement, especially in financial services, insurance, and express delivery services. As the TPP strives also to be a high standard agreement, *The Hankyoreh* reported in 2012 that, according to scholars and private interests involved in negotiations, provisions from KORUS will be a template for TPP negotiators.

For instance, following KORUS's example in financial services, the TPP will likely distinguish between financial services traded across borders and those sold by a provider with a commercial presence in the host country, according to 2013 congressional briefings. In the latter case, as summarized above, a negative approach was used; in the former, coverage was limited to specific banking and insurance services. As KORUS allowed for the free transfer of customer data in and out of Korea for service providers, this provision should be followed in the TPP as well. Financial services would also benefit from loosening of restrictions surrounding Foreign Direct Investment (FDI), which relates to services since they increase when providers are directly invested in a commercial presence in the host country, according to the East West Center. As investment and services are examples of "cross-cutting issues," strides that KORUS made in investment provide an example for the TPP. Finally, like KORUS, the TPP should allow for regulation to a certain extent in financial services. What the TPP should imitate is the way KORUS balanced provisions in both regulation and deregulation. KORUS did not simply deregulate trade but deliberately deregulated overprotected areas and increased regulation in under-protected ones—such as IPR—or those with increased risk—such as financial services.

The TPP will also closely follow KORUS's handling of state-owned enterprises, an issue that is common among TPP members. During KORUS negotiations, the postal system, which is state owned and operated in Korea, was considered to have an unfair advantage over private companies in express delivery services. To increase market access, KORUS required that a "postal system cannot use its monopoly power in providing postal services to give an express delivery subsidiary an unfair advantage," according to CRS. Each party's postal system is also not allowed to subsidize express delivery services. In addition, Korea Post's insurance sales were subject to less stringent regulation than private insurance companies'. Because of American concerns over Korea Post having an unfair competitive advantage, KORUS subjected Korea Post to the same regulations as other insurance companies. As the TPP includes countries with state owned enterprises, such as Vietnam, KORUS could be used as a model for increasing market access.

Other KORUS elements that are useful for the TPP relate to technical barriers to trade (TBT), which are standards and regulations to protect consumers' health and safety that can sometimes act as trade barriers. KORUS increases transparency related to TBT provisions by allowing partners "to comment on proposed standards and regulations and the implementation of regulations," according to CRS. This ensures that regulations and standards are not more restrictive than necessary and are applied indiscriminately.

Most importantly, though, KORUS changed the precedent and paradigm through which trade agreements were negotiated, a legacy from which the TPP will benefit. Previous efforts to liberalize services trade, especially among Asian countries, were token obligations, merely symbolic with dull teeth. "These commitments have codified current practice and have not helped propel domestic economic reform," writes Jeffrey Schott in a 2012 Peterson Institute article, "Prospects for Services Trade Negotiations." By using elements of KORUS in negotiating, the TPP will be a high standard agreement, as it aims to improve transparency across sectors and streamline regulations. On a political level, KORUS provides another benefit to TPP negotiators: by increasing the fear of being left behind in the face of increasing U.S.-Korea economic cooperation, KORUS compels other countries, particularly Japan, to join in on TPP negotiations, according to a 2011 *Asahi Shimbun* article, "Japanese Businesses Fear Impact of U.S-South Korea FTA." Thus, KORUS is not only a textual, legal template, but also a powerful catalyst for greater economic integration in the Asia Pacific region.

VI. BARRIERS TO ASIA PACIFIC TRADE INTEGRATION

While KORUS can be a template for the TPP, the same obstacles faced in negotiating and passing KORUS will remain for the TPP and greater Asia Pacific economic integration. Regional integration is complicated due to special characteristics in East Asia, such as large income disparities that makes domestic support for free trade difficult to muster. The diversity of the region, which is made up of both developing and developed states, also complicates integration. As the TPP will be made up of many countries, the main tension will exist between the competing desires to create an inclusive agreement, cognizant of differing levels of development and concerns over jobs and wealth distribution, and to maintain the U.S. goal of a high-quality, comprehensive agreement, according to a 2012 article by Yul Sohn at Yonsei University titled “The U.S. and China’s FTA Networks in Northeast Asia: How Should South Korea Respond?” This section discusses how Korea and the U.S. were able to cooperatively pass KORUS despite obstacles, as well as broader, strategic issues in the region.

During KORUS negotiations, automobiles were a controversial issue, and American automakers blocked the passage of the agreement for three years until the agreement was revised in 2010. The revisions made in 2010 can serve as lessons for drafting the TPP. By making concessions related to regulatory standards in Korea and slowing down tariff liberalization on both sides, U.S. automakers changed their stance toward the agreement. Of these regulatory reforms, which basically gave U.S. carmakers more leniency in conforming to higher Korean emission and fuel economy standards, two significant changes would likely be useful in future TPP negotiations: (1) an auto safeguard procedure and (2) commitments to greater regulatory transparency. For the first, each party would be allowed to use protective measures to counter import surges. This provision ultimately gave U.S. automakers insurance for market disruptions. Korea agreed also since Korean automakers already source a greater share of U.S. sales from U.S. manufacturing plants, making the likelihood of the measure going into effect low, according to a 2010 *Reuters* article. The second provision made the regulatory process more transparent and gave U.S. firms 12 months to comply with newer, substantially tougher Korean standards. These reforms were useful both economically and politically, creating the eventual pathway for full liberalization while providing leeway in implementation, and thus making KORUS more politically feasible. Likewise, the TPP should emphasize transparency and provide for similar mechanisms for safeguards, at least in instances where such a mechanism would not invalidate the agreement.

On the Korean side, the most contentious issue concerned U.S. beef and agricultural imports. Tens of thousands of Koreans protested against the pact,

claiming concerns over mad cow disease and that domestic farmers would suffer as a result of cheaper agricultural imports. To assuage these concerns, the U.S. agreed to exempt rice from the agreement and the Korean government promised to provide monetary support for farmers affected by increased U.S. competition, according to a 2008 article, "Implementing the KORUS FTA: Key Challenges and Policy Proposals," by Jeffrey Schott. For beef, a voluntary industry-to-industry agreement was struck, which would allow the U.S. only to import beef from cattle younger than 30 months, which is considered the safest from mad cow disease. In addition, in exchange for the 2010 automobile concessions, the U.S. also agreed to delay the lowering of Korean tariffs on U.S. pork. However, concerns over U.S. beef and agriculture were never fully resolved in Korea, and the Democratic opposition still opposes the agreement regarding these two products. Similarly, TPP members could have similar bents toward agricultural protection. While KORUS was passed by a standing majority of Korea's Grand National Party, a similar political situation may not always present itself during TPP negotiations.

Perhaps the greatest struggle for the TPP, and Asia Pacific integration in general, is fundamental disagreements over trade between developing and developed economies. A 2011 study by the East-West Center, "The Trans-Pacific Partnership and Asia-Pacific Integration," outlines areas that could pose obstacles to negotiations: (1) IPR standards that are too high; (2) tension over state-owned enterprises; and (3) provisions over labor standards. If standards are made too stringent in any of these areas, it could prevent other members from joining the TPP in the future, especially China, the country with which most countries want to expand trade. In terms of intellectual property, the TPP would do well to follow the example of KORUS in terms of making commitments beyond TRIPS, an approach that is favored by U.S. companies. KORUS elevates Korean IP standards to U.S. standards; however, many TPP members may be unfriendly to this idea. New Zealand has publically announced its support of TRIPS standards but nothing beyond the status quo. As for state-owned enterprises, the conflict is similar to the U.S. disapproval of the Korea Postal System, and many TPP members, like Vietnam, have similar state-owned enterprises that could create discord among negotiators.

Related to this idea of a divide between the developing and developed countries are several other issues that decrease the incentive of cooperating with the U.S. in a trade regime. First, the U.S. market is already open, so nations see little reason to cooperate with the higher, stringent standards that a high quality trade agreement would require. Moreover, areas in which KORUS excels, and to which the TPP aspires, are behind the border issues, or matters that are traditionally dealt with domestically, like regulation over health, competition, investment, and IPR. While these non-traditional areas are essential for deeper economic

integration, countries fear losing their sovereignty, warns the same 2011 study by the East West Center. Second, slower U.S. growth has decreased U.S. domestic demand for exports from other countries, and TPP countries' exporters have shifted their attention toward the more rapidly growing economies.

Finally, an obstacle that may be common to all partners is the political will for passing the TPP. While the U.S. has made the TPP a priority through the Obama administration's "pivot toward Asia," other countries may possess less ambition, especially if smaller, private interests block national aggregate interests for trade liberalization. Thus, a great challenge for TPP members will be marketing the agreement to the public to raise political support for passage.

VII. SOUTH KOREA'S FUTURE IN THE TPP

China, Japan, and South Korea's economies are required for any meaningful integration in the Asia Pacific. China and Korea are notably absent from TPP negotiations, and Japan declared its intentions to join negotiations in April 2013. Japan's entry will likely cause Korea to strongly reconsider its position on the TPP. According to a 2012 article "South Korea Prioritizes Asia Trade Pacts over Pacific Partnership" by the *Asahi Shimbun*, Korea's Ministry of Foreign Affairs and Trade (MOFAT) has made it clear that Korea is monitoring TPP negotiations and weighing the benefits of joining. However, since Korea already has a number of agreements in place with current TPP members, it has little incentive to join the negotiations. For Korea, the most economically impactful agreements would be with the U.S., China, and, albeit to a lesser extent, Japan.

As KORUS already secures Korea's free trade with the U.S., the Korean government is pushing for a separate trilateral agreement with China and Japan. Although Korean officials have noted their desire to merge the TPP with a trilateral agreement, their priority remains China. China is perhaps the greatest variable in the success of the TPP, since scholars see the trilateral agreement as a Chinese move to counteract the TPP and, by extension, U.S. regional influence. As Korea is also negotiating an FTA with China, Korea's decision ultimately comes down to pursuing an FTA network led by the U.S. or China.

On the other hand, the TPP offers non-quantifiable benefits to Korea. While Korea has aggressively pursued and completed 46 trade agreements, most of these agreements, with the exception of those with the U.S. and the European Union, could be considered low quality. That is, what matters in trade liberalization is not the number of markets but how each is opened. Deeper integration is key to tapping into trade benefits, a strategy Korean presidents have pursued to address distressing demographic changes and increasing energy dependence. However, unlike the high standard TPP, where the U.S. pushes for

liberalization in non-traditional areas, a trilateral China-Japan-Korea agreement is unlikely to be high quality, as investment and agriculture would likely remain protected, according to CSIS.

Joining the TPP, therefore, would allow Korea to update its current, low-quality agreements with TPP members Chile, Malaysia, and Vietnam and to avoid problems associated with the noodle bowl of FTAs. The TPP encompasses countries Korea is currently negotiating with as well, so Korea would achieve a single agreement instead of three separate agreements with Canada, Australia, and Mexico. Moreover, the opportunity cost of not joining the TPP would be much greater than joining, especially if Japan comes into play. As Japan and Korea are export competitors, particularly in electronics and automobiles, Japan clinching a high quality agreement with the U.S., along with the other TPP members, could impact Korean exports dramatically.

However, much of Korea's future in the TPP depends on its executive branch, which determines the direction of trade policy through the president and MOFAT, according to a 2010 study by Lee Hyun-chool in the *Journal of Contemporary Asia*. The new president, Park Geun-hye of the Saenuri Party, supported KORUS throughout its negotiation and ratification. However, Park may still face opposition from the Democratic United Party, which includes members who vowed to renegotiate KORUS over beef and agriculture concerns, according to a 2012 article by *Diodeo News*. Moreover, deteriorating relations with Japan over Dokdo and past Japanese imperialism make cooperation with Japan less likely, especially in the context of the TPP, according to the 2012 article "Where the Center Holds: The 2012 Election in Korea and U.S.-ROK Relations" by the Council on Foreign Relations. Japan also recently underwent a leadership transition, with Prime Minister Shinzo Abe and the Liberal Democratic Party coming to power again. Given the hawkish stand of the LDP and Abe, Japan's political situation could further exacerbate regional conflicts—which are further complicated by China's new leadership—and prevent economic cooperation. Moreover, with the Bank of Japan weakening the yen, thereby strengthening Japanese exports and hurting Korean exports, the Park administration has vowed to use domestic policy to soften the blow to Korean companies, according to 2013 Yonhap News article, "Korean gov't, exporters on alert against yen's slump." Thus, future Asia Pacific trade integration will hinge on domestic sentiments within Korea and other TPP-related countries.

VIII. CONCLUSION

KORUS was an important step in greater economic integration in the Asia Pacific region and in the Obama Administration's "pivot toward Asia." Given the rapid growth of developing countries and the region's dynamism, the U.S.

must work hard to remain competitive and not become excluded. The TPP is a key part of the U.S.'s economic rebalancing strategy, but the U.S. must also consider KORUS, which set a high standard for trade agreements, particularly in services, transparency, and other 21st century issues. Although KORUS' impact, particularly in trade facilitation and services liberalization, is long run and difficult to measure, KORUS confers other immediate impacts. It is a model for the TPP and an impetus for greater Asia Pacific free trade, and therefore holds great economic and geostrategic benefits for the U.S. KORUS sets the standard for trade in the Asia Pacific region, pushes for meaningful reform, and symbolizes America's continuing, strengthening presence in the region.

South Korea and China's Power Plays Through Free Trade Agreements with ASEAN

by Yesel Lee

I. INTRODUCTION

Historically, Korea has fought to maintain its identity and international position while sandwiched between two countries, China and Japan, each with their own agendas. With the division of the peninsula, a war-devastated Republic of Korea (hereafter, South Korea) has transformed through export-oriented growth from a developing country to an OECD member, a title it gained in 1996. As South Korea continuously seeks to expand its regional economic influence, China is rapidly increasing its global economic weight, threatening to relegate South Korea's influence. During the Roh Moo-hyun administration, South Korea first combated this under its Northeast Asia Economic Hub (NAEH) policy framework, which confirmed Korea's intentions not to let a powerful China sideline it again. Under the Lee Myung-bak administration, the NAEH strategy shifted to highlighting the importance of trilateral cooperation with China and Japan and used free trade agreements (FTAs) as one of the primary tools in cementing these ties.

This paper examines how South Korea seeks to prevent being a secondary player in the greater Asian region. Specifically, it considers how Korea expands its influence on individual members of the Association of Southeast Asian Nations (ASEAN) and within the association as a whole. How China responded to Korean actions with ASEAN since the Asian Financial Crisis, and vice versa, helps determine how China and Korea seek to establish influence among ASEAN members. More specifically, this paper analyzes the trade agreements that Korea and China seek to establish with ASEAN, the agreements' scope, and the players involved in the proposal of the agreements. Although there are some objections about how vulnerable an FTA can make a nation, this paper does not assess these agreements' merits; instead, this paper uses the context and content of FTAs to analyze how China and Korea attempt to gain influence with ASEAN.

First, this paper assesses the impact of the Asian Financial Crisis. Then, China, Korea, and ASEAN's comparative advantages will be analyzed to determine how each would benefit from an FTA. Next, the sequencing and scope of South Korea and China's agreements are examined to determine their motives for Asian economic cooperation. After evaluating how domestic politics and public opinion can influence these trade negotiations, the paper concludes with policy recommendations for Korea, China, and ASEAN.

II. IMPACT OF THE 1997-1998 ASIAN FINANCIAL CRISIS

The Asian Financial Crisis of 1997-1998 had a significant impact on South Korea, China, and ASEAN countries. The crisis halted growth and integration trends, and its aftermath resulted in large policy shifts to temper long-term effects and prevent potential future crises. These post-crisis changes warrant a brief overview of trade patterns and agreements prior to the crisis in order to better assess the differences in South Korea and China's approach to trade agreements over the past decade. Note that, in ASEAN's case, analyzing trade composition and policy reforms of the individual countries goes beyond the scope of this paper; thus, this analysis will be applied to ASEAN as a whole.

South Korea

According to the IMF, from 1990, Korea's exports to ASEAN increased until a dramatic drop in 1997 when total trade growth to the region fell to 1.47 percent and became negative in 1998 at -25.43 percent. Most South Korean exports to ASEAN consisted of manufactured goods, including both light industry, such as textiles, and heavy industry, such as chemicals and electronics. Raw materials and agriculture were less than 10 percent of all exports to ASEAN, perhaps expected given ASEAN's abundant natural resources.

During this period, South Korea's economy experienced significant upheaval. In the 1990s, Gross Domestic Product (GDP) growth for South Korea was between 5 and 10 percent, dropping to a recession of -5.71 percent in 1998. Due to this recession, South Korea implemented significant economic reforms to prevent a future crisis, mainly by strengthening its economy's legal and regulatory framework and by resuscitating the financial industry, as outlined in a paper by the International Monetary Fund and the Singapore government.

Since the Asian Financial Crisis, Korea's economy rebounded, its GDP and trade grew again, the only exception being -16.82 percent negative trade growth in 2009 owing to large recessions in the United States and the European Union. Having demonstrated tremendous growth pre-crisis and stability since, South Korea has embarked on an economic growth strategy of ensuring future markets and resource access. Furthermore, it went against its tradition of regional economic indifference and embarked on a series of multilateral and bilateral trading agreements. In a 2003 *East Asia* journal article, Hyun Seog Yu argues this was not only to combat the worst of the crisis, but also to come to terms with an economic reality that is no longer as U.S.-centered.

This interest in establishing regional economic ties culminated in the NEAH strategy. On February 25, 2003, President Roh Moo-hyun announced in his

inaugural address that he wanted to develop South Korea as “an economic hub of Northeast Asia.” This strategy has three main goals: (1) establishing inter-Korean economic ties; (2) instituting an integrated Northeast Asian economic system; and (3) developing infrastructure for Korea to be a business hub. However, the NAEH strategy under the Roh administration raised eyebrows in China, whose cooperation is vital to the strategy’s success. Since South Korea has made it clear it is positioning itself to be an economic hub for Asian economic cooperation, China’s reaction will influence the nature of this cooperation and the roles each country will play. Analyzing how South Korea makes its presence felt in Asian regional cooperation should help determine if it seeks new markets for trade or strategic considerations, such as countering China’s growing influence.

China

Like South Korea, China’s trade with ASEAN grew steadily until the Asian Financial Crisis. However, China was slightly more insulated than Korea during the crisis and according to IMF statistics, China experienced trade growth of 18.27 percent in 1997 and -5.55 percent in 1998. As indicative of China’s rapid growth during this period, China’s composition of exports to ASEAN transitioned from traditionally labor-intensive sectors to more advanced sectors, such as electronics and heavy machinery.

Unlike South Korea, China never entered a recession as a result of the Asian Financial Crisis and has grown at least 7 percent since 1991. This was in large part due to China’s proactive policy and reform implementation to counteract and insulate the Chinese economy. Since China’s large population and nominal GDP give it considerable economic influence, it is considered a natural potential leader in the Asian, if not global, economy. China’s economic growth should continue, albeit at a slower pace than in recent years, and its large market make it an attractive trade partner to neighboring countries.

ASEAN

The Asian Financial Crisis started in Thailand, an ASEAN member country, and impacted trade within the association more than trade between the association and China. Like South Korea and China, trade within ASEAN increased in the early 1990s. However, according to the IMF, the trade growth rate fell from 24.46 percent in 1995 to 5.62 percent in 1996, reaching a low of -18.06 in 1998. This pattern indicates the Asian Financial Crisis hit these countries first, with the effects spreading to other countries like South Korea through 1998.

As Nongnuch Tantisantiwong writes in a 2010 *ASEAN Economic Bulletin* article, it is important to note that the countries that were most open to trade

experienced the sharpest economic downturns after the Asian Financial Crisis. These reasons will make it more difficult for the association as a whole to reach a consensus on trade liberalization as countries hit hardest by the crisis may be hesitant to enter into multilateral and bilateral trade agreements. Thus, any ASEAN member country's decision to engage in free trade ties with China or South Korea reflects the positive level of trust the member country has in the two Northeast Asian countries' economic influence. Since both South Korea and China have FTAs with ASEAN, it is clear that all ASEAN countries saw more economic benefit than harm in free trade with these countries. The creation and implementation of the FTAs with South Korea and China will be used to examine how these two Northeast Asian countries are using their strong economic positions to exercise their influence in Asia vis-à-vis ASEAN.

III. COMPARATIVE ADVANTAGE AND FACTOR ENDOWMENTS

When analyzing any FTA, it may be inferred that whichever party had greater influence in the negotiations received the most benefit. In determining China and South Korea's possible positioning efforts, the analysis should also weigh ASEAN's comparative advantages. FTAs that allow China and Korea more access to beneficial resources or markets indicate which of these two countries had more influence when negotiating these agreements. Conversely, if a party of greater influence accepts marginally beneficial trade agreements, it may imply that trade liberalization was not that party's primary goal; rather, it sought to position itself as an economic leader in Asia.

For the past decade, South Korea has shifted from export-oriented economic development to establishing itself as a potential hub for Asian economic cooperation. Until the early 1990s, as South Korea was industrializing, it had a comparative advantage in capital-intensive sectors even though there was a surplus of labor. This has translated to a comparative advantage in electronics, heavy machinery, and other technological goods vis-à-vis China. However, China's rapid growth has enabled it to surpass the comparative advantage that South Korea had in what the OECD classifies as low-technology sectors. Meanwhile, China has lost its comparative advantage in labor-intensive industries vis-à-vis ASEAN. Nevertheless, Jung Taik Hyun and Jin Young Hong have determined in their 2011 study, "Comparison of Comparative Advantage of Korea and China by Technology Level," that South Korea has maintained a comparative advantage in high- and medium-high technology products over China.

Conversely, in a 1993 *ASEAN Economic Bulletin* article, Dean DeRosa finds that ASEAN as a whole continues to have a comparative advantage in labor-intensive industries and in natural resources, stemming from its large tropical

land area. Due to this reason, it is in ASEAN's best interest to expand trade with industrialized countries that have significantly different factor endowments. Thus, South Korea's trade agreements with ASEAN would be mutually beneficial if an agreement allowed Korea freer access to labor-intensive goods and ASEAN access to manufactured or capital-intensive goods. As South Korea still maintains a comparative advantage in high-technology products over China, it would also be mutually beneficial for Korea and ASEAN to allow free trade of these products. Similarly, as China no longer has a comparative advantage in labor-intensive sectors, especially compared to ASEAN, it is mutually beneficial for China and ASEAN to allow freer trade of low- and medium-high technology products and labor-intensive products.

IV. SOUTH KOREA AND CHINA FREE TRADE AGREEMENTS

As Table 1 shows, six of South Korea's thirty-one FTAs, either proposed or implemented, involve only ASEAN countries. Although South Korea and China have additional FTAs involving ASEAN countries, these other multilateral FTAs are not exclusive to ASEAN, and for the purposes of this paper, I will analyze the interactions between South Korea and China and ASEAN, as individual members and as a whole. As shown in Table 2, of China's twenty-six FTAs either proposed or implemented, three involve only ASEAN countries.

Table 1. South Korea-ASEAN Free Trade Agreements

	Proposed by:	Date proposed:	Date signed:	Date in effect:
ASEAN-Korea Comprehensive Economic Cooperation Agreement (AKFTA)	South Korea	October 2003	August 2006	June 2007
Korea-Indonesia FTA	South Korea	May 2011	July 2012 (negotiations)	
Korea-Singapore FTA	South Korea	October 2003	August 2005	March 2006
Korea-Thailand FTA	South Korea/Thailand	October 2003		
Korea-Vietnam FTA	South Korea	June 2010	August 2012 (negotiations)	
Malaysia-Korea FTA	South Korea	May 2011		

Table 2. China-ASEAN Free Trade Agreements

	Proposed by:	Date proposed:	Date signed:	Date in effect:
ASEAN-People's Republic of China Comprehensive Economic Cooperation Agreement (ACFTA)	China	November 2001	November 2002	July 2005
People's Republic of China-Singapore FTA	Singapore	August 2006	October 2008	January 2009
People's Republic of China-Thailand FTA	Thailand		June 2003	October 2003

China has only initiated one FTA in Southeast Asia, the ASEAN-China Free Trade Agreement (ACFTA) in 2005, which Korea followed two years later with its own proposal of a free trade area with ASEAN countries. Meanwhile, South Korea initiated all six of its FTAs, highlighting the active steps it has taken in building economic interdependence with Southeast Asia. Furthermore, South Korea has pursued bilateral agreements with individual ASEAN countries, demonstrating initiative to gain early influence and possible first-mover advantage vis-à-vis China in those countries. Given the number of FTAs Korea has pursued since ratification of ASEAN-Korea Free Trade Agreement (AKFTA) in 2007, it is clear that South Korea seeks to establish itself in Asia, the region former president Lee Myung-bak characterized as Korea's "economic territory," in his 2011 speech. Combined with President Roh's NEAH strategy, it is clear South Korea intends to play a prominent role in Asia's economic development and emergence.

Since China has shown no inclination to pursue additional FTAs with ASEAN, one might infer they are not concerned with South Korea's efforts in the region. In contrast, Korea proposed all of its FTAs after China proposed the ACFTA. It is debatable how much this decision was influenced by the free trade potential of ASEAN and ASEAN member countries versus the fear of falling behind China in regional influence and advantage. With the exception of the People's Republic of China-Thailand FTA—since this is limited to reducing tariffs on agricultural goods—both China and South Korea's ratified trade agreements are with the same trading partners. Singapore's decision to pursue a trade agreement with China after it already had one through the ACFTA, and South Korea's decision to pursue an FTA with Singapore suggests potential trade partners in ASEAN consider China to have higher promise compared with South Korea.

V. SCOPE OF FREE TRADE AGREEMENTS

Analyzing the agreements already in force should demonstrate whether these FTAs are regional maneuvers for influence or motivated by genuine trade interests. For South Korea, the applicable agreements are the AKFTA and Korea-Singapore FTA. For China, these would be the ACFTA, People's Republic of China-Singapore FTA, and People's Republic of China-Thailand FTA, but as the latter only applies to agricultural goods, this agreement will not be analyzed.

South Korea

South Korea's largest ASEAN agreement, AKFTA, consists of an agreement with all ASEAN members, and the tariff reduction schedule generally mirrors the ACFTA. During negotiations, Thailand initially deferred from signing because of a disagreement over agricultural provisions, believing that these especially, but also the agreement as a whole, would not benefit its economy. However, Thailand signed on in February 2009 only after it negotiated with Korea for an extension on tariff reductions for certain products and tax reductions on goods such as cosmetics, steel, and leather.

As will become apparent in the next section, Thailand's behavior and successes during negotiations indicate the relatively lower stature vis-à-vis China that Korea had with Thailand, if not all of ASEAN. Provisions on tax and tariff reduction, which were sufficient for the other members of the ASEAN 6, were too few for Thailand, which negotiated a separate tariff reduction schedule. In light of South Korea's comparative advantage in high-technology and Thailand's advantage in agriculture, the two economies are complementary and both would benefit from freer trade. However, Thailand's late entrance and the concessions Korea gave indicate that Korea had a greater desire to enter into a comprehensive trade agreement than the ASEAN countries themselves, especially Thailand.

In terms of provisions accounting for dispute settlements and intellectual property (IP), South Korea's most comprehensive FTA is with Singapore, which places great importance on potential markets and benefits from trade integration through this agreement. Korea's FTA with Singapore is the only one out of the four analyzed here that has IP provisions. In recent years, China has aggressively sought to acquire high-technology knowledge from other countries, to the point of not enforcing piracy laws. However, Singapore and South Korea's decision to include provisions for encouraging high-technology research between the two countries demonstrates an attitude of cooperation instead of competitiveness, which embodies these FTAs' original intent. In the context of South Korea's comparative advantage over China in high-technology products, Korea and Singapore's cooperation may indicate Korea's desire to maintain a lead in these

industries. Singapore's comparative advantage in both labor-intensive industries and natural resources manifests in the tariff reduction schedule which further points to economic cooperation that maximizes benefits for each country. Singapore and Korea also demonstrated their cooperation by liberalizing standards for government procurement, the only agreement out of the four that includes any such provisions.

China

China proposed its FTA with ASEAN two years after its 2001 WTO accession and early in its economic liberalization. Like the AKFTA, the ACFTA has tariff reductions on two schedules, one for the ASEAN 6 and one for the remaining four nations. Unsurprisingly, the ACFTA focuses on the benefits ASEAN gains in accessing China's vast markets. Accordingly, other provisions in the ACFTA are not elucidated, left to be negotiated at later dates. For example, the Trade in Services Agreement of the ACFTA says that all countries will enter into negotiations and commit to liberalization in the trade of services. (An Agreement on Trade in Services was signed in January 2007.) Similar to South Korea, China holds a comparative advantage in low- to high-technology sectors over ASEAN, making free trade between the two mutually beneficial.

Less than a year after the first provisions of the ACFTA came into effect, Singapore proposed a bilateral agreement with China. China's bilateral agreement with Singapore goes beyond China's agreement with ASEAN and accelerates the tariff reductions outlined in the ACFTA. China and Singapore's complementary economies, in terms of their respective comparative advantages, significantly benefit from the tariff reduction schedule and freer trade. Singapore's proposal of a bilateral agreement and its emphasis on an accelerated tariff reduction timeline indicate the country's desire to increase trade in China's huge market. Provisions of the ACFTA that were not comprehensive or were lacking are detailed in the China-Singapore agreement. For example, the investments provision, which points to the provisions of the ACFTA Investment Agreement, details more commitments for the two countries in terms of what actions each is prohibited from taking in service sectors. It is interesting to note that the China-Singapore agreement does not have any provisions for IP, as the Korea-Singapore agreement does. This may be a result of China's increasing aggressiveness in seeking to acquire technology secrets, often to its trading partners' dismay. It also indicates the larger technological gap between China and Singapore than between South Korea and Singapore. Since South Korea and Singapore have closer technological capabilities, IP provisions are more likely to encourage the free flow of ideas and research. On the other hand, allowing its research and development to be freely shared with China, a country with significantly greater manufacturing capabilities and global market reach, puts Singapore at risk of losing intellectual property.

VI. DOMESTIC POLITICS AND INTERNATIONAL ECONOMIC COOPERATION

South Korea has expanded its zone of economic cooperation through FTAs; however, domestic public opinion has not always agreed with government intentions. The best example is perhaps the Korea-United States Free Trade Agreement (KORUS), which resulted in protests by the opposition party campaigning to renegotiate the agreement. Domestic politics and public opinion can stand in the way of mutual economic benefits. Although there is no commensurate or even visible reaction to the FTAs with ASEAN or individual ASEAN members, public opinion in China and South Korea could affect future cooperation or competition between themselves and the extension of their regional economic influence.

China and South Korea are much more likely to build stronger economies by creating agreements their citizens are more likely to support, for instance with regional powers like each other. Their economies are already highly integrated, and their geographic proximity suggests increasingly strong economic ties. However, their political history and China's relationship with North Korea may impede economic growth.

As China's economic influence grows, how South Koreans will react to China's maneuvers largely depends on current issues. Overall, the populations in both countries view each other the same way—economically positive, but sensitive to cultural and historical issues. In his article “Disillusionment and Dismay: How Chinese Netizens Think and Feel About the Two Koreas,” Peter Gries states that Koreans view China as an economic partner and hope to grow alongside China. Furthermore, Chung Jae-ho finds that Koreans see China as a global heavyweight that can be leveraged against Japan and other global powers. However, South Korean views change when China's actions concern Korean security, such as incidents related to North Korea, or relate to historical national identity, such as controversies involving Goguryeo or the dragon boat festival. Similarly, while Chinese generally view South Korea positively as an economic partner, their opinions change drastically when it comes to thorny historical or national identity issues involving Korea.

Public opinion in South Korea regarding former president Lee's policies was that Korea could gain more by cooperating with China than by competing against it. Accordingly, President Lee assuaged Chinese and Japanese concerns and furthered Roh's NEAH strategy with a tone of cooperation, encouraging China and Japan to invest in Korea. By aligning itself as the hub, this policy ensures that Korea is in a cooperative position for both China and the United States. Given Korean views of China as an economic partner, promoting cooperation

with both China and the United States prevents public opinion from interfering with free trade benefits. The Lee administration has made it clear that it actively pursued FTAs as a strategy for economic growth, and Lee highlighted the fact that Korea is now in FTAs with 45 countries and 61 percent of the world market. Seeing China as an economic ally, Korea's pursuit of FTAs intends to capitalize on their economic benefits, not to challenge or compete with China. How the Park Geun-hye administration will continue with these economic and trade strategies remains to be seen.

VII. POLICY RECOMMENDATIONS

As South Korea cannot compete with China in size and economic strength, its role in the Asian economy must be oriented toward its comparative advantages. As China shows signs that its economic growth rate will be declining, it will continue to grow in size and influence. As it closes in on the comparative advantage that South Korea has in high-technology products, Korea's interest will be to expand trade in these industries as much as possible and establish itself as a leader in these products. Since one of the results of free trade is growing interdependence, Korea can utilize the current lead it has over China in high-technology products to expand its access to these markets, while also providing a market for ASEAN's labor-intensive and low-technology goods.

Since China is already the second-largest economy in the world and is likely to continue growing, it will remain an attractive trading partner. China knows this. It does not need to actively seek trading partners, and it has increased clout when negotiating FTAs.

For South Korea, this means that it must find a place in the Asian economy other than a leadership role. Its current comparative advantage in high-technology is likely to be matched by China, which implies that South Korea must establish its clout in the region beyond free trade. One way it can do this is to pursue the NAEH strategy, but how feasible this is, given China and Japan's initial resistance, is questionable. One way to overcome this would be to highlight how economic cooperation could be more beneficial than economic competition. If South Korea were to shift its focus from the United States toward Asia, the increased trade could bring more growth to the entire region. Demonstrating how this would be beneficial for the Asian economic bloc, especially to China and Japan, would give South Korea a chance to gain the political and economic support it needs to fully pursue such a program.

China's WTO accession has significant implications for its economic policies. For the first nine years after its accession, China demonstrated wholehearted economic liberalization efforts following WTO guidelines. However, since 2010,

China's assertive actions in acquiring high-technology and use of influence to skew trade and investment to its advantage could lead to a decrease in its attractiveness as a trading partner. For China to maintain good will in the global market, it must demonstrate its willingness to acknowledge and address the concerns of its current and potential trading partners.

It would also be in ASEAN's interest to expand and diversify its economic interdependence as it continues to develop. If ASEAN focused solely on China, it would be very susceptible to changes in the Chinese economy; integrating their economies with multiple countries would allow the ASEAN countries to maintain their independence and possibly develop a significant role in the region despite China's shadow. As an independent bloc, ASEAN's diversity in membership and development levels can contribute to the group's total growth. It would be interesting to analyze individual countries' comparative advantages and how they complement each other as part of the ASEAN free trade area. Not only would it provide evidence of how each country contributes to the development of ASEAN as a whole, it could also shed light on how individual comparative advantage could be used in developing similar agreements worldwide. As ASEAN plays a more significant role in the Asian and world economy, the diverse economic ties it forms now in the region will give it an advantage and can contribute to its economic development.

VIII. CONCLUSION

South Korea's rebound and economic growth since the Asian Financial Crisis prove that it can play a major role in Asia's economy. As China's economy continues to grow, South Korea does not intend to play a secondary role in the Asian economy. Implicitly it has done this through its proposal of an FTA with ASEAN and subsequent proposals of trade agreements with Singapore, Malaysia, Vietnam, Indonesia, and Thailand. Explicitly, the announcement of the NAEH strategy gives a definitive outline to Korea's hopes for its future role in expanding Asian economic cooperation. By integrating with the ASEAN economy, Korea is showing a concerted effort to improve trade relations and encourage economic interdependence. Since China has shown no response or reaction, Korea appears to be pursuing these policies not necessarily to counteract China's influence or to compete with China, but to expand its regional economic cooperation.

China's size and influence in the Asian economy make it an attractive trading partner for other Asian countries. This means it does not have to assert its leadership role in Asia. Since China is a natural leader in Asia, it has focused on how it can become a leader in the world economy, a goal it has pursued by seeking to expand its competitiveness in high-technology industries. However, its size gives China the luxury of not having to concern itself with economic

positioning and active integration as Korea has. Although President Lee's comment about "economic territory" demonstrates South Korea's desire for economic authority in the region, it will not be able to expand its influence if it alienates or raises suspicions in those that can be its closest trading partners. If South Korea wants to establish a role for itself outside of China's shadow, the most feasible way would be to prove that economic cooperation would benefit its natural regional partners, China and Japan.

CHAPTER II: Business and Investment



Lips and Teeth: Chinese-North Korean Trade and Foreign Direct Investment's Impact

By Trevor Clark

I. INTRODUCTION

There can be no doubt that northeast Asia will continue as a major flash point for international politics and economics in the next decade. Northeast Asia is home to one of the most dynamic and emergent economies, China, two of the world's most stable democracies and economic powerhouses in their own right, Japan and South Korea, and one of the world's most mercurial and unpredictable regimes, the Democratic People's Republic of Korea (DPRK or North Korea). This paper explores the relationship between China and North Korea. In particular, it focuses on their economic relationship—foreign direct investment (FDI, also referred to as overseas direct investment) and trade—as well as the degree to which this economic relationship plays into regional politics. This paper also analyzes this relationship's implications and the effect it has on China's relationships with the other major regional power, the United States. North Korea and China's economic relationship is such that China will continue to operate as it has for the sake of regional stability, ensuring South Korea and its ally, the U.S., remain off China's borders. The effective result is a continuation of the status quo and the possibility of continued or heightened strains on the Sino-U.S. relationship.

This paper first outlines North Korea and China's relationship. It then explores the evolving nature of the economic relationship between these two countries, focusing on outbound FDI from China into North Korea and China-North Korea trade and their fluctuation pattern since the 1950s. Next, it considers the economic relationship's ramifications for the political relationship and the future of the Sino-North Korean alliance. Finally, the paper explores how China's increasing economic partnership with North Korea—or better put, North Korea's increasing dependence on China for regime survival—will affect Sino-U.S. relations and the extent to which Beijing and Washington will adjust their policies towards each other.

II. "LIPS AND TEETH," A BRIEF HISTORY OF CHINA-NORTH KOREA RELATIONS

The history of China-North Korea relations is dynamic and multifaceted. China's interests in the alliance have ranged from a shared ideological connection with

the Soviet Union, to the simple fact that North Korea is one of the few barriers China can maintain to keep its distance from the U.S. The DPRK became one of the first countries to recognize the People's Republic of China as a sovereign nation on October 6, 1949, five days after the Chinese Communist Party declared victory over the Kuomintang in the Chinese Civil War. According to George Yu's 1998 historical account, "China-North Korea political relations and friendship were 'forged in blood' with China's participation in the Korean War, beginning October 1950, in common opposition against 'American imperialism.'" Between the armistice that halted the Korean War in 1953 and the mid-1980s, the exchange of government officials and military leaders, cultural exchanges, and trade agreements further strengthened their relationship. The most important of these agreements was the 1961 China-DPRK Treaty of Friendship, Cooperation, and Mutual Assistance. According to the Center for Strategic and International Studies (CSIS)'s Bonnie Glaser in November 2012, the treaty codified China and North Korea's security partnership, with the agreement being renewed every twenty years (most recently in 2001) and requiring that any revision of the treaty be agreed to by both sides. These exchanges not only helped further entrench the two countries under the Soviet Bloc's umbrella, but also helped the alliance persist following the Soviet Union's fall.

That being said, the relationship between North Korea and China was far from perfect, even after the 1961 treaty. North Korea, much like China would later do with the Soviet Union and the U.S., consistently played the Soviet Union and China off each other. This allowed North Korea to reap the benefits of having two major economic providers, while also preventing itself from becoming too reliant on one or the other or getting itself caught in between two giants. According to Bonnie Glaser, for China, this became an increasingly difficult problem to manage as Sino-Soviet relations began to crumble, ultimately leading to the Sino-Soviet split. Further, when Deng Xiaoping began implementing his reform and Open Door Policy in the 1980s, North Korea felt that "China's domestic policy shift was a 'betrayal of Socialist ideals' and of the bilateral relationship writ large." But this feeling of betrayal did not lead to economic disentanglement, and China remained a major economic partner for North Korea.

The end of the Cold War, in effect, freed China to begin to operate its foreign policy outside the confines of ideological decision-making. George Yu noted in 1998 that, following cues from Russia, China began to thaw its relationship with South Korea, establishing formal relations with the U.S. ally in August 1992. China did not forego its relationship with the DPRK, but rather continued to maintain "correct relations" with North Korea. However, this strained the relationship and also began to weaken some of Beijing's control over Pyongyang. Jian Yang noted in a 2006 article, "The fact that China established an embassy in Seoul without insisting that the United States first recognize North Korea

angered Pyongyang.” Yet, relations between the two communist nations began to improve in the late 1990s, punctuated by China’s then-President Jiang Zemin’s September 2001 visit to Pyongyang. However, as Samuel Kim and Tai Hwan Lee point out in their 2002 article, “Chinese-North Korean Relations: Managing Asymmetrical Interdependence,” the overall relationship between the two nations continues to be “just beneath the surface a highly asymmetrical interdependence in all political, military and economic issue areas.” This asymmetric relationship has persisted, and yet, China continues to remain North Korea’s staunchest ally, regionally and globally.

III. CURRENT STATE OF THE RELATIONSHIP

The primary problem that China faces in its North Korea policy is the fact that Beijing has multiple interest areas in the Korean peninsula, and often these interests are at odds with each other. Yang adds, “China’s top priority in North Korea is peace and stability.” Any sort of regime change would fundamentally alter the security architecture of the region. The Kim Jong-un regime’s fall would mean that China could lose what it views as an all-important buffer country to a South Korean regime more sympathetic to the U.S. As a result, Beijing has an incentive to continue to support Pyongyang even as it tries to rein it in. However, North Korea may see support as an opportunity to be more aggressive, such as with the 2006 nuclear test and multiple missile tests (most recently in May 2013). China has, relatively consistently, publicly denounced many, though not all, of North Korea’s provocations but has taken few punitive measures. Even what China *has* done hardly seems to deter the DPRK. As a result, Beijing currently sees the relationship as one that it must balance with the conflicting ideals of support and restraint.

Within the current relationship, outside actors—particularly South Korea, Japan, and the U.S.—continue to assert that China is not using the full extent of its influence on North Korea. However, Yang argues that, due to China’s focus on economic reform and the abandonment of communist-style planning, its influence over North Korea is waning or, at the very least, its desire to exert that influence is waning. Economic reform does not support North Korea’s agenda and is not the path it would have preferred China to take. However, for Scott Snyder, in his 2001 chapter “Korea’s Influence on Northeast Asian Major Power Relations,” with China’s ultimate goal of stability and peace on the peninsula, the outside actors must work strategically to play the two sides of the alliance off each other.

That being said, as the main crux of this paper and as the following sections show, the especially asymmetric economic relationship between North Korea and China ensures that Sino-North Korean cooperation will continue and that

China's support of the DPRK will not likely falter. In fact, according to Nicholas Eberstadt, a political economist at the American Enterprise Institute (AEI) and the Council on Foreign Relations (CFR), in 2010, "Since the early 1990s, China has served as North Korea's chief food supplier and has accounted for nearly 90 percent of its energy imports. By some estimates, China provides 80 percent of North Korea's consumer goods and 45 percent of its food." The following sections break down Chinese FDI in North Korea and the international trade relationship between the two. They support Eberstadt's analysis and demonstrate that the China-North Korea relationship will persist.

IV. THE ECONOMIC RELATIONSHIP

Before fully dissecting the compiled data, it should be noted that there are several problems inherent in this research. The first is data accuracy and number of sources. North Korea is notoriously secretive and does not release reliable economic statistics. As a result, analysts are faced with the task of using "mirror" statistics and looking at North Korea's trade partners to extract data and projections. For the purposes of this paper, the United Nations Conference on Trade and Development (UNCTAD), the Ministry of Commerce in the People's Republic of China (MOFCOM), news reports and analysis of reports from the Ministry of Unification in South Korea, and the Korean Trade-Investment Promotion Agency (KOTRA), among others, were used as the primary economic data sources. Another issue is the inclusion or exclusion of intra-Korean trade. That is, some sources include intra-Korean trade (trade between North and South Korea) in analyzing and calculating percent changes in North Korea's international trade, while others do not, considering it domestic trade. This makes analysis and conclusions sometimes difficult. In fact, as will be noted below, the trade statistics between North Korea and China often do not include South Korea, giving the impression that China is responsible for more than 80 percent of North Korea's trade. However, according to Stephan Haggard and Marcus Noland in their 2012 report, *Reordering Chinese Priorities on the Korean Peninsula*, this number vastly overstates China's economic power: "The actual figure, once North-South and other missing entries are accounted for, is roughly half as much: it is still a large number, but does not hold the overwhelming dominance often claimed in public discussion." However, given the preponderance and access to data that China's MOFCOM provides as well as the use of this same data by the UN and other publications, for simplicity's sake, this paper focuses primarily on FDI and trade data that treats North-South trade as domestic, not international.

Chinese FDI

China's FDI presents another problem to some degree. While MOFCOM reports China's annual outflows (and destinations) in an annual report, other analysts, in this case the U.S.-China Economic and Security Review Commission, report that nearly 80 percent of China's FDI first flows through tax havens in Hong Kong, the Cayman Islands, and others before being distributed. This, reportedly, makes independently tracking Chinese FDI much trickier. However, this paper will rely on the MOFCOM reported figures in order to stay consistent with UNCTAD, which uses the MOFCOM figures.

Over the course of the last 30 years, Chinese FDI has skyrocketed. According to the MOFCOM *2010 Statistical Bulletin of China's Outward Foreign Direct Investment*, Chinese FDI in 2010 reached \$68.81 billion. This is a meteoric rise for a country that as recently as the 1980s had FDI outflows that totaled less than \$100 million. This evolution, according to the U.S.-China Economic and Security Review Commission's March 2011 report, went through four primary periods: (1) 1979-1985, which saw China gradually open to the world economy but the central government maintain a vice-grip on foreign trade; (2) 1986-1991, which saw the Chinese government begin to liberalize and reduce restrictions on some private enterprises allowing them to invest abroad; (3) 1992-1998, which saw both successes and severe restrictions as Chinese companies began to get aggressive in the market, only to have the Asian Financial Crisis of 1997 scare the central government back into tight controls; and (4) 1999-present, which has seen significant reductions in controls and an emphasis on China's "going global" strategy.

Despite this evolution and the government's loosening of some control over FDI, according to the same U.S.-China Economic and Security Review Commission report, "Since its inception Chinese [FDI] has been initiated or approved by the state, which still retains a great measure of control." Despite these tight controls, Chinese FDI has done nothing but grow, particularly over the past five years. As of 2010, according to UNCTAD's *World Investment Report 2011*, China had become the fifth largest country in terms of outward FDI flows and seventeenth overall in terms of global FDI stock, accounting for approximately 5.2 percent of global FDI flows and 1.6 percent of global FDI stocks. In fact, despite its top-five status, China's outward FDI actually pales in comparison to its inward FDI. One of the unique features of Chinese FDI, according to the U.S.-China Economic and Security Review Commission's March 2011 report, is that rather than focus large sums in particular countries, China often chooses to spread its FDI out to many countries and in smaller amounts of less than \$10 million. In 2010, the most recent data currently available, China's Ministry of Commerce reported that China's outward FDI topped \$68.81 billion, a 21.7 percent growth from 2009's

\$56.53 billion. This increase, coupled with FDI already distributed meant that “[b]y the end of 2010, more than 13,000 domestic investing entities had established about 16,000 overseas enterprises, spreading in 178 countries globally.”

Chinese FDI in North Korea

China is the biggest, most significant, and most consistent FDI provider to North Korea, though, it must be noted, this excludes Kaesong Industrial Complex’s uniqueness as a joint-Korean venture. However, for the purpose of statistics, the UN, Congressional Research Service (CRS), and others omit this project when evaluating FDI.

China’s FDI to North Korea has not been on a steady and consistent trend and clearly has felt the effects of geopolitical events. Chinese FDI does, however, account for an increasingly large portion of total FDI North Korea receives on a yearly basis. Table 1 shows China’s outward FDI flow to North Korea since 2004, the total global FDI inflows to North Korea since 2006, and China’s percentage of that FDI. One of the above-mentioned anomalies of the disparate data sources that must be used occurs in 2009, with China accounting for 293 percent of the UN’s recognized \$2 million inflow of FDI into North Korea.

Table 1. China-North Korea FDI Relationship

<i>FDI given in millions of USD</i>	2004	2005	2006	2007	2008	2009	2010
China’s Outward FDI to North Korea	14.13	6.50	11.06	18.40	41.23	5.86	12.14
Total North Korean FDI Inflows	N/A	N/A	105	67	44	2	38
China’s % of North Korean FDI	N/A	N/A	10.5%	27.5%	93.7%	293%	31.9%

Table 1 shows the fluctuation in Chinese FDI, demonstrating North Korea’s increasing reliance on China when it comes under fire for its provocative behavior. Following the 2006 nuclear test, the Chinese proportion of North Korea’s FDI increased to 27.5 percent in 2007. In the wake of the 2008 global financial crisis, China became an even bigger factor as North Korea’s other benefactors further retreated from providing economic support, leaving China to account for 93.7 percent of the flow of FDI into North Korea. Within this FDI, Chinese companies have particularly focused on mineral resources. According to a 2010 CRS report, “This is part of a Chinese strategy of stabilizing the border region with the DPRK, lessening the pressure on North Koreans to migrate to China, and raising the general standard of living in the DPRK.” (This paper’s trade section further explores the nature of this border relationship.)

Chinese investors also appear reasonably confident in investing in the North, despite many problems with the infrastructure and business climate. Over the last several years, there have been various agreements signed between the DPRK and China, as well as laws being relaxed in both countries to spur greater investment. In fact, Glaser notes, “the Samsung Economic Research Institute based in Seoul has reported that Chinese firms have planned projects worth as much as \$6.5 billion, mostly for infrastructure development.” If North Korea and China continue to ease restrictions on the flow of FDI, it is very possible that Chinese investment in the country could continue to expand. One interesting factor that plays into Chinese FDI (and even the trade relationship) is the prevalence of foreign currency usage. It appears that most Chinese exporters to North Korea use Chinese yuan (55 percent), according to a 2007 survey analyzed by Stephan Haggard and Marcus Noland, followed by the U.S. dollar (34 percent), and then bartering (8 percent). This is also true for goods coming back into China from the DPRK, with more than 50 percent using the U.S. dollar.

China-North Korea Bilateral Trade Relationship

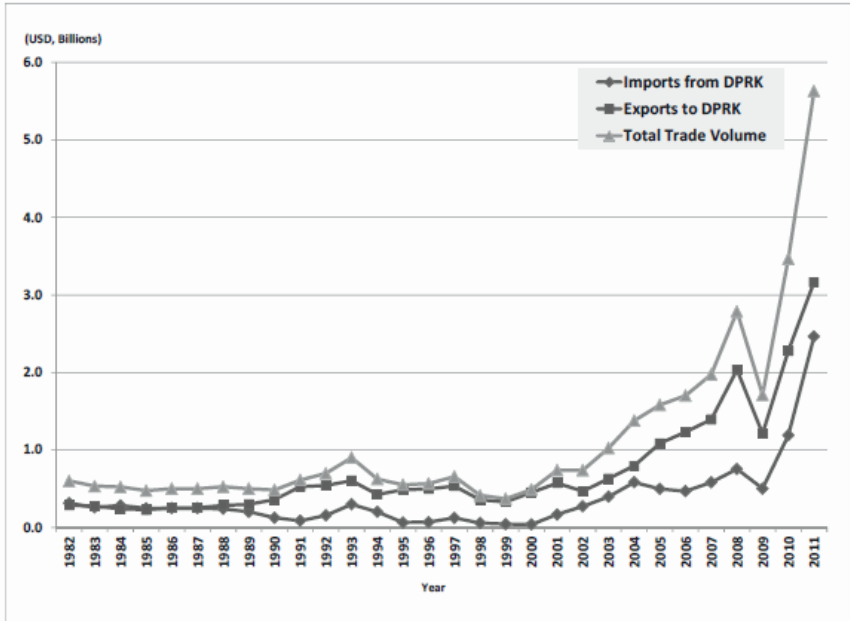
Not unlike the FDI flows discussed above, trade between China and North Korea is very much one-sided (though in this case benefiting China; Figure 1). It has fluctuated over the years but has recently skyrocketed. According to research done by Samuel S. Kim and Tai Hwan Lee, the bilateral trade relationship between the two countries goes back to the 1950s, when China made up anywhere from 25 to 60 percent of North Korea’s foreign trade, with an absolute value hovering around \$100 million. From 1960-1967, China’s percentage of North Korea’s foreign trade fell to 30 percent, then fell further to 10 percent during the Cultural Revolution, rose to roughly 20 percent in the middle to late 1970s (valued around \$300-600 million), and declined again to between 10 to 20 percent in the 1980s (but the overall value increased dramatically to \$3-4 billion). In the 1990s, trade values stabilized percentage-wise until 1998, although the overall value of the trade actually plummeted from a high-water mark of \$899 million (1993) to \$371 million (1999).

In the first half of the 2000s, North Korea’s dependency on China continued to deepen in both imports and exports. According to Yang:

From 2000 to 2005, North Korean imports from China (including oil, pork, electronic gadgets, and farming machinery) more than doubled, to US\$1.1 billion, while its exports to China (fish, low-grade steel, and minerals) soared more than tenfold, from US\$37 million to US\$499 million. Trade with China accounted for more than half of North Korea’s total exports and imports in 2005.

The volume of trade between North Korea and China continued to grow into the latter half of the decade. In 2008, the value of trade between them reached \$2.7 billion. Hyung-Gon Jeong and Hokyung Bang’s 2010 study, “An Analysis of

Figure 1. China-North Korea Trade since 1982



Source: *Stephan Haggard and Marcus Noland, 2012*

North Korea’s Principal Trade Relations,” using 2008 trade statistics produced an insightful analysis of the degree to which trade between China and North Korea occurs along the border and within northeastern China. Approximately 22 percent of all trade occurred at or near the 880-mile long border, and further, “according to Chinese customs statistics, \$2.03 billion worth of goods were exported from Northeast China... [representing] 77% of total Chinese exports to North Korea.” This trade was primarily concentrated in the provinces of Jilin, Liaoning, and Heilongjiang. These provinces also took in the vast majority of North Korean exports to China at approximately 72 percent of total exports (\$540 million). As a result, they note, “Local governments and local companies located in border areas have become North Korea’s main trading partners.” Thus,

while the central government may play a pivotal role in setting out trade policy, it is, in fact, the localities that are seeing the biggest boost from the deepening relationship between Pyongyang and Beijing.

Towards the end of the decade, the economic ties between the two continued to increase. In 2009, China accounted for roughly half of all imports that flowed into North Korea, while absorbing nearly one-quarter of all North Korean exports. China's total exports to the DPRK fell from \$2.03 billion in 2008 to \$1.89 billion in 2009 as a result of the financial crisis, but CRS notes North Korea still increased its exports to China by \$39 million, from \$754 million in 2008 to \$793 in 2009. This growth has continued through 2011 and 2012. In 2011, the *Korea Herald*, in an article titled "N. Korea's trade with China surges due to U.N. sanctions," reported that total trade between the two countries grew 62.4 percent to \$5.62 billion, and in the first seven months of 2012, bilateral trade expanded another 14.5 percent from 2011 to \$3.54 billion. During this rapid growth period (2007-2012) the relationship became further entrenched. In 2007, China accounted for approximately 67 percent of North Korea's export market, but that too has grown rapidly reaching 72.9 percent in 2008, 82.9 percent in 2009, and 89.1 percent in 2010. Further, the same report notes that one strong possibility for this is the economic sanctions that have been imposed on North Korea in the years after its 2006 nuclear test. These sanctions almost certainly have led former major trading partners, such as Japan, to reduce if not remove trade with the DPRK altogether.

Perhaps unsurprisingly, this expansion of trade has also seen growth in North Korea's already sizeable trade deficit with China. Between 1990 and 2000, North Korea saw its trade deficit balloon to a total of \$3.85 billion. This deficit resulted primarily from the fact that North Korea simply does not have high-value exports and those goods that it can export are rapidly losing competitiveness, even in the Chinese market. For the sake of contrast, Kim and Lee indicate, "South Korea's trade with China in 2000 generated a huge surplus of \$5.7 billion." The trade deficit has not improved during the course of the 2000s either. In 2008 alone, according to the CFR in October 2010, trade between China and North Korea generated a North Korean trade deficit of \$1.25 billion, followed by another deficit of more than \$1 billion in 2009. Given that North Korea is not able to finance any of its trade deficit by borrowing, some experts view this deficit "as an indirect Chinese subsidy."

V. IMPLICATIONS AND THE FUTURE OF SINO-NORTH KOREAN RELATIONS

From the evidence, it is clear that the Sino-North Korean economic relationship is, for China, insignificant, which has dire implications for the alliance. To provide some perspective on how small China's trade relationship is with North Korea, Kim and Lee's research shows that in 2000 the value of trade between North Korea and China was approximately \$488 million, or about 20 percent of North Korea's international trade. On the other hand, this made up only 0.1 percent of China's international trade. Things have not improved in the latter half of the decade either, despite the explosion of trade between the two nations. As of 2009, North Korea ranked 82nd among China's export destinations, below Kenya, Sri Lanka, and Peru. In terms of imports, North Korea was again fairly low on the list, coming in at 77th below Gabon, Yemen, and the Ukraine. However, as CRS points out in its 2010 report, "China-North Korea Relations," it is still important to note that trade between the DPRK and China has risen greatly in recent years.

While the economic implications for China may be small, the same cannot be said for North Korea. As has been noted above, trade and FDI from China is vital for the Kim Jong-un regime's continuation, as it was for his father's. This is particularly true in the economy's energy and food sectors, which Beijing is, reportedly, almost single-handedly providing. Yang notes, "China now allegedly supplies at least 80% of North Korea's energy. Pyongyang received more than 90% of the 576,582 tons of cross boarder food aid provided by China in 2005. Together with South Korea...they accounted for 85% of the total aid provided to North Korea in 2005." In addition, a 2012 *Korea Herald* report noted that China single-handedly provided some 380,000 tons of food aid in 2011.

China's investment strategy in North Korea continues to evolve. It is reported that prior to 2002, small- and medium-sized firms handled the majority of DPRK investment. However, according to Bates Gill, in a July 2011 report for the U.S. Institute of Peace, today "major Chinese investors have changed...to the current large state and private listed production enterprises. All of the projects they have invested are strategically important, their cooperation term is long, and their investment scale is huge." Much of this switch has been orchestrated, according to Glaser, by the central government in Beijing, which sees the investment not only as a platform for improving the returns China receives from North Korea, but also as "a broader government strategy to promote reform in North Korea and open up its economy." As will be discussed further below, China is well aware of the economic benefits it will receive if North Korea begins to liberalize its economy, as well as the improved regional stability that is likely to result from such an opening.

Chinese firms appear to be very focused on the mineral and mining sectors of the North Korean economy. While Chinese firms have certainly expanded beyond this sector into others such as computer hardware, analysts such as Bates Gill believe that China is the single-largest investor in the mineral and mining sector in North Korea. Given the fact that Beijing continues to struggle to find new sources of energy to feed its ever-growing domestic demand, its attempts to expand its procurement of and search for these sources into the North Korean economy is unsurprising and is likely to continue. In fact, recently, China has become interested in investing in Rason, a “Free-Trade Area” that would be largely financed by Chinese firms, not unlike the Kaesong Industrial Complex that was exclusively financed by Seoul and South Korean firms. As Bonnie Glaser and Brittany Billingsly, in their 2012 report for CSIS, note, “China views Rason as a valuable ice-free port for the land locked Chinese provinces of Jilin and Heilongjiang.” Further, according to Glaser and Billingsly, the state-owned Shangdi Guanquan Investment Company has already committed to investing some \$2 billion into the Rason area.

However, this investment and the continued messages of support and mutual gain have come under fire of late, with 2012 reports by Malcolm Moore in the United Kingdom’s *Telegraph* of Chinese mining firms coming under attack, contracts destroyed or annulled, and firms being kicked out of North Korea.

Thus, despite appearances of strong partnerships and alliances, there are still fractures, and North Korea is not always the obedient child to the China parent that the West would prefer. In fact, during a meeting with Jang Song-taek, Kim Jong-un’s close advisor and uncle, Wen Jiabao noted the difficulties that Chinese firms are having in working in North Korea. At a June 2012 roundtable series hosted by CSIS, U.S. officials and experts also noted that China’s Ministry of Finance and Commerce had recently issued guidance for how to handle working in North Korea, “which did not cast its neighbor in a positive light.” In a 2007 survey of Chinese firms operating in North Korea, Stephan Haggard and Marcus Noland found that, although the process of doing business seemed to be getting better—likely due to the ongoing six-party talks which would later collapse in 2008—there were substantial hurdles faced by Chinese companies attempting to operate in North Korea. Cell phone usage bans, inadequate infrastructure, as well as fluctuating laws and enforcement of regulations are all cited as major hindrances. Accordingly, they assert, “... [T]he overall investment climate—and even fear of outright expropriation of assets—serves as a deterrent to longer-run investment relations.” The continued difficulty of operating in North Korea puts Chinese firms in a tough spot. However, as has been noted, North Korea is so dependent on China for economic support that even China cannot use the dependency as leverage. China’s fear of causing instability by making extreme

changes to its economic policy towards North Korea means it is unlikely to take drastic measures to correct the situation. It rather relies on bilateral conversations and personal urgings to improve the business climate.

Perhaps most important to China is the geopolitical nature of the relationship and the important role Chinese investment plays in it, beyond simple economic benefits. China's desire to have stability on the Korean peninsula and in particular a friendly regime on its borders has, according to Yang, created the sense that "Beijing's hands are tied by its concerns over the collapse of the North Korean regime. Those concerns have neutralised much of Beijing's leverage over North Korea." This lack of leverage has frustrated other interested parties, which see Beijing as having significant sway over Pyongyang owing to its economic influence. In fact, some experts, such as Bonnie Glaser, believe that without the aid that China provides North Korea, the regime would collapse, particularly with South Korea's aid shipments falling off quickly in 2008. However, as China's primary goal is to maintain stability in the region and to prevent the Kim regime's collapse, China will do its best to prevent any drastic changes that will disrupt its policy aims. The CFR noted in 2010, "After all it is *not* about securing influence over North Korean affairs but is about peaceful management of the relationship with the intent to preserve the status quo of the peninsula." (Emphasis theirs)

Chinese officials believe that some combination of economic pressure along with continued bilateral conversation is the only way to nudge North Korea in the direction that China wants them to go. Although, as noted in the paragraphs above, China holds massive economic sway over North Korea, it is very much caught in a catch-22. If China suspends economic aid, it is possible the Kim regime could fall causing instability that would go against everything China is trying to preserve in the region—not to mention that South Korea and the U.S. are the two most likely countries to intercede. On the other hand, according to CSIS' Bonnie Glaser, "The Chinese recognize the need to apply pressure on North Korea to ensure that Chinese interests are protected." However, pressure alone is not sufficient, nor effective. Glaser quotes a Chinese official commenting on the 2006 nuclear test—which Chinese pressure clearly did not prevent—as saying, "If we merely rely on pressure, then it won't work. If we only promote dialogue, that also won't work...the two wheels must work together. Only if they are working simultaneously can they be effective."

It is very difficult to predict how the Chinese-North Korean relationship will evolve moving forward. Experts have consistently expected Beijing to coax Pyongyang into better behavior. Yet, even the most promising economic development along the border has proceeded slowly. According to Yang, this is due in large part to the increasing provocations by North Korea, including its

2006 nuclear test, which China reportedly adamantly requested North Korea not go forward with. However, there are also signs that China will continue to push North Korea to institute greater reforms, particularly economic ones, where it hopes to serve as a model. In a May 31, 2012 editorial in the *Global Times*, a Chinese Communist Party mouthpiece, the editors declared, "Opening up will pose risks to the Democratic People's Republic of Korea, but it will face bigger risks if it maintains its current policy. It will find out which way is better. The DPRK should understand that it has to seize opportunities." Is this an indication that Beijing is frustrated by Pyongyang's insistence on developing its internal economy, or is Beijing simply trying to acquiesce to outside demands and demonstrate that it is *trying* to promote change on the peninsula? It is, at this moment, hard to say. This is due, in part, to the recent regime change following the death of Kim Jong-il and the ascension of Kim Jong-un. Scholars believe that as the health of Kim Jong-il deteriorated, China was increasingly reticent to push for major changes for fear it could destabilize the transition in the event of the elder Kim's death. Will his son be receptive to reform? Will China push for them?

The additional wrinkle to this relationship is the political transition both countries are going through currently. As briefly noted above, under Kim Jong-un's rise to power, China was hesitant to push for any liberalization for fear of destabilizing the regime. On the other hand, the recently completed 18th Party Congress in Beijing also marks a once-in-a-decade leadership transition in China, with Xi Jinping taking over for Hu Jintao in November 2012. What do these successions in both China and North Korea mean for the future? That remains unclear. The early analysis on the newest Kim regime does not seem to indicate a radical shift in North Korea's policy, either economically or strategically. Glaser notes, "Hints that Kim Jong-un might experiment with agricultural and economic reforms have not been accompanied by any suggestion he is considering abandoning the country's nuclear weapons program." However, experts still believe that China will continue to push for some sort of economic reform, even in the face of North Korean resistance. This is not only due to China's continued desire for stability in the region, but also the economic gains that could certainly be had by further development, particularly in the provinces that border or are near North Korea.

On the other hand, there are experts who, given North Korea's track record, are far less optimistic that Chinese pressure or new leadership will change the economic situation in the DPRK in the near future. Although China has consistently implored North Korea to liberalize its economy to some degree, Haggard and Noland argue that it has made little headway:

The political economy of cross-border exchange is clearly evolving, and we cannot rule out that it will ultimately feed

into a process of economic reform. But as of this survey (2007), the evidence did not augur well. Moreover, not much has happened since to suggest that the observed patterns have undergone fundamental change; to the contrary, as we have argued elsewhere in some detail, trends toward controls have become more clear since the collapse of the six-party talks in 2008 and the extended process of succession that continues to this day.

Thus, the weak policy and regulatory framework that appears to have staying power does not bode well for China's ability to push North Korea in the direction of reform and opening. Further, according to Haggard and Noland, it even appears that North Korea is taking steps to exert greater central government control over the economic partnership between Chinese and North Korean firms in North Korea.

VI. IMPLICATIONS FOR SINO-U.S. RELATIONS

The U.S. undoubtedly plays a major role in anything that happens on the peninsula. Its troops stationed in South Korea irk Beijing, while also helping provide the stability that Beijing so strongly desires. However, in order to ensure stability on the peninsula, particularly in the event of a regime collapse in Pyongyang that leads to some sort of unification, Beijing and Washington must be ready and willing to work with each other. Therefore, good Sino-U.S. relations are imperative because, according to Snyder, in his 2001 chapter, "Korea's Influence on Northeast Asian Major Power Relations," "The question of which direction a unified Korea leans diplomatically could engender competition for a close relationship with Seoul." China will most certainly fight to maintain a strong and close relationship with a country it shares an 880-mile border with, while the U.S. may very well want to retain its forces on the peninsula. Yu's 1998 research demonstrates that China continuously expresses fears that not only is the U.S. attempting to encircle and stunt the growth of China but that Washington's politicking in the region will "lead to a redivision of Asia Pacific into competing camps, reminiscent of the Cold War era."

Regardless of China's concerns with the U.S. rebalancing or pivot, what is clear is that, according to Gill in his 2011 report for the United States Institute of Peace, "certain elements within the constellation of Chinese foreign and security policy seem to be gaining an upper hand in shaping policy toward North Korea." This means that it is possible Beijing could become more aggressive in its support for Pyongyang, particularly as Western countries increase economic and political pressure mechanisms and sanctions. This path is something that policy makers in Washington must be aware of when handling the North Korea-China situation.

Whether these more conservative and militant voices will indeed be leading the charge for China's North Korea policy or whether the more moderate tone seen in the *Global Times* editorial will become the driving force, remains to be seen. As noted above, China has recently begun its own leadership transition. The degree to which Xi will alter China's foreign policy, particularly with regard to the U.S. rebalance or North Korea, is unknown due to China's unwillingness to give its future leaders much opportunity to publicly espouse their views, if they want to rise through the CCP ranks that is. Rather, the vice-grip that Beijing has on its media means that relatively little is known about Xi, his policies, or his plans for China's future. While there have been recent reports about China beginning to take a tougher line on North Korea and its nuclear programs, Xi has, thus far, not radically changed the Chinese government's position.

Perhaps the biggest stumbling block between the two superpowers is the fact that while they share similar policy goals (denuclearization, for example), their prioritization of those goals is vastly different. Unlike the conventional assumption, however, Chinese officials claim that they always bring up the issue of denuclearization in every meeting with North Korean officials. Further, according to Glaser, they claim that they have sent envoys and letters to Pyongyang, publicly and directly condemned actions by the North that could affect Chinese security, supported UN resolutions condemning certain behaviors, signed joint statements, and denied military aid. While the U.S. priority is denuclearization, China's primary goal is stability along its borders. As a result, China's decision-making likely often boils down to simple cost-benefit analysis. For Glaser, the DPRK's recent behavior would indicate that the benefits of supporting the North Koreans and the Kim regime outweigh the "short-lived condemnation from the international community." In fact, Bonnie Glaser and Brittany Billingsly have promoted some dramatic new policy recommendations for the U.S. These would include "ensuring that economic and security benefits accrue to Beijing for helping denuclearize North Korea but also increasing the costs if China fails to cooperate." This idea of new and stronger economic sanctions against China for not leaning hard enough on North Korea is interesting, but ultimately seems ill-advised since it is highly unlikely that China would respond positively to the U.S.'s punitive economic policy, while also continuing to work with the U.S. to push North Korea to the negotiating table. As Glaser and Billingsly admit, Beijing would only be able to exert pressure on Pyongyang in the event of solid Sino-U.S. relations.

The U.S. needs to continue to work with China and reaffirm that its goals in the region are based neither on containing China, nor on preventing China's rise. As a number of Chinese editorials and academic works express, China has concerns that the increased U.S. presence in the region is meant to check China and maintain American hegemony. If the U.S. fails to convince China that this

is not the case, then there is little chance that China will feel any obligation to pressure North Korea, except when China feels its own security or regional stability is threatened. According to Glaser and Billingsly, the U.S. must make certain guarantees to China, including withdrawal of American troops from the peninsula in the event of North Korea's collapse, as well as support and aid to the collapsed regime so that China will not bear the costs of collapse alone.

VII. CONCLUSION

The Korean Peninsula has been a flashpoint and epicenter of geopolitical and economic events and crises since the outbreak of the Korean War. The armistice signed in 1953 stemmed the violence, allowing for regional politicking and economic integration. This paper explored, in particular, the FDI and trade relationship between China and North Korea. Although both FDI and the trade relationship have been a bit of a roller coaster, the past decade has seen a dramatic increase in North Korea's economic dependence on China. Yet, despite this, China has not been able—or willing—to exert the kind of pressure on North Korea that the West has demanded of it. There have been some possible signals of adjustments in China's North Korea policy, and regime change in both countries opens up new challenges and possibilities. However, the extent to which these will actually result in change remains to be seen. What this likely means is that, in the near term, the status quo will continue. China will continue to support North Korea economically as well as politically, when needed for its own advancement.

South Korea's "New Silk Road" to Central Asia: Diplomacy and Business in the Context of Energy Security

By Alison Evans

I. INTRODUCTION

Security for the two Koreas is most immediately conceived of in military terms. However, energy security has not only played an integral role in the Republic of Korea (ROK)'s meteoric rise since the 1970s, but also has shaped the South's diplomatic and economic expansion since the early 1990s. As an energy-poor country with an energy-intensive economy, the ROK is forced to import the vast majority of its energy sources. It must do so from the distant energy hubs of the Middle East and Central Asia, putting supply at risk to stability in these areas, and compete with equally energy-hungry neighbors such as China and Japan. Yet, as South Korea seeks to diversify its energy sources away from the Middle East, it has comparative advantages relative to its Northeast Asia neighbors and competitors further afield: the ROK represents a recent economic miracle, smaller and less threatening than China, and boasts aggressive conglomerates not put off by high-risk, long-term investments.

This paper first explores South Korea's energy security and its internal catalyst for diverse ties with Central Asia, and then focuses on Central Asia as an arena where the ROK's diplomacy and business are closely linked with its energy interests. Finally, I contextualize South Korea's "New Silk Road" to Central Asia in its comparative advantages with two brief case studies of Kazakhstan and Uzbekistan.

II. ENERGY SECURITY

Overview

Although President Richard Nixon spoke of "energy independence" in 1973, energy security now implies not the practically unattainable energy autarky, but stability and predictability of supply and demand. For consuming countries, this means reliable supply at reasonable prices, and for exporting countries, this means "sufficient access to markets and consumers to justify future investment," according to Daniel Yergin's 2006 *Wall Street Journal* article, "What Does 'Energy Security' Really Mean?" The principles and policies underpinning energy security are (1) mitigating disruptions like the 1973 oil embargo; (2) avoiding any political and economic instability that strained the Western alliance in the

1970s; (3) diversification, “in terms of both sources of oil and in increased use of other energy supplies,” Yergin emphasizes; (4) energy efficiency; (5) long-term investment frameworks; and (6) increased cooperation to protect increasingly complex supply chains. Two critical chokepoints to these congested supply chains are the sea lanes through the Strait of Hormuz, which carry 20 percent of the world’s oil supplies, and the Strait of Malacca, which transport “80 percent of Japan’s and Korea’s oil, and half of China’s,” according to Yergin. These primary energy resources are essential to economic activity and thus are a key cause for ROK vulnerability, due to its domestic energy trends outlined below.

South Korea: Consumption and Production

Between the 1960s and 1990s, South Korea’s supply-focused energy policies were aimed at “providing stable, reliable supplies of energy at low prices to enhance industrial competitiveness, fuel economic growth, and contain inflation,” according to Hoseok Kim, Eui-soon Shin, and Woo-jin Chung in the 2011 study, “Energy Demand and Supply, Energy Policies, and Energy Security in the Republic of Korea.” These policies were implemented mainly through centrally planned energy markets and government-controlled enterprises. This interventionist model drove industry, and then export-led growth, resulting in a “relatively energy-intensive economic structure” and environmental issues, according to the same study. The ties between authoritarian regimes (and even democratic governments after 1988) and South Korea’s *chaebol* conglomerates, and the vulnerabilities and opportunities the ties bring about, are the subject of further analysis in the context of Central Asia.

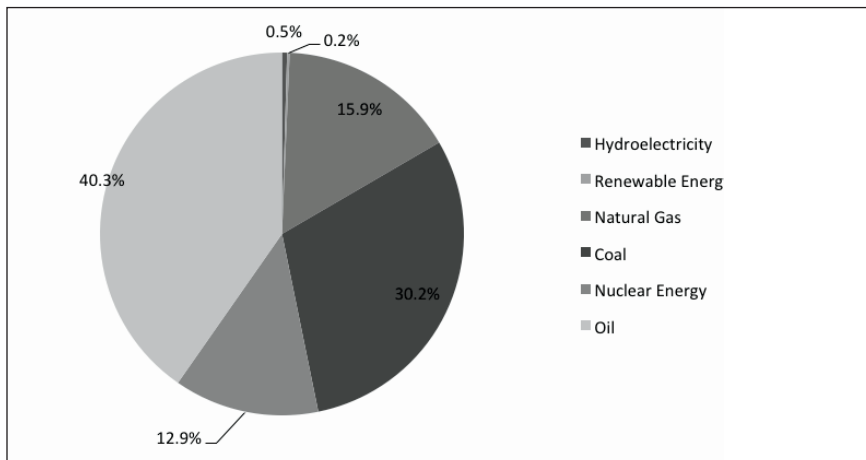
Korea’s first policy paper specifically addressing energy security was the first *National Basic Plan for Energy* in 2008, which offered a 20-year vision of the future of Korea’s energy resources. According to the Ministry of Knowledge Economy, the stated objective of *National Basic Plan for Energy (2008-2030)* is to “stably secure, introduce, supply and manage energy. [sic]” The *National Basic Plan for Energy (2008-2030)* explicitly links energy security and economic growth by identifying new “demands for manufacturing industry, service industry, and infra industry in countries having resources.” The plan lays out “custom-made” resource diplomacy for developing overseas resources, but identifies Korean energy enterprises’ relative inexperience compared to competitors from the U.S., France, and other developed countries. This inexperience is also revisited later in the discussion on South Korea’s comparative advantage.

The contents of the *Basic Plan* highlight the yawning discrepancy between the ROK’s consumption trends and its domestic resources or, more realistically, its means. South Korea’s energy consumption has risen sharply despite minimal population growth. According to Kim *et al.*, since 1994 industrial electricity use

has doubled while electricity consumption in the residential/commercial sector tripled—a fact that indicates that a decline in efficiency is partially to blame for the ROK’s increase in energy appetite. However, the major contributing factor to rising energy consumption has been the increasing importance of manufacturing in South Korea’s economy. In 1980, manufacturing accounted for 17.4 percent of total gross value added to Gross Domestic Product (GDP), increasing to 32.5 percent by 2008. Since 1998, the industrial sector has accounted for 55 to 58 percent of total energy demand.

Unfortunately the ROK has meager domestic energy sources to feed this consumption. Traditionally South Korea has imported relatively cheap coal mainly from Australia and almost all of its oil (over 80 percent, which provides 40 percent of its primary energy) and gas from the politically-volatile Middle East. Although South Korea’s consumption of nuclear energy constitutes over 5 percent of total world nuclear energy consumption, the ROK is still highly dependent on coal and natural gas as shown in Figure 1, both of which the ROK must import via congested sea lanes. Unlike China, which in December 2009 opened the first section of a pipeline from Turkmenistan, Afghanistan, and Tajikistan through which Turkmenistan will pump 30 billion cubic meters of gas, the Korean peninsula is geographically distant from energy sources, even those in Siberia. Moreover, any pipeline would have to pass through North Korea—posing political challenges and a new potential vulnerability for the South.

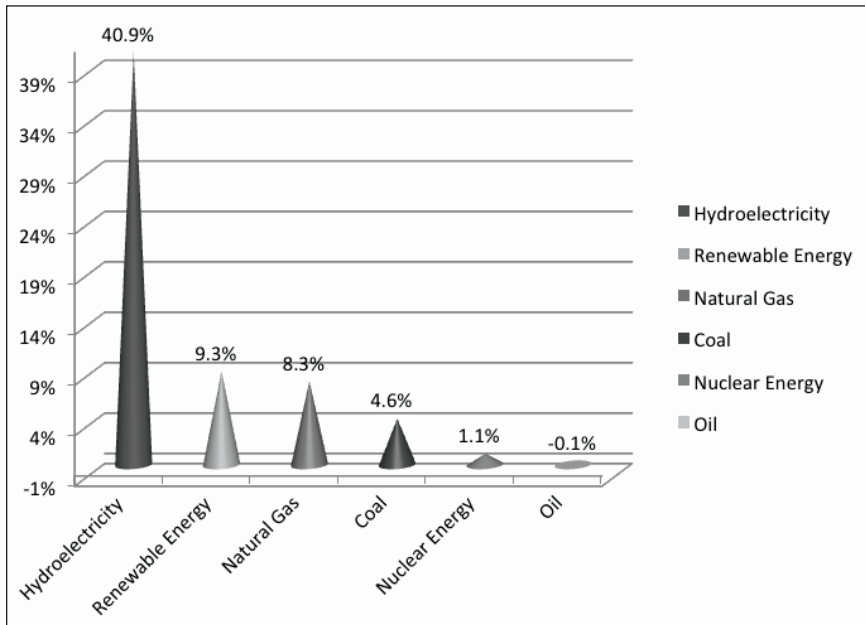
Figure 1. South Korea’s Energy Resources: Share of Total Energy Consumption by Type



Source: *BP Statistical Review of World Energy June 2012*

Thus the ROK is almost entirely and increasingly dependent on imports for its overall energy. According to Kim *et al.*, in 1980 it imported 60 percent of its total energy, increasing to 97 percent by 2007. Energy imports peaked at 97.6 percent in 2000. As the overall costs of energy rise, it may become economically viable for South Korea to tap its own minimal coal reserves and invest further in high-cost renewable energy projects such as wind farms. Another possibility is that South Korea may win access to oil resources along maritime boundaries with China. In the meantime South Korea has managed to make some progress on energy efficiency: according to ABB Group's *South Korea: Energy Efficiency Report*, in 2008 the ROK revised tax structures for certain fuels to incentivize renewable fuel use and fuel-efficiency in vehicles, causing a 3.7 percent decline in industry energy intensity and a 1.5 percent decline in annual intensity of primary use between 2000 and 2009. Unfortunately, however, as shown in Figure 2, these figures still pale in comparison to the latest figures of year-on-year increases in energy consumption.

Figure 2. Percentage Change in Consumption by Energy Source, 2010 to 2011



Source: BP Statistical Review of World Energy June 2012

Korea and its neighbors have no choice but to compete for these key resources in the far-flung Middle East and Central Asia, as well as Africa and South America. In response to this growing resource competition and other threats to its energy security, the ROK has strived to diversify its energy sources in geographic provenance and type (Crude oil and oil products as a percentage of primary energy supplies declined from 58 percent in 1981 to 42.2 percent in 2009). As for sourcing energy from different geographical locations, the ROK has sought to cooperate with states on developing oil and gas resources at all stages of the supply chain, from exploration to development, and has participated in Northeast Asian energy cooperation on research projects for pipelines, natural gas supply, electricity transmission, and coal mine development. This paper presents case studies of such projects and agreements in Kazakhstan and Uzbekistan.

In sum, the three core elements of the ROK's energy security are: (1) dependence on imported oil, coal, and gas due to a lack of domestic resources; (2) disproportionate reliance on the Middle East as identified in Kent Calder and Viktoriya Kim's academic paper, "Korea, the United States, and Central Asia: Far-Flung Partners in a Globalizing World," published by the Korea Economic Institute in December 2008; and (3) intensifying competition with its neighbors to secure energy resources. Central Asia is crucial to Korea as it addresses all three of these vulnerabilities through diversification towards gas and nuclear power and diversification away from the Middle East.

III. CENTRAL ASIA

Resources

Central Asia is rich in natural resources; it is estimated to have 3 percent of the world's crude and 6 percent of the world's gas reserves. Specifically, according to Myers Jaffe's 1998 publication, while Turkmenistan has significant reserves of natural gas, 80 percent of the region's oil reserves are in Kazakhstan. Kazakhstan has almost 40 billion barrels of oil, 33.6 billion tons of coal, and 12 percent of the globe's proven reserves of uranium. As shown in Table 1, Uzbekistan also has some natural gas and 2 percent of uranium reserves. John Daly wrote in "Central Asia's Energy Chessboard" published by *World Political Review* in 2008 that Kyrgyzstan and Tajikistan are poor in hydrocarbons but have hydroelectric potential. Significantly, the *BP Statistical Review of World Energy June 2011* shows that the fraction of global proven oil reserves in Eurasia also increased by 2 percent between 1990 and 2010, in part thanks to exploration and extraction projects joint-driven by Northeast Asian companies and national energy corporations.

Table 1. Central Asia States' Energy Reserves and Production

		Kazakhstan	Turkmenistan	Uzbekistan
Proven oil reserves	Volume (billion barrels)	39.8	0.6	0.6
	Percent world total	2.9%	<0.1%	<0.1%
	Percent world production	2.1%	0.3%	0.1%
Proven natural gas reserves	Volume (trillion cubic meters)	1.8	8.0	1.6
	Percent world total	1.0%	4.3%	0.8%
	Percent world production	1.1%	1.3%	1.8%

Source: *BP Statistical Review of World Energy June 2011*

Particularly as events such as the Arab Spring shake long-standing Middle Eastern authoritarian regimes, the land-locked petro-states of Central Asia are objects of increasing interest by energy-hungry economies like China, Japan, and South Korea. However, contingencies—such as Moscow's lingering influence, the prospect in the near future of political instability through the disintegration of authoritarian power, and vulnerability of access to the sea-lanes via pipelines that pass through other equally or more opaque states—may deter potential investors.

Significance for South Korea

Central Asia not only provides imports of oil, gas, and uranium which are key to Seoul's ambition of energy supply security but is also a market with promising potential growth for the ROK. The region is abundant in natural resources used in both energy supply and in manufacturing. According to Oxford Analytica's *Central Asia/South Korea: Resources Are but One Tie* in 2009, "Central Asia ranks first in terms of proven reserves of zinc, tungsten, and barite and second in terms of silver, lead, and chromium... [and] holds substantial coal, gold, and uranium." South Korea trades these commodities for plastic manufactures, consumer goods, electronics, automobiles, and heavy machinery. In the future, the ROK hopes to also target Central Asia for its growing defense export industry. Lastly, the relative underdeveloped state of these countries' economies and their authoritarian governments make them prime targets for aid and the ROK's growth model. According to Oxford Analytica's 2009 report, the complementarities of this three-pronged strategy (diplomacy, trade, and aid) are undergirded by Korea's motivation to "increase its global diplomatic voice to a level commensurate to its economic position."

IV. SOUTH KOREA'S NEW SILK ROAD

Aid and Memoranda of Understanding have been the two major channels of the ROK's government initiatives to address its energy needs through relations with Central Asia, especially the Central Independent States (CIS: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Uzbekistan). Korea opened embassies and Cultural Centers in many CIS capitals soon after the Soviet Union's collapse and steadily increased interaction from 1996. According to Lee Joon-beom, chief of the Planning Division at the Korean National Oil Corporation (KNOC), South Korea was at first more interested in Russian resources and business, but became discouraged by the unexpected license expirations for foreign firms after President Vladimir Putin came to power in 1999. As a result Seoul decided to follow firms like LG and "utilize [the *chaebol's*] advantage in Central Asian countries."

Aid

Although the ROK was a net recipient of aid until the 1990s, it began disbursing financial aid after establishing the Economic Development Cooperation Fund (EDCF) in 1987 and the Korea International Cooperation Agency (KOICA) in 1991. A Ministry of Foreign Affairs and Trade (MOFAT) mandate issues aid in the form of grants through KOICA, while loans dictated by the Ministry of Strategy and Finance are provided by the EDCF. In 2010, Korea finally acceded to the Organization for Economic Co-operation and Development (OECD)'s Development Assistance Committee (DAC) and ratified a legal basis for the Overseas Development Aid (ODA) it had already been providing for over 20 years. Although the ROK's volume of aid is still relatively modest for an OECD country, subsequent to a 2008 review it identified 26 priority partners and steadily increased aid volume up to \$1.321 billion through 2011. Specifically, the proportion of total aid allocated by KOICA to Eastern Europe and Central Asia rose by 1 percent in 2010 up to 5.7 percent in 2011; Azerbaijan and Uzbekistan (rich in oil and gas respectively) were the top recipients, as shown in Table 2. The sector receiving the bulk of aid from the ROK (42.9 percent) was energy and industry, with education a distant second at 23.6 percent. Azerbaijan even received the second most energy and industry sectoral aid from KOICA worldwide in 2011.

Table 2. Top 5 Eastern Europe/CIS Recipients of KOICA Aid in 2011

Rank	Country	Disbursement (millions KRW)	% Region's Total Aid Disbursement
1	Azerbaijan	11,663	45.5
2	Uzbekistan	7,288	28.4
3	Armenia	1,514	5.9
4	Kazakhstan	1,512	5.9
5	Turkey	1,319	5.1
	Total	23,296	90.9

Source: *Korea International Cooperation Agency: Annual Report 2011*

In 2011, the top Central Asian recipients were Kazakhstan and Uzbekistan (Azerbaijan is in the Caucasus, Armenia in the Balkans, and Turkey in Eastern Europe). These two resource-rich states are additionally interesting case studies because South Korean involvement in Uzbekistan has been mainly government-led, while in Kazakhstan it has been driven by private firms. Central Asia and its energy and industrial sectors are becoming increasingly important targets for ROK aid. Moreover, Korea has been criticized, notably in the OECD DAC Peer Review, for its lack of transparency regarding its choice of priority countries and regarding tying aid to trade. Consequently there are strong indications that multiple national interests, including energy security, are part of Seoul's aid disbursement calculations.

Diplomacy

In addition to economic incentives for collaboration, Seoul also employs diplomatic soft power to foster strong relations with Central Asia. In November 2007, the first Korea-Central Asia Cooperation Forum was held in Seoul under Prime Minister Han Deok-su and Minister for Foreign Affairs and Trade Song Min-sun. The forum welcomed government officials, industry representatives, and academics to establish regular annual dialogue and promote the Korean development model. In July 2012, the Ministry of Foreign Affairs and Trade again hosted the sixth annual South Korea-Central Asia Cooperation Forum in Seoul. Over 100 policymakers, businesspeople and scholars from Korea, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan took part in various discussions on the 20th anniversary of diplomatic relations between South Korea and these former Soviet Union republics.

In particular, President Lee Myung-bak has focused more on Central Asia than his predecessors. Soon after his inauguration in February 2008, he called for a refocus of foreign policy in the New Asia Initiative during his tour of Southeast Asia in March 2009. He then launched the “New Silk Road Diplomacy” program on a visit to Central Asia in May 2009. The initiative upgraded Kazakhstan and Uzbekistan to strategic partners and led to the signing of Memoranda of Understanding to develop Central Asian resources, build power plants, and establish Internet networks in Kazakhstan. President Lee even revisited the region during his term in August 2011. In the interim, many high-level exchanges took place with all six Central Asian republics (Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan). Kazakhstan in particular has hosted ROK ministers from the following ministries: the Ministry of Environment and the Ministry of Knowledge Economy in October 2010; the Ministry of Foreign Affairs and Trade in December 2010; the Ministry of Culture, Sports, and Tourism in January 2011; and the Ministry of Strategy and Finance in May 2011. According to Linda Blachly’s 2010 article for *Air Transport Online*, the aims of Seoul’s tailored “cooperation programs” with Central Asian states are to secure natural resources and to build industrial infrastructure in the region, which supports Korean energy, trade, and cultural interests and paves the way for Korean construction, manufacturing, and telecommunication firms in the region.

However, Seoul’s aid and bilateral agreements have often followed major business deals for Korean conglomerates in Central Asia. Specifically, President Lee’s first visit in 2009 secured three high-profile, high-investment deals, but only after long-standing *chaebol* presence in the region. According to Oxford Analytica’s 2011 report, *Central Asia: Seoul’s Incremental Engagement Pays Off*, these were, “a 4.0 billion dollar agreement to build a petrochemical complex in Atyrau (western Kazakhstan); another 4.0 billion dollar contract to build two power plants in Balkhash (eastern Kazakhstan)...; and a 4.1 billion dollar deal to develop Uzbekistan’s Surgil gas field.” The next section discusses this catalytic force of Korean firms, which represents one of Korea’s comparative advantages when dealing with Central Asian states.

V. THE ROLE OF THE CHAEBEOL

Korea’s diplomacy and government funding in the region has either followed or simultaneously complemented its major firms’ economic expansion into the former Soviet states. According to Oxford Analytica’s 2011 report, *chaebol* (industrial conglomerates) “offer a number of needed services across business sectors... [ensuring] trade flows by handling multiple sides of each transaction, including exporting capital equipment, financing, supplying infrastructure and even finding export markets [*sic*].” Their “formidable” marketing skills and

ability to “efficiently procure and assemble the specialized components and services required to build and operate large-scale” projects mean that *chaebol* are highly competitive in infrastructure and resource-extraction businesses—enterprises essential to energy security for South Korea and to development for Central Asian states. However, during the 1980s despite President Roh Tae-woo’s Nordpolitik policy, South Korea “was almost wholly excluded, in both business terms and diplomatically” from Central Asia due to Soviet restrictions. Subsequently, in the 1990s the Korea Trade-Investment Promotion Agency (KOTRA) significantly encouraged *chaebol* interest in the region for both post-cold war political interests (i.e., further isolating North Korea) and commercial interests.

Particularly in Eastern Europe and Central Asia, “*chaebol* seek ‘first mover’ advantage over more cautious investors,” according to Oxford Analytica’s 1997 report. For example, in June 1997, Daewoo purchased a 40 percent stake in Kazakhtelecom for \$1.37 billion. Daewoo also built a new automobile factory in Uzbekistan and was the fourth largest seller of cars in CIS and Eastern Europe at 165,000 vehicles (after AvtoVAZ of Russia, Volkswagen, and Fiat). According to Business Monitor International in 2012, the *chaebol* calculate that “making early, high-profile investments creates political goodwill [with the region’s authoritarian governments] which can be used to facilitate further activities.” For example, Daewoo International, the diversified conglomerate that emerged from the collapse of the Daewoo Group in the early 2000s, is a partner in nine upstream permits in Myanmar, Uzbekistan, Vietnam, Peru, and Oman. The *Korea Herald Online* wrote in 2012, “A multitude of state-run and private Korean businesses including Samsung, LG, and Hyundai Engineering are building power and chemical plants, renovating refining facilities or drilling gas in Kazakhstan, Uzbekistan and Turkmenistan [*sic*].”

While not all of these *chaebol* investments in Central Asia have been energy-related, such large investments are vital to economic growth, both directly and indirectly facilitating South Korea’s regional resource acquisition. Thus, *chaebol* investments, KOICA aid, and diplomatic overtures are mutually reinforcing. Business Monitor International even went so far as to claim that, in its quest for energy security, the ROK has developed a “standard strategy” offering “development assistance to poor countries in return for access to their hydrocarbon reserves” both through public and private channels.

VI. TWO CASE STUDIES: INTERDEPENDENCE AND KOREA’S COMPARATIVE ADVANTAGE

The above sections highlight two elements of Korea’s comparative advantage: (1) its recent economic rise making it a non-threatening and yet relatively

generous donor, and (2) its conglomerates' ability to invest in long-term, potentially high-risk, multi-sector projects that can enhance energy security. Indeed, the most significant gains for Korea's trade and energy security have been won through coordination between Korea's two main actors in Central Asia, the government and the *chaebol*. Trend D. Azizov wrote in "Korea Willing to Continue Contributing to Central Asia's Development" (2012) that "Trade turnover between Korea and Central Asian countries increased by 180 times up to \$2.7 billion in 1992-2010." According to Lee of KNOC, diplomatic and business efforts tend to be complementary: either firms initiate commercial negotiations and diplomacy takes over when agreeable terms cannot be reached, or inter-government agreements are signed and must be implemented by private companies.

Two states that naturally lend themselves to comparison are oil-rich Kazakhstan and gas-rich Uzbekistan: their interaction with South Korea has been largely firm-led or government-led respectively. In 2004 and 2005, President Roh Moo-hyun visited Kazakhstan and Uzbekistan to secure oil, gas, and uranium energy sources. In May 2011, the Ministry of Strategy and Finance announced that Kazakhstan and Uzbekistan (the largest and most resource-rich countries in the region) would garner comprehensive cooperation packages while the smaller states would benefit from deal-by-deal cooperation. In May 2008, Prime Minister Han Seung-soo led a delegation on a ten-day trip to Azerbaijan, Kazakhstan, Turkmenistan, and Uzbekistan to increase South Korean corporate awareness of potential partnerships and facilitate lucrative agreements.

Uzbekistan

Korea is Uzbekistan's fourth-largest trading partner. Their annual trade turnover increased 30 percent between 2009 and 2010 to \$1.5 billion and investment totaled over \$1 billion. South Korea has invested over \$5 billion in Uzbekistan, primarily in Navoi's free industrial economic zone with Hanjin's intercontinental logistics center. Hanjin, the parent company of Korean Air, has invested in a hub and opened a new cargo terminal there in the hopes that it will become the focus of the modern day "Silk Road," anticipating increases in goods and people-to-people exchanges. These investments in infrastructure, specifically logistical infrastructure, are also in the interest of extraction of energy resources because they will make the supply chain and distribution processes more efficient and effective.

There have also been governmental exchanges between Uzbekistan and South Korea. In November 2011, the fifth annual South Korea-Central Asia Cooperation Forum was held in Tashkent, Uzbekistan. Han Seung-soo's visit in 2008 resulted in a prime-ministerial agreement to export 2,600 tons of uranium

to South Korea, while the companies Uzbekneftegaz and Kogas signed a \$1.8 billion agreement to explore the Surgil gas field. During President Lee Myung-bak's May 2009 visit, KNOC and Uzbekneftegaz signed a Memorandum of Understanding for exploration and production rights in five fields in the eastern Namangan-Tergachi and Chust-Pap regions, estimated to hold 67 million barrels and 13.1 billion cubic meters of oil and gas reserves. Business Monitor International writes, "In return for upstream stakes, KNOC has agreed to help finance infrastructure projects." When President Lee visited in August 2011, he launched a \$2.6 billion investment project to construct the Ustyurt gas chemical complex.

According to Lee of KNOC, it was these "diplomatic relations [that] initiated energy projects" in Uzbekistan. Unfortunately, the projects first proposed during Kim Dae-jung's administration have been less successful than extraction and production efforts in Kazakhstan, chiefly for geological reasons. (With reserves deeper than 3000 meters underground, even if drilling were successful oil may not flow freely).

Kazakhstan

Korea is Kazakhstan's fourteenth-largest trading partner with annual trade steadily increasing. Between 1995 and 1996, trade between the ROK and Kazakhstan more than doubled from \$135 to \$300 million, which accounted for approximately 3 percent of Kazakhstan's total trade volume, according to a 1997 article from the *Korea Herald*. Between 2009 and 2010, total trade rose by 50 percent reaching \$760 billion. By 2009, South Korea had invested \$976.5 million in Kazakhstan. Kazakhstan received significant Foreign Direct Investment (FDI) from Samsung in copper and gold, from Daewoo in electronics, telecommunications, and infrastructure, and from LG in televisions. In 2007, the Korean Consortium for the Caspian Oil Project, which includes SK, LG, Samsung, and Daesung, acquired a 2 percent share in the Zhambyl offshore block in cooperation with the company Kazmunaigas. In May 2008, Prime Minister Han's delegation negotiated agreements for Samsung to construct a \$4.5 billion plant and for KNOC to acquire a 27 percent stake in Kazakhstan's Zhambyl oil block.

LG funding four projects, before requesting government backing, by proposing joint-efforts with KNOC exemplifies the complementarity between business and diplomatic enterprise in Kazakhstan. Similarly, Lee of KNOC asserted that it was only after the *chaebol* had initiated projects that "diplomatic relations between South Korea and Kazakhstan allowed KNOC to have even more opportunities."

VII. CONCLUSION

Energy resources are key to economic growth and therefore to domestic stability. The search to secure diverse energy supplies near and far is never-ending; for example, in 2012, Daewoo, STX, and Australia's Woodside Petroleum initiated exploration for oil and gas off the Korean peninsula's east coast. Also in 2012, the ROK was in talks with Russia about the possible construction of two pipeline routes (one each for oil and gas) overland via North Korea or undersea direct to the South which would "dramatically alter Korea's hydrocarbons equation... currently based on expensive sea cargoes," according to Business Monitor International.

Central Asia is therefore a natural partner for the ROK to mitigate energy insecurities through efficiency, nuclear power, and renewables at home, while diversifying resources and geographic sources overseas. The complementarity between these energy security interests and economic growth is embodied in the dual progress of securing the necessary resources for its own economy while developing consumer markets for future exports. The positive externalities of diplomacy and business in Central Asia for Korea are (1) mitigating disruptions to its energy supply chains; (2) avoiding political and economic instability in its energy suppliers; (3) diversification of geographic provenance and type of its energy sources; and (4) long-term investments in states that have the potential to become strong trading partners.

In competing with other Northeast Asian energy-hungry giants like China and Japan, the ROK must rely on its comparative advantage to continue to garner major extraction, operation, infrastructure, and industrial projects. Not only does South Korea offer an example of Asian development more broadly applicable than China's, but also its government and businesses are less interested in addressing domestic political corruption or authoritarianism than Western investors. Thus Korea's comparative advantage stems from (1) its economic development model; (2) its octopus-like *chaebeol*; (3) its small size, allowing it to escape neo-colonial criticism; (4) its decision to tailor its approach to each country; (5) its possible perception as a balancing act against China's growing influence; and (6) its image of a state that places economic ties over political influence. In particular, the *chaebeol*'s all-round expertise predisposes them to "fulfill the wide-ranging needs of post-communist economies," Oxford Analytica emphasized in 1997.

The three concerns of the ROK's energy security are (1) dependence on imported oil, coal, and gas due to a lack of domestic resources; (2) disproportionate reliance on the Middle East; and (3) intensifying competition with its neighbors to secure energy resources. Korea's interest in and ties to Central Asia revolve

around three themes: energy, trade, and diplomacy. Broader challenges facing Korea and its energy security are the risks associated with potential reunification and with the growing involvement, or at least interest, of civil society at large in nuclear energy post-Fukushima. In recent years, external and internal factors—such as supply security and environmental concerns—have led the ROK to redraw its energy policies and focus its diplomatic and commercial efforts into ties with Central Asia: in September 2012, on a visit to Astana, Kazakhstan, President Lee Myung-bak stated, “By reducing this dependence [on the Middle East] through energy cooperation with Central Asia, South Korea will improve its energy security.” The ROK’s New Silk Road to Central Asia, in particular Kazakhstan and Uzbekistan, has been clearly charted; progress thus far an economically and strategically mutually beneficial journey.

APPENDICES

Table 3. ROK Energy Consumption – volume, percentage, and change 2011 over 2010

Type of Energy	Units	2011	Share of Total Consumption	Change 2011 over 2010
Oil	Million Tons	106	40.29%	-0.10%
Coal	Million Tons Oil Equivalent	79.4	30.18%	4.60%
Natural Gas	Million Tons Oil Equivalent	41.9	15.93%	8.30%
Nuclear Energy	Million Tons Oil Equivalent	34	12.92%	1.10%
Hydroelectricity	Million Tons Oil Equivalent	1.2	0.46%	40.90%
Renewable Energy	Million Tons Oil Equivalent	0.6	0.23%	9.30%
Sum		263.1	100.00%	

Source: *BP Statistical Review of World Energy June 2012*

CHAPTER III: IDENTITY AND SOCIETY



Negotiating Away the Bloodline: North Korean National Identity and the Implications for Reunification

By Sean Nelson

I. INTRODUCTION

Due to the divided nature of the Korean peninsula, each Korean state has to explain why theirs is the sole legitimate Korea. This dilemma gives national identity issues a particular resonance on the peninsula. The following analysis will show that the Democratic People's Republic of Korea (DPRK)'s national identity norms create disincentives for DPRK political actors to enact reforms that would make reunification possible in the medium-term.

The Socialist Constitution of the DPRK commits it to pursue reunification. A key paragraph in the preamble states,

The great leader Comrade Kim Il Sung is the sun of the nation and the lodestar of national reunification. Regarding the reunification of the country as the supreme national task, Comrade Kim Il Sung devoted all his efforts and care for its realization. He made the Republic a powerful bastion for national reunification. At the same time, he set forth the fundamental principle and ways of national reunification and developed the movement for national reunification into a nationwide movement, opening the way for achieving the cause of reunification through the united efforts of the whole nation.

Chapter 1, Article 1 states that “the Democratic People's Republic of Korea is an independent socialist State representing the interests of all the Korean people.” Chapter 1, Article 9 reads “the Democratic People's Republic of Korea shall strive to achieve the complete victory of socialism in the northern half of Korea... and reunify the country.” However, policies that would help integrate the DPRK and the Republic of Korea (ROK) systems would violate key tenets of North Korean national identity. For instance, the DPRK emphasis on independence of action has led it to embrace nuclear weapons and missile tests at the expense of economic reform and growth, which hurts its ability to economically integrate with the ROK to promote reunification. As Stephan Haggard and Marcus Noland

write in “Sanctioning North Korea: The Political Economy of Denuclearization and Proliferation” in *Asian Survey*, such actions lead the DPRK to isolate itself as international sanctions are enforced.

All nation-states have national identities with normative components that help define which policy actions are acceptable for actors working within the state apparatus. After starting with all potential state actions, a state removes those policies it cannot pursue due to geographic and resource constraints, those policies it cannot enact due to other states’ reactions, and then those policies that violate this nation-state’s accepted normative framework. Domestic normative concerns can be a reason that states fail to take actions that, to an outside observer, make logical sense. Policies that make sense within one normative context look less attractive in a different normative context. Political actors, like water flowing down a mountainside, tend to choose the path of least resistance.

Within the realm of international relations theory, constructivism examines the role norms play in determining actor behavior. As Jeffrey T. Checkel in “The Constructivist Turn in International Relations Theory” in *World Politics* asserts, “constructivism has succeeded in broadening the theoretical contours of IR. By exploring issues of identity and interest bracketed by neoliberalism and neorealism, constructivists have demonstrated that their sociological approach leads to new and meaningful interpretations of international politics.” Felix Berenskoetter, in his piece “Reclaiming the Vision Thing: Constructivists as Students of the Future” in *International Studies Quarterly*, adds:

...that humans are capable of self-reflection to ask how they, as individuals and collectives, come to establish a sense of Self and what consequences this has for their behavior. To understand this process, the study of identity formation and its impact on international politics is central to constructivist work.

In order to show that North Korean national identity can obstruct, rather than facilitate, unification, this paper is organized as follows. First, this paper outlines the key contributing sources of North Korean national identity. Second, these sources are analyzed, showing how the individual components reinforce each other. Finally, this paper examines how North Korean national identity creates roadblocks toward major economic, political, and social reforms that could aid in drawing the two Korean systems together to facilitate reunification.

II. SOURCES OF NORTH KOREAN NATIONAL IDENTITY

North Korean national identity has four main sources of inspiration: (1) Korean culture and history, (2) localized Marxist-Leninist theory, (3) Confucianism, and (4) Japanese imperial race theory. The first two sources are explicit within the DPRK system. The latter two have been demonstrated implicitly through DPRK actions and works.

Korean Culture and History

After Kim Il-sung came to power in the North, one of his goals was to imbue the North Korean people with a sense of Korean nationalism. The Japanese imperial system subordinated Korean identity under Japanese identity. According to Key P. Yang and Chang-Boh Chee in “North Korean Educational System: 1945 to Present” in *The China Quarterly*, in the centuries before Japan controlled Korea as a colony, the Joseon Dynasty implemented “a self-imposed submission to Chinese culture.” Against this backdrop, Kim Il-sung asked in 1955 “How can we teach our children to have national pride?”

One answer was reforming the education system. The DPRK education system was created in part to fulfill nationalist goals. The previous Japanese imperial and Joseon education systems had used Japanese and Chinese textbooks. The DPRK used Korean language *Hangul* textbooks instead. North Korean historians also sought to write a nationalist history of Korean civilization with clear lines separating it from Chinese civilization, rescuing Korean history from the Joseon Dynasty’s narrative. In their view, as Yöng-ho Chöe in “Reinterpreting Traditional History in North Korea” in *The Journal of Asian Studies* notes, Korea’s history had been “viciously distorted by the feudal ruling class, the *sadae chuii* [flunkeyism] followers, and the big-power chauvinists.”

John Curtis Perry, in his piece “Dateline North Korea: A Communist Holdout” in *Foreign Policy*, writes that North Koreans also assert that Pyongyang, “one of the world’s cradles of culture,” has always been superior to Seoul. This imbues the DPRK with greater historical and cultural legitimacy than the ROK. As Seoul continues to grow as a world megacity and Pyongyang relatively stagnates, the DPRK nationalist discourse has to rely on the past to assert Pyongyang’s superiority. Kim Il-sung also promoted the teaching of the Pyongyang dialect over the Seoul dialect in schools, according to Yong Soon Yim in “Language Reform as a Political Symbol in North Korea” in *World Affairs*.

Kim Il-sung placed both himself and his family at the nationalist discourse’s center. Kim Il-sung claimed that his great-grandfather in 1866 attacked the *General Sherman*, an American merchant marine vessel that was forcibly and

illegally trying to conduct trade in Korea, meaning his family had been fighting foreign imperialism since the mid-19th century, as illustrated in D. Gordon White's work "The Democratic People's Republic of Korea through the Eyes of a Visiting Sinologist" published in *The China Quarterly*. In Perry's words, Kim Il-sung's great-grandfather, Kim Ung-u, "is thus portrayed as the first Korean to strike a blow against American imperialism." Kim Il-sung's parents continued this pro-Korean, anti-imperial heritage by fighting against Japan. He himself fought against Japanese imperialism in the 1930s. Kim Il-sung's military background aided him in the DPRK's early days as well. Due to the North's status as a borderland through much of Joseon history, as Kyung Moon Hwang illustrates in his book *Beyond Birth: Social Status in the Emergence of Modern Korea*, military leaders and soldiers held a prominent and locally respected position in northern Korean society. This nationalist history portrays all of Korean history as leading up to Kim Il-sung and the founding of the DPRK.

If both national and family history gave Kim Il-sung the authority to lead the state, it also gave him the authority to pass on leadership through his family line. According to stories told in North Korea, in 1952, Kim Il-sung demonstrated his decision to eventually pass the mantle of political leadership of the DPRK onto Kim Jong-il by giving the younger Kim a handgun on a battlefield. Heonik Kwon and Byung-Ho Chung, in their book *North Korea: Beyond Charismatic Politics*, note that this ties Kim Jong-il directly to his father's anti-imperial pedigree, specifically to the elder Kim's fight against the United States during the Korean War. Official propaganda states that Kim Jong-il was born on the celebrated Mount Baekdu.

Official arts reinforce the importance of the anti-Japanese fight in crafting Korean nationalism. Kim Il-sung supposedly wrote many of the major DPRK operas and novels set in Manchuria during World War II featuring ethnic Korean heroes. Kim Jong-il directed a number of adaptations of his father's works. One example, *Sea of Blood*, is the story of a widow and mother from a farming village who suffers under Japanese imperialism in Manchuria and later joins the Anti-Japanese Guerilla Army. Through joining the nationalist struggle and revolution, she reclaims dignity for herself and her people.

Such works connect the anti-Japanese fight with developing Korean nationalism in a way that reinforces the Kim family's ruling legitimacy. Kwon and Chung describe how such works of art that are rooted in the past reinforce the state's legitimacy in the present as follows:

Within the formation of the partisan state, the history and myth of the Manchurian era cannot be relegated to a thing of the past but must be brought into actuality, time and again, as a

living history of the present. Kim Il Sung's heroism in the 1930s cannot be a legacy from the past but should be reenacted, re-experienced living heritage. In this sense, the concept of the theater state helps to explain the way in which the old heroism of the Manchurian partisans becomes an ever-new glory of the polity's contemporary life—that is, how North Korea's political history transforms into its political culture.

The DPRK's leaders have long understood this paradigm. As Kim Jong-il is reported to have said, “works which do not cater to the Party's requirements are of no use at all.” Cultural works have to be “socialist in content, national in form,” meaning that the regime encourages using Korean art forms to convey regime-approved messages.

Localized Korean Marxism-Leninism and Juche

North Korean historians have used Marxist-Leninist historical theories to reinforce the Korean nationalist historical narrative. By the early 1960's, the consensus among DPRK historians was that the *General Sherman* incident ushered in Korea's capitalist era. The logic, as illustrated in Ch'oe, is as follows:

This is the year when the first beacon flared for the national struggle against foreign aggression, which was the most important form of the people's movement throughout the modern period, and also marks the beginning of the transformation of our country from a feudal to a modern society as the new movement for modernization, such as the spread of the enlightenment idea, appeared against the background of maturing capitalistic relations.

This decision also served to further legitimize Kim Il-sung's rule. Choosing the *General Sherman* incident as the beginning of modern Korean history not only tied his family to the beginning of modern Korea, but also underscored the role of anti-imperial struggle as part of Korea's modern historical mission. Just as a capitalist period must precede a communist one in communist historiography, Kim Il-sung's family helped usher in Korea's capitalist era, but still in the service of fighting against imperialism. Considering historical inevitability's importance in Marxist-Leninist historical discourse, Kim Il-sung's rule and the DPRK's founding become not only necessary, but also destined.

The Korean Workers' Party has long been an explicitly revolutionary party. The first article of the party's 1956 regulations states, “the immediate goal of the Korean Workers' Party is to complete the anti-imperialist, anti-feudal,

democratic revolution on a national scale; the final goal is the construction of a Communist society.” According to Kim Il-sung, “anyone can become a Communist if he would dedicate himself to the struggle against all forms of exploitation and oppression and for the liberation and happiness of all men.”

Kim Il-sung did not wish to mimic Soviet or Chinese communism. When Kim Il-sung founded the DPRK, he understood his country was relatively small compared to the nearby communist giants. He wished for the DPRK to enjoy greater freedom of action than other small communist states. As he put it, “we are not engaged in the revolution of another country but in our Korean revolution.”

Kim Il-sung’s answer was *juche*, which puts the DPRK and the Korean people first in all matters. According to Bradley K. Martin in *Under the Loving Care of the Fatherly Leader*, *juche* emphasizes DPRK independence in the realms of economics and foreign policy. James E. Hoare in his *Historical Dictionary of the Democratic People’s Republic of Korea* defines the term as follows:

Juche revolves around two concepts: the people are the masters of their destiny, and they should remain independent of all outside influences. External contact and the acceptance of assistance are permitted, but the nation should avoid spiritual and psychological dependence and any sense of deference to stronger powers. While *juche* stresses the central role of human beings, people can play out this role only through subordination to a leader.

The DPRK Constitution’s first line reads “the Democratic People’s Republic of Korea is the socialist motherland of *Juche* which has applied the idea and leadership of the great leader Comrade Kim Il Sung.” During the Cold War, *juche* received greater attention than Marxism-Leninism in the DPRK. As White and Perry both note, bookstores were more likely to carry Kim Il-sung’s writings on *juche* than major Marxist-Leninist works.

In practice, *juche* represents North Koreans implementing Marxism-Leninism in a particularly North Korean context. *Juche* acts as the ideological weaponry that protects the DPRK from encroachment by the outside world, including the communist world, and its imperialist tendencies. B. R. Myers writes in *The Cleanest Race* that part of Kim Jong-il’s legitimacy was based on the idea he learned *juche* directly from his own father. Kim Jong-il protected *juche* with *seon-gun*: the DPRK’s military-first policy. *Seon-gun* is also popularly referred to as *chongdae cheollhak*, meaning “the barrel-of-a-gun philosophy,” which is a reference to Mao’s idea “political power grows from the barrel of a gun.” Kwon

and Chung illustrate the relationship between *seon-gun* and *chongdae cheolhak*. In practice, *seon-gun* is the military-first policy, while *chongdae cheollhak* grounds the military's primacy in society. Kim Jong-il described *seon-gun* as follows: "Our Party's Military-First Politics is founded on the philosophy of the gun barrel, which advocates that revolution is pioneered, advanced, and completed by the barrel of a gun." *Seon-gun* thus protects the *juche* state, allowing it to continue with its Marxist-Leninist policies and revolution. As a revolutionary party that based its legitimacy in the anti-Japanese fight, the Korean Workers' Party first needed a strong military hand to ensure control of the North and then ensure its Marxist-Leninist policies were implemented throughout society. *Seon-gun* simply reinforces this tendency and ensures the DPRK's independence of action.

While *seon-gun* helped Kim Jong-il leave his own distinct mark on DPRK politics, *chongdae cheolhak* granted him legitimacy by tying his policies to his succession story of his father gifting him a gun. In addition, the ideal DPRK citizen is also a gun willing to be wielded in the name of the state to protect the revolution. The purer one is, the better a weapon for the leader's use one can become and the closer to the nation's leaders one can stand. *Chongdae cheolhak* embeds the military in society, but while also standing over the society it militarizes.

Select works of officially sanctioned North Korean literature since the introduction of *seon-gun* have emphasized the ideal *chongdae* citizen. *The Great General of Sŏngun [Seon-gun] and the World of Love*, published in 2005, asserts that there is no greater love in the world than "the love and trust between the Leader and the army, between the Leader and the people." As a result, *seon-gun* becomes a "politics of love." Kim Jong-il, in this interpretation, instituted *seon-gun* because he loves his people. Elevating the military's status thus allows him to protect the nation and the revolution. If Kim Il-sung gave the people a purpose in *juche*, Kim Jong-il gave the people *seon-gun* to protect *juche*.

Modified Confucianism

As a matter of stated policy, the DPRK state rejects Confucianism. However, erasing centuries of cultural practice cannot happen overnight. The fact that the North Korean state has passed power down from father to son twice reinforces the idea that the state in part relies on Korean society's historical Confucian ethos. With that said, the North Korean state only draws on Confucianism when necessary instead of submitting to every Confucian norm. Confucianism in North Korea is a useful tool, not a dogma.

In practice, Kim Il-sung explicitly drew on Confucian filial piety. At Heartbreak Ridge, Kim Il-sung informed his army corps commanders to tell their men to “realize that it is the wish of their parents and the Party’s line that not even an inch of the sacred soil of the fatherland be yielded to the enemy.” Kim Jong-il emphasized his “pure revolutionary line.” Martin asserts that this revolutionary bloodline, drawing on Confucianism, formed the cultural basis for the carefully coordinated leadership transition from Kim Il-sung to Kim Jong-il. After Kim Il-sung’s death, Kim Jong-il observed three years of official mourning, using policy to uphold a Confucian norm. Jae-Cheon Lim in “North Korea’s Hereditary Succession: Comparing Two Key Transitions in the DPRK” in *Asian Survey* points out that the DPRK state emphasizes Kim Jong-un’s physical similarity to Kim Il-sung in order to grant the younger Kim greater legitimacy, thus further reinforcing the patriarchal line as the basis of the latest Kim’s rule. State officials excuse the DPRK’s relative material poverty by drawing on what Patrick McEachern in “North Korea’s Policy Process: Assessing Institutional Policy Preferences” in *Asian Survey* refers to as the “clean poverty” ethos within Confucianism, which he defines as “how the state is virtuous, especially in times of corruption or material domination, not despite but because of its material poverty.” DPRK officials thus use the Confucian cultural context in Korean history to tie poverty and morality together during times of economic trouble.

With this said, the DPRK state has ignored Confucian norms when necessary. When the author of *The Great General of Sŏn’gun [Seon-gun] and the World of Love* describes Kim Jong-il’s love for his people as “the affection that is as strong as the entirety of love shown by 10 million parents to their children,” the author applies the Confucian parallel between fatherly responsibilities to their children and the emperor’s responsibilities to their subjects. However, the author also subverts this Confucian ethos by using this norm to elevate and praise a Marxist-Leninist secular leader. Similarly, as Peter M. Beck points out in “North Korea in 2011: The Next Kim Takes the Helm” in *Asian Survey*, Kim Jong-un has not followed his father’s example and observed three years of mourning, but has instead already publicly assumed control, such as becoming the head of the Korean People’s Army. This is due to the much shorter transition period Kim Jong-un experienced than Kim Jong-il. Finally, Kim Jong-un inherited his father’s leadership role despite not being Kim Jong-il’s eldest son. While political power was kept within the family, the latest power transition did not follow along strict Confucian lines.

Japanese Imperial Race Theory

During Japan’s imperial rule in Korea, Japanese propaganda aimed to convince Koreans that both the Korean and Japanese peoples were brothers in a unified race. A number of Korean collaborators moved to the DPRK. An official history

of the early postwar period posits that “the Great Leader Kim Il Sung refuted the mistaken tendency to doubt or ostracize people just because they... had worked for Japanese institutions in the past.” Kim Il-sung’s brother had been an interpreter working with the Japanese military in China. These collaborators ended up creating propaganda based on the Japanese imperial template. Koreans were a pure, “inherently virtuous” race that had suffered in a dangerous world. To quote B. R. Myers,

Like Kim [Il-sung], Hirohito appeared as the hermaphroditic parent of a child [meaning pure and innocent] race whose virtues he embodied; was associated with white clothing, white horses, the snow-capped peak of the race’s sacred mountain, and other symbols of racial purity; was said to be joined with his subjects as one entity, “one mind united from top to bottom”; and referred to as the Sun of the Nation (minjok ūi t’aeyang [*minjok-ui taeyang*]), the Great Marshal ([*daeweonsu*] taewönsu) whom citizens must “venerate” ([*bat-tteul-ta*] pattülda) and be ready to die for.

He goes on to write that “the North Koreans’ race theory gives them extra reason to want a leader who is both mother enough to indulge their unique childlikeness and father enough to protect them from the evil world.” When the ROK government hosted an American athlete who was ethnically half-Korean, an item in the official DPRK press read, “mono-ethnicity [*tanilsöng / danilseong*] is something that our nation and no other on earth can pride itself on... There is no suppressing the nation’s shame and anger at the talk of ‘a multi-ethnic, multi-racial society’... which would dilute even the bloodline of our people.” The ROK is portrayed as a bloodied woman, “a foul whore of America.” While South Koreans discuss immigration and intermarriage, the official DPRK media is already referring to Kim Jong-un as “the outstanding leader of the Korean race.”

Drawing on Japanese imperial race theory, DRPK propaganda emphasizes North Koreans’ purity, in contrast to South Koreans tainted by foreign influence. To an extent, the DPRK’s reinvention of Japanese imperial race theory can be interpreted as a form of internalization. Stuart Hall in “Gramsci’s Relevance for the Study of Race and Ethnicity” in *Journal of Communication Inquiry* defines “internalization” as “the ‘subjection’ of the victims of racism to the mystifications of the very racist ideologies which imprison and define them.” The use of the Japanese imperial racial discourse can thus be seen as North Koreans accepting the imperial era’s dominant discourse as true, then later modifying that discourse to fit a postwar context.

III. MUTUALLY REINFORCING NATIONAL IDENTITY NARRATIVES

The DPRK state is savvy about making sure these four national identity components reinforce each other. *Juche*, as a particularly Korean form of Marxist thought grounded in the Korean wish not to be subservient to outside powers, allows the regime to unite Marxism-Leninism with Korean nationalism. The regime finds the more authoritarian aspects of Confucianism useful, as these have been co-opted into a nationalist and authoritarian discourse in which the people implicitly consent to having this regime. Race theory allows the regime to assert its superiority over the outside world. The importance of the military runs through all four components as the lynchpin holding the system together. The lack of a free press and academia mean that the public cannot easily parse out any internal contradictions in North Korean national identity.

IV. DPRK NORMS

From the interplay between these sources of national identity, we can infer the following normative framework: (1) The DPRK must maintain independence of action. (2) The DPRK cannot be subservient to any outside power, including politically, economically, and culturally. This means that the DPRK must maintain relatively isolationist and Marxist-Leninist economic policies for the time being. (3) The Korean people must be culturally and racially pure. (4) The military holds a prominent place in North Korean society. (5) Kim Il-sung and his chosen successors are the personification of the Korean people. Kim Il-sung's founding of the DPRK was historically inevitable and necessary for the protection of the Korean people from foreign aggression.

This normative framework constrains North Korea's policy choices, as can be seen in many of its critical decisions. As White discovered while in the DPRK, during the Sino-Soviet split, DPRK officials said they chose neither the Soviet nor Chinese side, but instead supported "the Korean side." Throughout the Cold War, North Korea was relatively cut off from the rest of the communist world. Perry writes that rail and air connected Pyongyang only to Beijing, Moscow, Khabarovsk, and East Berlin, with only the Pyongyang-Beijing train active daily. Pyongyang maintained distance from even its closest allies.

Its normative framework also predisposes Pyongyang to take economic policies that may seem counterproductive to outsider observers who do not share the same framework. For instance, according to Don Oberdorfer in *The Two Koreas*, Soviet aid was on favorable terms. DPRK never repaid the Soviet Union's soft loans used to build factories. The Soviet Union also subsidized Soviet-DPRK trade, despite the fact that North Korea benefited more from Soviet-DPRK trade than the Soviets did. By the 1980's, the Soviet Union saw the DPRK as one of its

least vital client states. However, as Byung-Joon Ahn in “The Soviet Union and the Korean Peninsula” in *Asian Affairs* asserts, North Korea assumed that the Soviets would guarantee its security. Meanwhile, the DPRK state stopped paying interest on its debt to Western creditors in 1984, which in 1987 declared North Korea in default.

The normative framework even orients Pyongyang away from asking for aid in difficult times and away from anything that might undermine its sense of pride. Since the collapse of the Soviet Union, the DPRK has at times in effect traded away aid for the privilege of having its nuclear deterrent. As the BBC reported in 2012, the DPRK’s recent decision to sacrifice American food aid in exchange for conducting a missile test shows the regime is willing to sacrifice material economic benefits for pride. The DPRK does not want to become economically subservient to another country. While nation-states run like China and Vietnam have embraced reform to enhance state capacity and pursue policy goals, North Korea continues to shut itself off from the outside world, thus moving it away from an increasingly globalized and cosmopolitan ROK. The reasons for such internationally isolating moves are complex and in part reactions to outside powers, but in the end the DPRK has agency and has chosen its own path. While the DPRK has shown some flexibility in opening areas for overseas tourists and foreign investments, policy reform has not run as deep as in China because its policy choice is guided by a more constrained normative framework. As this analysis shows, the role of North Korean national identity cannot be ignored in presenting DPRK actors with certain incentives for policy action.

V. IMPLICATIONS FOR REUNIFICATION

Based on current force levels, as Jae-Jung Suh illustrates in “The Imbalance of Power, the Balance of Asymmetric Terror: Mutual Assured Destruction (MAD) in Korea” in *The Future of US-Korean Relations: The Imbalance of Power*, the DPRK will be unable to militarily reunify the Korean peninsula anytime soon. This means the DPRK will have to choose a less militaristic approach for reunification. Doing so would require bringing the DPRK closer to the ROK economically, politically and socially. However, the DPRK cannot do so without violating its own norms based on its national identity. This is not to say that the DPRK cannot reform, but that DPRK political actors face serious disincentives to enact substantial economic, political, and social reforms.

Economic Challenges

The DPRK lags behind the ROK on every economic indicator. According to the CIA World Factbook, in 2011 the ROK economy was estimated to be \$1.574 trillion, compared to \$40 billion in the DPRK. For the same year, the Gross

Domestic Product (GDP) per capita for North Korea was at \$1,800, while in South Korea it was \$32,100. The DPRK only exported \$2.557 billion and imported \$3.528 billion worth of goods and services, compared to \$552.8 billion and \$521.6 billion respectively for the ROK. South Korea's market is one of the most internationally integrated in the world, while North Korea's is relatively autarkic.

The DPRK cannot economically integrate with the ROK's larger, globally integrated market without forsaking its economic independence. Both the Asian financial crisis and the 2008 international financial crisis reflect integrated markets' vulnerabilities, while also creating further disincentives for the DPRK to integrate into the world economy. Integrating economically would also require the DPRK to recognize international economic norms, such as paying off its external debt. The ROK Ministry of Unification officials point out that the DPRK cannot finance major economic reforms as long as it is the subject of international sanctions for its nuclear program. Economically integrating with the ROK would violate both Marxism-Leninism and *juche*.

While the Chinese government has reformed while nominally claiming to be communist, the DPRK has rejected Chinese advice to reform for over a decade. Meanwhile, some analysts like Jaewoo Choo in "Mirroring North Korea's Growing Economic Dependence on China: Political Ramifications" in *Asian Survey* interpret DPRK rejections of Chinese advice as accusations of revisionism. In fact, the DPRK originally tilted towards the Soviet Union when China started reforming in 1978 because DPRK leaders viewed Chinese reform as revisionism.

Political Challenges

DPRK propaganda claims that "the south Koreans' most fervent wish, now as before, is to live in a free and united nation under the Dear Leader's rule," as opposed to living under the ROK's faux-elected leaders, who run a "puppet state" and a "Yankee colony." However, ROK citizens are unlikely to roll back hard-fought democratic gains. In 2012, Freedom House rated the ROK as "Free" with a score of 1 (with 1 being the highest) on political rights, 2 on civil liberties, and 1.5 on overall freedom. Meanwhile, North Korea was rated as "Not Free," receiving a low score of 7 on all three metrics. As the *Washington Post* reported in 2011, a majority of ROK citizens under the age of 40 do not believe that reunification is necessary.

Without enacting the necessary political and economic reforms, it is unlikely that the DPRK can make reunification more popular among ROK youth. The alternative to political reform within the DPRK would be Pyongyang integrating

under Seoul's control. After decades spent arguing that the DPRK system is the only one fit to rule over all Koreans, the DPRK leaders are unlikely to defer to a political system they see as subservient to Americans. Furthermore, since North Korean leaders see South Korea as culturally and racially polluted, they would have difficulty accepting rule under those seen as unclean. Each of the four components of DPRK identity supports the legitimacy of the Kim family to rule over all Koreans as their national personification.

Social Challenges

According to the CIA World Factbook, both the DPRK and the ROK remain rather ethnically homogenous. As noted in both Myers and *The Korean Herald* in 2012, both countries have conservative leanings towards issues like homosexuality. Religion is the biggest potential social divide between North and South. While state-sanctioned religious practice has been allowed in the DPRK since the 1970's, this is mostly for international consumption. Defectors claim the DPRK still curtails independent religious practice.

Meanwhile, in the ROK, a majority claim some form of religious belief. Using the KBS World numbers published in 2012, as of 2005, 53.1 percent of South Koreans claimed to be religious. The religious population was 43 percent Buddhist, 34.5 percent Protestant, and 20.6 percent Catholic. DPRK propaganda portrays Christianity as an American intrusion. Accepting these South Korean Christians would violate the DPRK vision of Korean nationalism and Japanese imperial race theory since these Koreans would be deemed impure for following a foreign religion imposed by foreign imperialists. Allowing for greater freedom of religion in the DPRK based on individual religious sentiment would threaten the state's monopoly on moral authority. Under the DPRK system, the Kim patriarchs are supposed to lead based on their moral authority. Accepting moral authority that comes from alternative sources outside of Korean indigenous culture and *juche* violates the idea of the Kim family being Koreans and their inherent virtuousness personified.

VI. CONCLUSION

Per the 2000 Joint Declaration, both the ROK and the DPRK note the common ground between the ROK's unification goals and the DPRK's stated wish for confederation. This arrangement potentially sidesteps many of the problems associated with reaching full reunification outlined above. However, this does not directly address sovereignty issues. According to Max Weber's definition, a state is sovereign if it "claims the *monopoly of the legitimate use of physical force* within a given territory [emphasis original]," meaning it has the only legitimate military means to impose its will. If the ROK and the DPRK continue to have separate

militaries under confederation, then both are sovereign. The military holds a special place in North Korean society and history, meaning the DPRK will likely be unwilling to unilaterally forfeit its military. However, if both states have militaries, they will still be in the same security dilemma. Putting a confederation superstructure on top of this security dilemma will potentially allow for mutual understanding leading to reform on the DPRK's end, but this would once again return the DPRK to the point where it will have to choose between key tenets of its national identity or reforming to please the internationally-oriented ROK. Such an arrangement would reduce the DPRK's normative dilemma, but not erase it completely. Confederation would present DPRK leaders the opportunity to pragmatically update DPRK norms, but this would require a level of self-imposed pragmatism Chinese leaders have embraced, but DPRK leaders have rejected.

Meanwhile, if both states had a unified military under confederation, such a military would be difficult to control due to differing norms and conflicting loyalties. While a unified military would create an institutional basis for potentially greater understanding, it would also risk creating an unwieldy command structure rife with factionalism and mistrust. Creating a functioning unified military under confederation that would be acceptable to all necessary stakeholders would require a high degree of political skill, support, and coordination simultaneously in Seoul and Pyongyang. Such a potentially unstable institution would be subject to demands for its end once any major divergences in the national interest between the two confederation partners appeared.

Sometimes a leader enacts liberalizing reforms unexpectedly and against great domestic resistance, like in Burma. However, DPRK leaders cannot do so without violating the central tenets of their nation-state's own identity. Doing so would risk de-legitimizing the state. This creates disincentives for DPRK political actors to enact reforms that facilitate reunification with the ROK. In particular, we currently do not know to what extent Kim Jong-un has consolidated power within the DPRK. We also do not know to what extent Kim Jong-un and other major actors personally believe liberalizing reforms are desirable. Even if Kim Jong-un does support reform, he will have to outwit political veterans in carrying them out. The outlook for the DPRK to enact meaningful reforms that can make reunification a reality in the medium-term is grim.

Unwelcome Migrants: The Plight of North Korean Refugees in China

By Dianna Bai

I. INTRODUCTION

In China's northeastern provinces, tens of thousands to as many as 300,000 North Korean refugees hide, waiting in the wings for an opportunity to traverse the road to freedom. Some escape from political persecution; others are in search of food and a more prosperous life. Condemned as traitors by their own country for the act of leaving and wholly unwelcomed by authorities of the country they risked their lives to enter, North Koreans fleeing to China find themselves in a precarious limbo, caught between two dangerous worlds while searching for a way to resettle in South Korea or the United States.

This paper examines the perilous journey of North Korean refugees in China. It explains their rightful status as refugees, subject to the protections guaranteed by international law, and shines light on China's continued inattention to international conventions in favor of domestic and regional political considerations. As a result, North Korean refugees hide from Chinese authorities, fearful of forcible repatriation to North Korea where they would be persecuted for defecting. This paper also considers the options the international community could take to help North Korean refugees in China, whether through public pressure or aid to civil society groups.

II. THE PLIGHT OF NORTH KOREAN REFUGEES IN CHINA

Since it is virtually impossible for the ordinary North Korean citizen to defect to South Korea by traveling through the heavily guarded Demilitarized Zone between the North and South, the majority of North Korean refugees escape the country through the Chinese border. Two rivers separate China and North Korea, the Yalu and the Tumen, with the slower and narrower Tumen generally serving as the natural boundary of choice for North Korean refugees to cross. With North Korean guards patrolling the border every few hundred miles, escapees must embark on a long and circuitous hike through the mountains to the Tumen River. Crossing the river is only the beginning of a harrowing journey for the refugees. Once in China, they face a host of problems that keep many confined to a difficult life with little hope of making it to freedom. A 2007 Congressional Research Service (CRS) report numbers North Korean refugees in China anywhere from 30,000 to 300,000 persons.

The dilemma of North Korean refugees in China stems from the Chinese government's refusal to recognize them as refugees or even as potential refugees. The main body of international laws protecting refugees is given in the 1951 Convention on the Status of Refugees, which recognizes a person as a refugee if he or she

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside of the country of his/her nationality and is unable to or, owing to such fear, is unwilling to avail him/herself of the protection of that country; or who, not having a nationality and being outside the country of his last habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The Convention defines the obligations of party countries towards refugees and especially emphasizes the *non-refoulement* stipulation, which states, "No contracting state shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion."

Despite being a signatory, China argues that North Koreans who escape across the border to China are "economic migrants" rather than refugees, temporarily residing in China to seek out food and money. China has not enacted concrete legislation to incorporate the dictates of the 1951 Convention for refugees more generally, but it does allow defectors of non-North Korean nationality to seek asylum with the United Nations High Commissioner for Refugees (UNHCR) office in Beijing. The Chinese government has expressly forbidden the UNHCR to operate in China's northeastern provinces, preventing them from working with North Koreans there. Chinese authorities summarily arrest North Koreans they find and repatriate them to North Korea, at the same time imposing fines of up to \$3,500 on those Chinese who aid them. Chinese patrols periodically search house by house in the northeastern provinces to seek out North Koreans hiding in Chinese households. Those refugees rounded up by Chinese patrols are held in detention centers near the Chinese border and then sent back to North Korea. A 2006 *Washington Post* article reported that Beijing began construction of barbed wire fences along the Tumen River border in 2003 and started erecting a barbed wire fence along the Yalu River in 2006.

Repatriation

China repatriates North Koreans for a variety of social, economic, and political reasons. Mikyoung Kim writes in 2010 that China is concerned about the social burden that a massive number of North Korean refugees would place on an already fragile system. Already aggravated by economic problems of unemployment, inflation, increasing inequality, and environmental degradation, among others, China fears that a more welcoming stance toward North Koreans will encourage an even bigger influx. Besides this, preoccupied with social harmony and stability, China is apprehensive about foreign influences that may increase the autonomy of ethnic Koreans in northeastern China.

The desire to maintain strong and stable relations with North Korea also has a bearing on China's repatriation policy. China and North Korea's alliance was forged in history and ideology. Ever since China defended North Korea in the Korean War, the two countries have enjoyed a "blood relationship" according to Liu Ming in 2003. Jayshree Bayoria in 2010 argues that China still views North Korea as a buffer zone for foreign aggression as it did during Japanese colonialism and the Korean War, especially as a barrier between South Korea and the 29,000 American military troops stationed there.

Certainly, North Korea is at the least a long-standing ally with ideological affinity to China in a region of unfriendly neighbors. Timothy Savage notes in 2003 the impact of China's neighbors on China's relations with North Korea. To the north lies Russia, a Chinese rival since the Sino-Soviet split and the subject of several border disputes. To the east lies Japan, a Chinese competitor for regional hegemony and a country with which it has a bloody and hostile history. Southeast Asia views China with increasing suspicion because of several territorial disputes in the South China Sea. A nuclear India to the south rivals China in population and fought a bitter border skirmish with China in 1962. In the far west, the Islamic militancy in the Central Asian Republics could provoke more aggressive Muslim separatism in China's northwest province, Xinjiang.

Finally, as two of the few remaining Communist strongholds in the world after the fall of the Soviet Union and the collapse of Communism in Eastern Europe, China and North Korea also reinforce each other's political legitimacy according to Andrew Scobell in 2002. For China, turning from North Korea means turning from its Communist brother in arms. As analyst Bates Gill explains in 2011, past history and ever-present commonalities have perpetuated a narrative of "morbid reminiscence" between China and North Korea that continues to influence China's North Korea policy.

Complicating the issue of refugee status in particular, North Korea's Ministry of State Security and China's Ministry of Public Security also signed a 1986 "Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order and the Border Areas" treaty, in which China agreed to repatriate all North Koreans who flee across the Chinese border. The agreement states,

- 1) Both sides shall mutually cooperate on the work of preventing the illegal border crossing of residents. In the case of crossing the border without possession of a legal certificate or without passing through screening agencies or the passage places stated on the possessed certificate, [the individual] shall be treated as an illegal border crosser [...]
- 2) Regarding individuals who illegally cross the border, depending on the situation, a name-list or relevant materials should be turned over to the other side [...]

Not upholding the procedure laid out in the 1986 agreement would be a unilateral deviation from the treaty for China.

North Korea views the outflow of refugees as a fundamental threat to its legitimacy because its national ideology builds on the belief that North Korea is the most desirable place on Earth. According to NGO leader Sokeel Park in 2012, refugees who escape to South Korea also serve as information sources about the outside world to their relatives in the North, eroding the government's control. Thus, the refugee outflow to China is an extremely important issue to the North Korean government and one that the Chinese government will not dishonor, given the importance it places on the relationship with North Korea.

Even more crucial than maintaining good relations with North Korea, Dick Nanto and Mark Manyan in 2010 contend that China's priority remains preserving the status quo on the Korean Peninsula and in the region. China increasingly views South Korea as a friend and important trading partner. The buffer zone argument is quickly becoming obsolete given the global nature of modern warfare. Moreover, China's relationship with North Korea could be more of a burden to China than an asset. China provides North Korea with aid and political backing while North Korea's provocations in the nuclear realm have drawn fury from the international community. Additionally, North Korea is slow to implement China's recommended economic reforms. However, China does not want to see political destabilization in Pyongyang—whether by economic collapse or political upheaval—as it would cause even more refugees to flood across the Chinese border and result in a greater economic and social burden

for China. The situation is like a pebble starting an avalanche. China cannot recognize North Koreans who cross the border as refugees because it would encourage a bigger exodus of refugees that might destabilize the regime and result in even more refugees.

Are North Koreans in China Refugees?

In March 2004, China's Foreign Minister Li Zhaoxing reportedly said in a press conference at the National People's Congress, referring to North Korean who cross the Chinese border, "These refugees that you talk about do not exist ... [They] are not refugees, but they are illegal immigrants." China often compares North Koreans who flee to the PRC to illegal immigrants from Mexico who cross the border into the United States in search of jobs and better opportunities.

At first glance, China's labeling North Koreans as "economic migrants" has merit. Data collected in a 2005 survey conducted by Stephen Haggard and Marcus Noland of North Korean refugees in China suggests the overwhelming reason why North Koreans respondents left their country was economic. Ninety-five percent of respondents stated economic factors as the primary reason for leaving, completely overshadowing political reasons (two percent) and religious reasons (0.2 percent). However, this comparison does not hold for two reasons: (1) the political situation North Koreans face at home prior to leaving and (2) the punishment they risk if repatriated to North Korea.

Push and Pull Factors

The first reason China should accept these runaways as refugees is the harsh political situation they face at home. In recent years, a myriad of push and pull factors have emerged to compel North Koreans to flee to China in larger and larger numbers. According to a 2002 Human Rights Watch report, push factors include the "loss of status, frustration over lack of opportunities, political persecution due to family history, and the wish to live in similar conditions as North Koreans living outside of North Korea." Pull factors stem from the erosion of the North Korean state's total control of information by word of mouth, new information technologies, and the circumvention of the state's information monopoly.

Melanie Kirkpatrick's *Escape from North Korea: The Untold Story of Asia's Underground Railroad* chronicles the ways North Koreans are learning about the outside world. First, North Korean exiles provide their family members and friends still in North Korea information about the wider world through illegal Chinese cell phones, remittances, and other interactions. Second, although only state approved broadcasts are allowed to air in North Korea, some North Koreans

turn to the black market for retrofitted devices or cheap Chinese radios that can pick up foreign stations such as Radio Free Asia or Free North Korea Radio, a refugee-run channel based in South Korea. Third, as information technologies proliferate, entrepreneurs are smuggling more South Korean DVDs, CDs, and videos into North Korea. The more North Koreans learn about the world outside their borders, the more enticed they are by the opportunities that it may hold for them.

The Allocation of Food and the Political System

However, despite all the attractive “pull” factors, the primary condition that induces North Koreans to flee across the border is still extreme poverty and, ever since the devastating famine of the 1990s, the shortage of food in North Korea. The plight of North Korean refugees who cross the Chinese border in search of food reflects not only the economic situation in North Korea but also the political situation. North Koreans live under a caste system where citizens are divided into “loyal,” “wavering,” or “hostile” classes based on family pedigree. A 2012 report published by the Committee for Human Rights in North Korea aggregates the evidence that such a system, referred to as *songbun*, commenced during Kim Il-sung era and continues to exist today. Descendants of those who fought Japanese colonial rule, those who fought in the Korean War, and peasants and laborers belong to the loyal class. Families of artisans, small shopkeepers, traders, and intellectuals educated under Japanese rule comprise the wavering class, while the hostile class includes relatives of those who collaborated with the Japanese or opposed Kim Il-sung, as well as families of businessmen, religious leaders, landlords, and those who fled the country. The distribution of food through the Public Distribution System (including international food aid) as well as housing, employment, and healthcare favors the loyal class and discriminates against the hostile and wavering classes. For example, those belonging to lower *songbun* classes have no chance of education beyond secondary school and therefore no possibility of advancement to more influential positions, relegating them to poor food security, housing, and medical care for the rest of their lives. Thus it comes as no surprise that the vast majority of North Korean refugees hail from the two unprivileged classes, according to a 2005 survey conducted by Yoonuk Chang. North Koreans who flee to China are most often escaping an inherently unjust political caste system.

Refugees Sur Place

The second reason China should recognize North Korean refugees is because of the punishment they face if they return to North Korea. According to the

UNHCR, a person can become a refugee even if he or she was not persecuted before leaving but would be after going back. Article 92(b) of Chapter 2 of the UNHCR Handbook states,

The requirement that a person must be outside his country to be a refugee does not mean that he must necessarily have left that country illegally, or even that he must have left it on account of well-founded fear. He may have decided to ask for recognition of his refugee status after having already been abroad for some time. A person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee *sur place*.

North Korean law considers defecting to another country an act of treason, punishable by death. International law guarantees the right of people to leave their own country, but North Korean Criminal Code Articles 117 and 47 stipulate that all North Korean defectors have committed a crime regardless of reason. In 2012, Roberta Cohen at the Brookings Institution described the treatment North Korean refugees face after repatriation: the North Korean state security forces hold all North Koreans who are repatriated from China in detention centers near the border, where they are questioned about their reasons for leaving the country and who they have been in contact while within China. Those defectors with political reasons for leaving or who have been in contact with Christian missionaries and South Korean NGOs are often sent to North Korea's infamous gulags, where they are subject to beatings, torture, starvation, and other cruel and inhumane treatment. The lightest sentence—for those who left North Korea for economic reasons—is at least three to six months in a labor training camp, where beatings and malnourishment also occur. Female North Koreans who are pregnant by Chinese men are often forced to have an abortion or to see their infant killed upon birth.

North Korean Refugee Vulnerability in China

Despite the desperate circumstances that North Koreans who cross the Chinese border face both before and after leaving their home country, China refuses to recognize them as refugees for the variety of reasons discussed earlier. Although China has tacitly allowed thousands of North Koreans to reside within China, those refugees have no rights due to China's official policy. As a result, they live in constant fear and anxiety and become prime targets for exploitation by employers and sex traffickers.

Haggard and Noland's 2005 study illustrates the dire employment conditions for North Koreans in China. Only 22 percent of the respondents reported holding a

job, while 78 percent of those respondents said they received meager rather than fair wages and a full 9 percent received none. Indeed, when North Koreans find their employers unwilling to pay, they have no way to redress these grievances. With no *hukou* (residence permit) or *shenfenzheng* (ID card), North Koreans are left at the mercy of their employers.

Sex Trafficking

Women and girls make up approximately 80 percent of North Koreans refugees who flee to China, according to Melanie Kirkpatrick in 2012. They are also the most vulnerable group, often becoming “commodities for purchase” for human traffickers. China’s One Child Policy, enacted in 1979, has skewed the male-to-female birth ratio and created a thriving market for North Korean brides in China. Aiming to control overpopulation, China has only allowed one child per couple for over three decades. However, in rural Chinese society, boys are valued more than girls. They can help as laborers on the farm, provide for their parents as they age, and carry on the family name. Therefore, many Chinese families choose to abort babies they know will be girls before they come to term or kill female infants shortly after birth. As a result, China’s current birth ratio is 118 males to 100 females, as reported by *The Guardian* in 2011, leaving millions of males with no chance of finding Chinese wives.

Spotting a lucrative business opportunity, a plethora of human traffickers has made their living finding North Korean brides for single Chinese men. Though traffickers mostly operate in the northeastern provinces of Jilin, Liaoning, and Heilongjiang where the ratio of young men to young women is an incredible 14 to 1, North Korean brides are sold all over the country, according to Kirkpatrick’s account. “Suppliers” travel to North Korea to seek out attractive young women in public areas, even following some women home to approach them about false employment opportunities in China. Once they lure the North Korean women into going to China, suppliers then sell them to “wholesalers,” who in turn sell the women to “retailers.” Brokers also entrap young North Korean women who independently cross the border, abducting them or again luring them in with false promises of jobs in factories. In some cases, Chinese border guards or police will pretend to arrest North Korean women for illegally crossing the border but then sell them to human traffickers or directly to Chinese men looking for brides. Once in the grasp of human traffickers, North Korean women suffer both physical and psychological abuse. Kathleen Davis’ 2006 article “Brides, Bruises and the Border” chronicles the dilemma of North Korean brides. The women are often beaten, locked up, and repeatedly raped as their captors attempt to break their spirit and turn them into complacent sex servants. Some are then forced to work in the sex industry as karaoke bar hostesses or prostitutes in brothels. The majority are sold as wives to Chinese men for anywhere from \$500 to \$1,000

depending on their age and appearance, after which they often continue to face physical and psychological abuse from their new husbands. Many women, however, agree to marry a Chinese man, the only available option they see for themselves aside from repatriation and starvation. Some of the men who buy North Korean brides are physically disabled or extremely poor and barely able to provide for the women. Even after marriage, North Korean women still have no proper documentation and continue to live in fear of being found by the Chinese authorities.

Possibilities and Impossibilities for China

One way for the Chinese government to assist North Korean refugees is to grant them temporary work visas or marriage licenses if they marry Chinese natives, providing a legal status that would protect them from exploitation and human trafficking. The Chinese government could potentially allow the United Nations to distribute economic aid to the refugees or set up refugee camps in the three northeastern provinces closest to North Korea. However, these possibilities are highly unlikely due to the fact that taking any such measures would require China to recognize North Korean escapees as refugees, break the 1986 treaty with North Korea, and potentially destabilize North Korea. It is not in China's best interest to encourage a larger influx of refugees by changing any official policy.

III. OPTIONS FOR THE INTERNATIONAL COMMUNITY

Because of the strong diplomatic relationship that continues to exist between China and North Korea and North Korea's insistence on the repatriation of refugees, the options for the international community are relatively limited. International NGOs must continue to operate in China to locate and guide refugees out of the country while exercising extreme caution in terms of their relationship with the Chinese government. Although official diplomatic actions are limited due to China increasing international importance in economic, political, and military affairs, the international community must continue to create humanitarian norms that can potentially influence China's unofficial policy.

Strengthening the Underground Railroad

Encouraging China to pursue a benign neglect policy—meaning China would quietly ignore North Korea refugees' presence—may be the best option. The 2002 asylum crisis in China serves as a cautionary tale for NGOs trying to bring too much inflammatory public attention to the refugee situation. Ming Liu writes in 2003 that from 1999 to 2001, China became more tolerant of North Korean refugees, gradually reducing the number of refugees forcibly repatriated to

North Korea and quietly allowing South Korean human rights and missionary groups to feed and shelter the refugees in the northeastern provinces. However, in 2002, emboldened NGOs helped dozens of North Korean refugees travel to Beijing to occupy the Spanish, American, and South Korean embassies. Chinese police reportedly violated diplomatic immunity by entering the compounds to remove the North Koreans. The situation devolved into a diplomatic row between China and South Korea and Japan. NGO leaders capitalized on this opportunity to publicize the refugees' plight, which ultimately altered the tacit compromise between NGOs serving North Korean refugees and the Chinese government. Subsequently, the Chinese government ordered a crackdown on North Korean refugees, conducting a massive search for refugees in Beijing and China's three northeastern provinces, immediately repatriating all the defectors they found. Furthermore, the Chinese government issued a warning to all foreign organizations to stop sheltering and aiding North Korean refugees and to abide by all Chinese laws and regulations. China went on to arrest and deport a number of NGO leaders involved in smuggling North Koreans into South Korea.

An important lesson that one can glean from the 2002 asylum crisis is that China tolerates the services of foreign NGOs who aid North Koreans so long as this does not become a political issue, especially one that humiliates the Chinese government on the international stage. In fact, this dynamic mirrors the attitude China holds toward its own domestic NGOs as well; the Chinese government can tolerate NGOs that provide valuable services that help keep China's "harmonious" society stable and that do not become political. Foreign civil society groups feeding and sheltering North Korean refugees lessen the burden placed on Chinese society by aiding these displaced persons, but when they stage a very public intervention such as occupying a foreign mission, they draw news headlines and cause embarrassment for the Chinese government, forcing a response.

As such, foreign NGOs should not be so eager to draw attention to the refugee crisis even though they serve as advocacy groups. Instead, they should shift away from public displays seeking asylum and concentrate on quieter but just as effective avenues of sneaking North Korean refugees out of China. The "underground railroad" through which foreign humanitarian NGO workers and missionaries guide North Korean refugees into Southeast Asia may be the most effective way of moving refugees to South Korea. Countries like Thailand, while also not recognizing fled North Koreans as refugees, will not repatriate them to North Korea but instead deport them to South Korea. Once the North Korean refugees arrive in a country like Thailand, they can seek asylum at the South Korean embassy, be deported to South Korea, or obtain a fake passport and fly directly into Seoul.

Due to a lack of sufficient resources at NGOs, only a handful of refugees each year travel on the underground railroad to Southeast Asia. Planning the journey requires time and extraordinary effort, as the railroad guides must discover and test out routes themselves before they can lead refugees on them. Mike Kim observes in *Escaping North Korea* that NGOs find themselves unable to help every North Korean who wishes to escape, instead having to choose to only help the most vulnerable refugees or those with the most valuable information. To help North Korean refugees who want to resettle in South Korea, the international human rights community should direct more resources to humanitarian NGOs and missionary groups helping North Koreans escape China quietly rather than supporting publicity stunts. By sparing China international criticism, this creates a space for China to tolerate the presence of North Korean refugees, especially if they are being channeled out of China and into South Korea quickly and quietly.

The Humanitarian High Ground: Pressure from the International Community and the UN

Although China is unlikely to grant North Korean border crossers official refugee status given its political consideration for North Korea, the international community and the UN may be able to encourage a benign neglect policy by raising the issue's profile in diplomatic and multilateral forums. As China becomes increasingly prominent on the international stage, it wishes to appear responsible and benevolent. As China analyst Wu Chengqiu in 2003 explains,

[As] a result of its domestic socio-economic development and its interactions with other countries, China underwent an identity change from a defensive power of bitterness and insecurity to a confident ascending power aspiring to take more responsibility, which inevitably redefined China's interest and made the country more receptive to international pressure and more willing to behave in accordance with international norms.

The United States, for instance, could raise the topic at the annual Strategic and Economic Dialogues held between China and the U.S. to indicate to China the issue's importance as a humanitarian matter. Doing so could induce China to take a more lenient position on repatriating North Korean refugees even if it does not elicit an official policy change vis-a-vis North Korea.

The United Nations High Commissioner for Refugees could also play an important role in setting international norms by choosing to exit China in protest of China's repatriation policy. Denied access to the border by Chinese authorities, the UNHCR has its hands tied on the North Korean refugee issue

despite China's signed agreement with the UN in 1995 stating "UNHCR personnel may at all times have unimpeded access to refugees and to the sites of UNHCR projects in order to monitor all phases of their implementation." China has turned down offers of assistance from the UNHCR multiple times, disagreeing with the agency on whether these displaced persons should be considered "persons of concern" and subject to humanitarian assistance. When the South Korean government, along with foreign NGOs, proposed the idea of refugee camps, a Chinese Foreign Ministry spokesman rejected the notion. As one of the few human rights agencies allowed in China, the UNHCR states that it aids North Korean refugees behind the scenes. However, the UNHCR could potentially leave this role to private NGOs and instead make a statement to China by closing its offices in Beijing and exiting the country. Since the UNHCR is an intergovernmental organization, such a move would send a strong message to China about international norms in this arena.

IV. CONCLUSION

Thousands of North Koreans are trapped in a quagmire in China as a result of China's policy of repatriating border crossers from North Korea, despite ample evidence that these displaced persons are indeed refugees. Under no legal protection, these refugees are extremely vulnerable to exploitation and human trafficking in China. Although it is unlikely for China to break its 1985 Agreement with North Korea to repatriate border crossers given their relationship and China's desire to maintain the status quo on the Korean Peninsula, there are measures the international community could take to help the refugees and appeal to China's aspirations for international respect. The international community needs to continue directing financial resources to foreign NGOs helping North Korean refugees in China travel the "underground railroad" through Southeast Asia to South Korea. The international community must also step up its application of international pressure through diplomatic and multilateral forums to induce China to carry out a *de facto* policy of benign neglect.

CHAPTER IV: HISTORICAL DISPUTES AND REGIONAL STABILITY



Asia's Multilateral Cooperation and Bilateral Tensions: Finding a Way Forward

by Kyle Johnson

I. INTRODUCTION

The establishment of the Trilateral Cooperation Secretariat (TCS) in 2011 should have been followed by enhanced cooperation between the Republic of Korea, Japan, and the People's Republic of China. This new institution was tasked with strengthening and institutionalizing the trilateral cooperation that had previously been limited to annual leader meetings. Less than a year after the TCS was created, though, numerous bilateral disputes among the members had clearly made increased cooperation far from certain and placed the future of the trilateral grouping in question. Amid a vast array of Asian regional and multilateral organizations, many of which have been light on accomplishments to date, might the TCS similarly fail to live up to its early promise?

This question is important to the futures of some of East Asia's biggest powers, as well as to the world's. Enhanced cooperation among these three states could help to overcome the perceived security dilemma resulting from China's economic and military rise. It could also help to resolve some persistent sources of concern, such as the North Korean nuclear program and the development of natural resources in the seas.

This paper explains the TCS and the modern history of trilateral relations between China, Japan, and South Korea (hereafter referred to collectively as "CJK") by examining a current conflict between the former two: the territorial dispute over Senkaku/Diaoyu Islands. An often-overlooked aspect of this dispute is its impact on trilateral cooperation. This paper is intended to fill this void and to provide a proposal for how the trilateral members can best respond to such disputes.

Specifically, it aims to answer the following questions. How does a serious dispute between two constituent members affect trilateral cooperation? In such times, is there an appropriate role for the third state? And finally, can a mechanism or forum be utilized or established to manage some of the region's biggest problems, such as territorial issues and differences in historical interpretation?

This paper starts with a review of Asian multilateral and regional efforts at collaboration, with a specific focus on the TCS. Second, using an ongoing territorial dispute between Japan and China as an example, the paper examines

challenges to increasing CJK cooperation by analyzing the effect that bilateral challenges have on the third party and the trilateral relationship. Finally, the paper looks at some possible responses to bilateral disputes and suggests a course for Korea in the case of the aforementioned Japan-China dispute.

II. ASIA'S MULTILATERAL BOOM

The TCS is part of a relatively recent wave of regional and multilateral arrangements in Asia. The leader in Asian multilateralism is the Association of Southeast Asian Nations (ASEAN), which has branched out to cover many realms since its inception in 1967. Member states have adopted “fundamental principles,” the most notable being non-interference, to guide their relations, and the organization’s consensus-driven approach serves as the “institutional and norm entrepreneur for innovative regional arrangements,” according to Aileen S.P. Baviera’s chapter on “ASEAN Multilateralism and the Engagement of Great Powers” in 2012’s *Emerging China: Prospects for Partnership in Asia*. Although there have been worthwhile drivers of regional cooperation, obstacles to closer collaboration are rampant.

The current split in ASEAN regarding whether or not to “internationalize” the South China Sea is a good example of how disputes make closer multilateral cooperation more difficult. While most of these states prefer addressing the issue in a multilateral setting, Cambodia—reflecting the wishes of China—in particular calls for bilateral efforts to deal with the disputed territories. Thus, the South China Sea disputes further divide the organization that could play a role in ending them.

Of the members in the TCS, Japan has perhaps been the most vocal in its willingness to pursue multilateral and regional cooperation and institution building as a key component of its foreign affairs, albeit often in a limited manner. In the wake of the 1997-1998 Asian financial crisis, Japanese leaders proposed an Asian monetary fund that could provide short-term loans to member states in case of a crisis. Following Japan’s proposal, the Asian currency swap agreement system, “Chiang Mai Initiative” was established in 2000, and has grown substantially in its scope since its creation. Although Japan has supported multilateral engagement, “Japan’s Perspective on Asian Regionalism,” written by Akiko Kukushima in 2009, notes that the country faces a recurring debate over the extent to which multilateral efforts should move beyond the economic realm.

China, once skeptical of the utility of multilateral efforts, now sees that multilateralism can at times serve its interests by “assuaging regional fear,” according to Fu Kuo-Lai’s 2012 piece titled “China’s Strategy in Asian Regional Cooperation: Towards Multi-layered Engagement.” China’s outreach to its

neighbors during the Asian financial crisis earned friends, although its lack of support for Japan's Asian Monetary Fund proposal was widely interpreted as the primary cause of the proposal's failure. China was also a key proponent of the Six-Party Talks on the North Korean nuclear issue. Although these talks have not yet resolved the security issues on the Korean Peninsula, they have been a useful forum for bringing together Northeast Asia's stakeholders to discuss some of their other concerns.

South Korea has generally viewed multilateral efforts as a potential route to resolving its security concerns regarding North Korea. Lim Wonhyuk notes that at ASEAN Regional Forum's first meeting in 1994, South Korea proposed a Northeast Asia security dialogue that would address regional security issues including arms buildups, tensions across the Taiwan Strait, and peace on the Korean Peninsula.

III. THE TRILATERAL RELATIONSHIP

In light of CJK's increasing work in multilateral engagement, the creation of the TCS and the formalizing of a series of trilateral meetings was a logical next step in cooperation. The TCS's history can be traced back to the 1999 ASEAN Plus Three Summit, where CJK representatives held a small breakfast meeting. Korea proposed an independent summit in 2004, and the first annual summit was held in Fukuoka, Japan in 2008. The "Joint Statement for Tripartite Partnership" signed at this meeting created the groundwork for a comprehensive partnership solidified by the TCS's inauguration in Seoul last fall. The three parties are equal members in the TCS; the executive decision-making body seats rotate between the parties and the budget is financed equally.

The three states view the trilateral relationship, and later the TCS, as tools for addressing issues specific to Northeast Asia. In contrast to the usual vague results of ASEAN's efforts to bring together a disparate group of states, CJK relations can be used to focus more specifically on issues at hand. Ideally, it can also be a useful forum for keeping countries engaged on issues of mutual cooperation even during periods of bilateral tensions, as Andrew Yeo noted in a 2012 East Asia Institute (EAI) Issue Briefing titled "China, Japan, South Korea Trilateral Cooperation: Implications for Northeast Asian Politics and Order."

A review of some CJK statistics from the TCS website emphasizes how rapidly the trilateral grouping institutionalized. CJK met only twice in 1999, compared to 53 meetings in 2011. Between 1999 and 2011, there were a total of 155 meetings on economic issues alone and 163 additional meetings on other topics (including security, energy and environment, and culture). The three countries have used the trilateral framework to create more than 60 consultative mechanisms

and 100 cooperative projects, according to Yeo. These mechanisms address issues as varied as disaster management, agriculture, youth exchanges, and the environment.

The trilateral relationship, however, has not been immune to disputes among its members in the past. For instance, following then-Japanese Prime Minister Junichiro Koizumi's visit to Yasukuni Shrine in 2005, the leaders of the three states cancelled their annual meeting. This episode suggests that contrary to the wishes of today's policymakers, disputes within the trilateral relationship can negatively affect their cooperation and are thus sources of concern for the TCS's future. Expectations that the CJK relationship will brush aside any troubles that occur within the grouping are unfounded unless the three countries actively work to make such an expectation a reality.

As is true of other Asian multilateral arrangements, the relationship is largely based on the members' economic interests. According to figures from the U.S.-China Business Council, in 2010, China's trade totals with Japan and South Korea were \$297.8 billion and \$207.2 billion respectively. This makes Japan and South Korea the third and fourth biggest importers of Chinese goods in the world and the top two exporters to China. Including the nearly \$200 billion in Japan-Korea trade in that year pushes CJK trade volume to nearly \$700 billion. Japanese and Korean foreign direct investment in China was around \$130 billion.

The CJK grouping has not yet been used to discuss politically sensitive issues, such as territorial and historical disputes. For the most part, this cooperation has focused on so-called "soft" issues, those in which all members have a common interest to seek cooperation. The 2012 annual leaders' meeting, for instance, focused on sustainable development and wildlife conservation.

The TCS's most serious effort perhaps has been in the realm of a trilateral CJK free trade agreement (FTA). Preliminary consultations have taken place, although CJK will have to overcome stumbling blocks to make this proposal a reality. Moon Chung-in's 2012 piece, "Changing Patterns in South Korea's Relations with China and India: The Way Forward," says China, in light of its trade deficit with South Korea, prefers a bilateral FTA with South Korea, and negotiations for such a bilateral agreement are also underway.

Korean policymakers often say that the realization of a trilateral FTA would further entwine the three countries economically and serve as a relationship stabilizer. Korea's vice minister for special affairs, Kwon Taeg-gy, said in a November 2012 personal interview that the FTA would help to erase the "invisible trade barriers" that exist in Northeast Asia and could be an important

step in helping to resolve larger issues, such as territorial disputes. National Assembly Member Kim Yong-tae said in a separate interview in November 2012 that he was similarly supportive of the stabilizing role of an FTA.

This view posits that further economic integration will make disputes increasingly costly, and states will be incentivized to seek resolution, or at least management, over escalation. However, in light of the fact that many disputes have lingered for decades in spite of surging trade and economic integration, CJK cooperation currently faces a catch-22; while these disputes make cooperation more difficult, they are unlikely to end or be managed effectively without cooperation.

For instance, the odds of CJK FTA passage seem low at this point. The same experts in Seoul who suggested an FTA made sense all concurred that due to political concerns, this FTA would be difficult for any state to approve. Ralf Emmers, a professor whose work focuses on the various territorial disputes in Asia, stated in a personal interview that Japan particularly does not seem to be invested in this trilateral FTA. Ultimately, the disputes between Japan, Korea, and China affect their ability to work together in bilateral and multilateral contexts. They must find a way out of this gridlock if the CJK relationship is to be a lasting one.

IV. THORN IN THE SIDE: THE SENKAKU/DIAOYU DISPUTE

In the past few years, tensions between these countries have threatened the advancement of East Asian cooperation. South Korea and Japan's dispute over Dokdo/Takeshima heated up once more when former South Korean President Lee Myung-bak visited the island in the summer of 2012. This visit was met with a surge of nationalism on both sides and increasingly aggressive statements of sovereignty regarding the island. South Korea and China have also had recent problems, such as the perceived increasing aggressiveness of Chinese fishermen encroaching on Korea's waters and the dispute over which country has a stronger claim to the heritage of the ancient Goguryeo Dynasty. Korean public opinion of its two trilateral partners is quite low. According to a fall 2012 survey by the Asan Institute for Policy Studies and the German Marshall Fund of the United States, only 44 percent of Korean respondents viewed China favorably, and only 38 percent Japan.

The biggest source of problems, though, is found in the Sino-Japanese relationship. Japanese Foreign Affairs Minister Koichiro Gemba said at a November 28, 2012 press conference that the Japanese government purchased the East China Sea Islands—called Senkaku in Japan, Diaoyu in China—“in the

interest of ensuring the peaceful and stable maintenance and management of the islands.” However, the action set off an explosion of anti-Japanese sentiment in China and a deterioration of the two countries’ relationship.

This territorial dispute has long been a source of friction in the Sino-Japanese relationship, and to a lesser extent it has also periodically hampered Japan-Taiwan collaboration. China and Taiwan’s claims rest on documentation of Chinese control and usage of the islands for hundreds of years, while Japan counters that it legally acquired the islands in 1895 through the international precedent of *terra nullius*, or claiming territory controlled by no one.

The outcome of this historical-legal debate would not be important if the islands were located elsewhere. The islands total less than seven square kilometers, or about 1 percent of the size of Seoul. Furthermore, they are largely seen to be unsuitable for economic development or human habitation. They are strategically important, however, because of their location in the East China Sea. The islands—120 nautical miles northeast of Taiwan, 200 miles east of China, and 200 miles southwest of Okinawa—would provide the owner with an ideal place to situate a naval base, according to Emmers.

The most sensitive aspect of the dispute is its perceived relation to Japanese imperialism and China’s period of “humiliation” at the hands of other countries. This factor has been a primary contributor in hampering broader Sino-Japanese relations. In 1978, for instance, a right-wing Japanese student group built a lighthouse on one of the islands. This action was met with a wave of anti-Japanese sentiment in China, and a fleet of 80 armed Chinese fishing boats was sent to the islands in response. This year, a similar cycle occurred when the Japanese government’s purchase of the islands was soon followed with the sailing of a fleet of Chinese fishing ships. This aspect of the dispute is unlikely to be resolved in the near-term.

Economic motivators perhaps provide the most rational reason to contest sovereignty and pursue territorial control. Emmers says disputes over these islands were nearly nonexistent until the U.S. transferred administrative control to Japan as part of the Okinawa Revision Treaty in 1971. Just a few years before administrative control was granted to Japan, a United Nations geological survey provided the first evidence that the surrounding region was likely to contain substantial oil and natural gas resources. Since then, this area’s natural resource potential estimates have increased substantially.

The fact that the three disputants—Japan, China, and Taiwan—all rely on substantial energy imports to fuel their economies makes control of these islands a potential means to achieving the stable energy supply needed to maintain

economic growth. The role that sovereignty of the islands plays in the mapping of Exclusive Economic Zones in the East China Sea also provides a rationale for the disputants to avoid compromise. Unfortunately, without knowing the ownership of these islands, border demarcation in the sea is unlikely to be finalized. The current result is a prisoner's dilemma of sorts: important fishing waters and substantial natural resources will be underutilized by all sides as they narrowly pursue their best interests. Should one of the disputants act unilaterally to develop resources in the area, the situation could escalate, with serious consequences for regional stability.

Beyond attempts to downplay the dispute—the tactic most frequently employed in the past by the disputants—they have periodically strived for deeper resolutions. Fishing agreements in the East China Sea have been signed by China and Japan in the past, most notably in 1997 and 2000. However, fishing disputes remain common due to the unclear nature of the maritime border demarcation.

Joint natural resource exploration and development in the region is another potential means of cooperation. A 1970 Japan-Taiwan agreement in this vein was scrapped due to Chinese objections, but Japan and China finalized an agreement in 2008. This agreement ultimately had no impact, and Emmers is now skeptical of the chances of a joint development agreement having a meaningful influence on this dispute.

Additionally, the scope of these joint development proposals has been small due to their unpopularity. M. Taylor Fravel stated in a November 1, 2012 piece for *The Diplomat* that Japan fears an extensive collaboration with China on this issue would acknowledge that the sovereignty of the islands is in question, which it does not admit. Chinese fears focus on the potential validity granted to Japan's equidistant approach in maritime border demarcation should cooperation in the disputed region proceed.

Although the standard line among CJK officials is that this dispute does not impact trilateral cooperation, the reality of the situation is not so clear. In just this recent period of tensions, the dispute sparked a wave of anti-Japanese protests in China that hurt Japanese companies operating there, revealing that the Chinese government would allow expressions of nationalism even if these affect the bilateral relationship.

The increased tensions, and Japan's strong reaction to it, have affected the Japan-South Korea relationship as well. A fairly routine and very useful intelligence-sharing agreement between the two states was scrapped at the last minute in light of a Korean citizen uproar regarding perceived assertiveness from the Japanese government. While the Senkaku/Diayou dispute was not the sole driver of the

agreement's demise—the spike in tensions surrounding Dokdo/Takeshima was a more direct factor—the Japan-China dispute's role in reigniting anti-Japanese sentiment throughout the region certainly was a hindrance to passage of the plan. A final example of how this dispute can affect the trilateral relationship is China's involvement in recent annual meetings of the International Monetary Fund and the World Bank. Because Japan hosted the meetings, the Chinese government scaled back its participation. These incidents show that bilateral disputes have easily spilled over to negatively affect relations with other countries.

The potential for military conflict also seems heightened in this current dispute. Fravel notes China seeks to redefine the status quo in its various territorial disputes, primarily by utilizing its increasing naval strength to regularly send Chinese patrols into disputed waters. Other media reports also highlight Japan's enhanced joint naval activities throughout East Asia. Furthermore, the U.S. and Japan planned to reexamine their defense cooperation guidelines in large part due to concerns about China's increasing military power.

Military conflict in Northeast Asia between Japan and China would have negative consequences for South Korea in a number of ways, including by setting back trilateral cooperation. Even if the conflict ultimately were to fall short of military warfare, this lingering dispute's impact on trilateral cooperation and the proposed FTA could be devastating. If trilateral cooperation is indeed a worthwhile goal for South Korea, it should be concerned about this dispute. However, as was noted earlier, the prevalent view among Korea's policymakers seems to be that through economic integration, cooperation on more difficult issues will be possible later.

While the trilateral members can choose to take a wait-and-see approach to this dispute, this is not a long-term solution. This dispute and others, such as competing interpretations of history and demands for a Japanese apology for its actions in the first half of the twentieth century are becoming increasingly common, and their motivating factors will only become more salient in the future. Therefore, a more proactive resolution is needed.

Korea has three basic options for responding to this dispute. First, it can continue its long-running policy of pursuing economic engagement to get around the thorny issues in the relationship. A second approach is to utilize multilateral organizations, such as the TCS, to push cooperation on a number of mutually beneficial fronts in an effort to keep Japan and China in communication and to diminish the chances of this dispute turning into something larger, such as armed conflict. The final approach under examination is for Korea to take a

proactive role in seeking to manage or settle, and not simply to temporarily shelve the dispute. This could take the form of Korea-led mediation, coupled with a push for a code of conduct in the area around the islands.

Because the first policy is unlikely to continue to work and the last policy is not desired by any of the states, Korea should use the multilateral approach to bring the disputants together on other areas of cooperation. However, each of these policies has merits and limitations.

Option 1: Status Quo

A continuation of the status quo—that is, addressing this on a bilateral level without Korea’s involvement—is the most probable outcome. Thus far, the Senkaku/Diaoyu disputants have primarily ignored the issue when possible and focused on other aspects of their relations to prevent a detrimental breakdown. This approach has been somewhat effective in the past in cooling tensions and returning to a healthier bilateral relationship. Regarding this specific case, there was wide support among those interviewed by the author in Seoul in November 2012 for remaining uninvolved and allowing economic integration to be the mechanism to ultimately resolve this problem.

The current dispute, however, appears different from previous rounds of tension. Japan, Taiwan, and China now appear much more willing to allow nationalism to fan the flames and disrupt their relationships. Japanese companies have increasingly started to look outside of China for investment opportunities, for example. These companies invested \$444 million in Taiwan last year, and seem to be nearing a free trade pact. Major Japanese companies such as Mazda, Panasonic, and Honda also showed their willingness last fall to temporarily halt production in China. Japan has also established security and economic cooperation with India, as the latter has also cashed in on Japan’s troubles with China. Perhaps the dispute has fundamentally changed, and handling it solely through bilateral efforts is no longer enough.

There are other signs that the current strain in the relationship may not simply disappear on its own. This dispute has coincided with a number of other troubles around Asia. Increased tensions around a particular dispute in Asia seemed to have ratcheted up the intensity of other disputes, as Japan has seen in its troubles with China and Korea. For example, concerns about Japan’s domestic political situation and its perceived nationalistic turn have impacted relations with China and Korea simultaneously. The total impact of a particular dispute can no longer be gleaned simply from looking at that particular issue.

A wait-and-see approach seems most likely to work when a dispute can be countered with numerous areas of bilateral cooperation. In today's environment, though, one Asian dispute is connected to many others, which makes shelving the dispute impossible. If maintaining the status quo shelving tactic no longer works, then it is time to try a multilateral approach.

Option 2: Status Quo Plus

This option represents a low-stake way for Korea to insert itself and push for an expanded trilateral relationship. As in the first approach, Korea would remain uninvolved in the specific dispute. However, Korea would take proactive steps through the TCS and the CJK grouping to ensure that the territorial dispute could not disrupt other issues. Specifically, Korean leaders would seek to expand the scope of TCS and CJK connections by finding additional areas of cooperation that benefit all the states—the environment or cultural exchanges, for example. They can also advocate for more difficult issues, such as the CJK FTA. While some of these proposals may not be accepted, finding additional ways for China and Japan to cooperate can help them step back from the source of their tensions and find common ground once more.

Such an approach would be consistent with the Korean-preferred path of increasing engagement to counter strains. Instead of waiting and hoping for economic ties to ameliorate the relationship, however, Korean leaders would need to take the initiative and push this engagement on Japan and China. If the issues are not controversial and truly mutually beneficial, even in tense times the leaders should be able to cooperate. Most importantly, Korea's effort would keep all the parties in communication and prevent a breakdown of the CJK relationship. As was noted above, it is increasingly unlikely that the territorial dispute, or the numerous other territorial and historical conflicts will be resolved in the near-term. Therefore, states need to take steps to prevent these recurring tensions from spilling over into other areas and disrupting multilateral engagement. Presumably, this same tactic would be useful to any of the states if the other two are engaged in a serious and destabilizing dispute. If the Dokdo/Takeshima Island issue takes a turn for the worse, for example, China can utilize this framework to bring Japan and Korea together.

The primary difficulty of such a plan is that it requires the state pushing for enhanced cooperation—in this case, Korea—to act as a neutral peacemaker. If two disputants are pitted against the third—as has been the case with some historical disputes—this option is unlikely to be implemented. This limited approach is currently Seoul's best option, and it is the route that should be pursued now.

Option 3: Mediation

A third option is for Korea to pursue a role as mediator in China and Japan's conflict. While the successful implementation of this approach would result in a positive outcome, it is highly unlikely that Korea would crave such a role or that either Japan or China would accept the offer.

For starters, the three states are not of equal in power, so mediation could be an opportunity for the more powerful to force their will on the others. For Korea, successful mediation of this dispute would provide a big boost to its international image and diplomatic stature, but failure (or worse, rejection of the offer to mediate) would be a major embarrassment that it is unlikely to risk.

An additional complicating factor is the precedence any mediated outcome would set for other territorial disputes. For Korea, mediating a resolution would provide a direct example of how the Dokdo/Takeshima issue could be handled; Chinese involvement in mediation would provide a precedent to the claimants of the disputed South China Seas islands; and Japan would have to live with this case in its other disputes. Simply put, the risk is far too great for all three parties.

Finally, excluding these factors, China and Japan would still reject mediation because of the increasing salience of their motivations for pursuing territorial sovereignty in the first place. The treasure that would go to the victor in the form of sea lanes, fishing grounds and oil resources, to name a few, will likely long serve as a good reason to avoid compromise and seek sole ownership. Mediation could provide a final resolution of this difficult issue, but it would also provide a number of risks that none of the parties are willing to take.

V. CONCLUSION

Trilateral cooperation between China, Japan, and South Korea is relatively undeveloped and susceptible to the bilateral strains that have surfaced with increasing frequency in recent years. The general approach has thus far been to largely ignore these strains and attempt to proceed with cooperation, but this approach seems destined to lose steam. Such tensions increase the risk of rendering the TCS obsolete and preventing a mutually beneficial integration of the three states beyond trade statistics.

A role such as I have suggested for Korea in the Senkaku/Diaoyu dispute would help to tighten trilateral cooperation by setting the norm of using institutional means to address bilateral strains. Such action would also establish a role for any

third party in a dispute among the other two members. The proposal suggested here would also signal a legitimate effort to overcome problems in trilateral relations in an effort to seek a deeper accord.

A continuation of the status quo, on the other hand, sends the signal that Asian multilateral venues are weak and unlikely to lead to meaningful integration. South Korea has the potential to be a difference maker in a dispute of importance to the world, if it is willing to work for it.

Goguryeo Ghosts: China's History Dilemma and the Future of Sino-Korean Relations

By Taylor Washburn

I. INTRODUCTION

Historical narratives lie at the core of national identity. As a result, competing interpretations of the past can come to define international relationships. Nowhere is this more evident than in Northeast Asia, where symbolic “history wars,” combined with destabilizing Chinese growth, have contributed to a fraught security environment. The best known of these disputes stems from Japan’s annexation of Korea and occupation of much of China in the decades before 1945. But if arguments about the legacy of Japanese imperialism have occasionally united Beijing, Seoul, and Pyongyang against Tokyo, another quarrel with much older roots has the potential to pit both Koreas against China and could even play a defining role in Sino-Korean relations in the event of Korea’s reunification.

Understanding the significance of this speculation requires a brief foray into the pre-modern history of Northeast Asia. For over 600 years, between the first century B.C. and the seventh century A.D., much of the Korean Peninsula and Manchuria were ruled by the kingdom of Goguryeo. Although governed in its final two centuries from Pyongyang, the kingdom’s early capitals sat north of the Yalu River, which today demarcates the western portion of the border between China and North Korea. At its height in the fifth century, Goguryeo controlled lands that would now include parts of South and all of North Korea, as well as contiguous land in northeast China and a sliver of maritime Russia. Because the peninsula’s south was then split between two other states, Silla and Baekjae, contemporary historians refer to this era as Korea’s Three Kingdoms Period. The tripartite division finally came to an end in the second half of the seventh century, when the southeastern kingdom of Silla, having enlisted the assistance of China’s Tang Dynasty, absorbed its western and northern rivals.

Tying modern nations to ancient predecessors can be a messy business, but historians generally concur in describing the Goguryeo state as proto-Korean. In 2002, however, this mainstream view came under attack, when the Chinese Academy of Social Science (CASS), a government-backed think tank, launched a re-evaluation of Goguryeo history under the auspices of its “Northeast Project,” which sought to recast the pre-modern history of Manchuria and Korea. The project concluded Goguryeo had not been an autonomous political entity but rather a vassal of the Middle Kingdom, falling within “Chinese local history,”

according to Gilbert Rozman's 2010 book, *U.S. Leadership, History and Bilateral Relations in Northeast Asia*. It is unclear to what degree CASS's work was directed by the central government, but official actions permit an inference of collusion. In 2003 and 2004, while the project was still underway, China applied to UNESCO to register Goguryeo tombs in China as a World Heritage Site, and China's Foreign Ministry conspicuously scrubbed its website of references to pre-modern Korean history.

In South Korea, the effect of China's Goguryeo revisionism was explosive. In the popular press, which gave the issue extensive coverage, the Northeast Project was depicted as a negation of Korea's ethno-cultural independence from China. To combat China's version of history, the South Korean government established its own Goguryeo Research Foundation in 2004 and summoned China's ambassador in Seoul to protest the alterations to the Foreign Ministry website. The dispute triggered a near-instantaneous reversal in positive South Korean attitudes towards China, which dated back to the establishment of diplomatic ties in 1992. While it is harder to gauge the issue's effect on China-North Korea relations, the North Korean regime, which filed its UNESCO application for its own Goguryeo tombs in 2001, has a strained relationship with its greater patron and employs a distinctive nationalist mythology valorizing Goguryeo vis-à-vis its southern rivals, Silla and Baekje.

In 2004, seeking to quell the controversy, China promised South Korea that it would not include its own account of Goguryeo history in Chinese high school textbooks. Although the dispute was not forgotten in South Korea, it went into remission. In late January 2013, however, South Korea's *Hankyoreh* newspaper reported that a group of scholars in the northeastern Chinese province of Jilin was conducting "closed research" on a freshly discovered stele, an engraved memorial stone dating to the fifth century. "Concerns are being raised," the *Hankyoreh* piece noted vaguely, "that with key figures from the Northeast Project taking part in the research, it is very likely that China will use the results of the study...to reinforce its argument that Goguryeo belongs to China."

Even before this stele's discovery, as the Goguryeo dispute lay dormant, related controversies over culture and history continued to roil China-South Korea relations. In 2011, for example, South Koreans were outraged when China included the quintessentially Korean folk melody "Arirang" on an official list of Chinese cultural assets, purportedly to celebrate an artistic contribution from China's own ethnic Korean population. In summer 2012, South Korea registered formal concern with China after Chinese archeologists claimed to have established that the Great Wall was more than twice its previously estimated length, extending almost to the Korean border. For their part, many Chinese objected to South Korea's 2005 UNESCO registration of a local holiday derived

from China's traditional Dragon Boat Festival, which fed Internet rumors (largely false) that Koreans also claim other Chinese icons, from Confucius to Sun Yat-sen.

As North Korea expert Andrei Lankov has observed in a 2006 *Asia Times* article, there is a certain absurdity to arguing over "ownership" of any ancient kingdom or tradition. Lankov has described the Goguryeo dispute as a "retro-projection of modern identities," the application of anachronistic labels to a long-gone people:

The real-life Goguryeoans would have been surprised or even offended to learn that, in the future, they would be perceived by Koreans as members of the same community as their bitter enemies from Silla. Describing Goguryeo as Chinese or Korean is as misleading as, say, describing medieval Brittany as French or English or Irish.

But while the dispute may be ahistorical, it still has contemporary political resonance, particularly in South Korea. Given the symbolic power of the issue and the challenges it poses to Sino-Korean relations, it is worth considering why Beijing has continued to flirt with revisionism. This paper considers the strategic thinking that may underlie China's new and controversial reading of Northeast Asian history, placing China's actions in the context of perceived threats to the state's integrity and security. Specifically, it draws connections between this dispute and Chinese concerns about the long-term future of Northeast Asia and independence movements on its western frontier. It then discusses the apparent effects of the Goguryeo dispute and other identity-related controversies on Korean perceptions of China. Finally, the paper outlines the dilemma that China faces in attempting to recast Northeast Asian history to its own advantage and the implications of these efforts for Sino-Korean relations, suggesting that China's internal imperatives make it likely that historical debates will continue to sow regional discord.

II. THE VIEW FROM BEIJING

From overseas, the Chinese Communist Party (CCP) can appear self-assured and optimistic, buoyed by decades of relentless growth, and increasingly willing to flex its diplomatic and military muscles in East Asia and beyond. For many foreign observers, the Beijing Olympics offered the definitive image of the new China: modern, proud, regimented, and efficient. China's visible success, contrasted with the ongoing financial and sovereign debt crises besetting the West, has led some to conclude that the CCP's combination of "meritocratic" one-party rule and state capitalism may be a compelling alternative to liberal democracy and Anglo-Saxon economics. In addition, although the United States

retains a significant military edge over China, China has cut into the American lead, which has no doubt contributed to its willingness to press maritime territorial claims in the South and East China Seas. Considering China's trajectory—it is projected to have the world's largest economy within a decade, surpassing the United States—why shouldn't the CCP be confident?

In fact, as its own leaders are aware, China's political horizon is as hazy as its skies. Unlike the United States, which maintains a strong network of alliances around the globe, China's closest friends are troubled states with little international clout. At home, the legitimacy of CCP rule has come to hinge on its ability to deliver jobs, meaning that a sharp drop in asset prices or even anemic growth could lead to serious unrest. Environmental and public health disasters, gruesome accidents, and shocking stories of elite corruption have filtered through the Great Firewall, igniting fury on Twitter-style microblogs like Sina Weibo. Meanwhile, on China's lightly-populated Himalayan and Central Asian frontiers, independence movements simmer, posing at least a conceptual threat to the state's integrity and stability. For reasons stemming from China's history, demographics, and strategic fears, these movements obsess Beijing.

More than 90 percent of China's 1.3 billion citizens are members of the Han ethnic group, which dominates the country's major cities and populous coastal provinces, but China is a multinational state with 56 officially recognized ethnic groups and growing religious minorities (including tens of millions of Muslims and Christians). China's diversity—along with its sheer size, geographic centrality, and long record of distinctive cultural achievements—has led some, including the CCP apologist Martin Jacques, to describe China as a “civilization state,” incomprehensible to foreign observers whose understanding of international relations is based on the experience of the splintered, Westphalian West. Whether or not this assessment is accurate, it is certainly true that China has no Western analog. The Middle Kingdom has always maintained a sense of its own cultural integrity, not to say superiority, even when overrun by Mongol or Manchu “barbarians” or riven by civil war. Over millennia, it has thus exerted tremendous influence on the peoples around its borders.

Where exactly those borders lie has never been fixed for long and remains in some areas a matter of contention. As the international relations theorist David Kang noted in 2010, the East Asian political order prior to the arrival of European powers was fundamentally different from that of the West: rather than a jumble of delineated sovereign nation-states, East Asia was hierarchical, with rulers of smaller kingdoms paying tribute to the Middle Kingdom. Neighboring nations have thus maintained a complex and mutable relationship with China across the centuries—neither fully integrated into its empire, nor wholly autonomous in foreign policy. This can make it surprisingly hard to say, for

example, whether Tibet was ruled by China throughout the late Qing Dynasty (as China claims), given that the Qing continued sending administrators to Lhasa long after its actual power in the Himalayas had waned. By any measure, China as it exists today is larger than during most of its recorded history, yet smaller than at the Qing's peak in the early 19th century, before the disastrous collision with the West and later Japan.

That collision and the “century of humiliation” that followed still contribute to a sense of strategic insecurity in China and are important ingredients in a nationalist narrative that portrays China as the perpetual victim of jealous foreigners. This history also helps explain the CCP's fixation on China's independence movements, each of which is closely tied to its anxiety about outside interference.

Taiwan, governed from Taipei since the Nationalists fled to the island after China's Civil War, was previously severed from the mainland by Japan in 1895. The “loss” of Tibet in 1912, meanwhile, is generally blamed on Britain, which invaded in 1904 to force the Dalai Lama to establish relations with the British Raj. China's third major independence movement in the Turkic Uyghur homeland of southwest Xinjiang, or East Turkestan, seeks autonomy for a region that was dominated by the Soviet Union throughout the 1930s and 1940s. China's line is that the People's Liberation Army was only acting in accordance with its name when it invaded Tibet and Xinjiang in 1949 and 1950, freeing “Chinese” peoples from foreign tyranny. Losing either region would not only take a great terrestrial bite from western China (and, in the case of Tibet, increase China's exposure to rival India), but recall an era of mortifying impotence.

Faced with the challenge of integrating restive Tibet and Xinjiang into Greater China, China has encouraged Han Chinese to work and live in both regions, provided substantial aid for their development, and assiduously monitored and suppressed local dissent. But, it has also employed nationalism and history—which is where the line connecting Goguryeo and China's anxiety about Tibetan and Uyghur “splittists” becomes clear. Ruling over a vast and multinational civilization-state, Beijing has embraced a modern concept known as *zhonghua minzu*, usually translated as “Chinese nationalities”—the idea that Chinese identity transcends ethnic and cultural divisions, embracing peoples outside of the Han heartland who have fallen within China's sphere of influence. Appreciating that any challenge to this theory could endanger the entire edifice, Beijing regards its minority populations in parallel. Thus, CASS's Northeast Project was accompanied by Southwest and Northwest Projects, situating pre-modern Tibet and Xinjiang within “local Chinese history” as well, according to Rozman.

China's northeast bears little resemblance to its far west. Numbering less than two million residents, ethnic Koreans comprise only 40 percent of the population of the Yanbian Korean Autonomous Prefecture, where the majority reside, and a mere four percent of Jilin Province, of which Yanbian is a part. Known as *chaoxianzu* in Chinese and *joseonjok* in Korean (names derived from Korea's Joseon Dynasty, which ruled the peninsula from 1392 until 1897), ethnic Koreans in this region are largely descended from families who arrived in China between the 1880s and 1940s, seeking richer farmland or fleeing the Japanese occupation. Many *chaoxianzu* sided with the Communists during the Chinese Civil War and have rarely faced systematic discrimination. Indeed, Beijing has allowed and even encouraged the teaching of Korean language and culture.

Unlike Tibetans and Uyghurs, China's ethnic Koreans have never been politically restive. Any pan-Korean sentiment that might exist in Yanbian has been dampened by the region's proximity to grim North Korea, as well as discrimination *joseonjok* have suffered while working in South Korea. Even if this were to change, demographics are destiny, and the region's Korean population is gradually shrinking in both relative and absolute terms. A credible challenge to Chinese sovereignty over Yanbian would thus require a sea change in the region's population and politics.

Nonetheless, as Andrei Lankov notes in his 2007 *Asia-Pacific Journal* article, "The potential threat of irredentism has never been completely forgotten [in Beijing]." and not without reason. "Greater Korea" fantasies encompassing a broad swath of Northeast China may be limited to a nationalist fringe, but many South Koreans resent the loss of Gando, a marshy plot ceded to the Qing Dynasty by Imperial Japan in 1909 and reject the validity of a 1962 pact between Pyongyang and Beijing acknowledging Chinese sovereignty over much of Mount Baekdu, a peak that plays a prominent role in Korean mythology. In 2007, Seoul was forced to apologize to Beijing after a group of South Korean athletes hoisted signs reading "Mount Baekdu is our land!" at the Winter Asian Games in Jilin.

In reality, of course, Korean invasion or secession is vanishingly unlikely. Still, not all of Beijing's fears concerning the peninsula are groundless. A more pressing threat to Chinese security is instability brought about by a failed North Korea. China scholars are generally quick to dismiss the notion that China has designs on the North, pointing to the dangers and costs of occupation. But if the North Korean regime crumbles, Goguryeo could still figure into China's calculus of intervention. China's contingency plans must account for the chance that South Korea would be unable or unwilling to stabilize a post-Kim North on its own, not to mention the possibility that U.S. troops could approach China's border. And, while few experts believe China would fight to block Korea's reunification under South Korea, China is less than enthused about the idea.

Just as France's colonial rule in North Africa conditioned its voters to support its intervention in Mali, the aggrandizement of China's historical role in Korea could make it easier for China to sell intercession on the peninsula to a skeptical public should such an expedition—however unpalatable—be deemed necessary.

Yet, it would be a mistake to view China's Goguryeo revisionism in the context of Korea and Manchuria alone. Recalling the *zhonghua minzu* concept, it is easy to see why China does not regard far-flung “autonomous” zones like Yanbian, Tibet, and Xinjiang in isolation. According to a 2013 *Washington Post* article, China scholar David Shambaugh observed that the CCP is obsessed with the Soviet Union's disintegration—a process hastened, as the CCP leadership is surely aware, by the rise of ethnic nationalist movements. Throughout the 20th century, such campaigns often proved contagious. The Korean uprising against Japanese rule on March 1, 1919, for example, drew inspiration from Woodrow Wilson's “Fourteen Points” speech of the previous year, as well as the postwar independence of nations like Poland and Finland. China's appreciation of this phenomenon clarifies why China expressed “grave concern” at Kosovo's declaration of independence from Serbia in 2008 and later stood at Belgrade's side before the International Court of Justice.

Viewing the Northeast Project in this light, it appears likely that China's interest in Goguryeo is intimately tied to its fears about Xinjiang and Tibet. By reinforcing the idea that Chinese nationality has always incorporated a diverse array of ethnic groups, the placement of Goguryeo within “local Chinese history” indirectly reinforces China's claim over lands thousands of miles from Korea. China's aforementioned efforts to extend its iconic Great Wall make this connection explicit. In 2012, Chinese archeologists claimed to have found new segments of the Great Wall in Manchuria, more than doubling its length and running almost to North Korea. China's last major Wall-related discovery, a decade earlier, had extended its western terminus into Xinjiang.

III. KOREAN REACTIONS

The old cliché that Korea is a “shrimp among whales” is outdated, a throwback to the days before Samsung and Hyundai, when South Korea's total economic output was far smaller than its current defense budget of \$30 billion. Nonetheless, this phrase continues to capture a key component of the national psyche—a fear that Korea could still be overrun by one of its bigger neighbors and a frustration that Korea's distinctive cultural accomplishments receive insufficient recognition from the wider world. In examining why present-day Koreans are so emotionally invested in a kingdom that peaked prior to Europe's Middle Ages, it is important to appreciate the mixture of strategic vulnerability

and national pride that inform the attitudes of both South and North Korea towards their neighbors, as well as the role that Goguryeo has played in forming modern Korean identity.

In *Imagined Communities*, his classic 1983 work on the origins of nationalism, Benedict Anderson proposes that national identity is a product of modernity, facilitated by the dissemination of vernacular literature and the development of a shared national discourse. The development of Korean nationalism, which has its roots in the late 19th century, is consistent with this theory. Some patriots sought illumination from abroad, drawing on Western sources from Christianity to Marxism, as well as the stunning industrialization of Meiji Japan. Others peered into to their own nation's past for inspiration. The most important member of this latter group was Shin Chae-ho, an independence activist and intellectual who died in a Japanese prison in China in 1938.

Shin, whose work is still read in both Koreas, was especially interested in the origins of the Korean *minjok* (race) and was the first modern historian to situate its ancient cultural heartland in Manchuria and the peninsula's north. He popularized the Dangun myth, which situates the genesis of the first proto-Korean kingdom, Gojoseon, near Mount Baekdu. Shin also lionized Yeon Gaesomun, a military leader of late Goguryeo notable for his fierce opposition to Tang China. For obvious reasons, this version of ancient history has particular appeal to the present-day mythologists of Pyongyang, where allusions to the ancient northern kingdom have been incorporated into the leadership's personality cult.

According to Shin and his acolytes, Goguryeo was not merely one proto-Korean kingdom, but *the* proto-Korean kingdom—the most authentic and influential predecessor of the various states that subsequently governed the peninsula as a whole. Thus, for South Koreans schooled in this tradition, the proposal that Goguryeo was merely “a minority group and a provincial government of China” reads like a flat negation of their nation's ethno-cultural distinctiveness. Such anxieties are reflected in South Korea's official response to China's Great Wall announcement in 2012: “The government's principal stance is not to overlook any possible history distortion as it directly relates to Koreans' ethnic identity.”

Evidence that the Northeast Project has damaged China's image in South Korea is manifold. Between 2004 and 2005, when the Goguryeo dispute reached its height, the share of citizens who expressed a preference for prioritizing relations with Beijing over those with Washington flipped from 61 versus 26 percent to 29 versus 55 percent in one survey by *The Dong-A Ilbo*. Similar polls taken between 2006 and 2008 demonstrated that the trend continued to hold for years after the two nations' governments had formally put the issue to rest, according

to 2009 *Asian Survey* article by Jae Ho Chung. Indeed, when the Asan Institute and German Marshall Fund of the United States polled South Koreans in 2012, only a small majority said that South Korea shares enough values with China to cooperate on international problems, and nearly three-quarters indicated that they now believe China poses a military threat to their country. Another 2012 poll, taken by the BBC World Service, found South Koreans are far more likely than Americans, Russians, Indians, or Australians to describe China's worldwide influence as negative—surpassing on this score even the Japanese. Not all Korean Sinophobia can be attributed to an abstract debate over history, of course, but the revelation of the Northeast Project does appear to have coincided with a sharp reversal in attitudes toward China.

Although it may seem hard to believe that ordinary citizens would take interest in a dispute of such remote provenance, the South's immensely popular television dramas often mine Korean history for material. In 2006, each of the nation's three major broadcasters—KBS, MBC, and SBS—ran an epic fictional series about Goguryeo or one of its successor states, Balhae, which also ruled territories now within China and Russia. The most popular of these, MBC's *Jumong*, took its name from Goguryeo's founding monarch, who was portrayed (apocryphally) as battling invaders from China's Han Dynasty. Combined with extensive press coverage of the Northeast Project and the lengthening of the Great Wall, pop culture has helped keep the issue at the front of the national consciousness.

Given limited access to elite and public opinion in North Korea, it is much harder to say what effect these historical debates may have had on ties between Beijing and Pyongyang. We know the “lips and teeth” camaraderie of the 1950s is long gone, but the specific nature of the relationship between the North Korean regime and its Chinese patrons is famously mysterious. Mao Zedong's support for Kim Il-sung, borne of ideological solidarity as well as sincere gratitude for Korean contributions to the Communist cause in the Chinese Civil War, was attenuated by the Sino-Soviet split of the 1960s, as Kim cannily sought neutrality between his great-power protectors. Even as China agreed to impose sanctions after Kim Jong-un's nuclear test in February 2013, China remains—by an enormous margin—North Korea's key diplomatic benefactor, as well as its largest trading partner and source of aid. To Chinese frustration, North Korea seems to greet this assistance with resentment, paying little heed to China's economic advice and ignoring its admonitions against weapons testing.

Pyongyang remained uncharacteristically quiet as Beijing and Seoul litigated Goguryeo's status, but this circumspection should not be taken to mean it had no interest in the matter. Goguryeo evidently held a lifelong fascination for Kim Jong-il (who claimed, falsely, to have been born on the slopes of Mount Baekdu). According to Leonid Petrov in his 2004 article “Restoring the Glorious

Past: North Korean Juche Historiography and Goguryeo,” the North has long traced its connections to Goguryeo in its propaganda and textbooks—one of which describes the northern kingdom as “a huge and powerful empire, which managed to subdue most of its neighbors in Manchuria” and even “threatened the territorial integrity of ancient China.

Indeed, rivalry between China and North Korea seems to have played a role in igniting the dispute, as China’s decision to file a UNESCO application for Goguryeo tombs in its own territory was precipitated by a 2001 North Korean application for similar tombs south of the border. In late 2012, Western media outlets like Comedy Central made light of the North’s bizarre claim to have uncovered an ancient “unicorn lair,” but China may have found the story less amusing. Pyongyang had not, of course, intended to refer to the single-horned horse of European legend, but rather the mythical Northeast Asian *Kirin*—in this case, the particular beast ridden by Goguryeo’s founder. While the Goguryeo dispute may not have produced any visible fissure between China and North Korea, the governments of both nations seem to have used this period of history to send messages and score points.

IV. CHINA’S DILEMMA

As a multinational state sharing land borders with fourteen other nations, China faces a political dilemma in defining its own civilizational scope. On the one hand, Beijing has an obvious incentive to promulgate historical narratives that legitimize its dominion over peoples within China’s borders who do not, by and large, regard themselves as Chinese. This imperative is particularly acute in those regions with active independence movements, such as Tibet and Xinjiang, but its logic also extends to areas with quieter minority populations, including Yanbian.

And yet, while Beijing may yield some political advantages through advancing an expansive historical definition of Chinese civilization, such a revisionist project also has the potential to aggravate relations with neighbors. South Korea has generally taken care to balance between China and the United States, maintaining close economic relations with the former, by far its largest trading partner, and robust political and military ties with the latter. In pressing Goguryeo and similar cultural and historical claims, China risks pushing South Korea closer to the U.S.

This is not an idle concern. As recently as 2009, Japan’s then-premier Hatoyama Yukio was calling for Japan to hew closer to Asia, an idea that sank as Sino-Japanese island tensions rose. With relations between China and South Korea already strained by North Korean weapons tests, China’s security will suffer if China nudges South Korea in the same direction. Today, military cooperation

between Seoul and Tokyo is constrained by their own historical disagreements, as well as Seoul's desire to avoid being ensnared in broader regional conflicts. But, this dynamic could change along with East Asia's balance of military power.

If asked, the Northeast Project's architects might describe their work as corrective and defensive, a response to ethnic separatism and China's rational long-term concerns about a North Korean crackup and Korean reunification. South Koreans, however, generally view the project as an aggressive Chinese effort to delegitimize Korean civilization and perhaps as a signal of Beijing's designs on post-collapse North Korea or even the peninsula as a whole. This is a problem for China. South Korea is not only a close U.S. ally, but one of the world's dozen leading economic and military powers in its own right, fielding what expert Robert Farley has called the most powerful ship-for-ship fleet in Northeast Asia, per his 2012 assessment. With a recent agreement between Seoul and Washington extending the reach of South Korean missiles to 800 kilometers, major northeastern Chinese cities like Qingdao, Dalian, and Shanghai could soon fall within range of weapons originally designed and deployed for use against the North.

As a result, China finds itself in a situation akin to the classic security dilemma, in which a nation's efforts to strengthen its own defensive posture risk being perceived as hostile, thereby elevating rather than abating the danger of conflict. In this case, the measures taken by China have been intellectual rather than military, directed at threats remote from Korea as well as proximate and abstract as well as concrete. But even a symbolic salvo can exacerbate tension if it is perceived to signal aggressive intent. To the extent that China seeks to shore up its own internal security or address concerns about Northeast Asia's future by treading on elemental components of Korean national identity, it will thus continue to find itself at odds with South Korea, and potentially even North Korea.

V. CONCLUSION

In northwestern Seoul, there is a stone arch resembling the Arc de Triomphe and bearing the legend "Dongnimmun" (Independence Gate). Considering that it is located next to a former Japanese prison for Korean dissidents, a visitor might reasonably imagine that the monument was built after 1945. In fact, it is fifty years older, and the independence to which it refers was born of Japanese victory rather than defeat. Japan's 1895 rout of the Qing in the first Sino-Japanese War ultimately paved the way for Korea's annexation, but its immediate effect was to end Korea's tributary obligations to China.

Examining the sources of anti-Chinese sentiment in South Korea today, one finds a range of irritants based firmly in the present: China's support for North Korea, of course, the repatriation of defectors to North Korea, illegal fishing in Korean waters, and animus towards Chinese immigrants (even if the majority are ethnically Korean). Yet, anxiety about Chinese power is not a recent phenomenon, nor is it likely to prove transient. In fact, as Dongnimmun illustrates, such fears have deep historical roots, and they are likely to grow more pronounced as Chinese power grows. These days, concerns about Japanese remilitarization are often paired with speculation that a Chinese superpower would attempt to recreate the hierarchical Sino-centric order that prevailed in East Asia before the arrival of Western powers. Such a system cannot be reconciled with contemporary Koreans' desire and ability to shape their own destiny.

Even without information on public opinion, there is reason to believe Chinese revisionism could increase tension with North Korea as well. In the North, Soviet-style communism has long since been abandoned in favor of a chauvinistic ideology combining abject leader worship, Kim Il-sung's *juche* idea (the spirit of Korean self-reliance), and ethno-nationalism. This amalgamated ideology embraces the pre-modern history of northern Korea in portraying the North Korean regime as the legitimate ruler of the whole peninsula—a narrative inconsistent with China's Goguryeo revisionism.

There is no saying exactly how Beijing will resolve the dilemma described in this paper. China's agreement to step back from the Northeast Project after 2004 suggests that its diplomats, at least, understand the damage the issue inflicts on Sino-Korean relations. Given that self-determination movements in Tibet and Xinjiang will continue in the near future, however, China will have an ongoing incentive to advance a historical narrative that emphasizes the state's historic breadth and diversity. Facing the specter of lagging growth, which threatens a general legitimacy crisis, and the multinational character of the land over which it presides, the CCP can ill afford to concede that any of China's minority groups—ethnic Koreans included—have a long-standing claim to cultural or political independence.

In addition, while Kim Jong-un appears to have consolidated power over the North, the impoverished state's longevity remains in doubt. Like South Korea and the United States, China has undoubtedly prepared contingency plans for the North's collapse, as well as a variety of other reunification scenarios. Whether China is concerned about instability, unification or irredentism, the redefinition of China's ancient relationship with Korea could prepare its own citizens for an unpopular and risky operation to protect Chinese interests on or near the Korean peninsula.

In light of the fact that many Koreans view Goguryeo revisionism as an implicit rejection of their ethno-cultural independence, any further efforts by Beijing to rewrite pre-modern history to its own advantage are certain to color Korean perceptions of China's intentions and exacerbate unease about its rise. What remains to be seen is whether Beijing, with an eye on its own shifting security imperatives, will determine that this is a price worth paying. For the last ten years, Goguryeo's ghosts have been at rest. But William Faulkner's familiar observation is as true in Northeast Asia as in Mississippi: "The past is never dead. It's not even past."

Uncertainty in the Shadow of a Rising China

By Alexander Bellah

During South Korea's historic transition to democracy at the Cold War's end, the opportunity to normalize relations with a rising China promised immense economic gains with few compromises to national security interests. Faith in this promise appeared founded as, in most cases, bilateral relations with China improved along economic, cultural, and even security arcs from 1992 through the mid-2000s. By 2008, as the Lee Myung-bak administration came into office, some of these trends had begun to shift, leading some in Seoul to question whether Chinese and Korean interests were fully compatible. In 2010, China's role in supporting Pyongyang following North Korea's sinking of the *Cheonan* and its ambivalence toward the shelling of Yeonpyeong Island brought these critical voices to the fore, suggesting that Korea's honeymoon with China was at an end.

Since normalization in 1992, Korea has faced a dilemma in which its long-term economic—and at times security and cultural—interests demand that it participate in China's rise, but more immediate security concerns and historical path dependency anchor it to the ROK-U.S. alliance. China's rapid growth, now in its fourth decade, has quickly raised its economic appeal to Korea while threatening to disrupt a regional security order that depends on U.S. involvement. With many regional actors—including voices within Korea—expressing concern that China's rapid economic and military rise could precipitate extended competition with the U.S., this basic dilemma has grown in complexity. How Korea would respond if forced to make a choice is a topic of fierce debate within Korea and of overwhelming importance to the United States as it seeks to grapple with the ramifications of China's growth. To the extent that immediate security interests vis-à-vis North Korea and institutional dependency on the U.S. alliance are likely to prevent Korea from “bandwagoning” with China, its ever-deepening Chinese economic relations would also seem to push it toward a neutral stance.

The single most important factor determining Korea's stance moving forward will be the extent to which its security concerns about China's rise are discernable from its security concerns about North Korea. Since this dilemma involves elements of time-inconsistency, disentangling it requires flexibility to engage hypothetical timeframes and scenarios. If Korea worries over China's military and economic rise only because it may complicate goals of stability and eventual unification on the Peninsula, then there will likely be a very cautious Korea that is slow to take sides and quick to unravel its security relationship with the U.S. in the event of unification. Conversely, if Korea is becoming less sanguine over the

direct implications of China's rise, as many other regional actors are becoming, then likely Korea will actively diversify its economic and political relations while using the U.S. security alliance as a hedge against China.

The first section of this paper reviews the predictions of international relations theory for how surrounding states should respond to a rising power. The second section traces the arc of Sino-Korean relations since normalization to determine how they have been affected by three core concerns: security, economy, and values. The third section focuses on the period since the Global Financial Crisis to assess how Koreans' perceptions of China as a threat have shifted in the three issue areas. This analysis concludes with a discussion of future events that might suggest a change in Korea's course, such as its willingness to join security initiatives fiercely opposed by China, like ballistic missile defense, or a closer trilateral security relationship with Japan and the U.S. that is meant to deter Chinese revanchism. Studies by Sarah Kreps on elite consensus and Thomas Risse-Kappan on public opinion and domestic structure show that even in democracies, foreign policy and especially alliance decisions are often the purview of relatively insulated elites. Thus, although this paper looks at both public and elite perceptions of China over time, considerably more weight is given to elite perception in the predictions offered in the conclusion.

I. KOREA AND THE U.S.-CHINA COMPETITION

There is some debate as to the nature of competition between China and the U.S. Aaron Friedberg and other realists have argued that the two may engage in a "contest for supremacy" in Asia in which the balance rests largely on which country can woo greater support from regional actors, while liberals and liberal-institutionalists like John Ikenberry believe China can be peacefully socialized into the world order. Some see the potential for Samuel Huntington's "clash of civilizations," in which Korea is explicitly predicted to move closer to and join its large "Confucian Civilization" neighbor. Others support the hypothesis put forth by David Kang in "Getting Asia Wrong" in 2003 that China is neither revisionist nor imperial, but that its rise signals a return to a peaceful, hierarchical East Asian order dominated by China. For the purposes of this paper, however, it is only important that Koreans *perceive* a U.S.-China competition as existing and intensifying. Some experts on Northeast Asian security, like Chung Jae Ho in his 2007 book *Between Ally and Partner*, see this through traditional realist balance of power mechanisms, while others, like Lee Jung-nam in his 2012 working paper "Faltering Korea-China Relations with the Emergence of the G2 Era," forecast the emergence of a "G2," in which the U.S. and China alternatively cooperate and compete while rampaging over the interests of surrounding states. Concern over this competition frequently manifests in editorials from the major

daily papers in South Korea, and public opinion polls from 2012 by the Asan Institute for Policy Studies show that over eighty percent of Koreans believe the U.S.-China relationship is fundamentally competitive.

How should Korea respond to such a competition? Kang predicts that Korea will, like other actors, show deference to Chinese interests by refraining from controversial policies like missile defense. Looking at other regional actors' responses, Chung suggests that the most important determinants of balancing or bandwagoning behavior are the existence of a territorial dispute with China or a pre-existing alliance with the U.S., followed by the extent of economic dependency. Korea has no serious territorial dispute with China (although the partially-submerged Socotra Rock may one day achieve this distinction), but it is a U.S. ally; so its potential response is theoretically ambiguous. In *China's Rise and the Two Koreas*, Scott Snyder used the "strategic triangle" tool to assess Korea's response to the rise of China, arguing that with normalization Korea began shifting from a "stable marriage" relationship—alliance with the U.S. against China—toward a more "romantic triangle" during the Roh Moo-hyun administration, in which it alternates between the U.S. or China in pursuit of specific policies. Whether Korea will continue to seek a balance or play a larger balancing role will largely reflect its security concerns vis-à-vis China.

Surveying the literature on Sino-Korean relations yields two interesting insights. First, because South Koreans focus overwhelmingly on North Korea when considering security issues, separating Korean views on China from their broader views of the U.S.-ROK alliance is difficult. When South Korea and the U.S. are in lockstep on North Korea policy, Korean elites tend to emphasize the benefits of the alliance and downplay the risks of entrapment, while public views of the United States tend to be more favorable vis-à-vis China. When the two allies disagree on the best strategy for dealing with North Korea, South Koreans are more likely to distance themselves from the U.S. and seek balance in their relations. Second, although economic and political factors at first overwhelmed concerns about China's rise during the so-called "honeymoon" period, many of these positive trends have slowed or reversed as Koreans have grown worried over China's growing assertiveness and one-way support for North Korean poor behavior.

II. SINO-KOREAN RELATIONS: THE "HONEYMOON" PERIOD

Although the Sino-Korean relationship, since normalization in 1992, has not been without its irritants, many observers in the late 1990s and early to mid 2000s felt that most elements of the bilateral relationship improved over time. In particular, China was not generally viewed as a destabilizing military power. Indeed, a 2006 RAND Corporation study titled *Pacific Currents* found that many

Koreans believed China was enhancing regional stability through facilitating the four and six-party talks processes and helping to raise concerns over any step by Japan to become a “normal” military power. Historical, political, and minor economic controversies periodically roiled relations, but on the whole, China’s economic rise was viewed favorably by a nation desperate to find new means of sustaining growth following the financial crisis of the late 1990s.

Sino-Korean Security Relations under the Liberal Korean Governments

In the immediate wake of normalization, Korea did not face very painful tradeoffs between its security and economic interests. This is because over the past two decades Korea has largely viewed China’s rise only through the lens of stability on the Peninsula and North Korea’s nuclear program. With the conventional balance on the Peninsula shifting in the South’s favor during the 1990s and early 2000s, Seoul’s security concerns increasingly focused on the North’s nuclear program. Here, both elites and the larger public believed China was playing a positive role. Against the backdrop of generally tense U.S.-ROK relations over what Seoul viewed as Washington’s hard-line policies, Snyder points out that the Roh administration often felt that its preferred policy of engagement aligned more closely with China’s preference for stability on the Peninsula. China’s support for referring the DPRK to the UN Security Council in 2003 reinforced this perception. In the aforementioned book, Chung reiterates that Korea at this time also believed China could play a useful role as a military and diplomatic counterweight to Japan. Both nations were concerned that conflicting historical interpretations and repeat trips to Yasukuni Shrine by Prime Minister Junichiro Koizumi would usher in a more militarized Japan.

Although South Korea took measures to ease tensions and demonstrate its military commitment to the ROK-U.S. alliance—notably by deploying forces to Iraq in 2004—this period was characterized by South Korea’s efforts to increase its diplomatic flexibility, diversify its foreign relations, and increase its control over combined forces in Korea. A January 19, 2006 U.S.-ROK Joint Statement saw South Korea responding to U.S. attempts to regionalize its bilateral security relationship by stressing the “position that [the ROK] shall not be involved in a regional conflict... against the will of the Korean people.” These events occurred even as tensions on the Peninsula were building with North Korea’s nuclear program. On the one hand this may stem from long-standing and fundamentally divergent threat perceptions of North Korea, which Victor Cha has previously illustrated in his 1997 article “Realism, Liberalism, and the Durability of the U.S.-South Korean Alliance,” but another key factor was Seoul’s desire not to be entrapped in any potential competition as China began to catch up to the U.S. in relative power terms. Recognizing this fear, some Western and Korean analysts

posited that deepening economic relations with China might lead South Korea to adopt a neutral position in any crisis or, in the event of Korea's unification, seek to unravel U.S.-Korean security relations outright.

New Gains in Economic Relations

Even before normalization, South Korean firms, especially the *chaebols*, began investing heavily in China. They sought to benefit from cheap labor and establish themselves in China's burgeoning market. As Snyder notes, Korean foreign direct investment (FDI) accounted for nearly three-quarters of all FDI in Northeast China in the early 1990s. More importantly, the trade flows resulting from these investments led to structural surpluses that helped offset large trade deficits Korea was running against other countries at the time. Although many of these gains stalled temporarily as Korea dealt with the aftermath of the 1997 financial crisis, once China entered the World Trade Organization (WTO) in 2001 trade and investment growth were rapidly restored. By 2006, China was South Korea's largest trading partner. Despite occasional trade hiccups, such as the "Garlic Wars" tariff incident in 2000, and fears that its manufacturing base might be "hollowed out," South Korea increasingly viewed China's economic rise as a solution to its worries about slowing domestic growth. In contrast to this general optimism, some elites at this time were beginning to worry about economic over-dependence on China. Such concerns may have contributed to the Roh administration's sudden support for the Korea-U.S. Free Trade Agreement (KORUS FTA) as a means of economic diversification late in his term.

Portents of Future Discord: Culture Wars

Not all bilateral trends unfolded as positively as security and economic relations during the late 1990s and early 2000s. Although the "softer" aspects of the relationship, such as shared culture and heritage, contributed to harmonious relations immediately following normalization, there was a sharp shift around 2004. Early 2000s public opinion polls indicate that the Korean population generally agreed that China's stance in the Six-Party Talks and Sino-Korean economic relations were net positives. Chung cited a 2003 *JoongAng Ilbo* polling that showed Koreans held more positive views of China than they did of America. This was in part because China as a foreign policy issue held little salience among a public more directly concerned with North Korea and U.S.-ROK bilateral relations. Although some opinion leaders, especially on the right, worried about how a future with China as the dominant Pacific power might be, it simply was not important enough to dominate the national conversation. When it came to potential military conflict, the population was more concerned that the U.S. might drag it into war than that it might need to rely on U.S. forces for security from China in the future.

This general optimism took a sharp hit in 2004 during a dispute over whether Goguryeo, which South Koreans view as one of the kingdoms among the fabled Three Kingdoms Period, was more properly part of Korean or Chinese heritage. The dispute had been dormant since 2002 but was reignited in Korean media after the Chinese Foreign Ministry delisted some references to Korea from its website. As Snyder details, support for strengthening political ties with China fell from over 80 percent to 40 percent between summer 2004 and January 2005. In a sign that the Korean public views ROK-U.S. and ROK-Chinese relations in somewhat zero-sum terms, favorable feelings toward the U.S. rose over the same period. In addition to these historical disputes, which many Koreans believe raise questions of how responsible a dominant China might be, Koreans grow cyclically more wary of China when they hear of increasing Chinese economic permeation in North Korea or hear of Chinese refoulement of North Korean refugees and other human rights violations. More generally, as South Korea's democracy matures, the fact that China remains an authoritarian state interested in allowing only economic, not political, freedom is bound to grate against Korean sensitivities.

The Balance of Security, Economy, and Values

On balance, general nonchalance toward China as a military threat and the sense of opportunity in China's economic rise helped to crowd out disagreements over human rights or history. Between 1992 and 2008, although portions of Korean society might have objected to specific Chinese human rights practices or historical interpretations, few government or social elites were going to interfere with high-opportunity business dealings, absent concrete security concerns. South Korea thus avoided the hard choices now facing many countries in the region between closer economic ties with China and the pursuit of security interests.

III. THE DILEMMA INTENSIFIES: KOREA'S RESPONSE TO CHINA AFTER THE FINANCIAL CRISIS

Koreans since 2008 are not alone in worrying about intensifying competition between the U.S. and China. U.S. allies and neutral actors are each attempting in varying degrees to balance their economic interests in China's growth against fears that its growth may disrupt the regional stability that America has historically underwritten. Its status as a U.S. ally has led analysts like Chung, writing in his 2009 article "East Asia Responds to the Rise of China," to predict some form of security hedging, but Korea, to date, has adopted a carefully balanced stance. Although some of the trends mentioned previously lead to worsening Sino-Korean relations by the mid-2000s, on the whole bilateral relations were stable, and Korea was determined to continue using China's rise

for its own economic growth. From 2008 onward, however, how the Korean elite and public perceived China's role in Northeast Asian security shifted rapidly, while China's growth as an economic competitor for South Korea in important areas made economic exchange less beneficial.

New Outlooks on the Security Implications of China's Rise

After 2008, several key variables shifted in ways that contributed to new and growing concerns in South Korea. First, the election of a conservative president in late 2007 meant a likely shift away from engagement in the Blue House's orientation toward the North. This would create tension between the preferred policies of Seoul and Beijing, while enhancing the need to improve relations with Washington.

Second, the 2008 Global Financial Crisis rapidly accelerated the speed with which China was closing the relative power gap with the United States. The crisis also acted as a shock to the system, alerting foreign policy elites from Washington to Tokyo of underlying trends.

Third, Koreans began to realize the potential risks of China's growth during a two-year period of increased Chinese assertiveness from 2010 to 2012, a period analyzed by Michael Swaine in his 2010 article, "Perceptions of an Assertive China." Han Suk-hee points out in a 2012 publication "South Korea Seeks to Balance Relations with China and the United States" that part of this was a backlash against Chinese criticism of the U.S.-ROK alliance, which some Chinese deemed to be anachronistic. On North Korea, although China supported the extension of some sanctions via the United Nations Security Council following April and May 2009 ballistic missile and nuclear tests, it opposed other, harsher measures while continuing to provide broad economic aid to North Korea. With North Korea continuing to defy commitments to denuclearize made in the 2005 Six-Party Talks, the view that China was actively and positively contributing to the process deteriorated. Bae Jeong-ho notes in "China's Rise and the Korean Peninsula" (*Jungguk-ui busang-gwa Hanbando*) that China's obstructionist view of the 2010 sinking of the *Cheonan* and ambivalence toward the Yeongpyeong Island shelling raised further fears in Seoul that China was not acting responsibly. Elite perception held that the ensuing regional response, including the U.S. "pivot to Asia" in 2011, was a direct response to Chinese "belligerence."

Popular and Elite Assessments of the New Security Environment

Korean elites and the general population took from these events several insights that seriously exacerbated the perceived dilemma between economic benefits from ROK-China relations and potential damage to security interests. First,

Chinese behavior and the U.S. response meant that U.S.-China competition, in Korea's view, was heating up. Analyzing public opinion polls from 2007-2010, Jung-Nam Lee in the same "Faltering" article above finds that the Korean public increasingly believes that the U.S.-China gap is closing, leading to increased competition between the two. Interviews conducted by the author in 2012 found that some high-ranking South Koreans fear that as this competition grows, so too will Washington's demands for Seoul to join in initiatives perceived as hostile by Beijing. This gives rise to fear of entrapment, and, at a more mundane level, increases South Korea's concern that it will be called on to uphold a larger share of Northeast Asia's defense burden, even as it was already "barely keeping its head above water" following the Global Financial Crisis.

Second, Koreans across the political spectrum came to believe that China was either indifferent toward or outright opposed to Korean unification. A liberal party assemblyman and high official in the National Assembly expressed skepticism that China would contribute in any process that sought Korean unification. On the opposite end of the political spectrum, a conservative National Assembly member argued China was opposed to unification for strategic reasons. Elaborating on this strategic rationale, Bae points out that China's desire above all for stability devolves into support for a status quo of disunity. He also puts forth a more widely held belief that China benefits from North Korea's status as a "buffer state" and as a form of leverage in the broader U.S.-China relationship. In short, the fear that China fundamentally opposes Korean unification—a national goal with bipartisan support—has marred some of the 1990s' and middle 2000s' optimism Koreans felt toward China on security issues.

Third, the Korean population as a whole has grown more nervous about the role China might play in the region. Although Pew Global Attitudes polling finds that Koreans believe that the current regional security guarantor, the U.S., takes Korea's interests into account when formulating foreign policy, 86 percent believe China's rise as a military power is bad for Korea, and a larger portion believe China is more likely to be an enemy than a friend. Indeed, Asan International Trends Polling finds that as of 2012, the Korean public is more likely to believe China represents a military threat than the U.S. public is. Although many of these perceived threats continue to revolve around North Korea, they are broadening in scope. For example, a representative of the ROK Ministry of Foreign Affairs and Trade interviewed in November 2012 referred explicitly to territorial disputes in the South China Sea as constituting a security threat to the ROK's energy supply. He explained that the threat is in part amplified by the view that current Chinese behavior in the South China Sea could indicate future conduct.

Growing Ambivalence toward Economic Relations

As Koreans become increasingly concerned about the military and security aspects of China's rise, shifting public views of China's *economic* rise mean remunerative concerns become less of a counterweight. In contrast to 2002 polling, presented in Chung's *Between Ally and Partner*, showing 66 percent of South Koreans hold a positive view of China, Pew Global Attitudes polls in 2007, 2008, and 2010 each found Koreans increasingly divided on the benefits of China's growth, with the majority viewing it as detrimental to Korea's economy. Similar polling in 2012 by the Asan Institute found that 53 percent of Koreans believe China represents an economic threat, while only 44 percent see it as a source of opportunity. This is despite China's position as Korea's leading trading partner in both imports (16.5 percent of total) and exports (24.2 percent of total) in 2012, according to WTO. In part, this is due to the rising share of Chinese manufactures among Korean imports and concern that China will increasingly challenge South Korea's economic competitiveness. More importantly, it may reflect the unequal distribution of gains from trade. The same Asan Institute poll found that 91 percent of Koreans believed most economic benefits went to only a small segment of society. However, when broken down by age, the poll showed younger respondents tended to believe China held more economic opportunity than older ones. Thus, Koreans as a whole feel ambivalent toward economic relations with China. The same National Assembly members mentioned earlier each independently reiterated the importance of Chinese economic relations, and whatever concerns Korea may have over China's economic rise, it will launch official negotiations toward an ROK-China free trade agreement in May 2012.

When Autocracies and Democracies Fail to Mesh: Clashes over Values

Nearly every joint statement by the U.S. and ROK within the past four years has included some formulation of 2012's "common values of commitment to freedom, democracy, human rights, and the rule of law," serving as the bedrock of the alliance. ROK-China relations are weaker on shared values, with only half of Asan poll respondents identifying common values and interests between the two. China's authoritarian nature continues to unnerve South Korea, and its unbending view on North Korean refugees as economic rather than political refugees continues to frustrate South Koreans' sense of justice and concern for familial ties. More importantly, China is also demonstrating its willingness to antagonize South Korea directly. The alleged torture of South Korean human rights activist Kim Young-hwan at the hands of Chinese authorities in Dalian in March through May of 2012 elicited a harsh response from both the South Korean government, which demanded an investigation, and opinion leaders. For example, an editorial published in July 26, 2012 by *Dong-a Ilbo* derided "China

[as] not a Civilized Nation.” All of this increases ROK distrust and hostile threat perception of China, even absent any direct link to Korean security interests in North Korea.

IV. THE BALANCE: WHAT SOUTH KOREA’S RESPONSE MEANS FOR THE U.S.

Although the above analysis shows a general decline in ROK-Chinese relations since the mid-2000s, when poor U.S.-ROK relations contributed to serious concerns over the alliance’s future, U.S. strategists eager to enlist Korea in any broader strategy in East Asia should be wary of ongoing Korean ambivalence toward the U.S. “pivot to Asia” or “rebalancing.” During interviews in Seoul in November of 2012, high ranking U.S. State Department officials were quick to dismiss concerns of the ROK “walking away” from the alliance – a view held by a small minority of left-leaning academics. Given Asan polling showing 98 percent of South Koreans in support of the alliance, this is true. But, the key phrase one hears during interviews with Korean academics, policymakers, and even the general public is “balance.” Despite some economic irritants and concerns over China’s policy toward North Korea, South Koreans are still eager to partake in Chinese growth.

That Korea should seek “balance” in any broader regional order has been reiterated across the political spectrum by policymakers and is supported by polls, cited by Lee, showing that when asked whether Korea should stay neutral in a Sino-U.S. conflict, 62 percent of Koreans responded that they should. The ongoing desire for balance despite rapid growth in Chinese military spending is strong evidence that Koreans still view China as a security threat primarily because of its conflicting interests vis-à-vis North Korea, and not because they fear China might pose a direct threat in the near term. In the context of a still-divided Korea, then, South Korea is likely to temper its behavior to comport with Chinese interests when it comes to regional security frameworks. U.S. embassy personnel pointed out during personal interviews that since Korean elites view economic cooperative frameworks as incorporating security interests, as they did with the KORUS FTA, they express concern over joining the Trans-Pacific Partnership as long as China is not involved. Conversely, they are eager to pursue a Korea-China FTA as a means of constraining China. The U.S. should therefore expect only half-hearted Korean interest in the economic portions of its pivot.

Koreans are deeply distrustful of Chinese influence over North Korea and are three times more likely than Chinese citizens to believe China would intervene in a conflict on the peninsula, according to Lee. Thus, the flip side of Korean security concerns focusing on North Korea is that despite a willingness to bow to Chinese interests in certain areas, South Korea will likely continue to prioritize

security on the peninsula above even Chinese concerns, as it did when it conducted joint exercises with the U.S. in the Yellow Sea over China's objections or when it launched a new program to extend the range of ballistic missile defense (BMD) capabilities to include Beijing. A controversial policy initiative that falls between U.S. regional security goals and South Korea's security concerns over China is BMD. Korea continues to take halting steps toward such a program, but it has yet to commit fully. Although some argue that South Korea can convince China that the BMD program is only meant to counter North Korea's missile program, a decision to proceed over China's strong objection would indicate a substantial shift in South Korea's thinking about China's rise. It is likely to develop only in response to overt acts of aggression by China against other regional actors. On the other hand, a decision by the new Korean administration to distance itself further from or even criticize the U.S. pivot would indicate a drastic shift in the other direction.

V. CONCLUSION: HYPOTHESIZING A UNIFIED KOREA

If U.S.-China competition does not abate by the time Korea is unified, what will unification mean for the U.S.-Korea alliance? Looking at the three arcs of China-ROK relations provides some tentative answers to this overriding question. In the security realm, a key takeaway is that Korea is primarily concerned about China's rise only as it relates to North Korea. Although the 2012 Asan polls show that 63 percent of Koreans believe China is the most likely country to pose a post-reunification threat, those polled could only select between Japan, Russia, China, and the U.S. Such a poll cannot indicate how likely Koreans think China is to pose a threat. Much would depend then on how reunification comes about and China's attitude toward it. If China were to support a gradual process of unification through confederation or federation and to recognize the border on the Yalu and Tumen Rivers, it would alleviate the principal source of strategic antagonism with South Korea. In this case, a unified government in Seoul would be hard-pressed to find compelling reasons beyond institutional inertia to sustain the U.S.-Korea alliance. If, on the other hand, unification occurred through North Korea's collapse or even as the result of an escalating conflict in which the U.S. played a key role, South Korea would likely support continuing the alliance, especially if it viewed China as continuing to fight for the status quo.

On the other hand, ongoing cultural and value-based antipathies also mean South Korea is unlikely to follow the bandwagoning path predicted by analysts like David Kang. The U.S.-Korea alliance has been the bedrock of South Korean security thinking for six decades. Korea would only be likely to side against the U.S. in a major competition if China itself had ceased to be an autocratic state and developed a similar value system as the one Koreans hold today. The prevailing trends in Northeast Asia indicate that Korea will pursue its "balanced" path even after unification.

CHAPTER V: LEGAL DILEMMAS AND ELECTIONS



American Legal Dilemmas and Korean Elections

By Mark Kulish

I. INTRODUCTION

Choosing a nation's highest leader is the supreme exercise of popular sovereignty in an electoral democracy. When one partner in a close and multifaceted bilateral alliance holds a general or presidential election, the alliance's long-term viability rests on both the reality and the perception of non-interference in the alliance partner's elections. Regardless, circumstances may arise where events apt to have an influence on elections in one alliance partner pose legal issues that demand decisions by officials in the other alliance partner. Although there may be no intent to interfere—and indeed pains are taken not to interfere—influence, whether or not decisive, may nonetheless be exercised simply by making decisions the legal process demands. Even if one of the options before decision makers is to delay final resolution of the issue until after the alliance partner's election is over, a decision to delay resolution still constitutes a decision and could still have an impact.

Over the past 60 years, a complex web of ties has grown around the core Republic of Korea–United States (ROK-U.S.) security alliance, beginning with the post-Korean War stationing of U.S. forces in the ROK, then expanding immigration (predominantly of ROK citizens to the U.S., many of whom acquired U.S. citizenship), and a wide array of trade and economic ties. The alliance is now a multifaceted relationship regulated by an array of bilateral rules and legal regimes. Relevant here, in 1966, the prolonged stationing of U.S. forces in the ROK gave birth to a status of forces agreement (SOFA), amended in 1991 and again in 2001. In 1998, the large numbers of ROK immigrants to the U.S. gave rise to an extradition treaty.

In both 2002 and in 2007, the operation of legal regimes in place to regulate the various facets of this complex bilateral relationship came to have a direct bearing on the outcome of presidential elections in the ROK. This paper describes both chains of events, focusing on the critical junctures where U.S. officials made decisions demanded by a legal process. In 2002, the operation of the ROK-U.S. Status of Forces Agreement (SOFA), which triggered, in turn, the body of laws and procedures governing the U.S. military justice system, placed the U.S. in a position where its resolution of a legal issue could affect, and likely did affect, the outcome of a ROK presidential election. Once U.S. officials made the decision to exercise “official duty” jurisdiction under the SOFA over two U.S. soldiers allegedly responsible for the deaths of two Korean middle school girls, resolution

of the issue lay with the U.S. military justice system. Decision makers in the U.S. legal process, even though attempting to appease host-nation public opinion in advance of the election, likely, and ironically, contributed decisively to the election of the candidate perceived as less favorably disposed to the U.S. and the alliance.

In 2007, the operation of the ROK-U.S. extradition treaty again placed the U.S. in a position where its resolution of a legal issue appeared to have the potential to sway the outcome of yet another ROK presidential election. In October of that year, an alleged former business associate of then-candidate Lee Myung-bak suddenly placed himself on the precipice of extradition from the U.S. to the ROK after years of petitions and appeals. In 2007, U.S. decision makers deliberately chose to allow the extradition process to operate in a normal fashion, in spite of considerable pressure to do otherwise and even risking an election outcome (Lee's defeat) widely perceived as unfavorable to U.S. interests. What U.S. decision makers (and various actors in Korea) could not anticipate in 2007 is that these decisions, unlike the decisions made in 2002, would have no discernable effect on the election outcome in any case.

The very fact that in 2007 U.S. decision makers assumed a risk that did not eventuate (the defeat of a candidate perceived as more favorable to U.S. interests) helps answer the question of what made one set of decisions (those in 2007) superior to another (those in 2002). This paper argues that legal decisions in such charged and volatile circumstances should hew to three criteria: (1) consideration of the intrinsic merits of a case, without regard to external consequences; (2) following settled procedures; and (3) ensuring the maximum level of transparency warranted by those procedures. Decisions made according to these tenets may still influence an election outcome in an alliance partner, but such influence will be muted because the decision is based on intrinsic facts, not fear of alliance partner perceptions; because the press and public in the alliance partner are well-informed about the intrinsic facts on which that decision was based; and because they know that settled procedures were followed in reaching the decision.

II. 2002: THE DEATHS OF SHIM MI-SUN AND SHIN HYO-SOON

The ROK-U.S. SOFA

In 1965, some twelve years after the end of the Korean War, the U.S. and ROK concluded their SOFA. The agreement entered into force in 1966. The two sides first amended the agreement in 1991. In the more extensive 2001 revision, the two sides amended the agreement to afford the ROK the right, depending upon the seriousness of the offense at issue, to assume custody of the U.S. service

member over whom it was exercising jurisdiction at earlier points in the process than had previously been authorized. Namely, the ROK could assume custody upon indictment by ROK authorities for certain serious crimes and upon arrest by ROK police for certain more serious (or “heinous”) offenses. The 2001 SOFA revisions altered only the criteria governing which country would have custody of a service member once the ROK exercised jurisdiction. The 2001 revisions did not alter the criteria governing the exercise of criminal jurisdiction itself. As under the U.S. SOFA with NATO countries and the U.S. SOFA with Japan, if an offense occurred between U.S. personnel with SOFA status (i.e., a U.S. alleged perpetrator and a U.S. alleged victim), the U.S. would have the primary right to exercise jurisdiction. If a U.S. SOFA status individual were accused or suspected of committing an offense against a ROK citizen (or, for that matter, a person in the ROK without U.S. SOFA status), the ROK would have the primary right to exercise jurisdiction, *unless* the U.S., through one of its general officers stationed in the ROK, certified that the U.S. SOFA status individual had been acting in the pursuit of “official duty” at the time of the offense. In that case, the U.S. would retain the primary right to exercise jurisdiction.

The “understandings” reached by the two sides when the SOFA was amended in 2001 provide that the U.S. general officer’s

...[official duty] certificate will be conclusive unless modification is agreed upon. However, the Republic of Korea authorities may discuss, question or object to any United States armed forces official duty certificate. The United States authorities shall give due consideration to any opinion which may be raised by the Republic of Korea authorities in this regard.

With regard to all SOFAs to which the U.S. is a party, U.S. authorities are under a Congressional mandate to “maximize” jurisdiction over U.S. personnel. That is, once it is determined the U.S. has the primary right to exercise jurisdiction (because the offense was committed by one U.S. SOFA status person upon another or because the offense, though allegedly committed against a non-SOFA status alleged victim, was committed in the pursuit of “official duty”), the U.S. will, without exception, assert its primary right to retain jurisdiction. In such a case, the ROK authorities may register objection but have no authority under the SOFA to retain or to seek custody of the service member pending a trial. The 2001 SOFA amendments, which expanded the rights of the ROK to seek or to retain custody in cases where *the ROK* had the primary right to exercise jurisdiction, would simply not apply. Instead, the service member remains under U.S. control, and the offense is resolved (if the alleged perpetrator is a service member rather than a civilian stationed with U.S. forces) under the U.S. military justice system.

The U.S. Military Justice System

As it stood in 2002, the U.S. military justice system bore a strong resemblance to civilian criminal justice systems in the U.S. state and federal courts, but also retained important differences. Among the differences, the initial charging decision, though made with the advice of uniformed prosecuting attorneys, was (and today still is) made by the suspected service member's commanders rather than the prosecuting attorneys. Commanders are free to exercise a range of options, from no action at all, to what is known as "non-judicial punishment" (where rank, pay, extra duty, and restriction to certain limits on base are at stake, but confinement is not), to court-martial (where rank and pay are at stake, confinement is possible, and punishments may include the stigma of a bad-conduct discharge or a dishonorable discharge from military service). There are various levels of courts-martial, corresponding roughly to "misdemeanor court" or "felony court" in civilian systems.

Upon referral to general court-martial—the highest level of court-martial—the maximum possible punishment is limited only by the maximum punishments specified by Congress in the Uniform Code of Military Justice (UCMJ), or, where Congress has not specified a maximum punishment, by the maximum punishments specified by the President (under a statutory delegation of authority) in the Manual for Courts-Martial. Only a "general court-martial convening authority" (normally, the first general officer in the service member's chain of command) may refer a case to a general court-martial. The general officer may refer a case to a general court-martial only after there has first been a pretrial investigation, known as an "Article 32 investigation," by virtue of the statute in the UCMJ that mandates and authorizes it, before a "neutral and detached" officer.

An Article 32 proceeding's chief purpose is to provide the chain of command a more in-depth picture of the circumstances of the alleged offense and a considered recommendation regarding whether the case should indeed be referred to a general court-martial, should be resolved by a lower level of court-martial, or should be dismissed. During the proceeding, the Article 32 investigating officer hears sworn testimony and examines, if admissible, documentary evidence, all in the presence of the accused service member, his defense counsel, and prosecutors. At the hearing's conclusion, the Article 32 officer finds whether the evidence warrants the charges against the accused service member and, if so, recommends an appropriate level of court-martial or other disposition. The Article 32 officer's recommendation is not binding. Although the Article 32 proceeding is often compared to a grand jury in the U.S. civilian federal criminal justice system, it is more analogous to the preliminary hearing common in many U.S. state criminal justice systems.

The U.S. Court of Appeals for the Armed Forces, the highest appellate court in the U.S. military justice system (and composed entirely of civilian judges), has held since 1997 that Article 32 proceedings, like courts-martial themselves, are federal criminal proceedings which, unlike federal grand juries, must be open to public view, absent compelling reasons to close them. Compelling reasons may include the discussion of classified information or to protect the privacy of child witnesses, but even if such interests exist, only such portions of the Article 32 hearing should be closed as are necessary to protect those interests. In other words, the presumption is in favor of keeping these hearings, like courts-martial trials themselves, open to public view and public access.

If, after receiving the report of the Article 32 officer, the general officer in command decides to refer the case to a general court-martial, the matter then falls within the jurisdiction of a U.S. military judge, that is, a uniformed judge advocate officer whose sole function is to preside over courts-martial. The military judge is responsible for conducting any necessary hearings prior to trial to dispose of pretrial motions (for example, motions to suppress evidence or motions to obtain evidence the prosecution has not disclosed to the defense), and, most pertinently here, is responsible for setting the actual dates of trial. The military judge is insulated from command pressures. He or she is not answerable to, or rated by, anyone in the chain of command. Uniformed defense counsel represent service members, though they have the option to hire a civilian lawyer at their own expense.

Accused service members may choose to have their guilt or innocence, and, if found guilty, their sentence, decided by the military judge alone, by a panel of officers, or, if the accused is an enlisted member, by a panel of both officers and enlisted service members. The same general officer who referred the case to a general court-martial chooses the panel, but its members are subject to challenge, just as civilian jury members are. Once the panel has heard the evidence and received instructions from the military judge on the applicable law, the panel conducts its deliberations in a closed setting. The military judge instructs the members that the influence of superiority in rank cannot be brought to bear by any member of the panel upon any other member. Even after the trial has concluded, the members are prohibited from discussing their deliberations with anyone. This rule serves to further insulate the members from any command pressures, subtle or otherwise.

Early Selection of Major Party Candidates in Korea, 2002

As Korea's 2002 presidential election year began, the Millennium Democratic Party (MDP), the party of the incumbent president, Kim Dae-jung, decided to choose its presidential candidate by a party primary process. The opposition

conservative party, the Grand National Party (GNP), reluctantly followed suit. In April 2002, after eleven rounds of regional primaries, Roh Moo-hyun, a former National Assembly member, former Kim administration cabinet member, and former human rights lawyer, won the MDP nomination. In May 2002, GNP Chairman Lee Hoi-chang, whom Kim Dae-jung had defeated in the 1997 presidential election, won the GNP primary by a wide margin.

At the end of May, the 2002 World Cup, co-hosted by the ROK and Japan, began in Seoul. By June 10, the ROK team had secured one victory (over Poland) and one tie (against the U.S.). On June 13, the ROK held local elections, which the GNP swept. Most schools in Korea were closed for these local elections, including schools in and near the city of Yangju, mid-way between Seoul and the city of Dongducheon, where the bulk of the U.S. Second Infantry Division was stationed.

June 13, 2002

On June 13, 2002, two Yangju area middle-school girls, Shim Mi-sun and Shin Hyo-soon, excused from school for the day, were walking on the roadside between two villages in the Yangju area to a friend's birthday party. The road consisted of two lanes, one running in each direction. Company B of the 44th Engineer Battalion, part of the Second Infantry Division's Engineer Brigade, was engaged in a field exercise in the vicinity. As part of the exercise, Company B's commander led a vehicle convoy, including a large tracked vehicle (an M48A5 AVLM), to link up with an infantry unit.

The company commander assembled the convoy on short notice, and he occupied the convoy's lead vehicle. As the company commander's lead vehicle rounded a curve, the company commander was preoccupied with a radio conference regarding the exercise. The company commander and his driver passed the two girls walking in the same direction as the convoy, their backs to the approaching vehicles, on the right edge of the paved road. Soon after, the occupants of the second vehicle (being the vehicle immediately in front of the AVLM) also spotted the girls, who were now in a single file with their hands over their ears due to the noise of the convoy.

The AVLM, the large tracked vehicle, was driven by Sergeant Mark Walker. Due to the positioning of the driver's seat deep inside the left side of the vehicle and the outer shell of the AVLM, Sergeant Walker could not see the right side of the road. Also in the AVLM was Sergeant Fernando Nino. Sergeant Nino was serving as the track commander (TC) of the AVLM. Among his duties was to alert the driver, Sergeant Walker, of any hazards. His standard means of communicating with Sergeant Walker was via an intercom system controlled by a switch. Turned

in one direction, the switch would activate the intercom. Flipped in the other direction, the switch would enable Sergeant Nino to communicate with other vehicles via radio.

Meanwhile, a convoy of five Bradley Fighting Vehicles from an infantry unit approached the engineer unit's convoy from the *opposite* direction, and began to pass them in the opposite lane of the one-lane-each-way road. As the AVLM rounded the curve, Sergeant Walker saw the oncoming Bradley Fighting Vehicles in the opposite lane. Given the width of his AVLM, and in order to avoid a collision with the Bradleys, Sergeant Walker edged the AVLM to the right. A non-commissioned officer (NCO) in one of the Bradley Fighting Vehicles, approaching in the opposite lane, seeing the girls and the approaching AVLM, rose up from his seat and gave a standard hand signal to Sergeant Walker, the AVLM's driver, to stop. At the same time, one of the occupants of the vehicle immediately in front of the AVLM also gave the AVLM a hand signal to stop.

However, due to a large t-shaped metal fixture (a "t-bar") affixed to the AVLM in front of Sergeant Walker, he could not see the hand signal from the NCO in the opposite lane. For the same reason he could not see the two girls, Sergeant Walker also could not see the hand signal from the soldier in the vehicle travelling directly in front of him. Meanwhile, Sergeant Nino, seeing the two girls as the AVLM rounded the curve, using the intercom, immediately attempted to tell Sergeant Walker to stop. On at least two attempts, Sergeant Walker did not respond. Either the intercom system failed or Sergeant Nino did not operate the switch properly. (After the accident, investigators tested the intercom. Operating the switch properly, they found that it was not functioning.) With one more attempt, some seven seconds after the two girls had first come into his view as the AVLM had rounded the curve, Sergeant Nino reached Sergeant Walker via the intercom. Sergeant Walker brought the AVLM to a stop. By then, it was too late. The right track of the vehicle had knocked down Ms. Shim and Ms. Shin, instantly crushing them to death.

The 2002 World Cup, Demonstrations, and a Naval Clash

Meanwhile, the Korea-Japan World Cup continued, with the Korean team winning victories over Portugal (June 14), Italy (June 18), and Spain (June 22), advancing to a semi-final match against Germany (June 25). The Korean team's performance had exceeded all expectations, even though it lost the semi-final match to Germany. Mass demonstrations of popular support for the team throughout the ROK, peaceful and friendly in nature, were broadcast throughout the world.

Some demonstrations, however, targeted U.S. forces in Korea. On June 20, demonstrators penetrated the perimeter of Camp Red Cloud in Uijeongbu, the headquarters of the Second Infantry Division north of Seoul. In a further demonstration on June 26, nine U.S. military police were injured as demonstrators again breached the camp's perimeter. On June 29, during yet another demonstration outside Camp Red Cloud, ROK and Democratic People's Republic of Korea (DPRK) vessels engaged in a firefight in the West Sea, resulting in one lost ROK vessel with five ROK sailors killed and twenty-two wounded.

Investigation and U.S. Assertion of SOFA Jurisdiction, June-July 2002

On June 14, 2002, the day after the deaths of Ms. Shim and Ms. Shin, the U.S. Army Criminal Investigation Command and ROK Army Criminal Investigation Command initiated a joint investigation of the incident. On June 20, a U.S. general officer signed an official duty certificate under the ROK-U.S. SOFA pertaining to Sergeant Walker. That is, the U.S. general officer certified that, at the time of the accident, Sergeant Walker had been acting in the course of his official duties. Accordingly, the U.S. would have (and, implicitly, would assert) the primary right to exercise jurisdiction over any criminal proceedings against Sergeant Walker.

On July 3, 2002, court-martial charges were preferred against both Sergeant Walker and Sergeant Nino. Each NCO was charged with two specifications of negligent homicide; that is, causing the deaths of Shin Hyo-soon and Shim Mi-sun by failing to exercise such care under the circumstances as would have been exercised by a reasonable person under the same or similar circumstances. Although the mere preferral of court-martial charges did not foreclose a later waiver of U.S. jurisdiction prior to trial, the U.S. intent to exercise jurisdiction was clear.

On July 10, the ROK Ministry of Justice (MOJ) requested that the U.S. waive its primary right to exercise jurisdiction over the two soldiers. On July 11, a U.S. general officer signed another official duty certificate, this one pertaining to Sergeant Nino.

Nevertheless, U.S. authorities continued to cooperate with the ROK prosecutor, making Sergeants Walker and Nino, as well as numerous other witnesses to the accident, available for questioning, providing witness statements and photographs from the Criminal Investigation Command's investigation, and permitting ROK prosecutors and their assistants to inspect the AVL. Meanwhile, demonstrations, some including over 900 participants, continued outside USFK installations, particularly in the Second Infantry Division area

north of Seoul. On August 7, USFK officials informed the ROK MOJ that the U.S. would not waive its primary right to exercise jurisdiction, noting that a U.S. waiver of jurisdiction in an official duty case would have been unprecedented.

U.S. Court-Martial Proceedings Prior to Trial

Court-martial charges having been preferred, an Article 32 officer was appointed to hear testimony, to examine other available and admissible evidence, and to make a recommendation whether the two cases should be disposed of by a general court-martial. The Article 32 officer held three hearings pertaining to both cases on July 13, July 19, and August 2, 2002. It is unclear whether these hearings were expressly declared open to the public, as required by law absent a compelling reason to close them. In any event, in contrast to the later courts-martial trials, the command did not invite Korean media to attend. Even *Stars and Stripes*, the independent U.S. newspaper with on-base civilian reporters, did not report on them until after they were concluded.

On August 8, 2002, the Article 32 officer completed his written recommendation. Although his recommendation was not made public at the time, the officer recommended that Sergeant Walker's charges be dismissed and Sergeant Nino's go forward, stating only that Nino "could have done more" to prevent the accident. Finally, the officer recommended that court-martial charges be lodged against Company B's commanding officer, who had been in the convoy's lead vehicle, and that those charges be forwarded to a general court-martial. The Article 32 officer's findings and recommendations were not binding on the command.

After examining the Article 32 officer's report and recommendations, the Second Infantry Division's commanding general nevertheless decided, on September 11, 2002, to refer the negligent homicide charges in the cases of both Sergeant Walker and Sergeant Nino to separate trials by general court-martial. From that point forward, authority over the scheduling of the trials was in the hands of the military judge, an officer independent from any command.

On September 24, 2002 the military judge arraigned both service members. On or after the day of those arraignments, the military judge set Sergeant Nino's trial to begin on November 18 and Sergeant Walker's on November 21. To all appearances, the military judge treated the scheduling as he would any other. He likely set the two cases to be tried in November based on trials in other cases already scheduled on his docket; representations by the prosecution, the defense, or both, regarding their readiness for trial; the number of witnesses each side intended to call; and the necessity of bringing any witnesses from the U.S. to Korea to testify. He likely set the two cases to be tried in immediate succession

based on representations from the defense, the prosecution, or both, that testimony from the same witnesses, many of whom would have to be brought to Korea from the U.S. or elsewhere in the world, would be required in both cases.

There is no indication that the prosecution raised the impending ROK presidential election or that the ROK election had any bearing on the military judge's decision regarding trial dates. For any commander or other U.S. official, including the U.S. ambassador to the ROK or anyone acting on his behalf, to approach the military judge regarding the scheduling of the two trials, save by way of the prosecuting attorneys in the two cases, would have been, at best, improper. Even if they had done so, it is unlikely that the military judge would have considered the election so compelling a factor as to require delaying the trials until after the ROK Election Day (December 19). A holiday season would immediately follow, when it would be much more difficult to secure the presence of numerous witnesses. Moreover, Sergeant Walker or Sergeant Nino or both could lodge objections to delay, and each had a right to a speedy trial.

***Presidential Politics, SOFA Protests, and Nuclear Crisis,
October-November 2002***

Following the MDP's poor showing in the June 13 local elections, MDP candidates suffered further defeats at the hands of the GNP in the August 2002 by-elections. Some party members questioned Roh Moo-hyun's candidacy. In September 2002, Chung Mong-joon, a member of the National Assembly, son of Hyundai founder Chung Ju-yung, and controlling shareholder of Hyundai Heavy Industries, seeking to capitalize on his role in the successful hosting of the World Cup, announced his independent candidacy for the presidency.

In October 2002, the U.S. State Department announced that it had confronted DPRK officials with evidence that the DPRK was engaged in a highly enriched uranium production program. The 1994 U.S.-DPRK Agreed Framework began to unravel. Meanwhile, taking a cue from the mass peaceful demonstrations of support for the Korean World Cup soccer team in June, a series of candlelight vigils was held to protest the U.S. exercise of jurisdiction under the SOFA in the cases of Sergeant Walker and Sergeant Nino.

On November 16, 2002, Roh Moo-hyun and Chung Mong-joon reached an agreement under which one or the other would alone stand for president against the GNP's Lee Hoi-chang, based on the results of an opinion poll after a televised debate between Roh and Chung. The debate was held on November 23, and the poll results, won by Roh, were released on November 25, 2002. Chung withdrew his candidacy and started to campaign for Roh.

The Courts-Martial of Sergeant Walker and Sergeant Nino, November 18-22, 2002

Prior to the trials of Sergeant Nino and Sergeant Walker, USFK made arrangements for a large contingent of Korean and American reporters, as well as representatives of Korean NGOs and family members of Ms. Shim and Ms. Shin, to attend the trials. The reporters were permitted to enter the base where the trial was held (Camp Casey in the city of Dongducheon) and afforded the use of a separate room adjacent to the courthouse equipped with a live closed-circuit video feed and staffed by an interpreter. These efforts by USFK to accommodate news media coverage stood in contrast to the command's treatment of the Article 32 proceeding in July. Though the Article 32 hearing may not have been formally closed to the public, it was held on the same installation, Camp Casey, without invitations having been extended to any ROK media outlets. Even U.S. media were apparently unaware the Article 32 proceeding was underway on until it was already completed in August. Thus, the news media were not fully exposed to the facts of the incident until five months after the deaths of the two girls, by which time opinions had already hardened and, in many cases, judgments had already been made.

On November 18-20, Sergeant Nino was tried before a court-martial panel (jury) of seven officers and non-commissioned officers. The prosecution called eight witnesses, and the defense four. On the afternoon of November 20, the panel acquitted Sergeant Nino. On November 21-22, Sergeant Walker was tried before a panel of eight officers and non-commissioned officers, none of whom sat in Sergeant Nino's case. The prosecution called eight witnesses, the defense one. Late in the evening of November 22, the panel found Sergeant Walker not guilty.

Unlike in most U.S. civilian criminal courts, these verdicts need not have been unanimous. In each case, the prosecution was required to convince two-thirds of the panel members (five members in the case of Sergeant Nino, and six in the case of Sergeant Walker) that the accused service member was, beyond a reasonable doubt, guilty of negligent homicide. Thus, for either of the two to be acquitted, at least three members need to have voted for acquittal.

The Aftermath and the Election

A firestorm of protests followed the announcement of the acquittals. On November 27, the U.S. ambassador met with the victims' families to convey President Bush's apology for their daughters' deaths. Protests and candlelight vigils nevertheless continued. The largest protests invoked the choreography of the June World Cup celebrations. Most spectacularly, in Seoul's City Hall Plaza on December 14, a massive demonstration attended by as many as 50,000

people (surrounded by approximately 23,000 riot police) culminated with huge American flags being unfurled over the heads of the attendees, much as huge ROK flags had been unfurled over the heads of soccer match attendees during the World Cup—only now, once they had fully unfurled the American flags, the demonstrators tore each of them to shreds. This huge protest took place only a day after President George W. Bush telephoned President Kim Dae-jung to convey a direct apology.

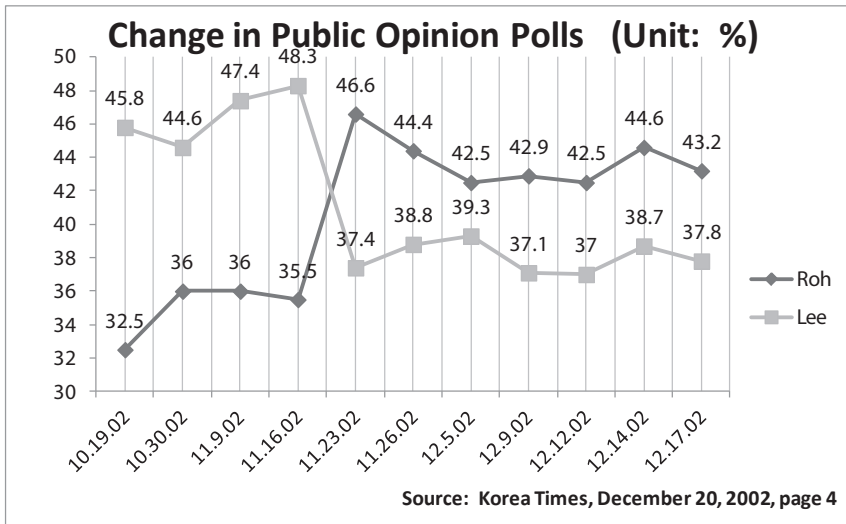
The presidential campaign, with Roh Moo-hyun now alone in the contest against Lee Hoi-chang, concluded amidst both these post-verdict demonstrations and growing unease regarding the collapse of the 1994 U.S.-DPRK Agreed Framework. On December 12, the DPRK demanded that IAEA inspectors deactivate monitoring devices at the Yongbyon nuclear reactor, and announced its intention to put the reactor, dormant since 1994, back into service. Meanwhile, the Bush administration continued to make its case that Iraq's alleged development and possession of weapons of mass destruction warranted a change in its regime, by force if necessary.

On December 17, two days before the election, a USFK spokesperson revealed that the Second Infantry Division Commanding General had issued only an administrative letter of reprimand to the Company B commander, who had been in the lead vehicle of the convoy, and had done so well before the trials of Sergeants Walker and Nino in November.

Chung Mong-joon's withdrawal of his candidacy on November 25, only three days after the announcement of the second of the two verdicts of acquittal, may obscure or cause to be understated the effect of the acquittals on the election results. On December 18, the eve of the election, Chung abruptly withdrew his support of Roh's candidacy (whether because of certain campaign rally remarks by Roh he regarded as anti-American, or other Roh remarks he regarded as anti-Chung, or both, is not entirely clear) and declared his November pact with Roh at an end. From the evening of December 18 into Election Day, December 19, Chung's announcement provoked a last-minute campaign to get out the vote for Roh via cell phone text messaging and internet social media.

However, opinion polls released immediately after the election, where the pollsters posed a choice only between Roh, the MDP candidate, and Lee Hoi-chang, the GNP candidate, show a remarkable shift between November 16 (three days before the start of the first court-martial) and November 23 (the day after the second verdict of acquittal on November 22, but *before* Chung Mong-joon withdrew his independent candidacy on November 25). On November 16, Lee led Roh by a nearly 13-point margin (48.3 percent to 35.5 percent), a margin he had maintained for nearly a month. Suddenly, on November 23, not only had Lee's previously stable

and solid lead disappeared, but the tables were turned altogether: Roh led Lee by a 9-point margin (46.6 percent to 37.4 percent), a deficit from which Lee Hoi-chang never recovered. In the end, Roh Moo-hyun won the election with 49.9 percent of the popular vote to Lee Hoi-chang's 46.6 percent.



If a sense of injustice among the ROK populace and electorate did, as argued here, contribute decisively to the outcome of the December 2002 election, it was not because the U.S.-ROK SOFA process, and then the U.S. military justice system, were unable to do justice. Rather, as will be further detailed in the conclusion, it was because U.S. decision makers, in the pretrial phase, did not focus on the intrinsic factual merits of the case, and did not ensure the transparency called for by the rules of the military justice system. As fate would have it, another U.S. legal process, this time extradition, again took center stage in the run-up to the following ROK presidential election in 2007.

III. 2007: THE "BBK SCANDAL" AND THE EXTRADITION OF KIM KYUNG-JOON

The ROK-U.S. Extradition Treaty and Process

The ROK-U.S. Extradition Treaty, concluded in 1998, went into force in 1999. Prior to its ratification by the U.S. Senate, the U.S. Justice Department cited—among other factors warranting the negotiation, conclusion, and ratification of the treaty—"the increase in Korean immigration to the United States, increased

business and commercial ties, and a general close relationship between the two countries,” further noting that the ROK and the U.S. had “reach[ed] a point where it was clear that Korea was one of the countries where both governments would benefit from an improved ability to secure the extradition of fugitives. That, coupled with the democratic reforms [in the ROK], made this a logical step in the expansion of [ROK-U.S.] relations.”

Regarding “democratic reforms” in the ROK, the Justice Department official was referencing the possibility that under the treaty a U.S. citizen could be extradited to the ROK, and a ROK citizen to the U.S. The U.S. judgment was that the ROK criminal justice system afforded adequate procedural protections should a U.S. citizen be extradited to the ROK and face a criminal trial there. Article 3 of the treaty stated that even if extradition were otherwise authorized by the treaty, the ROK or the U.S., at their discretion, could still decline to extradite their own nationals. This provision was included to comply with ROK domestic law. The U.S., for its part, as a matter of longstanding policy, does not regard a fugitive’s U.S. citizenship as a reason to withhold extradition.

The extradition process, controlled in part by the treaty and in part by U.S. statutes and procedures, begins with a request by either side for extradition of a fugitive. The requesting state forwards supporting documentary evidence and a specification of the laws the fugitive is suspected of having violated, along with a charging document. The receiving state, after initial review of the request, issues a warrant for the arrest of the fugitive. After arrest, a fugitive in the U.S. may contest his extradition before a U.S. magistrate (a federal judicial official inferior to a U.S. district judge), though the grounds he may offer, under the treaty and U.S. statutory law, are very narrow. The fugitive may not contest the essential facts alleged by the requesting state, though he may raise other objections. Should the U.S. magistrate find that the extradition request is proper, the magistrate will certify that the fugitive is extraditable.

At this point, the fugitive may continue to contest his extradition by lodging a petition for a writ of habeas corpus in a U.S. district court. In effect, by petitioning for a writ of habeas corpus, the fugitive is appealing the magistrate’s decision. Should the U.S. district judge deny the petition, the fugitive may then appeal that decision to a U.S. circuit court of appeals. While this writ of habeas corpus procedure is underway, and so long as the fugitive remains in U.S. federal custody, the original magistrate’s order certifying the extraditability of the fugitive is normally stayed.

Should the fugitive exhaust all these avenues without success, by U.S. statute, the Secretary of State (or the standing designee, the Undersecretary of State for Political Affairs) must, within two calendar months, decide whether to surrender

the fugitive to the authorities of the requesting state. Should the Secretary of State fail to act within that two-month period, under U.S. law the fugitive may then petition for his release from U.S. custody. Under Article 11 of the ROK-U.S. extradition treaty, the Secretary of State must, in any event, promptly notify the requesting state (the ROK) of the U.S. decision regarding the fugitive's surrender.

Kim Kyung-joon's Activities and Flight from the ROK

In late 2000 and early 2001, Kim Kyung-joon, a U.S. citizen, induced 14 investors to invest approximately 33 billion won (\$27 million) in a Korean venture capital firm known as BBK. Kim then forged the corporate charters of 19 non-existent U.S. companies. He used these falsified corporate charters to establish a number of bank accounts and deposited the BBK funds into those accounts. Kim used the funds from those accounts to buy a controlling number of shares in another venture capital firm, Optional Ventures Korea. Kim then used Optional Ventures to attract further potential investors, claiming that the non-existent U.S. firms had already made initial investments. In the latter half of 2001, Kim transferred the funds from Optional Ventures' bank accounts to other accounts he or members of his family controlled in the U.S. Korean authorities arrested Kim in late 2001. He fled to the U.S. after posting bail.

Lee Myung-bak, a former Hyundai Engineering and Construction CEO and former two-term National Assembly member, had become acquainted with Kim Kyung-joon prior to Kim's launch of the BBK venture capital firm. The extent to which Lee was involved in encouraging investment in BBK, much less whether he was aware of Kim's fraudulent conduct (or in fact was one of the victims of it), is a matter of much dispute. In 2002, Lee Myung-bak returned to politics and won election as mayor of Seoul, a position in which he served until 2006.

The Extradition Request, February 2004-January 2007

On February 12, 2004, the ROK Ministry of Foreign Affairs and Trade submitted a request to the U.S. that Kim be extradited to face counterfeiting, forgery, embezzlement, and securities fraud charges. U.S. authorities arrested Kim, and Kim then contested the extradition request before a U.S. magistrate. On October 21, 2005, the magistrate certified that Kim was extraditable to the ROK. By U.S. statute, the U.S. then had two months within which to surrender Kim to ROK authorities, failing which, Kim could apply to a U.S. district judge for release. Kim, for his part, had two months within which to seek a stay of the certification of extraditability and file a petition for a writ of habeas corpus, which would permit him to continue to contest the extradition at two higher levels of court (a U.S. district court and a U.S. court of appeals). A U.S. district court granted Kim's request for a stay on November 14, 2005, to remain in effect until December 21.

In December 2005, Kim still had not filed a habeas petition. Accordingly, the U.S. Undersecretary of State for Political Affairs, acting under a standing delegation of authority from the U.S. Secretary of State, executed a warrant authorizing the surrender of Kim to ROK authorities in the event Kim failed to file his habeas petition by the December 21st deadline. Then, on December 19, 2005, the U.S. district court granted Kim an extension. He finally filed a habeas petition on March 23, 2006. On January 18, 2007, the U.S. district judge denied Kim's petition, and on February 12, 2007, Kim filed a notice of appeal in the U.S. Court of Appeals for the Ninth Circuit. The U.S. district judge further extended the stay of the magistrate's order certifying Kim's extraditability, pending resolution of Kim's appeal. The State Department would not be able to further act on Kim's extradition until this appeal was resolved.

In April 2007, some of the defrauded investors initiated a civil damages suit against Kim in a California state court. Among the plaintiffs was Kim Paik-jun, an associate of Lee Myung-bak. After Lee became president in 2008, Kim Paik-jun served as senior secretary to the President for administrative affairs.

Presidential Politics in the ROK, May-October 2007

In May 2007, former Seoul mayor Lee Myung-bak declared his presidential candidacy. He ran for the GNP's presidential nomination against current President Park Geun-hye, the daughter of the late President Park Chung-hee. In August 2007, Lee defeated Park by a razor thin margin. Much later, in October 2007, Chung Dong-young secured the nomination of President Roh Mu-hyun's Democratic Party. Lee and Chung went on to contest the December 2007 presidential election along with two other candidates from minor parties, including Lee Hoi-chang of the Liberty Forward Party, whom President Roh had defeated in the 2002 presidential contest.

An Appeal Withdrawn, a Decision Required, October 2007

As Kim Kyung-joon's appeal in the U.S. Ninth Circuit Court of Appeals remained pending, Kim was summoned to give deposition testimony for the civil suit lodged against him. After testifying for a few days, Kim refused to be deposed further. On October 3, 2007, Kim filed a motion to withdraw his appeal (regarding his extradition) in the Ninth Circuit. On October 9 and 12, 2007, Kim Paik-jun, one of the plaintiffs in the civil suit and, as noted above, an associate of Lee Myung-bak, filed motions before the Ninth Circuit requesting that the appeals court defer ruling on Kim's motion for ninety days so that Kim Paik-jun and the other plaintiffs could seek an order from the California state court compelling Kim Kyung-joon to resume his deposition testimony. As a private party, Kim Paik-jun did not have standing to intervene in an extradition

proceeding. The Ninth Circuit did not formally accept Kim Paik-jun's motion, noting only that it had been "received." On October 18, 2007, the Ninth Circuit granted Kim Kyung-joon's request to withdraw his appeal and denied Kim Paik-jun's motion to delay its decision on Kim Kyung-joon's request as "moot." At long last, the original certification of Kim's extraditability, issued by a federal magistrate almost exactly two years prior, took full effect.

Now the Undersecretary of State for Political Affairs had to make the final decision regarding Kim Kyung-joon's extradition. Article 11 of the extradition treaty required the Secretary of State to "promptly notify [the ROK], in writing through the diplomatic channel, of its decision on the request for extradition." Also, under U.S. statutory law, the Secretary of State was required to surrender Kim Kyung-joon to ROK authorities no later than two calendar months from the date of the last judicial action (October 18, 2007), that is, by December 18, 2007, or else Kim would be entitled to request release from U.S. custody altogether. Ironically, on the evening of December 18 in the U.S., citizens in Korea would begin casting their ballots in the December 19 presidential election.

Kim Paik-jun, undeterred, rushed to the U.S. federal district court (a court inferior to the Ninth Circuit Court of Appeals), asking that court to reimpose its stay on the magistrate's 2005 order certifying Kim's extraditability. Justice Department attorneys opposed this motion. Kim Paik-jun's motion was extraordinary in that he was asking a lower court to effectively reverse a higher court's binding decision. On October 24, 2007, the U.S. district court denied Kim Paik-jun's motion.

Korean Coverage of the Kim Kyung-joon Extradition Matter

On October 15, 2007, both the Chosun Ilbo (the primary ROK conservative newspaper) and the Hankyoreh (the primary ROK progressive newspaper) published editorials regarding Kim Kyung-Joon's extradition. Both papers noted that Lee himself told an interviewer from MBC television that Kim should promptly be returned to the ROK to face the criminal process, and both expressed puzzlement that Lee nevertheless was permitting his surrogates to take legal action to delay the extradition. Within four days after the Ninth Circuit granted Kim Kyung-joon's motion to withdraw his appeal and denied Kim Paik-jun's motion that it defer any ruling (October 18, 2007), the *Korea Times* reported unambiguously (and more or less correctly) that "when Kim will be extradited is totally dependent on U.S. Secretary of State Condoleezza Rice." In other words, by October 22, 2007, the Korean press and public were fully aware that the timing of Kim's surrender to the ROK depended solely on the U.S. Secretary of State, or her designee regarding the execution of surrender warrants, the Undersecretary of State for Political Affairs.

The State Department's Dilemma

The Undersecretary of State for Political Affairs now had to decide whether to surrender Kim Kyung-joon to the ROK immediately or wait until the statutory two-month period expired, effectively on the day of the ROK presidential election. On the one hand, the ROK press and public would likely perceive a U.S. delay of Kim Kyung-joon's extradition as U.S. complicity with the efforts of Kim Paik-jun—clearly regarded by ROK opinion-makers of all stripes as a Lee surrogate—to delay the extradition.

On the other hand, the ROK press and public could perceive an immediate surrender of Kim Kyung-joon to ROK authorities as complicity with Kim Kyung-joon, who himself had sought to control the timing of his return to the ROK by withdrawing his appeal. Furthermore, immediate surrender of Kim could be perceived as undue interference in the ROK presidential election process and could cause unpredictable political instability. If Lee Myung-bak was in fact an innocent victim of or an innocent bystander to Kim's fraudulent conduct, any allegations Kim might make against Lee could be unfairly manipulated by Lee's opponents in the weeks before the election.

Yet if Kim Kyung-joon offered damning and credible testimony, Lee Myung-bak might have to withdraw his candidacy, or might have to resign his candidacy after having formally registered as the GNP's candidate. Lee might instead refuse to resign in the post-registration and pre-election period (November 25-December 18) even if the GNP asked him to do so. Should Lee become president-elect upon winning the December 19 election and then be charged with criminal offenses prior to his inauguration (February 25), under Article 68 of the ROK constitution he might be deemed "disqualified" to assume office and a special presidential election would have to be held within 60 days.

The State Department's Decision and the Aftermath

As noted above, the Undersecretary of State for Political Affairs had signed the surrender warrant for Kim Kyung-joon in December 2005, but the U.S. district court had stayed the magistrate's October 2005 certification of Kim's extraditability from December 2005 until the Ninth Circuit Court of Appeals granted Kim's request to withdraw his appeal on October 18, 2007. On October 30, 2007, the State Department—having decided to extradite Kim as soon as ROK authorities were prepared to take him into custody rather than waiting until December 18, 2007, the eve of the presidential election—delivered that surrender warrant to the ROK embassy in Washington, D.C.

On November 15, 2007, ROK authorities received custody of Kim in Los Angeles and escorted him to Seoul. On December 5, 2007, ROK prosecutors announced that they had found no evidence that Lee Myung-bak was involved in Kim Kyung-joon's criminal activities in 2000-2001 and that they would not seek to prosecute Lee. A few days before the election, an individual approached the Lee campaign with a purported video clip of Lee stating that he was a co-founder of BBK and attempted to extort money from the campaign. That individual was arrested. Two days before the election, the National Assembly, voting along party lines and boycotted by the GNP, passed a bill requiring a special prosecutor to investigate whether Lee was involved with BBK (as well as other unrelated allegations). Regardless, on December 19, 2007, Lee prevailed in the election by a record margin. Clearly, the October 30, 2007, surrender of Kim Kyung-joon did not sway the results.

On February 21, 2008, the special prosecutor announced his finding that there was "not a shred of evidence" that President-elect Lee was involved in Kim Kyung-joon's criminal activities. Lee Myung-bak was inaugurated President of the Republic of Korea on February 25, 2008.

IV. CONCLUSION

A neutral legal process has at least three major characteristics. First, the intrinsic factual merits of the case or issue should control the outcome. Second, the procedural rules governing the process, whether in the form of written rules or settled practice, should be followed without regard to the impact of the legal process on extrinsic events. Third, unless prohibited by the procedural rules themselves, the legal process should be open to public and, in the case of a legal dispute between two friendly countries, allied partner scrutiny. Openness does not absolutely ensure that the legal process is understood or its results accepted by those standing outside the process. But openness at least makes that understanding and acceptance more likely, and in any case, lessens suspicion that the process is being manipulated and deprived of its neutrality.

By this measure, the initial 2002 SOFA process passes muster. Given the long-standing U.S. policy to "maximize jurisdiction" over its own personnel, USFK's decision to certify that Sergeants Nino and Walker had been acting in the course of official duty when the AVL M they were operating struck and crushed Shim Mi-sun and Shin Hyo-soon, and USFK's decision not to waive the U.S. primary right to exercise jurisdiction, were inevitable. The "official duty" rule is not unique to the U.S.-ROK SOFA. The same scheme is found in the U.S.-Japan and U.S. NATO SOFAs. Although the assertion of "official duty" jurisdiction was a

foregone conclusion, the results and raw materials of the initial joint investigation were made available to ROK prosecutors. ROK prosecutors were provided all witness statements, and given access to all witnesses and to the AVLM itself.

However, the 2002 court-martial process after the U.S. assertion of its primary right to exercise criminal jurisdiction under the SOFA does not fare as well. The various actors in the U.S. military justice system had to resolve, not only the cases of Sergeants Walker and Nino, but also the question of whether responsibility for the victims' deaths in fact lay elsewhere. The military justice system's preliminary process functioned well, providing commanders the information and recommendations they needed to make sound decisions regarding who, among those present at the scene of the accident, should be exposed to a court-martial. The Article 32 officer tried to warn the command that they had, in his view, charged at least one individual without sufficient evidence of guilt (Sergeant Walker) and had failed to charge another whose responsibility was more clear under the facts (the commander of B Company, who was in the first convoy vehicle). Under the intrinsic facts of the case, the company commander had been in the best position to get the two girls off the road before the AVLM rounded the curve.

However, the next responsible decision maker in the process, the Second Infantry Division commanding general, discounted the results of those preliminary proceedings, instead opting to pursue two courts-martial with weak evidence in one case (Sergeant Nino) and practically no evidence in the other (Sergeant Walker). Notwithstanding the Article 32 officer's recommendations, the commanding general gave the company commander in the lead convoy vehicle only a written letter of reprimand. The commanding general's reasoning is unknown. Possibly he concluded that the company commander's failure to stop his lead convoy vehicle and take action to remove the two girls from looming danger lacked a sufficiently close causal link to their deaths. However, causation in such cases is always judged under the particular facts and circumstances at issue. In order to convict a service member of negligent homicide, it is sufficient that the deaths were a natural, foreseeable, and probable result of the acts, or failure to act, of the person prosecuted. The company commander's own lead vehicle had just rounded a curve on a narrow road and the company commander knew the AVLM was about to do the same. Regardless of whether the company commander knew of any problems with the AVLM's intercom, he was, or certainly should have been, aware that a huge tracked vehicle under his command, just rounding a curve directly behind him, was suddenly bearing down on two pedestrians.

It is also possible that the commanding general reasoned that there was little hope of convicting Sergeant Nino of causing the deaths without having

Sergeant Walker, the AVL M's driver, "stand in the dock" beside Nino, even if the pretrial investigation had clearly absolved Walker of negligence. If that was the commanding general's reasoning, he wrongly subjected Sergeant Walker to a criminal prosecution merely in order to bolster a weak case against Sergeant Nino. The theory behind Sergeant Nino's guilt, presumably, was that Nino caused the fatalities by failing to operate the intercom switch properly in the seven or so seconds after the girls came into view. However, from early in the investigation, there was ample reason to doubt whether the intercom, even if operated properly, was functioning reliably. If the commanding general, whether explicitly or tacitly, envisioned the process as a means of appeasing ROK popular sentiment by exposing the two individuals in the AVL M (i.e., those in direct control of the vehicle and thus the most responsible from a visceral point of view) rather than others whose responsibility, though less obvious, was more amenable to factual proof, his decision backfired. Distracted by the extrinsic consequences of his decisions, he failed to focus on the intrinsic factual merits of the case.

Finally, had the responsible commanders more scrupulously and proactively followed military justice system's rules and opened its preliminary proceedings to public access and scrutiny, the ROK press and public would have had more time to absorb and to process information about the accident. Though the November trials themselves were open and accessible to ROK media, similarly proactive measures were not taken to afford the ROK media access during the preliminary Article 32 hearings in July and August 2002. Likely the almost daily and sometimes violent demonstrations on the perimeter of Second Infantry Division installations led commanders to discount the ability of the wider ROK press and public to absorb and process information.

Nevertheless, had the command taken the initiative to afford such access, rather than permitting the Article 32 hearings to take place quietly and unobserved, then possibly the ROK press and public would have gained a better understanding of the facts of the case at a much earlier time. Indeed, if, by virtue of such earlier transparency, the commanding general had been confident that his decision would find greater acceptance among a well-informed ROK press and public, he might have been less hesitant to expose the company commander to a court-martial.

Although American commentators on alliance and security affairs later criticized the military judge for scheduling the trials in the way that he did, the judge was treating the two cases in the same fashion as he would any cases competing for space on his docket as the holiday season approached. While the judge hewed to the tenets of legal neutrality by following settled practice and ignoring

extrinsic consequences, the process by which the cases had been referred to his jurisdiction (over which he had no control) had already breached the tenets of legal neutrality and had set the stage for a calamity.

Taken together, these departures from the tenets of legal process neutrality had a profound, if not decisive, impact on the 2002 ROK residential election results. If the political implications of putting the two sergeants on trial in 2002 had been more studiously ignored and if the preliminary process of sifting the facts of the case had been more open to public view and had been afforded more weight, at least one more factually culpable individual might have been held to account within the view of a better informed host nation public with far less explosive consequences.

In the Kim Kyung-joon extradition matter in 2007, the U.S. decision making process was, by the very nature of the extradition process itself, schematically much simpler. Once the issue was effectively released back to the State Department by the federal courts in California on October 18, 2007, State alone could address the matter, rather than the array of officials (commanders, military judge advocate prosecutors, a military judge, and court-martial panel members) making decisions in the 2002 court-martial case. Faced with a clear choice between, on the one hand, surrendering Kim Kyung-joon immediately to the ROK and, on the other hand, delaying his surrender until the beginning of election day in the ROK, the State Department opted for immediate surrender.

In so doing, the State Department, though pressured to do otherwise, made a politically neutral decision, treating Kim's extradition as it would have treated the extradition of any other fugitive and ignoring extrinsic consequences. The press and public in the alliance partner knew that settled procedures were followed and were more fully informed in advance of polling day than they would have been if the U.S. had held Kim Kyong-joon until after the election.

If the State Department instead had acceded to the desires of candidate Lee as expressed through his surrogates and decided to defer its decision regarding the surrender of Kim Kyong-joon until the morning of election day, without question the U.S. would have become the focus of the Korean presidential campaign. Precisely the kind of heated speculation candidate Lee and his surrogates sought so strenuously to avoid would have called into question, fairly or unfairly, his fitness for the nation's highest office. More likely than not, this would have steadily eroded his support up until the ballots were cast. "What is Lee hiding?" was the question asked in both the conservative and progressive press in October, and it would have been the question incessantly asked in Korean press and broadcast media of all stripes through December 19, 2007, along with the additional question, "Why is the U.S. helping candidate Lee hide the truth?"

The ultimate lesson of the events in 2002 and 2007 can be stated in very pragmatic terms. If decision makers, acting in fear of extrinsic consequences, fail to make legal decisions as openly as established procedures permit or require, in accordance with settled procedures, and based on the intrinsic merits of a case, they are apt to conjure exactly that which they fear.



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