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North Korean Refugees in China and Human Rights Issues: International Response and U.S. Policy Options

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Rhoda Margesson, Coordinator
Specialist in International Humanitarian Assistance
Foreign Affairs, Defense, and Trade Division

Emma Chanlett-Avery
Analyst in Asian Affairs
Foreign Affairs, Defense, and Trade Division

Andorra Bruno
Specialist in Immigration Policy
Domestic Social Policy Division

Prepared for Members and Committees of Congress

Congressional Research Service

North Korean Refugees in China and Human Rights Issues: International Response and U.S. Policy Options

Summary

North Koreans have been crossing the border into China, many in search of refuge, since the height of North Korea's famine in the 1990s. The State Department estimates that 30,000-50,000 North Korean refugees currently live in China (some non-governmental organizations estimate the number is closer to 300,000) and believes those who are repatriated may face punishment ranging from a few months of "labor correction" to execution. A number of reports also document the difficult conditions faced by North Koreans who remain in China. The plight of the North Koreans focuses attention not only on those seeking refuge and their refugee status, but also points to the factors driving their decision to leave, primarily food shortages, deteriorating humanitarian conditions, and human rights violations. North Korea is generally characterized as one of the world's worst violators of human rights and religious freedom, an issue that some Members of Congress and interest groups say should assume greater importance in the formation of U.S. priorities towards North Korea. Congressional concern about human rights in North Korea and conditions faced by North Korean refugees led to the passage of the North Korean Human Rights Act (NKHRA) in 2004.

This report examines both the situation of North Korean refugees in China and human rights issues because they are frequently raised simultaneously, particularly in a congressional context. Although the issues surrounding those North Koreans seeking to leave their country and the situation for those who remain inside its borders pose different questions and may call for separate responses, both also focus on the nature of the regime in Pyongyang. Critics of the North Korean government have raised both issues together to put pressure on the regime, particularly when nuclear weapons program negotiations stalled. Some advocates decry the practice of linking refugee and human rights issues, claiming that the former calls for a quieter, cooperative approach, while the latter requires a more outspoken response to the North Korean government's practices. Although some policy experts insist that the United States has a moral imperative to stand up for the oppressed, others say that this creates obstacles in the nuclear disarmament negotiations. In 2007, the Bush Administration entered into bilateral talks with North Korea and linked the prospect of diplomatic relations and Pyongyang's re-entry into the international community with only the nuclear issue, leaving out human rights and refugee concerns.

Nevertheless, North Korean human rights and refugee issues remain significant concerns and also have broader regional importance. China and South Korea want to avoid a massive outflow of refugees, which they believe could trigger the instability or collapse of North Korea. North Korean refugees seeking resettlement often transit through other Asian countries, raising diplomatic, refugee, and security concerns for those governments. South Korea, as the final destination of the vast majority of North Koreans, struggles to accommodate new arrivals and does not want to damage its relations with North Korea. This report will be updated as events warrant.

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Overview

The increased international attention given to the situation of North Koreans seeking refuge, primarily in China, has led Congress to take a greater interest in the refugee situation and the underlying causes within North Korea and across its borders.[1] Food shortages, persecution, and human rights abuses have prompted thousands and perhaps hundreds of thousands of North Koreans to go to China where they often become victims of further abuse, neglect, and lack of protection. Those who remain in North Korea (formally known as the Democratic Republic of North Korea, or DPRK) also continue to suffer from a lack of food and other basic humanitarian provisions.

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Both the House and Senate have held hearings and passed resolutions addressing the status of the refugees. Additionally, several Members of Congress have written letters regarding the issue to the U.S. and Chinese governments. In 2004 the 108th Congress passed, and President Bush signed, the North Korean Human Rights Act (H.R. 4011; P.L. 108-333). The North Korean Human Rights Act (NKHRA) authorizes the President new funds to support human rights efforts, improve the flow of information, and to require the President to appoint a Special Envoy on human rights in North Korea. It also identifies the need for humanitarian food assistance and refugee care.

North Korea has been viewed as a threat to U.S. interests for a number of important security reasons that go well beyond refugee concerns and human rights issues. These include the pursuit of nuclear weapons and missile programs; a history of proliferating missiles; reported threats to export parts of its self-declared nuclear arsenal; and possible possession of chemical and biological weapons programs.[2] North Korea is also on the U.S. list of states that sponsor terrorism.[3] Amid an atmosphere of continuing tensions over North Korea's nuclear program, the potential

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[1] Use of the term "refugee" in this report does not connote that these persons would necessarily meet the legal standard for being designated refugees as stipulated under the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. See **Appendix B**, **Figures 1** and **2**, for maps of the region and of North Korea.

[2] For more information, see CRS Report RL33590 *North Korea's Nuclear Weapons Development and Diplomacy*, by Larry Niksch.

[3] For more information, see CRS Report RL30613 *North Korea: Terrorism List Removal?*, by Larry Niksch and Raphael Perl.

remains for worsening humanitarian conditions and a possible increase in North Koreans fleeing the country. The situation raises the questions of what more, if anything, can and should be done — by the United States and the international community — not only to focus attention on the abuses of the DPRK regime, but to alleviate the suffering of North Koreans. Increasingly, some argue it is the suffering of ordinary North Koreans that brings into sharp relief the continuing violation of fundamental rights — rights pertaining to food security, refugee status, and individual freedoms — and raises questions about how those rights should be protected and by whom.

Protecting Refugees

China generally refuses international agencies and non-governmental organizations (NGOs) access to the North Koreans who cross its border; this and its periodic practice of deportation, have led many to ask about international law and the protection of refugees in China. China's obligations under international refugee law will be discussed later in the report.

The U.N. Convention Relating to the Status of Refugees

The international instruments that provide protection to refugees include the 1951 United Nations Convention Relating to the Status of Refugees (Refugee Convention) and the 1967 Protocol to that Convention.[4] A refugee is legally defined in the Refugee Convention as a person fleeing his or her country because of persecution or "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...."[5] Parties to the Refugee Convention have an obligation to abide by the principle of "non-refoulement," which means that "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."[6] China and South Korea are parties to the Refugee Convention and its 1967 Protocol; North Korea is not a party to either instrument.[7]

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[4] Under the 1951 Convention, mainly Europeans involved in events occurring before 1 January 1951 could apply for refugee status. In response to the emergence of large refugee movements since 1951, the 1967 Protocol incorporates the measures in the original 1951 Convention but imposes no time or geographical limits. For texts, please see [http://www.unhcr.org/protect/3c0762ea4.html].

[5] Text of the 1951 United Nations Convention Relating to the Status of Refugees, Chapter 1, Article 1 (A) 2.

[6] Text of the 1951 United Nations Convention Relating to the Status of Refugees, Chapter 1, Article 33.1. The issue of non-refoulement is also considered part of customary international law.

[7] Countries that are used as escape routes by North Koreans include Cambodia, which is a

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The United Nations High Commissioner for Refugees (UNHCR)

The United Nations High Commissioner for Refugees (UNHCR) is the U.N. agency dedicated to the protection of refugees and other populations displaced by conflict, famine, and natural disasters.[8] Its mandate is to lead and coordinate international action for the protection of refugees and the resolution of refugee problems worldwide. Refugees are granted a special status under international law. Once an individual is considered a refugee, that individual automatically has certain rights, and states that are parties to the Refugee Convention and its Protocol are obligated to provide certain resources and protection. UNHCR ensures these rights, works to find permanent, long-term solutions for refugees, and coordinates emergency humanitarian relief for refugees and, increasingly, other persons of concern.

Enforcement of the Refugee Convention can present challenges. For example, the national laws of a state may not be developed sufficiently to allow full implementation of the provisions of the Refugee Convention. Often becoming a party to the Refugee Convention is a first step and UNHCR serves as an important resource. Sometimes the Refugee Convention may contradict bilateral agreements between states, such as the repatriation agreement between North Korea and China described later in this report. From UNHCR's point of view, international law overrides other bilateral agreements, but governments may not agree. UNHCR may try to assist in creating a solution or states may use ad hoc procedures to determine whether an individual has a well-grounded fear of persecution and thus is protected from deportation. UNHCR often works with governments behind the scenes in asylum cases to push for application of the principles of the Refugee Convention and protection of the rights of the individual, even though there may not be agreement on legal jurisdiction.[9]

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[7] (...continued)
party to the Refugee Convention and its Protocol, and Laos, Vietnam, Burma, Thailand, and Mongolia, all of which are not parties to either instrument.

[8] UNHCR was established by the U.N. General Assembly Resolution 428 (V) of December 14, 1950, and made operational in 1951.

[9] For more information, see CRS Report RL31690 *United Nations High Commissioner for Refugees (UNHCR)* and *International Crises and Disasters: U.S. Humanitarian Assistance, Budget Trends, and Issues for Congress*, by Rhoda Margesson, Specialist in International Humanitarian Assistance.

Profile of North Korean Refugees[10]

Scope of the Problem

Numbers. There is little reliable information on the size and composition of the North Korean population located in China. Estimates range from as low as 10,000 (the official Chinese estimate) to 300,000 or more.[11] Press reports commonly cite a figure of 100,000 - 300,000. In 2006, the State Department estimated the number to be between 30,000 and 50,000, down from the 75,000 to 125,000 range it projected in 2000. UNHCR also uses the 2006 range (30,000 - 50,000) as a working figure. UNHCR has not been given access to conduct a systematic survey. Estimating the numbers is made more difficult because most North Koreans are in hiding, some move back and forth across the border — either voluntarily to bring food and or hard currency from China or North Korea — or because they are forcibly repatriated. Amnesty International has estimated that, on average, each year about 10% of those who cross the border back to North Korea do so as a result of force. A much smaller number is estimated to make their way to third countries.[12] Clearly, the refugees' need to avoid detection, coupled with a lack of access by international organizations, make it difficult to assess the full scope of the refugee problem; however, based on anecdotal reports, the number of people crossing the border does not seem to have overwhelmed the resources of the Chinese economy, in part because the movement has been gradual.

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Gender Representation. According to some recent reports, it is thought that nearly 75 percent of the refugees are women.[13] UNHCR says the number of males may be underestimated and they may be in hiding, but the proportion of women among those hoping eventually to resettle in South Korea is striking. Three years ago, reportedly 50 percent of the refugees were women; four to five years ago, 20 percent were women. It has become a trend, but the reasons are unclear. In North Korea the conditions of poverty and failed marriages could also be contributing factors as to why women choose to leave. An element of family reunification for men who left several years ago may also be a factor. Some also believe that men may be more tied to their enterprises, which could make them less mobile.

Conditions in China

Crossing Point. Most North Koreans are believed to enter China from North Korea's northeastern provinces in search of food and/or employment. The destination favored by most refugees, the Yanbian Korean Autonomous Prefecture

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[10] Some of the research for this section was provided by Tom Coipuram, Information Research Specialist, Knowledge Services Group, CRS.

[11] Seymour, James D., Commissioned by the United Nations High Commissioner for Refugees, Protection Information Section, "China: Background Paper on the Situation of North Koreans in China," January 2005, p. 16

[12] Seymour, p. 26.

[13] Amnesty International *Report 2007*.

of China, is home to an estimated one million Chinese of Korean descent. Many of these ethnic Koreans have assisted their newly arrived North Korean kin, for a mix of reasons, including family connections, financial motivations, a sense of altruism, and a desire to reciprocate the help that North Koreans gave those Korean Chinese who crossed the border during the political turbulence of China's Cultural Revolution in the 1960s and 1970s. It is unlikely that large numbers of North Korean refugees are living elsewhere in China.

Exploitation at the Border. Reports express concern for those exploited at the border, citing organized gangs and intermediaries who target the refugees.[14] Human smuggling, trafficking, extortion and exploitation are thought to be a growing problem. Women are particularly vulnerable to prostitution, rape, arranged marriages, and bride traffickers; many otherwise face the option of imprisonment or hunger in North Korea. The State Department rates North Korea as a Tier 3 country in human trafficking, the poorest rating, due to the fact that it has not implemented international standards or prosecuted trafficking.[15] It has also engaged in forced labor. It is reported that perhaps 80%-90% of North Koreans in China end up as trafficking victims. There appears to be an increase in the numbers, but this could also be attributed to greater awareness of the problem.[16]

Living Situation. North Koreans who remain in China (and their local protectors) live in danger not only of being discovered by the Chinese authorities, but by anyone who turns them in as undocumented immigrants for payment of a reward. While northeast China is generally far more economically developed and stable than North Korea, some non-governmental organizations (NGOs) report the poverty in the broader region of northern China is extreme and that conditions for the poor in both China and North Korea are roughly similar. Reports indicate that many refugees live in dire conditions, forced to survive by working in menial, low-paying jobs.

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[14] Amnesty International *Report 2007*; State Department, *2006 Human Rights Report*.

[15] Since enactment of the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) or TVPA, the Administration and Congress have given priority to the human trafficking problem. In June 2001, the State Department issued its first congressionally-mandated Trafficking in Persons (TIP) report. The State Department issued its seventh congressionally mandated Trafficking in Persons (TIP) Report on June 12, 2007. Each report categorized countries into four groups according to the efforts they were making to combat trafficking. Those countries (Tier Three) that do not cooperate in the fight against trafficking have been made subject to U.S. sanctions since 2003. The group named in 2007 includes a total of sixteen countries. They are: Algeria, Bahrain, Burma, Cuba, Equatorial Guinea, Iran, Kuwait, Malaysia, North Korea, Oman, Qatar, Saudi Arabia, Sudan, Syria, Uzbekistan and Venezuela. The President must make a determination by mid-September of a given year on whether to impose sanctions on any or all of these countries. Note: This year the Presidential determination has been postponed until October 2007.

[16] The Tier rankings for each can be found at [http://www.state.gov/g/tip/rls/tiprpt]. China was on the Tier 2 watch list in 2006 and 2007. For more information on trafficking, see CRS Report RL30545, *Trafficking in Persons: U.S. Policy and Issues for Congress* by Clare Ribando, Analyst in Latin American Affairs.

Push and Pull Factors

People cross borders for many different reasons — some choose to do so voluntarily, others are forced to leave or flee as a matter of life or death. "Push" and "Pull" factors are terms used to explain why people move. As in many refugee situations, there are push and pull factors that influence certain people to leave their country. The reasons North Koreans seek refuge in China may vary based on individual circumstances, but despite limited access and information, it is clear that two key elements driving North Koreans across the border into China include deteriorating humanitarian conditions — mainly due to food shortages — and human rights violations.

Food Shortages. Extreme poverty within the DPRK in general, and food shortages in particular, appear to have a significant impact on movement across the border into China. The DPRK began experiencing a food shortage of increasing severity beginning in the early 1990s, after the collapse of the Soviet Union and the resulting cut-off of economic benefits North Korea had received from the communist bloc. Disastrous floods in the summer of 1995 plunged the country into a severe famine that by some estimates was responsible for 600,000 to two million deaths, approximately 5 to10 percent of North Korea's population.[17] Some argue food shortages are inextricably linked to the regime itself, in part because food distribution favors the ruling elite and military and is tied to the government's ongoing broader political and military motivations.[18] In September 1995, North Korea appealed for international food assistance, contradicting its national ideology of *juche*, or self-reliance. Shortly thereafter, the United Nations World Food Program (WFP) moved into North Korea, and its activities there gradually expanded to become at one point the WFP's largest single-country operation. Until 2005, the United States was by far the largest donor to the WFP's North Korea operation. China and South Korea provided — and continue to provide — even larger amounts of food bilaterally to North Korea.[19]

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Though the famine apparently abated by 1997 and the DPRK made incremental progress in agricultural production, the WFP says that food conditions worsened for

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[17] Although natural disasters were the immediate causes of the food crisis, several experts have found the root causes of the famine in decades of economic and agricultural mismanagement. For instance, see Andrew Natsios, *The Great North Korean Famine* (U.S. Institute of Peace: Washington, DC, 2001), especially chapters 1 and 2. Among the cited policies that over time led to the famine were excessive use of chemical fertilizers and the excessive conversion of land into agricultural uses. The latter practice contributed to the massive deforestation and soil erosion that led to increasingly severe annual floods. Moreover, lack of agricultural machinery and inputs and a severe energy crisis also mean that production remains well below standard.

[18] See U.S. Committee for Human Rights in North Korea, "Hunger and Human Rights: The Politics of Famine in North Korea," by Stephen Haggard and Marcus Noland, 2005.

[19] For more information, see CRS Report RS21835, *U.S. Assistance to North Korea: Fact Sheet* by Mark Manyin, Specialist in Asian Affairs.

most North Koreans after North Korea introduced economic reforms in 2002.[20] By 2005 the WFP estimated that nearly half of North Korea's 24 million people did not have enough to eat and that more than a third of the population was chronically malnourished.[21] According to the WFP, food security continues to be a daily struggle for one third to one half of all North Koreans. In March 2007, the WFP indicated that the government had acknowledged an expected shortfall of one million metric tons of food and the possibility of a willingness to increase food assistance.[22] Flooding and reduced WFP and bilateral food assistance in 2006 only compounded the problems that are ongoing in 2007. Torrential rains between August 7 and 14, 2007 caused significant and widespread flooding in nine provinces in central and northern DPRK, and the international community is providing emergency relief and conducting needs assessments.[23]

Human Rights Violations. The State Department's *Country Reports on Human Rights Practice for 2006* and reports from private organizations have portrayed a similar pattern of extreme human rights abuses by the North Korea regime for many years.[24] There appears to be no prospect of appreciable change at least in the near future. The reports paint a grim picture of human rights conditions and stress three general categories of abuse:

> (1) A total denial of political, civil, and religious liberties: The regime's list of proscribed offenses is extensive, and severe punishments are established by North Korean laws and the constitution. No dissent or criticism of Kim Jong-il is allowed. The regime totally controls all media organs. Most North Koreans have no access to media sources other than the official media.

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[20] A 2004 nutritional survey conducted jointly by the North Korean government and by the United Nations (UNICEF and WFP) also indicated that, although malnutrition rates fell significantly after the late 1990s, more than one-third of the population remained malnourished and anemic. It concluded that people's growth was stunted from lack of food and nutrition. In this survey, among children, 37% were stunted, 23% were underweight, and 7% were wasted. NAPSNET Special Report, "World Food Programme Press Conference on the DPRK," by Tony Banbury, WFP Regional Director for Asia, March 31, 2005.

[21] WFP News Release, "6.5 Million Vulnerable North Koreans Still in Desperate Need of Food Aid," January 27, 2005.

[22] World Food Programme, "WFP Concerned About Food Shortfalls in DPRK; Seeks to Increase Aid," March 28, 2007. See Appendix II, Figure 3 for WPF Assistance.

[23] United Nations Office for Humanitarian Assistance, "DPR Korea Floods: Flash Appeal 2007), August 27, 2007. It is too soon to determine if the flooding will have a marked impact. The situation is not addressed further in this report.

[24] In the 1970s, Congress formalized the responsibility of the United States to promote respect for international human rights standards in several ways, one of which was through annual written country reports. Sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as amended, require the State Department annually to submit to Congress a report on human rights conditions in all countries that receive U.S. assistance or are members of the United Nations.

(2) Severe physical abuse meted out to citizens who violate laws and restrictions: The U.S. Committee for Human Rights in North Korea published a lengthy report in 2003, describing a system of concentration camps, organized like the Soviet "gulag" system, that houses an estimated 150,000 to 200,000 inmates, including many political prisoners.[25] Reports from survivors and escapees from the camps indicate that conditions in the camps for political prisoners are extremely harsh and that many political prisoners do not survive.

(3) Other evidence of violations of human rights: The State Department's 2006 report cites "anecdotal evidence from refugees" that North Korean refugees who crossed into China for strictly economic reasons "were generally being treated less harshly than in past years," but that the regime continued to inflict severe punishments for repatriated North Koreans who went to China for political reasons, had contacts with South Korean groups (including religious groups), and sought asylum in third countries.[26] Recent reports by Amnesty International and Human Rights Watch confirm the State Department's description of human rights conditions within North Korea. However, Human Rights Watch presents a different description of North Korea's policy toward refugees who went to China for economic reasons. Human Rights Watch asserts that "North Korea appears to be punishing its citizens with longer sentences in abusive prisons if they are caught crossing the border to China or have been forcibly repatriated by Beijing" and that this "ominous hardening of policy" since the summer of 2004 has been applied to all repatriated North Koreans regardless of their reasons for going to China.[27]

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The United Nations confirms these findings. The U.N. Special Rapporteur on the DPRK (Special Rapporteur) states that despite some legislative improvements, there are continuing reports of violations of basic freedoms such as security of the person, humane treatment, and justice.[28] According to the Special Rapporteur,

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[25] The U.S. Committee for Human Rights in North Korea, *The Hidden Gulag: Exposing North Korea's Prison Camps*,2003.

[26] The State Department report on North Korea is more general in nature than for other countries. Many of the specific incidents and events cited occurred in 2005 or previously. This reflects the closed nature of North Korean society and the difficulty in securing information on up-to-date events in the country. The 2006 report acknowledges the difficulties in securing information, much of which comes from sources outside North Korea.

[27] Human Rights Watch, "North Korea: Border-Crossers Harshly Punished on Return," March 20, 2007, and "North Korea's Cruelty," March 17, 2007, by Kay Seok.

[28] Vitit Muntarbhorn was appointed U.N. Special Rapporteur on the Situation of Human Rights in Democratic People's Republic of Korea in 2004 by the former U.N. Commission on Human Rights (now U.N. Human Rights Council) "to investigate and report to the Commission and the General Assembly on the situation of human rights in the country, including compliance with its obligations under both international human rights instruments and international humanitarian law." Annual reports examine a wide range of human rights issues (civil, political, economic, social and cultural). For the latest report, see "Report of the Special Rapporteur on the Situation of Human Rights in the DPRK, Vitit Muntarbhorn,"

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"despite [North Korea's] formal commitment to human rights in various national laws and under the human rights treaties mentioned, the human rights situation remains grave in a number of areas." Many violations of rights persist throughout the country, and as well as in countries of first asylum.[29] Some of these rights are the focus of specific international treaties and conventions, to which North Korea and China are each a party, and others are cited in numerous reports and discussions or are part of evolving custom or practice between states. North Korea has not cooperated with the Special Rapporteur despite repeated requests. In its response to the Human Rights Council, China focused mostly on its unwillingness to view illegal migrants as refugees.

DPRK Policy Towards Those Seeking Refuge in China

North Korea considers those who cross the border into China to be criminals, though it is difficult to get a fuller sense of how North Korea views the problem. It is possible that North Korean leaders have calculated that the refugee situation poses little threat to the regime. Because the flows of refugees have been going on for years, it is likely that the refugees have already been politically triaged, in that most individuals of any political importance have either already left or been caught. New border-crossers could be considered politically insignificant by North Korea's leadership. Indeed, in some sense, China's provinces have provided North Korea with a useful way to export its economic problems as the migration may have protected thousands more people from starvation.

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Travel Limitations within DPRK. Travel by North Koreans within and outside of their country is strictly controlled, and violators who are caught are subject to punishment. Any movement outside an individual's home village requires a travel pass, although in recent years the government has tended to turn a blind eye toward those violating the travel rules in search of food. Officials and trusted celebrities, such as athletes and artists, are the only people granted exit visas.

Border Security and Enforcement. According to reports, Article 47 of the 1987 North Korean penal code lists defection or attempted defection as a capital crime, stating that a defector who is returned to North Korea "shall be committed to a reform institution for not less than seven years. In cases where the person commits an extremely grave concern, he or she shall be given the death penalty."[30] It is unclear how "grave concern" is defined. Minor offenders appear to be subject to up to six months imprisonment at labor training centers where conditions are extremely harsh and inhumane.

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[28] (...continued)
7 February 2007, A/HRC/4/15.

[29] In his report, the U.N. Special Rapporteur focuses on definitions of refugee status; the response of the first asylum countries; the need for international burdensharing in finding durable solutions; and links between patterns of arrivals of those seeking asylum and the attitudes and practices of neighboring countries.

[30] U.S. Committee for Refugees, *World Refugee Survey 2002*.

Enforcement reportedly varies, in part due to rampant bribery and corruption inside North Korea. Some repatriated North Koreans are subjected to brutal treatment, including detention, torture, placement in concentration camps, forced labor, and even execution. North Korean authorities are particularly brutal toward those suspected of making contact with South Koreans, missionary groups, or other foreigners. Returnees who cross the border in search of food reportedly receive milder treatment. Many repatriated pregnant women carrying the children of Chinese men — often husbands to whom the women were sold by human traffickers — are reportedly subjected to forced abortions.

Whether or not an individual committed crimes in China, what the person has done since leaving North Korea, and what he or she was trying to escape from, all reportedly factor into the punishment of returnees to North Korea. UNHCR has received reports that some people deported one to three times by China back to North Korea receive little punishment while others endure hard labor or beatings. Even if UNHCR could assess who is at risk before deportation, it would be difficult to determine and weigh the risk factors and the seeming arbitrariness of the system in North Korea. Families are classified by loyalty to the regime — those "blacklisted" are more at risk. When a person is deported, if China passes along information that indicates he or she was trying to get in touch with an embassy or foreigners, there might be greater consequences.

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Application of the Refugee Convention and Protocol

Despite being a party to the Refugee Convention and Protocol, China has not allowed U.N. agencies, in particular UNHCR, to have access to North Koreans who are residing in China because it views these individuals as economic migrants (rather than political refugees) who cross the border illegally, primarily in search of food.[31] UNHCR has therefore been unable to determine what percentage of these individuals (North Koreans in China) qualify as refugees, but believes a number may meet that

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[31] China has been a party to both instruments since September 1982, but has not adopted legislation to implement the treaties. For example, the entry and exit of aliens being granted political asylum under Chinese law is based solely on the approval of "competent authorities." China's policy towards refugees in general has varied over the decades. Two large groups of foreigners in China who have claimed refugee status include the Vietnamese and the Kachin Burmese. It is estimated that there are up to 300,000 people from Vietnam residing in China, many of whom arrived during the Sino-Vietnam war in 1979. UNHCR has provided some assistance to these refugees over time. They have mostly integrated and been accepted by the Chinese, although not granted permanent status. Much less is known about the Kachin Burmese, of which there could be hundreds of thousands in China, mainly in the Yunnan Province. Other small groups of refugees that have been certified by UNHCR have been allowed to stay; still others have been repatriated without UNHCR being granted access. Under the 1951 Convention and the 1967 Protocol, contracting States agree to cooperate with UNHCR and facilitate its supervisory function.

definition.[32] In 1995 UNHCR established an office in Beijing under an agreement with China. At the time, issues were focused on limited numbers of refugees coming from Vietnam. During visits to the northeast in the late 1990s, UNHCR determined that some of the newly arrived North Koreans were refugees. But China saw the problem as an internal matter and subsequently prohibited UNHCR from all direct access to the border.[33]

The Chinese are suspicious of UNHCR's intentions and have prevented aid agencies from entering the region to monitor the situation and possibly set up refugee camps. Although it continues to push its case for access, UNHCR cannot provide assistance to the refugees in an open, transparent manner. First-hand information is not available to UNHCR, which relies heavily on those "working on the ground." UNHCR officials interviewed for this report say that they have worked behind the scenes with Chinese officials to assist with the challenges posed by refugees and asylum seekers and believe this is the most productive way forward.

The Status of North Koreans in China

China does not usually allow North Koreans to apply for political asylum.[34] Moreover, China indicates it is obliged under a bilateral1986 repatriation agreement with North Korea to return all border crossers. Despite this agreement Chinese officials have generally ignored the agreement, tolerating the inflows of refugees and the activities of foreign NGOs so long as such activities were carried out quietly.

Cited in Liv v. Holder, No. 05-70053 archived on April 3, 2009

Definitions of status are not always easily determined and motivations — be they economic or political — are not so easily separated. UNHCR recommends that no one be deported until a determination of refugee status can be made.[35] According to UNHCR, even those who arrive in search of food may have a claim to refugee status *sur place* because they would be at risk of persecution if they returned.[36] Thus, some experts argue that because it is known what might happen to North Koreans

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[32] Seymour, p. 21.

[33] The UNHCR mandate in the 1995 agreement with China was not implemented because of China's objection to UNHCR involvement with the North Koreans in the Northeast.

[34] Complementary forms of protection are occasionally available, usually negotiated on a case-by-case basis, such as granting humanitarian status temporarily or arranging political asylum in third countries. See "Complementary Forms of Protection: Their Nature and Relationship to the International Refugee Protection Regime," Executive Committee of the High Commissioner's Programme, 9 June 2000, and "Complementary Forms of Protection," Global Consultations on International Protection, 4 September 2001.

[35] In addition, some experts have questioned whether the level of deprivation in North Korea could be considered a reason to grant refugee status as the poverty is so extreme, and perhaps no different from other political reasons that cause people to flee. While this gives the Chinese explanation some basis, it is not directly linked to political persecution, but rather to the conditions under which people are forced to try to survive. The general criteria used to determine the status of a refugee have not been expanded to include this observation.

[36] A person who was not a refugee when he or she left his or her country, but who later becomes a refugee is considered a refugee *sur place*.

who are deported, the North Koreans in essence become refugees. Furthermore, China's deportations raise the question of a violation of international law, that is, China's violation of its obligations to abide by the principle of *non-refoulement* under the Refugee Convention and Protocol. In March 2006, these issues were raised for the first time in high-level talks between the U.N. High Commissioner for Refugees and the Chinese Foreign Ministry.

The creation of a refugee program raises difficulties for China. It does not want to provoke an ally, destabilize the Korean peninsula, or create a "pull"factor for individuals wanting to cross into China. UNHCR is concerned, too, about the treatment by North Korea and China of the victims who are repatriated and those who become victims of exploitation at the border.

China's Policy Considerations

In addition to being a formal ally with North Korea, the Chinese government wants to avoid a situation that could destabilize the broader region, such as the collapse of the North Korean regime. It believes such an event would bring thousands of North Koreans across its border and have a huge impact on its economic development, adding to the unemployment problem in its industrial Northeast.[37] Moreover, it could strain China's relations with North Korea, perhaps weakening China's influence over North Korea's behavior in other matters, such as its nuclear weapons program. Given North Korea's ability to destabilize the region quickly through military provocations, China may be reluctant to antagonize its neighbor. Some experts also contend that China wants to maintain distance from the U.S. troops in South Korea with North Korea serving as a buffer. China favors a peaceful resolution to the border issues through dialogue and negotiation with North Korea. Chinese officials undoubtedly are also concerned that allowing international groups access could set an unwanted precedent that could be used in future refugee scenarios involving other ethnic groups in other parts of China, such as Tibetans or Uighurs.

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China is considered to have significant leverage over North Korea. It is North Korea's most important diplomatic and economic backer, and provides significant food aid annually. China is also North Korea's largest trade partner and supplies the bulk of North Korea's energy imports. However, China's leverage is limited if the DPRK sees any threat of withdrawing aid as empty, for it would only lead to instability in North Korea.[38]

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[37] The official registered unemployment in China as a whole is about 4 percent. However, substantially greater unemployment and underemployment exist in rural areas.

[38] For more background information, see CRS Report RL33877, *China-U.S. Relations: Current Issues and Implications for U.S. Policy* by Kerry Dumbaugh, Specialist in Asian Affairs.

Transit and Final Destinations for Refugees

The Role of Non-Governmental Organizations (NGOs)

Because the influx of refugees across the border has been gradual, rather than sudden, a network of South Korean, Japanese, U.S., and European NGOs have had time to develop and to provide food, shelter, and employment. Smaller numbers of North Koreans have also surfaced in Cambodia, Mongolia, Thailand, Vietnam, and Laos, suggesting that these groups may have successfully set up escape routes akin to the Underground Railroad in the United States for slaves seeking freedom in the 19th Century. NGOs assisting the refugees often adopt a low profile to avoid detection by the Chinese authorities.[39]

High-Profile Bids for Asylum

According to NGOs assisting the refugees, for reasons that are not clear, beginning in 2001 and away from the public eye, Chinese authorities began cracking down on the North Korean refugee population and those who assisted them. This led some individuals and NGOs, many of which were foreign, to begin orchestrating high-profile rushes of North Koreans into foreign diplomatic compounds and into schools, where the refugees requested asylum, with most seeking resettlement in South Korea. The asylum bids were well publicized. In most of these high-profile asylum cases, China decided on humanitarian grounds to allow the North Koreans to travel to a third country and then transit to Seoul.[40]

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As a consequence of the asylum bids, reports indicated that the Chinese were arresting Korean-Chinese accused of helping North Koreans. (According to some reports, there are apparently more than 1,000 ethnic Korean-Chinese helping the North Koreans who cross over into China.) From time to time, the press mentioned arrests of NGO workers. China increased roundups, repatriations, border patrols, and security around foreign diplomatic buildings. The goal of this harsh response appeared to be to discourage similar high-profile acts. The publicized actions of the asylum seekers raised the visibility of the issue, but it alarmed China, and the repressive solution on the part of the Chinese may have had a negative impact on a far greater number of refugees than the relative few who sought asylum. At different points like this, China has come under considerable international pressure — felt most keenly by the Chinese Foreign Ministry — to recognize the North Koreans as political refugees and allow the international community openly to assist them.

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[39] According to one source at InterAction, a coalition of more than 160 U.S.-based private relief, development and refugee assistance agencies, many NGOs do not want to talk on the record as further publicity is likely to prompt China to clamp down on their activities.

[40] China claims that foreign diplomatic missions have no right to provide asylum on Chinese territory and that embassies should not harbor refugees. The Refugee Convention is supposed to override bilateral agreements between states. In practice, China continues to allow virtually all asylum seekers who successfully enter foreign diplomatic compounds and schools to quietly leave for South Korea via a third country.

South Korea

South Korea remains the primary destination for North Korean refugees. In addition to granting South Korean citizenship, the South Korean government administers a resettlement program and provides cash and training for all defectors.[41] In February 2007, South Korean government officials announced that the number of North Korean defectors arriving in South Korea since the end of the Korean War in 1953 topped 10,000. What began as a trickle in the decades following the war swelled beginning in the late 1990s due to the North Korea famine. According to the South Korean Unification Ministry, up to 1,578 refugees arrived in 2006, exceeding the previous record of 1,139 in 2002.[42] However, there have also been reports about problems in the integration of North Koreans resettled in South Korea with some wanting to return to North Korea or resettle elsewhere. South Korea is party to the Refugee Convention and its Protocol. UNHCR has an office in Seoul to provide assistance to resettlement programs.

Some observers say that Seoul adjusted its stance on North Koreans to mollify Pyongyang and that this was reinforced by two new measures announced by the South Korean Unification Ministry in 2004: the traditional lump sum amount provided to North Korean refugees was reduced by two-thirds (with the difference going to job-training incentive programs), and screening of asylum seekers in diplomatic missions was strengthened to identify possible criminals or spies. Critics say the changes in policy are designed to discourage defections, but South Korean officials defend the changes as necessary to discourage exploitative brokers who charge the defectors for facilitating passage from North Korea. In addition, officials claim, the enhanced screening prevents Korean-Chinese from gaining illegal entry into South Korea.

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Escape Routes Through Third Countries

Southeast Asia. It is believed that only a small percentage of North Koreans in China make their way to third countries in order to seek asylum. North Korean refugees seeking passage to a third country face largely uncooperative governments even if they get through China. Cambodia, Laos, Vietnam and Burma have diplomatic relations with both Seoul and Pyongyang. Fear of offending Pyongyang and, for Vietnam and Laos, the shared characteristic of nominally communist governments make them generally unwilling to assist defectors. After the Vietnamese government allowed 480 North Korean defectors to fly into South Korea on chartered planes in July 2004, the underground network for refugees in Vietnam was reportedly nearly eliminated as an escape route because of Hanoi's unwillingness to upset North Korea again. However, Vietnam reportedly still plays a reduced role

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[41] A South Korean law grants automatic citizenship to all North Korean residents who defect to the South.

[42] "Number of N. Korean Defectors to S. Korea Tops 10,000," *KoreaNet.News*. February 16, 2007.

in the underground railroad that assists North Korean asylum-seekers.[43] Cambodia is party to the Refugee Convention and its Protocol; Laos, Vietnam, and Burma are parties to neither, which means they are not obligated to provide resources and protection to refugees.

Thailand's reputation for relative tolerance for refugees, as well as crackdowns in other recipient countries, has attracted an increasing number of North Korean asylum-seekers. Media sources say that 1,000 North Koreans were detained in Bangkok, and 500 were sent on to Seoul in 2006.[44] Thailand has traditionally quietly cooperated with sending the North Koreans on to South Korea for resettlement, but by 2006 the rise in volume reportedly had strained the system and led Bangkok authorities to intensify measures to prevent illegal entry by North Koreans. In an indication of the Thai government's fraying patience, the Foreign Ministry complained in December 2006 that international and local NGOs — by shepherding North Koreans to Thailand — were hurting its ability to prevent the illegal entry of North Korean defectors. Activists claim that some North Koreans in Thailand may be seeking resettlement in the United States. Thailand is not a party to the Refugee Convention or its Protocol.

Mongolia. For some North Korean refugees, traveling north to Mongolia is preferable as an escape route out of China. The Mongolian government maintains a policy of not repatriating North Koreans and its practices are considered humane by international refugee organizations. Although some advocates had been pushing for the establishment of an official refugee camp in Mongolia, experts have since concluded that camps would not be suitable, in part because North Koreans transit through Mongolia so quickly. Mongolia's official relations with both South Korea and North Korea are strong, including a guest worker program with Pyongyang that allows hundreds of North Koreans to work in mine and construction projects. UNHCR maintains regular contact with the Mongolian government. Although Mongolia is not a party to the Refugee Convention or its Protocol, it has been both cooperative and diplomatic in dealing with the North Koreans, an approach that appears to be acceptable to its neighbors.

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Congressional Response

Human Rights and Refugee Issues in Overall North Korea Policy

In general, under the Clinton Administration, security issues with North Korea were explicitly separated from human rights concerns: the 1994 Agreed Framework was limited to economic incentives in exchange for Pyongyang freezing its nuclear

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[43] "Perilous Journeys: The Plight of North Koreans in China and Beyond," International Crisis Group Report. October 26, 2006.

[44] "Thailand Playing a Key Role in Aiding N. Korean Asylum Seekers," *The Nation* (Thailand). February 27, 2007; and "Land of Smiles for N. Korean Refugees," *Straits Times*. March 5, 2007.

weapons program. The Bush Administration policy on North Korea has undergone several shifts, from refusing to meet with the North Koreans to pushing aggressively for a negotiated deal on dismantling the North's nuclear weapons programs. Until the 2007 Six-Party Agreement, the Bush Administration had regularly drawn attention to North Korean human rights violations by supporting resolutions that criticize the North Korean record at the United Nations Human Rights Council and General Assembly. High-level officials, including the President and Secretary of State, also periodically criticized the regime in Pyongyang for its human rights practices. Some observers note that focus on human rights issues appears to have increased during periods when nuclear weapons negotiations have stalled. With a few exceptions, references to the refugee situation have generally been limited to lower-level meetings.

As efforts to push forward the Six-Party talks have accelerated in 2007, the Administration has not proposed any negotiations with North Korea over human rights but has asserted that human rights is one of several issues to be settled with North Korea after the nuclear issue is resolved. The Six-Party Agreement of February 13, 2007, calls for the United States and North Korea to "start bilateral talks aimed at resolving bilateral issues and moving toward full diplomatic relations." Prior to the Agreement in 2007, the Bush Administration held that it would not agree to normalization of diplomatic relations with North Korea until there was progress on human rights (presumably including refugees) and other issues. This position was criticized by China and South Korea, which called on the Administration to offer North Korea full diplomatic relations in exchange for a satisfactory nuclear settlement. However, since the signing of the agreement in February, Assistant Secretary of State for East Asian and Pacific Affairs Christopher Hill increasingly has linked normalization of U.S.-North Korean relations solely to a satisfactory settlement of the nuclear issue.[45]

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The North Korean Human Rights Act

Congressional attention to North Korean human rights and refugee issues has been consistent and critical. Several hearings specifically devoted to the topics called on expert witnesses as well as executive branch officials to testify about the conditions faced by North Koreans, both those within the country and those attempting to escape. The 108th Congress passed by voice vote, and President Bush signed, the North Korean Human Rights Act of 2004 (NKHRA).[46] The legislation

- authorizes up to $20 million for each of the fiscal years 2005-2008 for assistance to North Korean refugees, $2 million for promoting human rights and democracy in North Korea and $2 million to promote freedom of information inside North Korea;

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[45] "Pact with North Korea Draws Fire From a Wide Range of Critics in U.S.," by Helene Cooper and Jim Yardley, *New York Times*, February 14, 2007, p. A10; "No Partial Solution," *New York Times*, May 31, 2007, p. A14; and "North Korea 'Prepared' to Shut Down Reactor, U.S. Envoy Says," by Choe San Hun, *New York Times*, June 23, 2007, p. A5.

[46] H.R. 4011; P.L. 108-333; and 22 U.S.C. 7801.

- asserts that North Koreans are eligible for U.S. refugee status and instructs the State Department to facilitate the submission of applications by North Koreans seeking protection as refugees; and

- requires the President to appoint a Special Envoy to promote human rights in North Korea.

The NKHRA also expresses the sense of the Congress that human rights should remain a key element in negotiations with North Korea; all humanitarian aid to North Korea shall be conditional upon improved monitoring mechanisms for the distribution of food; support for radio broadcasting into North Korea should be enhanced; and that China is obligated to provide UNHCR with unimpeded access to North Koreans inside China.

Some have hailed the NKHRA as an important message that human rights will play a central role in the formulation of U.S. policy towards North Korea. They believe the issue should be addressed in the U.S.-North Korea normalization working group established by the February 13, 2007 Six-Party Talks agreement. Passage of the legislation was also driven by the argument that the United States has a moral responsibility to stand up for human rights for those suffering under repressive regimes. Advocates claim that, in addition to alleviating a major humanitarian crisis, the NKHRA will ultimately enhance stability in Northeast Asia by promoting international cooperation to deal with the problem of North Korean refugees.

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Critics say the legislation risks upsetting relations with South Korea and China, and ultimately the diplomatic unity necessary to make North Korea abandon its nuclear weapons program through the Six-Party Talks. Further, they insist that the legislation actually worsens the plight of North Korean refugees by drawing more attention to them, leading to crackdowns by both North Korean and Chinese authorities and reduced assistance by Southeast Asian countries concerned about offending Pyongyang. They point to reports that Chinese soldiers nearly shut down the border between China and North Korea following a series of embassy stormings in 2002, preventing any further flow of refugees. Since passage of the NKHRA, it does not appear that China has altered its practices in response to pressure from the United States to deal more humanely with North Korean refugees.

Congressional Complaints on Pace of Implementation. Critics have complained that implementation of NKHRA has been halting. Most publicly, no North Korean refugees were resettled in the United States until May 2006 and Jay Lefkowitz was not appointed as the Special Envoy for Human Rights in North Korea until August 2005, ten months after President Bush signed the bill into law. At three House hearings in the 108th Congress devoted to NKHRA, lawmakers repeatedly expressed frustration at the pace and lack of robust implementation of NKHRA. Others complained that the Administration did not request any of the annual $24 million authorized under NKHRA until $2 million was requested for FY2008. When Ambassador Lefkowitz testified at the April 2006 hearing, a Member questioned him on the number of hours he was able to devote to the issue, questioning whether he could fulfill his duties as the Special Envoy as a part-time employee of the State Department. Lawmakers also raised reports that U.S. embassy officials in China had

turned away or discouraged North Koreans seeking asylum, an accusation made by a witness at the October 2005 hearing.[47]

Difficulties of Implementation. Some observers contend that good-faith implementation of NKHRA's refugee provisions may be counterproductive. They argue that the legislation on North Korean refugee admissions could send a dangerous message to North Koreans that admission to the United States as a refugee is assured, encouraging incursions into U.S. diplomatic missions overseas. State Department officials say that given the tight security in place at U.S. facilities abroad, unexpected stormings could result in injury or death for the refugees. Secondly, granting of asylum status to North Korean refugees involves a complex vetting process that is further complicated by the fact that the applicants originate from a state with which the United States does not have official relations. In congressional hearings, State Department officials have cautioned that effective implementation of the NKHRA depends on close coordination with South Korea, particularly in developing mechanisms to vet potential refugees given the dearth of information available to U.S. immigration officials on North Koreans.[48]

Funding. The State Department has not requested funding explicitly under the NKHRA, but officials assert that the mission of the NKHRA is fulfilled under a number of existing programs. The State Department's Population, Refugees, and Migration (PRM) Bureau provided $7.56 million in FY2006 for UNHCR's annual regional budget for East Asia, which includes assistance for North Korean refugees, among other refugee populations. PRM funds international organizations such as UNHCR or the ICRC. For democracy promotion in North Korea, the State Department's Democracy, Human Rights, and Labor (DRL) Bureau gives grants to U.S.-based organizations; in the FY2008 budget, DRL requested $1 million for North Korea human rights programs, as well as $1 million for media freedom programs. DRL also considers $1 million expended in FY2006 in the National Endowment of Democracy account specific to North Korea as fulfilling part of the NKHRA's mission. In FY2008, the Broadcasting Board of Governors (BBG) requested $2.9 million for increased radio broadcasting into North Korea, according to the BBG Congressional Budget Justification. The authorizations of the NKHRA expire in FY2008.

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Some government officials and NGO staff familiar with providing assistance to North Korean refugees say that funding explicitly associated with the NKHRA is problematic because of the need for discretion in reaching the vulnerable population. Refugees are often hiding from authorities and regional governments do not wish to draw attention to their role in transferring North Koreans, so funding is labeled under

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[47] Transcript of October 27, 2005 joint hearing of the Subcommittee on Asia and the Pacific and the Subcommittee on Africa, Global Human Rights, and International Operations entitled, "An Update on the Implementation of the North Korean Human Rights Act," accessed at [http://www.foreignaffairs.house.gov/archives/109/24202.pdf].

[48] Transcript of April 28, 2005 joint hearing of the Subcommittee on Asia and the Pacific and the Subcommittee on Africa, Global Human Rights, and International Operations entitled, "The North Korean Human Rights Act: Issues and Implementation," accessed at [http://www.foreignaffairs.house.gov/archives/109/20919.pdf].

more general assistance programs. In addition, many of the NGOs that help refugees do not have the capacity to absorb large amounts of funding effectively because of their small, grass roots nature.

Radio Broadcasting into North Korea. The NKHRA authorizes the President to "take such actions as may be necessary to increase the availability of information inside North Korea by increasing the availability of sources of information not controlled by the Government of North Korea, including sources such as radios capable of receiving broadcasting from outside North Korea" and authorizes the appropriation of $2 million annually for this purpose.[49] In the FY2008 budget request, the Broadcasting Board of Governors requested $2.9 million in order to increase broadcasting into North Korea by establishing a 10-hour coordinated stream of Voice of America (VOA) and Radio Free Asia (RFA) daily programming. The radio broadcasts into North Korea, through medium- and short-wave, were modestly enhanced beginning in 2006, and original programming was added in FY2007. Content includes news briefs, particularly news involving the Korean peninsula, interviews with North Korean defectors, and international commentary on events happening inside North Korea. The BBG cites an InterMedia survey of escaped defectors that indicates that North Koreans have some access to radios, many of them altered to receive international broadcasts.[50]

Freedom House Conferences. In FY2005, $2 million was appropriated to Freedom House[51] to organize international conferences to raise awareness of human rights conditions in North Korea. The second forum, held in Seoul in December 2005, raised political tension between U.S. officials in attendance and the South Korean government. As South Korean ruling party officials maintained a distance from the event, opposition leaders and Special Envoy Lefkowitz called for the Roh Administration to speak out against North Korea's human rights abuses. Lefkowitz also urged the South Korean government to tie its humanitarian aid shipments to improvements in Pyongyang's human rights record. A third conference held in Brussels in March 2006, was attended by Lefkowitz, the Japanese Special Envoy for Human Rights Issues Humiko Saigo, and several North Korean defectors. The Brussels conference coincided with an unprecedented hearing on human rights issues in a European Union parliamentary session, resulting in a resolution condemning human rights conditions in North Korea. A second, similar resolution was passed by the same body after the fourth Freedom House conference was held in Rome in July 2006.[52]

Cited in Liv v. Holder, No. 05-70053 archived on April 8, 2009

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[49] Section 104, 22 U.S.C. 7814.

[50] Broadcasting Board of Governors, Executive Summary of *Fiscal Year 2008 Budget Request*.

[51] Freedom House is a Washington, D.C.-based, independent, non-profit organization, non-governmental but funded predominantly by the U.S. government, that supports civic initiatives promoting human rights and democracy world-wide.

[52] Texts of the two European Parliament resolutions can be found at [http://www.nkfreedomhouse.org/resources/resolutions/].

The Resettlement of North Korean Refugees in the United States. The NKHRA states as one of its goals the resettlement of North Korean refugees in the United States.[53] Section 302 of the Act states that "North Koreans are not barred from eligibility for refugee status or asylum in the United States on account of any legal right to citizenship they may enjoy under the Constitution of the Republic of Korea." Given the quick availability of citizenship, as well as the presence of historical and cultural ties and the provision of benefits to North Korean arrivals, South Korea historically has been viewed by the United States and other countries as the preferred resettlement country for North Koreans. Section 304 expresses the sense of the Congress that UNHCR and its donor governments, including the United States, "should persistently and at the highest levels continue to urge the Government of China" to allow access to North Koreans within China to determine whether they qualify for refugee protection.

More general in nature, Section 303 of the NKHRA directs the Secretary of State to "undertake to facilitate the submission of applications" under the Immigration and Nationality Act (INA) by prospective North Korean refugees. Some of the challenges to implementing this provision were highlighted in a report the NKHRA required the Secretary of State to submit to Congress. Noting opposition by governments hosting North Korean refugees, particularly China, to U.S. refugee admissions processing on their territory, the report stated:

> Without cooperation of such governments, the multi-step, often-lengthy admissions procedures leading to the departure of North Koreans for the United States will not be possible in the region.

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The report suggested, however, that it might be possible to admit some North Korean refugees to the United States from South Korea "after appropriate vetting." This reference to vetting suggests another significant obstacle to North Korean refugee resettlement in the United States — the difficulty in completing security checks. The House International Relations Committee report on the bill that became the NKHRA cited "genuine security concerns" related to North Korean refugee resettlement in the United States. Acknowledging "the Department of Homeland Security's obligation and authority to assess North Koreans ... on a case-by case basis," the report stated that "such requirements may present natural limits to the number and pace of North Korean refugee admissions into the United States."

Challenges to North Korean refugee resettlement in the United States and efforts to address them were discussed at an April 2005 hearing on implementation of the NKHRA by the House International Relations Committee's Subcommittees on Asia and the Pacific, and on Africa, Global Human Rights and International Operations. In written testimony, Arthur E. Dewey, then-Assistant Secretary of State for PRM, described actions being taken to obtain access to North Koreans in China:

> The State Department continues to fund UNHCR's efforts to obtain access to, protection of, and solutions for North Koreans. The United States consistently

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[53] For background, see CRS Report RL31269 *Refugee Admissions and Resettlement Policy*, by Andorra Bruno, Specialist in American National Government.

> and at high levels continues to urge the PRC to adhere to its international obligations....

At the same time, Assistant Secretary Dewey emphasized limits on the ability of the United States to provide direct assistance. He maintained that direct U.S. involvement with North Koreans in certain states could increase the vulnerability of those individuals. With respect to security concerns, he noted that the U.S. government lacked ready access to information about individual North Koreans necessary to complete required background checks. He cited the need for a "reliable mechanism" to complete these security checks and indicated that consultations with governments in the region were essential to developing viable mechanisms to facilitate applications of North Korean refugees for U.S. resettlement.

Testifying before the same subcommittees in April 2006, the Special Envoy, Jay Lefkowitz, reported progress in addressing challenges to gain access to North Korean refugees and conduct security screenings. In May 2006, the first six North Korean refugees were admitted to the United States from an unidentified nation in Southeast Asia. In written testimony prepared for a March 1, 2007 hearing of the House Foreign Affairs Committee's Subcommittee on Asia, the Pacific, and the Global Environment, Special Envoy Lefkowitz stated that "our government has opened America's doors to North Korean refugees." He further stated, "While we expect that most North Korean refugees will continue to choose to resettle in South Korea, we impose no quota or limit on the number we are willing to accept."

As of July 2007, a total of 30 North Korean refugees had been admitted to the United States from undisclosed transit states.

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Linking Security and Human Rights

The Six-Party Talks remain focused primarily on the nuclear weapons issue and Bush Administration negotiators in 2007 have linked establishing diplomatic relations and facilitating Pyongyang's re-entry into the international community with only the nuclear weapons issue rather than human rights and other issues. The appointment of a special envoy on human rights theoretically allows for a separate track, but, according to many observers, the predominant attitude of the Bush Administration in 2007 reflects the view that raising the profile of North Korea's human rights violations jeopardizes the progress of the nuclear disarmament negotiations.[54]

The NKHRA pressures Executive Branch policymakers to link human rights and overall negotiations with Pyongyang. The NKHRA conveys the Sense of Congress that human rights should be a "key element" in talks with North Korea and that the United States should pursue a human rights dialogue modeled on the

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[54] "U.S., in Shift, Plans Talk in North Korea on Arsenal," by David Sanger and Norimitsu Onishi, *New York Times*, June 21, 2007, p. A8; and "U.S. Envoy Outlines N. Korea Agenda - Peace Process in Works by '08," by Nicholas Kralev, *Washington Times*, June 26, 2007, p. A1.

Helsinki process with North Korea and other regional states.[55] In addition to these suggestions, the requirements for admission of refugees and the funds authorized to aid human rights and refugee NGOs alters the diplomatic environment in which the State Department has pursued talks with the North Koreans because of the reactions of other regional powers.

Some observers disagree that a linkage policy based on the Helsinki process is an effective approach to dealing with North Korea. They argue that several factors that existed in Eastern European countries — a nascent civil society, minority groups, semi-autonomous institutions such as the Catholic Church, dissident organizations, armed uprisings against the rulers, deeper contacts with the outside world, and an overall political "thaw" — were necessary prerequisites for the approach to take hold. Few or none of these factors reportedly exist in the closed state of North Korea and, as a result, outside NGOs have very limited local forces with whom to partner to develop political movements.[56]

Regime Change as a Motivation?

Some critics of the NKHRA charge that a desire for regime change in Pyongyang motivated the legislation. Passage of the NKHRA was driven in part by the activities of a network of NGOs devoted to North Korean issues. The network includes groups explicitly committed to precipitating the collapse of the regime in Pyongyang. The predecessor to the NKHRA, the North Korean Freedom Act,[57] proposed language that more harshly criticized South Korea and China, provided less flexibility to the President to negotiate a security agreement, explicitly linked security and human rights issues, and, according to some analysts, associated itself with regime change.[58] Critics of the regime-change approach point to some of Lefkowitz's public statements that characterize Pyongyang as "a government that inflicts on its citizens repression reminiscent of the most cruel totalitarian rulers of the 20th century...[and] is today counterfeiting U.S. currency, trafficking in narcotics, building a nuclear arsenal, and threatening other nations."[59] In 2005 and 2006 critics questioned whether the Administration was committed to working with the existing

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[55] The Final Act of the Conference on Security and Cooperation in Europe, known as the Helsinki Final Act, Helsinki Accords or Helsinki Declaration, was the final act of the Conference on Security and Co-operation in Europe held in Helsinki, Finland in December, 1975 among the United States and Canada, the Soviet Union and the countries of Eastern and Western Europe. The 33 signatories committed themselves to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language, or religion." The participating governments further committed themselves to foster "freer movement and contacts," improved access to information, and cultural and educational exchanges.

[56] Feffer, John. "The Forgotten Lessons of Helsinki Human Rights and U.S.-North Korean Relations," *World Policy Journal*. Fall 2004.

[57] S. 1903, 109th Congress

[58] Lee, Karin, "The North Korean Human Rights Act and Other Congressional Agendas." *Nautilus Policy Forum Online*. October 7, 2004.

[59] Lefkowitz, Jay, "Freedom For All North Koreans," *Wall Street Journal*, April 28, 2006.

North Korean government in the Six-Party Talks if a high-level envoy could describe the regime in Pyongyang in such negative terms. Lefkowitz also criticized aspects of South Korea's "sunshine policy" of engaging North Korea, words that some say have periodically strained relations with Seoul. However, in 2007, the Bush Administration entered into bilateral talks with North Korea, and Assistant Secretary of State Hill visited Pyongyang in June 2007. The Administration also resolved financial restrictions against banks in Macau that engaged in activities that were implicated in North Korean counterfeiting operations. Lefkowitz, though still serving as Special Envoy, has kept a lower profile in 2007.

The House International Relations Committee report accompanying the NKHRA, however, explicitly disavowed an interest to bring down the Pyongyang government: "[NKHRA] is motivated by a genuine desire for improvements in human rights, refugee protection, and humanitarian transparency. It is not a pretext for a hidden strategy to provoke regime collapse or to seek collateral advantage in ongoing strategic negotiations."[60] Former Chairperson of the Subcommittee of Asia and the Pacific James Leach reiterated at a congressional hearing in 2005 that "... I would like to affirm that the motivations for the North Korean Rights Act (sic) were and are solely humanitarian, not geo-strategic.... [NKHRA] is agnostic about regime change, but emphatic about behavior change."[61]

Despite this public statement, many observers say that securing cooperation from China and South Korea to deal with North Korean human rights and refugee issues is more difficult because of the distrust of the goals of some U.S. government officials. South Korean Unification Minister Lee Jong-seok, for instance, told a parliamentary committee in July 2006, "Personally, I oppose a Northeast Asian version of the Helsinki Process... Because there is a wide perception that the Helsinki Process is premised on regime change, (applying the process to North Korea) would have no effect," adding that "In the U.S., the people who have been calling for a change of the North Korean regime are raising the [human rights] issue."[62]

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[60] The full House Report (H.Rept. 108-478) can be found at [http://www.congress.gov/cgi-lis/cpquery/R?cp108:FLD010:@1(hr478)].

[61] Statement made at House International Relations Subcommittee on Africa, Global Human Rights and International Operations and Subcommittee on Asia and the Pacific joint hearing on April 28, 2005.

[62] "Seoul Refuses to Duplicate 'Helsinki Process' on N. Korea," *Yonhap English News*. July 24, 2006.

Regional Responses to NKHRA

South Korea

Passage of the NKHRA raised uncomfortable issues for South Korea, adding another irritant to an increasingly strained U.S.-South Korea bilateral relationship. Many observers say that NKHRA draws sharp attention to the plight of North Korean citizens and refugees and illuminates the gulf between the U.S. and South Korean approaches to dealing with North Korea. As part of its policy of increasing economic integration and fostering warm ties with North Korea, South Korea has generally refrained from criticizing Pyongyang's human rights record and downplayed its practice of accepting North Korean refugees. Until 2006, South Korea had abstained from voting on several U.N. resolutions calling for improvement in North Korea's human rights practices. In an indication that Seoul's position may have evolved, in November 2006 South Korea for the first time voted in favor of a U.N. General Assembly resolution that criticized North Korea for torture, public executions, past abductions of foreigners, severe prison conditions, and failing to allow access to the Special Rapporteur on North Korean human rights.[63] The unprecedented vote by Seoul may also have been a result of its former Foreign Minister Ban Ki-Moon being designated as the next U.N. Secretary General; Ban had earlier called for North Korea to make progress on its human rights and for South Korea to assist the international community in pressuring Pyongyang to open up. It may also reflect a response to U.S. pressure and to domestic criticism of South Korea's approach following North Korea's nuclear missile tests in July 2006. However, the turn of Bush Administration policy in 2007 has brought U.S. policy closer to South Korea's conciliation strategy. The Bush Administration expressed support for a North Korea — South Korea summit announced in August 2007. There is no indication that the Bush Administration will urge South Korean President Roh Moo-Hyun to raise human rights or refugee issues when he goes to Pyongyang.

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The tension between Washington and Seoul on human rights issues may threaten bilateral cooperation on refugee problems. The admission of North Korean refugees for resettlement in the United States could benefit from information sharing with South Korean intelligence services for vetting purposes. It is unclear if South Korea has been willing to provide cooperation in light of its reluctance to antagonize Pyongyang. Complicating any U.S. effort to "burden-share" with South Korea by accepting North Korean refugees is the South Korean law that grants automatic citizenship to all North Korean residents who defect to the South. Shortly before the acceptance of the first six refugees under the NKHRA, another North Korean defector who had settled in South Korea in 1998 was granted asylum by a Los Angeles immigration court. After South Korean officials, including then Foreign Minister Ban Ki-Moon, criticized the ruling, unnamed State Department sources explained that the case did not reflect U.S. refugee policy and did not fall under NKHRA because of the established citizenship of the defector. Seoul officials have chafed at the suggestion by some North Korean defectors that they are discriminated against in South Korea because of their North Korean origins.

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[63] U.N. General Assembly Resolution GA/SHC/3874.

China

Passage of the NKRHA, and the issue of human rights in general, raises difficult issues with China, the host of the Six-Party Talks and a crucial part of the Administration's strategy to pressure North Korea into giving up its nuclear weapons. NKHRA describes in harsh language the conditions refugees face in China and Beijing's policy of repatriation to North Korea. During hearings on NKHRA's implementation, several Members of Congress strongly criticized Beijing for its policy on North Korean refugees, including the suggestion that the United States should boycott the 2008 Olympics in protest. Beijing fears the NKHRA might serve as a beacon to refugees and encourage a greater number of North Koreans to cross the border into China.

Although the Bush Administration has spoken out on Chinese human rights abuses, some analysts say that the criticism has been muted because of the need for Beijing's cooperation with the war on terrorism, the Six-Party Talks, and Iran. However, the White House elevated one individual's case to an unusually high profile: Kim Chun Hee, a 31-year old North Korean who sought asylum at two Korean schools in China before being deported to North Korea, according to various press reports. With her fate uncertain, the White House issued a statement on March 30, 2006, expressing its grave concern for her and calling on China to honor its obligations as a party to the Refugee Convention and Protocol. Urged on by activist groups, including an influential church from Bush's hometown, President Bush raised the case directly with Chinese president Hu Jintao during their April 2006 summit. According to White House officials, Hu offered no response.

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Japan

The United States and Japan have found common ground on the issue of confronting North Korea on human rights violations. Since Kim Jong il's 2002 admission that the Pyongyang government abducted Japanese nationals in the 1970s and 1980s, the Japanese government has increasingly taken a tougher stance on North Korea, including imposing strict sanctions on Pyongyang after the North's 2006 tests of missiles and then a nuclear device. Previous Prime Minister Shinzo Abe rose to prominence based largely on his hardline stance toward North Korea, from insisting on a full accounting of the abductees to stepping up military cooperation with the United States in response to Pyongyang's provocations.

Japan has maintained pressure on the United States to include the issue of human rights in the ongoing Six-Party Talks. The North Korea-Japan normalization working group, one of five established by the February 13, 2007 Six-Party Talks agreement, focuses on resolution of the abduction issue as well as Pyongyang's historical grievances for the Japanese annexation of the Korean peninsula from 1910-1945. A provision of the agreement that states that the United States will "begin the process of removing the designation of the DPRK as a state-sponsor of terrorism" has alarmed Japan, which has urged the United States to keep North Korea on the terrorism list until North Korea resolves Japan's concerns over the kidnappings. In 2004, the Administration noted that the kidnapping of Japanese

citizens justified, in part, North Korea's inclusion on the state sponsors of terrorism list.

Japanese lawmakers passed their own version of the NKRHA in 2006. The Japanese Act calls for greater awareness on North Korean human rights violations in general, with an emphasis on the abductions of Japanese citizens, as well as enhanced international coordination to prevent further human rights abuses by the North Korean government. Solving the plight of North Korean refugees is mentioned, but no specific measures to assist refugees are outlined. The law calls for economic sanctions if human rights violations, specifically the abduction issue, fail to improve, although similar sanctions are already applied for North Korea's missile and nuclear tests.

The Japanese abductee issue has been elevated in Congress. The NKHRA includes a sense of the Congress that non-humanitarian aid be contingent on North Korean progress in accounting for the Japanese abductees. A House hearing in April 2006 focused on North Korea's abductions of foreign citizens, with testimony from former abductees and their relatives. Among the witnesses was Sakie Yokota, the mother of Megumi Yokota, abducted at the age of 13. The following day, President Bush met with Yokota and other relatives of abductees, further emphasizing the link between U.S. policy and Japan's most pressing priority in its relations with North Korea.

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Options for Congress and Other Policymakers

Formulating policy toward North Korea has been characterized as deciding among a range of bad options. The following outlines some basic approaches to dealing with North Korea's human rights and refugee issues advocated by various constituencies, with an analysis of some of the possible diplomatic and security-related ramifications. United States policy has adopted elements of several of these strategies in the past and future policies will likely be a combination of approaches.

Encourage Refugee Flows to Destabilize the North Korean Regime

Putting aside the significant humanitarian concerns about North Korean refugees, some commentators have advocated the use of refugee flows for the political ends of weakening the regime in Pyongyang. Liberal U.S. resettlement policies and official encouragement to North Korean refugees to seek asylum at American diplomatic posts in the region could act as a magnet for drawing larger numbers of North Koreans over the border. If the United States weighed in as an official advocate for fleeing North Koreans, it could arguably foster the underground railroad system by pressuring Beijing to assist in the relocation process.[64] Some calculate that a large outflow could lead to the collapse of the precarious system of

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[64] See Nicholas Eberstadt and Christopher Griffin, "Saving North Korea's Refugees: The Case for Action," *International Herald Tribune*. February 20, 2007.

political control enforced by the North Korean government. Such advocates argue that regime change in North Korea is the only solution given the scale of human rights abuses in the country. Critics of this approach point out that the more likely response to a massive movement of people across the border would be a bloody crackdown by Chinese and North Korean authorities, not necessarily leading to a regime collapse. In addition, some argue that a sudden political collapse would lead to a chaotic aftermath in which human rights and lives would be direly threatened.

Provide Protection Versus Status to Refugees

The United Nations High Commissioner for Refugees has examined the legal aspects of who among the North Koreans in China qualifies for refugee status. South Korea recognizes that once refugees are on South Korean territory, it has an obligation to protect them; however, it cannot protect the North Korean refugees while they are in China. Politically, it is both a domestic and bilateral problem for China to acknowledge refugee status for the North Koreans. And given the circumstances, UNHCR believes there may be overriding, practical reasons not to do so. First, it is possible that there could be relatively few cases that might technically qualify as refugees. Second, it is probable that granting refugee status decreases China's tolerance dramatically for the refugees in general, at least in the short- and medium-term. The question thus becomes whether it is helpful to push the refugee status issue or find another way to achieve the solution being sought: Protect the North Korean refugees in China.

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Granting some form of humanitarian status — rather than refugee status — is one way to provide a broader definition of who can be helped that may be more politically acceptable to China. The UNHCR Department of International Protection, which is responsible for the agency's core protection mandate, in March 2006 proposed a humanitarian program, or enclave, be developed with other humanitarian agencies to make sure the refugees have or gain access to humanitarian services. Discussions between UNHCR and representatives suggest that China could justify a "good neighbor approach" on the one hand, without pushing human rights or asylum, or on the other hand, pushing for deportation. China has expressed a willingness to consider the option of protection in the form of such a humanitarian enclave, but no further progress has been made.

UNHCR also believes there may be too much emphasis on the "pull factor" on the part of China and others. Unfettered travel in North Korea is difficult and both countries have demonstrated their ability to control their respective borders. China clearly does not want a political confrontation or fallout with North Korea. UNHCR has been opening the dialogue with China behind the scenes because it also views open confrontation with China as unproductive, given China's current political structure. The proposal to give humanitarian status as a means of increasing protection for the North Koreans in China is seen by some as far less provocative than granting refugee status and as offering a practical solution that can be implemented. Although not necessarily the approach sought by some high-profile NGOs, UNHCR believes it has to minimize its visibility and publicity to make the most progress.

Resettle Larger Numbers of North Korean Refugees in the United States

Some advocates support a program that builds considerably on the past acceptance of a few dozen North Korean refugees. Advocates of granting U.S. asylum to North Koreans say it would help share the burden of accepting the refugees with the South Korean government. Some Korean-American groups have indicated that their community is willing to facilitate increased resettlement in the United States. Other supporters of the NKHRA applaud the admission of refugees but insist that South Korea will remain the primary destination for defectors from the North. Administration officials have cited reluctance by China and Southeast Asian countries to be involved in transferring North Korean refugees to American officials, as well as the complicated vetting procedure required by American immigration officials, particularly for citizens from a country on the state sponsors of terrorism list. Refugee experts have also voiced concern about North Koreans' ability to adjust to an American lifestyle, particularly if language skills are not strong upon arrival.

Implement the Responsibility to Protect

While the U.N. Charter obligates U.N. members to promote respect for human rights and asserts as a primary purpose of the Organization is the promotion of human rights and fundamental freedoms for all, it also recognizes the doctrine of non-intervention. Thus, Article 2, Paragraph 7, of the U.N. Charter states that "nothing in the Charter authorizes the United Nations to interfere in matters which are essentially within the domestic jurisdiction of any state." Because of the traditional approach towards human rights as a matter exclusively within the domestic jurisdiction of sovereign states, Article 2(7) has been viewed by some as an obstacle to the implementation of the human rights provisions of the Charter. States accused of human rights violations frequently cite this provision in response to criticisms by other states (or international organizations) relating to human rights conditions within their borders.

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However, many advocates argue that there is substantial justification for state responsibility for the protection of the human rights of individuals and for some level of "interference" by the international community on behalf of those whose rights have been infringed. Activity for the protection of human rights has been constantly subjected to tension between state sovereignty as protected by the doctrine of non-intervention and state obligations to protect human rights and fundamental freedoms. Increasingly, protection of populations affected by conflict within a country is seen as partly the responsibility of the international community. For example, some observers have more recently argued that the DPRK government is a threat to its own people and that North Korea has violated its responsibility to protect its own citizens from crimes against humanity. They suggest that action by the international community and the U.N. Security Council is warranted.[65]

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[65] U.S. Committee for Human Rights in North Korea, "Failure to Protect: A Call for the UN Security Council to Act in North Korea," October 30, 2006.

At the 2005 U.N. World Summit, the "Responsibility to Protect" was introduced, putting forward the idea that each state has a responsibility to protect its people from genocide, war crimes, ethnic cleansing and crimes against humanity and that human rights violations committed in one state are the concern of all states.[66] It is an agreement in principle that speaks to the obligations of a state to protect its own people and the obligations of all states when that fails, but this U.N. Resolution does not make action easy or even probable. Lee Feinstein, Senior Fellow for U.S. Foreign Policy and International Law at the Council on Foreign Relations, observes that "Adoption of the responsibility to protect begins to resolve the historic tension between human rights and states' rights in favor of the individual. Where the state had been erected to protect the individual from outsiders, the responsibility to protect erects a fallback where individuals have a claim to seek assistance from outsiders in order to substitute for or protect them from the state."[67] Still, as the case of North Korean refugees demonstrates, translating principle into action remains an enormous challenge.

Encourage North Korea and China to Honor International Treaty Obligations

As members of the United Nations, both China and North Korea are bound by the U.N. Charter. Both China and North Korea have ratified several key international treaties that could be used as leverage to change their human rights practices. China is party to the Refugee Convention and Protocol, which obligates China to cooperate with UNHCR and prohibits China from repatriating refugees to any countries where they are at risk for serious human rights abuses. China also ratified the U.N. Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, which states that no government shall repatriate "a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." In addition, China has ratified the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, and the International Covenant on Economic, Social and Cultural Rights.

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North Korea is party to two international treaties that prohibit human rights violations: the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. It is also party to two covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. To the extent that Beijing and Pyongyang wish to be acknowledged as legitimate members of the international community, the argument that their governments have a responsibility to uphold widely recognized human rights principles might be invoked.

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[66] General Assembly Resolution 60/1 and confirmed by the Security Council Resolution 1674 (2006).

[67] Feinstein, Lee, "Darfur and Beyond: What is Needed to Prevent Mass Atrocities," Council on Foreign Relations, *Council Special Report*, No. 22, January 2007.

Call Attention to North Korea's Human Rights Record

Supporters of the NKHRA point out the value of having U.S. officials raise human rights issues to the international community. Special Envoy Jay Lefkowitz has been charged with leading this effort, and insists it can be done on a track parallel to the security negotiations. Some analysts have dubbed this approach a "name and shame" strategy that depends on the regime in North Korea feeling sufficient pressure from the international community to curb its human rights practices. An extension of this strategy may involve singling out the Chinese and South Korean governments for their failure to publicly condemn Pyongyang's human rights violations, therefore pressuring officials in Beijing and Seoul to take a more proactive stance. Security analysts warn that the high-profile nature of this approach threatens to derail existing talks on the nuclear weapons issue given North Korea's demonstrated sensitivity to international criticism and past boycotts of the talks based on similar condemnation from State Department human rights reports or statements from U.S. officials. However, others point out that North Korea has used many issues as a pretext for boycotting talks, and that the human rights issue will not be an insurmountable obstacle if Kim Jong-il is committed to a deal.

Address Human Rights As Part of a Package Deal

The strategy of offering diplomatic recognition and other incentives in exchange for dialogue on human rights and other issues has been adopted by European countries. After establishing normalized relations with North Korea in 2001, the European Union became a significant trade partner with North Korea, in addition to offering food aid and technical and humanitarian assistance. Modest "human rights dialogues" between Pyongyang officials and ambassadors from E.U. countries have been held. Supporters of the policy argue that having regular exchanges and embassies on the ground in Pyongyang may eventually build up the trust necessary to make progress on human rights.[68]

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By most accounts, North Korea's human rights record has not demonstrably improved since relations were established, although supporters of the approach point to isolated cases of progress.[69] Some observers insist that increased contact with North Korean leadership is the only way to improve human rights in the state, and argue as a result for early normalization of relations between the United States and DPRK. However, the U.S. offer is conditional upon thorough and verifiable nuclear disarmament.

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[68] See, for example, Roberta Cohen, "Talking Human Rights With North Korea," *Washington Post* opinion page. August 29, 2004.

[69] For example, Pyongyang officials agreed to discuss individual human rights cases with British diplomats and human rights experts, contingent upon "more trust and confidence." See Karin J. Lee, "The North Korean Human Rights Act and Other Congressional Agendas," *Policy Forum Online*, Nautilus Institute. October 7, 2004.

Conduct Quiet Diplomacy

Some advocates argue that behind-the-scenes discussions with Pyongyang and Beijing are the most effective way to improve human rights in North Korea. By staying out of the public eye, the danger of appearing to be interfering in internal affairs could be reduced. Although there were few direct exchanges between high-level North Korean and U.S. officials when the Six-Party Talks stalled, a revival in direct bilateral contact may provide more opportunities to discreetly raise human rights concerns.

In terms of protecting individual North Korean refugees, some refugee advocates argue that Beijing is receptive to their appeals to take small humanitarian steps if the exchange remains out of the public eye. For example, China might be convinced to quietly stop deportations and arrests, and perhaps even offer legal resident status to North Koreans who have married Chinese nationals.[70] High-level U.S. officials could raise the issues quietly with their counterparts in bilateral talks. In addition, quiet pressure on other regional countries not to repatriate North Korean refugees and to streamline asylum seekers' cases with the South Korean government and UNHCR could help alleviate humanitarian concerns for fleeing North Koreans.

Introduce Additional Legislation on Human Rights

The Bush Administration's hope that a normalization of diplomatic relations between the United States and DPRK could begin after the successful elimination of North Korea's nuclear weapons and related programs is further demonstrated by discussion of other plans, such as the negotiation of a permanent peace treaty on the Korean peninsula, development of a multinational security organization for Northeast Asia, and economic aid to North Korea.[71] However, not mentioned in these headlines are humanitarian and human rights issues, at least for the moment. Depending upon the outcome of the current negotiations with North Korea and fulfillment of its obligations, refocusing attention on the humanitarian and human rights issues may support the need for additional legislation and oversight by Congress.

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One option that Congress might consider is developing legislation that requires North Korea to make progress on addressing human rights conditions in exchange for diplomatic relations and an end to U.S. economic sanctions. For example, although the political situations are very different in these two countries, the Burmese Freedom and Democracy Act of 2003 could provide a useful model for such legislation. Since 1988 the United States has imposed a wide range of sanctions against Burma, which, by 2004, meant that nearly all economic relations with Burma had terminated. The Burmese Freedom and Democracy Act bans imports from Burma into the United States, which affects mainly imports of Burmese textiles. The

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[70] See *Acts of Betrayal: The Challenge of Protecting North Koreans in China* by Refugees International, or at [http://www.refugeesinternational.org/content/publication/detail/5631/].

[71] "Still Waiting on North Korea: The Bush Administration is Eager to Believe that Kim Jong Il Will - For the First Time - Fulfill his Promises," *Washington Post*, June 24, 2007, p. B6.

United States has not had an ambassador to Burma since 1992 when the Senate Foreign Relations Committee refused to confirm the nomination of an ambassador because of the human rights abuses. The conditions set forth in the Burmese Freedom and Democracy Act for the lifting of sanctions show that the sentiment in Congress favors maintaining the full range of U.S. sanctions (once again renewed in August 2007) until the ruling State Peace and Development Council (SPDC) and the Burmese military terminate major human rights abuses and make fundamental political concessions to the democratically elected government.[72] It should be noted, however, that the President has the authority to exercise these options under existing legislation.

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[72] For more information on Burma, see CRS Report Rl33479, *Burma-U.S. Relations* by Larry A. Niksch, Specialist in Asian Affairs.

Appendix A. Overview of the U.S. Refugee Program

The admission of refugees to the United States and their resettlement here are authorized by the Immigration and Nationality Act (INA), as amended.[73] Under the INA, a *refugee* is a person who is outside his or her country and who is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. In special circumstances, a refugee also may be a person who is within his or her country and who is persecuted or has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Excluded from the INA definition of a refugee is any person who participated in the persecution of another.

Each fiscal year, following consultations with Congress, the President issues a presidential determination setting the refugee admissions ceiling and regional allocations for that year. For FY2007, the worldwide refugee ceiling is 70,000. This total includes 50,000 "admissions numbers" allocated among the regions of the world and an unallocated reserve of 20,000 "numbers." An unallocated reserve is to be used if, and where, a need develops for refugee slots in excess of the allocated numbers.

Refugees are processed and admitted to the United States from abroad. The State Department handles overseas processing of refugees, which is conducted through a system of three priorities for admission. These priorities are separate and distinct from whether such persons qualify for refugee status. Priority assignment, however, reflects an assessment of the urgency with which such persons need to be resettled. Priority One (P-1) covers compelling protection cases and individuals for whom no durable solution exists, who are referred to the U.S. refugee program by UNHCR, a U.S. embassy, or a non-governmental organization (NGO). North Koreans, like all nationalities, are eligible for P-1 processing. Priority Two (P-2) covers groups of special humanitarian concern to the United States. It includes specific groups within certain nationalities, clans, or ethnic groups, such as Iranian religious minorities. North Koreans are not among those eligible for P-2 processing. Priority Three (P-3) comprises family reunification cases involving spouses, unmarried children under age 21, and parents of persons who were admitted to the United States as refugees or granted asylum. Seventeen nationalities, including North Koreans, are eligible for P-3 processing in FY2007.

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All refugee applicants are checked through the State Department's Consular Lookout and Support System (CLASS).[74] In addition, the State Department must

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[73] Act of June 27, 1952, ch. 477; 8 U.S.C. 1101 et seq. The Refugee Act (P.L. 96-212, March 17, 1980) amended the INA to establish procedures for the admission of refugees to the United States. For additional information on the U.S. refugee program, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno, Specialist in American National Government.

[74] CLASS contains records on people ineligible to receive visas, including individuals who are suspected or known terrorists and their associates or who are associated with suspected

(continued...)

obtain a Security Advisory Opinion (SAO) from the Federal Bureau of Investigation on certain applicants, including certain males from specified countries. In the SAO process, additional databases are checked for information on the individual.

Individuals who are preliminarily determined to qualify for a processing priority are presented to the Department of Homeland Security's U.S. Citizenship and Immigration Services (DHS/USCIS) for an in-person interview. USCIS makes determinations about whether individuals are eligible for refugee status and are otherwise admissible to the United States.

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[74] (...continued)
or known terrorist organizations.

Appendix B. Maps of North Korea

Figure 1. Regional Perspective on North Korea and China

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Figure 2. North Korea: Administrative Divisions (as of 2005)

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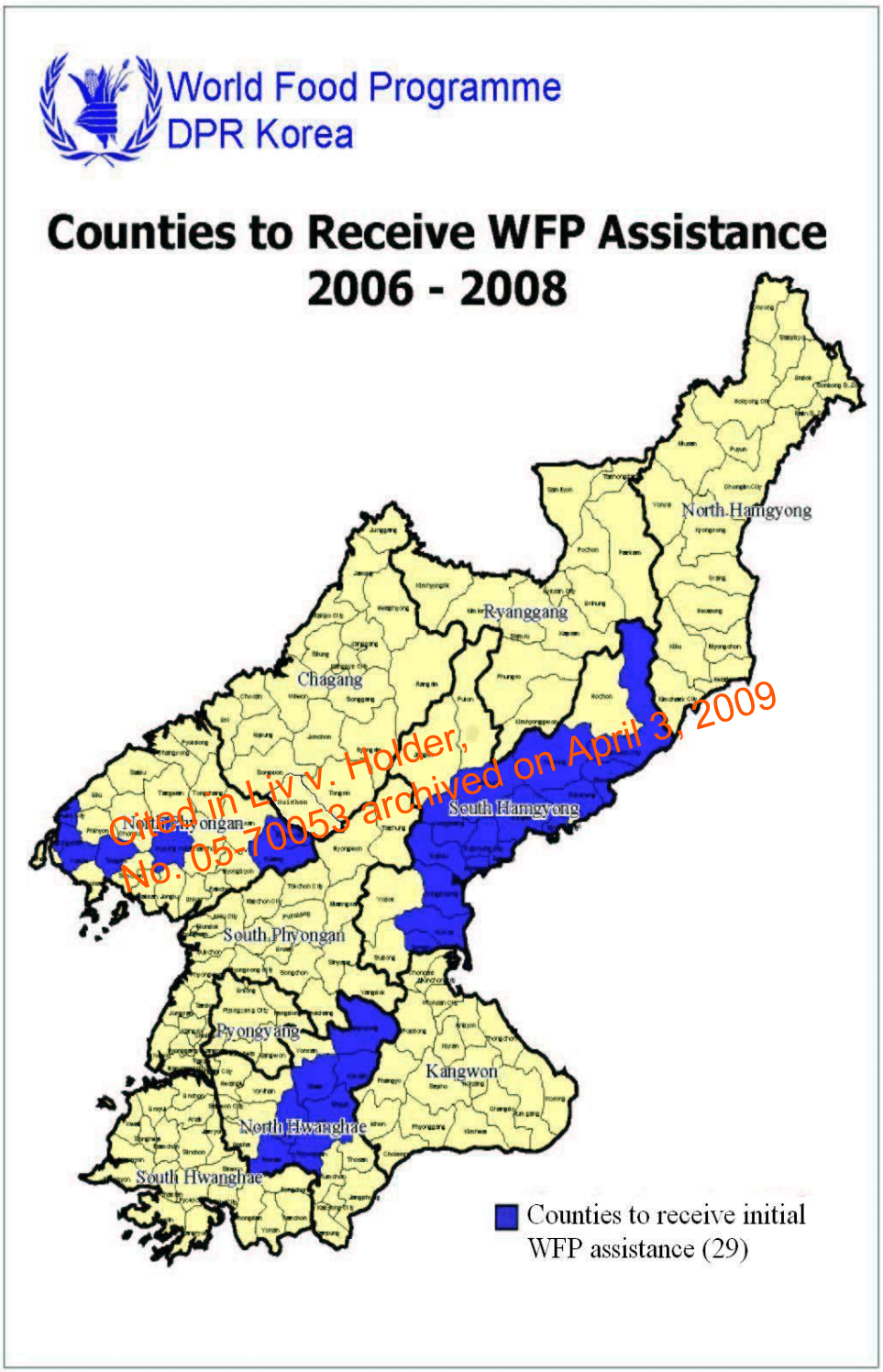
Source: Central Intelligence Agency (CIA) provided by Relief Web; see [http://www.reliefweb.int/rw/rwb.nsf/db900sid/LPAA-6RUPAJ?OpenDocument&rc=3&cc=prk].

Figure 3. Counties to Receive WFP Assistance 2006-2008



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Source: World Food Programme (WFP), DPR Korea, map provided to CRS, April 2007.