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Refugee Law or Refugee Politics? The Varied Levels of China's Hospitality Towards North Korean, Kachin, and Vietnamese Refugees

Kailey Ibsen

有朋自远访来，不亦乐乎！

To have friends coming from afar, is it not a delight!¹

A landscape of rich flora, patterned by rice terraces stretching from Yunnan Province in the southwest of China into Myanmar's northeast region, is home to an ethnic minority group, known as the "Kachin" in Myanmar and the "Jingpo" in China.² Beginning in 2011, groups of Kachins, displaced from their villages due to war in the Kachin State of Myanmar, have fled to Yunnan Province, where the Chinese government has set up several camps for internationally displaced persons (IDPs).³ However, some Kachins have been turned away by Chinese authorities at the border or ordered to leave villages where they were given shelter by Chinese nationals.⁴ To aid these displaced individuals, Mr. Zhang, a Chinese human rights activist, travels across the Myanmar-China border at unsecured, unpatrolled points to deliver food and supplies to the Kachin. His past efforts to raise awareness on human rights issues in China have led him into trouble with Chinese authorities.⁵ In 2003, Mr. Zhang was jailed for four months after writing about China's persecution of house churches.⁶ However, as of February 2013, his subsequent humanitarian efforts along the border of Myanmar have been overlooked by Chinese

¹ This is a famous Confucius quote.

² This paper will focus on the experience of Kachin people, who inhabit the Kachin State of Myanmar.

³ Diantan & Yingjiang, *The Kachin Dilemma*, *The Economist* (Feb. 2, 2013), <http://www.economist.com/news/asia/21571189-over-border-kachin-conflict-causes-headaches-china-kachin-dilemma>.

⁴ *Id.*

⁵ *Id.*

⁶ "House churches" in China are comprised of members who worship privately together in their homes. Only monitored and regulated state-sanctioned churches are allowed to openly operate in China. Zhaohui Hong, *Protecting and Striving for the Rights to Religious Freedom: Case Studies on the Protestant House Churches in China*, 29 *J. of Third World Studies* 1, 249-261 (2012).

authorities.⁷ Mr. Zhang's experiences represent a familiar narrative of individuals who have come to the aid of refugees along the borders of China.⁸ This article will examine China's response to three different refugee groups that have sought protection within its borders: North Koreans, Vietnamese, and Kachins.

For over twenty years, North Korean citizens have been crossing the border into China to escape famine and political, social, and religious persecution. Although China is a party to the United Nation's 1951 Convention relating to the Status of Refugees and its 1967 Protocol (hereinafter "Refugee Convention"), its treatment of refugees that have fled into China from North Korea has been completely inconsistent with its obligations under this treaty.⁹ China's policy is to classify North Koreans escaping the deadly, oppressive rule of the North Korean regime as "economic migrants," rather than "refugees," and to completely repatriate North Koreans who illegally enter Chinese territory.¹⁰ Collaborated efforts to secretly pass North Korean refugees through China into Southeast Asia have become known as the "new underground railroad."¹¹ Several Americans living in China have been caught aiding North Korean refugees and have been deported or sentenced to serve jail time in China.¹²

Historically, China has not been so harsh in its dealings with all refugees that have arrived at its borders. In the 1970s, Vietnamese citizens fleeing war and ethnic discrimination arrived in China and nearly a quarter of a million people were offered refuge by the Chinese

⁷ DIANTAN, *supra* note 2.

⁸ *See generally*, MELANIE KIRKPATRICK, ESCAPE FROM NORTH KOREA: THE UNTOLD STORY OF ASIA'S UNDERGROUND RAILROAD (Encounter Books 2012).

⁹ 1951 Geneva Convention Relating to the Status of Refugees, art. 1, July 28, 1951, 189 U.N.T.S. 137, as amended by the 1967 New York Protocol, Jan. 31, 1967, 606 U.N.T.S. 267, 6 I.L.M. 78 [Refugee Convention].

¹⁰ KIRKPATRICK, *supra* note 7, at 147.

¹¹ *Id.* at 2.

¹² *See id.*

government.¹³ In contrast to the experience of North Koreans in China, these Vietnamese refugees were not only welcomed and provided with food and temporary shelter, but the Chinese government even sent ships into the South China Sea to pick them up.¹⁴ Most of these people were Vietnamese citizens, but ethnically Chinese. Decades later, many Vietnamese refugees and their children continue to reside in China, primarily in Guangxi Province.¹⁵

Officially, the Chinese government maintains that neither Kachins nor North Koreans in China are refugees, but rather North Koreans are illegal economic migrants, and Kachins are temporarily displaced people visiting family and friends in Yunnan.¹⁶ However, it is evident that China has been more accommodating to Kachin refugees than it has been to North Korean refugees, despite the stronger case for granting refugee status to individuals fleeing North Korea under the Refugee Convention. While China has not practiced a policy of total repatriation of Kachin people, there have been reports of arbitrary repatriation or denied entry of Kachins into China. Additionally, China has taken a much stronger hand in prosecuting those who aid North Koreans in China under its domestic penal law. On the other hand, Vietnamese refugees that fled to China in the late 1970s were granted asylum.¹⁷ Despite the current disparity in treatment of North Koreans and Kachins, neither group has experienced the welcome and long-term stay offered to Vietnamese refugees several decades ago.

Examining China's approach to North Korean, Kachin, and Vietnamese refugees against one another, begins to suggest that China will interpret its obligations under international treaties

¹³ Tom Lam, *The Exodus of Hoa Refugees from Vietnam and their Settlement in Guangxi: China's Refugee Settlement Strategies*, 13 J. of Refugee Studies 4, 374-390 (2000).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ KIRKPATRICK, *supra* note 7, at 147. 'No Assistance' for Kachin Refugees, Radio Free Asia (June 26, 2012), <http://www.rfa.org/english/news/burma/refugees-06262012165817.html>.

¹⁷ Xiaorong Han, *Exiled to the Ancestral Land: The Resettlement Stratification and Assimilation of the Refugees from Vietnam in China*, 10 Int'l. J. of Asian Studies 1, 25-46 (Jan. 2013), at 28.

depending on what horse it has in the race. Vietnamese refugees that were subject to ethnic discrimination and persecution in Vietnam were most likely properly granted asylum in China, even though China was not yet a signatory party to the Refugee Convention at that time. North Koreans fleeing into China have a strong case for refugee status under the Refugee Convention and warranting protection under the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (hereinafter “Torture Convention”).¹⁸ Human rights groups have argued that Kachin people in Yunnan Province, China fulfill the U.N.’s definition of refugee.¹⁹ However, the circumstances surrounding the Kachin dilemma do not provide as compelling a case for refugee status as does the plight of North Koreans in China. The Chinese government has nevertheless departed from its practice of complete repatriation and has established four temporary camps for Kachins in Yunnan Province, though not all Kachins are granted refuge in the camps, as some have been denied refuge in China and transported by bus back into Myanmar.²⁰ There have not been any reports suggesting what criteria local authorities have used in Yunnan Province, when determining which refugees should be denied entry to China or forcibly returned to Myanmar. The national government in Beijing has not taken a substantial amount of direct involvement in the situation and enforcement by local officials appears to be arbitrary.²¹ Even so, the Kachin people and the Chinese activists providing aid to them have received different treatment than North Korean refugees and their supporters. Although many Chinese people have provided shelter to undocumented Kachins and

¹⁸ Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment art. 3, 10 Dec. 1984.

¹⁹ ISOLATED IN YUNNAN: KACHIN REFUGEES FROM BURMA IN CHINA’S YUNNAN PROVINCE 25 (Human Rights Watch June 2012), available at: <http://www.hrw.org/reports/2012/06/25/isolated-yunnan>.

²⁰ *Kachin refugees from Myanmar face food and water shortages at makeshift camps in China*, UNHCR Refugees Daily (June 27, 2012), <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463ef21123&id=4febee2a5>. Kate Hodal, *Burma steps up military offensive against Kachin rebels*, The Guardian (Jan. 01, 2013), <http://www.guardian.co.uk/world/2013/jan/14/burma-military-offensive-kachin-rebels>.

²¹ David Cohen, *China’s Myanmar Problem*, The Diplomat (Jan. 17, 2013), <http://thediplomat.com/china-power/chinas-myanmar-problem/>.

humanitarian workers have illegally crossed the border to bring Kachin people supplies, there have not been any reports of detention of these individuals by Chinese authorities.

This paper will present the historic background and current relevant factors of North Korean, Kachin, and Vietnamese refugees in China, followed by an analysis of economic and political interests that likely account for China's differing treatment of each refugee situation. Part one will discuss the plight that ordinary people face in North Korea, China's strict repatriation policy towards North Korean refugees, and a secret network of aid workers that help them to pass through China to safety. Part two will explore the background of refugees that entered into Southern China from Vietnam in the mid to late 1970s and the Chinese government's active role in aiding them. In part three, this paper will examine the current conflict in the Kachin State of Myanmar, ethnic Kachin people that have fled to Yunnan Province, China, and the treatment of Chinese nationals that have been providing them with food and shelter.

After exploring the circumstances of each region, part four will discuss China's current political and economic interests in North Korea and Myanmar and hypothesis as to the reasons why Vietnamese refugees received such a distinctly warmer welcome in China. It is the opinion of this paper that the Chinese ethnicity of the Vietnamese refugees that arrived in China in the 1970s, as well as the deteriorating relations between China and Vietnam at that time, were major factors in the accommodating treatment they received from the Chinese government. China's differing treatment of North Korean refugees and ethnic Kachins may be explained, in part, by the influential role that the Kachin Independence Organization plays in the security of Chinese investments in the Kachin State and the fact that the average North Korean citizen exercises little to no clout in Chinese government policy decisions. In order to protect its economic interests in

Myanmar, it is pragmatic for China to encourage peace in the Kachin State of Myanmar and remain somewhat neutral between the Kachin people and the Myanmar government, due to the power that the Kachin still maintain in a region where China has made many investments. As North Korea's only ally, Beijing prioritizes preserving friendly relations with the North Korean regime. Therefore, complying with its agreement with the North Korean government to repatriate "defectors" is important in order to maintain stability on the North Korea-China border.

Finally, part five of this paper will make recommendations for China's future course of action with refugees from North Korea and Myanmar. While China's differing approaches in the two regions may serve its economic and geopolitical interests, they are contrary to the requests and mandates of the United Nations and have resulted in uneven enforcement of China's domestic law. It is the opinion of this paper that in order to meet its international legal obligations, China must end its repatriation policy of North Korean refugees and comply with the United Nation's request to grant Kachin people temporary legal status in China, until they are able to return to their homes. However, while it is plausible that China may accordingly accommodate Kachin refugees, it is strongly unlikely that there will be any modification to China's repatriation policy of North Korean refugees without significant pressure from the international community. Imposing heavy pressure on China may not be a current priority of the international community, given the greater danger posed by the North Korean government's nuclear program and increasingly aggressive posture. If China were to decide to grant asylum to North Koreans, its experience with Vietnamese refugees would serve as a useful model for how to deal with a refugee population.

Part I: Fleeing North Korea

After World War II, political differences divided the Korean Peninsula and leader Kim Il Sung built a communist nation in the north based on the Soviet model.²² The new North Korea was supported by China and the Soviet Union.²³ Yet after Stalin's death, Khrushchev, who opposed Stalinism and warned against cult personalities like Kim Il Sung, came to power.²⁴ The changing political climate in the Soviet Union prompted Kim Il Sung to purge all who opposed his rule from the Communist Party.²⁵ Although North Korea initially experienced a period of economic success, the economy eventually stalled and the country became largely supported by subsidized supplies from the Soviet Union.²⁶ Crisis set in when the Soviet Union collapsed and famine struck North Korea.²⁷ After the fall of the Soviet Union, China remained North Korea's only ally.²⁸ The death of Kim Il Sung in 1994, followed by a series of natural disasters, further exacerbated the food shortage and many starving North Koreans began to flee into China.²⁹ During this time, approximately 5% percent of the population died.³⁰

Today, severe food rationing, hunger, and numerous human rights violations persist in North Korea. The government has devised a discriminatory food policy to deal with the food shortage, which allocates food rations on the basis of social standing.³¹ The country's regions are organized by social castes and rations are distributed accordingly.³² When food rations are particularly scarce, the region in the northwest, which is inhabited by one of the lowest ranking

²² GLYN FORD, *NORTH KOREA ON THE BRINK: STRUGGLE FOR SURVIVAL 2* (Pluto Press 2007).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 113.

²⁷ *Id.*

²⁸ James Seymour, *China and the International Asylum Regime: The Case of the North Korean Refugees*, East Asian Institute, Columbia University 1-9 (2000).

²⁹ *Id.*

³⁰ MARC NOLAND, *WITNESS TO TRANSFORMATION: REFUGEE INSIGHTS INTO NORTH KOREA 1* (Peterson Institute for International Economics 2011).

³¹ Richard Parks, *Shining a Light on North Korea's Human Rights Crisis*, *The Diplomat* (Dec. 12, 2012), <http://thediplomat.com/the-editor/2012/12/12/shinning-a-light-on-north-koreas-human-rights-crisis/>.

³² KIRKPATRICK, *supra* note 7, at 25.

social castes, is sometimes denied rations entirely.³³ The caste system also determines whether an individual can attend university and what type of job they can obtain.³⁴ In depth academic scholarship on the plight of North Korean refugees is scarce, due to the country's isolation, and most published information about refugees that have escaped comes from media and government sources.³⁵ Stories of the North Korean government's abuse of its citizens have been provided to the international community from refugees that have successfully escaped to Southeast Asia, South Korea, or western countries. Not all refugees are willing to tell their story, for fear that their families in North Korea will be punished, but those that do share their stories provide crucial information to understanding this out-migration.³⁶ Many people in North Korea, including political dissidents, are arbitrarily imprisoned in harsh conditions.³⁷ These circumstances, along with many other injustices, have caused North Koreans to flee to China, where they hope to find food and some relief.

When North Koreans first flee their country, they enter China through Jilin Province in the northeast of China, a region referred to in Mandarin as "Dongbei."³⁸ Jilin Province has a large population of ethnic Koreans, who are Chinese nationals. North Korean citizens in Jilin Province are individuals connected with and trusted by the North Korean government or refugees that are hiding from authorities, passing through China, or sold as brides to Chinese men. A group of these government supported individuals attends Northeast Normal University in

³³ KIRKPATRICK, *supra* note 7, at 148.

³⁴ KIRKPATRICK, *supra* note 7, at 25.

³⁵ Elim Chan and Andreas Schloenhardt, *North Korean Refugees and International Refugee Law*, 19 Int'l. J. on Refugee Law 2, 215-245 (2007).

³⁶ *Id.*

³⁷ PARKS, *supra* note 30.

³⁸ A direct translation of "Dongbei" in Mandarin Chinese is eastnorth. Cardinal directions in Mandarin are described in the reverse order of directions in English.

Changchun, a large city in Jilin Province.³⁹ Besides their North Korean citizenship, other information about their identities is unknown to most, if not all, students and they generally travel together in public and avoid social interaction with other students. Other than the individuals who receive permission from the North Korean government to travel to China, most North Koreans in Jilin Province do not have legal status in China and are considered to be “defectors” by the North Korean government.⁴⁰ The worst outcome for those fleeing North Korea is to become discovered by Chinese authorities and sent back to North Korea. As a result of China’s strict repatriation policy, many North Korean refugees that do not continue on to a third country are pushed underground.⁴¹ This leaves them vulnerable to blackmail, abuse, and sexual exploitation.⁴² North Korean women are also vulnerable to the dangers of the illegal bride market in China. Due to a gender imbalance, human trafficking of women as “brides” has become a serious problem in China.⁴³ Sadly, a market for North Korean “brides” endures, in part, by the fact that their families will probably never come looking for them and the women themselves may fear deportation to North Korea more than remaining with their captors.

Refugees that are successful in passing through China into Southeast Asia often do so with the help of a disjointed network of humanitarian workers, collectively known as the “underground railroad.”⁴⁴ This network is partly comprised of American and South Korean

³⁹ This information is based on personal encounters, while living in Jilin Province, China and attending Northeast Normal University as a Chinese language student.

⁴⁰ SEYMOUR, *supra* note 28.

⁴¹ *Id.*

⁴² *Id.*

⁴³ The gender imbalance of the Chinese population consists of a disproportionate number of men to women. The most popular theory on the cause of this imbalance is China’s One Child Policy and the desire of couples, based on traditional Chinese values and economic concerns, to have a son. In some Chinese cities, both the desire to have a son and the restrictions of the One Child policy are relaxing, but the policy has resulted in a serious shortage of prospective brides for many young Chinese men now coming of age. Richard Lehmann, *Why China is Finally Abandoning its One Child Policy*, *Forbes* (March 28, 2013), <http://www.forbes.com/sites/investor/2013/03/28/why-china-is-finally-abandoning-its-one-child-policy>.

⁴⁴ See KIRKPATRICK, *supra* note 7.

based NGOs, as well as Chinese churches that provide shelter to North Korean refugees, arrange transportation to their next destination, and connect them with individuals who can help them in the next segment of their journeys.⁴⁵ Many refugees that successfully pass through China report that they were told early in their journey to “look for a building with a cross on it.”⁴⁶ After connecting with this network in Jilin Province, successful refugees often make their way to Kunming, a city in the southwest province of Yunnan. From there, a typical journey continues into Laos and across the Mekong River to Thailand. Once in Thailand, North Korean refugees often go to the South Korean Embassy or the U.S. Embassy to seek political asylum. While this is the typical experience of successful refugees, many people that flee North Korea are not as lucky.

Protecting North Koreans under UN Conventions

China has not fulfilled its obligations as a signatory party to international treaties that set out to protect the rights and safety of endangered people, such as those fleeing from North Korea to China. China has been a party to the Refugee Convention since 1982. Under the Refugee Convention, a refugee is defined as a person who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, or membership of a particular social group or political opinion, is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”⁴⁷ Parties agree to a policy of ‘non-refoulement,’ under which a state is prohibited from forcibly returning refugees if their “life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social or political

⁴⁵ KIRKPATRICK, *supra* note 7, at 40.

⁴⁶ KIRKPATRICK, *supra* note 7, at 41.

⁴⁷ REFUGEE CONVENTION, *supra* note 9, at art. 33.

opinion.”⁴⁸ This policy of non-refoulement requires states to provide “access to fair and effective procedures for determining status and protection needs” before rejecting asylum seekers at the nation’s border.⁴⁹

Another treaty that China has violated in its treatment of North Korean refugees is the Convention against Torture (hereinafter “Torture Convention”), which China ratified in 1988. It undertakes to prevent torture and inhumane treatment of people around the world.⁵⁰ Article 3 of the Torture Convention prevents signatory parties from returning or extraditing a person to a state in which there are substantial grounds for believing that the individual would be in danger of being tortured.⁵¹ Torture is defined in Article 1 as:

Any act by which severe pain, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.⁵²

Additionally, Article 10 of the Torture Convention requires signatory governments to provide training on the prohibition of torture to all levels of law enforcement.⁵³ Although these treaties require signatory nations to take appropriate measures to protect human rights, China’s

⁴⁸ *Id.* at art. 33.

⁴⁹ *UNHCR Note on the Principle of Non-Refoulement*, UNHCR (November 1997), <http://www.unhcr.org/refworld/docid/438c6d972.html>.

⁵⁰ PETER BURNS, CHINA AND THE CONVENTION AGAINST TORTURE 3 (Int’l Ctr. for Criminal Law Reform & Criminal Justice Policy 2005).

⁵¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, 10 December 1984.

⁵² *Id.* art. 1.

⁵³ *Id.* art 10.

constitution is silent on the domestic implementation of international treaties.⁵⁴ The Chinese government did, however, state in a 1991 report that as soon as the government agrees to an international treaty, it becomes effective in China and that the Torture Convention is effective in China.⁵⁵ Despite this comment, China's agreement with North Korea to repatriate any North Korean, is clearly not in conformity with China's obligations under the treaty, as North Koreans face grave danger when returning to North Korea. Besides this agreement, Chinese domestic law does not expressly call for deportation of all refugees, and even if it were to, China's Civil Procedure Law provides that when there is a conflict between an international treaty and Chinese Law, the international treaty will govern, besides where China has expressly declared reservations.⁵⁶ Although China has made no such declarations of reservation in regard to Articles 1 or 3 of the Torture Convention, its repatriation of undocumented North Koreans is clearly a violation of these articles.

There are several valid legal grounds for finding that returning North Koreans to their home country would violate the Torture Convention and for granting North Koreans in China with refugee status under the UN's definition. These include the North Korean government's persecution of any religious beliefs, severe suppression of speech, arbitrary imprisonment and torture of political dissidents, the organization of citizens into social castes, discriminatory distribution of food rations, and the persecution of any citizen that leaves the country.⁵⁷ Despite these circumstances, China does not recognize any undocumented North Koreans as refugees and follows a strict policy of repatriation of these undocumented individuals. China's policy of

⁵⁴ Sanzhan Guo, *Implementation of Human Rights Treaties by Chinese Courts: Problems and Prospects*, 8 Chinese J. of Int'l Law 1 (2009) 161-179.

⁵⁵ *Id.*

⁵⁶ Civil Procedure Law of the People's Republic of China art. 260, 31 Aug. 2012.

⁵⁷ ROBERTA COHEN, CHINA'S REPATRIATION OF NORTH KOREAN REFUGEES 2-3 (Brookings Institute 2012).

repatriation of North Koreans began in the 1960s, but an influx of North Koreans into China did not become a real problem until the Chinese economy took off in the mid-1990s and severe famine struck North Korea.⁵⁸ Interestingly, before this time, most migrants into Northeast China were well-nourished males.⁵⁹ Although an agreement between China and North Korea had already been made to return those that illegally crossed over the border, China did not make strong enforcement efforts against these early migrants.⁶⁰ This may be because the amount of migrants was small enough that the Chinese government did not receive the same level of pressure from the North Korean government or because China was not as concerned about a North Korean population in Northeast China until the influx became more significant. In fact, until recently, Chinese domestic law did not even provide a formal definition of a refugee. In 2012, China's Exit-Entry Law was revised to include recognition of refugee status in Article 46, stating that,

Foreign nationals applying for a refugee status, during the period of identification of their refugee status, stay in China on the basis of a temporary identification issued by the public security authority; and those identified as refugees may stay or reside in China on the basis of a refugee identification issued by the public security authority.⁶¹

China has defended against accusations that it has violated its obligations to receive North Korean refugees by asserting that individuals who have illegally crossed into China from North Korea are not in fact “refugees,” but rather “economic migrants.”⁶² This categorization grossly minimizes the human rights violations by the North Korean regime against the North Korean people. The Chinese government has argued that its repatriation of undocumented North

⁵⁸ KIRKPATRICK, *supra* note 7, at 28. (Before the early 1990s, there was not a huge incentive for North Koreans to risk their lives fleeing to China because the standard of living in China was not significantly greater than in North Korea.)

⁵⁹ SEYMOUR, *supra* note 28.

⁶⁰ *Id.*

⁶¹ Exit-Entry Administration Law of the People's Republic of China art. 46, 30 June 2012.

⁶² Melanie Kirkpatrick, *China Vs. North Korea's Refugees*, Wall St. J., Mar. 1, 2013 at A. 15.

Koreans is analogous to the United States' deportation of illegal immigrants from Mexico.⁶³ However, among the many distinguishing factors between undocumented North Koreans in China and undocumented Mexicans in the United States is that upon returning to North Korea, citizens would be criminally charged for fleeing.⁶⁴ In 2010, the North Korean Ministry of Public Security issued a decree calling defection a crime of treachery.⁶⁵ Any crime of an individual in North Korea is payable by three generations of the criminal's family.⁶⁶ The punishment is based on a theory of 'collective responsibility' and sets out to 'cleanse' North Korea of its opponents. The approach is suspected to have its roots in a statement made in 1972 by Kim Il Sung that, "Factionalists or enemies of class, whoever they are, their seed must be eliminated through three generations."⁶⁷ Another counterpoint to China's "economic migrant" defense is that the United Nations High Commissioner on Refugees (hereinafter "UNHCR") provides that where a country's economic measures result in the destruction of a population's economic existence, the victims may become refugees upon leaving their country.⁶⁸

Additionally, a strong argument can be made that China's repatriation policy of North Koreans violates the Torture Convention. Under the Torture Convention, signatory states are prohibited from returning individuals to a country where there are substantial ground for believing that the individual will be inflicted with severe physical or mental pain for the purpose of punishing him for an act he has committed.⁶⁹ It is well documented that individuals repatriated

⁶³ *Id.*

⁶⁴ COHEN, *supra* note 44, at 2.

⁶⁵ *Id.*

⁶⁶ KIRKPATRICK, *supra* note 7, at 3.

⁶⁷ CHAN, *supra* note 27, at 219.

⁶⁸ Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees F.63, 1976.

⁶⁹ TORTURE CONVENTION, *supra* note 47.

back to North Korea are punished by death or placed into labor camps.⁷⁰ One such refugee, who now lives in the United States, spoke at a conference in Washington, D.C. and described his time in a North Korean prison.⁷¹ He said that one morning an inmate was too weak to get out of bed after he was beaten all night by the prison guards. His fellow inmates were ordered to bury him alive in the woods.⁷²

Helping North Koreans

Although the Chinese government formally stated on December 1, 1995 that, “UNHCR personnel may at all times have unimpeded access to refugees and to the sites of UNHCR projects in order to monitor all phases of their implementation,” the UNHCR has not been able to do so in the case of North Korean refugees.⁷³ International aid groups have also been denied access to monitor the situation near the North Korean border.⁷⁴ In 2006, a report from Time Magazine suggested Chinese authorities had increased their efforts in northeast cities to break up networks that seek to aid North Koreans in passing through China or providing them with shelter.⁷⁵ Generally, small gestures of providing food to undocumented North Koreans are ignored by local Chinese authorities, but any involvement in aiding North Koreans to pass through China via the “underground railroad” is a serious criminal offense.⁷⁶ The New York Times has described a trend of “gradually hardening Chinese posture” toward those who aid

⁷⁰ See KIRKPATRICK, *supra* note 7.

⁷¹ KIRKPATRICK, *supra* note 7, at 7.

⁷² KIRKPATRICK, *supra* note 7, at 8.

⁷³ United Nations (United Nations High Commissioner for Refugees) and China Agreement on the upgrading of the UNHCR Mission in the People’s Republic of China to UNHCR branch office in the People’s Republic of China, 1 December 1995.

⁷⁴ KIRKPATRICK, *supra* note 7, at 8.

⁷⁵ Bill Powell, *Long Walk to Freedom*, Time, May 01, 2006, available at: <http://www.time.com/time/world/article/0,8599,2056132,00.html>.

⁷⁶ KIRKPATRICK, *supra* note 7, at 43.

North Koreans.⁷⁷ This increased enforcement might be due, in part, to the occurrence of North Korean soldiers fleeing into China.⁷⁸

In December 2006, three Americans were arrested by Chinese authorities, for helping North Korean refugees to reach the United States Consulate in Shenyang, a large city in Jilin Province.⁷⁹ They worked for an organization called LiNK, which set out to help North Korean refugees pass through the “underground railroad” to freedom and safety.⁸⁰ One of the three arrested was the group’s executive director, Adrian Hong, who had previously aided in the escape of the first North Koreans to receive political asylum in the United States.⁸¹ A few days before the group was arrested, they executed the beginning of a plan to bring six North Koreans, who had been hiding in the Chinese border town of Yanji, to the American Consulate.⁸² This was the same way Hong had successfully aided two North Koreans escape a few months earlier and he was confident that a Foreign Service officer at the Consulate would help him to do so again.⁸³ Yet while strategically positioned in a KFC restaurant in Shenyang, just down the street from the U.S. Consulate, the plan began to unravel.⁸⁴ The group’s cover was blown when Hong called the Consulate, speaking with intentionally vague language, and a Foreign Service officer replied in specific detail that he should instead bring the North Koreans to UNHCR in Beijing.⁸⁵ Hong and the other two Americans were arrested by Chinese authorities, who heard the conversation through their electronic surveillance.⁸⁶ They were transported to a jail in Beijing, where they

⁷⁷ Nicholas Eberstadt, *Saving North Korea’s Refugees*, New York Times, Feb. 19, 2007, available at: http://www.nytimes.com/2007/02/19/opinion/19eberstadt.html?pagewanted=all&_r=0.

⁷⁸ SEYMOUR, *supra* note 28.

⁷⁹ *Id.* at 138.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 139.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 139-140.

were held for a week before being deported to the United States.⁸⁷ The three LiNK employees were lucky because they could have served many years in Chinese prison under Article 318 of China's Criminal Law. Article 318 criminalizes the act of assisting a person to illegally cross the national borders of China.⁸⁸ Aiding one individual holds a sentence of two to seven years, but additional circumstances, such as acting as a ringleader or repeating the offense, yield sentences from seven years to life in prison.⁸⁹ Adrian Hong was particularly lucky, as he repeatedly acted as a ringleader to bring North Koreans to the U.S. Consulate. Fortunately for Hong, it appears that his earlier actions of aiding North Koreans went undiscovered by Chinese authorities at the time of his deportation.

Other individuals that have aided North Korean individuals in China, including Steven Kim, a Korean-American businessman, have not been as lucky as the LiNK employees. Steven Kim left his work in the United States, when he felt a spiritual calling to go to China and assist refugees fleeing from the severe North Korean regime.⁹⁰ After being arrested in connection with helping North Koreans to pass through China on the "underground railroad," Kim was convicted under Article 318 and served five years in a Chinese prison.⁹¹ After serving out his sentence, he returned to New York, where he now operates an organization called 318 Partners, named after the Chinese Law upon which he was prosecuted, to help raise awareness on the situation of North Korean refugees.⁹²

Part III: Vietnamese in China

⁸⁷ *Id.* at 141.

⁸⁸ Criminal Law of the People's Republic of China art. 318, 1 July 1979, available at: [http://www.icrc.org/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/29898759f62c63bbc12575710032278a/\\$FILE/China%20-%20Criminal%20Code.pdf](http://www.icrc.org/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/29898759f62c63bbc12575710032278a/$FILE/China%20-%20Criminal%20Code.pdf).

⁸⁹ *Id.*

⁹⁰ Jade Shao, *Steven Kim: The Korean Schindler*, *The Yale Globalist* (Dec. 4, 2011), <http://tyglobalist.org/onlinecontent/blogs/steve-kim-the-korean-schindler>.

⁹¹ *Id.*

⁹² *Id.*

In the late 1970s China granted asylum to approximately 270,000 Vietnamese citizens fleeing war and ethnic discrimination.⁹³ When U.S. forces moved out of Vietnam after the Vietnam War, the new Vietnamese government began confiscating businesses and moving people from urban areas to farmland.⁹⁴ Much of this weight fell on the ethnic Chinese in Vietnam.⁹⁵ In 1978, sensing the danger of an open conflict between the Chinese and the Vietnamese and feeling discriminated against, many Vietnamese of Chinese ethnicity began to flee to China.⁹⁶ Many became fishers, farmers, and factory workers and still reside in China.⁹⁷ The Vietnamese refugees were predominantly from the Han ethnic group, which makes up the majority of China's population.⁹⁸ In China, the names used to describe these refugees, such as *Yuenan huaqiao* (meaning "overseas Chinese from Vietnam"), illustrate how they are almost as belonging in China.⁹⁹ The name suggests the notion that, although they were Vietnamese citizens, the refugees were previously like ex-patriots of China living in Vietnam that have returned home. Some Vietnamese left for China voluntarily and others were pushed out by the Vietnamese government.¹⁰⁰ They became famously known around the world as the "boat people" noting their typical mode of transportation across the South China Sea to the coast of China. Once in China, the refugees lived in refugee camps only for a short period of time and were quickly brought to new homes and offered permanent status.¹⁰¹ Most of the Vietnamese refugees were brought to live on state-farms in rural Guangxi Province.¹⁰² Within a few years of arrival, groups of

⁹³ LAM, *supra* note 13.

⁹⁴ Peter Brush, *Vietnam, China, and the Boat People*, Vanderbilt University (2007).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Vietnamese refugees well-settled in China, await citizenship*, UNHCR (May 10, 2007), <http://www.unhcr.org/464302994.html>.

⁹⁸ HAN, *supra* note 17 at 26.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 27.

¹⁰¹ *Id.*

¹⁰² *Id.*

refugees developed successful businesses in the city of Beihai in Guangxi Province, many with export contracts to Hong Kong.¹⁰³ In the mid-1980s, it was reported that many of those that became business people, as well as those who worked as farmers in the rural areas, earned salaries of \$4,000 USD per year, which was higher than the average Chinese salary at that time.¹⁰⁴

However, other reports published in the late-1980s did not paint as flowery a picture of life for Vietnamese refugees in China. In 1987, the Associate Press reported that Chinese authorities had stopped more than 4,000 Vietnamese refugees from leaving China and called the need to stop the flow of Vietnamese refugees out of China “a matter of the utmost importance.”¹⁰⁵ Refugees leaving China complained that the quality of their farmland was poor and that it was difficult to find better paying jobs.¹⁰⁶ It might be the case that these particular refugees never intended to stay in China and viewed it as an intermediate destination from which they would continue on to a third country, such as Hong Kong or a western nation. Nevertheless, the experience of Vietnamese refugees in China was arguably successful. In March 2006, UNHCR Commissioner Antonio Guterres called the integration of Vietnamese refugees into Chinese society “one of the most successful integration programs in the world.”¹⁰⁷ Although these refugees that have now resided in China for several decades still do not have full Chinese

¹⁰³ Barbara Crossette, *Former Boat People Land the Good Life in China*, New York Times (Nov. 17, 1984), at 2.

¹⁰⁴ *Id.*

¹⁰⁵ Dan Biers, *Wave of Vietnamese Refugees Streaming into Hong Kong from China*, Associated Press (Aug. 16, 1987), <http://www.apnewsarchive.com/1987/Wave-of-Vietnamese-Refugees-Streaming-Into-Hong-Kong-From-China/id-ab2e23e682b500a7b75f4cd774ec4207>.

¹⁰⁶ *Id.*

¹⁰⁷ UNHCR, *Vietnamese Refugees well settled in China, await citizenship* (May 10, 2007), <http://www.unhcr.org/464302994.html>.

citizenship, they do enjoy much of the same benefits as Chinese citizens and are sometimes even issued Chinese passports by local authorities.¹⁰⁸

Part III: The Kachin Conflict

To consider the reasons behind and implications of China's treatment of ethnic Kachin people in Yunnan Province, it is important to understand the background of the current conflict in the Kachin State of Myanmar. Myanmar is a country located in Southeast Asia, which borders China, India, Thailand, and Laos. The country was governed under British rule for 62 years, as a part of the Indian Empire and then as a separate colony, until it became a sovereign nation in 1948.¹⁰⁹ Today, sixty eight percent of people in Myanmar belong to the Burman ethnic group, but the country has many different ethnic minorities, including the Kachin.¹¹⁰ The Kachin people live in the northeast Kachin State of Myanmar, one of the country's seven states. In 1947, the Kachin minority group, together with other ethnic groups in Myanmar entered into the Panglong Agreement with the Myanmar government, which promised ethnic Kachins a semi-autonomous Kachin State in northwestern Myanmar.¹¹¹ However, this promise never materialized, which led to the original conflict between the national government and the Kachin Independence Organization (KIO), together with its armed wing, the Kachin Independence Army (KIA).¹¹² The fight continued until a ceasefire agreement was reached in 1994.¹¹³

¹⁰⁸ *Vietnamese refugees well-settled in China, await citizenship*, UNHCR (May 10, 2007), <http://www.unhcr.org/464302994.html>.

¹⁰⁹ *CIA World Factbook Burma*, CIA (Feb. 5, 2013), <http://www.state.gov/r/pa/ei/bgn/35910.htm>.

¹¹⁰ *Id.*

¹¹¹ Jake Spring, *In the new Burma, one marginalized group has yet to see peace*, *The Atlantic* (March 21, 2013), <http://www.theatlantic.com/international/archive/2013/03/in-the-new-burma-one-marginalized-group-has-yet-to-see-peace/274219/>.

¹¹² *Id.*

¹¹³ *Id.*

In 2012, reforms to Myanmar's government prompted the U.S. and other nations to lift economic sanctions against the country, but freedom of expression continues to be highly restricted.¹¹⁴ In Myanmar's recent elections, the Kachin people were not able to form a political party.¹¹⁵ After a 17-year-long truce between the Myanmar Army and the KIA, fighting resumed in 2011.¹¹⁶ Some reports have attributed the recent conflict to tensions caused by Chinese investments in the region, including a large dam project that displaced over 12,000 ethnic Kachins, who were forcibly relocated to Chinese-built villages.¹¹⁷ Other reports have claimed that the breakdown of the agreement occurred after the government pressed the KIA to merge with the national army or to disarm.¹¹⁸ However, representatives of the KIA have claimed the resumed fighting is in response to war crimes committed against civilian Kachins and the continued oppression of the Kachin people.¹¹⁹ Although Myanmar President Thein Sein said the national army would only act in self-defense, jet fighters were sighted targeting the KIA in early 2012 and the Myanmar Army has reportedly been moving toward the KIA headquarters in Laiza, a town near the Chinese border.¹²⁰ There have also been reports of KIA attacks on non-military targets, including passenger trains.¹²¹ Similar claims against the national army have been made by an organization called Free Burma Rangers, based in Chiangmai, Thailand, which posted a video of national helicopters shooting into a KIA area.¹²² President Thein Sein's office defended

¹¹⁴ CIA, *supra* note 71.

¹¹⁵ DAVID DAPICE, CHINA AND YUNNAN ECONOMIC RELATIONS WITH MYANMAR AND THE KACHIN STATE 5 (Ash Center for Democratic Governance and Innovation 2012), available at: <http://www.ash.harvard.edu/extension/ash/docs/chinayunnan.pdf>.

¹¹⁶ R.C., *Fighting in Myanmar's Kachin State: Lengthening shadow*, The Economist (Jan. 16, 2013), <http://www.economist.com/blogs/banyan/2013/01/fighting-myanmars-kachin-state>.

¹¹⁷ Maija Yang, *Myanmar's minorities: Caught in the middle*, The Economist (July 11, 2012), <http://www.economist.com/blogs/banyan/2012/07/myanmars-minorities>.

¹¹⁸ Bibhu Prasad Routray, *Myanmar's National Reconciliation: An Audit of Insurgencies and Ceasefires*. Institute for Peace and Conflict Studies, Special Report 138 (March 28, 2013).

¹¹⁹ SPRING, *supra* note 74.

¹²⁰ R.C., *supra* note 79.

¹²¹ ROUTRAY, *supra* note 81.

¹²² *Id.*

the strike by stating that the KIA had attacked government convoys in that area.¹²³ Since the ceasefire between the KIA and the national Burmese Army ended in 2011, over sixty villages that were previously inhabited by ethnic Kachins have been burned.¹²⁴ Peace talks between the Myanmar government and the KIA were facilitated by the Chinese in early 2013, but the most recent meeting on March 10, 2013 resulted only in an agreement to proceed with further negotiations of a ceasefire.¹²⁵ Although aid workers in Myanmar have reported a lessening appearance of violent conflict, it is unclear when a ceasefire will be reached.¹²⁶ The KIA demands political dialogue before agreeing to a ceasefire and the Myanmar Army demands a ceasefire as a precursor to any political conversations.¹²⁷

Protecting Kachins

Displaced Kachins began fleeing to China in June 2011.¹²⁸ Some crossed the border at unsecured points, which is typical in daily economic activities on the border.¹²⁹ Many of these people went to stay with friends, relatives, and other Chinese nationals who graciously provided them with shelter. Human Rights Watch issued a report in June 2012 stating that Chinese authorities had forcibly returned Kachins in Yunnan Province back to Myanmar, but the report also stated that the Chinese government made concerted efforts to collect information about the displaced Kachins and their needs.¹³⁰ Although there are probably many Chinese people that have sheltered displaced Kachins, who illegally crossed the border, there have been no reports of arrests or detention of these individuals. Theoretically, anyone helping a Kachin residing

¹²³ *Id.*

¹²⁴ DAPICE, *supra* note 78, at 4.

¹²⁵ SPRING, *supra* note 74.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ HUMAN RIGHTS WATCH, *supra* note 15.

¹²⁹ COHEN, *supra* note 14.

¹³⁰ ISOLATED IN YUNNAN, *supra* note 87, at 26.

illegally in China could be prosecuted under Article 318 of China's Criminal Law. There have also been no reports of arrests of individuals like Mr. Zhang, who illegally cross the border at unsecured points to help bring supplies to Kachin people. Chinese authorities appear to be unconcerned with these humanitarian efforts, or at least unaware, due to the lower priority the issue holds or the newness of the situation.

While the Chinese government has not formally granted Kachin people, who have fled Myanmar into China, refugee status, the establishment of refugee camps in Yunnan Province indicates a stark departure from its approach to North Koreans entering into China through the northeastern border. Conditions of these camps have been criticized by Human Rights Watch, but no formal investigation by the UNHCR has been conducted. The Chinese Ministry of Foreign Affairs' spokesperson Hong Lei expressed the Chinese government's view on the displaced Kachins in Yunnan Province stating:

Since early this year, there have been military conflicts between Myanmar's military government and armed ethnic groups. Some of the [Burmese] have come to China because of safety issues. They are not refugees. Moreover, they will return to Myanmar as soon as the conflicts end. China has been providing humanitarian aid to those people during their time in China.¹³¹

Human Rights Watch argued in favor of refugee status for these displaced Kachins in Yunnan, stating that they fled human rights violations in Myanmar and returning to their homes would be life threatening.¹³² UNHCR has not made any determination of their status, but has petitioned China to grant Kachins temporary legal status in Yunnan. It is difficult for UNHCR to make a full assessment of the situation because it currently lacks access to the camps in Yunnan, because

¹³¹ 'No Assistance' for Kachin Refugees, Radio Free Asia (June 26, 2012), <http://www.rfa.org/english/news/burma/refugees-06262012165817.html>.

¹³² ISOLATED IN YUNNAN, *supra* note 87, at 7.

China does not allow any foreign aid or media groups to provide coverage of the Kachin refugees.¹³³ On September 7, 2012, UNHCR spokesperson Adrian Edwards stated that:

Despite repeated requests to the Chinese authorities, UNHCR has not been able to reach or assist these groups living along the Chinese side of the border. In mid-August this year, we started receiving reports of Kachins being sent back to Myanmar, but were unable to confirm as we could not access the border areas.¹³⁴

UNHCR has not been able to investigate the camps set up in China, but it was able to travel to the village of Lwe Je in the Kachin State of Myanmar, near the Chinese border.¹³⁵ In Lwe Je, UNHCR reported stories from Kachin people that plain-clothed police officers removed them from their shelters in China, loaded their belongings into trucks, and transported them back to Myanmar. These returnees are now living in temporary camps in the Kachin State, as they fear returning to their villages.¹³⁶

To build a case for Kachin refugee status under the Refugee Convention, an argument could be made on the basis of persecution of an ethnic minority group or as war refugees. The Refugee Convention provides for the protection of individuals that are persecuted due to their race, nationality, or social status. Evidence of the Myanmar government's persecution of the Kachin can be found its long history of depriving the Kachin people of representation in the government, freedom to express their political opinions, broken promises of autonomy, and targeting ethnic Kachins with crimes of abduction, rape, and murder. Individuals fleeing war are not generally granted refugee status unless they can demonstrate a well-founded fear of persecution and an inability or unwillingness (as a product of their fear) to avail themselves of

¹³³ YANG, *supra* note 80.

¹³⁴ Adrian Edwards, *UNHCR Reaches Kachins sent back from China*, UNHCR (Sept. 7, 2012), <http://www.unhcr.org/5049cdba9.html>.

¹³⁵ *UNHCR concerned about welfare of Kachins sent back from China*, UNHCR (Sept. 7, 2012), <http://www.unhcr.org/5049e42b6.html>.

¹³⁶ *Id.*

the protection of the government in their home country.¹³⁷ Here, due to the fact that the persecution of Kachins and crimes against Kachin people are being committed by the national army, it is easy to argue that the Kachin are unable to gain necessary protection. Rape against ethnic minority women in Myanmar was confirmed generally by pro-democracy leader Aung San Suu Ki, who stated in 2011 that:

Rape is used in my country as a weapon against those who only want to live in peace, who only want to assert their basic human rights. It is used as a weapon by armed forces to intimidate the ethnic nationalities and to divide our country.¹³⁸

The Kachin Women's Association of Thailand reported that from September 2012 to February 2013, twenty-six civilian Kachins had been injured or killed by artillery attacks by the Myanmar Army.¹³⁹ They also documented the rape of 64 women and girls by national troops.¹⁴⁰ Another non-profit organization, the Shan Women's Action Network, which represents the interests of women from Myanmar's Shan ethnic minority has also reported numerous instances of rape by members of Myanmar's army.¹⁴¹

If the UN made a determination that Kachins in China meet the Refugee Convention's definition of a refugee, China, as a signatory party, would be obligated to accept Kachin refugees and would be prohibited from returning Kachin people to the region in which their lives are threatened. However, the UN has not made that determination and has instead petitioned China to grant Kachins in Yunnan temporary legal status and allow them to stay until conditions are safe enough to return to their homes in Myanmar. The request that China provide only temporary

¹³⁷ UNHCR, *supra* note 52.

¹³⁸ Christine Leah, *Myanmar needs to admit rape of minority women*, Bangkok Post, March 25, 2013, available at: <http://www.bangkokpost.com/opinion/opinion/342205/myanmar-needs-to-admit-rape-of-minority-women>.

¹³⁹ KACHIN WOMENS THAI., STATE TERROR IN THE KACHIN HILLS: BURMA ARMY ATTACKS AGAINST CIVILIANS IN NORTHERN BURMA. 5 Feb. 2013, available at: http://www.kachinwomen.com/images/stories/publication/state_terror.pdf.

¹⁴⁰ *Id.* at 8.

¹⁴¹ SHAN WOMEN'S ACTION NETWORK, LICENSE TO RAPE. June 2002, available at: http://www.shanwomen.org/images/stories/reports/licensetorape/Licence_Rape_english.pdf.

status to Kachins rather than permanent asylum might be due to an unofficial determination by UNHCR that Kachins do not meet the criteria of refugee status or because they believe the fighting in their villages will not continue long-term. Whether China's deportation of Kachins in Yunnan would establish a violation of the Torture Convention depends on a finding of substantial grounds for believing that returned Kachins could be tortured in Myanmar. Although returned Kachins continue to be displaced from their villages and live in overcrowded ICP camps, their conditions probably do not meet the UN's definition of torture. Based on this definition and the observation of UNHCR representatives in Myanmar's IDP camps, China is probably not violating the Torture Convention by returning Kachins to Myanmar, though it could still be found to be in violation of their obligations to accept Kachins under the Refugee Convention.

Part IV: China's Interests

There is little room to doubt that China has been much more accommodating to Kachin people in Yunnan than it has been to North Koreans, despite the more compelling case for finding that North Koreans in China meet the UN's definition of a refugee and that their treatment in North Korea more clearly meets the definition of torture under the Torture Convention. Article 3 of the Refugee Convention forbids a state from discriminating on the basis of race, religion or country of origin when applying the provision of the Convention.¹⁴² Additionally, neither group has experienced the hospitality with which China received Vietnamese refugees in the 1970s. It is the position of this paper that China's behavior can be explained, but not justified, through an analysis of its economic and geopolitical interests in each region. In light of China's unbending approach to North Korean refugees, the government's somewhat relaxed dealings with displaced Kachin people coming into Yunnan Province suggests

¹⁴² Convention Relating to the Status of Refugees art 3, 28 July 1951.

different priorities and interests in the southwest region. The crossing of North Koreans into China has received serious attention from Beijing, whereas the Kachin influx to China was handled by local authorities in Yunnan.¹⁴³ This suggests that the Kachin situation is not as high of a priority to Beijing.¹⁴⁴ If China were to decide to comply with the U.N.'s requests to accommodate North Koreans and Kachins, its experience with Vietnamese refugees would serve as a useful model of how to handle a refugee population.

Money and Stability in Myanmar

The current conflict in the Kachin State is not the first quarrel between Myanmar's national government and ethnic minority groups that has caused refugees to flee into Chinese territory. Conflict between Myanmar's government and the Kokang ethnic group resulted in more than 37,000 refugees to flee to Yunnan Province.¹⁴⁵ China has taken a similar position with all the conflicts that have recently occurred near the China-Myanmar border to encourage peace and resolution between the parties.¹⁴⁶ It is the opinion of this paper that China's approach is due to its calculation that encouraging resolution, rather than solely backing the government, will best support its economic interests in Myanmar. Many ethnic groups that oppose the national government, or at least particular government actions, are well organized in Myanmar, such as the KIO. Supporting the national government without encouraging dialogue between the KIO and Myanmar's government would not be likely to yield quick peace or stability in the region. China's interests in the Kachin State are particularly important for the economy of Yunnan Province. Community ties are strong on the Yunnan Province-Kachin State border, as Kachins in

¹⁴³ COHEN, *supra* note 14.

¹⁴⁴ *Id.*

¹⁴⁵ Yun Sun, *China's Strategic Misjudgment on Myanmar*, 31 J. OF CURRENT SOUTHEAST ASIAN AFF. 73, 73-96 (2012).

¹⁴⁶ *Id.* at 75.

Myanmar and Jingpo people in China belong to the same ethnic minority group. Many Chinese nationals live on the Myanmar side of the border to conduct trade and Kachin people often cross into China for daily errands and business.¹⁴⁷

China has many economic investments in the northwest region of Myanmar, which it may not want to disrupt by harshly sending back all Kachins that have fled to China. Myanmar is rich in natural resources and China's strategic position and long political friendship with the country present many opportunities for Chinese state-owned enterprises.¹⁴⁸ For example, the conflict in the Kachin State has caused China to suspend the construction of a dam on the Irrawaddy River called Myitsone. The plan is unpopular among many people in Myanmar for environmental reasons and is seen by many as being exploitative of Myanmar's resources. Over 90% of the electricity generated by the Myitsone would have been sent to China.¹⁴⁹ In order to proceed with building the dam, China would need to renegotiate and gain the support of several groups in Myanmar, including the Kachin.¹⁵⁰ Another strategic Chinese investment in Myanmar is an oil and gas pipeline project that would provide China with more direct access to the Indian Ocean and therefore reduce China's dependency on shipping oil from North Africa and the Middle East through the Malacca Strait.¹⁵¹ Construction of the pipelines began in 2010 and they are designed to transfer 22 million tons of crude oil from North Africa and the Middle East and an additional 12 billion cubic meters of natural gas from offshore gas fields near Myanmar.¹⁵² This project will be a large energy source for China and will lessen its dependency on coal. Stability in Myanmar is of great importance to the success of these investments.

¹⁴⁷ *Id.*

¹⁴⁸ SUN, *supra* note 103, at 78.

¹⁴⁹ YANG, *supra* note 80.

¹⁵⁰ DAPICE, *supra* note 78, at 5.

¹⁵¹ SUN, *supra* note 103, at 78.

¹⁵² *Id.*

Provoking the Regime

In a 2007 article, the New York Times suggested that if the U.S. assured China that it would only be a “way station” for North Koreans to relocate to other countries, Beijing’s fears of an influx of refugees would vanish and the situation would improve.¹⁵³ However, this hypothesis assumes that avoiding a refugee population is China’s main motivation for its repatriation policy. Of course, its own soaring population is a concern to China, but the influence of its relationship with the North Korean government should not be ignored or understated. In regard to China’s interests in maintaining its repatriation policy toward North Koreans, Zhu Feng, a national security expert and professor at the prestigious Peking University in Beijing, commented that, “The problem is that if China refuses to repatriate, that would signal that Beijing wants to bring down the North Korean regime.”¹⁵⁴ In 1986, China entered into an agreement with North Korea to prevent illegal border crossings called the Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order and the Border Areas.¹⁵⁵ China claims that this bilateral agreement with North Korea supersedes any obligation it has under an international treaties.¹⁵⁶

There could be many reasons why China prefers to maintain its status quo relationship with North Korea. Although during the time of Kim Il Sung and Mao Zedong, China and North Korea shared many similar political and ideological values, today, even the Chinese government

¹⁵³ Eberstadt, *supra* note 59.

¹⁵⁴ Peter Martin & David Cohen, *Through Chinese Eyes: Zhu Feng*, The Interpreter, Oct. 18, 2011, available at: <http://www.lowyinterpreter.org/post/2011/10/18/Through-Chinese-eyes-Zhu-Feng.aspx>.

¹⁵⁵ COHEN, *supra* note 44.

¹⁵⁶ SEYMOUR, *supra* note 28.

appears to view North Korea as a loose cannon that must be contained.¹⁵⁷ While sharing a border, it serves Chinese interests of peace and stability in the region to avoid provoking its unpredictable neighbor. After North Korea conducted nuclear and missile tests in February 2013, China began to take a stronger hand in enforcing UN sanctions.¹⁵⁸ Inspection of cargo headed to North Korea has become more rigorous in Chinese ports and cities.¹⁵⁹ Other than this small improvement, China's approach to North Korea does not seem to be changing, even though the relationship does not appear to be symbiotic in anyway. North Korea repeatedly ignores China's advice not to threaten the United States, South Korea, or Japan with nuclear weapons.¹⁶⁰ The Chinese government provides a significant amount of food, fuel, and funding to North Korea, but the regime has little to offer China in return. It appears that North Korea is like an unpredictable friend that China perpetually placates, while in the meantime, conducting diplomatic damage-control each time North Korea makes a nuclear threat. It is the opinion of the paper that China continues its repatriation of North Korean refugees, in part, for the same reasons it participates in every other song and dance with the North Korean regime— that provoking the leadership or destabilizing the North Korean economy could result in the next world war right on China's border and/or a flood of refugees into Chinese territory. If North Korea were to collapse, China fears and political analysts predict that it would result in South Korea's leadership over the entire

¹⁵⁷ *On the Naughty Step: China continues to fret over its troublesome neighbor*, The Economist (Feb. 2, 2013), <http://www.economist.com/news/china/21571196-china-continues-fret-over-its-troublesome-neighbour-naughty-step>.

¹⁵⁸ *China punishes North Korea for nuclear tests as US asks for more*, Fox News (March 24, 2013), <http://www.foxnews.com/world/2013/03/24/china-punishes-north-korea-for-nuclear-tests-as-us-asks-for-more/>.

¹⁵⁹ *Id.*

¹⁶⁰ Dick Nanto & Mark Manyin, *China-North Korea Relations*, Congressional Research Service 1-22 (Dec. 28, 2010).

peninsula, which is counter to China's interests because it would mean that their immediate neighbor is a nuclear-armed U.S. ally.¹⁶¹

Part V: Looking Forward

The UNHCR has already requested China to accept displaced Kachins from Myanmar and allow them to obtain a temporary legal status in China until they are able to safely return to their villages. These requests were made recently and there have been no public reports evidencing China's compliance. Still, the Chinese government is probably less concerned about a huge influx of Kachins entering Yunnan Province than it is about the high number of North Koreans that would enter into China if North Korea were to collapse. Also, China's previous accommodation of Kachins in IDP camps may indicate at least a possibility of willingness to be cooperative. Authorities in Yunnan sent back groups of Kachins and this received international attention. Over the span of decades, Kachin people have clung onto and fought for their autonomy and representation in the government of Myanmar. History indicates they are a group of people that are proud of and attached to the region they call home. It appears the Kachin people are not seeking to permanently relocate to China and the UNHCR has noted that it is preparing for voluntary repatriation of these refugees. However, many are currently still fearful of returning to their villages. Taking these factors into consideration, it would behoove China to continue to accept displaced Kachins and grant them temporary status, as requested by the UNHCR. Reducing the volume of people in Myanmar's internally displaced persons camps would protect more Kachin civilians and might help to facilitate resolution of the conflict. Peace between the KIA and the Myanmar government is essential to the continuation of Chinese energy projects in the region, as is the support of the Kachin Independence Organization.

¹⁶¹ *Id.*

Turning away displaced Kachins is not likely to help the Chinese resume construction of the Myitsone Dam and might even cause the amount of Chinese dollars already invested to be wasted if the project is permanently suspended.

China's struggle with North Koreans fleeing famine and the persecution of their government has persisted for over two decades. During this time, China has consistently returned discovered refugees to North Korea, as per its agreement with the North Korean government. There are some issues, such as limiting North Korea's use of nuclear weapons, which behoove China to take a strong position with the North Korean government. However, given China's own record, remedying human rights violations has not been at the top of Beijing's agenda with its eastern neighbor. Along the same line, given the increasing severity of North Korea's statements of nuclear threat toward South Korea and the United States, the international community's priority of putting pressure on China to use its influence to contain these threats is probably much greater than the current concern of China's repatriation of North Korean refugees.¹⁶² The United Nations is, however, taking forward steps to address human rights violations in North Korea and petition China to enforce UN sanctions. On Thursday, March 21, 2013, the UN formed a committee to investigate human rights in North Korea.¹⁶³ It is the first time that such an inquiry has been made, but whether it will deal with China's repatriation of North Korean refugees is unclear at this time.¹⁶⁴

¹⁶² China, the U.S., North Korea, South Korea, Russia, and Japan are involved in a negotiation process, called the Six-Party Talks, aimed at ending North Korea's nuclear program. Jayshree Bajoria, *The Six-Party Talks on North Korea's Nuclear Program*, Council on Foreign Relations (March 8, 2013), <http://www.cfr.org/proliferation/six-party-talks-north-koreas-nuclear-program/p13593>.

¹⁶³ *UN to investigate possible human rights abuses in North Korea*, The Guardian (March 21, 2013), <http://www.guardian.co.uk/world/2013/mar/21/un-investigate-human-rights-abuses-north-korea>.

¹⁶⁴ *Id.*

China's concerns in Myanmar versus North Korea are as far apart as the regions are in miles. It is befitting to China's economic interests in Myanmar to encourage resolution between the Kachins and Myanmar's government. The conflict in the Kachin State is occurring between the KIA and the Myanmar Army, with civilian Kachin casualties. Considering the current domestic climate in Myanmar, China would not find success in supporting Myanmar's national government to crush opposition without dialogue. North Korea on the other hand, has all power and force concentrated in its capital, Pyongyang. There is no visible conflict between the people and the North Korean government, only the regime's unilateral abuse of the people. From a Chinese perspective, the current state of affairs in North Korea probably encourage China to support its agreements with the testy North Korean regime and use its influence in select battles. With the world watching both regions, lifted sanctions by western countries in Myanmar, and nuclear threats from the North Korean government, there is always a possibility that China will move closer to conforming to requests from the international community to accommodate Kachins and North Koreans in China. Still, human rights almost always take a second seat to national security and China understandably perceives a destabilizing or angered North Korea as a huge national and regional security issue.

If China were to accept North Korean refugees into its territory, its strategic approach to dealing with the large influx of Vietnamese refugees several decades ago would serve as a useful model. These Vietnamese refugees were able to establish a new life in China and become productive members of society. The lack of shared ethnicity between the Chinese Han majority and North Koreans should not alone cause China to be any less welcoming of North Korean refugees. Despite these recommendations, China's past approach in the two regions remains the best prediction of how it will continue to protect its interest in Myanmar and North Korea. As

current nuclear tensions in North Korea and the conflict in the Kachin State of Myanmar develop, the world will watch and China will have the opportunity to fulfill its obligations under its international treaty agreements, protect those that come to the aid of the helpless, and once again exhibit their ability to effectively receive a refugee population.