

Working Paper # 11

**North Korea:
Scenarios From The Perspective Of
Refugee Displacement**

Christian F. Mahr

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ABBREVIATIONS AND ACRONYMS

CIA	United States Central Intelligence Agency
DMZ	Demilitarized Zone
DPRK	Democratic People's Republic of Korea
EXCOM	Executive Committee of the Programme of the United Nations High Commissioner for Refugees
EU	European Union
GDP	Gross Domestic Product
GNP	Gross National Product
IFRC	International Federal of Red Cross and Red Crescent Societies
KEDO	Korean Peninsula Energy Development Organization
KWP	Korean Workers' Party
NDC	National Defense Commission
NGO	Non-Governmental Organization
ROK	Republic of Korea
SEZ	Special Economic Zones
UNHCR	United Nations High Commissioner for Refugees
WFP	World Food Program
U.S.	United States of America

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EXECUTIVE SUMMARY

Some 10,000 to 300,000 citizens of the Democratic People's Republic of Korea (DPRK) are currently reported to be living illegally in the Northeastern provinces of China. Based on bilateral treaties between the two countries, North Koreans are actively sought out, and forcibly returned to the DPRK, where they are likely under certain circumstances to encounter persecution at the hands of the authorities.

Despite the United Nations High Commissioner for Refugees' (UNHCR's) request to gain access to North Koreans residing on its territory, the Chinese authorities have refused to do so since June 1999, based on the postulation that the North Koreans are economic migrants—not refugees—and therefore outside the mandate of UNHCR.

The true rationale for the refusal of the Chinese authorities to recognize the North Koreans as refugees appears to be a reluctance to create a pull-factor to their country for North Koreans, which would not only cause it to lose face vis-à-vis the leadership in Pyongyang, but could serve as a contributing factor leading to the demise of the DPRK regime. The latter scenario, and its costly and tumultuous outcomes, is one that not only the Chinese, but the Republic of Korea (ROK), Japanese and United States Governments would like to avoid at all costs.

While various reports indicate that the primary basis for the North Koreans' flight to China continues to be of an economic nature, the fact of having left their country illegally by itself creates a well-founded fear of persecution among certain categories of North Koreans. Due to these circumstances, and the continued forcible returns to the DPRK of North Koreans in China, UNHCR must ensure that protection is provided to persons of concern within this group.

Given the high probability that the flight to China by North Koreans is likely to continue for at least as long as the DPRK cannot feed its own population, UNHCR must urgently develop means of providing protection for such persons. Given China's strong geo-political interests in the subject matter, it is imperative that whatever strategy UNHCR decides to adopt as its primary protection modality must be agreeable to the Chinese Government. One possible solution is to work with the Chinese authorities to develop a pilot temporary protection program, inclusive of a variety of safeguards, in which North Koreans who are most likely to be victims of persecution would be allowed to remain on Chinese soil under conditions of de facto detention. Meanwhile, UNHCR must discuss with the Chinese Government methodologies aimed at minimizing the creation of *sur place* refugee cases, which are “created” as a result of the policy of forced returns of North Koreans conducted by Beijing.

At the same time, considering that the health and policies of the DPRK regime are difficult to predict accurately due, *inter alia*, to the paucity of reliable data, it would be essential for UNHCR to take the initiative to develop comprehensive local and regional contingency plans among the key players in Northeast Asia so as to deal effectively with a mass influx situation, which could potentially emanate from the DPRK at a moment's notice. The variables that need to be considered in developing such a plan are discussed in the main text of the paper.

NORTH KOREA: SCENARIOS FROM THE PERSPECTIVE OF REFUGEE DISPLACEMENT

Christian F. Mahr¹

1. INTRODUCTION

The East Asian scholar Robert Scalapino aptly sums up the dilemma related to conducting research on the Democratic People's Republic of Korea (DPRK) in the following passage from his 1997 analysis on the future of the country: "To search for facts regarding this society is to seek spots of light in a dark sky. Although an increasing number of facts are being established on some critical matters, our best efforts do not go beyond establishing parameters within which truth appears to lie or assigning probability to alternative future scenarios."²

Indeed, the DPRK is a notoriously difficult subject to study. Aside from the fundamental shortage of data that can be independently verified, a significant proportion of the available literature and reports concerning the country are heavily influenced by a variety of biases, and/or are based on source material of questionable origin.

A further element enhancing the degree of complexity of the analysis is the absence of a workable theory connecting economic distress or deprivation with political change.³ Had any other population in the world experienced the level of hunger and suffering that descended upon the DPRK throughout the 1990's, and continues to plague the country, we would generally expect its citizens to rise up in arms, or for there to be a breakdown in political order. Apparently nothing of the sort has happened in the DPRK, and most long-term observers of the country dismiss the possibility of it ever happening. In summary, we have no clear idea as to what they do, why they do it, and why they have not stopped doing what they do.

Considering the wide range of disagreement and uncertainty among experts in the field even in terms of their analysis of the status quo in the DPRK—much less their predictions regarding future scenarios—this paper should be read with a healthy dose of skepticism. At best, the analysis detailed below could be used as a starting point to contemplate a comprehensive contingency plan for the Korean Peninsula.

¹ The author conducted research for this paper while in residence as a Visiting Fellow at MIT's Center for International Studies. The opinion expressed in this paper is that of the author, and does not represent the official view of any organization. The author would like to thank Sharon Stanton Russell for her contribution throughout the research and drafting of this paper.

² Robert A. Scalapino, *North Korea at a Crossroads* (Stanford, CA: Hoover Institution, 1997), p.2.

³ Marcus Noland, *Avoiding the Apocalypse: The Future of the Two Koreas* (Washington, D.C.: Institute for International Economics, 2000), p.251.

2. HISTORICAL OVERVIEW

Following the partition of the Korean Peninsula after World War II, and the subsequent devastation brought about as a result of the Korean War, the two Koreas went on to develop into diametrically opposed entities. One half has developed into a dynamic democratic society, occupying a place among the top echelon of industrialized economies. The other half has become the world's last remaining Stalinist regime, which finds itself largely isolated in the international arena, and unable to feed a large segment of its population.

The clarity in the supremacy of one Korea over the other was not so evident until the 1980's. Up until the early 1970's, the Gross National Product (GNP) of the DPRK was thought by the U.S. Central Intelligence Agency (CIA) to be the same as or higher than that of the Republic of Korea (ROK).⁴ However, as the result of a combination of lackluster economic policies and massive amounts of resources poured into maintaining a huge military presence well beyond its means, the DPRK under the leadership of the "Great Leader", Kim Il-sung, gradually squandered its lead.

The end of the cold war dealt a devastating blow to the DPRK economy. The demise of the Eastern bloc and the subsequent evaporation of generous economic subsidies, as well as the loss of socialist trading partners placed the DPRK in a greater degree of isolation and vulnerability than ever before. While China continued to assist the DPRK by providing more than two-thirds of its energy needs, it was both unwilling and unable to fill the gap created by the dissolution of the Soviet Union.⁵ Starting in May 1991, even China officially requested that a change in trade policy be made from one based on "friendship rates" and barter exchanges to one based on hard currency.⁶ By the time of the death of Kim Il-sung in July 1994, the DPRK was deep in the spiral of economic decline. An economy that had once been ahead of the ROK was by this point estimated to be one-sixteenth the size of its adversary.⁷

3. STATUS QUO

A. Economic

The DPRK economy suffered a steady decline during most of the decade of the 1990's, during which period the economy shrank by more than 50 percent.⁸ As seen in the graph

⁴ Victor D. Cha, "Engaging North Korea Credibly," *Survival*, vol. 42, no. 2, Summer 2000, p.143.

⁵ Don Oberdorfer, *The Two Koreas: A Contemporary History* (Massachusetts: Addison-Wesley, 1997), p.233.

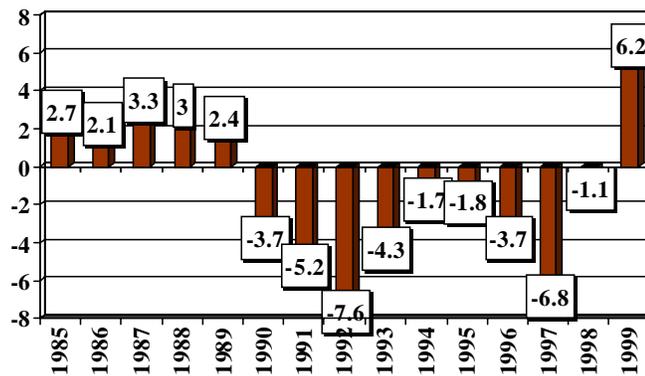
⁶ *Ibid.*, p.243.

⁷ *Ibid.*, p.297.

⁸ Chung Min Lee, and Jonathan D. Pollack, *Preparing for Korean Unification: Scenarios & Implications* (Santa Monica, CA: Rand, 1999), p. xi.

below, the real growth rate in the Gross Domestic Product (GDP) was negative throughout the decade, with the exception of 1999. DPRK watchers are quick to point out that the positive growth in 1999 was not stimulated by internal growth, but was the result of an influx of foreign aid, and not reflective of any real economic recovery.⁹

DPRK: Real GDP Growth (percent)



Source: Ministry of Unification, ROK; EIU Country Report May 2001.

Most experts point to the fact that there are no easy fixes to the DPRK economy because of the systemic nature of the problems.¹⁰ Without a fundamental reform in the manner of producing and procuring food, energy and capital;¹¹ an end to the ever-important Marxist-Leninist self-reliance doctrine of *juche*; and the abandonment of central planning, it is unlikely that the crumbling economy can be resuscitated.

Instead of choosing the route toward reform, the DPRK has opted for a policy that maximizes regime survival at the cost of foregoing badly needed reforms. As a means of implementing this policy, the regime utilizes implicit and explicit threats to extract aid from the outside world, and selectively courts foreign investment projects aimed at attracting hard currency without altering the systemic nature of the economy.¹² So far, these policies have proven to be very beneficial for the regime.

⁹ *Country Report: South Korea, North Korea* (London: Economist Intelligence Unit: May 2001), p.37.

¹⁰ Marcus Noland, "Prospects for Northeast Asia in the 21st Century," (Paper presented at the Northeast Asia Economic Relations Symposium, Toyama, Japan), October 13, 1999, (<http://www.iie.com/papers/noland1099.htm>).

¹¹ Scott Snyder, "North Korea's Decline and China's Strategic Dilemmas," United States Institute for Peace Special Report, October 1997, (www.usip.org/oc/sr/snyder/China-NK-pt1.html).

¹² Noland (1999).

The World Food Program (WFP) reported early in 2001 that while 4.8 million tons of grain were required by the DPRK to feed its population during 2000/01, a shortage of 1.8 million tons was foreseen.¹³ Reports issued in 2001 indicated that in addition to having experienced the coldest winter in 50 years,¹⁴ the Korean Peninsula was suffering from the worst drought in a century.¹⁵ Thus, the food shortage is likely to be even more severe than that initially predicted by the WFP.

If past experience can be a guide, the drought of 2001 will result in a famine, which in turn will create a greater impetus for North Koreans to head illegally for China in search of food. Pyongyang itself acknowledges that record numbers of North Koreans are likely to cross into China in search of food during 2001/2002.¹⁶ This fact, combined with the alleged start of the latest round of crackdowns on North Koreans illegally residing in China by Chinese authorities and DPRK security agents,¹⁷ could cut off an essential life-line for many North Koreans.

Regardless of the above-mentioned economic hardships, the DPRK continues to spend an estimated thirty percent of its annual budget on military-related expenditures,¹⁸ which goes toward maintaining the fifth largest army in the world after China, the U.S., Russia and India.¹⁹

B. Political

The Kim family has pulled off the first dynastic handover of power in a communist system. Questions were initially raised as to Kim Jong-il's ability to consolidate power following the death in 1994 of his father, Kim Il-sung, but all indications point to the fact that Kim Jong-il is now firmly in control of the power structures of the DPRK.²⁰

Kim Jong-il's primary source of power resides in his power base within the military. Through a series of two major personnel reshuffles, it appears that Kim Jong-il has further consolidated his standing within the military by bringing in a younger generation

¹³ "Another Poor Harvest Leaves North Korea Short of Food," *Associated Press*, April 16, 2001.

¹⁴ Robert J. Saiget, "North Korea Faces Serious Food Shortages After Brutal Winter," *Agence France Presse*, April 16, 2001.

¹⁵ C. W. Lim, "Worst Drought in a Century Hits Korean Peninsula," *Agence France Presse*, June 10, 2001.

¹⁶ George Wehrfritz and Hideko Takayama, "Riding the Seoul Train," *Newsweek International*, March 5, 2001.

¹⁷ "DPRK Agents Allegedly Using Much Reward Money to Find 'Refugees'," *Choson Ilbo*, April 2, 2001, FBIS.

¹⁸ Seok-jae Kang, "Defense White Paper Designates North Korea as No. 1 Threat," *Korea Herald*, December 5, 2000.

¹⁹ Noland (2000), p.7.

²⁰ Wendy R. Sherman, "Testimony Before the Senate Foreign Relations Committee, Subcommittee on East Asian and Pacific Affairs," Department of State, Washington, DC, March 21, 2000, (www.state.gov/www/policy_remarks/2000/000321_sherman_nkorea.html).

of officers who are personally loyal to him, and by phasing out the old guard.²¹ Much of the rise in power of the military seems to have been accompanied by a parallel loss in the degree of influence previously exercised by the Korean Workers' Party (KWP) Politburo.²²

Following the death of Kim Il-sung the Central People's Committee was abolished, and the National Defense Commission (NDC) was made the highest state body. The chairmanship of the NDC is now occupied by Kim Jong-il.²³

All indications are that the military remains deeply conservative in terms of embracing reform. The inclusion of three top military leaders in Kim Jong-il's trip to Shanghai in January 2001,²⁴ as well as the decision to send Vice Marshal Jo Myong Rok, the First Vice Chairman of the National Defense Commission, as the lead negotiator during the high level meeting in Washington in October 2000 signals the apparent desire—as well as the need—of Kim Jong-il to gather the support of the conservative factions for his economic and foreign policies.

C. Social

Due in part to the maintenance of a tight internal security apparatus, the effective isolation of its citizens against information from abroad, rigid social control policies, and the strict implementation of the unity of ideology (*yuilsasang*)²⁵, there are no reports of the existence of an organized opposition movement in the DPRK.²⁶ Regardless of the fact that an estimated 1 to 3.5 million persons out of a pre-famine population of 24 million²⁷ are believed to have perished as a result of famine-related causes since 1995, visitors to the DPRK report that ordinary North Koreans apparently blame the outside world, as opposed to their own Government, for the hardships they experience.²⁸

²¹ See "North Korean Leader Orders Military Shake-up," *Agence France Presse*, October 8, 2000, as well as Normal D. Levin, "What If North Korea Survives?," *Survival*, vol.39, no. 4, Winter 1997/98, p.163.

²² EIU Country Report, May 2001, p.36.

²³ *Ibid.*, p.34.

²⁴ "South Korean Paper Analyzes North's Delegation to China," *Choson Ilbo*, January 21, 2001.

²⁵ Aidan Foster-Carter, "How to Handle North Korea," *Asiaweek.com*, January 29, 1999.

²⁶ Jea-Jean Suk and Byoung-Lo P. Kim, "Prospects for Change in Kim Jong-il Regime," in Chae-jin Seo (ed.), *Series No.2 Policy Studies Report* (Seoul: The Research Institute for National Reunification, December 1994), p.55.

²⁷ Shim Jae Hoon "North Korea, A Crack in the Wall," *Far Eastern Economic Review*, April 29, 1999, p.11.

²⁸ See Heather Smith, "The Food Economy: The Catalyst for Collapse?," in Marcus Noland (ed.) *Economic Integration of the Korean Peninsula* (Washington, D.C.: Institute for International Economics, 1998), as well as Diederik Lohman, "North Korea: A Potential Refugee Crisis?," WRITENET for UNHCR, October 1996, (UNHCR/CDR REFWORLD Database) p.24.

Moreover, media reports indicate that North Koreans have been led to believe that the food shortage is of a global nature, and that they are relatively well off.²⁹ The success of such policies are attributed to the fact that most North Koreans are almost entirely cut off from external sources of information, and brought up to believe unequivocally in the superiority of their home-grown system of Government.

Whether strict loyalty to the official line by an overwhelming proportion of the population is indeed genuine, or a defense mechanism given the high cost of nonconformity, is unknown to those of us in the periphery. Ronald Wintrobe introduces his theory on the political economy of dictatorships by precluding the possibility that “dictatorships—even totalitarian ones—can capture the souls of men and women.”³⁰ Wintrobe's assumption is put to the test, however, when one reads accounts regarding the sincere sadness felt even among North Korean defectors to the ROK upon hearing about the death of Kim Il-sung.³¹

One of the few visible examples of Government policies being ignored on a large scale relates to the ongoing violation of the strict internal and external travel restrictions that DPRK citizens are required to follow.³² The graph below, which is based on a study conducted by researchers at Johns Hopkins University, provides a clear linkage between the food shortages, the subsequent breakdown of the ration system, and the need for persons to forage in search of food. The study indicates that in 1994, 11.9 percent of the surveyed population relied on foraging, and 60.6 percent relied on Government rations as their primary source of food. By 1997, the percentage of persons relying on foraging as their primary source of food shot up to 40.2, while those relying on Governments rations dropped to 5.7.³³ The necessity to forage farther away from one's home in search of food has indeed been the primary reason why most North Koreans resort to crossing the Chinese border illegally.

²⁹ "Through the Looking Glass: A Survey of the Koreans," *Economist*, July 10, 1999, p.13.

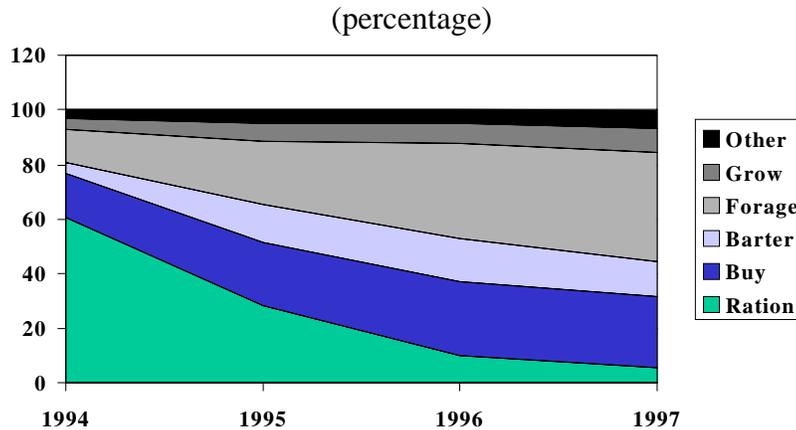
³⁰ Ronald Wintrobe, *The Political Economy of Dictatorship* (Cambridge: Cambridge University Press, 1998), p.45.

³¹ Ray Richard Grinker, *Korea and Its Futures: Unification and the Unfinished War* (New York: St. Martin's Press, 1998), p.252.

³² "2000 Country Reports on Human Rights Practices: Democratic People's Republic of Korea," U.S. Department of State, February 2001, (www.state.gov/g/drl/rls/hrrpt/2000/eap/index.cfm?docid=726).

³³ W. Courtland Robinson, Myung Ken Lee, Kenneth Hill and Gilbert M. Burnham, "Mortality in North Korean Migrant Households: A Retrospective Study," *The Lancet*, vol. 354, July 24, 1999, p.293.

Primary Source of Food for North Korean Households



Source: W. Courtland Robinson, et al.

D. External Relations

The initial euphoria surrounding inter-Korea relations, which emanated from the historic summit held between Kim Jong-il and President Kim Dae Jung of the ROK in July 2000, appears to have given way to a realization that the peace process is likely to be slow and frustrating. Few of the planned joint economic and cultural projects have proceeded as scheduled. Indications are that Kim Jong-il's much anticipated visit to Seoul is unlikely to materialize in the near future.

Relations with the United States, toward which Pyongyang places the highest priority, witnessed a flurry of activity with the visit to Washington in October 2000 by Vice Marshal Jo Myong Rok, First Vice Chairman of the National Defense Commission, and the follow-up visit to Pyongyang by Secretary of State Madeline Albright. The hand-over to the Bush administration led to a halt in US-DPRK contacts while the new administration chose to reassess the policies adopted toward the DPRK during the Clinton years. By the end of 2001, official pronouncements by the US Government reaffirmed the existence of a significant impasse between the two Governments.³⁴

China has played the role of elder statesman, and assisted the DPRK, among other matters, in preparations leading to the inter-Korea summit meeting held in June 2000. China has also actively encouraged the DPRK to follow its footsteps in terms of pursuing market-oriented economic reforms.

³⁴ "North Korea Missing Chance For Dialogue with Washington: US Envoy," *Agence France-Presse*, November 19, 2001.

Normalization talks with Japan have remained stalled for years, mainly because of the inability of negotiations to surmount the sensitive topics related to the return of some ten Japanese allegedly abducted by DPRK agents during the 1970's and 1980's, as well as compensation over the colonial rule by Japan.³⁵ The mutual relationship, which can be described as fragile at best, has yet to recover from the test-firing of a ballistic missile over Japanese airspace in August 1998.

Clear results were achieved, however, in terms of DPRK's diplomatic offensive launched during 2000 and 2001 aimed at normalizing relations with a host of industrialized countries. As a result, the DPRK can now boast diplomatic relations with, *inter alia*, Australia, Canada, New Zealand, and all the European Union (EU) countries except France and Ireland.

4. FUTURE SCENARIOS³⁶

A. No Change

Owing to its high cost, maintaining the status quo is unlikely to be a viable option for the Kim Jong-il regime. Especially now that it increasingly relies on foreign assistance to feed its people, Kim Jong-il should be aware that he must at least be seen by foreign Governments to be paying lip service to introducing incremental economic changes if he wishes to continue receiving large sums of foreign assistance money, as well as investments in the Special Economic Zones (SEZ). It would be virtually impossible for the DPRK regime to stabilize the economy—much less guarantee its own survival beyond the short term—should foreign assistance funds dry up.

It is conceivable that the DPRK could cut itself off from Western donor countries, and concentrate on arms sales to rogue states as well as other illicit activities as its primary means of earning hard currency, but it is highly unlikely for such payments alone to be able to ensure the survival of the regime in the mid- to long-term.³⁷ Besides active resistance on the part of the U.S. and its allies to stem the flow of weapons proliferation, it is foreseeable that such efforts will not be welcomed by its patrons in China, who may see that a more belligerent DPRK could provide further justification for the development by the U.S. of a Nuclear Missile Defense System as well as the general arms build-up of the U.S. military and allied forces in the region.

³⁵ Masaki Hisane, "Tokyo, Pyongyang in Secret Talks on Links," *Japan Times*, February 7, 2001.

³⁶ While the future always holds unlimited possibilities—subsequently making it impossible to cover all the available options—this paper focuses on three scenarios that most DPRK experts seem at present to believe are among the more viable options available to the DPRK regime.

³⁷ Missile exports reportedly earn the DPRK an estimated \$500 million annually. [See Shim Jae Hoon and Peter Saidel, "North Korea, Pandora's Box," *Far Eastern Economic Review*, August 10, 2000.]

B. Fundamental Reform

Just as not willing to change at all could jeopardize the regime, doing too much could prove to be even more detrimental to the well-being of the DPRK Government. Kim Jong-il faces a classic "Catch-22" situation when it comes to evaluating the implementation of reform in the DPRK. As Professor Cha phrases it: "(the DPRK) needs to open to survive, yet in the process it may unleash the forces that ultimately lead to its destruction".³⁸ A Rand Corporation study commissioned by the U.S. Army goes even further by warning that "if the North Korean regime launches major market-oriented economic reforms, the country would very likely face massive socioeconomic disruption and a growing challenge to its political legitimacy."³⁹ The inherent danger and difficulty of introducing fundamental reform in the DPRK is all the more ironic when one considers that systemic reform is the very thing needed to ensure the long-term viability of the regime.

A lot has been discussed among DPRK-watchers regarding the viability of introducing Chinese and Vietnamese-style economic reforms in the DPRK in order to bring about improvements in its economy. The media made much of the tour of Kim Jong-il and his entourage to Shanghai in January 2001 to witness the economic advances made by the Chinese Government. China itself is known to be actively promoting its track-record as a model for the DPRK to follow, and Kim Jong-il appears at least outwardly to be leaning toward the Chinese model, given his endorsement of Chinese-style economic reforms as being "correct".⁴⁰

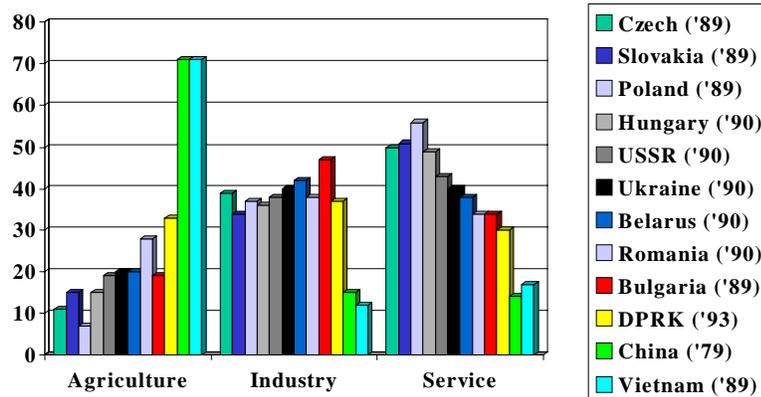
In reality, Chinese-style reforms may not be transferable to the DPRK-context. As seen in the chart below, the DPRK economy has, structurally speaking, much more in common with the centralized industrialized economies of the former Eastern bloc, as opposed to China and Vietnam, which were high agrarian societies at the time their respective economic reforms were initiated in 1979 and 1989.

³⁸ Cha, p.147.

³⁹ Lee and Pollack, p. xv.

⁴⁰ "North Korea Economy: Kim Looks to China's Example," *Financial Times*, January 23, 2001.

Distribution of Labor Force at Time of Reform



Source: Noland (2000)

Economic reform in China was primarily fueled by agricultural reform. Agricultural output jumped following a liberalization in farming policies, which de-emphasized communes in favor of private farming. The surplus labor then migrated to new semi-private industries that sprang up. Such policies were effective in China, since some 70 percent of its population were in the agricultural sector in 1979. However, as seen above, in the heavily industrialized economy of the DPRK, the agricultural sector employs little over 30 percent of the population.⁴¹

A number of other factors could make it difficult for the DPRK to emulate China and Vietnam. First, the fact that these countries won the ideological battle against their archenemies allowed them greater leverage to experiment with reform. Second, Kim Jong-il's legitimacy is derived from his father. A revocation of his father's policies could put into question the very source of his authority.⁴² Third, at the time of their reforms, China and Vietnam both had a sizeable diaspora that played a crucial role in bringing in business opportunities, while overseas North Korean communities have much less economic clout.⁴³ Fourth, particularly in comparison to China, the DPRK has fewer resources, a smaller market, and is behind in technical know-how.⁴⁴ Fifth, unlike

⁴¹ Philip P. Pan and Doug Struck, "Experts Doubt N. Korea Can Be 'Second China'," *Washington Post*, January 23, 2001.

⁴² Lee and Pollack, p.35.

⁴³ Sung-Joo Han, "The Koreas' New Century," *Survival*, vol. 42, no.4, Winter 2000-01, p.91.

⁴⁴ Michael Parks and Gregory F. Treverton, "North Korea Considers 'Going Chinese'," *Los Angeles Times*, January 26, 2001.

Vietnam and China, the natural conditions of DPRK and the profile of its workforce are not conducive to large-scale agricultural production.⁴⁵ Sixth, the existence of China's and Vietnam's political systems was not threatened at the time of the start of reforms.⁴⁶

Some of the above reasons could have been the motivating factors behind a newspaper article issued by a pro-DPRK newspaper in Japan, which repudiated the possibility of the DPRK following Chinese-style reforms, and explained the mid-January visit by Kim Jong-il to Shanghai as having been nothing more than an evaluation of the state of economic progress in China. The article further stated that: "(the DPRK) has decided to follow its own way. Our march in the new century focuses on pursuing the *juche* (self-reliance) idea, which we protected in the face of hardships, instead of shifting from it."⁴⁷

Even if the DPRK chooses to implement fundamental reform by introducing elements of a market economy, Kyung-Won Kim, the former ROK ambassador to the United States, warns that such reforms by their very nature may be very difficult to implement without backfiring. First, there is no guarantee that the market economy will lead to better economic performance. Kim cites the former Eastern bloc as being an example of such difficulty. Second, he warns that even if the economy improves, there will be a considerable time lag until the improvements are felt.⁴⁸

While radical reforms may be out of the question, not all appears hopeless when evaluating DPRK's chances of successfully pulling off a very gradual process of fundamental reform. The DPRK after all, is a smaller country, and has a more unified leadership than China at the time its reforms were initiated. The DPRK also has a willing investor in the ROK,⁴⁹ as well as the likely support of the United States and Japan, which are eager to forestall a collapse of the DPRK Government. Furthermore, should the DPRK manage to come to terms with the Japanese Government regarding compensation, billions of dollars worth of development assistance could flow into the country. However, given the aforementioned risks associated with the requisite opening up of the country as part of the introduction of reforms, the DPRK is much more inclined at this stage to follow the scenario described below.

C. Muddling Through

In many ways, given the inherent dangers associated with introducing fundamental reform, and the high cost of doing nothing, the most likely scenario to be chosen by the DPRK in the short- to mid-term is the middle-of-the-road path of "muddling through", in

⁴⁵ Smith, p.70.

⁴⁶ Han, p.91.

⁴⁷ Ji-ho Kim, "N.K. Will Not Become 2nd China," *Korean Herald*, February 12, 2001.

⁴⁸ Kyung-Won Kim, "No Way Out: North Korea's Impending Collapse," *Harvard International Review*, Spring 1996, p.24.

⁴⁹ Parks and Treverton.

which changes are gradually introduced without attempting to alter fundamentally the nature of the system.

Kim Jong-il and others in a position of power in the DPRK are justified in feeling a strong need to preserve the current system, since in introducing fundamental reforms needed to put an end to the evils inherent in the status quo, they could well unleash forces of change that could ultimately undermine their own position. As the deputy director of the CIA points out:

(Kim Jong-il) knows the security risks involved and he knows the fates of other leaders who fell victim to change they could not control. He may have seen images of Gorbachev in retirement. Of Honecker in exile. Of a startled Ceausescu on his palace balcony the day the crowds stopped cheering. At this point, Kim Jong-il may have a toe in the river of change. And he is moving just as we would expect him to: Slowly, carefully, and with plenty of room to bargain, maneuver, or pull back.⁵⁰

The unenviable fates that befell the former presidents of the ROK, Chun Doo-hwan and Roh Tae-woo, may also do little to comfort the principals of the DPRK regime.

In order to minimize the dangers of opening up to the external world as part of its efforts to attract foreign investments and aid, the DPRK has embarked on its so-called "mosquito-net liberalization" policy. Similar to a mosquito net, which lets in the cool summer breeze without letting in the insects, the plan intends to promote the inflow of foreign capital and assistance funds without bringing in "dangerous" information and ideas from abroad.⁵¹ Whether the mosquito net is immune to wear and tear is yet to be seen.

The DPRK's increased willingness to engage with the outside world has so far paid off. Between 1995 and 2000, total international aid provided to the DPRK amounted to US\$1.66 billion (including US\$476 million, or 26 percent from the ROK).⁵² Based on such favorable results, it is likely that the present modus operandi will continue.

In terms of the private sector, the most visible and profitable project has been the Mt. Kumgang tourism project led by the Hyundai group. While the project has recently run into liquidity problems, since its start in November 1998, some \$342 million has been paid to the DPRK Government.⁵³ The contract provides that a further \$600 million is to

⁵⁰ John E. McLaughlin, "North Korea: Engagement or Confrontation" (Remarks to Texas A&M Conference), April 17, 2000, (http://www.cia.gov/cia/public_affairs/speeches/ddci_speech_04172001.html).

⁵¹ Mark Magnier, "Seoul Ignores Caution Signs on the Road North," *LATimes.com*, June 10, 2000.

⁵² "S. Korea was Largest Aid Donor to N. Korea in 2000," *Associated Press*, January 4, 2001.

⁵³ "Troubled Hyundai Halves Tour Money to North Korea," *Agence France Presse*, January 30, 2001.

be paid to the DPRK until February 2005, regardless of the number of tourists.⁵⁴ As a show-case model of the mosquito net policy, entire villages were removed and security guards posted around the vicinity of the tourist facilities so as to eliminate all unintended interaction with the local population.⁵⁵

All indications thus are that for lack of a better alternative to ensure the survival of the regime, the DPRK is slowly but surely interacting with the outside world. However, analysts reiterate that as soon as the DPRK regime finds that its existence is threatened, it will pull the plug on its reform and open-door policies.⁵⁶

Foreign Governments, who uniformly seem eager to prevent a collapse of the DPRK regime, are prepared to continue assisting the DPRK, albeit begrudgingly, to ensure that it survives. While a "soft landing" is advocated by William Perry in his October 1999 review of U.S. policy towards the DPRK,⁵⁷ the geopolitical interests of the key players seem to favor no landing at all, at least for the short- to mid-term future. The unstated geopolitical and financial preference seems to lie in gradually bringing the two Koreas closer together over an extended period of time.⁵⁸

Topping the list of concerns for the ROK Government are the great costs anticipated as a result of unification with the DPRK. During the unification of Germany, Seoul sent analysts to its embassy in Bonn to analyze carefully the process and financial burden related to unification. The conclusion they reached was that the economic and social costs related to unification might bankrupt the ROK.⁵⁹ Given that the population ratio of East and West Germany was 1:4, while it is 1:2 between the DPRK and the ROK, and that economic disparities are considerably wider between the two Koreas than the two Germanies, the reunification costs are expected to be much higher for Korea than they were for Germany.⁶⁰ Estimates of the costs range from \$130 billion to \$2 trillion,⁶¹ which is a

⁵⁴ Zeno Park, "Hyundai Hits New Troubles Over North Korea Tour," *Agence France Presse*, January 9, 2001.

⁵⁵ Magnier.

⁵⁶ Wan-kyu Choi, "The Current State and Tasks of Study of Change in the North Korean Political System: A South Korean Perspective," in Chung-in Moon (ed.), *Understanding Regime Dynamics in North Korea: Contending Perspectives and Comparative Implications* (Seoul: Yonsei University Press, 1998), p.59.

⁵⁷ "Review of United States Policy Toward North Korea: Findings and Recommendations," Unclassified Report by Dr. William J. Perry, U.S. North Policy Coordinator and Special Advisor to the President and the Secretary of State. Department of State, Washington, D.C., October 12, 1999, (www.state.gov/www/regions/eap/991012_northkorea_rpt.html).

⁵⁸ Nicholas Eberstadt, "Hastening Korean Reunification," *Foreign Affairs*, Vol. 76, No.2, p.77. [See also Lee and Pollack, p.12.]

⁵⁹ Michael Breen, *The Koreans* (United Kingdom: Orion Publishing Group, 1999), p.247.

⁶⁰ Masao Okonogi, "Japanese Perspectives on Regime Dynamics in North Korea," in Chung-in Moon (ed.) *Understanding Regime Dynamics in North Korea: Contending Perspectives and Comparative Implications* (Seoul: Yonsei University Press, 1998), pp. 75-6.

⁶¹ David Reese, *The Prospects for North Korea's Survival* (Oxford: Oxford University Press, 1998), p.60.

staggering sum for the ROK, especially considering that public support for shouldering the costs of unification is not very high.⁶² Kim Dae Jung, the principal architect of the engagement policy toward the DPRK, himself reiterates that rapid unification is not desired by the ROK: "Unification is not our goal at this point. That may take the next ten to twenty years, I can't say for sure."⁶³ Furthermore, given the extremely limited capacity that the ROK currently has with regard to the accommodation and integration of the small number of North Korean defectors it receives, it is highly unlikely that the ROK can effectively cope with the anticipated large-scale migration onto its territory from the North.⁶⁴

China anticipates and fears that a unification of the Korean Peninsula would likely be conducted strictly on the terms of the ROK.⁶⁵ Aside from losing a strategic buffer zone between itself and the ROK, the Chinese believe that unification could include the possibility of U.S. forces relocated at or near the Sino-Korean border.⁶⁶

Japan sees unification, *inter alia*, as the rise of a rival that could create greater economic and diplomatic challenges.⁶⁷ Given its colonial past and the traditional animosity between the two countries, the possibility of taking a back seat to the Koreans in terms of economic performance could be an unsettling thought to Japanese policy makers. Japan also fears the possible possession by a unified Korea of nuclear weapons capabilities inherited from the DPRK.

The U.S. also has very valid reasons to favor the status quo. The unification of Korea would eliminate the primary justification for maintaining U.S. troops on the Korean peninsula.⁶⁸ Given the growing anti-U.S. sentiment among South Koreans generated by the presence of U.S. troops, it could be very difficult to justify its continued presence in a unified Korea. U.S. planners also fear the possibility of a unified Korea being less inclined to ally itself closely with the United States; for after all, a unified Korea may

⁶² The responses of an opinion poll among South Koreans to the question, "What extent are you willing to pay taxes for unification?", were as follows:

willing to pay even if it involves a high burden	6.1
willing to pay if burden is manageable	68.9
unwilling to pay even if burden is manageable	15.9
unwilling to pay taxes at all	7.7

Reported in Norman D. Levin, *The Shape of Korea's Future* (Santa Monica, California: RAND Corp., 1999), p. 10.

⁶³ Michael Vatikiotis, "Tactical Engagement," *Far Eastern Economic Review*, November 2, 2000.

⁶⁴ Calvin Sims, "Life in South Hard for North Koreans," *New York Times*, April 24, 2000, Sec. A, p.10.

⁶⁵ Lee and Pollack, p.14.

⁶⁶ Lorien Holland, "Lips and Teeth," *Far Eastern Economic Review*, April 29, 1999, p.15.

⁶⁷ Eberstadt (1997), p.79.

⁶⁸ Lee and Pollack, p.89.

have a strategic interest in positioning itself neutrally between China and the United States.⁶⁹

While President Vladimir Putin tried in mid-2001 to regain for Russia some of the considerable influence the U.S.S.R. formerly wielded in DPRK affairs, it seems unlikely that Russia would favor the rise of a new regional power along its eastern borders during a time when it is very vulnerable itself.⁷⁰

Subsequent to the reasons listed above, as long as the DPRK shows a marginal interest in cooperating with the primary countries of concern, it is likely that for the foreseeable future, hard currency will find its way to the coffers of the DPRK regime—enough at least to guarantee its survival. For these reasons, whether Kim Jong-il will continue his reform efforts after initial survival is guaranteed will be the true test of his determination to fundamentally reform the DPRK.

5. PROTECTION OF DPRK CITIZENS IN CHINA

According to reports by Newsweek in 2001, some 300,000 North Koreans were estimated to be living illegally in Northeastern China.⁷¹ While the foreign media, ROK Non-Governmental Organizations (NGOs) and think-tank institutes estimate the number of such persons to range between 100,000 and 300,000, the Chinese and ROK authorities estimate the number to be much lower, at 10,000.⁷² The DPRK Government itself concedes that some 200,000 of its citizens have fled for China.⁷³

With the exception of a small minority who manage to find a way to defect to the ROK via a third country, most of the North Koreans discreetly reside among ethnic Korean communities in the Chinese towns of Tumen, Ji'an, Yanji, and Dadong as well as other cities in the Jilin and Lianing provinces. Ethnic Koreans in the region are said to number some 2 to 3 million.⁷⁴

⁶⁹ Michishita Narushige, "Regional Aspects of Korean Reunification: Focusing on Strategic Issues", in Christopher Dashwood and Kay Moller (eds.), *North Korean Scenarios (1999-2003) and Responses of the European Union* (Baden-Baden: Nomos Verlagsgesellschaft, 1999), p.83-84.

⁷⁰ Eberstadt (1997), p.79.

⁷¹ Wehrfritz and Takayama.

⁷² Noland (2000), p.189.

⁷³ Barbara Crossette, "Korean Famine Toll: More Than 2 Million," *New York Times*, August 20, 1999, Section A, p.6.

⁷⁴ "Persecuting the Starving: The Plight of North Koreans Fleeing to China," Amnesty International, December 15, 2000, ASA 24/003/2000, (www.amnesty.org).

A. Legal Status

To a large extent, for a number of years the Chinese authorities tolerated the presence of the North Koreans on their territory, unless they became too visible or got involved in criminal activities.⁷⁵ This tolerance lasted until about early 1999, when crackdowns on the group began.⁷⁶

Various reasons are cited for the crackdowns, ranging from a fear of creating a major pull factor that could help undermine the regime in Pyongyang,⁷⁷ fear of being used as a staging ground for anti-DPRK activities,⁷⁸ saving face toward the DPRK,⁷⁹ fear of antagonizing the DPRK,⁸⁰ to a reluctance to create an additional economic drain on an already economically depressed region.⁸¹ It is likely that the truth lies in a combination of these factors.

According to reports by NGOs, an estimated 7,000 persons were forcibly returned during the initial wave of crackdowns during 1999. Fines imposed on Chinese citizens harboring or assisting North Koreans were increased ten-fold from 500 yuan (U.S.\$60) to 5,000 yuan (U.S.\$600)—5,000 yuan being the equivalent of a year's salary.⁸²

A second wave, coinciding with the visit of Kim Jong-il to Beijing, began in March 2000. According to aid groups, some 2,000 North Koreans were returned to the DPRK every month—double the numbers in 1999.⁸³ Fines were increased to 30,000 yuan (U.S.\$3,600), and rewards given to those who cooperated with the Chinese authorities in tracking down North Koreans.⁸⁴

According to reports from the ROK media, a third wave of crackdowns appears to have begun in the spring of 2001. The *Choson Ilbo* reported on April 2, 2001, that DPRK agents started handing out money to ethnic Koreans in Northeast China to obtain their cooperation in locating North Koreans illegally residing in the area. Ethnic Koreans

⁷⁵ Elisabeth Rosenthal, "China in Campaign to Expel Koreans Who Enter Illegally," *New York Times*, May 31, 2000, Sec. A, p.1.

⁷⁶ Amnesty.

⁷⁷ Hoon, pp.12-13.

⁷⁸ Ibid., p.14.

⁷⁹ Holland, p.15.

⁸⁰ Aidan Foster-Carter, "North Korea: Prospects, Scenarios, and Implications," WRITENET for UNHCR, March 1999 (UNHCR/CDR REF WORLD Databases).

⁸¹ "Planning for a Peaceful Korea: A Report of the Korea Competitive Strategies Working Group," Nonproliferation Policy Education Center, November 3, 2000, (www.wizard.net/~npec/koreareport.htm).

⁸² Amnesty.

⁸³ Rosenthal (2000).

⁸⁴ Amnesty.

found to have helped out the North Koreans were apparently targeted for harassment by the agents.⁸⁵

The official position of the Chinese Government regarding the North Koreans was stipulated by the Chinese Foreign Ministry spokesperson as follows:

In recent years, a small number of DPRK citizens did illegally cross the Sino-DPRK border and enter China due to economic difficulties. According to international law and their purposes for crossing the border, this small number of DPRK citizens cannot be regarded as refugees.⁸⁶

The United Nations High Commissioner for Refugees (UNHCR), in contrast, maintains that "insofar as the small group of persons who would fall within the international refugee definition is concerned, they must be protected against forcible return to North Korea."⁸⁷

A legal analysis of the 1951 Geneva Convention Relating to the Status of Refugees and its normative application puts into question the validity of the official position asserted by the Chinese authorities. Under Article 1(a) of the Geneva Convention, a refugee is defined as someone who "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."

Contrary to the Chinese position which focuses exclusively on the reasons an individual left his/her country of origin as a means for denying him/her refugee status, the Geneva Convention concerns itself with the question as to whether an individual has a well founded fear of persecution if he/she were to be sent back to his/her country of origin. In another words, the focus of the inquiry is not past persecution, but the likelihood of future persecution. Professor Goodwin-Gill reiterates this point when he states that:

The Convention neither requires that the putative refugee shall have fled by reason of fear or persecution, nor that persecution should have actually occurred. The fear may derive from conditions arising during an ordinary absence abroad (for example, as a diplomat or holiday-maker), while the element of well-foundedness looks more to the future, than to the past.⁸⁸

⁸⁵ "DPRK Agents Allegedly Using Much Reward Money to Find 'Refugees'," *Choson Ilbo*, April 2, 2001, FBIS.

⁸⁶ "PRC FM Spokeswoman on Korean Summit, Refugee Issues," *Zhongguo Xinwen Shen*, June 8, 2000, FBIS.

⁸⁷ "UNHCR Talking to DPRK, China, Russia on DPRK Refugees," *Yonhap*, February 3, 2000, FBIS.

⁸⁸ Guy Goodwin-Gill, *The Refugee in International Law* (Oxford: Clarendon Press, 1983), p.25.

Refugee law has a specific terminology for persons who fall under this legal category: refugee *sur place*.⁸⁹

In classic refugee status determination analysis, past persecution is usually the best measure to determine the likelihood of future persecution. In the case of North Korean refugees, assuming that the majority of them flee simply because of hunger, they are unlikely to have valid grounds for successfully claiming refugee status based on past persecution. However, when one looks (as we do below) at the possibility of future persecution awaiting North Koreans who have left their country illegally and are subsequently forcibly returned to the DPRK authorities, their chances of falling within the definition of the Geneva Convention are greatly increased.⁹⁰

Article 117 of the North Korean criminal code includes a reference related to leaving the country illegally: "A person who crosses a frontier of the Republic without permission shall be committed to a reform institution for up to three years."⁹¹ Whether such punishment equates to persecution would need to be analyzed in accordance with a variety of factors. Firstly, as stipulated in Paragraph 59 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, it is necessary to determine whether the crime for which the individual can be prosecuted is in line with accepted human rights standards.⁹² Given that the individual is being imprisoned for exercising a basic human right of freedom of movement, which is enshrined in Article 13(2) of the Universal Declaration of Human Rights,⁹³ an imprisonment of three years may be deemed excessive. Furthermore, given that a significant proportion of persons crossing over into China for food do so in order not just to better their economic situation, but to avoid starvation, the basic human right at issue may also include the fundamental right to be free of hunger⁹⁴, and to an adequate standard of living, which is enshrined, *inter alia*, in Article 25 of the Universal Declaration of Human Rights as well as Article 11 of the International Covenant of Economic, Social and Cultural Rights.⁹⁵

⁸⁹ see *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva: UNHCR, January 1992), Paragraphs 94-96.

⁹⁰ This scenario runs parallel to the practice referred to as *Republikflucht*, which was frequently used during the cold war vis-à-vis persons who fled communist regimes, and as a result could be severely penalized, if returned, by the internal laws of their country. [See Atle Grahl-Madsen, *The Status of Refugees in International Law* (Leyden: A. W. Sijthoff, 1966), volume I, pp. 238-242, or Guy S. Goodwin-Gill, *The Refugee in International Law* (Oxford: Clarendon Press, 1996), p. 53.]

⁹¹ Lohman, p. 9.

⁹² UNHCR Handbook, Paragraph 59.

⁹³ Article 13(2) of the Universal Declaration of Human Rights stipulates that: "everyone has the right to leave any country, including his own, and to return to his country."

⁹⁴ Article 1 of the Universal Declaration on the Eradication of Hunger and Malnutrition of 1974 stipulates that: "every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental facilities."

⁹⁵ An instrument which China ratified on March 27, 2001.

Second, Goodwin-Gill suggests that attention be paid to the "object and purpose of such legislation" when analyzing whether the application of severe penalties for illegally leaving the country can, by itself, be a ground to claim persecution.⁹⁶ He provides as an example a 1971 court decision in the Federal Republic of Germany, which held that "[Punishment for the crime of flight from the Republic] serves the goal of securing the political sovereign authority of communism. It is not comparable with the penalties with which, even in 'constitutional states', unauthorized border crossing is punished."⁹⁷ An analysis of the DPRK legislation may very well fall within a similar legal juxtaposition as that of the German case, which is that of a law drafted mainly to curtail freedom of movement out of the country so as to prevent access of its citizens to new ideas and information which could ultimately be used against the regime.

Third, the reported treatment by the DPRK authorities of North Koreans caught for illegally leaving the country is an additional persecutory element on top of any long prison sentence. According to reports compiled by Amnesty International, potential penalties include long interrogation and torture, imprisonment under extremely harsh conditions, or forced labor at camps.⁹⁸

The North Korean criminal code additionally can penalize the act of seeking asylum. Article 47 of the 1987 DPRK Criminal Code stipulates that, "A citizen of the Republic who defects to a foreign country or to the enemy in betrayal of the country and the people... shall be committed to a reform institution for not less than seven years. In cases where the person commits an extremely grave offence, he or she shall be given the death penalty."⁹⁹ The severity of punishment associated with the "crime" leaves very little question as to whether it would be reasonable for a North Korean who seeks asylum abroad to fear persecution upon return.

It should be noted that reports compiled by NGOs based on eyewitness accounts seem to indicate that, because of the desperate food shortage experienced over the past few years, the DPRK authorities are not applying the above-mentioned statutes as strictly as they have in the past. Persons who are forcibly returned to the DPRK are apparently released after a few days or weeks of detention and interrogation. Those who are returned a third time, however, as well as persons who are known to have contacted Christian missionaries, intelligence officers, or met with foreigners, or women who become pregnant while in China, are still dealt with in a severe manner.¹⁰⁰ Amnesty International also states that:

⁹⁶ Goodwin-Gill (1983), p.32.

⁹⁷ Goodwin-Gill (1983), p.32 fn.49.

⁹⁸ Amnesty.

⁹⁹ Lohman, p.19.

¹⁰⁰ See Mi-yong Kim, "DPRK Said to be Loosening Punishment of Defectors," *Choson Ilbo*, November 14, 2000, FBIS, as well as Hoon, p.13.

North Korean Government officials, suspected political opponents or those who attempt to seek political asylum outside the country are particularly at risk of harsh punishment if forcibly returned. Little is known about their fate but given the provisions of the North Korean Criminal Code and the numerous reports of executions, it is not unlikely that some of them may have been executed.¹⁰¹

The 2000 Human Rights Report issued by the U.S. State Department also refers to instances of execution of repatriated defectors.¹⁰²

Finally, aside from determining the likelihood of future persecution, the Geneva Convention requires that the persecution be based on at least one of the stipulated grounds: race, religion, nationality, membership of a particular social group or political opinion. While persons who flee the DPRK because of hunger may not necessarily possess a particular political opinion, once such persons are forcibly returned to the DPRK, they are deemed to be persons who are potentially hostile to the regime, and are dealt with by the authorities in such a manner, which includes both close monitoring, and the possibility of receiving less food through the official rationing system.¹⁰³ Thus, while not necessarily possessing a political opinion per se, the very fact that they are imputed to have a political opinion should be sufficient to invoke the Geneva Convention.

For all the reasons stipulated above, the Chinese Government has a duty under the Geneva Convention to assess the eligibility of North Koreans who desire to apply for refugee status while on Chinese territory. Even if China is reluctant toward granting refugee status to North Koreans, it is still bound by the terms of the 1951 Geneva Convention, which prohibits the expulsion or forcible return (*refoulement*) of persons at risk. Article 33(1) of the Convention states that: “No Contracting State shall expel or return (“*refouler*”) a refugee¹⁰⁴ 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.”

¹⁰¹ Amnesty.

¹⁰² 2000 U.S. Country Reports on Human Rights Practices.

¹⁰³ Rosenthal (2000).

¹⁰⁴ It must be noted that in theory, official recognition by a State party to the Geneva Convention of his/her refugee status does not make the person a refugee, but simply declares him/her under municipal law to be one. A person does not become a refugee because of recognition, but is recognized because he/she is a refugee. In practice, with regard to State parties that conduct positive refugee status determination procedures (as is the case with China), the principal determinant whether a person is a refugee is the outcome of its own status determination procedures designed to interpret Article 1 of the Geneva Convention. Among such States, the full rights and duties of the Geneva Convention are deemed to be acquired by an individual only after he/she is officially granted refugee status. Exceptionally, the notion of *non-refoulement* in Article 33(1) of the Convention—in anticipation of the possible acceptance of the person as a refugee—must be applied before he or she is formally granted refugee status. In support of the above notion, the Executive Committee of the High Commissioner's Programme clearly stipulates in Conclusion No. 6 (1977), the “fundamental importance of the principle of *non-refoulement*... irrespective of whether or not individuals have been formally recognized as refugees.”

Aside from the Geneva Convention, China, as a signatory to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is bound under Article 3 of the treaty which stipulates that: "No State Party shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

B. International Protection of DPRK Refugees

Regardless of the above-mentioned safeguards stipulated under international law, the Chinese authorities brought to bear their official view in December 1999, when despite strong criticism from UNHCR and western nations, it *refouled* seven North Korean refugees to the DPRK. The seven persons had been mandated as refugees by UNHCR in Russia, prior to their initial deportation to China.¹⁰⁵ In response to the *refoulement*, Sadako Ogata, the United Nations High Commissioner for Refugees at the time, spoke up strongly in protest of the action taken by the Chinese Government: "We are gravely concerned by the Chinese decision to deport people whom UNHCR has recognized as refugees under the 1951 Refugee Convention."¹⁰⁶

The Chinese Government quickly replied that it has to deal with the issue "prudently" with an eye to maintaining stability on the Korean Peninsula. Beijing called on UNHCR to exercise restraint, and to "understand and respect the Chinese position and avoid complicating the situation."¹⁰⁷ In response to the Chinese statement, UNHCR immediately backed down from its strong position. Francois Fouinat, the Director of the Asia Bureau stated that: "It (the agency's protest to China) is exceptional, and I hope it remains exceptional. It is an unfortunate incident and may be a chance for a good restart of discussions."¹⁰⁸

A few months later, Qiao Zonghuai, the Chinese representative to the Executive Committee of the Programme of the United Nations High Commissioner for Refugees (EXCOM), took the opportunity during an EXCOM session to further reiterated Beijing's position regarding North Koreans in a thinly-disguised criticism of UNHCR's protest against the *refoulement*:

[If UNHCR is to] grow in effectiveness and importance, as was hoped, it must seek to strengthen its cooperation with Governments, adhere strictly

¹⁰⁵ While the Russians returned this group of North Koreans to China, according to news reports, some 340 North Koreans have been handed by Russian authorities to UNHCR in recent years. (John Pomfret, "N. Korean Refugees Insecure in China: West Silent Despite Forced Repatriations," *Washington Post Foreign Service*, February 19, 2000, p. A01.)

¹⁰⁶ "UNHCR Protests Chinese Deportation of North Koreans," UNHCR Press Release, January 13, 2000.

¹⁰⁷ "China Urges Restraint in Granting N. Koreans Refugee Status," *Kyodo*, February 7, 2000.

¹⁰⁸ *Ibid.*

to its Statute and comply with the instructions it received from the General Assembly. According to its Statute, it should intervene only with the approval of the Governments of the countries concerned, since States were first and foremost responsible for the situation of refugees. It might also ensure at all times that its activity was entirely non-political and related only to groups or categories of refugees.¹⁰⁹

Aside from this particular incident, as discussed previously, NGOs and independent observers report ongoing incidences of forcible returns to the DPRK, and the persecution of such persons by DPRK authorities.

6. POLICY OPTIONS FOR UNHCR

As long as the DPRK pursues a muddling through strategy, it is likely that for the short- to mid-term future, a steady number of North Koreans will continue to trickle into Northeastern China in hopes of procuring food and/or international protection. The primary policy priority for UNHCR must thus be geared toward resolving the issue of providing protection to persons of concern. The biggest obstacle to overcome remains the reluctance of the Chinese authorities to consider the application of the Geneva Convention toward the North Koreans.

At the same time, given the difficulty of accurately gauging the health of the DPRK regime, UNHCR must also be poised to deal with a mass influx scenario should such a situation arise. John McLaughlin, the Deputy Director of the CIA, reiterated this point in a talk he gave in April 2001 at a conference on the DPRK: "Because totalitarian elites tend to mask their own policy deliberations and drive opposition underground, the health and stability of their regimes are notoriously difficult for outsiders to gauge."¹¹⁰

In conducting contingency planning, a crucial factor will be the maintenance of secrecy. Public statements made by the High Commissioner¹¹¹ and the ROK Foreign Minister¹¹² both stress the importance of pursuing negotiations regarding the issue of North Korean refugees in a discreet manner that satisfies all the parties involved. Indeed, the U.S., Japan, and the ROK have a lot to lose and very little to gain by being intimately associated with the issue of North Koreans in China. On the other hand, by keeping the issue away from the headlines and avoiding direct criticisms vis-à-vis Beijing, these Governments should be able to maintain greater flexibility in their negotiating positions.

¹⁰⁹ Summary Record of the 545th Meeting, Executive Committee of the Programme of the United Nations High Commissioner for Refugees, U.N. Doc A/AC.96/SR.545 (21 November 2000), para. 67.

¹¹⁰ McLaughlin.

¹¹¹ "UNHCR Talking to DPRK, China, Russia on DPRK Refugees," *Yonhap*, February 3, 2000, FBIS.

¹¹² Secretary of State Madeleine K. Albright and Republic of Korea Foreign Minister Lee Jung-Binn. Press remarks at Signing Ceremony for Social Security Agreement and Administrative Arrangement, Treaty Room, Department of State. Washington, D.C., March 13, 2000, (secretary.state.gov/www/statements/2000/000313a.html).

A Continuous Flow

Any policy option that attempts to provide protection to North Koreans in China would need to offer a solution that is agreeable to the Chinese authorities. Aside from its obligations to the DPRK Government under the terms of the 1960 DPRK-China Extradition Treaty, the 1986 Agreement on Cooperation in DPRK-China Boundary Areas, and the Jilin Province Management Act of November 1993,¹¹³ China fears that the granting of refugee status to North Koreans would lead to a "loss of face" vis-à-vis the DPRK regime.¹¹⁴ Moreover, the primary Chinese fear may be that by granting refugee status to persons on its territory, it would create a major pull factor for North Koreans fleeing difficult circumstances at home. Should the pull factor be great enough, the fear is that it could contribute to undermining the stability of the DPRK regime.

As illustrated previously, UNHCR and the Chinese Government are currently at a stalemate with regard to the protection of North Koreans. The Chinese insist on deporting such persons, while prohibiting the access of UNHCR to the border areas and the screening of deportees for the possible inclusion of asylum seekers and refugees.

While hardly an ideal situation, until the Chinese Government shows a willingness to offer access to asylum to the North Koreans and for UNHCR to monitor their circumstances, UNHCR would need to work with the Chinese Government to ensure that the North Koreans are at least permitted to remain on Chinese soil, and not forcibly returned to the DPRK. As described previously, however, it may be difficult for the Chinese authorities to justify to their DPRK counterparts a policy of tolerance.

It is also conceivable that the advocacy of any form of limited tolerance could be severely challenged as a result of China's being chosen to host the summer Olympic games for 2008.¹¹⁵ The presence of North Koreans on its territory—and the predictable international condemnation of the fact—will likely be an embarrassment that the Chinese would like to avoid at all cost. This could lead the Chinese to attempt to alleviate any future problems early on by stepping up its efforts to locate North Koreans illegally on its territory, and to effectively seal off its border with the DPRK.

¹¹³ Chu-Whan Son, "North Korean Refugees: Problems and Policy Consideration," *Korea Focus on Current Topics*, May-June 1999, vol. 7, no.3, (www.kr.or.kr/KoreaFocus).

¹¹⁴ The "face" factor remains very important to the Chinese Government, which outwardly professes to maintain a relationship as close as "lips and teeth" with the DPRK. (See Scalapino, p.14.)

¹¹⁵ The reluctance of the Chinese authorities to attract adverse publicity regarding the issue of North Korean refugees was seen in the quiet and prompt departure granted to seven North Koreans who sought asylum at the Beijing office of UNHCR in June 2001—just two weeks prior to the vote by the International Olympic Committee on the 2008 Olympic games. A number of press reports indicate that Chinese efforts to deport North Koreans back to the DPRK gained considerable momentum following the episode in June. [see John Pomfret, "China Steps Up Repatriation of North Korean Refugees," *Washington Post Foreign Service*, July 23, 2001, p. A16, or Don Kirk, "China Ferrets Out North Korean Refugees," *New York Times*, July 30, 2001.]

A potential pilot project that UNHCR may consider pursuing with the Chinese authorities would be to agree discreetly to detain North Koreans who, upon arrest by the Chinese authorities, express a fear of being persecuted by the DPRK should they be forcibly returned to their country.¹¹⁶ Under this pilot project, all such persons would be placed in a special detention center, to be monitored on a regular basis by UNHCR, the International Federal of Red Cross and Red Crescent Societies (IFRC), or an independent NGO. The challenge for UNHCR would first be to ensure that optimal conditions of stay and livelihood be maintained at the detention center, so as to compensate for the fact that "residents" will be deprived of their freedom of movement. Another prerequisite for UNHCR would be to obtain guarantees that the existence of the center will not be used as a pretext by the Chinese authorities to crack down even further on North Koreans on its territory, especially given that a large number of North Koreans continue to live illegally without being detected by the Chinese authorities and DPRK security agents. Whatever the case, it is unlikely that such a center would be large enough to accommodate the high number of North Koreans estimated to reside on Chinese territory. Under such circumstances, it would be crucial to obtain the understanding of the Chinese authorities that the project is deemed to be nothing more than a discreet pilot project aimed at providing protection to persons particularly likely to be targeted for persecution if returned to the DPRK, and that vulnerable persons who cannot be accommodated in the centers should be protected against *refoulement*.

Other important points of understanding that would need to be resolved in advance relate to, *inter alia*: the construction and operating costs of such centers, guaranteeing that a screening of residents takes place to ensure that security agents from the DPRK do not infiltrate the centers, and ways of ensuring that the initial planning and future activities related to the project are conducted discreetly.

As far as the duration of stay is concerned, it would ideally be in the interest of UNHCR to have an agreement with Beijing so that after a certain period of stay, particularly in cases involving vulnerable persons, UNHCR will be allowed access to those individuals and be able to consider together with the Chinese authorities the possibility of recommending such persons for resettlement abroad.

The Chinese would not be breaking any of its internal rules by operating such centers. The legal basis under Chinese law for the detention of the North Koreans can be found in Article 40 of the Rules Governing the Implementation of the Law of the People's Republic of China on the Entry and Exit of Aliens,¹¹⁷ which stipulates penalties for aliens illegally entering or exiting China. This law, aside from prescribing fines as well as detention of 3 to 10 days, allows criminal prosecution for offenses deemed to be serious

¹¹⁶ Needless to say, the primary challenge for UNHCR would be to ensure that it has an independent means of verifying that persons who express fear of persecution are not *refouled*.

¹¹⁷ Approved by the State Council on December 3, 1986 and Promulgated by the Ministry of Public Security and the Ministry of Foreign Affairs on November 27, 1986. Revised and approved by the State Council on July 13, 1994, and Promulgated by the Ministry of Public Security and the Ministry of Foreign Affairs on July 15, 1994.

enough to constitute a crime. Article 322 of the Criminal Law of the People's Republic of China¹¹⁸ in turn, allows for imprisonment of up to one year for a serious violation of border control regulations. The commission of bribery, and the use of fake documents, *inter alia*, can increase the duration of imprisonment by up to ten years.

The above-mentioned pilot project should only be applied to persons who claim they are likely to face persecution if they are sent back to the DPRK, and need to be provided with international protection. Otherwise, for North Koreans who are arrested by the Chinese authorities and express a desire to return to the DPRK, UNHCR should encourage the Chinese Government to ensure that such persons are not handed back directly to the DPRK authorities, but are allowed to cross back discreetly into their country. By not handing over such persons to the DPRK, the Chinese Government would not automatically be creating a risk of potential persecution for persons whose only interest is in procuring food for themselves and their families in the DPRK. In order to eliminate possibilities for the creation of further *sur place* refugee cases, the Chinese authorities would also need to bring to an end the presence of DPRK agents who are reportedly operating in Northeast China with the explicit task of capturing and sending its citizens back to the DPRK.¹¹⁹

Given that it is not in China's interest to alter its policy towards North Koreans, or necessarily that of the United States, Japan, and ROK to confront China aggressively regarding the issue, UNHCR would have to assume a proactive role in first discreetly informing the respective parties of the pilot project, and to obtain their support. A sample initial lobbying strategy is illustrated below:

¹¹⁸ Adopted by the Second Session of the Fifth People's Congress on July 1, 1979 and amended by the Fifth Session of the Eighth National People's Congress on March 14, 1997.

¹¹⁹ Wehrfritz and Takayama.

**Initial Lobbying Strategy for UNHCR to Initiate Pilot Project to
Stem Forced Returns of North Koreans to the DPRK**

- **Appoint in-house focal point at UNHCR Headquarters in Geneva responsible for all lobbying efforts, as well as a special project team made up of liaison officers at UNHCR offices in target countries.**
- **Circulate concept/conduct presentations discreetly and gather moral and financial support among the EU, U.S., ROK, and Japan.**
- **Lobby the U.S. Government (State Department and Congress) to address issues related to North Koreans in China within the Trilateral Coordination and Oversight Group (TCOG) process.**
- **Once initial support is gathered, begin informal discussions with the Chinese Ministry of Foreign Affairs.**
- **Lobby for inclusion of subject matter on talking points of high level visitors to China.**

UNHCR should expect very little public support from Governments regarding its plans, with the possible exception of EU Governments, which do not have a direct stake in the outcome of policies in the region. At the same time, UNHCR should be fully prepared for vocal criticism from NGOs,¹²⁰ which may be dissatisfied with anything less than the endowment of full refugee status and resettlement for the North Koreans in China.

While hardly an orthodox solution to the problems inherent in the status quo, given the staunch position that the Chinese Government has taken on the issue—which, as analyzed above, is based on its strong geo-political interests—and the ongoing forced returns of North Koreans, it is imperative that UNHCR promptly adopt a partial solution in order to break the zero-sum nature of the current equation. Successfully setting up this, or another pilot project that resolves the principal aspects of the greater problem of North Koreans in China, would be an important confidence-building measure that could be built upon pending a satisfactory outcome.

B. Mass Outflow

Aside from attempting to address the immediate concerns resulting from the ongoing returns of North Koreans to the DPRK, UNHCR needs to set in place a comprehensive contingency plan that can deal with a sudden large-scale outflow of persons from the DPRK into neighboring countries. Given the inherent complexities involved in contingency planning—particularly when planning in a context where the certainty of

¹²⁰ Media reports have indicated that the UNHCR office in Seoul (which was opened in April 2001) may become a focal point for demonstrations by ROK NGOs that advocate for the rights of North Koreans in China. [“North Korean Politics, Refugee Scandal Brewing,” *Economist Intelligence Unit*, January 10, 2001.]

facts is little more than a state of mind—this paper has selectively addressed only some of the numerous variables that need to be taken into account.

i. Causes of Displacement

A variety of scenarios could result in mass displacement from the DPRK. The factors listed below, individually—but most likely collectively—may be among the primary catalysts leading to a mass outflow of North Koreans out of the DPRK.

Some Factors That Could Trigger Mass Displacement from the DPRK

- armed conflict
- coup d'etat
- popular unrest
- death of Kim Jong-il
- intentional policy
- foreign intervention
- Government functions collapse
- natural disaster

While it is beyond the scope of this paper to analyze each of the factors listed above,¹²¹ the subject of intentional policy and popular unrest are briefly addressed.

Taking into consideration the aggressive brinkmanship used by Kim Jong-il as part of his negotiation tactics,¹²² it is within the margin of possibility that the DPRK regime, if placed in a situation where such a strategy is perceived to be beneficial to their bargaining position, may opt to release waves of refugees onto its neighbors. An intentional policy of mass displacement has precedence, for example, in Cuba during the six-month Mariel Boat Lift, and arguably by Serbia in response to the NATO bombardment.¹²³ Such policies, if utilized strategically, can be an effective means of blackmailing a recipient Government.

Whether or not a popular uprising could topple the DPRK regime is another topic that is debated among DPRK-analysts. While most experts agree with Suk and Kim, who point to the severe punishments awaiting anyone who dares to air his/her grievance or puts up a

¹²¹ see Lee and Pollack for detailed study of many of the factors.

¹²² see Scott Snyder, *Negotiating on the Edge: North Korean Negotiating Behavior* (Washington D.C.: United States Institute of Peace Press, 1999).

¹²³ see Kelly Greenhill, "People Pressure: Engineered Migration as an Instrument of Coercion," Ph.D. dissertation, Massachusetts Institute of Technology (forthcoming).

resistance against official policies (coupled with a highly effective state security apparatus) as the primary reasons why it is highly unlikely for an opposition movement to arise in the DPRK,¹²⁴ the theory of preference falsification proposed by Timur Kuran poses an interesting question as to the validity of such observations.¹²⁵ Kuran's theory suggests that people misrepresent their genuine desires because of perceived social pressures. When practiced on a massive scale, such misrepresentations can, *inter alia*, cause Government leaders to misread greatly the level of repressed feelings within the society toward the Government's policies. When autocrats are in power, the general populace may be too demoralized and dependent on authority to rebel. However, given the right opportunity, the repressed anger can suddenly emerge on a massive scale—to the great surprise of its leaders—as it did during the Prague Spring, as well as during the massive protests that led to the fall of most of the Eastern bloc regimes. Should the proper circumstances be in place, the possibility of a popular uprising or mass unrest against the DPRK regime perhaps cannot be automatically discounted.

It is also not a foregone conclusion that any of the outflow scenarios, with the possible exception of armed conflict, would necessarily trigger a mass outflow. Some experts argue that because of the extremely limited knowledge of and negative attitude toward conditions outside the DPRK, and the strong psychological and logistical barriers to its citizens leaving their country, North Koreans may be less inclined to migrate en-mass except under extreme conditions.¹²⁶ On the other hand, should the DPRK Government collapse, it is entirely conceivable that the next best reliable "institution" that North Koreans call on to get them through the imminent hardships may be their extended families in neighboring countries.

ii. Indicators

Considering that most of what we know about the DPRK is derived from anecdotal evidence, the indicators we use to detect a potential collapse of the DPRK regime are equally challenged in terms of their validity and predictive power. A Rand study conducted for the U.S. Army reflects this sentiment: "To be sure, a sharp alteration of the status quo, including regime collapse or systemic implosion, cannot be predicted with certainty; such change might occur with little or no warning."¹²⁷ Under such circumstances, it is imperative for UNHCR to ensure that sufficient preparations are made so that it and its primary interlocutors can effectively deal with the outbreak of a mass influx situation that may arise at a moment's notice.

¹²⁴ Suk and Kim, p.55.

¹²⁵ see Timur Kuran, *Private Truths, Public Lies: The Social Consequences of Preference Falsification* (Cambridge: Harvard University Press, 1995).

¹²⁶ Lohman, pp.16, 25; Smith, in Noland (ed.), p.64-65; as well as Helen-Louise Hunter, *Kim Il-song's North Korea* (Westport, Connecticut: Praeger, 1999).

¹²⁷ Lee and Pollack, p.2.

The following list of indicators produced by the Rand Corporation can, if taken as a whole, serve as a useful device to measure the level of instability building up in the DPRK:

Indicators Hinting Towards Instability in the DPRK
<p style="text-align: center;">(political)</p> <ul style="list-style-type: none">• Increased defections of high-ranking officials and military officers.• Sudden shifts in leadership hierarchy.• Prolonged absence from public view of key Government, party and military officials.• Subtle criticism of Kim Jong-il in official media.• Downgrading of party activities and anniversaries.
<p style="text-align: center;">(socioeconomic)</p> <ul style="list-style-type: none">• Final breakdown of ration system.• Continued decline of harvest and increase in request for humanitarian assistance.• Major surge in refugee flows.• Increased crackdown on “antisocialist crimes.”• Growing incidence of public executions.• Increased transfer of internal security duties from the Ministry of State Security to army units.• Increased surveillance of “wavering” and “hostile” classes.
<p style="text-align: center;">(military and security)</p> <ul style="list-style-type: none">• Growing militarization of the party.• Rigidification of major foreign policy positions.• Unexpected or unusual military appointments.• Withdrawal from four-party talks.• Unilateral suspension of the Agreed Framework.• Discontinuation of Korean Peninsula Energy Development Organization (KEDO).

Source: Lee and Pollack.

UNHCR will need to work toward developing its own network of contacts and information sources in order to obtain reliable situation reports both from the DPRK as well as at the Chinese-DPRK border. Such data will be helpful in tracking any major irregularities in the country, and would allow UNHCR to address imminent emergencies in a proactive manner.

iii. Entry Points

Of prime interest when devising a contingency plan is the estimation of likely entry points.¹²⁸ Strictly based on the fact that 10 million North Koreans live within a week's walking distance of the De-Militarized Zone (DMZ)¹²⁹ and that 7.7 million South Koreans have family members in the DPRK,¹³⁰ the ROK at first seems to be the most logical country of destination for the majority of North Koreans, should there be an uncontrolled displacement. However, a factor that will limit movement to the ROK is the presence of an estimated 1.04 million landmines buried throughout the DMZ, and an additional 75,000 mines planted along the border.¹³¹ Whether a direct road and rail link is completed between the DPRK and ROK at the time of the influx is likely to influence strongly the direction and volume of the flow towards the ROK.¹³²

The absence of a direct route may technically work to the favor of the ROK authorities, who would very likely be interested in limiting an influx onto its territory. However, the perceived security benefits for the ROK authorities may quickly turn into a public relations nightmare should sufficient numbers of desperate North Koreans start to get killed or seriously injured trying to cross through the minefields. The weight of domestic and international opinion would most likely force the ROK Government quickly to offer alternate solutions, which may include sea and air-based evacuation programs.

The protection solution of choice for the ROK authorities is likely to be the provision of assistance to the North Koreans without having them enter the territory of the ROK. Estimates as to the number of migrants from the DPRK who are likely to head south if the border is opened range from 1.4 - 2.8 million to 4 million.¹³³ Based on the difficulty that the ROK has in accommodating the small number of North Korean defectors it receives, it would be inconceivable for the ROK at this stage to have the know-how or resources to be able to care for such a large group.

Aside from the need to provide immediate material assistance to persons entering its territory, the rapid influx of such a large group would also make it impossible to screen out DPRK security agents as well as potential combatants and/or terrorists. Moreover, the

¹²⁸ It should be noted that given the harsh winter conditions prevalent in Northeast Asia, any contingency plan would have to take seasonal variations into account.

¹²⁹ "Through the Looking Glass: A Survey of the Koreas," *Economist*, July 10, 1999, p.14.

¹³⁰ John Larkin, "Hopes for Family Reunions", *Asiaweek.com*, June 9, 2000.

¹³¹ "Estimated 1.12 mil. Land Mines Buried Around DMZ," *Korea Herald*, October 21, 2000.

¹³² An agreement between the ROK and DPRK to build road and rail links through the DMZ was made in 2000. The ROK initiated construction on its side of the border, but little progress had been made by the DPRK. Talks aimed at resuming construction remain stalled for the time being. Meanwhile, the *New York Times* reported in June 2001 that an access road will be opened between the two Koreas at the eastern end of the DMZ in order to allow tourists to use the route to visit Mt. Kumkang by car. [Don Kirk, "Koreas to Permit Regular Road Travel Across Border," *New York Times*, June 11, 2001.]

¹³³ Noland (2000), p.297, fn.26.

movement of such a large proportion of North Koreans onto its territory would be an inauspicious turn of events for the ROK, which very likely intends to avoid replicating some of the costly policy decisions made by the Germans during their unification efforts, which stemmed from their inability to prevent large-scale migration from the east to the west.¹³⁴

Another variable to consider would be, that should ROK troops enter the DPRK even as a purely humanitarian gesture, such an event is likely to be met at best with a very nervous reaction by Beijing. A likely scenario may witness a similar movement by the Chinese military so as to ensure that their geo-political interests are accounted for, and that they are ultimately given a principal role in sculpting the dynamics of a unified Korea.

Assuming that there will be a choice, whether the majority of North Koreans will head south to the ROK or north towards China is an open question. An important variable to be considered in predicting the direction of the flow would depend on the accessibility of routes leading to the DMZ, as well as the level of the actual access into the ROK (or at least the availability of material assistance along the vicinity of its border). Another element to be considered is the degree of willingness among North Koreans—likely to be additionally influenced by the underlying circumstances that triggered the influx situation—to cross over onto the territory of the DPRK's sworn enemy.

The People's Republic of China, which shares by far the longest border (1416km) with the DPRK, should expect a sizeable influx onto its territory, should there be any major turbulence in the DPRK. Three likely points of border crossings can be identified based on routes currently used by North Koreans to enter covertly into China. The first is along the Tumen River, which carves out the northeastern boundary of the DPRK. The Tumen's width ranges from 30 to 100 meters, and is shallow enough even for children to cross at certain points. During the winter, the river freezes, allowing easy access to the other side.¹³⁵ Once they cross the river, North Koreans are in the Korean Autonomous Republic of Yanbian, where ethnic Koreans make up forty percent of its 2.1 million residents.¹³⁶

In terms of transporting large volumes of material assistance to Yanbian, Yanji Airport, located immediately south of the city, possesses a single 2600m runway which can accommodate aircrafts up to a Boeing 757.¹³⁷ Otherwise, circuitous rail and road links

¹³⁴ See Noland (2000), pp.285-322, for an analysis of the policies pursued by the German Government.

¹³⁵ Yeo-Sang Yoon, "Field Survey Report: On the Situation of North Korean Defectors in China," The Korean Political Development Research Center, September 1998, p.10, (www.nkhumanirghts.or.kr/eng/nk/nknews13.html).

¹³⁶ Susan V. Lawrence, "Cross-Border Disappointment," *Far Eastern Economic Review*, April 29, 1999, p.12.

¹³⁷ "Airports in the Tumen Region," Tumen River Area Development Programme, (www.tradp.org/htmls/trairpts.htm).

through Dunhua and Jilin would need to be used to transport goods from the port in Dalian.¹³⁸

Second, the Yalu River, which flows south along the Chinese-DPRK border into Korea Bay, is generally deep and wide, making it a difficult physical barrier to cross before entering Chinese territory. Upstream, the Yalu can be crossed at certain points without much difficulty; however, given that bordering Chinese areas are not inhabited by ethnic Koreans who are likely to give them shelter, North Koreans have hitherto generally avoided using this route.¹³⁹ While difficult to cross, the Yalu is the most direct route for accessing China for North Koreans living in the main population centers located in the North Pyongan and South Pyongan provinces and in the municipal district of Pyongyang.¹⁴⁰ Should the Chinese be willing to allow North Koreans to cross over the Yalu, and be ready to provide access to foreign aid organizations to assist the North Koreans, the port in Dalian could be a primary staging ground for orchestrating such activities.¹⁴¹

Finally, the Changbai Mountains offers the only land route into China. The thick cover provided by the mountains make them an ideal place for North Koreans to hide.¹⁴² On the other hand, the rough terrain will make it extremely difficult for humanitarian groups to locate and provide assistance to North Koreans who choose this route. Transporting large amounts of assistance materials into the immediate area would likely be a logistical nightmare as well.

Based on its past actions in reference to Vietnamese refugees, it is predictable that China may try to redirect the influx of North Koreans towards the ROK,¹⁴³ while it attempts to seal off its borders to prevent access to its territory. Convincing the Chinese authorities to provide North Koreans access to its territory, as well as for humanitarian groups to provide material assistance within Chinese territory, will no doubt be a significant challenge for UNHCR and the international community.¹⁴⁴ It could be an even greater challenge should the Chinese military conduct activities within the DPRK in an attempt to prevent further displacement of persons onto its territory. Whether disguised as a

¹³⁸ Detailed information regarding transportation links in Yanbian available at the Tumen River Area Development Programme web site (www.tradp.org).

¹³⁹ Yoon, pp.10-11.

¹⁴⁰ Andrea Matles Savada (ed.), *North Korea: A Country Study* (4th edition) (U.S.: Library of Congress, 1994), p.59.

¹⁴¹ How the ROK would react to a large-scale operation within China is an open question.

¹⁴² Yoon, p.11.

¹⁴³ "Special Report on North Korea in Crisis - October 1996: A Coming Crisis on the Korean Peninsula?" United States Institute of Peace, October 1996, (www.usip.org/oc/sr/korea96.html).

¹⁴⁴ Given the history of the Korean War, UNHCR should keep in mind the possibility that China may be reluctant to permit the presence of a United Nations-affiliated agency on DPRK territory should tensions escalate vis-à-vis the U.S., ROK and its allies. For such reasons it may make sense to have the International Red Cross organizations involved in contingency planning from an early stage.

humanitarian effort or an outright military intervention, as described above, such actions could trigger a reciprocal measure by the ROK and/or U.S. military units. The potential for such a scenario highlights the importance of conducting regional-based contingency planning and other confidence building measures involving regional Governments as well as NGOs so as to prevent a further escalation of tension on the Korean Peninsula that may likely accompany a mass influx situation originating in the DPRK.

The border between the DPRK and the Russian Federation spans only 17km along the mouth of the Tumen River. The only effective means of crossing the border, aside from relying on boats, is the one bridge spanning the river. Aside from the predictable displacement onto its territory from Chongjin and other cities along the northeastern coast of the Korean Peninsula—which is less populated in comparison to the southwestern coast—should China seal its borders, and the ROK either seal off or limit access to its borders, Russia may be the only one among the border countries that could be persuaded to provide access to its territory for the provision of humanitarian assistance and temporary protection of North Koreans.

Vladivostok, the headquarters of the Russian Far Eastern Fleet is located very near the Russian-DPRK border. The military infrastructure in place should allow for the efficient delivery of emergency provisions into the area both by air and sea. Vladivostok airport, located 50km northeast of the city, is operational on a 24-hour basis, and has two runways of 3,500 and 2,500 meters.¹⁴⁵ Vladivostok port has 18 commercial docks available for use.¹⁴⁶ It is likely that a large number of surplus military structures that could serve as temporary homes for the North Koreans may well be found in Vladivostok. Considering how the Russian Government will likely have a much wider variety of policy options available to it than either the Chinese or ROK Governments, and the fact that a mass displacement may offer the financially strapped Primorskiy Kray some clear financial benefits, as well as potentially offer the Kremlin an opportunity to request economic concessions from the West, it would be up to the international community to devise creative solutions to permit the provision of temporary protection on Russian soil. Such strategies cannot be implemented at a moment's notice. Once again, regional contingency planning with the participation of federal and regional Russian authorities may hold the key to the successful outcome of such strategies.

Should modalities of transport be available,¹⁴⁷ Japan may be the country of preferred destination, during both the immediate and post-crisis stage of the displacement, for a significant number of ethnic Japanese living in the DPRK, or North Koreans who have

¹⁴⁵ Airports in the Tumen Region.

¹⁴⁶ "Port Facilities in the Tumen Region," Tumen River Area Development Programme, (www.tradp.org/htmls/trports.htm).

¹⁴⁷ Scenarios that can be considered range from a boat people-type outflow, or organized air/sea evacuations conducted by the Japanese Self Defense Forces, should such actions be deemed permissible under Article 9 of the Japanese Constitution.

relatives living in Japan.¹⁴⁸ Japan took in only a small number of refugees during the Vietnam crisis, and may not be willing to offer permanent abode to too many North Koreans.¹⁴⁹ However, political pressure exerted on Japan by the ROK and the United States, as well as *Chonchongryun*, the organization of pro-DPRK ethnic Korean residents in Japan, may cause a reluctant Japan to offer some form of temporary protection to a limited number of North Koreans.

The United States, represented in physical form through its network of military bases in Japan and the ROK could play an important role in providing assistance to the North Koreans. A likely opening scenario could see the U.S. military providing support in the form of land-based humanitarian evacuation and rescue at sea. The U.S. military might also get involved should the ROK military decide to provide material assistance for North Koreans within the DPRK. From a logistical standpoint, U.S. military bases in Japan, ROK, and as far afield as Guam could prove to be strategic locales to provide temporary accommodation and assistance to North Koreans. As part of a contingency plan, U.S. military bases could be an ideal place to discreetly stockpile emergency supplies required for an influx situation, as well as to conduct sensitive exercises among regional military and civil defense units.

iv. Contingency Planning

Very little public domain information is available regarding the level of preparedness among the countries in Northeast Asia as well as within the U.S. military for a mass displacement situation involving North Koreans.¹⁵⁰ The few media reports addressing the subject have focused almost exclusively on the lack of preparation by the ROK Government for such scenarios.¹⁵¹ Whether this is true in fact, or more a reflection of ROK policy not to draw attention to such matters, is difficult to confirm.

Assuming that sophisticated plans are not available at the country and/or regional levels, it would be the task of UNHCR to take a proactive position to ensure that sufficient plans are put in place. The following is a very rough roadmap of some of the priority issues UNHCR may want to address: A first step would involve (on a country-by-country basis) the training of key Government, NGO, and military personnel in contingency planning, preparedness and response;¹⁵² second, with the assistance of UNHCR, focal points from

¹⁴⁸ An estimated 250,000 ethnic Koreans living in Japan are deemed to be loyal to Pyongyang. [See Sonia Ryang, *North Koreans in Japan* (Colorado: Westview Press, 1997), p.5, for further details.]

¹⁴⁹ Particularly in view of the complex relationship that the Japanese Government has had with its ethnic Korean residents.

¹⁵⁰ According to ROK's Yonhap news agency, UNHCR has provided advice to the Chinese Government on how they could lay out emergency relief operations in case of a mass influx of North Koreans. ("UN Concerned Over China's Treatment of North Korean Defectors," BBC Monitoring International Reports via NewsEdge Corporation, June 28, 2001.)

¹⁵¹ Smith, in Noland (ed.), p.65.

¹⁵² It goes without saying that the DPRK would feel extremely threatened by any news of such activities. Accordingly, the group should be small enough to limit as much as possible the leakage of information. In

China, Japan, ROK, Russia, and the U.S. military should be encouraged to develop in-country contingency plans on which the development of a regional contingency plan would be based; third, regular working group meetings should be convened among Government policy makers representing the Governments of China, Japan, ROK, Russia and the U.S., to ensure that the necessary channels of communication and understanding are in place;¹⁵³ and fourth, military and civil defense units should be brought together to conduct in-country and regional simulation/training exercises. While contingency and training plans are being developed, plans to stockpile emergency supplies must also be addressed.

c. Prevention

While the primary focus of a short- to mid-term contingency plan for the DPRK would be to deal with the constant trickle and mass outflow scenarios, a long-term goal for UNHCR should be ultimately to prevent mass displacement on the Korean Peninsula. A key factor in achieving this would be working together with other external actors toward ensuring that civil society takes root in the DPRK, and that human rights are respected. In pursuit of such goals, it is necessary for UNHCR to take part in confidence-building measures undertaken by Governments and NGOs. UNHCR would also need to work with the principal actors involved in the distribution of food assistance within the DPRK to ensure in the long-term that North Koreans will no longer be forced to cross the border in order to supplement their official rations. Furthermore, UNHCR must establish a working relationship with the DPRK Government so that proper channels of communication and consultation are available, should the DPRK Government itself be in need of UNHCR's assistance at a future date.

7. CONCLUSION

As long as the survival of the DPRK is in doubt, the DPRK regime is likely to continue its policy of maximizing the amount of assistance it receives from the outside world. Any reforms introduced by the regime are likely to be carefully tailored so as not to undermine the fundamentals of the very system that keeps the leadership in power. The West is likely to continue providing substantial funds to the DPRK based on humanitarian concerns, as well as purely geo-political interests related to their need to hold off unification for as long as possible.

terms of conducting the contingency training, the newly created UNHCR Regional Centre for Emergency Training in International Humanitarian Response (e-Center), with its secretariat in Tokyo, and operational capacity throughout the region, could be an ideal forum to conduct such activities. [see www.the-e-centre.net for more details.]

¹⁵³ Given the sensitivities surrounding the subject, in order to maintain as much as possible a neutral and non-confrontational ambiance, the preferred forum for such an event would be a closed-door conference and/or round-table discussion on the subject sponsored by an academic institution.

The above scenario is likely to continue producing, for the foreseeable future, a constant trickle of North Koreans heading towards China in search of food. Because of the well-founded fear of persecution that can await North Koreans once they are forcibly returned to the DPRK, such persons must be given the opportunity to seek asylum, if so desired. UNHCR needs to devise strategies together with the Chinese Government that will ultimately result in the provision of international protection to North Koreans in China and immediately result in the termination of *refoulement*. A potential pilot project to develop confidence-building measures with the Chinese authorities, as well as suggestions for decreasing the unintentional creation by the Chinese of *sur place* refugees, have been described above. UNHCR will need the discreet yet active support of the international community in developing the suggested protection modalities.

In addition to planning to tackle the problems inherent in the status quo, UNHCR, together with Governments in the region, should also focus its efforts on ensuring that a comprehensive contingency plan is in place, in case unexpected events lead to a mass displacement of people from the DPRK. The predictably complex process that will likely accompany the unfolding of such a scenario would require that as little as possible be left to the uncertainties of the moment, hence compounding the need to develop local and regional contingency plans as well as to pursue confidence-building measures among the main stakeholders.

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