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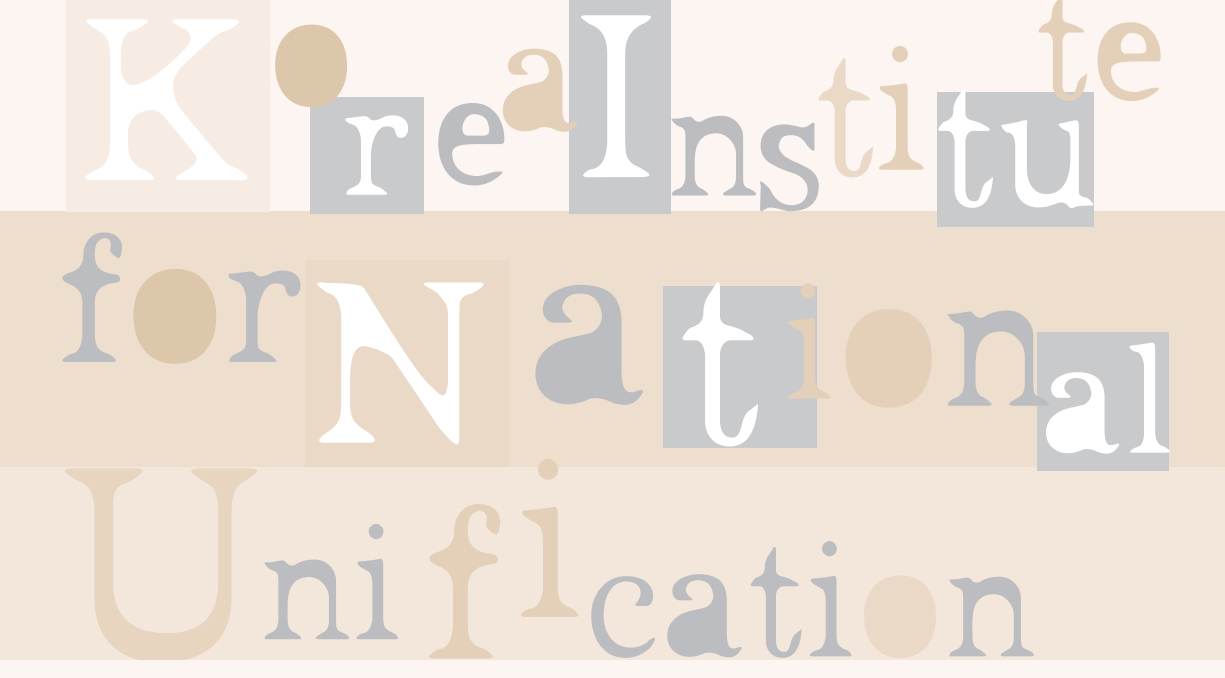

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Old Friends, New Partners, and Troubled Times: North Korea's Relations With Southeast Asia

Brian Bridges

Taking a broad historical perspective, this article examines the character of North Korea's relationships with the individual member states of the Association of Southeast Asian Nations as well as with ASEAN as a regional organization. North Korea, with its limited experience of interacting with regional cooperation organizations, has approached Southeast Asia in terms of individual bilateral relationships that can be leveraged through historical and ideological linkages. It was not until the 1990s that North Korea took ASEAN seriously, but even then its focus remained primarily on preventing a unified position from being sustained. However, the continued nuclear and missile tests have pushed ASEAN into taking stronger critical actions against the North, despite ASEAN's aspiration to play a mediating role.

Keywords: North Korea, ASEAN, Legitimacy, Security, Development

In March 2016, Le Luong Minh, Secretary-General of the Association of Southeast Asian Nations (ASEAN), received the credentials of the new Ambassador from the Democratic People's Republic of Korea (DPRK, or North Korea hereafter), An Kwang Il. During their exchange of courteous remarks, Ambassador An explained that his country looked forward to 'expanding and developing cooperation with ASEAN,' while Le mentioned that he specifically hoped for 'greater and active participation' by North Korea in the ASEAN Regional Forum (ARF). Notably, however, Le also reaffirmed the ASEAN position on the 'importance of maintaining peace and stability in the Korean peninsula and the wider region.'[1] This caveat reflected the fact that only

1. ASEAN Secretariat Press Releases, 16 March 2016, http://asean.org/54034-2.

two months earlier North Korea had carried out its fourth nuclear test and only a few days before this meeting had test-fired a number of missiles; both the nuclear and missile tests were in contravention of United Nations (UN) resolutions. Subsequently, a fifth and sixth nuclear test, continued missile tests, and the assassination of the half-brother of the North Korean leader Kim Jong Un at Kuala Lumpur airport would mean that the ASEAN-North Korea relationship would come under continuous and, if anything, heightened strain.

Ambassador An was, in fact, only the second such North Korean ambassador to ASEAN, following his path-breaking predecessor who took up office in Jakarta in 2011. This seemingly short official relationship between North Korea and ASEAN belies the fact that North Korea has maintained strong relations with some individual ASEAN member countries for well over six decades.[2]

Taking a broad historical perspective, this article examines the character of North Korea's relationships with individual ASEAN members as well as with the regional organization as a whole. It is argued that North Korea, with its limited experience of interacting with regional cooperation organizations and even more limited direct experience of being a member of any such organization, has basically approached Southeast Asia in terms of individual bilateral relationships that can be leveraged through historical and ideological linkages. Despite adopting from time to time broader 'charm offensives' and employing the occasional rhetoric of cooperation with ASEAN (such as in Ambassador An's remarks above), bilateralism has reigned supreme.

North Korea's policy – or policies – towards Southeast Asia can be broadly divided into two historical phases. First, from the 1950s to the 1980s, there was direct diplomatic competition with South Korea (ROK or the Republic of Korea) in order to counter-balance the latter's own

2. Neither ASEAN nor its individual member states have been the focus of sustained coverage in North Korean official statements or media; visits by Southeast Asian leaders, attendance of North Korean officials at ASEAN-related meetings, and occasional meetings between North Korean foreign ministers and ASEAN ambassadors based in Pyongyang are usually reported in a perfunctory way. No major statement on policy towards ASEAN has been located.

evolving linkages with Southeast Asia. North Korea utilized both 'revolutionary' appeals to ideologically sympathetic governments and diplomatic and economic promises to non-communist regional states. Second, there were the more 'realist' approaches from the early 1990s onwards, after the shocks of the end of the Cold War and the Soviet and Chinese recognition of South Korea came to the forefront. This approach can be characterized as a greater interest in ASEAN as an organization, but also as an attempt to both undermine any putative regional unity against North Korea and exploit revenue-raising opportunities in the region.[3]

North Korean foreign policy objectives

North Korea has been fairly consistent in its broad foreign policy goals, but has not been averse to changing specific policies in response to the changing international scene and its own domestic constraints. Byung Chul Koh usefully distinguishes between manifest goals (officially-stated goals such as 'independence, peace and friendship') and latent goals (objectives inferred from actual behaviour) in the North Korean case.[4] Accordingly, utilising Koh's framework, three latent and interlinked goals can be identified: legitimacy, security, and development.[5]

First, through military, economic and political means, the North waged a competitive struggle with the South for legitimacy and prestige. Having failed to solve the legitimacy issue by force during the Korean War, the North then resorted to diplomacy and ideological appeals. This meant trying to gain recognition from other states, achieve entry into international organizations, including the United Nations (UN), and host international events, ideally at the expense of

3. The use of the terms 'revolutionary' and 'realist' here owes much to conversations with and my readings of writings by Hazel Smith.
4. Byung Chul Koh, "Foreign Policy Goals, Constraints, and Prospects," in *North Korea: Ideology, Politics, Economy*, Han S. Park (ed.) (Englewood Cliffs: Prentice Hall, 1996), pp. 176-177.
5. *Ibid*., pp. 180-184.

its southern counterpart. However, despite the North making some progress in this respect during the 1960s and 1970s, by the 1980s, the balance of advantage was shifting increasingly in favour of the rising economic power, South Korea. In the Southeast Asian context, North Korea had looked not only to sustain linkages with its ideological friends, such as the socialist Vietnam, the anti-imperialist Indonesia of Sukarno, and the vehemently non-aligned Burma, but also to develop new contacts with other regional states. Recognition by most ASEAN members had been achieved by the mid-1970s, but from the 1990s onwards, the economic clout of South Korea would make it a far more desirable partner than the North for almost all the ASEAN states.

Second, security of the state and the regime has been crucial. Memories of the Korean War play strongly in North Korea, so while attempts are made to disparage the South at every opportunity, the North's real target is the United States; distrust of that 'imperialist' power remains potent. The paramount concern with security at first led the North to build up its conventional forces, but as its socialist allies declined in number and its conventional forces began to lose the qualitative competition with the South, from the early 1990s onwards, the North began slowly to rely on the nuclear option. Increasingly, especially after the US invasion of Iraq in 2003, the North was to come to see the possession of an effective nuclear arsenal as crucial to its survival.[6]

As far as Southeast Asia was concerned, none of the ASEAN states constituted a direct security threat to the North (unlike South Korea, Japan, and the United States) and, conversely, no Southeast Asian state felt directly threatened by the North's military build-up. However, the North's increased efforts to improve its missile technology and test nuclear devices from the 2000s onwards did heighten concerns in ASEAN about regional stability and security. This raised issues for the North about how to divide opinion or at least prevent such policy concerns from impinging on its own security and survival.

The third theme of North Korean foreign policy – economic development – has remained an important, if often seemingly subordinate,

6. Glyn Ford, *North Korea on the Brink: Struggle for Survival* (London: Pluto Press, 2008), p. 154.

goal. Economic development links into and sustains both prestige and security. Despite the rhetoric of *juche*, the North did look initially to develop some commercial relations with its socialist allies. This was to be followed in later decades by expanding such linkages with other states. However, in order to avoid becoming dependent on the 'capitalist' world, the North resisted adapting to the changing global economy and became increasingly faced with hardships – and by the mid-1990s, even famine – which impacted its ability not only to meet domestic demands, but also to act as a trading partner of any note with external powers, such as with the ASEAN states.

The following sections will examine these three basic goals, as displayed in the Southeast Asian regional context, in more detail.

Socialist comrades, capitalist partners and historical legacies

Before considering North Korea's interactions with ASEAN as a multilateral organization, it is necessary to review briefly the historical patterns of bilateral linkages as a means for North Korea to secure the legitimacy it desired. When ASEAN was formed in 1967 from the then five most economically-advanced economies of Southeast Asia, only Indonesia had any existing diplomatic relations with North Korea (and that connection had only been established in 1964, reflecting President Sukarno's own close linkages with both the local communist party and China). Instead, North Korea's closest links were with other Southeast Asian states, such as the ideologically-sympathetic regimes in North Vietnam and Cambodia, which were at that time respectively either in a post-colonial conflict or trying to maintain a façade of neutrality. Yet, even though ASEAN expanded by adding Brunei in 1984 and then Burma (Myanmar), Cambodia, Laos, and Vietnam in the mid-1990s, North Korea's relations with the grouping were by no means smooth.

The longest-standing links for North Korea were with Vietnam (with the northern part, known as the Democratic People's Republic from 1945, and then with the Socialist Republic of Vietnam from its reunification in 1976). Relations were established in January 1950 and

state visits by respective leaders took place in 1957-58. As the Vietnam War escalated in the mid-1960s, North Korea tried to play the role not just of ally, but also of lead proponent of a 'united front strategy against American imperialist aggression.'[7] Crucially, however, Kim Il Sung was able to use the Vietnam conflict to enhance his own position internationally by heightening his anti-imperialist rhetoric and highlighting the parallels between Vietnam and the divided Korean peninsula.[8] But while the reunification of Vietnam in 1975 should have been a boost to North Korean morale, Kim had opposed North Vietnam's earlier peace talks with the United States and bilateral relations actually deteriorated as Vietnam's quarrels with the new Cambodia (Kampuchea) led to invasion and civil war. North Korea sympathized with the deposed Cambodian leader, Prince Norodom Sihanouk, and continued to criticize the Vietnamese actions in Cambodia.[9] Then, as the Cambodian crisis began to wind down, Vietnam, looking to diversify its economic partners, established diplomatic relations with South Korea in 1992. North Korea's failure to pay for a large shipment of Vietnamese rice in 1996 added to the distrust and while Vietnamese-South Korean economic ties expanded, North Korea's relationship with Vietnam remained low-key into the 2000s.[10]

Cambodia, attempting to follow a policy of neutrality in the Cold War after 1960, became the third Southeast Asian state to recognize North Korea by establishing diplomatic relations in late 1964. A strong

7. Kook-Chin Kim, "An Overview of North Korean-Southeast Asian Relations," *The Foreign Relations of North Korea: New Perspectives*, Jae Kyu Park, Byung Chul Koh, and Tae-Hwan Kwak (eds) (Colorado: Westview Press, 1987), pp. 365-366.
8. Barry Gills, *Korea versus Korea: A case of contested legitimacy* (London: Routledge, 1996). pp. 106-116.
9. One Vietnamese ambassador told a Hungarian diplomat in 1983 that the relationship between Vietnam and North Korea was 'bad'; 'Although Vietnam continues to consider the DPRK a socialist country, the line of the Korean Workers' Party is contrary to Marxism-Leninism.' Wilson Center Digital Archive International History, NKIDP, Doc.No. 115830.
10. Samuel Rumani, "Can Vietnam help mediate With North Korea?" *The Diplomat,* 21 September 2016, http://thediplomat.com/2016/09/can-vietnam-help-mediate-with-north-korea/.

personal relationship began to develop between Sihanouk and Kim, so much so that after Sihanouk was toppled in a military coup in 1970, North Korea not only continued to support his government-in-exile, but also provided a kind of 'second home' for Sihanouk, in the form of a special palace Kim had built for him in Pyongyang.[11] Sihanouk regularly resided for several months at a time in North Korea until 1993 when, after the United Nations-brokered peace deal, he again became King of Cambodia (taking back with him a bodyguard of North Korean special forces). He continued to make occasional visits to Pyongyang over the following years. Post-1993, Cambodia adopted a low-key though generally favourable attitude towards North Korea that continued into the 2000s.

The third Indochinese state, Laos, had limited diplomatic capacity and was slower to recognize North Korea, not doing so until mid-1974 (and recognizing South Korea on the same day took away much of the credit as far as North Korea was concerned). However, the communist takeover of Laos in 1975 did lead to stronger ties with the North (relations with the South were suspended). Yet, as Vietnamese influence over Laos strengthened from the late 1970s on, the souring of Vietnamese-North Korean relations reverberated onto Laotian-North Korean relations, which remained polite but distant through the 1980s and 1990s.[12]

Amongst the original founding members of ASEAN, it was Indonesia that was of the most interest to North Korea. The radical nationalism and anti-imperialist rhetoric of Indonesia's President Sukarno in the late 1950s appealed to Kim Il Sung, and Sukarno saw North Korea as an appropriate partner in his putative 'anti-imperialist axis' across Asia.[13] Although not present at the 1955 Bandung Conference, which heralded the beginning of Afro-Asian 'solidarity' against Western colonialism and imperialism, North Korea welcomed the message of revolutionary endeavour. After slowly building through trade and consul-

11. Kim, Overview, pp. 366-367.
12. *Ibid*., p. 368.
13. Michael Leifer, *Indonesia's Foreign Policy* (London: George Allen & Unwin, 1983), pp. 99-105.

ar links, full diplomatic relations with Indonesia were established in April 1964. Sukarno visited Pyongyang later that same year and Kim made one of his very rare overseas visits to a non-communist state when he went to Jakarta in early 1965. However, only a few months later, an abortive communist coup in Indonesia threw the country into turmoil, from which emerged a new, more pragmatic leader, Suharto, who pursued a more even-handed policy towards the two Koreas.[14]

Even though contacts were maintained - foreign ministers exchanged visits in the mid-1970s and the North Korean premier visited Indonesia in 1982 - the Indonesian-North Korean relationship was unable to prosper in the way that it had under Sukarno. Indonesia recognized South Korea in 1973 and steadily built up economic links, while the relationship with North Korea basically marked time.

The mid-1970s, however, represented a breakthrough period in North Korea's relations with the Third World and even with Western Europe, as it manoeuvred through the changes taking place in global politics after the Sino-US rapprochement. ASEAN members were also included in this breakthrough, and North Korean relations were established with Malaysia in June 1973, Thailand in May 1975, and Singapore in December 1975; in addition, then non-ASEAN member Burma (Myanmar) established relations in May 1975.

Malaya, renamed Malaysia in 1963, had limited contact with North Korea during the 1950s and 1960s, not least because of the strong anti-communist attitude of the government, which had been fighting the Malayan Emergency from 1948-1960. North Korea's open support for Indonesia in its *Konfrontasi* (Confrontation) conflict with Malaysia from 1963-1966 also played a role in the lack of relations. In the early 1970s, however, the new leadership in Malaysia's more public profession of non-alignment and its strong advocacy of a Zone of Peace, Freedom, and Neutrality for ASEAN (ZOPFAN) made it a more congenial partner for North Korea.[15] In turn, at a time when the momentum for opening relations with China was gathering speed in

14. Kim, Overview, pp. 368-369.

15. *Ibid*., p. 370.

the early 1970s, Malaysia sought to expand its non-aligned foreign policy credentials by establishing relations with East Germany (German Democratic Republic) and North Vietnam (Democratic Republic of Vietnam), around the same time as it did so with North Korea.[16] Nonetheless, the establishment of diplomatic relations in 1973 did not lead to very active exchanges, even though a Malaysian Deputy Prime Ministerial visit to Pyongyang occurred in 1979.[17] Instead, Malaysia became increasingly interested in South Korea's economic progress, culminating in Prime Minister Dr Mahathir Mohammad's proclamation of a 'Look East' policy in 1983, which specifically targeted South Korea and Japan as models for socio-economic development.

Singapore, which, like Indonesia and Malaysia, had joined the Non-Aligned Movement (an organization that also appealed to North Korea), gradually developed trade and consular links with the North starting in the late 1960s, and took the final step of establishing full diplomatic relations in 1975. Yet, Singapore had already recognized South Korea earlier that same year and, given Singapore's strong technology-based economic growth strategy, the links with the South grew much faster than any similar connections with the North.[18] Nonetheless, despite Singapore's strong connections to the United States, the North may well have continued to view some aspects of the Singaporean development model – particularly its successful struggle to establish its own national identity and economic style in the 1960s – in a favourable light.[19]

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16. Chandran Jeshurun, *Malaysia: Fifty Years of Diplomacy, 1957-2007* (Kuala Lumpur: The Other Press, 2007), pp.126-127; Johan Saravanamuttu, *Malaysia's Foreign Policy: the First Fifty Years: Alignment, Neutralism, Islamism* (Singapore: ISEAS, 2010), pp. 149-157.
17. The comment by an accompanying diplomat that 'North Korea had all the symptoms of an impoverished country living in blissful isolation from the reality of the rest of the world' might help to explain Malaysian reticence over deepening relations at that time (Tan Koon San, *Excellency: Journal of A Diplomat* (Kuala Lumpur: The Other Press, 2000), p. 62).
18. Kim, Overview, p. 371.
19. Tan Er-Win, Geetha Govindasamy and Chang Kyoo Park, "The Potential Role of South-East Asia in North Korea's Economic Reforms: The Cases of ASEAN,

Both Thailand and the Philippines had contributed troops to the United Nations forces fighting against the North during the Korean War and had subsequently remained closely allied to the United States, so it was not surprising that no links with the North emerged during the 1950s and 1960s. However, the Thai government in power at the time of the communist victories in Indochina in 1975 was keen to accommodate itself to the new regional realities and swiftly recognized North Korea in May 1975.[20] Although Thai troops were subsequently withdrawn from the United Nations Command, then based in South Korea, further progress in relations with the North was hampered by a military coup in Thailand in 1976. The fluctuating domestic political situation within Thailand remained the main factor in constraining or advancing relations with the North and relations remained low-key until the early 1990s when the North's domestic food supply problems encouraged it to turn to Thailand as an important source of rice imports.

The Philippines, constrained both by its strong treaty relationship with the United States at least until the early 1990s and by the legacies of its involvement in UN operations on the peninsula, was reluctant to develop relations with North Korea. Additionally, the Philippine side, responding to US intelligence, remained suspicious that the North had been aiding the insurgent New People's Army inside the Philippines. Desultory negotiations took place over nearly 2 decades before relations were finally established in July 2000, making the Philippines one of the last Asian states to recognize North Korea.

Brunei, which joined ASEAN in 1984 upon independence from Britain, has had no substantial connections with North Korea. Like the Philippines, Brunei appreciated the new mood of South-North Korean 'détente' in the late 1990s and diplomatic relations were established in January 1999. North Korea may not have had any real links with Brunei, even though the latter's energy supplies might be of interest, but the North's decision to establish relations with Brunei – and also with the Philippines – was almost certainly driven by the desire to gain

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Vietnam and Singapore," *Journal of Asian and African Studies*, March 2015, pp. 10-11, DOI:10.1177/0021909615570952.

20. Kim, Overview, pp. 371-372.

admittance to the ARF; diplomatic relations with these two ASEAN states had effectively become one pre-condition of admission.

The final ASEAN member, Burma/Myanmar, has probably had the most controversial relationship with North Korea. Convinced post-independence of its need to be non-aligned, Burma became increasingly insular after a military-led coup in 1962 under Ne Win forged the 'Burmese Way to Socialism.' Yet, trade relations and consular relations with North Korea did begin in the early 1960s and a regular stream of senior North Korean officials subsequently visited Rangoon, including Kim Il Sung himself in 1965. Relations were upgraded to full diplomatic levels in May 1975 and Burma supported a pro-North Korean resolution for the first time at the UN General Assembly later that year.[21]

However, as Burma slowly began to explore greater regional economic connections, South Korea became a particular object of interest. Consequently, South Korean President Chun Doo Hwan, who himself had made improving relations with Southeast Asia a policy priority, made a state visit to Rangoon in October 1983 as part of a six-nation tour of South and Southeast Asia. North Korea attempted to assassinate him; the bomb missed him, but killed 12 of his accompanying ministers and officials. After a Burmese investigation discovered the perpetrators, diplomatic relations were quickly broken off (and not resumed until 2007).[22] Though not a member of ASEAN at the time, Burma's experience at the hands of North Korea shocked its Southeast Asian neighbours.

The politics of regional cooperation

North Korea's sustained desire for legitimacy eventually brought it

21. *Ibid*., p. 373.
22. Mark Clifford, *Troubled Tiger: Businessmen, Bureaucrats, and Generals in South Korea* (New York: M.E.Sharpe, 1994), pp. 204-205; Kim Eungseo, "The Past and Present of North Korean Belligerence: Rangoon 1983," *Sino-NK*, 7 July 2017, http://sinonk.com/2017/07/07/the-past-and-present-of-north-korean-belligerence-rangoon-1983.

to ASEAN's door, even though the strong focus on bilateral links had been complemented by limited North Korean interactions with ASEAN until the 1990s. North Korea had seemingly taken little notice of the formation of ASEAN in 1967. Indeed, it may well have shared the perspective of other external powers that an organization born out of confrontation would be as short-lived as some of its aborted predecessors in Southeast Asia. Given the loss of influence or at least of fellow-feeling with Indonesia after 1965, the North tended to concentrate on bilateral links with those Southeast Asian states which seemed to share its 'socialist' vision.

The cautious consolidation of the culture of consultation, which was a hall-mark of ASEAN's early years, was, however, to suffer a jolt in mid-1975 with the end of the Vietnam War and the emergence of communist control over Indo-China, the 'other Southeast Asia.' This dramatic political change not only served as a catalyst for greater intra-ASEAN co-operation, but also created an environment which enabled several Southeast Asian states to open diplomatic relations with North Korea.

However, North Korean diplomacy towards the region remained strongly bilaterally focused, even after ASEAN held its first Summit meetings, negotiated the Treaty of Amity and Cooperation (TAC), and began to solicit stronger economic links with external major powers in the late 1970s and early 1980s. North Korea's relative indifference towards ASEAN as an organization was reciprocated on the ASEAN side. Even when dialogue arrangements with interested powers began to expand in the 1980s, ASEAN as a grouping showed little interest in interacting with North Korea. The North's isolationist economic policies, its terrorist actions in Burma in 1983, and the much greater economic attractiveness of South Korea, which became a dialogue partner in 1991, ensured that North Korea did not feature high on ASEAN's regional cooperation agenda. Of course, the ASEAN states were not unaware of the tensions on the Korean peninsula – and dialogues with South Korea invariably included some lobbying by the South Koreans for support of their perspectives regarding events on the peninsula and the North's military threats.

The founding ASEAN member states and subsequently-joining members have subscribed to the evolving so-called 'ASEAN Way,' a non-confrontational approach to diplomacy which relies on building trust through regular consultations and developing personal ties. As ASEAN established its regular dialogues with external partners, these inevitably focused primarily on economic issues. However, after the end of the Cold War, ASEAN leaders began to reflect on the changing international order and identified the need for a forum that might at least help to create greater confidence-building and, arguably, defuse potential security threats in the region. In July 1994, the first meeting of the ARF was held; 18 foreign ministers drawn from ASEAN and its main interlocutors attended.[23] South Korea was invited, but North Korea was not. Yet, even though the first nuclear crisis was at a crucial stage at that time, the ARF did not take a concerted stand since the initial meeting was devoted almost entirely to deciding issues of structure and objectives without concrete discussion of specific problems.

Although the Korean situation was picked up from the 1995 ARF meeting onwards, the subsequent chairman's concluding statements at these annual ARF meetings tended to be limited to rather anodyne expressions about the 'importance of peace and security on the Korean peninsula' and the need for dialogue and reconciliation. Around the time of the ARF's formation, North Korea did approach ASEAN members to inquire about membership, but it was told that until it had shown better behaviour over nuclear site inspection, it would not be considered.[24] Additionally, some ARF members felt that the North's 'participation should be a reward for conducting better relations with South Korea.'[25] However, in the late 1990s, under President Kim Dae-jung's 'Sunshine Policy,' the South became more receptive to the idea of the North joining the ARF. As other states in the region noted North Korea's renewed diplomatic offensive in the region and as the first

23. Michael Leifer, *The ASEAN Regional Forum: Extending ASEAN's model of regional security* (London: Oxford University Press for the International institute of Strategic Studies, 1996).
24. Interview with a Southeast Asian diplomat, July 1994.
25. Leifer, ASEAN Regional Forum, p. 48.

ever North-South Korean Summit meeting occurred in Pyongyang in June 2000, it was felt to be appropriate for the North to be invited to the July 2000 ARF meeting. Thailand, as host of the ASEAN meetings that year, took the initiative to invite the North to join the ARF, using Cambodia as a channel to the North. Additionally, given the expanded composition of ASEAN, it was left to the last remaining member which had never had any formal links to the North, the Philippines, to also strongly endorse the gesture and announce that it would establish diplomatic relations with the North when the latter attended the ARF. In what the Thai Foreign Minister described as a 'pretty unanimous' decision by the then 22 ARF members, the North Korean formal application made in May 2000 was accepted.[26] Japan, due to its deteriorating relations with the North over missile launches, spy ship intrusions, and the abductions of Japanese citizens, was one of the member states which had had the most reservations about the application, but it finally relented and joined the consensus.[27] That ARF meeting welcomed the 'positive developments' on the Korean peninsula, describing the June 2000 Pyongyang Summit as a 'turning point in inter-Korean relations.'

The 2001 ARF meeting also expressed appreciation for North Korea's 'active participation' in ARF activities, but by the 2002 meeting, ARF members were already beginning to express 'concern' (primarily about a recent North-South Korean naval clash), while also hoping for progress in the North-South reconciliation. By the 2003 meeting, when North Korea had become embroiled in the second nuclear crisis, the ARF Chairman was calling for a 'peaceful solution of the nuclear problem there for the sake of durable peace and security in the region.' After strong lobbying from the United States and Japan, the Chairman's statement also specifically called on the North to reverse its stated policy of withdrawing from the Nuclear Non-Proliferation Treaty and to resume cooperation with the International Atomic Energy Agency.[28] Although the meeting concluded that ARF had

26. *People's Daily*, 21 June 2000.
27. Takeshi Yuzawa, *Japan's Security Policy and the ASEAN Regional Forum* (London: Routledge, 2007), pp. 135-136.
28. *Ibid*., p. 145.

'played a useful and constructive role' by supporting efforts by the ARF Chair (Cambodia) to 'help ease tensions on the Korean peninsula,' it was not clear what exact role the ARF as an organization had played in the early stages of this second nuclear crisis.[29] Reportedly, the United States and Japan were not enthusiastic about one proposal floated by some ASEAN members that an ad hoc meeting involving North Korea, China, Russia, Thailand, and Malaysia might be held within the framework of the ARF.[30] Consequently, it was left to Cambodia, given its long-standing close relations with the North, to try to bring about some amelioration of the tension, if only through encouraging interested parties to talk to each other. Soon afterwards, however, the Chinese initiative to establish a Six-Part Talks forum - outside the ARF framework - became public.

ASEAN also attached importance to its TAC, calling on external powers to adhere to this treaty as a means of contributing to regional order and the eventual establishment of the ASEAN Security Community. New members joining ASEAN were required to sign this Treaty and, after 1998, external powers were encouraged to do so too, provided that all ASEAN members agreed. In July 2008, at the urging of Singapore and Indonesia, North Korea became the fourteenth non-ASEAN state to accede to the Treaty. In February 2014, North Korea also applied to become a dialogue partner of ASEAN, but, because of a moratorium on new partners at that time, no action was taken.

Two nuclear crises

The North's preoccupation with security found vivid expression in its ambitions to develop nuclear weapons, which have been an issue for the Asian Pacific region and the wider international community for nearly a quarter of a century; ASEAN members have not been able to ignore such developments. The first nuclear crisis from 1993-1994, which

29. ASEAN Regional Forum, *Chairman's Statements, 2000-2003*, http://aseanregionalforum.asean.org/library/arf-chairmans-statements-and-reports.html?id=173.

30. Yuzawa, Japan's Security Policy, p. 145.

brought the peninsula to the brink of military action and was only averted by former US President Jimmy Carter's mission to Pyongyang to meet Kim Il Sung, revolved around intelligence evidence of North Korean efforts to reprocess nuclear materials (plutonium) as a means to make what were widely believed to be nuclear weapons. The crisis, however, was largely contained within the US-North Korean relationship and it was a bilateral US-North Korean Agreed Framework in October 1994 that brought it to a conclusion. Asian Pacific powers, including neighbouring China, sat on the sidelines; ASEAN was no exception.[31]

As the Agreed Framework's implementation faltered in mutual recriminations over delays and non-commitment, the United States and Northeast Asian regional states began to be concerned about the North's development of longer-range missiles as well as nuclear weapons. In October 2002, US officials confronted North Korea with intelligence evidence that, contrary to the 1994 agreement, the North had been carrying out secret nuclear activities (uranium enrichment); in what remains a controversial exchange, the North's representative argued that the North was entitled to possess nuclear weapons (the North later denied it had admitted to having the uranium enrichment programme).[32]

This second crisis rapidly moved beyond bilateral bounds. China, concerned that nuclear weapons in the North could persuade South Korea and Japan, and even Taiwan, to also develop nuclear weapons, began to take an active role. This led to the creation of the Six-Party Talks (made up of the two Koreas, China, Japan, the United States, and Russia), beginning in August 2003. Hosted by China, these talks continued intermittently, with two agreements signed in 2005 and 2007 but then implemented incompletely, before finally collapsing in 2009.

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31. The definitive study of the first nuclear crisis, Leon Sigal, *Disarming Strangers: Nuclear Diplomacy with North Korea* (Princeton: Princeton University Press, 1998), makes no reference to ASEAN.

32. Mike Chinoy, *Meltdown: The Inside Story of the North Korean Nuclear Crises* (New York: St.Martin's Press, 2008), pp. 110-140; Daniel A. Pinkston and Phillip C. Saunders. "Seeing North Korea Clearly," Survival, 45 (3), Autumn 2003, pp. 81-82.

The North Koreans undertook their first nuclear test in October 2006; although not entirely successful, it did change the atmosphere of the talks and showed that the North was serious about developing nuclear deterrents. The United Nations Security Council (UNSC) passed a critical resolution and the first phase of sanctions were imposed on the North. A second nuclear test in February 2009 inevitably provoked another critical UNSC response; in turn, North Korea decided to reject any further contact through the Six-Party Talks. This has not deterred China from continuing to raise the issue of reconvening the talks on numerous occasions over the subsequent years both publicly and in private bilateral contacts with officials of the participating states, but no progress has been made yet.

Meanwhile, the ASEAN members mainly watched from the sidelines as the six powers tortuously manoeuvred for advantage during these negotiations, which were spread out over more than 5 years. They could only play two subsidiary roles: as a facilitator of bilateral talks and, through the ARF, as a provider of a forum for the protagonists to meet.

The perceived 'neutrality' of ASEAN states, or at least of some of the members, meant that they were occasionally chosen as venues where US and North Korean diplomats could meet more informally outside the Six-Party Talks format. For example, in April 2008, Christopher Hill and Kim Kye Gwan, the respective senior US and North Korean nuclear negotiators, met in Singapore.[33] Earlier, but admittedly prior to the opening of the Six-Party Talks, Kuala Lumpur had acted as a host for US-North Korean discussions over the North's missile development programme. This was in July and November of 2000.

Moreover, the annual ARF meetings provided opportunities for foreign minister-level interactions outside the conference room. In 2002, US Secretary of State Colin Powell casually met with the North Korean Foreign Minister Paek Nam Sun during a coffee break at the ARF meeting in Brunei, only a few months after President George W.

33. James E. Hoare, "Foreign Relations of the Two Koreas in 2008," in Rudiger Frank, James E. Hoare, Patrick Kollner and Susan Pares (eds) *Korea Yearbook, Vol.3, Politics, Economy and Society, 2009* (Leiden: Brill, 2009), p. 83.

Bush had labelled North Korea part of an 'axis of evil' along with Iran and Iraq. In 2004, on the sidelines of the ARF meeting in Jakarta, Powell and Paek held a more formal meeting regarding the facilitation of the Six-Party Talks. In July 2008, in Singapore, the ARF meeting even provided a venue for all six foreign ministers from the Six-Party Talks member states to meet informally together for the first time. US Secretary of State Condoleezza Rice talked briefly first with North Korean Foreign Minister Pak Ui Chun, then the 4 other foreign ministers joined for what would become an hour-long discussion.[34]

Back in 1971, under a Malaysian initiative, the then ASEAN members declared the idealistic goal of making Southeast Asia into a Zone of Peace, Freedom and Neutrality (ZOPFAN) by reducing any external military presence and, theoretically, working towards completely excluding such major power interventions and achieving the 'neutralization' of the region. During the discussions, the idea of a nuclear weapons-free zone in the region had also been mooted. However, while the ASEAN members were able to overcome intra-mural differences over ZOPFAN's meaning and objectives, doing the same for the Southeast Asian Nuclear Weapons Free Zone (SEANWFZ) proved more difficult to accomplish. Moreover, not unexpectedly, it faced strong opposition from the United States, which envisaged its security role in the region being undermined. Consequently, even after Malaysia formally tabled the proposal in 1984, intra-ASEAN talks dragged along in a desultory fashion and not until 1995, after the end of the Cold War, was a treaty concluded.[35]

This was a symbolically significant treaty, but since the nuclear weapon-possessing states around the world were not directly involved and several of the parameters of the treaty, such as verification and compliance, were left deliberately vague, serious doubts remained about its effectiveness in practice.[36] Nonetheless, at least it reflected the

34. *Yonhap North Korea Newsletter*, 24 July 2008.
35. Mohd Bin Ahmad Yusof, *"Continuity and change in Malaysia's foreign policy, 1981-1986"* (Tufts University PhD dissertation, 1990), pp. 183-189.
36. Amitav Acharya, *Constructing a Security Community in Southeast Asia* (London: Routledge, 2001), pp. 54-56.

desire of the ASEAN members – all later recruits to the grouping were required to sign on to these ZOPFAN and SEANWFZ declarations – that the region not only should develop its regional autonomy in security matters but also would never create or possess nuclear weapons. Since all the ASEAN states had already signed the NPT, in effect its impact would only be felt by the declared nuclear-weapon states. However, as of ASEAN's latest reassessment of the situation in mid-2016, none of the five nuclear states had signed the accession protocol attached to the SEANWFZ treaty. The push to complete the SEANWFZ reflected ASEAN's new self-confidence after the end of the Cold War, but it also took place soon after the wider region had had to face up to the first nuclear crisis on the Korean peninsula.

Although the Korean peninsula is, of course, geographically well beyond the envisaged limits of SEANWFZ, this commitment by the ASEAN members nonetheless implied an interest in monitoring and encouraging similar non-proliferation regimes in other parts of Asia. Therefore, the successive North Korean nuclear tests, in 2006, 2009, 2013, 2016 (twice) and 2017, were of concern to the ASEAN grouping. These events forced ASEAN to respond at times which did not coincide with ARF annual meetings. The first nuclear test in October 2006 brought a sharp reaction from ASEAN. 'Deeply concerned' about the actions, the ASEAN Chairman issued a statement on behalf of the foreign ministers, noting that they 'protest such testing, and strongly urge the DPRK to desist from conducting further tests.' At the same time, however, they called on 'all parties concerned to exercise restraint,' even though the onus was clearly put on North Korea to return to the Six-Party Talks. This 'deep concern' remained a key phrase for ASEAN. For example, after the February 2013 test, the then ASEAN Chairman used the same term, stating that ASEAN 'encourages' the North to 'comply fully with its obligations' under the various UNSC resolutions and reaffirming ASEAN's 'full support for all efforts to bring about the denuclearization of the Korean peninsula in a peaceful manner and the early resumption of the Six-Party Talks.'[37]

37. ASEAN statements 12 October 2006; 19 February 2013, http://asean.org.

After the January 2016 test, ASEAN repeated its belief in the peaceful denuclearization of the Korean peninsula. Even though it adopted a slightly tougher tone – 'urges' rather than 'encourages' the North to comply with the UNSC resolutions – the message 'to all parties' was to 'exert common efforts to maintain peace and security in the said region and create an atmosphere conducive to the early resumption of the Six-Party Talks.'[38] ASEAN here showed that, given its traditional belief in the efficacy of dialogue, it was broadly in line with the Chinese approach of pushing for the re-opening of the Six-Party Talks.

However, the tone of ASEAN's approach toughened up as another nuclear test in 2016, repeated launches of a variety of missiles during 2016-17, and regional tensions rose in the spring/summer of 2017, culminating in a sixth nuclear test in September 2017. Singaporean Foreign Minister Vivian Balakrishnan encapsulated the mainstream of ASEAN thinking when he said in late April 2017 that although the Korean peninsula was 'far away' from Singapore, 'the human price would be horrendous' if any miscalculations led to hostilities there. Rodrigo Duterte, the new Philippines president and current ASEAN Chair, was less diplomatic in his telephone exchange with US President Donald Trump, describing Kim Jong Un as 'not stable,' since 'he keeps smiling when he explodes a rocket.' He added that at the April 2017 ASEAN Summit, 'every member state was really nervous about the situation in Korean peninsula,' so they supported US efforts to 'keep on the pressure.'[39]

The ASEAN leaders reiterated their support for denuclearization of the peninsula and requested all concerned parties 'explore all avenues for immediate dialogue' with the blame laid clearly at the North Korean door: 'The actions of the DPRK have resulted in an escalation of tensions that can affect peace and stability in the entire region…

38. *Ibid*., 8 January 2016.
39. *Philippine Star*, 25 May 2017, http://www.philstar.com/headlines/2017/05/25/1703492/transcript-trump-duterte-phone-call. Duterte later, in July, on the eve of the ARF meeting, described Kim as 'a fool….playing with dangerous toys.' Guardian, 3 August 2017, https://www.theguardian.com/world/2017/aug/03/chubby-fool-duterte-lambasts-north-koreas-kim-jong-un-for-nuclear-ambitions.

[We] stressed the importance of exercising self-restraint.'[40] Immediately prior to the Summit, the North Korean Foreign Minister Ri Yong Ho had written to the ASEAN Secretary-General seeking the organization's support in criticizing the recent US-South Korean military exercises, since the Korean peninsula was 'reaching the brink of war.'[41] Evidently, his argument did not find favour with the ASEAN leaders.

In their early August 2017 meeting, ASEAN Foreign Ministers expressed 'grave concerns' over the escalating tensions on the peninsula, especially the two inter-continental ballistic missile (ICBM) tests, and called for the 'exercise of self-restraint and the resumption of dialogue'; after the September nuclear test, however, ASEAN foreign ministers not only reiterated their 'grave concerns,' but also added that North Korea's action 'seriously calls into question the country's sincerity in having meaningful dialogue on the real issues facing the Korean Peninsula.'[42]

An economic partner?

The third latent goal of the North has been economic development. However, as a grouping keen to promote its own economic development, ASEAN has sought out South Korea as an economic partner and model, while North Korea has rarely figured in the economic calculations of the ASEAN states, except for a few isolated examples.

The North Korean economy slowly began to falter and stagnate from the 1980s onwards. The loss of Soviet bloc support at the end of the 1980s was a blow, but the economy's 'inherent institutional flaws' provided clear limits to growth. Policies of austerity and exhortation failed to halt the decline and probably two-thirds of a million people

40. ASEAN Statement 2017, http://asean.org/category/asean-statement-communiques.

41. *Philippine Star*, 28 April 2017.

42. Joint Communique of the 50th ASEAN Foreign Ministers' Meeting, 5 August 2017, and ASEAN Foreign Ministers' Statement, 7 September 2017, both http://asean.org. Despite informal soundings by the US, the ARF members collectively decided not to expel or suspend North Korea from the forum.

died of malnutrition and disease in the mid-1990s.[43] Recovery did begin in the 2000s, not least because the regime was forced to allow individuals some degree of freedom to develop their own sources of income for survival reasons ('marketization'), but the levels of economic activity remained very low.

Despite the ideological commitment to self-sufficiency embodied in the *juche* philosophy of the early 1960s, Kim Il Sung recognized the need to import certain resources and capital goods for domestic economic development. A major foreign economic policy announcement in 1984 highlighted the need to expand economic relations with the developing world; Southeast Asia seemed an appropriate target for such South-South cooperation due to its geographical proximity.[44]

But trade relations with Southeast Asia remained as low-key as they had been prior to this new policy approach. This was to remain the case even a decade later, for in 1994, just before he died, Kim Il Sung had to issue an instruction that: 'Since the socialist bloc countries are gone, we have to actively pursue trade with Southeast Asian countries.'[45] Trade data is not released by North Korea, so trade flows can only be reconstructed using such data as is available from the partner countries, in this case the ASEAN members. Although different ASEAN states have featured as favoured trade partners in particular years, there has been no regular pattern. Indonesia and Singapore were relatively important as North Korean trading partners in the 1980s and 1990s, but in the 2000s, Burma, Thailand and the Philippines have had periods when they were relatively important to North Korea. For example, as North Korea's trade with Japan decreased to almost zero as a result of sanctions in the mid-2000s, Thailand found itself in

43. Hazel Smith, *Hungry for Peace: International Security, Humanitarian Assistance, and Social Change in North Korea* (Washington D.C.: United States Institute of Peace Press, 2005), pp. 59-66, 73-75.

44. Joseph S. Chung, "North Korea's Economic Development and Capabilities," in *The Foreign Relations of North Korea: New Perspectives*, Jae Kyu Park, Byung Chul Koh, and Tae-Hwan Kwak (eds.) (Colorado: Westview Press, 1987), pp. 120-128.

45. Yonhap News Agency. *North Korea Handbook* (New York: M.E.Sharpe, 2003), p. 627.

2005 becoming the third-largest trading partner of North Korea.

However, two points are important to remember with regards to these bilateral trading relationships. First, during the 2000s and particularly the 2010s, China has become increasingly dominant as almost the sole trading partner of the North. By 2014, over 80% of all North Korean trade was carried out with China alone and, by 2016, this had increased to an estimated 90%.[46] This means that even if an ASEAN member featured in the 'top ten' of the North's trading partners in any particular year, its relative importance – compared to China – was very low. Moreover, not only have bilateral trade flows fluctuated, though with a gradual decrease in recent years, but also the ranking of individual ASEAN states as trading partners of North Korea has continued to fluctuate. Second, from the ASEAN member states' perspectives, North Korea has barely registered on their radar as a trading partner. Frequently, trade with North Korea made up scarcely 0.1% of their total trade. For example, in 2005 when Thailand emerged as the third-largest trading partner of North Korea behind China and South Korea, its exports to the North were less than 0.2% of its total exports, while its imports from the North were only 0.1% of its net imports.[47] As UN sanctions began to increase after the various nuclear tests and related critical UN Security Council resolutions, bilateral trade flows were affected. The ASEAN Secretariat's own figures for total ASEAN trade with North Korea in 2016 showed just $106 million in exports to the North and only $60 million in imports, so low as to represent less than 0.1% of total ASEAN trade.[48]

Most individual ASEAN members have sustained a favourable balance of trade, with exports to North Korea exceeding imports,

46. Rex Tillerson, "Rex Tillerson: North Korea nuclear drive risks catastrophic consequences," *The Guardian*, 28 April 2017, https://www.theguardian.com/world/2017/apr/28/rex-tillerson-north-korea-catastrophic-consequences.
47. United States Embassy Bangkok, 'Thailand's Trade with North Korea: Doing Business with the Hermit Kingdom,' *Wikileaks*, Telegram, 6 November 2006, https://wikileaks.org/plusd/cables/06BANGKOK6702_a.html
48. ASEAN Secretariat, *ASEAN Trade by Partner Countries/Regions*, 2016, http://asean.org.

reflecting the asymmetry of the North's natural resource needs compared with the relative unattractiveness of its exports, apart from gold and rare minerals. Singapore, for example, has consistently featured in the top ten of global exporters to the North during the 2000s and 2010s (though primarily for exporting foodstuffs and drinks), but is well out of the top twenty in terms of imports.

There is, however, a third dimension to ASEAN-North Korean economic relations, namely the extent to which North Korea views certain ASEAN states as potential models for its own economic development. Vietnam, which has been able to institute economic reform without losing political control, and Singapore, whose strong government created a powerful economy, have been of interest to North Korea, judging by the various visits to those states by economic and political delegations, but without resolute follow-ups domestically.[49]

Shadowy linkages

However, the Southeast Asian economies have provided other benefits for North Korea. As North Korea's legal trading activities have stagnated and declined under sanctions, illegal or 'grey area' methods for gaining foreign currency have become increasingly vital. Exports of military technology and weapons, money laundering, currency counterfeiting, drug-trafficking, labour 'export,' smuggling, and cybercrime have all been uncovered by various investigations by the UN and other international bodies, as well as by individual national governments. Inevitably, the values and quantities of such illicit activities are difficult to quantify accurately, but one expert argued that by the 1990s, one-third of the North Korean economy was based on such activities; with the tightening of UN-enforced sanctions since then, it is quite feasible that the propor-

49. Tan et al, Potential Role, pp. 8-13. Former British Ambassador in Pyongyang, John Everard, comments in his book *Only Beautiful, Please: A British Diplomat in North Korea* (Stanford: Stanford University, 2012) on such 'study' visits, noting that the 'regime…has never been able to bring itself to implement the necessary changes' (p. 112).

tion of national economic activity funded by such activities may be even larger.[50]

In the context of ASEAN's relations with North Korea, while the North is believed to have practiced several of these activities in many of the member states, certain states have become the focus for particular aspects of these illicit activities. Two important examples are chosen for analysis here. Given that its conventional military technology has seemingly become slowly outdated compared to what is available from Western and Russian suppliers, few ASEAN states have been interested in North Korean conventional military technology. However, the North's nuclear and missile technology has been steadily advancing. This has been reflected in the relationship that represents the one important exception to ASEAN indifference: Burma/Myanmar. After the Rangoon bombing, all contact ceased, but in the late 1990s, Burma and North Korea secretly re-established contacts through the Burmese military. In 1998, Burma received a delivery of field guns and over the following few years, several secret missions by Burmese governmental delegations were made to Pyongyang; in 2001, a senior North Korean Foreign Ministry official visited Rangoon to discuss defence industry cooperation. The following years saw intermittent reports of North Korean technicians being spotted at ports and military sites and also close to the central Burmese town of Natmauk, where Burma had planned to set up a nuclear reactor.[51] With both states short on foreign currency, North Korean arms sales to Burma were basically bartered for with Burmese rice, rubber, and other essential goods that could flow into North Korea.[52] These contacts eventual-

50. Cha, Impossible State, pp. 129-137.

51. Bertil Lintner, "Burmese-North Korean relations have a long history," *NK News*, 24 September 2013, https://www.nknews.org/2013/09/burmese-north-korean-ties-have-a-long-history/; Irrawaddy, "From foes to friends: The changing face of Burma-North Korean relations," 4 October 2015, http://www2.irrawaddy.org/burma_north_korea.php.?art_id=16161.

52. Radio Free Asia, "North Korea Aids Burma Tunnels," 18 June 2009, http://www.rfa.org/english/news/myanmar/burmatunnels-06182009131301.html; Maria Rosaria Coduti, "A brief history of the North Korea-Myanmar friendship," NKNews, 9 May 2017, https://www.nknews.org/2017/05/

ly led to the re-establishment of diplomatic relations in April 2007.

While the Burmese military's efforts to acquire some North Korean conventional weapons have become clear, the extent to which Burma also wanted to develop nuclear weapons, with North Korean assistance, is far more controversial. Rumours swirled, and while the exact terms of a 2008 military cooperation agreement between Burma and North Korea remain obscure, by the 2010s, as a quasi-civilian government was installed in Burma and prospects of better relations with the United States began to emerge – with one US precondition being the cutting off of weapon flows from North Korea – there began a process of 'winding down' in the Burmese-North Korean military relationship.[53] In 2012, the then Burmese leader, Thein Sein, promised South Korean President Lee Myung-bak (the first South Korean president to visit since 1983) that Burma would not buy any more weapons from the North.[54] Although some very discreet weapons trade may have continued (and US officials had to raise the nuclear issue again with the new civilian government of Aung San Suu Kyi in 2015), Burma began not only to endorse ASEAN statements criticizing North Korean nuclear and missile tests, but also, by 2016, following a degree of political change within Burma, to separately condemn North Korean infractions of UN resolutions.

Malaysia also became important to North Korea because of its willingness to be open to North Korean citizens, which the North was able to exploit in various ways. In 2000, in response to the North's improvement of relations with South Korea, as well as with ASEAN, Malaysia granted North Korean citizens one month visa-free access; in 2009, primarily with the hope of increasing commercial interactions,

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a-brief-history-of-the-north-korean-myanmar-friendship.

53. Bertil Lintner, "Is the Burma-North Korean relationship a thing of the past?," NK News, 23 September 2013, https://www.nknews.org/2013/09/is-the-burma-north-korean-relationship-a-thing-of-the-past.; David I. Steinberg, "Myanmar turns its back on North Korea," *Nikkei Asian Review*, 18 January 2016, http://asia.nikkei.com/Viewpoints/Viewpoints/Myanmar-turns-its-back-on-North-Korea.

54. Coduti, op.cit..

the Malaysian Government went one step further and granted unlimited visa-free access. This in turn was reciprocated by the North for Malaysian citizens. This enabled the North to use Malaysia for a variety of activities, not all of which were strictly legal. Despite Malaysian efforts to clamp down on money-laundering, UN experts doubt whether there have been systematic means to detect sanction evasion activities by North Korean entities. For example, a UN report highlighted that one front company, Glocom, set up in Kuala Lumpur by North Korean intelligence agents, has been selling battlefield radio equipment in violation of UN sanctions.[55] Additionally, a coal-mine disaster in a remote part of the Sarawakian jungle in east Malaysia in November 2014 brought to light the special deal done by the Sarawak local government to allow North Korean labourers to work there legally.[56] Despite one death and several injuries from this accident, around 300 North Korean labourers continued to work in that state's construction industry. By March 2017, there were reportedly over 140 North Koreans who had overstayed their visas (Sarawak has an immigration system semi-independent from that of peninsula Malaysia), but these were all deported in groups by early April 2017.[57]

The most dramatic incident involving a North Korean citizen, of course, was the assassination in February 2017 at Kuala Lumpur airport of Kim Jong Un's half-brother, Kim Jong Nam, who in exile regularly commuted between Malaysia, Macau, and Beijing. Poisoned by two young Southeast Asian women using VX nerve agent, he collapsed and died within an hour; this assassination prompted a major diplomatic controversy between Malaysia and North Korea. Ambassadors were recalled or expelled, diplomats became hostages, and rhetoric escalated. Finally, quiet negotiations ensued, resulting in the body

55. James Pearson and Rozanna Latiff, "North Korea spy agency runs arms operation out of Malaysia, U.N. says," Reuters, 27 February 2017, http://uk.reuters.com/article/uk-northkorea-malaysia-arms-insight-idUKKEN1650YG.2017; Stephen Haggard and Kent Boydston, "Kim Jong-nam Update: Malaysia-DPRK Relations," *PIIE: North Korea Witness to Transformation*, 2 March 2017.
56. *Sunday Star,* 23 November 2014; Star, 24 November 2014.
57. *Malay Mail*, 30 March 2017; Sunday Star, 2 April 2017.

of Kim Jong Nam being flown out and two persons of interest, hiding in the North Korean Embassy in Kuala Lumpur, being allowed to leave; in turn, the stranded Malaysian diplomats were allowed to return home. While the Malaysian government did not go as far as the Burmese government had in 1983 by breaking off relations, the strain which was already becoming apparent in Malaysian-North Korea relations over the latter's continuing missile and nuclear tests rapidly came to the surface. Despite whatever 'special relationship' may have existed before, it will clearly take some time before 'normal' relations can resume.[58] North Korea has achieved its key target – eliminating a potential rival for the leadership – and has reminded the world that it does have chemical weapons at its disposal, but at the price of upsetting China, which had implicitly been 'looking after' the exiled Kim Jong Nam, losing its relatively free access to Malaysia, and reinforcing doubts amongst many ASEAN neighbours about the wisdom of allowing North Koreans to conduct business easily on their territories. As such, the medium-term consequences for the North may be to make its efforts to divide ASEAN more difficult. Although the ASEAN Summit meeting in Manila in April 2017 did not publicly refer to the Malaysian murder case, it must have been in the minds of the ASEAN leaders as they discussed the Korean situation.

Conclusions

North Korea's relations with Southeast Asia have seen fluctuations both in individual bilateral connections and in the broader relationship with ASEAN as an organization. In the early decades after the Korean War

58. Haggard and Boydston, Kim Jong-nam; Prasanth Parameswaran, "The Myth of a North Korea-Malaysia Special Relationship," *The Diplomat*, 23 February 2017, http://thediplomat.com/2017/02/the-myth-of-a-north-korea-malaysia-special-relationship; Shahanaaz Habib, "Dicing with deadly diplomacy," *Sunday Star*, 26 February 2017; Mergawati, "The North Korean story is not over yet," *Star*, 1 April 2017, http://www.thestar.com.my/opinion/columnists/mergawati/2017/04/01/the-north-korean-story-is-not-over-yet-its-been-a-nailbiting-few-weeks-and-the-time -has-come-to-take.

Southeast Asia became yet another diplomatic battleground for North and South Korea to carry out the struggle for legitimacy and prestige. Although most ASEAN states – and the pending members of that organization – had established diplomatic relations with the North by the early 1990s, thereby achieving one component of North Korea's goals, the North at the same time was by then well on the way to losing the battle for political favour in Southeast Asia. The South Korean economic model and its promise of trade, investment and technology had become significantly more attractive to ASEAN states than the North's self-reliant and increasingly deteriorating economy. Moreover, despite several ASEAN members' interest in non-alignment, the ideological appeal of Kim Il Sung's self-reliant philosophy was limited. While not all Southeast Asian states were comfortable with the burgeoning ideas of a 'new world order' being espoused after the end of the Cold War, they did not necessarily see anything of value in the North Korean autarchic approach to international relations.

Consequently, as the North began to emerge from the devastating effects of the famine in the mid-1990s, its diplomacy began to be 'characterized by global proactivity to respond to economic imperatives while simultaneously maintaining national defence capabilities.'[59] This new foreign policy approach, which capitalized on the new mood associated with President Kim Dae-jung's policies, led to the North establishing diplomatic relations with many states in Europe and the West more generally, as well as with the two remaining ASEAN states which had not previously recognized it. Moreover, North Korea began to take ASEAN seriously and initiated its first substantial involvement in a regional organization by becoming a member of the ARF. However, as the 2000s continued, this 'charm offensive' petered out as the North's perceived national security imperatives – recognized domestically through the songun (military-first) approach of Kim Jong Il and sustained as one key pillar of Kim Jong Un's byungjin line – came increasingly to the forefront and were made externally more visible through missile and nuclear tests.

59. Smith, Hungry for Peace, p. 187.

Although North Korea's improving military technology did not seem to directly threaten ASEAN (at least until the increased range capabilities of the ICBMs being tested in 2017 seemingly brought most parts of Southeast Asia within range), the rising tensions in the Northeast Asian situation remained a problem for ensuring the regional peace and stability that ASEAN desired. Similarly, although ASEAN did not seem threatening militarily to the North, the latter could not afford to allow a strong united front to emerge, especially if linked with the United States or Japan and South Korea. Consequently, the North tried to exploit perceived 'weaker' links in ASEAN by enhancing bilateral contacts with old socialist allies, such as Vietnam and Cambodia, as well as with 'neutralist' states, such as Malaysia and Burma/Myanmar. As such, the North played on bilateral connections as a way of combating any potentially-united anti-North Korean postures by ASEAN, while trying to exploit the differing regulations – or laxity of enforcing regulations – in individual member states so as to enhance its illicit income-raising activities. The North has proved adept at exploiting certain loopholes in individual Southeast Asian states' economic governance, but generally neither its own market nor its economic model generated enough interest from ASEAN to meet the North's developmental goal.

Consequently, the North's expanding missile testing, coupled with the assassination of Kim Jong Nam, meant that by mid-2017, the North was finding it increasingly difficult to use bilateralism to undermine ASEAN's multilateralist tendencies; the consensus amongst member states has been slowly but surely moving towards a tougher line towards the North. Yet, given its long-standing belief in dialogue to solve problems, ASEAN does find itself in a difficult position vis-à-vis the North: the Trump administration wants the Southeast Asian states to undertake more vigorous sanctions, but South Korea under the Moon Jie-in administration considers ASEAN to be the 'fifth power' (apart from the 4 major powers that are already involved in the denuclearization of the peninsula), which could urge the North back to the path of dialogue. Although some ASEAN politicians have not given up the hope of acting as some kind of 'peace-maker,' the consen-

sus within ASEAN remains that the growing confrontation surrounding the peninsula is a task primarily for the Koreans, North and South, as well as the Americans and the Chinese, to solve.

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North Korea's Engagement in International Institutions: The Case of the ASEAN Regional Forum

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Despite a successive increase in the DPRK's engagement with international organizations and institutions since the 1970s, research on North Korean foreign policy largely ignores the role of multilateralism in the DPRK's overall foreign policy conception and thus lacks a sufficient understanding of the country's engagement with the international community through international organizations and institutions. This is all the more surprising given that encouraging the engagement of North Korea into stable structures of cooperation is considered to be among the most pressing tasks in contemporary Northeast Asia. Such an engagement, however, presupposes an understanding of the motives and strategies that lead to North Korean engagement in or disengagement from regional and international organizations and institutions. This paper aims to fill this void in the international literature by scrutinizing an especially significant case of the DPRK's institutionalized engagement with a particular institution: the ASEAN Regional Forum (ARF). Embedded in a broader overview of North Korea's participation with international and regional organizations and institutions at large, this study analyzes the history, structure and organization of the DPRK's engagement with the ARF, aiming to distill the motives, strategies, and patterns of interaction with this significant institution. It reveals that (1) North Korea's decision to join the ARF was mainly due to the organization's loose decision-making procedures, (2) North Korea finds the ARF useful as it provides the country with a venue to interact with other states and (3) North Korea, as a theater state, uses the ARF as a stage on which national role conceptions can be articulated and dramatized.

Keywords: North Korea, International Organizations, Regional Institutions, ASEAN Regional Forum, Multilateralism

I. Introduction[1]

Hardly any other country in the contemporary world system has a more negative image than the DPRK, resulting in a unique perception of North Korea as a problem, an antithesis to and outsider of an increasingly globalized world. This image of the DPRK as a "hermit kingdom" has fueled a widespread perception of North Korea as either unable or unwilling to systematically engage with the international community–a view that is particularly prominent with regards to North Korea's engagement with the international community through international organizations and institutions. Consequently, studies on North Korean foreign policy tend to disregard and/or downplay the role of organizations/institutions and multilateralism in the DPRK's foreign policy conception,[2] leading one observer to famously label North Korea a "multilateralist nightmare" (Evans 2007: 109-110). However, such claims are–at the very least–challenged by a political reality in which North Korea not only has established diplomatic relations with 164 countries, but also, ever since the 1970s, has significantly expanded its memberships in international and regional organizations and institutions. As of early 2017, North Korea is a member of 63 international governmental organizations[3] and is signatory to 94 multilateral agreements, treaties, and conventions.[4] Critics may argue that it is not the quantity of memberships in organizations and institutions, but the quality of the respective interac-

1. The author would like to thank the three anonymous reviewers for their helpful comments on an earlier draft of this paper.

2. Notable exceptions in this regard are the respective contributions by Cho (2014), Habib (2013), Kihl (1998), Koh (1995), Pak (2000), Yoo et al. (2008).

3. This number does not include: cases in which the DPRK withdrew its membership (such as the International Atomic Energy Agency), institutions that have ceased to exist (such as the Six-Party Talk or the Four-Party Talks), or Track-II processes (such as the Northeast Asia Cooperation Dialogue, the Council on Security Cooperation in the Asia Pacific, or the Ulaanbaatar Dialogue on Security in Northeast Asia).

4. This number does not include obsolete agreements (such as COMECON), duplicative agreements (such as amendments to existing treaties), or agreements on accession to international or regional organizations.

tions that principally matter. To that end, North Korea has repeatedly frustrated the international community's endeavors to engage the country through international and regional organizations and institutions. For example, the country has decided on numerous occasions to back away from particular agreements or suspend its participation altogether. Nevertheless, North Korea's engagement with the international community through organizations and institutions is much more complex than many observers have suggested. In fact, there are significant variations in the DPRK's ways and means of interacting with international and regional organizations and institutions, ranging from non-compliance and obstruction to an astounding level of cooperation. For instance, North Korean representatives actively engage in many of the U.N. subsidiary organizations, such as UNESCO, where they join in the discussions in working group meetings, deliver addresses at the General conferences, participate in votes and elections, and access and ratify conventions. For example, Habib points out that "North Korea is a willing participant in the United Nations Framework Convention on Climate Change (UNFCCC)" (Habib 2013: 1), and that Pyongyang has "a record of compliance" (Habib 2014) with its obligations as a party to the UNFCCC. Ultimately, despite North Korea's reputation as a belligerent actor in nuclear diplomacy, the end of the Cold War saw an increase in North Korean interaction with and engagement in a number of security institutions and ad hoc multilateralisms such as the Korean Peninsula Energy Development Organization(KEDO) process, the Four-Party Talks and the Six-Party Talks, among others.

Understanding those variations is crucial, since the engagement of North Korea into stable structures of regional and international cooperation is among the most pressing challenges and tasks in contemporary Northeast Asia. However, a critical assessment of the (im-)possibilities of such an engagement presupposes an understanding of the motives and strategies underlying North Korea's decision to engage with–or disengage from–international and regional organizations and institutions in the first place. Against that backdrop, this paper evaluates North Korea's interactions with and participation in the sole institutionalized regional security mechanism in East Asia on the Track-I level that brings

together all major actors of the nuclear issue: the ASEAN Regional Forum (ARF). Embedded in a broader overview of North Korea's participation with international and regional organizations and institutions at large, this paper analyzes the history, structure, and organization of the DPRK's engagement with the ARF with the aim of distilling the motives, strategies and patterns of interaction on the part of North Korea. In so doing, the paper develops three major lessons to be learned from North Korea's engagement with the ARF–lessons that bear significance well beyond the single case analyzed here.

II. North Korea's Engagement with International Organizations and Institutions: A Brief History

While the DPRK's first engagement with an international organization preceded the actual founding of the North Korean state, in the beginning, Pyongyang showed a rather hesitant stance with regards to the prospect of engaging with international organizations.[5] Thus, North Korea's foreign relations until the late 1950s were confined to fellow socialist states. Starting in the 1960s, however, both the regional and international political context began to change significantly. Along with the relaxation of U.S.-Soviet and U.S.-Chinese relations in the early 1970s, which created new possibilities for the countries of both global blocs, a major development that paved the way for the DPRK's broader engagement with international organizations was the increasing influence of newly independent countries (NICs) in the arena of world politics. As North Korea actively engaged with the NICs of the Third World (Armstrong 2013: 143; Paik 2015: 497-502),[6] the entry of those NICs into

5. In 1947, and thus prior to the proclamation of the DPRK in 1948, North Korea joined the World Federation of Trade Unions via the General Federation of Trade Union of Korea. Between 1948 and 1973, North Korea became a member of only six further multilateral intergovernmental organizations.
6. In particular, the DPRK started a diplomatic campaign towards African and Asian nations in the 1960s, normalizing relations with some two dozen new governments, and particularly reaching out to those countries where China had

the U.N. system resulted in a major transformation of the power balance within the world body. Thus, framed by a modification of the broader foreign strategy of the DPRK,[7] international organizations, and particularly the United Nations and its sub-organizations, became a significant component of the DPRK's overall foreign policy conception and strategy. Thanks to the power structure at the U.N. being significantly altered, North Korea was admitted to the World Health Organization (WHO) in May 1973, despite firm opposition from South Korea and its supporters. With its admission to WHO, North Korea not only entered into the U.N. system, but also gained the customary privilege of applying for an observer status at the U.N. (Koh 1995: 48). Indeed, North Korea's application to this effect was approved in July 1973 and the DPRK subsequently established an observer mission at the U.N. headquarters in New York later that same year. Throughout the next couple decades, North Korea's memberships in international organizations gradually increased. Between 1973 and 1989, North Korea joined a total of 19 U.N. bodies in the form of subsidiary organs and specialized agencies, as well as 12 multilateral intergovernmental organizations and a number of INGOs and NGOs (Cho 2014: 38-43). While North Korea's early engagement with the international community was at least partially influenced by its 'legitimacy contest' with the Republic of Korea (ROK or South Korea), Pak (2000: 152) aptly points out that North Korean membership in these organizations has been beneficial to the DPRK. For example, North Korea has received $8.85 million in development funds from the UNDP, which established its office in Pyongyang in 1979 and initiated and supported programs that propped up agricultural and industrial productivity, provided support for the exploration of mineral resources, and promoted exports. Moreover, between 1981 and 1986, UNESCO, to

already established economic and diplomatic influence (Kihl 1998: 261-262).

7. In general, the 1970s were a decade of unprecedented outward expansion for the DPRK, characterized by an engagement of both the First and Third World and leading to a new global presence for Pyongyang. At the same time, North Korea also initiated a new outreach to the West, predominantly as an effort to develop its economy and expand its foreign ties. Between 1970 and 1980 alone, North Korea established diplomatic relations to as many as 68 countries.

which North Korea became a member in 1974, contributed a total of $1.4 million for the infrastructure of the DPRK's Institute of Foreign Language facilities.

Following South Korea's democratic transition in the late 1980s, Seoul's new 'northern policy' (*pukpang chŏngch'aek*) not only facilitated the normalization of the ROK's relations with the Soviet Union, Eastern Europe, and China, but also increased the likelihood of a parallel U.N. membership for the two Koreas. In order to counter these developments, North Korea proposed a 'single-seat membership' of Korea in the U.N. during a meeting of the North and South Korean premier ministers in 1990. However, with the domestic, regional, and international framework conditions once again significantly changing with the end of the Cold War, South Korea's proposal of a parallel membership gained increasing international support. North Korea reacted to these developments with another policy shift, essentially suspending its hitherto preferred objective of both a unilateral membership of the DPRK and a shared 'single-seat membership' between the North and South.[8] On May 27, 1991, North Korea announced its decision to join the U.N. and made a formal application for membership on July 8, 1991. On August 8, 1991, the U.N. Security Council (UNSC) passed UNSC Resolution 702, recommending both Koreas to the U.N. General Assembly (UNGA) for membership. On September 17, 1991, the UNGA admitted both countries under Resolution 46/1. To explain its policy reversal, the DPRK's For-

8. Although North Korea (reactively) requested its unilateral admission to the U.N. for the first time as early as February 1949–a strategic move to counter South Korea's application a month earlier–the general strategy of the North until 1973 was to object to any form of parallel U.N. membership by North and South Korea, arguing (1) that such a model would perpetuate the division of the two Koreas, (2) that only independent states could become U.N. members and that South Korea failed to meet this qualification and (3) that Korea's U.N. membership would constitute a matter of self-determination, which, in turn, would require a consensus of both sides (Pak 2000: 68). Following North Korea's entry into the U.N. system, Pyongyang significantly altered its position and policy vis-à-vis the world body. In June 1973, as part of a five-point program on Unification, Kim Il Sung proposed that North and South Korea form a confederation and join the U.N. as a single member.

eign Ministry issued a statement, arguing that it had reluctantly joined the world body against its will to resolve a difficult situation that would have been caused by a unilateral U.N. membership by the ROK, and to prevent both a biased debate on unification and the perpetuation of the division of the Korean peninsula (Pak 2000: 73-74).[9]

Following the DPRK's "forced entry" (Kihl 1998: 262) into the U.N. system as a full member, North Korea quickly established relations with most of the successor states of the Soviet Union and Yugoslavia in the 1990s and many Western European countries in the early 2000s. Moreover, during Kim Dae-jung's and Roh Moo-hyun's presidencies, the ROK actively supported a broader engagement with the DPRK, both bilaterally and via regional and international organizations and institutions. In this context, North Korea once again expanded its engagement with international organizations.

Three interwoven trends and developments characterize North Korea's interaction with international organizations and institutions in the post-Cold War era. They are: (1) its increasing participation with regional organizations and institutions in (North)East Asia, (2) its increasing engagement with security-related initiatives, and (3) its increasing participation in Track-II processes.[10] Since the end of the Cold

9. This explanation elucidates a number of motives and considerations for North Korea's decision to join the U.N. First, North Korea recognized that the changing regional and international circumstances made a continued rejection of South Korea's membership ever more unlikely. Hence, a unilateral admission of the ROK would have constituted a diplomatic upset and there would have been a real possibility that the DPRK could have been permanently barred from accessing the U.N. as a full member following the South's unilateral admission. This would have increased the risk of international isolation. Second, it is evident that North Korea hoped to be able to use its U.N. membership as a way to promote its own economic development, thereby stabilizing the economic situation in the North during a time of economic hardship. Third, North Korea's decision to apply for membership can also be seen as an attempt to influence future debates on such crucial issues as unification. This speaks to a vital element of the state's involvement in international organizations and institutions: to use them as arenas for influence-seeking policies (Ballbach 2013).

10. It is noteworthy that North Korea did not participate in any regional intergovernmental organization in East Asia until 1987, when Pyongyang

War, North Korea has become a member of eight further regional intergovernmental organizations in East Asia, most recently joining the Asia Pacific Group on Money Laundering as an observer in 2014. This growing engagement with multilateral institutions in East Asia has been paralleled by an increasing participation in multilateral institutions dealing with security-related issues in the region. For instance, North Korea (at times closely) cooperated in the mid-1990s with KEDO, an international consortium that emerged from the bilateral Geneva Agreement between the U.S. and North Korea. Additionally, between 1997 and 1999, North Korea participated in the Four-Party Talks, a multilateral format designed to establish a permanent peace mechanism on the Korean Peninsula by moving beyond the Armistice Agreement that ended active hostilities in 1953. While the four-party process eventually failed, it was intensive and far more frequent than the subsequent six-party process, since the Four-Party Talks met for three preliminary sessions at Columbia University and six formal plenary sessions in Geneva over the course of twenty-one months. In 2000, North Korea joined the ASEAN Regional Forum (ARF) and, between 2003 and 2008, participated in the Six-Party Talks, which was a process designed to solve what has become known as the second nuclear crisis on the Korean peninsula. And finally, there has been an increasing engagement of the DPRK in Track-II/Track-1.5 processes dealing with security issues in the region. For instance, North Korea joined the Council for Security Cooperation in the Asia-Pacific (CSCAP) in 1994, the Northeast Asian Cooperation Dialogue (NEACD) in 1993/2002, and the Ulaanbaatar (Northeast Asia Security) Dialogue in 2014, among others. Although North Korea has long rejected the idea of multilateral security cooperation in East Asia, these examples clearly reflect a changing posture towards such an engagement, raising the question: what motivates this altered position? Using the DPRK's participation with the ARF as an exemplary case, this question will be addressed in the chapters that follow.

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entered the International Organization for Marketing Information and Technical Advisory Services for Fishery Products in the Asian and Pacific Region.

III. North Korea's Participation in the ASEAN Regional Forum

Founded in 1993, the ASEAN Regional Forum (ARF) constituted the first regional security cooperation and dialogue platform in East Asia. As the Brunei Air Force Handbook notes, "As a major venue for carrying out ASEAN's objectives of regional harmony and stability, ARF adopted two main objectives: first, to foster constructive dialogue and consultation on political and security issues of common interest and concern and, second, to contribute to efforts towards confidence building and preventive diplomacy in the Asia-Pacific region" (USA International Business Publications 2007: 146). From the outset, its founders have conceptualized the organization as the principal forum for security cooperation in the region. Currently comprised of 27 countries, the ARF is guided by the so-called ASEAN values of consensus, confidence-building and progress at a pace comfortable to all, as well as by ASEAN-style diplomacy, which involves non-interference in the internal affairs of states, non-use of force, pacific settlement of disputes, consensus decision making, and a preference for non-binding and non-legalistic approaches. While the ARF thus displays a low level of institutionalization, consequently setting it apart from European security structures, the institution "is not designed to 'resolve' (…) disputes – i.e. to reach a formal agreement, or to create a formal mechanism to regulate concerned states' actions" (Katsumata 2006: 194). Instead, the ARF seeks to promote peace by using confidence-building measures (CBMs) to establish trust among its members. In other words, the ARF is about "identity-building" and its members hope that "dialogue (…) [will lead] to socialization which, in turn, will lead to the dissipation of conflicts of interests" (Garofano 1999: 78). Regarding its institutional structure, the ARF is characterized by a two-tiered process, and engages in a broad range of Track-I and Track-II initiatives. The most important of the Track-I activities is the annual ARF meeting, held at the foreign ministerial level in conjunction with the ASEAN Post Ministerial Conference and chaired by the ASEAN country occupying the rotating chairmanship. This meeting is supported by an annual Senior Officials' Meeting (ARF-SOM). Additionally, the ARF has established two additional sup-

port structures: an Inter-Sessional Support Group (ISG) on Confidence Building Measures and Preventive Diplomacy and various Inter-Sessional Meetings (ISMs). These groups are themselves supplemented by specialists who meet in Track-II meetings, like the Northeast Asia Cooperation Dialogue (NEACD), founded in 1993, and the Council for Security Cooperation in Asia-Pacific (CSCAP), founded in 1994. The ARF also hosts a number of conferences and workshops on a diverse set of issues from disaster management to transnational crime.

1. A Brief History of North Korea's Engagement with the ARF

North Korea first expressed its desire to join the ARF in November 1993 and reaffirmed its aspiration at a visit of then-Vice Foreign Minister Choi Woojin to Indonesia, Malaysia, and Thailand in July 1995. As discussed above, North Korea's accession to the ARF was embedded in a broader diplomatic outreach of the DPRK to the international community in the early 2000s, both bilaterally and multilaterally. North Korea's ARF membership was supported both by the ROK and by several Southeast Asian nations, who envisioned a more prolific role for the ARF in solving regional conflicts. In March 2000, Thailand's Foreign Minister Surin Pitsuwan visited Cambodia, a nation with comparably strong links to Pyongyang, and asked Prime Minister Hun Sen to help persuade North Korean leaders to join the ARF. Thailand's initiative was also backed by the Philippines. In a collaborative effort to bring North Korea into the Forum, Cambodia, Thailand, and the Philippines each initiated bilateral meetings with North Korea during the Non-Aligned Movement (NAM) summit in Havana in early June. When North Korea formally applied for membership to the ARF in May 2000, Thailand circulated a letter to all ARF participants in order to obtain formal admission from them (The Nation, July 27, 2000). North Korea's application was not, however, accepted without reservations by all of the ARF countries, and Japan, in particular, had concerns.[11] Meanwhile,

11. Though Japan had urged North Korea to join the ARF in the years of its inception, relations between the two nations had deteriorated considerably since that time due to the DPRK's missile launch over Japanese territorial

Thailand and the Philippines' collaborative initiative was motivated predominantly by the aspiration to restore the credibility of ASEAN's leadership role within the Forum, since it had been considerably undermined by the Asian economic crisis. Their eagerness surrounding the initiative was also caused in part by their expectation that the DPRK's participation in the ARF would enhance the quality of the institution's discussion on regional security issues. As the Philippines' Secretary of Foreign Affairs, Domingo Siazon, stated, the DPRK's "entry to the ARF enables the Forum to have more serious dialogue on regional security issues since we will deal with real issues" (The Strait Times, July 13, 2000). In line with its general strategy to support the (re-)engagement of the DPRK into regional and international structures of cooperation, North Korea's accession to the ARF was equally supported by South Korea's Kim Dae-jung administration. As will be discussed further below, the ARF's modus operandi, which can hamper discussion of many controversial issues, presented a suitable entry point for Pyongyang. It was in this particular context that the DPRK formally applied for admission to the ARF in May 2000. The application was agreed upon at the ARF-SOM later that month and was unanimously approved at the foreign ministerial meeting in July 2000 in Bangkok. To North Korea, the accession to the ARF constituted the country's first institutionalized participation in an established intergovernmental multilateral security institution in the East Asian region.

Following the outbreak of the second nuclear crisis on the Korean peninsula in 2002, some ARF members hoped that North Korea's participation in the ARF could strengthen the institution's role in solving the ongoing nuclear issue and bring about a change in the country's attitude towards multilateral security cooperation in the region. Confronted with a rapidly deteriorating nuclear crisis in late 2002 and early 2003, the Aus-

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waters and the issue of abduction of Japanese nationals. Japan's cautious stance was also in part due to its suspicion that North Korea might not fully recognize the ARF's objectives and respect its principles. Later, Tokyo softened its opposition to North Korea's participation on the grounds that, in the long term, incorporating North Korea into a multilateral security setting was much better for Japan's national security than isolating it.

tralian and Indonesian Foreign Ministers called for the adding of the nuclear issue to the agenda of the upcoming ARF-SOM (Sydney Morning Herald, March 12, 2003). Set against this background, in December 2002, Cambodian Foreign Minister Namhong visited Pyongyang in his role as acting chairman of the ARF, reflecting the hopes (by some member states) of a more proactive role for the institution. This was also expressed in the Chairman's Statement to the ARF-SOM in April 2003:

> "The Meeting commended the Cambodian ARF Chair for the efforts made in seeking ways to help defuse tension on the Korean peninsula and stressed the importance of the ARF as a constructive and useful forum to facilitate dialogue among the ARF participating countries with a view to help peacefully solve issues on the Korean peninsula. The efforts made by the Chairman of the 10th ARF testified to the significant progress of the enhanced role of the ARF Chair and of Preventive Diplomacy (…)."

According to Strothmann (2012: 104), the 10th ARF held in 2003 in Phnom Penh was "groundbreaking" due to the institution's handling of North Korea. At the meeting, U.S. Foreign Minister Colin Powell confirmed to the North Korean delegation his interest in multilateral talks. However, the main actors involved still did not want the ARF to play a leading role in addressing the nuclear issue, and instead preferred a more exclusive format for such talks. Following a trilateral meeting between China, North Korea, and the U.S., the regional powers agreed to establish what has become known as the Six-Party Talks, encompassing the U.S., China, North Korea, Russia, South Korea, and Japan. As a result, ASEAN's attempt to strengthen the role of the ARF and to implement the ARF chairman as a mediator and facilitator in the nuclear conflict on the Korea peninsula fell short. ASEAN's members had to accept that the major players were not interested in such a solution and its chairman acknowledged that North Korea, for a direct exertion of influence by the ARF, was "apparently too far away" (Asahi Shimbun, June 19, 2003).

While this acknowledgment points to the limited role of the ARF in directly contributing to a solution of the nuclear issue, the ARF did play what may be described as a 'subsidiary role' in trying to resolve the con-

flict. Above all, the ARF provided a significant additional channel for formal and informal consultations among the Northeast Asian powers – both on the Track-I and Track-II level. Particularly between 2003 and 2008, the ARF became an integral building block in North Korea's negotiation strategy vis-à-vis the regional powers–and vice versa. For instance, when the Six-Party Talks made considerable headway in 2007 and 2008, North Korea's rapprochement with the international community also continued within the framework of the ARF. In 2008, one year before the United States' own accession, North Korea signed the Treaty of Amity and Cooperation (TAC), the cornerstone treaty for ASEAN's external relations.[12] Notably, the informal consultations among the Foreign Ministers of the Six-Party Talks on the sidelines of the ARF meeting in 2008 constituted the highest level of diplomatic contact since the Six-Party process was initiated in 2003–and arguably was the most significant contribution of the ARF to the international community's ongoing efforts to defuse the nuclear issue.[13] Following the breakdown of the Six-Party process in late 2008, the ARF served as one of the few remaining channels of institutionalized contact on security issues with the DPRK, thus also playing a crucial role in further familiarizing the DPRK with security-related multilateral structures in East Asia. At the same time, however, following the sharp increase of missile and nuclear testing activities by the DPRK from 2016 onwards, the U.S. increasingly pressured ARF members to minimize their contact with North Korea, and aimed to further isolate Pyongyang. However, since there are no expulsion provisions contained within the ARF Charta, North Korea has continued to participate in a variety of ARF-sponsored activities, and some of the key ARF members are still convinced that the institution's

12. North Korea's accession to the TAC was the first time the country had joined an accord which includes a regional code of conduct. It was a very unusual step in the DPRK's annals of diplomatic relations, which not only set the stage for further discussion of regional security issues, but ultimately put North Korea a step closer to joining ASEAN's East Asia Summit, an annual gathering that could foster cultural, scientific, and economic exchanges for the DPRK.

13. The main subject of the exchange of views among the respective Foreign Ministers was the development of a pending verification mechanism to credibly verify the progress of the dismantling of North Korea's nuclear program.

channel of communication with the DPRK should be upheld. For instance, the Philippines have completely rejected the idea of banning North Korea from the ARF, stating that the ASEAN Regional Forum is the only venue where the international community, including Southeast Asian countries, can tell North Korea its concerns over its missile tests and nuclear program, as well as the only venue, aside from the United Nations, where North Korea, South Korea, Japan, China, Russia, the US, the European Union, and ASEAN all sit at the same table to discuss regional security issues (e.g. Philstar Global, August 3, 2017).

2. The Organization and Structure of North Korea's Participation with the ARF

In order to uncover more about both the motives and patterns of the DPRK's interaction with the ARF, it is helpful to take a closer look at how the participation is structured. Building on available data from the ARF, Table 1 provides a comprehensive overview on the organizational structure of the DPRK's interaction with the ARF between 2003 and 2014.

Table 1. North Korea's Participation with the ARF

Time period	Total No. of ARF activities	No. of activities attended by DPRK	DPRK's participation rate in %	Meetings attended by DPRK
08/2003 – 07/2004	8	2	25%	– ARF SOM, Jogjakarta (05/2004) – 11th ARF, Jakarta (07/2004)
08/2004 – 07/2005	14	10	71%	– Seminar on Alternative Development, Kunming (09/2004) – ISG on CBMs, Phnom Penh (10/2004) – ASPC, Beijing (10/2004) – ISG on CBMs, Potsdam (02/2005) – Seminar on Non-Traditional Security Issues, Sanya (03/2005) – ARF DOD, Vientiane (05/2005) – ASPC, Vientiane (05/2005) – ARF SOM, Vientiane (05/2005) – Workshop on Security Perceptions in East Asia, Ulaanbaatar (06/2005) – 12th ARF, Vientiane (07/2005)

Time period	Total No. of ARF activities	No. of activities attended by DPRK	DPRK's participation rate in %	Meetings attended by DPRK
08/2005 – 07/2006	20	10	50%	- 9th HDUCIM, Ha Noi (10/2005) - Seminar on Small Arms and Light Weapons, Phnom Penh (11/2005) - ISG on CBMs and PD, Manila (03/2006) - Seminar on Non-Proliferation of WMDs, Singapore (03/2006) - ISM on CT & TNC, Beijing (04/2006) - ARF DOD, Karambunai (05/2006) - ASPC, Karambunai (05/2006) - ARF SOM, Karambunai (05/2006) - ARF DOD, Kuala Lumpur (07/2006) - 13th ARF, Kuala Lumpur (07/2006)
08/2006 – 07/2007	20	9	45%	- Workshop on Cyber Security, New Delhi (09/2006) - Seminar on Prevention & Control of Communicable Diseases, Ha Noi (09/2006) - Workshop on Portable Air Defense Systems & Small Arms, Bangkok (10/2006) - ARF EEP, Manila (02/2007) - ARF Seminar on UN Peacekeeping, New Delhi (04/2007) - ARF ISM on CT & TNC, Singapore (05/2007) - ARF DOD, Manila (05/2007) - ASPC, Manila (05/2007) - ARF SOM, Manila (05/2007)
08/2007 – 07/2008	24	12	50%	- 14th ARF, Manila (08/2007) - Seminar on Narcotics Control, Xi'an City (09/2007) - Seminar on Cyber Terrorism, Busan (10/2007) - ISG on CBMs and PD, Bandar Seri Begawan (11/2007) - Workshop on Small Arms and Light Weapons, Phnom Penh (12/2007) - ARF ISM on CT and TNC, Semarang (02/2008) - Workshop on CBMs and PD in Asia and Europe, Berlin (03/2008) - ARF Exercise on Disaster Relief, Jakarta (05/2008) - ARF DOD, Singapore (05/2008) - ASPC, Singapore (05/2008) - ARF SOM, Singapore (05/2008) - 15th ARF, Singapore (07/2008)
08/2008 – 07/2009	19	5	26%	- ARF EEP, Beijing (11/2008) - Seminar on Disaster Relief Cooperation, Beijing (04/2009) - ASPC, Phuket (05/2009) - ARF SOM, May, Phuket (05/2009) - 16th ARF, Phuket (07/2009)

Time period	Total No. of ARF activities	No. of activities attended by DPRK	DPRK's participation rate in %	Meetings attended by DPRK
08/2009 – 07/2010	19	8	42%	- ARF EEP, Bali (12/2009) - ARF Peacekeeping Experts' Meeting, Bangkok (03/2010) - ARF ISG on CBMs and PD, Nha Trang (03/2010) - ARF DOD, Da Nang (05/2010) - ARF Security Policy Conference, Da Nang (05/2010) - ARF SOM, Quang Nam (05/2010) - ISM on NPD, Singapore (07/2010) - 17th ARF, Ha Noi (07/2010)
08/2010 – 07/2011	23	5	22%	- Seminar on International Disaster Relief by Armed Forces, Beijing (08/2010) - ARF ISM on DR, Bangkok (09/2010) - ARF ISM on CT and TNC, Kuala Lumpur (05/2011) - ARF SOM, Surabaya (06/2011) - 18th ARF, Bali (07/2011)
08/2011 – 07/2012	19	5	26%	- Workshop on CBMs and PD in Asia and Europe, Berlin (11/2011) - ARF ISG on CBMs and PD, Phnom Penh (12/2011) - ARF EEP (02/2012) - ARF SOM, Phnom Penh (05/2012) - 19th ARF, Phnom Penh (07/2012)
08/2012 – 07/2013	24	5	21%	- ARF DOD, Shanghai (04/2013) - ARF DOD, Bandar Seri Begawan (05/2013) - ARF Security Policy Conference, Bandar Seri Begawan (05/2013) - ARF SOM, Bandar Seri Begawan (05/2013) - 20th ARF, Bandar Seri Begawan (07/2013)
08/2013 – 07/2014	22	3	14%	- ARF Peacekeeping Experts' Meeting, Beijing (10/2013) - ARF ISG on CBMs and PD, Yangon (12/2013) - ARF DOD, Yangon (12/2013)

Source: Compiled by Author, based on data from the ASEAN Regional Forum

As the table above shows, North Korean officials participated in a wide range of ARF-sponsored activities and meetings following its accession in 2000. Between 2003 and 2014, the DPRK's average participation rate with the ARF–the percentage of meetings attended by the DPRK in relation to the total number of ARF-sponsored activities–was just slightly below 35%. While North Korea participated at a fairly high rate in the early years following its accession to the ARF, this rate

decreased in later years. As Table 1 illustrates, North Korea's participation rate reached its highest levels between 2004 and 2008–during the years of the Six-Party Talks process–while it decreased after the dissolution of the Six-Party talks. The decreasing participation rate since 2008 should not, however, be equated with an increasing disinterest in the institution on the part of the DPRK per se. Rather, the available data suggests a change in the structure of North Korea's participation with the ARF. Most importantly, since 2008, North Korea has focused primarily on institutionalized channels of interaction on a higher diplomatic level, as opposed to one-off workshops or consultations on a lower diplomatic level. While Pyongyang has continued to attend the Foreign Minister meetings as well as the ARF-SOM and, to a lesser degree, the ISGs, ISMs, and DODs, its participation in EEPs, ASPCs, and particularly ARF-sponsored Workshops has sharply decreased. Between 2002 and 2014, North Korea attended all ARF Foreign Minister Meetings, ten ARF-SOMs, seven ISGs, six ISMs, six ASPCs, seven DODs, three EEPs, one joint exercise, two peace-keeping meetings, and a total of 18 ARF-sponsored workshops.

The DPRK's participation in the annual Foreign Minister Meeting is the most high-ranking level of interaction with the ARF. While Pyongyang does not always dispatch its Foreign Minister, North Korean officials have participated in every ARF Foreign Minister meeting since joining the institution in 2000. The ARF Ministerial meetings consist of plenary and retreat sessions, where Foreign Ministry officials can discuss global and regional security issues. North Korean representatives often, but not always, have used the Ministerial Meetings as a way to address foreign representatives in the form of formal statements. The results of the Foreign Ministers' consultations are published in the form of a 'Chairman's Statement,' which, as the sole official text, provides information on the work of the ARF. North Korea's nuclear and missile programs have constituted a recurring point on the agenda of Foreign Ministers' meetings. In fact, ever since the outbreak of the second nuclear crisis on the Korean Peninsula, North Korea's nuclear endeavors have been addressed in every Chairman's Statement to some degree, reflecting the aspiration of certain ARF members to have the institution take a

more proactive role in the attempts to solve the nuclear issue. For instance, the Chairman's Statement published in the context of the 10th ARF, held in June 2003 in Cambodia, explicitly refers to the ARF's "useful and constructive role (…) to help ease tensions on the Korean Peninsula." On the other hand, the Statements also reflect the constrained capabilities of the ARF to play a leading institutional role in resolving this challenge. As such, the Statements habitually verbalize the reservations of the member states regarding North Korea's nuclear endeavors, calling upon Pyongyang to restrain from provocative measures and demanding from its members a promise to adhere to a peaceful solution to the conflict. In some instances, North Korea has been successful in including its own point of view in the Chairman's Statement, as exemplified by the Chairman's Statement released in the context of the 16th ARF held in Bangkok in July 2009:

> "The DPRK did not recognize and totally rejected the UNSC Resolution 1874 which has been adopted at the instigation of the United States. The DPRK briefed the Meeting of the fact that the ongoing aggravated situation on the Korean Peninsula is the product of the hostile policy of the United States against her, and stated that the Six-Party Talks have already come to an end, with the strong emphasis on the unique and specific security environment on the Korean Peninsula which lies in its continued division and presence of US military troops for over half a century to date in South Korea, since this factor is vital to consider and address the question of the Korean Peninsula.

Similarly, when concerns were raised with respect to North Korea's uranium enrichment activities at the 18th ARF held in July 2011, DPRK officials used the Chairman's Statement to reiterate "that their uranium enrichment activities are an exercise of its legitimate right of a sovereign state for peaceful purposes."

The Ministerial Meetings are supported by the annual Senior Officials' Meeting (ARF-SOM). Since 2003, North Korean officials have participated in every AFR-SOM. Usually held shortly before the Foreign Ministers' Meeting, the ARF-SOM filters and discusses the promising initiatives of the Track-II initiatives (such as the CSCAP) that are princi-

pally able to reach consensus. At the same time, the ARF-SOM also serves as an independent space for the exchange of opinions on current (security) political problems on a significant diplomatic level–as the delegations are usually led by the directors of the foreign ministries or their Asia-Pacific departments. The outcomes of the ARF-SOMs are typically written up in a Summary Report that combines a recapitulation of the outcomes of other ARF initiatives (such as the DOD or ISG meetings) with a discussion of the ARF's future direction, the preparation of upcoming ARF initiatives, and an exchange of views on regional security issues. While the developments on the Korean peninsula are frequently addressed in those Summary Reports and broad recommendations are offered to the involved parties, the wording is carefully calibrated and usually remains vague, restraining from open critique. For instance, the Summary Report of the ARF-SOM held in Bandar Seri Begawan in May 2013 simply "expresses concerns on the developments in the Korean Peninsula," calling "for the enduring peace and stability in the region." The reports also reflect the dissent among the member states by frequently adopting such formulations as "[m]ost participants (…) urged North Korea to abide by its obligations under the relevant UN Security Council resolutions and its commitments under the 2005 Joint Statement of the Six-Party Talks." North Korea has also frequently used the venue of the ARF-SOM and the publication of the ARF-SOM's Summary Report to convey its own opinion on regional matters and to brief the other member states on issues it deems important. For instance, the ARF-SOM in Thailand (May 2009) provided the first opportunity for North Korea to inform the other members of its missile launch earlier that month, as is expressed in the respective Summary Report:

> "The DPRK briefed the Meeting on its satellite launch on 5 May 2009, stressing that it had a sovereign right to do so, and stated that it had been compelled to make a decisive decision not to attend the Six-Party Talks any longer in view of the recent adoption of a Presidential Statement by the United Nations Security Council which it perceives as affecting its sovereignty."

The ARF's Intersessional Group on Confidence-Building Measures and Preventive Diplomacy (ISG-CBM/PD) constitutes the core ARF inter-sessional activity on the Track-I level, acting as a clearinghouse and catalyst for proposals on CBMs and PD. Representing the third tier of the pyramid of ARF activities at the intergovernmental level, the ISG-CBM/PD aims "to address (...) a dialogue on security perceptions and defence policy papers" (Leifner 1996: 42). North Korean officials participated for the first time in the ISG meeting in Kuala Lumpur on April 18-20, 2001. The DPRK's participation was cordially welcomed by the other delegations, who described the attendance of the DPRK at this ISG meeting as a significant step towards strengthening the ARF process and advancing the cause of regional peace and security. Between November 2000 and April 2016, the DPRK participated in 11 of the 31 ISG-CBM meetings, repeatedly using this particular venue to address other ARF members both via formal statements and informal consultations. For instance, following its first public declaration of possession of nuclear weapons in February 2005 and its subsequent decision to withdraw from the Six-Party Talks, North Korean officials used the ISG-CBM/PD meeting in Germany to provide a broader context to this announcement through a formal statement by the DPRK's Head of Delegation. Similarly, in December 2011, the DPRK used the ISG-CBM/PD meeting in Phnom Penh to express its commitment to return to the stalled Six-Party Talks without any preconditions.

Besides these three top-tier venues, North Korean officials have repeatedly attended the various ISM meetings of the ARF, the objective of which is "to deal with cooperative activities, including peacekeeping and search-and-rescue coordination" (Leifner 1996: 42). Interaction among defense officials alongside diplomats is also an established ARF practice. The Defence Officials' Dialogues, currently convened at least three times per year, aim to exchange views and information on the member states' respective defense policies and to review their political-military and defense dialogues, high-level defense contacts, joint training, and personnel exchanges with fellow ARF participants.[14] On a

14. ARF: Co-Chairmen's Summary Report of the Meetings of the ARF Intersessional Support Group on Confidence-Building Measures, pp. 1–2.

total of seven occasions between 2002 and 2014, North Korean officials attended the ARF-DOD. Much like other ARF dialogue processes, ARF-DODs are venues for regular discussions and exchanges of views on regional and international situations as well as on the common security issues facing the ARF and proposals on measures that might increase the effectiveness of security and defense cooperation among ARF members.[15] Another noteworthy form of North Korean interaction with the ARF is via the Council for Security Cooperation in the Asia Pacific (CSCAP), a Track-II mechanism organized for the purpose of providing a structured process for regional confidence building and security cooperation among countries and territories in the Asia Pacific region. Established in 1992, North Korea joined the CSCAP in 1994, thus preceding its actual cooperation with the ARF. North Korea participates with the CSCAP via the 'Institute for Disarmament and Peace,' thus constituting another dialogue channel with the international community to convey its own standpoint regarding the various conflicts with the international community. For instance, the CSCAP meeting in 2003 provided one of the few chances for the DPRK to clarify its own perspective on the escalating conflict surrounding the nuclear issue. On the other hand, the immediate influence of the central government on the member committee is overtly apparent, as North Korean delegates usually only convey the official position of Pyongyang, and do not submit new proposals.

Another notable aspect of North Korea's activities within the ARF is its involvement in the publication of the Annual Security Outlook (ASO).

15. Since 2005, an annual ARF Security Policy Conference (ASPC) is also held on the margins of the SOM. North Korea attended ASPC 6 times. On specific issues of interest, ARF has established annual inter-sessional meetings (ISMs), e.g. on Counter-Terrorism and Trans-National Crime (CTTC), Maritime Security (MS), Disaster Relief and Non-Proliferation (DRNP) and Disarmament (DA). Moreover, the ARF organizes a number of periodic activities with a view to addressing non-traditional, trans-boundary issues such as terrorism, transnational organized crime, maritime security, natural disaster management, and peacekeeping while continuing the basic objective of promoting confidence building and mutual trust in the Asia-Pacific. These efforts are in the form of capacity building activities, information exchange, sharing of experiences/best practices, exercises, etc.

Ever since 2000, ARF members are, on a voluntary basis, encouraged to provide reports in the form of an ASO in order "to promote transparency, mutual understanding and trust as well as facilitate the exchange of views among ARF members." The basic objective of the ASO is thus to generate a better understanding of the security perceptions of other member states, as each chapter provides information on the respective member states' a) security perceptions, b) contributions to regional stability, and c) national defense budget. By providing indications with regards to the hierarchy of importance and imminence that the state assigns to what the government perceives to be threats to the security of the country and of the region, the ASO offers helpful insights into the security perceptions, strategic outlook, and intentions, as well as the foreign and security policies, of the member states. While the ASO is generally formulated in a diplomatic undertone, North Korea frequently deviates from this standard by rather plainly describing the central antagonisms and perceived threats. Given that other authoritarian ruled member states of the ARF, such as Laos or Myanmar, have great reservations regarding the ASO, North Korea's regular publication of it can be regarded as a significant contribution. Following its accession to the ARF, the DPRK prepared its first ASO in 2001, and, until 2017, has contributed to the annual ASO regularly (apart from 2005, 2006 and 2014). Aiming to depict its own perspective on the regional security situation in East Asia, North Korea–unsurprisingly–focuses primarily on the security situation on the Korean peninsula. The ASO 2007 constituted a qualitative change in this regard, as North Korea not only provided a depiction of the security situation in East Asia and Korea, but also included specific policy initiatives and potential solutions in a more detailed manner than before.

3. Evaluating North Korea's Participation with the ARF: Three Lessons

The discussion thus far has allowed for a critical evaluation and some instructive results regarding North Korea's participation with the ARF. These results are presented in the form of three major lessons that can be drawn from the particular case in point.

The Suitability of ARF's Institutional Design

North Korea's accession to the ARF was significant, as its diplomatic activities in international organizations and institutions before 2000 have been largely confined to the United Nations and its sub-organizations. In particular, North Korea long rejected to participate in multilateral institutions focusing on security issues. While North Korea still holds a skeptical view with regards to multilateral security institutions, ARF's low degree of institutionalization warrants two important premises regarding the DPRK's participation in international organizations and institutions: the principle of non-interference in internal affairs and the adherence to a strict consensus system, as this system of proceeding complicates and at times even prevents controversial issues from being discussed. Ironically, while ASEAN's principles of non-interference and consensus decision-making served as a crucial factor in North Korea's decision to enter the ARF, those very same principles also prevented the Forum from earnestly addressing contentious issues. On numerous occasions, the U.S., Japan, and South Korea raised the issues of DPRK's missile and nuclear programs, but extensive discussions have not always been pursued due to ASEAN's reluctance to provoke Pyongyang. As such it can be said that North Korea gained full benefits from incorporating itself into the ARF, whose operation under the ASEAN's rule of consensus decision-making allows for exchanges 'on an equal footing'–a particularly prominent demand of the DPRK.

The ARF as a Bridge

Arguably the most important factor driving North Korea's manifold interactions with the ARF is the facilitation of both formal consultations and informal sideline talks among the involved Foreign Ministers and their officials. Comprised of plenary and retreat sessions, the Ministerial Meetings have been used regularly for informal diplomacy, often bridging the gap among states lacking formal diplomatic relations. In this context, it is important to bear in mind that the DPRK's entry to the ARF was paralleled by speculations about a personal meeting between U.S.

Foreign Minister Albright and her North Korean counterpart Paek Nam Sun, which, when it occurred, represented the highest level of diplomatic contact between the two countries. In their bilateral gathering, Albright and Paek agreed to launch normalization talks, which, in turn, led to more in-depth diplomatic exchanges between the two countries in the following months, and, most notably, the visit of a North Korean envoy to Washington and Albright's trip to Pyongyang in October that year. Strothmann (2012: 104) calls the realization of this meeting a "feature of performance (*Leistungsmerkmal*) of the ARF," for it displays how this multilateral forum enabled a face-to-face contact that could have been hardly realized on a bilateral footing at that time. To North Korea, the ARF thus serves as a bridge which simultaneously enables consultations to countries with which the DPRK has no formal diplomatic relations, such as the U.S., Japan, and South Korea, and provides an additional (and cost-saving)[16] channel to other states, such as China and Russia. At the 7th ARF in Bangkok, the first ARF meeting attended by the DPRK, the North Korean delegation participated in a number of informal bilateral meetings right after the arrival of its delegation, including consultations between DPRK Foreign Minister Paek Nam Sun and his South Korean counterpart, Lee Joung-bin (London Daily Telegraph, July 25, 2000). The same ARF meeting also saw bilateral consultations between Paek Nam Sun and Japanese Foreign Minister Kono Yohei. This meeting not only constituted the first-ever foreign ministerial meeting between the two countries, but also eventually paved the way for

16. While it is beyond the scope of this study to address this point in detail, it is important to acknowledge that economic considerations do have an immediate impact on North Korea's interaction with regional and international organizations and institutions. Especially on the Track-II level, North Korea's participation often depends on external funding, which, in turn, influences further aspects such as the size of the delegation. Moreover, given that ARF meetings are held all throughout East Asia, including countries in which North Korea does not have an embassy, it seems convincing to say that financial aspects have to be considered important, if only on the level below senior officials. In turn, this makes the existing patterns of interaction all the more significant, as it can be assumed that they are a result of a conscious prioritization of the central initiatives North Korea deems important.

the resumption of the previously suspended normalization talks between Pyongyang and Tokyo. One Japanese official later stated that "it would be unlikely that Japan and North Korea could hold a foreign ministerial meeting if the ARF did not exist, since it was hardly expected that Japan's Foreign Minister would visit Pyongyang at that time" (Takeshi 2005: 477). Hence, the ARF has repeatedly provided opportunities for bilateral meetings both at the foreign-minister level and below, which might otherwise have been politically difficult to realize. Although not formally institutionalized, the informal talks and ad hoc meetings on the sidelines of formal meetings have emerged as an important 'side product' of the ARF. Both for North Korea and the regional powers, the ARF has provided an alternative space to discuss bilateral issues and questions of inter-state relations informally. These informal contacts have been actively encouraged by the ARF. For instance, the Chairman's Statement from the 13th ARF, held in July 2006, shortly after North Korea's missile test, explicitly "welcomed the informal discussion among some ARF participants on the situation in Northeast Asia (…) and expressed their hope that this could contribute towards the early resumption of the Six-Party Talks." Building on available data between 2000 and 2008, Table 2 illustrates how North Korea repeatedly used the ARF as a space for informal (bilateral) contacts with the U.S., South Korea, Japan, and China, as well as with others.

Table 2. Informal Bilateral Meetings of the DPRK on the Sidelines of the ARF (2000-2008)

ARF Meeting	*Informal consultations*	*Contents of interaction*
7th ARF 2000	NK-U.S.	First meeting on foreign minister level, normalization of bilateral relations
	NK-SK	Inter-Korean relations, summit agreements
	NK-China	TMD system
	NK-Japan	First-ever meeting on foreign minister level, normalization of bilateral relations
8th ARF 2001	NK-SK	Continuation of inter-Korean dialogue
	NK-EU	Establishment of diplomatic relations

9th ARF 2002	NK-Japan	Normalization of bilateral relations
	NK-U.S.	'Axis of evil,' bilateral relations
10th ARF 2003	NK-U.S.	NKs nuclear program
11th ARF 2004	NK-U.S.	Assessment of Six-Party process
13th ARF 2006	NK-SK	Inter-Korean relations
14th ARF 2007	NK-Philippines	Bilateral relations, consultation agreement
	NK-SK	Denuclearization of the Korean peninsula
	NK-Japan	Bilateral relations
	NK-U.S.	Bilateral relations, Six-Party Talks
15th ARF 2008	NK-U.S.	Bilateral relations, denuclearization issue
	NK-SK- U.S.-J-PRC-R	Verification of NK's denuclearization

Source: Strothmann 2012: 115-116; expanded by the author

The ARF as a Stage

While the conduct of both formal consultations and informal behind-the-scenes diplomacy have been crucial to the DPRK, there is another motive driving Pyongyang's participation with the ARF. That is, North Korea wants to use the institution as a stage on which North Korean representatives act in front of–and interact with–representatives from other member states. In fact, North Korea has repeatedly been described as a theater state (e.g. Kwon and Chung 2012), which means that it is a state directed towards the performance of drama, spectacle, and rituals, rather than more conventional ends, such as welfare.[17] In other words, the expression of the theatre state is the spectacle, which manifests itself in rituals, arguments and speeches, among many others (cf. Medlicott 2005). While the theater state argument has been primarily used to describe how the DPRK executes power on the domestic scene, it is argued elsewhere (Ballbach 2014; 2016) that this perspective is of equal relevance to help better understand North Korean foreign policy. In fact, the performative enactment or staging of foreign policy plays an essential role in the country's engagement with international and regional organizations and institutions. As Kihl (1998: 258-259) aptly puts it,

17. This term was coined by Clifford Geertz in 1980 in reference to a political practice in the nineteenth-century Balinese Negara, but its usage has since expanded.

international and regional organizations provide a stage where "Pyongyang's role conceptions are articulated and dramatized." It is there where North Korean representatives can promote the DPRK's perspective on matters it deems important, where its national system and culture can be promoted to the international community, and its main patterns of identity can be articulated to representatives of other countries. For instance, following the breakdown of the 6PT, the DPRK repeatedly used the stage provided by the ARF in order to act upon its discursively constructed "nuclear state identity" (Ballbach 2016). As power in a theatre state is exercised through spectacle, these instances of staging foreign policy within international institutions do more than merely legitimate state power; they also signify the ceremonial constitution of state power in an open space–visible and acknowledged by all spectators.

IV. Conclusions

This paper has addressed North Korea's interaction with the international community through East Asia's sole institutionalized security institution on the Track-I level: the ARF. Building on a broader overview of North Korea's interactions with the international community through regional and international organizations and institutions, the study, on the most basic level, reaffirms the important notion that North Korea, despite all (mis-)perceptions prevailing in the international discourse, is not the hermit kingdom as it is so commonly portrayed. Instead, it interacts with the international community in various ways, with international and regional organizations and institutions playing an increasingly important role in the country's overall foreign policy conception. Hence, institutions matter to North Korea, although the motives and behaviors driving this engagement can vary as much as the organizations and institutions themselves. While North Korea's interaction with international organizations and institutions has successively increased since the 1970s, the end of the Cold War led to a significant change in the DPRK's foreign policy conception in this context, particularly with regards to North Korea's increasing participation in security-related organizations

and institutions in the East Asian region as well as the increasing level of Track-II interactions. Supplement by such Track-II activities as the CSCAP, the ARF, as the only regional security institution on the Track-I level in East Asia, therefore represents a worthwhile example to find out more about the motives and patterns of interaction guiding the DPRK's participation with international institutions. Building on a brief discussion of the history of North Korea's participation in the ARF, it was shown North Korean officials in fact participated in a wide range of ARF-sponsored activities and meetings since its accession in 2000, both on the Track-I and Track-II level. While North Korea's participation with the ARF was particularly broad during 2002 and 2008, the patterns of North Korea's interaction with the ARF changed significantly thereafter, with the DPRK mainly focusing on meetings that are at a higher diplomatic level, such as the Foreign Ministers' Meeting and the ARF-SOM. In conclusion, three major lessons can be drawn from North Korea's engagement with the ARF–lessons that, if verified in further research, may bear significance well beyond the single case analyzed here: (1) To begin with, the organizational structure and the rules of decision-making are vastly important aspects regarding North Korea's decision to join–or not to join–an organization or institution. In this regard, the suitable institutional design of the ARF, combined with the proper international political context, was among the core preconditions for the DPRK to join the ARF. (2) The ARF has served as a bridge between North Korea and other states and representatives, time and again enabling direct consultations that would have been almost impossible on a direct bilateral footing. Particularly important in this regard is the fact that membership in the ARF has provided a bridge to those states with whom the DPRK does not have diplomatic relations, while at the same time serving as an additional (and cost-saving) channel to other states, such as China and Russia. (3) As foreign policy performances are vital to the constitution of the North Korean state (Ballbach 2016), the ARF has provided a stage for North Korean representatives to articulate, promote and dramatizate Pyongyang's role conceptions. Such foreign policy performances, dramatized on the stage of international institutions, are as much about formal and informal consultations as they are about the cer-

emonial constitution of state power in an open space–visible and acknowledged by all spectators.

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China's Aid to North Korea, Is It Exceptional? A Comparative Analysis with China's Aid to Africa*

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This paper examines whether there is a "special nature" involved in China's aid to North Korea by using comparative analysis to juxtapose it with Chinese aid to Africa. Chinese aid can be reviewed mainly as a tool to secure China's economic interests both in North Korea and Africa. In terms of aid volumes to both regions, the general trend is upward rising. Especially in the cases of Ethiopia and North Korea, assistance has continued regardless of the domestic political situations. With respect to method, assistance is mostly provided with investment characteristics rather than ODA features. It could be concluded that aid to North Korea and Africa are similar. Therefore, Chinese aid to North Korea is not the result of the "special nature" of Chinese-North Korean relations, but is instead tailored to the unique characteristics of Chinese foreign aid.

Keywords: China's Aid, North Korea, Africa, Ethiopia, Aid Motivation

I. Introduction

During the Cold War, the People's Republic of China (PRC; hereafter China) and the Democratic People's Republic of Korea (DPRK; hereafter North Korea) maintained a relationship as "blood brothers" that was forged during the Korean War and the Chinese Civil War (Lee 200, 228). When the Cold War system collapsed, however, the two countries took differing paths. China began to participate actively in the new world order and achieved tremendous economic success, rising rapidly

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to global superpower status as a part of the G2, alongside the United States. On the other hand, despite the end of the Cold War order, North Korea has continued to adhere to its socialist planned economy and has experienced excruciating economic hardship. Furthermore, through its nuclear and missile tests, North Korea has repeatedly engaged in offensive communication with the outside world; the international community has responded to this with sanctions.

Lately, the international community has criticized China—especially when taking into account China's G2 status—for not taking appropriate measures towards the North Korean nuclear issue, and points to the "special nature" of Chinese-North Korean relations as the fundamental cause of China's evasive, soft attitude towards North Korea. This paper explores the above claim and examines whether such a "special nature" actually exists in China's aid to North Korea by comparing it with Chinese aid to Africa. Africa has been chosen as the comparative entity for two reasons: first, since there has been a hike in Chinese assistance to the region in recent times, an analysis of Chinese aid to Africa can help identify the general characteristics of China's foreign aid patterns; second, a comparative case study of aid given to North Korea and Africa can support the validity of the research findings, owing to the entirely different diplomatic and geographical environments of the two regions.

Although China has been giving aid to North Korea for more than 65 years, previous studies on the subject were of little significance. This is because China's aid to North Korea was mostly examined in the context of the general Chinese-North Korean relationship, and not as an independent subject in itself. The insufficiency of research is also due to the fact that China has never officially revealed the size of its aid to North Korea.[1] Nevertheless, recent attempts to estimate the volume of Chinese aid to North Korea, albeit through limited methods, have led

1. North Korea consistently keeps most material related to aid confidential due to the concern that aid, including aid from China, could possibly damage its national identity of *chaju* (political independence). Aware of North Korea's position on the matter, China also refrains from disclosing relevant information (Im 2014, 9).

to the announcement of additional research. The existing literature can be divided into two categories: first, there are analyses that directly or solely focus on China's aid to North Korea; second, there are analyses that treat aid as a component of the broader Chinese-North Korean economic cooperation. The representative research of the first category is by Im (2014). Her study focuses on the economic limits of China's aid by dividing the years from 1957 to 1970 into three periods and attaching weight to the key variables of the Sino-Soviet conflict. Among the second category of analyses are the studies by Cho et al. (2005), Choi (2009), Song (2011), and Moon (2013). Cho et al. (2005) investigate the possibility of future infrastructure development projects emerging between China and North Korea. Meanwhile, Choi (2009), in introducing the current status of trade and investment between China and North Korea, claims that China has increased its assistance to North Korea in order to keep it under Chinese influence, which may result in a deepening of North Korea's economic dependency on China. Song (2011) points out that the size of China's aid to North Korea is very small compared to the enormous amount of aid given to other developing countries, and argues that because North Korea relies on China for oil and food, North Korea's nuclear and missile tests, which are undesirable to China, have strained the bilateral relations. Moon (2013) shows that China has changed its political stance, which it took during the period before and after the end of the Cold War, into an economic one; especially since 2009, China has approached economic cooperation strategically from a new perspective. All previous studies acknowledge the limitations in their research that arise from analyses based on limited information. Moreover, because the analysis is based on the bilateral relations of China and North Korea, a political economic aid approach is absent in most of the literature.

The first part of this paper introduces the research background and the literature review on Chinese aid to North Korea. Chapter II looks into the general discourse on foreign aid, and then analyzes the characteristics of Chinese foreign aid. Chapters III to Ⅴ examine China's aid vis-à-vis Africa and North Korea. And finally, there are sum-

maries and a discussion of the limitations of this paper in chapter VI.

II. The Political Economy of Chinese Foreign Aid

1. The International Discourse on Aid

Economic cooperation among countries generally refers to the cooperation among countries through economic means or the joint effort made by countries to solve a common economic problem (Lancaster 2007, 9). Foreign aid is a type of economic cooperation whereby the public finance of one country is voluntarily transferred to another. This raises the question: why do countries sustain foreign aid even when it may entail high costs? The objective of aid-giving can be largely summarized by the realist and idealist perspectives.

Realists discuss economic cooperation in relation to security. In essence, they argue, because national security is of foremost importance to individual countries in an anarchic world order, the goal of all foreign aid is to promote and protect the country's national interest (Morgenthau 1962, 301-309). Through foreign aid, the donor country can acquire a strategic location, further solidify its alliances, or make economic gains by expanding its trade and investment with the aid recipient country. A classic example of this was the Marshall Plan. The United States allocated US$13 billion in aid for the reconstruction and prosperity of Europe because the U.S. goal at the time was to maintain U.S. hegemony (Wood, 1986). Similarly, the former Soviet Union provided assistance to Cuba, despite the geographical distance between the two countries, in order to gain the upper hand in its power competition with the United States (Mesa-Lago 1997).[2] In more recent times, the South Korean government's continued aid to key recipient countries has greatly contributed to the activation of South Korea's economic relations with these recipient countries (Kim et al. 2015). Also, one of

2. From 1986 to 1990, the Soviet Union donated an average of US$2 billion annually in grants, and offered loans amounting to US$2.3 billion annually to Cuba; these commitments equaled 15% of Cuba's GDP at the time (Mesa-Lago 1997).

the key motives of Japanese foreign aid is to expand its national economic interest (Stein 1998, 27-53). For realists, altruistic motives vis-à-vis the recipient country are not considered because, ultimately, foreign aid is given solely for the national interest of the donor country. But while most cases of foreign aid can be interpreted from a realist perspective, some cases seem to be better represented by the idealist viewpoint. For instance, the foreign aid of Nordic countries focuses on humanitarian acts and has the objective of alleviating poverty in developing countries. The multilateral aid provided through international organizations is also based on humanitarian motives. Due to these cases and others, liberalists interpret aid-giving as an altruistic act, emphasizing the roles of international norms and organizations in economic cooperation, and arguing that conflict among countries can be mitigated as a result of cooperation.

2. The Discourse on China's Aid

Starting with military aid in 1950, China has continued to provide foreign aid to North Korea. In the 1950s, China was both the recipient of aid from the former Soviet Union, and a donor not only to its socialist neighbors, but also to other non-socialist countries (Poole 1966, 662). China maintains this dual status even today: it is the recipient of aid from the Organization for Economic Co-operation and Development's Development Assistance Committee (OECD-DAC) and also a donor country that provides assistance to Africa, Asia, and other regions.

The Chinese aid paradigm has reflected the distinct characteristics of different time periods. Before China's "reform and opening-up" policies, Chinese foreign aid, mostly grants and loans to socialist countries and Third World nations, clearly served the political and diplomatic motives of the time. For instance, as a result of China's aid to Africa, China successfully secured the support of United Nations (UN) African member states in the vote that granted UN membership to China instead of Taiwan at the 26th Plenary Session of the UN General Assembly in 1971 (Yeo 2016, 11-12). After China's reform and opening-up policies came into effect, the objective of Chinese foreign aid

shifted from its previous pursuit of political benefits to seeking economic profit. With China's transformation into a socialist market economy, the aspect of economic gains based on market principles was also emphasized in China's foreign aid policies. For example, the Export-Import Bank of China (China EXIMBank), which was established in 1994, offered concessional loans to important recipient countries at an interest rate of between 2 and 3% with a maturity of 15-20 years. This signified the beginning of the "marketization" of Chinese foreign aid: financial institutions used capital raised from the market as the financial resource for administering concessional foreign aid loans, which had previously been financed using the Chinese government budget (Yeo 2016, 16). In the mid-1990s, the marketization of China's foreign aid became more established. A transition in the Chinese aid framework took place, resulting in a shift from the previous concept of aid, which stressed ideology, to the new concept of mutual development cooperation in order to accelerate economic profit-seeking and marketization. By both giving aid to Africa and other underdeveloped countries and leading the cooperation efforts with these countries, the "Five Measures" and the "Eight Principles of Foreign Aid" announced by the Chinese government in 2005 targeted the African market with an economic trade strategy that mixed aid with trade (Woods 2008, 1205-1221). Thus, history shows that Chinese aid has been based on realistic motivations involving both economic and political aspects.

Table 1. The Shift in the Chinese Aid Paradigm

Period	Prior to Reform and Opening-up	1980s to Mid-1990s	Mid-1990s onwards
Characteristics	• Political and diplomatic motives • Grants or loans given to socialist and Third World countries	• Economic motives • The marketization of aid	• Intensified economic motives • Aid used as foreign economic strategy

Source: Authors.

Chinese aid is somewhat different from the OECD definition of official development assistance (ODA). In the international community, foreign aid is generally understood to mean ODA. According to the OECD-DAC,[3] ODA is specified as flows that are: one, provided to developing countries or to multilateral institutions and nongovernmental organizations by official agencies, including state and local governments; two, administered with the objective of promoting the economic development and welfare of developing countries; and three, concessional in character with a grant element of at least 25%. However, Chinese foreign aid displays certain key differences from the OECD standard: Chinese aid is not distributed via development assistance organizations, it does not involve a specific grant element threshold, and it is linked to the economic situation of the recipient country. China commonly designates financial or human exchanges and infrastructure assistance as aid; moreover, the concessional loans[4] supplied through China EXIMBank are conditional loans that require at least 50% use of Chinese companies, China-sourced labor, and Chinese equipment. The Chinese aid system further differs from the international aid regime in the following ways (Nam 2009). First, the Chinese aid regime has a bilateral-focused aid practice; the international aid regime, meanwhile, emphasizes the harmonization among OECD-DAC donors. Second, with regards to the type of aid-giving, Chinese aid targets projects, whereas the international community is focused on programme aid. Third, China deals mainly with preferential loans and export buyers' credit financed through the China EXIMBank; the international community aims at the disbursement of grant-type aid. Fourth, China mainly delivers tied aid to state-owned enterprises and the recipient country's firms; on the other hand, the international community gives untied aid to the recipient government. Fifth, Chinese aid is characterized as trade or an investment package-type economic cooperation grounded on the "non-interference in internal affairs" principle; meanwhile, international aid predominantly links gover-

3. http://stats.oecd.org. (10. March 2017).
4. The recipient country's sovereign credit rating and its political and economic situations are important for determining the interest rate of the loan.

nance reform as a conditionality, and it is disconnected from commercial activity.

Opinions about Chinese foreign aid largely divide into two sides. On the one hand, a positive assessment of China's foreign aid notes that it has "no strings attached." This policy is not only welcomed by recipient countries, but also considered to have a positive effect on the recipient country's economic growth by emphasizing economic objectives (Moyo 2010). Chinese aid strictly adheres to the principle of non-interference in internal affairs and appears to respect the recipient country's ownership; this is unlike the aid from advanced countries that can often have conditions attached (Nam 2009, 53-54). Additionally, the different method China brings to aid-giving has diversified the aid actors and brought about a new change in international development cooperation. Specifically, the expansion of Chinese aid has provided complementary sources for the funds needed to accelerate recipient countries' development. The presentation of a Chinese-style model, with its differences from the existing aid model established in advanced nations and international organizations, also introduces healthy competition into the international aid order, thereby inducing greater efficiency (Kim and Park 2016, 237-238). On the other hand, negative analyses of China's foreign aid point to its "no strings attached" policy as well. Critics argue that by offering aid without any stipulations, China is ignoring the human rights conditions in the recipient countries, and is serving to assist the persistence of authoritarian regimes in the name of political and economic gains. There is also criticism that China is distributing large-scale aid specifically to resource-rich African countries in order to secure the resources and energy necessary to sustain its own economic growth (Kim and Park 2016, 237-238). And finally, China has been the subject of criticism for not taking an active role in the international aid effectiveness agenda, although it has made independent efforts on this behalf. Ultimately, critics in the United States and in Western media regard Chinese "no strings attached" foreign aid as turning a blind eye to human rights violations and propping up tyranny (Won 2010, 102).

In terms of its motivations, Chinese aid is based on a realist

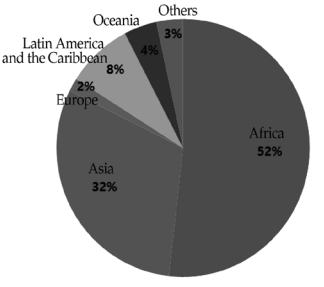
approach and, therefore, it offers aid differently from the OECD-DAC. Accordingly, if Chinese aid toward North Korea is also based on the unique characteristics of Chinese foreign aid, it can be said that China's aid to North Korea does not in itself have distinctive and exceptional characteristics but that it shares the attributes of all Chinese foreign aid. Moreover, if the type of aid that is evident in China's aid to North Korea also appears in China's aid toward Africa, it can be concluded that aid to North Korea is simply a very common case of how Chinese foreign aid works.

III. How Does Chinese Aid to Africa Work?

The grant to the Arab Republic of Egypt in 1956 was the first of China's aid efforts vis-à-vis Africa. Today, China's biggest aid recipients are on the African continent. China's aims in giving to Africa are mainly to develop its resources, increase its political influence in the region, and further its economic goals. For example, China continues to increase assistance to countries with an abundance of natural resources, such as the oil-producing countries, for the purpose of resource development. Additionally, in order to gain friends at the UN General Assembly and increase its political clout, China has excluded African nations that have established diplomatic relations with Taiwan from its list of recipient countries.[5] Also, to facilitate the entry of Chinese businesses into Africa and increase the export of Chinese goods, China has helped its state-owned and private enterprises enter Africa by securing aid-based contract orders[6] through the China EXIMBank's preferential loans.[7]

5. Burkina Faso, Kingdom of Swaziland, Republic of The Gambia, the Democratic Republic of São Tomé and Príncipe, and others.
6. Chinese enterprises obtain African infrastructure turnkey projects, and construction is carried out with labor, equipment, and materials procured from China.
7. Ever since China EXIMBank became wholly responsible for preferential loans in 1995, the volume of these loans has increased from US$5 billion in 2006 to US$20 billion in 2012 (The Export-Import Bank of Korea 2017).

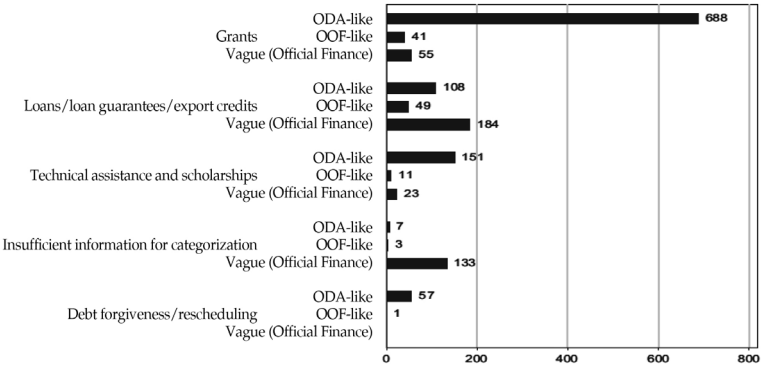
Figure 1. Regional Distribution of China's Foreign Aid



Source: Lee. *US and China's Economic Policies* (EAI 2017, 8).

A detailed examination of the trends in China's assistance to Africa for the period between 2000 and 2011 reveals the following. First, China's total financial commitments to Africa during this period reached US$73 billion, and were disbursed through 1,511 projects to 50 African nations. Of China's total commitments, US$15 billion corresponded to the OECD-DAC concept of ODA (AidData 2015). In terms of the total number of projects, two-thirds were in the form of grants, and one-fourth were in the form of loans. However, with respect to the total amount of aid provided, grants only constituted 10%, while loans accounted for 86% (AidData 2015).

Figure 2. China's Assistance to Africa by Project (2000-2011)



Source: China Development Finance to Africa (Center for Global Development 2013).

Second, a sectoral breakdown based on the number of assisted projects (Table 2) shows that the "government & civil society" sector received the largest amount of assistance with 209 projects funded (worth more than US$1.7 billion). However, in terms of the total aid amount, the "transport & storage" sector secured the top spot with US$17.2 billion, followed by US$13.3 billion of infrastructure assistance in the "energy generation & supply" and "communications" sectors.

Table 2. Sectoral Distribution of China's Assistance to Africa (2000-2011)

(USD million)

Sector	No. of Project (Rank)	Amount (Rank)
Unallocated/Unspecified	214(1)	3,740(6)
Government & Civil Society	209(2)	1,718(9)
Health	182(3)	1,078(13)
Education	149(4)	239(15)
Transport & Storage	107(5)	17,230(1)
Agriculture, Forestry, & Fishing	98(6)	3,520(7)
Other Social Infrastructure & Services	87(7)	1,766(8)
Communications	80(8)	4,324(4)
Energy Generation & Supply	69(9)	13,301(3)
Emergency Response	57(10)	160(16)
Action Relating to Debt	56(11)	4,099(5)
Other Multisector	49(12)	16,937(2)
Water Supply & Sanitation	39(13)	1,666(10)
Trade & Tourism	35(14)	1,248(12)
Industry, Mining, & Construction	32(15)	1,521(11)
Food Aid	14(16)	24(19)
Population Policies & Reproductive Health	11(17)	36(18)
Banking & Financial Services	10(18)	313(14)
Business & Other Sectors	5(19)	41(17)
Women	4(20)	0(23)
Support to NGOs & GOs	2(21)	9(20)
General Budget Support	1(22)	1(21)
Non-Food Commodity Assistance	1(23)	0(22)
Total	1,511	72,971

Source: Tracking Underreported Financial Flows (SAGE 2015).

Chinese assistance to Africa is expected to rise steadily in the future. By 2025, the Chinese government plans to expand its aid volume vis-à-vis Africa to US$1 trillion and to provide it in a comprehensive manner that includes concessional loans, commercial loans, and foreign direct investment. At the Forum on China-Africa Cooperation (FOCAC)[8] held in 2015 in Johannesburg, South Africa, Chinese president Xi Jinping pledged funding support worth US$60 billion to Africa, and in addition, promised to provide US$60 million in free aid to the African Standby Force[9] of the African Union (AU) in support of its operation and response to emergency situations.[10]

The example of China's aid to the Federal Democratic Republic of Ethiopia (Ethiopia), a major African recipient country of Chinese aid, clearly depicts the key characteristics of Chinese aid to Africa. During the 1950s, China maintained ambiguous diplomatic relations with Ethiopia due to the Haile Selassie government's participation in the Korean War as well as its diplomatic ties to Taiwan and the United States. From the 1970s onward, however, China began official economic cooperation with Ethiopia, including aid. Economic cooperation activities during this period included the donation of grants worth US$84 million in 1971, the dispatch of medical teams in 1974, the construction of a main road to connect Woldiya and Wereta in 1975, and the completion of a diesel power plant in the region of Afar in 1978 (Martyn Dacies et al. 2008; Robert Rotberg 2008; The Export-Import Bank of Korea 2017). As in the past, China's goals in providing aid to Ethiopia continue to be connected to both political and economic issues; thus, they are basically similar to the objectives of Chinese aid to Africa in general. The goals are political, since they aim to increase Chinese clout within the AU. For example, China believes that giving aid to Ethiopia in particular will augment its influence on African countries through the AU because the AU headquarters are located in

8. The FOCAC is held every three years to support African development.
9. The African Standby Force is a standing army, under the direction of the AU, for voluntary conflict resolution within Africa and exists in order to conduct resolution activities outside international pressure.
10. http://www.focac.org/eng/ltda/dwjbzjjhys_1/.

Ethiopia. Moreover, to achieve this specific goal, the Chinese government recently spent US$200 million on building a new AU headquarters (Robert Rotberg 2008; The Export-Import Bank of Korea 2017). Simultaneously, the aid objectives are linked to economic issues, such as the use of cheap labor and access to export markets. For instance, the approximate tenfold gap difference in the per capita incomes of China and Ethiopia makes it possible for Chinese manufacturing companies to reduce production costs by producing in Ethiopia. In 2011, China built a shoe factory in Ethiopia upon request (The Export-Import Bank of Korea 2017). Later, this same Chinese shoe-manufacturing business grew rapidly and has now even entered the U.S. market.

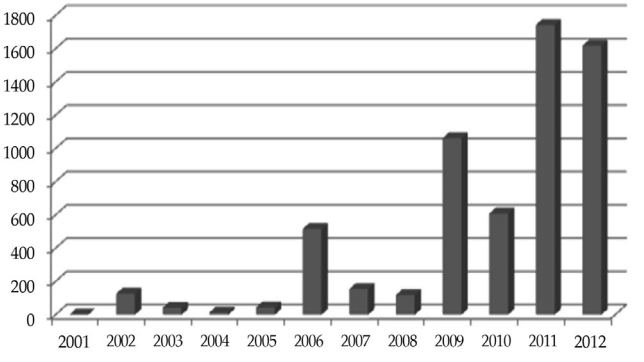
During the period from 2000 to 2012 (table 3), Chinese commitments to Ethiopia were worth US$6.1 billion and were allocated to 81 projects. A detailed assessment shows that the volume of assistance increased immensely over that time period, starting at just US$220,000 in 2000 and exceeding US$1.6 billion by 2016. A sectoral examination of Chinese assistance to Ethiopia during this period reveals a few trends. First, the largest sum was dispersed in the energy and transportation sectors. In particular, since 2005, China has constructed around 70% of the roads in Ethiopia and secured a predominant position in the construction of dams, roads, railways, and other infrastructure.[11] Second, several large-scale projects were also undertaken in the health sector, including the foundation of two hospitals, the Tirunesh Dibaba Beijing Hospital (2011; worth US$13 million) and the Ethio-China Friendship Hospital (2011; worth US$13 million), as well as an anti-malaria center. China also dispatched 16 medical teams composed of 255 medical personnel during this 12-year period. Third, China has consistently extended assistance in the education sector. In particular, China founded the Ethio-China Polytechnic College and provided technical education and scholarships. Fourth, assistance has also included military training and the provision of artillery, light armored vehicles, and other military supplies. Finally, China has also provided assistance to the "other food" sector (a total of US$800,000 in

11. Construction includes Genale Dawa III dam, Dire Dawa-Dewalle highway, Addis Ababa light railway, and Addis Ababa-Djibouti railway.

2015), donated 90 government vehicles, provided technical assistance and jamming equipment against anti-government forces[12], and dispatched Chinese youth volunteers.[13]

Figure 3. The Volume of Chinese Assistance to Ethiopia (2000-2012)

(USD million)



Source: National Bureau of Statistics of China 2014.

Table 3. Sectoral Distribution of Chinese Assistance to Ethiopia (2000-2012)

(USD million)

Sector	Amount (Rank)	No. of Project (Rank)
Unallocated/Unspecified	1,917.28(1)	20(1)
Energy Generation & Supply	1,763.35(2)	8(4)
Transport & Storage	1,005.12(3)	9(3)
Other Multisector	716.37(4)	5(7)
Industry, Mining, & Construction	158.44(5)	8(5)
Action Relating to Debt	141.06(6)	2(10)
Agriculture, Forestry, & Fishing	123.84(7)	4(8)
Government & Civil Society	106.68(8)	6(6)

12. This is related to the regulation on anti-government radio programs based overseas, such as the Amharic-language programs of the Voice of America and Deutsche Welle.
13. Ever since 2005, China has sent youth volunteers to Ethiopia annually. The batch sent in 2005 was the first ever to be sent to Africa.

Sector	Amount (Rank)	No. of Project (Rank)
Water Supply & Sanitation	29.58(9)	1(12)
Trade & Tourism	25.10(10)	1(13)
Banking & Financial Services	25.00(11)	2(11)
Emergency Response	24.45(12)	4(9)
General Budget Support	15.81(13)	1(14)
Education	13.21(14)	10(2)
Total	6,065.29	81

Source: National Bureau of Statistics of China 2014.

IV. What Narrative is Involved in Chinese Aid to North Korea?

China's aid to North Korea began when the two countries agreed to a "blood alliance" with the provision of military assistance by China to North Korea during the Korean War in 1950. Even after the Korean War Armistice in 1953, China and North Korea continued their alliance, signing the "Sino-Korean Economic and Cultural Cooperation Agreement," under which China wrote off the entire sum of North Korea's war-time debt to China, RMB 720 million worth of supplies and costs, and additionally offered a gift of RMB 800 million in aid (石林 1989, 24; Im and Han. 2015a, 387-388). Moreover, China also supplied the machines and other equipment necessary to repair North Korea's railway traffic system, which had been destroyed during the war (Im and Han. 2015b, 280). In the late 1950s, China provided North Korea with massive aid in order to secure North Korea's support during the Sino-Soviet conflict. The provision of aid, owing to political homogeneity and the unique situational factor of the international environment under the Cold War system, took place under the "Sino-North Korean Treaty of Friendship, Cooperation and Mutual Assistance," which was concluded in 1961 and dealt with military, economic, and technical assistance. Interestingly, after the adoption of reform and opening-up policies in 1979, China began to display a tendency to pursue economic profit and interest in the implementation of its aid (Yeo 2016, 15). This tendency was the most

evident in the changed aid-giving practices of China to other socialist countries such as North Korea, Vietnam, and Albania: China completely terminated all aid to these countries and implemented foreign aid reforms instead. China's new direction, grounded on realism, was also detectable in China's trade relationship with North Korea: barter trade and the "friendship price system" was replaced with a cash payment system after the Sino-South Korean diplomatic normalization in 1992 (Cha 2016, 147-148).[14] Recently, China's assistance to North Korea has expanded into the infrastructure sector with construction, particularly at the border areas. An example is the construction of a new bridge over the Yalu (Amnok) River, which began in October of 2010 after the signing of the"Agreement on Economic and Technological Cooperation between the Governments of the DPRK and China" in October 2009 (Song 2011, 201; 209). By 2020, China plans to secure access to the East Sea through North Korea's Rajin Port by investing in the construction of railways and highways to connect Musan, Chongjin and other areas to Rajin Port, in tandem with the Chang-Ji-Tu Development Project (Song 2011, 201; 209). Another example is the Quanhe-Wonjong multinational bridge connecting the ports of Quanhe and Yuantingli, which was built with Chinese aid and is currently in use (Lee Taehwan 2012, 34). When considering these recent trends, a continued gradual expansion in the increase of transport infrastructure systems between China and North Korea can be expected. In the past, China offered unilateral assistance and preferential treatment to North Korea because of the common ideology shared by the two countries. Now, the objectives of Chinese aid to North Korea are for the mutual economic development of the two countries and to ensure stability in the surrounding area for economic development.[15]

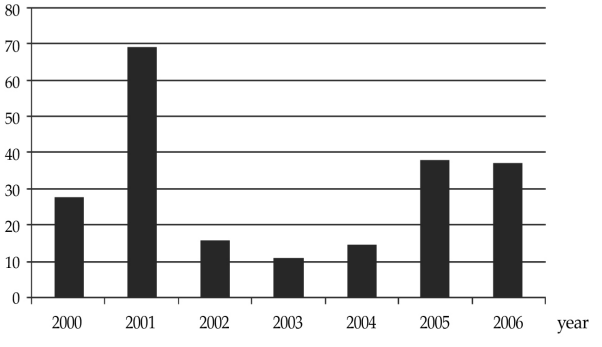
14. In 1995, however, China reintroduced barter trade and the favorable price system due to North Korea's deteriorating economy (Song 2011, 193).

15. Since the sinking of the South Korean naval ship, the Choenan, in 2010, many Chinese scholars believe that China provides aid to North Korea with two objectives: first, to ensure peace and security on the Korean Peninsula by countering the intensified joint military drills of the United States, South Korea, and Japan; second, for the mutual development of China and North

Although China is known to provide a considerable amount of assistance to North Korea, the exact total has not been revealed. However, an estimation based on officially released information presents the following statistics: through the "Agreement upon Economic and Technological Collaboration" signed during the visit to China by North Korean Deputy Premier Hong Song-nam in May 1996, China promised to supply North Korea with 500,000 tons of grain, 1.3 million tons of crude oil, and 2.5 million tons of coal, half for free, and the other half at a concessional rate equivalent to one third of international prices (Choi 2009, 22-23). In 1997, US$348 million worth of official grants were given to North Korea, but this plunged to US$28 million given in 2000. After receiving US$69 million in 2001, the grants maintained an average level of around US$15 million until 2004. However, from 2005 to 2006, the volume of Chinese aid to North Korea jumped to nearly US$40 million.

Figure 4. Chinese Aid to North Korea: Grants (2000~2006)

(USD million)

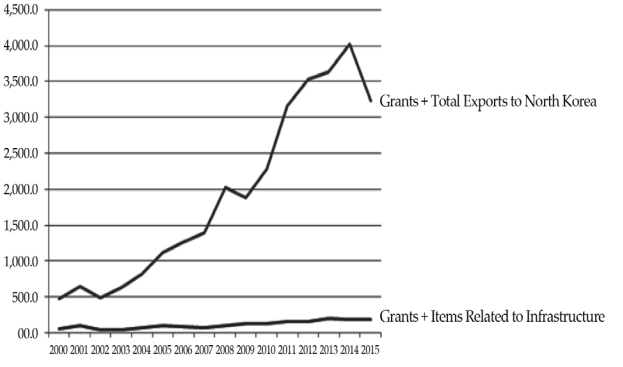


Source: Aid Grant 中华人民共和国海关总署. http://www.customs.gov.cn/publish/portal0/. (2017. 2. 23).

Korea. Meanwhile, on an international level, Chinese aid to North Korea is considered by some to be a means to eliminate the North Korean nuclear threat (燕玉叶 2011, 25-26).

Figure 5. China's Assistance to North Korea: An Estimated Sum of Grants and Exports

(USD million)



Source: Authors' estimation based on Trade-中国国家统计局, Aid Grant-中国海关信息网

Note: China's assistance to North Korea suddenly decreased in 2015 due to the price decline of coal as an important export item.

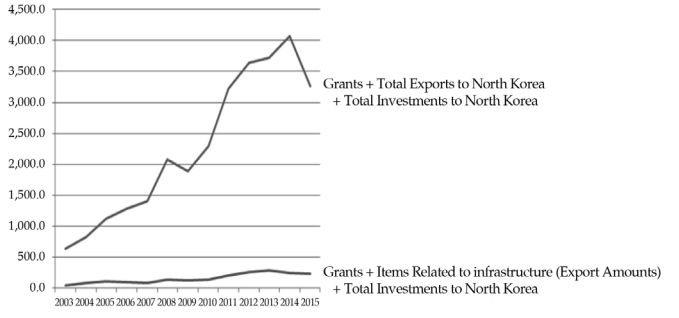
However, a more realistic measure of China's aid to North Korea could perhaps be derived by deploying different methods. According to Choi (2009), because of the reciprocal characteristic of Chinese exports to North Korea, export figures should be included in the calculation of Chinese aid volumes to North Korea (Choi 2009, 22). Chinese export to North Korea also includes assistance in areas like crude oil and food that are carried out confidentially. Therefore, according to Choi, adding exports to the grant volumes leads to a more realistic estimate of the total amount of aid China gives to North Korea. The results of this calculation reveal that, before the temporary decrease in 2015, Chinese aid to North Korea was not only steadily on the rise, but also showed a sudden increase in recent years. However, this statistic may be skewed as it would be unreasonable to include all types of Chinese exports in the calculation of Chinese aid volumes to North Korea. Moreover, the recent focus of Chinese aid vis-à-vis North Korea on infrastructure construction at the border areas should be factored in. Thus, calculations can be made on certain select items: steel and steel

products, as well as coal, plastic, cement, and other infrastructure construction items. Estimates of Chinese aid to North Korea, including both grants and general export figures, show that even though the increase in aid volumes to North Korea has slowed down in degree, the growing trend is still visible (figure 5). Specifically, the estimated volume of Chinese aid to North Korea spiked up from US$478 million in 2000 to almost US$1.12 billion in 2005. Moreover, in 2014, the estimate exceeded US$4 billion, which was almost nine times greater than the figure recorded in the year 2000.

The size of China's assistance to North Korea can also be estimated by adding the volume of investments to the volumes of exports and grants. In order to diversify the estimated figures, two types of calculations can be performed: the first method adds up grants, investments, and general exports; the second formula simply adds the exports of infrastructure items to grants and investments. Chinese investments vis-à-vis North Korea are included because the Chinese government actively pursues investments in North Korea, and the Ministry of Commerce has arranged a mechanism to safeguard the investment funds of those Chinese enterprises that suffer a loss from their investments in North Korea. Translated, this means that the Chinese government has subsidized a part of the total investments to North Korea. The estimated figures show that Chinese assistance to North Korea grew steadily until the year 2014, but decreased in 2015. When general exports and investments are added to grants, the estimated volume of Chinese assistance to North Korea ranges from a minimum of US$478 million (2000) to a maximum of US$4 billion (2014). On the other hand, when only the export of infrastructure items and investments are added to grants, the minimum estimated size of Chinese aid to North Korea is US$40 million (2003); the maximum estimate is US$202 million (2013).

Figure 6. China's Aid to North Korea: An Estimated Sum of Grants, Exports, and Investments

(USD million)



Source: Authors' estimation based on Trade-中国国家统计局, Aid Grant-中国海关信息网, Investment- 中华人民共和国商务部对外投资和经济合 作司.

Note: China's assistance to North Korea suddenly decreased in 2015 for the price de clining of the coal as an important export item.

A sectoral breakdown of Chinese assistance to North Korea, usually provided in the form of commodities, shows that the "social and public infrastructure" sector and the "economic infrastructure" sector carried considerable weight.[16] In 2006, the major items of Chinese official grants were items that fell under non-identified products and

16. Major Items of China's Foreign Aid from 2010 to 2012, http://www.gov.cn/znhence/2014-07/10/content_2715467.htm.

Sector	Major Items	Number of Items
Social & Public Infrastructure	Hospitals, schools, civil construction, public facilities	360
Economic Infrastructure	Transportation & transport system, broadcasting & telecommunications, power supply	156
Agriculture	Agricultural technology demonstration centers, farmland irrigation, farm produce processing	49
Industry	Light industry, textile, construction materials, chemical industry, machinery & electronics	15

other trade goods, which were worth US$37 million and represented almost 40% of all items; computer-related equipment (including machines and electric products) followed next. Between 2001 and 2006, grains, edible meat, and other food items necessary for the subsistence of the North Korean people occupied a large proportion of the items of Chinese exports to North Korea; since 2007, however, grain exports to North Korea have fallen.[17] From 2007 to 2012, the export of electric appliances related to everyday life, plastic goods, other articles for daily use, fuel, machinery, and other industry-related goods were the main export items of China to North Korea. This trend in the ranking of Chinese exports to North Korea continued until 2015.

V. Similarities between China's aid to North Korea and Africa

Chinese foreign aid, which has expanded dramatically over the years, emphasizes the principle of political non-interference, setting it apart from the aid provided by other countries. The distinctive characteristics of Chinese aid are especially prominent in China's aid-giving vis-à-vis Africa. In the past, China provided assistance to Africa based on the unique characteristics of the international environment under the Cold War system; recently, however, China has increased its aid to Africa enormously based on the realist motive of economic benefits. Although most of the assistance to Africa is in the form of loans and tied aid, the method of providing assistance is gradually becoming more comprehensive. Chinese aid to Africa also adheres to the principle of non-interference in the domestic politics and governance systems of the recipient countries. Likewise, the characteristics of China's aid to North Korea are also clearly similar to the qualities of Chinese foreign aid in

17. China implemented a restriction on grain export at the end of 2007 amidst concern of worldwide agflation due to skyrocketing international grain prices (including the prices of wheat, corn and other major grains) in the spot and future markets since 2006. The fall in grain exports to North Korea is considered a part of China's food export restriction policies that started at the beginning of 2008.

general. First, Chinese aid to North Korea has shifted from a relationship based on political ideologies in the past to one based on a realist perspective of economic benefits in the present. Second, the method of aid-giving to North Korea has expanded from the traditional grant-type aids to loans that are long-term, of low interest, and involve repayment plans. Third, Chinese assistance to North Korea has accelerated in the sectors of traffic infrastructure and construction.

Table 4. A Comparison of China's Aid to Africa and North Korea

Region	Aid Objective	Trend in Aid Volume	Aid Type	Sectors	Miscellaneous
Africa	Realist motives (Focus on international political interests --> Focus on economic interests, but also still seek political interests)	On the rise	Loans/ tied aid	Assistance for transport & storage infrastructure (based on scale) / Assistance to government & civil society, health, etc. (based on number of projects) * Assistance to all sectors	The principle of non-interference in internal affairs
North Korea	Realist motives (Political logic of the alliance relationship --> Economic logic)	On the rise	Shift to loans/ tied aid	Previously centered on commodity (grain, energy, etc.) trade, but expanded to include construction of traffic infrastructure	The principle of non-interference in internal affairs

Source: Authors.

China's aid to North Korea clearly embodies the characteristics of Chinese foreign aid in general and, moreover, does not differ significantly from the characteristics of Chinese aid to Africa. First, with regards to aid motives, the goals of Chinese aid to Africa and North Korea are similar. In Africa, China seeks to assert political influence and secure Chinese interests in connection to relevant economic issues.

In the case of North Korea, Chinese aid can be seen as a tool to secure Chinese economic interests, to create a stable regional environment for China, and to ensure the mutual economic development of both China and North Korea. Second, in terms of aid volumes to both North Korea and Africa, the general trend is upward rising. Especially in the cases of Ethiopia and North Korea, Chinese assistance has continued and is on the rise regardless of the domestic political situations of the two countries.[18] Both aid to Africa and aid to North Korea demonstrate an essential characteristic of Chinese foreign aid that stresses the principle of non-interference in the internal affairs of recipient countries. Third, with regards to the method of providing assistance, assistance vis-vis both North Korea and Africa are mostly provided with investment characteristics rather than with the characteristics of the existing international definition of ODA. In fact, the very characteristics of Chinese foreign aid that mark a clear difference from the characteristics of the international community's foreign aid are directly mirrored in the aid provided by China to both Africa and North Korea. Therefore, it can be concluded that Chinese aid to North Korea does not result from the "special nature" of Chinese-North Korean relations, but rather is dictated by the unique characteristics of Chinese foreign aid. Even in the future, it can be expected that provision of aid to North Korea will continue in accordance with Chinese foreign aid policies: aid will be based on the principle of non-interference in North Korea's internal affairs and along the lines of the realist goal of pursuing both economic and political interests.

18. North Korea's nuclear and missile test provocations and its domestic human rights situation hinder North Korea's chances of receiving large-scale assistance from the international community. The dire domestic situation of Ethiopia, in which a state of national emergency has been declared with internal conflict at an extreme, owing to anti-government protests, may halt international assistance toward Ethiopia. It can be said that the increase of continued assistance from China to the two countries, despite their domestic situations, results from the unique features of Chinese aid.

VI. Conclusion

This paper has examined whether there actually is a "special nature" involved in China's aid to North Korea by comparing it with Chinese aid to Africa, and especially Ethiopia. Through the comparison, it is clear that there are similarities between Chinese aid to both North Korea and Ethiopia. First, China's aid to both countries acts as a tool to secure China's economic interests, create a stable environment, and ensure the mutual economic development of China and the recipient countries. Second, in terms of aid volumes, the general trend is upward rising, regardless of the domestic political situations of the two countries. With respect to method, assistance is mostly provided with investment characteristics rather than with ODA characteristics. Therefore, it is possible to conclude that China's aid to North Korea does not result from the "special nature" of Chinese-North Korean relations, but rather springs from the unique characteristics of Chinese foreign aid. We can also predict that future aid to North Korea will continue, based on China's foreign aid policies.

This paper has made a number of significant contributions to the research on Chinese aid toward North Korea, and in the process, has overcome the major limitations found in previous studies. The first limitation of previous studies stemmed from the lack of information on the exact volume of Chinese aid to North Korea, which ultimately hindered accurate analysis. To this end, we calculated a more realistic estimate of Chinese aid volumes to North Korea by not only using available and officially disclosed aid volume information, but also computing the relevant figures of transactions in the area of Chinese-North Korean economic cooperation that can be presumed as aid. Second, we tackled the problem of past analyses on this subject that focused on the general relations of China and North Korea by introducing an assessment of Chinese aid to North Korea based on a political and economic approach to aid. Additionally, considering the near absence of comparative analyses between North Korea and Africa with regards to Chinese aid, this study expands the scope of research. Moreover, we hope that our assessment can become a research base from which future pol-

icy implications are drawn. In particular, the international community has emphasized that China is responsible for the low effectiveness of sanctions implemented against North Korea. However, the findings of this paper reveal how the nature of Chinese aid to North Korea can help pave the way for new discussions on how to approach China with regards to sanction effectiveness. Nevertheless, this article still has some limitations. For example, even though we conducted a comparative analysis of Chinese aid to North Korea and Chinese aid to Ethiopia, our hypothesis was restricted to looking at the similarities with no mention of the differences. Further studies that also deal with the differences could lead to more fruitful and improved analyses. Moreover, the focus of our research has been on economic matters. We believe that further analyses that also incorporate the political issues on the subject more could enhance the in-depth understanding of China's aid to both North Korea and Africa.

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中国海关信息网 http://www.haiguan.info/cstat1.aspx.

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More than an Ignorant Bystander: Chinese Accountability and the Repatriation of North Korean Defectors

Stephy Kwan

When it comes to human rights abuses, North Korea is in a category of its own. Since 2003, the General Assembly of the United Nations has annually adopted a resolution to condemn the country's record. However, it was not until 2013 that the UN's Human Rights Council created a Commission of Inquiry to investigate the State's human rights violations. In their 400-page report, the Commission reached two conclusions: first, that North Korea has infringed on its people's rights on a scale and gravity without parallel in the contemporary world; and second, that it has not acted alone, but with the assistance of China. For the first time, China's forced repatriation of North Korean defectors was placed under an international spotlight. This paper explores the possibility that China will be held accountable for North Korea's human rights abuses, especially in light of International Human Rights Law and International Refugee Law.

Keywords: Human Rights, China, Korea, Defectors, Non-refoulement

I. INTRODUCTION

"I ran toward the center of the river… The ice, I'm sure, groaned beneath my weight, but my ears were filled with the sound of my heartbeat. Just let me make it, I thought. Just let me get there and I will be able to live for the first time in so long."[1]

1. Joseph Kim and Stephan Talty, *Under The Same Sky: From Starvation In North Korea To Salvation In America* (Houghton Mifflin Harcourt Publishing Company 2015).

This passage is from the story of Joseph Kim, one of the thousands of defectors who have fled North Korea in search of a new life.[2] Defectors like Kim leave their country because it is one of the world's most oppressive regimes, where life is defined by extreme fear of political persecution, long-term hunger and discrimination. Because it is impossible to cross the heavily armed Demilitarized Zone, they must risk being shot to death while crossing rivers on the dangerous path to China.[3]

Despite their suffering, the defectors do not receive a warm welcome in China. Under Chinese policy, they are regarded, not as refugees, but as illegal border-crossers.[4] Hence, instead of providing protection, the Chinese police are instructed to forcibly repatriate them to North Korea, where upon return they will be subjected to charges and reprisals up to and including torture and execution.[5] Due to political sensitivities, the Chinese Government never provides information on the total number of repatriated North Koreans. Estimates can only be drawn from data collected by other governmental and non-governmental organizations (NGOs). At the beginning of 2000, the number of North Korean defectors repatriated from China reached upwards of 15,000 within a single month.[6] From 2002, the number steadily dwindled to around 2,000 per month, with a further drop seen between 2004 to 2009.[7] Nonetheless, the sharp fall in numbers should not be taken as a positive indication of policy change, but rather a result of

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2. North Korea, a country officially known as the Democratic Republic of North Korea.
3. China, a country officially known as the People's Republic of China.
4. Roberta Cohen, "China's Repatriation Of North Korean Refugees" (Brookings, 2017) <http://www.brookings.edu/testimonies/chinas-repatriation-of-north-korean-refugees/>, p. 1.
5. Morse Tan, "North Korea, International Law And The Dual Crises" (Taylor and Francis 2015), pp. 52-62.
6. Suh Jae Jean, Eui Chul Choi, Woo Young Lee, Lim Soon-Hee and Kim Su-Am, "White Paper On Human Rights In North Korea"(KINU 2002) <http://www.dbpia.co.kr/Issue/VOIS00067531>, pp. 1-15.
7. United Refugees, "U.S. Committee For Refugees And Immigrants World Refugee Survey 2007 – China" (Refworld, 2007) <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=publisher&skip=0&publisher=USCRI>.

tightened border control.[8]

To avoid forcible repatriation, North Korean defectors become helpless and easily manipulated subjects while hiding in China.[9] In particular, women are often subjected to human trafficking and marriage enslavement.[10] As a result, the North Korean human rights crisis passes on to the next generation. According to figures reported by a leading NGO, there are roughly 30,000 stateless children born to North Korean mothers in China. These children are stateless in the sense that they are not recognized by either North Korea or China. They are deprived of their basic rights because their births cannot be registered without exposing their mothers to the risk of refoulement.[11]

After more than a decade of ignorance, in 2013, the United Nations Human Rights Council (OHCHR) finally established a Commission of Inquiry (COI) to investigate the situation inside North Korea.[12] Although China's repatriation policy was not initially included in its mandate, the role of the Chinese state became evident once the Commission began their work.[13] In its report, the COI highlighted China's forcible return of tens of thousands of North Koreans, almost all of

8. Financial Times, "Escape Route From North Korea Grows Ever More Perlious" (2017) <https://www.ft.com/content/8e0ba354-5229-11e7-bfb8-997009366969>.
9. Jeanyoung Jeannie Cho, "Systemizing The Fate Of The Stateless North Korean Migrant: A Legal Guide To Preventing The Automatic Repatriation Of North Korean Migrants In China," (2013) Fordham International Law Journal. <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2326&context=ilj>, p. 206.
10. Committee On The Elimination Of Discrimination Against Women, Concluding Comments Of The Committee On The Elimination Of Discrimination Against Women: China (United Nations Committee 2006), paras. 33-34.
11. The Guardian, "30,000 North Korean Children Living In Limbo In China" (2017) <https://www.theguardian.com/world/2016/feb/05/north-koreas-stateless-children>.
12. The United Nations General Assembly, Twenty-fifth session 7 February 2014 "Report Of The Detailed Findings Of The Commission Of Inquiry On Human Rights In The Democratic People's Republic Of Korea" (7 February 2014) UN Doc A/HRC/25/CRP.1<http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIDPRK/Report/A.HRC.25.CRP.1_ENG.doc>, para 1. (COI Report).
13. Cohen, "China's Repatriation Of North Korean Refugees" (n 4), p. 5.

them subjected to acts of torture, sexual violence, and arbitrary detention.[14] In a letter appended to the report, Chairman Kirby warned China that its officials could be "*aiding and abetting crimes against humanity.*"[15] Nevertheless, China's Ambassador to the United Nations, Mr. Wu Haitao, responded that China would continue to handle the issues of North Korean citizens in accordance with its domestic law, international law, and humanitarian principles, on the premise of safeguarding state sovereignty, while bearing in mind the stability of the Korean Peninsula.[16] His statement reflects the truth that the problem of North Korean human rights abuses is not merely a moral topic, but one that must be balanced with political reality. And yet, there is also a fundamental legal aspect that lawyers and academics must address.

As such, this paper aims to fill an existing gap by scrutinizing the accountability of China for forcibly repatriating North Korean defectors. Part I introduces the problems caused by the Chinese repatriation policy. Part II challenges China's justifications and rationales, and examines whether a non-refoulement obligation can be established under The Convention Relating to the Status of Refugees (Refugee Convention) or The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Torture Convention"). Part III explores potential pathways to ensure the full accountability of China, provided that a breach of obligation can be proven. Part IV considers from a personal perspective the extent to which the law can resolve the North Korean problem.

14. 'COI Report' (n 12), para. 1114.
15. The United Nations General Assembly, Twenty-fifth session 7 February 2014 "Report Of The Commission Of Inquiry On Human Rights In The Democratic People's Republic Of Korea" (7 February 2014) UN Doc A/HRC/25/63 <http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/CommissionInquiryonHRinDPRK.aspx>, pp. 26-36. (COI Summary Report).
16. *Ibid*,.

II. OBLIGATIONS

In response to the COI's accusation, China has defended its policy on the following grounds: (i) bilateral treaty obligations between China and North Korea must be upheld; (ii) North Korean defectors are not refugees but economic migrants; and (iii) repatriated defectors have not faced torture. The validity of these arguments are analyzed below.

A. Bilateral Treaty Obligations

Chinese officials have, on various occasions, stated that China does not run afoul of international law by repatriating North Korean defectors due to the existence of bilateral treaties between the two States.[17] The first such treaty, signed in secret in the 1960s, requires China to return any illegal border-crossers to North Korea as criminals.[18] This one-sided treaty in 1964 became a two-sided Mutual Cooperation Protocol.[19] Other than a mutual obligation to maintain border control, the Protocol demands that parties exchange information on individual defectors.[20] This collaboration further expanded in 1986, and the Mutual Cooperation Protocol remains valid today.[21] These three bilateral treaties form the basis for the repatriation policy. They are based on a fundamental principle of International Law: pacta sunt servanda codified in Article 26 of the Vienna Convention on the Law of Treaties (VCLT), which translates as, "*Every treaty in force is binding upon the parties to it and must be performed by them in good faith*." In other words, promises must be kept.

17. Cho, "Systemizing The Fate Of The Stateless North Korean Migrant: A Legal Guide To Preventing The Automatic Repatriation Of North Korean Migrants In China" (n 9), p. 217.
18. Escaped Criminals Reciprocal Extradition Treaty.
19. Protocol between the PRC Ministry of Public Security and the DPRK Social Safety Ministry for Mutual Cooperation in Safeguarding National Security and Social Order in Border Areas.
20. Tan, North Korea, International Law And The Dual Crises (n 5), p. 120.
21. Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas.

However, an exception to the general rule applies if the treaty in question is found to be in conflict with a peremptory norm under International Law. This principle is stated in Article 53 of the VCLT. The concept of a peremptory norm, also known as *jus cogens*, refers to fundamental principles that have been accepted by the international community as a whole and from which no derogation is permitted.[22] By applying this principle to the present situation, an exceptional circumstance will arise if China owes a non-refoulement obligation against North Korean defectors as alleged by the COI.

Although the customary status of the principle of non-refoulement has already been well-acknowledged, its *jus cogen* status remains open to debate.[23] Two requirements must be satisfied for a norm to be qualified as a jus cogen. First, it must be accepted by the international community as a whole; second, it must be a norm where no derogation is permitted. The second of these is relatively easy to satisfy with regard to North Korea, as a reference can be made to the comments of the Executive Committee of the United Nations High Commissioners for Refugees (UNHCR). In 1996, the UNHCR concluded that "*the principle of non-refoulement is not subject to derogation*," thus indicating an unambiguous and complete fulfillment of the requirement.[24]

By comparison, the first requirement is harder to satisfy, since the object concerned is the "international community as a whole." Professor Jean Allain has devoted great effort to gathering information about Latin American practices to support his argument that the principle in question achieves jus cogen status. For example, he cited the 1984 Cartagena Declaration on Refugees that explicitly mentions that "*the principle of non-refoulement…observed as a rule of jus cogens*." Nonetheless,

22. Rafael Nieto-Navia, "International Peremptory Norms (Jus Cogens) and International Humanitarian Law" (Kluwer Law International 2003) <www.dphu.org/uploads/attachements/books/books_4008_0.pdf>, p. 10.

23. Guy S Goodwin-Gill and Jane McAdam, *The Refugee In International Law* (Oxford University Press 2007).

24. Executive Committee of the High Commissioner's Programme, "General Conclusion On International Protection No. 79" (The UN Refugee Agency 1996) <http://www.unhcr.org/excom/exconc/3ae68c430/general-conclusion-international-protection.html>.

without challenging the overall validity of his argument, the author must point out that a legally non-binding Declaration signed by ten regional States can hardly be deemed to represent the international, or even the regional, community's view of a norm.[25] Therefore, it is no surprise that the *jus cogen* status of the non-refoulement principle has been tested by the Canadian Supreme Court in the Suresh case.[26] The Court held that the applicant must be deported despite the risk of him being tortured. Whilst the Court agreed that the prohibition against torture was a well-established peremptory norm, it refused to comment on the legal status of the principle of non-refoulement.[27] From the Court's perspective, the *jus cogen*s status of the prohibition of torture did not automatically grant the non-refoulement principle the same status, even if the latter was invoked on the same grounds.

The conservative approach taken by the Court is debatable.[28] After all, the Court could not justify the distinction between its absolute prohibition of torture and its non-absolute prohibition of deportation to torture. With the benefit of hindsight, the author would like to argue that, by relying on refutations drawn by the decision, this counter-proves that the principle of non-refoulement had already acquired a *jus cogen* status due to the general acceptance it had received. Such an argument is confirmed by the European Court of Human Rights' (ECtHR) decision in the Saadi case, in which the judges expressly declared, "*Since protection against the treatment prohibited by Article 3 is absolute...there can be no derogation from that rule*."[29]

Even if the jus cogen status of the non-refoulement principle cannot be established, China may still owe the non-refoulement obligation

25. Jean Allain, "The Jus Cogens Nature Of Non-Refoulement" (2001) 13 *International Journal of Refugee Law* <https://doi.org/10.1093/ijrl/13.4.533>, pp. 539-540.
26. *Suresh v Canada* (Minister of Citizenship and Immigration) [2002] Supreme Court of Canada, 1 S.C.R. 3.
27. *Ibid*., para. 61.
28. David Jenkins, "Rethinking Suresh: Refoulement to Torture Under Canada's Charter of Rights and Freedoms," (2009) p. 147.
29. S*aadi v. Italy* [2008] European Court of Human Rights, Appl. No. 37201/06, para 120.

against North Korean defectors under established Refugee or Human Rights Law. The obligation is derived from Article 14 of the Universal Declaration of Human Rights, which protects a person's right to seek asylum. The protection granted to the asylum seeker, however, must be interpreted consistently with a State's sovereign right to determine refugee status; thus does the principle of non-refoulement emerge. Today, this principle's relevance varies by context.[30] In the case of China and North Korean refugees, the two relevant grounds are Article 33 of the Refugee Convention and Article 3(1) of the Torture Convention, because both Conventions are ratified by China and have been used by the State as rationales to argue against the establishment of its obligation. The following section examines the strength of China's arguments.

B. Non-refoulement Obligation under Refugee Convention

Article 33 of the Refugee Convention reads, "*No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion*." To balance State interests and human rights, only people who qualify as 'refugees' are entitled to the non-refoulement protection. On various occasions, China has reiterated its view that it is not contravening this obligation because North Koreans are economic migrants.[31] In response, the author would like to raise the following points.

Argument 1: Not every North Korean defector is an economic migrant

Based on the UNHCR Handbook on the determination of Refugee

30. Sir Elihu Lauterpacht and Daniel Bethlehem, "The Scope And Content Of The Principle Of Non-Refoulement: Opinion," Refugee Protection in International Law: UNHCR's Global Consultations on International Protection (Cambridge University Press 2003) <http://www.unhcr.org/419c75ce4.pdf>, p. 90. ('Lauterpacht and Bethlehem').
31. COI Summary Report (n 15), pp. 26-36.

Status (UNHCR Handbook), China is correct in a sense: economic migrants should be distinguished from other refugees, because the former do not qualify for protection under the Convention. An economic migrant is defined as a person who "*voluntarily leaves his country in order to take up residence elsewhere*"; whereas under Article 1A (2) a refugee refers to someone who is 'forced' to move "owing to a well-founded fear of being persecuted." From China's perspective, since the Great Famine had already ended, one must assume that all North Koreans who defect do so for economic reasons.[32] However, according to data collected by the Korea Institute for National Unification (KINU), among the 4,000 North Korean interviewees who had entered China by 2004, only half had done so for economic reasons.[33] In other words, nearly half of the North Korean defectors who made their way to China left North Korea based on non-economic considerations. Nevertheless, China's sweeping classification has effectively excluded them from the reach of the Convention.[34]

Indeed, the critical line between economic migrants and refugees is sometimes blurred and difficult to draw. Hence, the Executive Committee further clarifies in its Handbook that if an economic measure ultimately drives an individual to flee his nation as a result of direct discrimination based on "*racial, religious or political aims or intentions directed against a particular group*," then the individual should be regarded as a refugee rather than an economic migrant.[35] In North Korea, its Government practice of official discrimination is unique.[36] All citizens are divid-

32. UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees," (Geneva, January 1992), UN Doc HCR/IP/4/Eng/REV.1 <http://www.unhcr.org/4d93528a9.pdf>, pp. 62-64. ('UNHCR Handbook').
33. Lee Keum-Soon, Choi Eui-Chul, Lim Soon-Hee and Kim Soo-Am. White Paper on Human Rights in North Korea, (KINU 2005) <https://www.amazon.com/White-Paper-Human-Rights-North/dp/8984790109>, p. 335.
34. Cho, "Systemizing The Fate Of The Stateless North Korean Migrant: A Legal Guide To Preventing The Automatic Repatriation Of North Korean Migrants In China," (n 9), p. 204.
35. UNHCR Handbook (n 32), para 63.
36. COI Summary Report (n 15), para. 8.

ed into three broad classes with 51 smaller sub-groups. This social structure is known as "Songbun"; under it, each person is ranked on the bases of his gender, race, religious and political opinions.[37] With rare exceptions, state-sponsored discrimination will impact and even define a person's socioeconomic status. For example, those born as members of the "hostile class" will probably be forced to work as hard laborers, simply because jobs are allocated according to the Songbun system. Based on NGO estimates, at least one-third of the total population of North Korea performs slave labor.[38] These people should be classified as refugees based on the UNHCR's definitions, even though their defections might initially be economically driven.

Argument 2: Defector can be a refugee without official recognition

The fact that not all North Korean defectors are economic migrants does not mean that they are automatically entitled to the non-refoulement protection. As stated above, in order to be eligible for protection, a North Korean defector must demonstrate that he is a refugee. However, the question of who deserves the title "refugee" is a far more complicated question than it appears to be, and is the source of much confusion. In both of their papers, academics Daniel Chang Park and Jane Haeun Lee have argued that the Refugee Convention is an ineffective way to secure North Koreans' rights, because the determination of refugee status remains within China's sovereignty.[39]

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37. COI Report (n 12), para. 271.
38. Robert Collins, "Marked For Life: SONGBUN, North Korea'S Social Classification System," (The Committee for Human Rights in North Korea 2012) <https://www.hrnk.org/uploads/pdfs/HRNK_Songbun_Web.pdf>.
39. Jane Haeun Lee, "The Human Rights Context Of North Korean Movement To China: Rights, Law, And Diplomacy" (Undergraduate, The University of Texas at Austin 2016), p. 81. "Specifically, if China refuses to accept NKEC by considering NKEC as illegal immigrants or economic migrants, then Refugee Convention and refugee law are ineffective." Daniel Chang Park, "The State Responsibility of China for the North Korean Refugees" (Postgraduate, University of Oslo 2008), p. 11. "It is hard to apply North Koreans to protect them because China as a contracting party can decide whether to confer on North Koreans refugee status or not."

It is true that, under Article 2 of the Charter of the United Nations, China has a legitimate right as a matter of domestic law to decide whether to grant a defector refugee status. But though Park & Lee's argument is partially valid, the author stresses that their interpretation represents a fundamental misunderstanding as to the meaning of "refugee" contained in the Convention. By its text, the concept does not only cover individuals who are formally recognized as refugees, but also those who are not. This is why Article 1A (2) refers to a "*well-founded fear of being persecuted*" without referring to official recognition.[40] To clarify the uncertainty, the Executive Committee once again reminds us that refugee status is a purely "declarative" matter. A person does not become a refugee because of recognition, but is recognized because he is a refugee.[41] To sum up, the status of a refugee under current International Law is completely independent of his status under national law. Therefore, a defector becomes a refugee once he can satisfy the Article 1A (2) criteria, and thus China automatically owes him a non-refoulement obligation regardless whether the state officially admits this status.

Argument 3: North Korean defectors should be qualified as refugees

Being a contracting party to the Refugee Convention and its Protocol, China has a duty to comply with the obligation of non-refoulement. This obligation is particularly important to North Korea defectors because, other than China, none of the countries commonly used in transit — including Burma, Mongolia, Laos, Thailand and Vietnam — are signatories of the Convention.[42] To be eligible for the protection, a North Korean defector must prove that he is a "refugee" based on the four criteria set out in Article 1A (2).

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40. Lauterpacht and Bethlehem (n 30), p. 116.
41. UNHCR Handbook (n 32), para. 28.
42. Emma Chanlett-Avery, "North Korean Refugees In China And Human Rights Issues: International Response And U.S. Policy Options" (Congressional Research Service 2007) <https://fas.org/sgp/crs/row/RL34189.pdf>, pp. 2-3.

(a) Well-founded fear of persecution

To qualify as a refugee, a defector must demonstrate a "*well-founded fear of being persecuted*." Unfortunately, a definition of persecution cannot be found under the Convention. The legal uncertainty is problematic because states like China use this as a reason to reject refugee claims, even for those backed by strong legal claims.[43] To end on a positive note, it is generally agreed that a threat to a person's life or freedom on the five grounds listed in Article 1A (2) qualify as persecution.[44] Therefore a defector is most likely to succeed in his claim by relying on the ground of torture because it is undoubtedly a serious human rights violation.

However, persecution alone is insufficient to qualify a North Korean defector as a refugee. The defector also bears a burden of proof with regard to a "well-founded fear."[45] While fear is a subjective criteria, the requirement that it be "well-founded" is an objective one.[46] In the U.S. case of Aguilera-Cota, the court decided that the subjective requirement could be easily satisfied by the applicant's testimony alone.[47] However, to make sure that fear is not irrational, it needs to be complemented with an objective requirement making it 'well-founded.[48] An assessment of the objective basis of fear can again be based on testimony. This is confirmed by the Bolanos-Hernandez case, where the court commented, "*the objective facts are established through the credible and persuasive testimony of the applicant does not make those fears less objective.*"[49] Yet, it is cautioned

43. David Weissbrodt and Isabel Hortreiter, "The Principle Of Non-Refoulement: Article 3 Of The Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment In Comparison With The Non-Refoulement Provisions Of Other International Human Rights Treaties" (1999) 5 *Buffalo Human Rights Law Review* <http://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1366&context=faculty_articles>, p. 21. ('Weissbrodt and Hortreiter').
44. Park, "The State Responsibility of China for the North Korean Refugees" (n 43), p. 50.
45. *Ibid*., p. 43.
46. Weissbrodt and Hortreiter (n 43), p. 20.
47. *Aguilera-Cota v U.S. Immigration and Naturalization Service* [1990] United States of Court of Appeals, 914 F. 2d 1375.1381
48. Weissbrodt and Isabel Hortreiter (n 43), p. 20.
49. *Bolanos-Hernandez v. U.S. Immigration and Naturalization Service* [1984] United

that the flexible approach adopted by U.S. courts may not apply in the present circumstance, since China is clearly not bound by their legal precedents.

(b) Relevant grounds of persecution

The Refugee Convention demands that the persecution must arise from one of the five grounds listed in Article 1A (2). This requirement is closely linked to the fundamental principle of non-discrimination stated in the UN Charter and other International Human Rights Treaties.[50]

(i) Race – "Race" is listed as a ground of persecution that can qualify a person as a refugee. According to Professor Gill, the meaning of 'race' should be interpreted broadly by referring to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to cover all forms of discrimination that are based not just on race, but also color, descent, and national or ethnic origin.[51] In North Korea, the regime places a strong emphasis on maintaining a "pure Korean race."[52] In order to do so, nearly all pregnant repatriated women are subject to forced abortion.[53] The sexual violence amounts to torture and crimes against humanity.[54] In one hearing session, a witness recalled North Korean officials pledging to "*exterminate mixed-race people*."[55] The author argues that the brutal treatment of children conceived to Chinese fathers may amount to genocide.

(ii) Religion – Religious persecution is common in North Korea. In particular, the COI confirms that Christians are targeted victims of

States of Court of Appeals, 767 F.2d 1277, 1285

50. See Article 1, 13(1)(v)a 55(c), 76(c) of the UN Charter. See also Article 2(1) of the ICCPR.
51. *Ibid*,.
52. COI Report (n 12), para. 369.
53. *Ibid*,. para. 1107.
54. *Ibid*,. para. 1105.
55. *Ibid*,. para. 426.

persecution.[56] Since religious discrimination is state-sponsored, Christians living in North Korea often find themselves in a marginalized position and classified as members of the lowest class under the Songbun system. Their social status as members of an abused social group should also qualify them as victims of persecution.

(iii) Particular social group – The above situation illustrates that the "particular social group" ground often overlaps with other bases of persecution, such as religion.[57] Professor Gill believes the ground is broader than the others, and thus "*potentially capable of expansion in favor of a variety of different classes susceptible to persecution*."[58] Nonetheless, North Korean defectors are reminded that this ground, like the ground of religion, must be used with caution, because in a normal situation mere membership in a particular social group is insufficient to establish a refugee claim.[59]

(iv) Nationality – According to the UNHCR, the concept of nationality should not be limited to the idea of "citizenship" only.[60] To clarify the ambiguity, nationality persecution is said to comprise antagonistic attitudes and actions against a national minority.[61] In North Korea, one typical example is the ethnic Japanese. At the end of WWII, having to choose between the South and the North, nearly half of the 2.4 million Koreans who then resided in Japan chose to move to the North due to its "Paradise on Earth" program.[62] In terms of composition, many of the migrants were originally from the South; around 7,000 held Japanese citizenship.[63] This phenomenon crystallized the blurred and impractical distinction drawn between "race" and "nationality" under the Refugee

56. *Ibid*,. para. 1095.
57. UNHCR Handbook (n 32), para. 77.
58. Weissbrodt and Hortreiter (n 43), p. 23.
59. UNHCR Handbook (n 32), para. 77.
60. *Ibid*,. para. 74.
61. *Ibid*,. para. 76.
62. COI Report (n 12), para. 916.
63. *Ibid*,. para. 917.

Convention. While the returnees were expecting a "Paradise" as portrayed by the North Korean government, it did not take them long to realize it was a lie. These voluntary returnees, together with the 100 Japanese believed to be forcibly abducted by North Korea officials, were victims of the discriminatory system, as they were deemed suspicious of political crimes.[64] Both experts and defectors testimonies' confirm that Koreans with a Japanese-tie are at higher risk of being detained in political labor camps compared to "pure-Koreans."[65]

(v) Political opinion – Due to the totalitarian nature of the North Korean regime, the COI devotes a section in its report to the possibility of bringing a case of political genocide against the Government. Regrettably, it is unlikely such a claim will stick, since political opinion alone does not fit the definition of genocide under International Law as the intent to destroy "*a national, ethnical, racial or religious group*."[66]

(c) Outside the country of nationality or not having a nationality

To qualify as a refugee, one must be outside the country of his own nationality.[67] This threshold is fulfilled by North Korean defectors hiding in China. However, difficulties may arise regarding the possession of nationality, as most of them are not expected to have a passport. In that case, the UNHCR advises that all factual elements of an applicant should be taken into account while weighing his credibility.[68]

(d) Unable or unwilling to be protected by that country

The last requirement demands proof that a person is unable or unwilling to be protected by his own country. The unavailability of judicial justice is easy to prove by virtue of a lack of an independent judicial system in North Korea.[69] Although unwillingness is a subjec-

64. *Ibid*,. para. 920.
65. *Ibid.*, para. 925.
66. *Ibid*,. paras. 1157-1158.
67. UNHCR Handbook (n 32), para. 88.
68. *Ibid*,. para. 93.
69. COI Report (n 12), para. 793.

tive test, the UNHCR is happy to accept a case if the unwillingness is based on an objective and well-founded fear.[70]

Argument 4: The possibility of North Koreans being Refugees sur place

Given the many hurdles that the Refugee Convention has set, a North Korean defector may not qualify as a refugee at the moment he escapes his country. However, he is reminded that he can still become a refugee at a later stage by claiming the status of refugee *sur place*.[71] A person can become a refugee sur place "*as a result of his own actions, such as associating with refugees already recognized, or expressing his political views in his country of residence*."[72] Therefore, even if a North Korean defector fails to satisfy his claim because of his flawless background, he can still be a refugee sur place if he later comes into contact with activist groups, or expresses his political views publicly in a third country. Indeed, recent years have seen a rising trend in high-ranking North Koreans seeking asylum. For instance, Thae Yong-ho, North Korea's former deputy ambassador to the UK, defected in 2016.[73] Jong Yol-ri, an 18-year old student with an elite background, also sought asylum in 2017.[74] Because of the publicity that these defections have drawn worldwide, it is reasonable to expect that they would be subject to inhuman treatments if repatriated.[75]

70. UNHCR Handbook (n 32), para. 100.
71. *Ibid*,. para. 94.
72. *Ibid*,. para. 96.
73. BBC, "People Will Rise Against N Korean Regime, Says Defector" (2017) <http://www.bbc.com/news/world-asia-38741078>.
74. South China Morning Post, "North Korean Maths Whizz'S Long Taxi Ride To Freedom" (2017) <http://www.scmp.com/news/china/diplomacy-defence/article/2074200/n-korea-maths-whizzs-long-hong-kong-ride-freedom>.
75. David R Hawk, *The Hidden Gulag* (US Committee for Human Rights in North Korea 2012), p. 115.

Argument 5: China's obligation of non-refoulement

Once a North Korean defector meets the criteria under Article 1A (2) and is recognized as a refugee, he will be eligible for protections guaranteed by the Refugee Convention to which China is bound. These protections include an obligation of non-refoulement which has the effect of prohibiting China from returning a refugee by virtue of Article 33 (1). The question of whether this obligation has been breached is discussed below.

Argument 6: The invalidity of the conventional exceptions

However, China may rely on certain exceptions to limit its non-refoulement obligation. First of all, China may reject the granting of refugee status by relying on Article 1F of the Refugee Convention. According to Article 1F, a person does not deserve of refugee status if he has committed: (a) a war crime or crime against peace or humanity; (b) a serious non-political crime; or (c) an act contrary to the purposes and principles of the UN. In the present case, grounds (a) and (c) are unlikely to be invoked by China. Regarding scenario (b), before developing its claim, China must first demonstrate that the suspect has been subjected to due process of law in North Korea, since this procedural safeguard is explicitly required by the UNHCR.[76] Nevertheless, by cross-referencing the COI report, the Commission repeatedly confirms that many of North Koreans are subject to detention and imprisonment without due process.[77] Hence, China's argument does not hold up.

A more specific limitation China may invoke is Article 33(2). This provides that a refugee cannot benefit from the previous provision if "*there are reasonable grounds for regarding [him] as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country*." Put simply, the two exceptions can be summarized as "a threat

76. UNHCR Handbook (n 32), para. 154.

77. COI Report (n 12), paras. 844, 1033. See Prosecutor v. Kordić & Čerkez [2001] International Tribunal for the Former Yugoslavia, Case IT-95-14/2, para. 302.

to national security" and "a danger to community interest." The community interest ground is similar to the Article 1F limitation. However, in this provision, the focus is placed on the danger a person poses to the community, rather than the seriousness of the crime. Regarding national security, this has previously been cited by Mr. Wu as grounds to justify the repatriation policy, although an explanation of how North Korean refugees effect China's national security has not been provided.[78] Nevertheless, the author understands that national security remains a politically sensitive topic that she does not intend to comment on further. However, this is not to say that China can continue its repatriation policy simply by throwing up national security as an excuse. Under the UNHCR's guidelines, only "very serious" danger can justify a refoulement. By applying the proportionality test, a danger will only be serious enough if the threats it poses to China outweighs the risk of persecution a defector faces upon his return.[79] Although the outcome of each case is within a State's sovereign rights to decide, China must bear in mind that refoulement is always the last resort.[80]

C. Non-refoulement Obligation under Torture Convention

Beyond the first legal basis illustrated above, a non-refoulement can also arise out of the Torture Convention which China ratified in 1988. Article 3(1) reads, "*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*."

Significant differences can be observed by comparing the two bases. First, any person can be protected under the Torture Convention whereas only refugees are eligible for protection under the Refugee Convention. Second, the protection granted by the Torture Convention is broader in that it covers torture of all kinds, i.e. it does not require the torture to be caused by an exhaustive list of reasons, which is how

78. COI Summary Report (n 15), pp. 26-36.

79. Silver & Others v United Kingdom [1981] European Convention on Human Rights, 3 EHRR 475.

80. Lauterpacht and Bethlehem (n 30), pp 138-140.

the Refugee Convention operates. Nevertheless, the approach taken by the Torture Convention can also be considered restrictive, as it is designed to protect victims of torture only.[81] The difficulty in determining the minimum level of gravity which inhuman treatment must reach in order to qualify as torture has been used by China as an argument to reject its non-refoulement obligation. In response, the author would like to stress the following points.

Argument 1: Repeated repatriations do not disprove the possibility of torture

In his correspondence with the COI, Mr. Wu contends that repatriated DPRK citizens from China do not face torture. Based on his line of reasoning, the fact that many defectors have repeatedly crossed the border disproves the Commission's allegation that defectors have been tortured by the Government upon their return.[82] Before commenting on its legal validity, this argument is without any logical foundation. Based on common sense, the concept of torture does not necessarily imply an irrecoverable harm that effectively prevents a person from fleeing his country. Instead, according to an NGO's study, around 35% of refugees to the U.S. have been previously subjected to torture.[83] The fact that many North Koreans have risked their lives again and again is nothing but strong proof of how desperate they are to leave their country. It does not mean that they have not been tortured. It means life in North Korea may itself be a form of torture.

Argument 2: The existence of torture

To establish a non-refoulement obligation under Article 3 of the Torture Convention, there must be substantial grounds for believing that a North Korean defector would be subjected to torture. Therefore,

81. Weissbrodt and Hortreiter (n 43), p. 8.
82. COI summary Report (n 15), Annex II.
83. "FAQ – Center For Survivors Of Torture (CST) – AACI" (Cst.aaci.org, 2017) <http://cst.aaci.org/faq/>.

the meaning of torture must be clarified. To break down the definition set out in Article 1, there are three elements that must be shown in order to qualify a claim of torture. First, an individual must have been subjected to pain or suffering that reaches a "severe" level. Second, the harm must be done for certain purposes, such as to obtain information or a confession, or simply for punishment. Third, it must be carried out by, or with the consent of, a public official or someone acting in a formal capacity.[84] Although the thresholds are high, the treatments of millions of North Korean defectors should not fall short of these standards.

Based on the findings of the COI, torture is a common feature of North Korea's interrogation process.[85] Although such treatment is prohibited under the law, in practice it has often been employed by officials to obtain a confession.[86] In one of the Commission's public sharing sessions, Mr. Kim Song-ju recalled being detained in a "cave" with 40 other prisoners after he was repatriated from China. The cave was approximately 80 centimeters high, and his hands were tied up by the police, from which he hung for three consecutive days. This form of punishment, which is known as "pigeon torture" creates enduring and excruciating pain, since the positioning effectively prevents a person from standing or sitting.[87] Besides pigeon torture, North Korean defectors have also been subjected to other forms of inhuman treatments including "scale," "airplane" and "motorcycle" tortures that are equally brutal.[88] As mentioned above, both the COI and NGO reports conclude that all forms of torture, ranging from deprivation of food, water and sleep, prolonged fixed positioning and physical confinement, are used as means to collect information or to obtain confessions, regardless of their truthfulness.[89] The fact that all of these methods are conducted with official consent, whether given explicitly or implicitly,

84. Weissbrodt and Hortreiter (n 43), pp. 10-11.
85. COI Report (n 12), para 840.
86. *Ibid*,. Article 253 of the DPRK Criminal Code criminalizes torture and other illegal means of interrogation.
87. *Ibid*,. para 715.
88. *Ibid*,. para 717.
89. *Ibid*,. para 1105.

must constitute acts of torture under the International Law.[90]

The only problem that may arise in regards to the application of the Torture Convention lies in the last sentence of Article 1(1). It states that torture "d*oes not include pain or suffering arising from, inherent in or incidental to lawful sanctions*." By relying on this, China may raise a defense that the North Koreans defectors do not face torture because those treatments are direct consequences flowing from the crime of escaping the country. Although such argument may appear to be sensible, in reality the written penalty for illegal border crossing, based on the revised Penal Code in 2004, is five years or more of correctional labor or, at the maximum, a life or death sentence.[91] In other words, the "*severe beatings, deliberate starvation and other means of torture*," for instance, the rape, forced abortion and infanticide stretch far beyond the black and white legal instruments even at the national level. It is worth noticing that when it comes to the lawfulness of sanctions, the Torture Convention concerns both the local and the international levels. Put simply, any sanctions found to have a tortuous nature cannot be legalized, since these actions are by law a *de facto* violation of *jus cogens*.[92]

Argument 3: Substantial grounds for believing that the North Korean defectors would be in danger of being subjected to torture

Similar to the "well-founded fear" test, for a non-refoulement to arise under the Torture Convention, both subjective and objective tests must first be passed. The subjective requirement requires a sincere belief that the applicant will be subjected to torture; however, unlike the Refugee grounds, this genuine belief must be held by the Committee against Torture rather than the applicant himself.[93] This principle is demonstrated in the case Ismail Alan v Switzerland, under which the Committee

90. *Ibid*,. para 707.
91. Kyu Chang Lee, "Protection Of North Korean Defectors In China And The Convention Against Torture" (2008) 6 *Regent Journal*, p. 152.
92. *ex parte* Pinochet Ugarte [1999] UK House of Lords, 2 W.L.R. 827
93. Weissbrodt and Hortreiter (n 43), pp. 10-11.

concluded that the question of whether there were subjective grounds for believing that the victim would be in danger of torture was one that the Committee must answer.[94] However, such subjective belief must be based on objective grounds.[95] In regards to the objective test, Article 3(2) suggests that "*all relevant considerations, including... the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights*" must be taken into consideration. This particular emphasis on the human rights conditions of the recipient country of an applicant adds extra merits to the use of Torture Convention as a cause of action given the "*systematic, widespread and grave violations of human rights*" situations in the North Korea.[96]

In some cases, the Committee has even considered the fact of whether the recipient country was a party to the Torture Convention while making its objective assessment. For instance in the case Tahir Hussain Khan v Canada, the Committee decided not to return Khan to Pakistan because it was found that Pakistan had yet to ratify the Torture Convention. For this reason, the Committee was of the view that a refoulement might not only subject Khan to torture, but effectively prevent him from seeking international protection.[97] Therefore, by analogy, the same decision should be reached by the Committee in a case involving a North Korean defector to China, since North Korea is likewise not a party to the Convention. In the same case, the Committee also considered the issue of standard of proof that an applicant must reach to show there are "substantial grounds" that he would personally be subjected to torture. The Committee considered that "*even if there could be some doubts about the facts as adduced by the author, it must ensure that his security is not endangered*."[98] Such a generous view is not an exceptional, but is the general approach the Committee has applied to

94. *Ismail Alan v. Switzerland* [1996] Committee Against Torture, U.N. Doc. CAT/C/16/D/21/1995.
95. Weissbrodt and Hortreiter (n 43), p. 13.
96. COI Report (n 12), para 690.
97. *Tahir Hussain Khan v. Canada*, [1995] The Committee Against Torture, U.N. Doc. A/50/44, para 46.
98. *Ibid*,. para 12.3.

cases where the victims are suspected of having been tortured.[99] Although previous torture alone cannot guarantee a definite invocation of non-refoulement obligation, the Committee is of the view that "*complete accuracy is seldom to be expected by victims of torture*," and the obligation should arise as long as the inconsistency is not material and thus raise doubts about the overall validity of the applicant's claim.[100] While critics may challenge the overall-leniency of the Committee's approach, they should be reminded that the initial and ultimate purpose of the Torture Convention is to "prevent" rather than to "redress" torture.[101] This explains the rationale behind its low threshold when comparing to the Refugee Convention.

D. Other international obligations associated with China's repatriation policy

Although the non-refoulement obligation should form the primary cause of action against China, there are other legal obligations that China has failed to comply with regards to the North Koreans who are currently hiding in China. Since no official data are available, the estimates of the North Korean population in China vary greatly.[102] Regardless of the number, these are real lives that need to be protected by the Law.

1. Women

Apart from the millions of North Koreans who are captured in detention centers, North Korean women often constitute the majority

99. *Pauline Muzonzo Paku Kisoki v Sweden* [1996] The Committee Against Torture, U.N. Doc. CAT/C/16/D/41/1996

100. *Ibid*,.

101. *Alan v. Switzerland* (n 94) , para 115.

102. Andrei Lankov, "North Korean Refugees in Northeast China," University of California Press, Asian Survey Vol.44, (2004), p. 860. China alleges that there are approximately 10,000. Some NGOs put the number as high as 300,000, while others generally set the range between 100,000 to 150,000.

of the hidden population.[103] Among them, 80% of women who enter China fall prey to human traffickers, a phenomenon that constitutes a violation under The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).[104] Under Article 6, China is obliged to suppress trafficking and prostitution activities in all forms and to protect the basic rights of women. Although China may argue that "appropriate measures," including legislation, have been put into place, the author contends that its refoulement policy has in effect rendered women without protection because of their fear of repatriation.[105]

2. Children

There are an estimated 30,000 half-North Korean children in China. They are born to North Korean mothers residing in China without legal permits. They are effectively stateless, because they cannot register the births of their children without exposing themselves to the risk of repatriation.[106] The difficulty these stateless children face by virtue of China's policy should be regarded as a violation of Article 7 of the Convention on the Rights of the Child (CRC) which China ratified in 1992 and which guarantees every child a right to nationality. As a direct result of their inability to complete family registration, these North Korean children are deprived of their basic rights to education and health under Article 29 and 24. As experts from NGOs have commented, the fear of being detected, seized and repatriated puts these children in an extremely vulnerable position. The author concludes that the policy pursued by China is not made in the best interests of these children.

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103. COI Report (n 12), para 460.

104. Tan, "North Korea, International Law And The Dual Crises," (n 5) p. 53. China has ratified the Convention in 1980.

105. Article 240 of China's Criminal Code prohibits trafficking of ladies or youngsters. Article 358 prohibited prostitution, with a maximum of 5-10 sentences. See also COI Report (n 12), para 458.

106. COI Report (n 12), para 472.

III. ACCOUNTABILITY

Pursuant to International Law, there are two ways to hold China accountable for its breach of its non-refoulement obligation against the innocent North Korean defectors. One way is by proving a breach of its non-refoulement obligation under a primary rule through the Refugee Convention or the Torture Convention; the other way is by relying on the secondary rule of State Responsibility, i.e. Article 16 of The Draft Articles on the Responsibility of States for Internationally Wrongful Act ("Drafted Articles") that governs a state's complicity liability. It refers to a state's responsibility for aids or assistance that have been given to another state for the commission of internationally wrongful acts.[107] The close relationship between the principle of non-refoulement and complicity is a subject of the legal scholarship of Samuel Shepson.[108]

A. Non-refoulement and complicity

The principle of non-refoulement has a long history and is well established in the areas of Refugee and Human Rights Law. On the other hand, Article 16 of the Drafted Articles is a secondary rule grounded on international customs that can only develop derivative responsibility.[109] Due to their legal natures, academics including Shepson and Aust have previously classified the principle of non-refoulement as a rule *lex specialis*, as distinguished from Article 16 which is a rule lex generalis.[110] As such, Shepson argues that by virtue of Article 55 of the Drafted Articles, the principle of non-refoulement protected under the Conventions must prevail over Article 16. This principle is known as *lex specialis derogat legi generali*, meaning that special

107. Marina Aksenova, *Complicity in International Criminal Law* (Hart Publishing 2016), p. 169.

108. Samuel Shepson, "Jurisdiction In Complicity Cases: Rendition And Refoulement In Domestic And International Courts" 53 *Columbia Journal of Transnational Law.*

109. Samuel Shepson (n 108), p. 712.

110. Samuel Shepson (n 108), p. 713. Helmut Aust (n 117), p. 397.

laws repeal general laws.

There are two other technical reasons why the primary rule should apply. First, non-refoulement obligations share a lower *scienter* threshold than Article 16. Under Article 33 of the Refugee Convention, China is banned from returning a North Korean as long as his or her life or freedom is threatened by repatriation. Article 3 of the Torture Convention prohibits China from *refouler* if there are substantial grounds for believing that a North Korean would be subjected to torture. Although the test of non-refoulement varies between the two Conventions, none of them demands an intent or actual knowledge as the Drafted Articles do. Under Article 16(a), China can only be responsible for complicity if aid or assistance is given to North Korea with knowledge of the circumstances of the internationally wrongful act, combined with a view to facilitating the commission of the internationally wrongful act.[111] Hence, holding China accountable for its refoulement of North Korean defectors is a much harder task under Article 16 because it requires not just a state's possession of actual knowledge and malicious intent, but also a definite outcome. These higher hurdles under the complicity framework are difficult to overcome, and hence work against the interests of the victims.[112]

Second, the responsibility of China under Article 16 is dependent upon the responsibility of North Korea for internationally wrongful acts. Article 16(b) states clearly that for an assisting state to be responsible for complicity, the act must be internationally wrongful on the part of the state committing the act. In other words, the assisted State is also bound by the obligation in question.[113] This fundamental principle of state's consent has deep roots under Article 34 and 35 of the VCLT.[114] Nevertheless, the possibility of consent being granted by a hermit

111. Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001, Article 16, p. 66, para (4)&(5).

112. Samuel Shepson (n 108), p. 714.

113. Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001, Article 16 (n 111), p. 65, para (6).

114. Vladyslav Lanovoy, *Complicity And Its Limits In The Law Of International Responsibility* (Hart 2016), p. 104.

country like North Korea is unrealistic. It is not a surprise that the DPRK is not a party to the Refugee or Torture Conventions.[115] Interestingly, according to research conducted by Weissbrodt, North Korea is not among the few remaining countries unbound to the principle.[116] Indeed, North Korea ratified the ICCPR in 1981.[117] Consequently, North Korea remains bound by the Convention and its implied principle of non-refoulement under Article 7. The provision provides that "*no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*" Despite the fact that the Human Rights Committee has issued very few decisions, this bar seems to have been cleared in the present context.[118] Nonetheless the obstacles do not prevent Shepson from concluding, "*[I]n some situations, the existence of the non-refoulement provisions in treaties makes determining a State's complicity in the violation of another State of international law unnecessary.*"[119]

Given the overall validity of Shepson's arguments, the author largely agrees with him that, in most cases, raising a claim under the conventional non-refoulement basis is a more sensible option than holding a State liable for complicity under Article 16. As far as the defectors' rights are concerned, the special rule of non-refoulement developed under Article 33 of the Refugee Convention and Article 3 of Torture Convention should be relied upon because of their lower legal

115. UNHCR, United Nations High Commissioner for Refugees, UNHCR, United Nations High Commissioner for Refugees, <http://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html. > United Nations Treaty Collection, 9. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, < https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en>.

116. Lauterpacht and Bethlehem (n 30), p. 2.

117. Although in 1997 the State had notified the UN of its intention to withdraw from the Convention, its alleged withdrawal was invalid because an official withdrawal would require an approval from all Member States, which did not happen.

118. In the case *Torres v*. Finland, the applicant built his claim on the possibility of being subjected to torture but was held to be inadmissible due to insufficient evidence. *Torres v. Finland* [1990], The Committee Against Torture, U.N. Doc. A/45/40 (1990).

119. Samuel Shepson (n 108), p. 713.

threshold thus higher chance of success when compared to Article 16. Therefore, the following will focus on the accountability of China for its breach of the non-refoulement principle under its treaty obligations. By virtue of the language of each conventional obligation, the author submits that they should be regarded as the "weaker" form of the special rule, with its specification limited to several points, as opposed to the "strong" forms of lex specialis, which are typically self-contained.[120] In other words, the relevant Drafted Articles will be applied if the treaties are silent on the relevant points.

B. Breach

Breaches of international obligations are discussed in Chapter III of the Drafted Articles.[121] The word "discussed" is used because the question of whether there is a breach is not resolved by the Drafted Articles. A breach of an international obligation is always a matter for the primary rules to decide, and the secondary rules of responsibility only have an ancillary role regarding this.

Under Article 33(1) of the Refugee Convention: "*No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion*." In comparison, the terms of this provision is almost identical to Article 3(1) of the Torture Convention under which provides that, "*No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that*

120. Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001 (n 111), p.140, Article 55, para (5).

121. *Ibid*,. para (2). See Crawford James, *The International Law Commissions Articles on State Responsibility: introduction, text and commentaries*, (Cambridge University Press 2002), p. 16. As Crawford explains "the law relating to the content and the duration of substantive State obligations is as determined by primary rules. The law of State responsibility as articulated in the Draft Articles provides the framework - those rules, denominated "secondary," which indicate the consequences of a breach of an applicable primary obligation."

he would be in danger of being subjected to torture."[122]

Thence the two legal bases can be read together while examining the breach of obligation.

As proven above, China owes North Koreans a number of obligations, especially non-refoulement, which is of primary concern. Because of its forcible reparatory policy, some academics have concluded, "*China has continually breached its international obligations under the Refugee Convention*" and that, "*China violates the Torture Convention each time it repatriates North Korean refugee*."[123] To a very large extent, the author agrees with such comments. Nevertheless, it is believed that further elaboration is needed to make sure that defector suffering is not over-generalized.

To begin with, it must be clarified that the non-refoulement obligation in effect is comprised of three obligations: first and second, the prohibitions of non-expulsion and non-refoulement under both Conventions; and third, the prevention of non-extraction included under Article 3(1) of the Torture Convention. Among all of the three obligations, the duty of non-expulsion should be the least common cause of action because the term expulsion only applies to asylum seekers who enter a contracting country lawfully.[124] Thus, as far as North Korean defectors are concerned, most of them will not raise an action based on these grounds. Given the "virtual travel-ban" imposed by the North Korean government, it is impossible for them to cross the border without breaking the law.[125] In the present context, the only relevant case is that of a teenage defector who sought asylum at the South Korean consulate during his stay in Hong Kong for the Mathematical Olympiad in July 2016. He had successfully reached South Korea after an 80-day

122. Weissbrodt and Hortreiter (n 43), p. 25.

123. Tan, *North Korea, International Law And The Dual Crises* (n 5), p. 132.

124. Lauterpacht and Bethlehem (n 30), p. 101.

125. COI Report (n 12), para 380. The Commission finds that DPRK citizens are subject to restrictions on foreign travel that in practice amount to a virtual travel ban on ordinary citizens, which is enforced through extreme violence and harsh punishment.

stay inside the consulate.[126] As a national delegate, the teenager was one of the few North Koreans who legally entered a foreign territory. Hence, Hong Kong could be at risk of violating its obligation under Article 3(1) of the Torture Convention if the proper procedural safeguards were not observed in the handling of the teenager's case.[127]

As opposed to expulsion, the notion of refoulement applies to people who enter a country illegally.[128] Likewise, in an ECtHR case, the court's ruling confirms that the return of an applicant to India constituted a violation of Article 3 of the ECHR because of his subjection to torture — regardless of his legal or illegal entry to the UK. Article 3 of the ECHR is content-wise equivalent to Article 3 of Torture Convention and the judgment was built upon the landmark Soering v UK case, although in that case the applicant had by then entered the UK legally.[129] Unlike Article 33 of the Refugee Convention, the non-refoulement obligation under the Torture Convention is an absolute one. Therefore, by implementing its standardized policy of forced repatriation of North Koreans without assessment, China is in breach of its non-refoulement obligation under the Torture Convention. In Tomuschat's words, China, just like European countries during the 1990s, has become an accomplice to the crime of torture, because the danger that defectors will be subjected to torture upon their forced return to North Korea has been well-established.[130] The

126. South China Morning Post, "Teenage defector's disappearance set off alarm bells among North Korean student delegation to Hong Kong math contest" (2016) at http://www.scmp.com/news/hong-kong/law-crime/article/1995900/top-south-korean-diplomat-keeps-mum-status-north-korean.

127. Both the UK and the PRC governments did not extend the Refugee Convention to Hong Kong. However, Hong Kong remains a party to the Torture Convention based on declaration made by the Secretary General in 1997. See "Refugee and Non-Refoulement Law in Hong Kong: The Introduction of the Unified Screening Mechanism" at http://www.hk-lawyer.org/content/refugee-and-non-refoulement-law-hong-kong-introduction-unified-screening-mechanism.

128. Weissbrodt and Hortreiter (n 43), p. 57.

129. Article 3 of the ECHR: No one shall be subjected to torture or to inhuman or degrading treatment or punishment. See *Chahal v. United Kingdom* [1997] European Convention on Human Rights, 23 EHRR 413.

130. Christian Tomuschat, *Human Rights: Between Idealism and Realism* (Oxford University Press 2014).

COI's findings suggest that Chinese officials who are tasked with enforcing the refoulement are generally fully aware of the torturous actions awaiting repatriated North Koreans. In certain circumstances, "*officials even seemed to show sympathy towards captured DPRK citizens, but had to comply with the repatriation policy nonetheless*."[131] This is particularly true in cases where pregnant women are caught and held in detention centers. One witness testified to seeing a guard suggest to a pregnant woman that she should have an abortion in China rather than after her repatriation to North Korea.[132] The sympathy coming from a number of individual persons, however, does not release China from its breaches of obligations.

While it is not yet the case, it is worth noticing that a difficult challenge may arise in unusual situations where North Korean refugees are interdicted on the high seas. As information gathered by the COI indicates, clandestine escape networks have been developed following the closing of the Mongolia route under Chinese pressure. Thereafter, North Koreans usually travel through China to Myanmar or Laos on a train, after which they take the seaway from Thailand to South Korea.[133] Under the 1967 UN Convention on the Law of the Sea III, Article 87 confirms the freedom of the high seas is open to all nations. But Article 88 also makes it clear that the areas "*shall be reserved for peaceful purposes*." Since China ratified the Convention in 1996, it has the effect of preventing it from stopping and searching from North Korean defectors on the high seas. However, given the legal uncertainty resulting from the South China Sea arbitration, including but not limited to its decision but jurisdiction, until now no academic has located and defined the scope of "the high sea" in Asia.[134] However, in

131. COI Report (n 12), para 440.

132. COI Report (n 12), para 440.

133. COI Report (n 12) , para 393.

134. Conflict and Diplomacy on the High Seas at https://projects.voanews.com/south-china-sea/. An Arbitration before an arbitral tribunal constituted under Annex VII to the 1982 United Nations Convention on Law of the Sea between the Republic of the Philippines and the People's Republic of China, Decided on 12 July 2016, the tribunal ruled in favor of Philippines and held that China had no right based on the nine-dash line map. China has refused to participate in the arbitration and subsequently issued a public statement rejecting the ruling as

the future, any consideration of action taken by China to intercept boats carrying North Koreans on the high sea must cite the case of The Haitian Centre for Human Rights v U.S. as a warning to China that its actions would constitute a violation of his non-refoulement obligation. The Haitian case concerned the U.S. practice of forcible repatriation of vessels carrying Haitians floating on the high sea as a result of political upheavals in the region.[135] In its judgment, the Inter-American Commission on Human Rights confirmed the fundamental principle that Article 33's protection under the Refugee Convention should be applied without geographical limitation. The same should apply in the context of China with no exception.[136]

Under Article 3 of the Torture Convention, extradition is one of the prohibited grounds in case a person is at risk of torture. Its intention is to "cover all measures by which a person is physically transferred to another State."[137] In other words, it is a wide net designed to catch all fish. In the famous Soering case, the ECtHR discussed the test of extradition in the following terms: "the question remains whether the extradition of a fugitive to another State where he would be subjected or be likely to be subjected to torture."[138] By applying the same principle, the Committee commented in the Chitat Ng v Canada case that a decision to extradite Mr. Ng to the U.S. where he would face a potential death penalty for murder charges would be a breach of Article 7 of the ICCPR.[139] Likewise, China's obligation under the Torture Convention is also found to be in conflict with its responsibility of extradition under bilateral treaties with

"null" and reiterated that it would ignore the decision.

135. Weissbrodt and Hortreiter (n 43) p. 58.

136. *The Haitian Centre for Human Rights v. United States* [1997] Inter-American Court of Human Rights, C.H.R. 51/95, OEA/ser.L/V./II.95 doc. 7 rev, at para 550.

137. Guy S Goodwin-Gill and Jane McAdam (n 25), pp. 126-127.

138. Soering *v. United Kingdom* [1989] European Convention on Human Rights, 98 ILR 270, at para. 88.

139. Human Rights Committee, General Comment No. 20 (1992), HRI/HEN/1/Rev.1, 28 July 1994, extract quoted at para. 207 above [Convention] Article 7 of the ICCPR "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

North Korea. Regarding this legal dilemma, Professor John Dugard and Judge Christine Wyngaert suggest in their book that bilateral extradition commitments must be "trumped" in favor of human rights principles, since a "*two-tier system of legal obligations that recognizes the higher status of multilateral human rights norms arising from notions of jus cogens, and the superiority of multilateral human rights conventions that form part of the ordre public of the international community*."[140] As noted by Weissbrodt, the Swiss Scholar Walter Kälin has advanced an alternative line of argument, based on his reading of Articles 55, 56, and 103 of the UN Charter, which he believes declare the supremacy of the UN obligations in times of conflict and the fundamental duty of member states to take action in co-operation with the organization to promote the "*universal respect for, and observance of, human rights and fundamental freedoms for all*." Regardless of which argument one finds more legally sound, the conclusion is the same: the obligation of non-refoulement must prevail.

C. Attribution

In the context of the North Korea human rights crisis, the obligation of non-refoulement demands that China not reflouler North Korean defectors. Therefore, its practice of automatic refoulement of North Korean defectors is a breach, and the conduct of any North Korean official who falls within the definition of state organs under Article 4 of the Drafted Articles should also be attributable to China.

Given the similarity between Article 4(1) and the Torture Convention, a positive finding on China's attribution is by no means without ambiguity. Under Article 1 of the Torture Convention, torture is defined as an intentional infliction of severe pain "a*t the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity*." As such, the link between torture and attribution is inevitable because an act or omission can only qualify as a crime of "torture" if it possesses a governmental element.

Based on the COI's findings, Chinese officials are involved in

140. John Dugard & Christine Van den Wyngaert, "Reconciling Extradition with Human Rights," *The American Journal of International Law* (1998).

every stage of the repatriation policy. In public hearings, countless defectors have testified to being seized by Chinese officials when they were identified as North Koreans but could not provide any valid travel documents. Some witnesses suggested targeted operations had been organized by Chinese security agencies to apprehend defectors from the North. In 2013, a "wanted notice" was published by the Yanbian police unit.[141] According to the publication, Chinese citizens were encouraged to provide information about North Korean defectors.[142] Alternatively, those who were found to be harboring North Korean defectors were to be blacklisted and punished.[143] Without doubt, the police crackdown is attributable to the State because the police exercise the executive function of the Chinese government as set out in Article 4(1). This principle is confirmed in the Salvador Commercial Company case, in which the Commission held, "*a State is responsible for the acts of its rulers, whether they belong to the legislative, executive, or judicial department of the Government, so far as the acts are done in their official capacity*."[144] The fact that Yanbian is an Autonomous Prefecture of China does not prevent China from being accountable. The case of Heirs of the Duc de Guise upheld the long-recognized principle that Article 4(1) should be applied in the same manner regardless of the structure of a state: "*For the Italian State is responsible for implementing the Peace Treaty, even for Sicily, notwithstanding the autonomy granted to Sicily in internal relations under the law of the Italian Republic*."[145]

After being arrested, North Korean defectors are normally subjected to detention ranging from several days to months. The Commission

141. For a full translated version, see http://www.northkoreanrefugees.com/NKFCM-China-Reward-for-NK-Refugees.pdf.

142. See China Briefing, A Complete Guide to China's Minimum Wage Levels by Province, City, and District at http://www.china-briefing.com/news/2013/01/28/a-complete-guide-to-chinas-minimum-wage-levels-by-province-city-and-district.html.

143. COI Report (n 12), para 436.

144. Rosa Gelbtrunk and Salvador Commercial Company (El Salvador & USA) 12 UNRIAA 459.

145. Palumbo Case—Decision No. 120, UNRIAA,VOLUME XIV, pp. 251-261, para. 161 (1951).

believes that these detainees are only handed over to the North Korean government when they have reached a "sufficient number."[146] Unfortunately, there is no further elaboration as to the definition of "sufficient." More specific information has been helpfully provided by the activist Mike Kim, who went undercover as a taekwondo student to train under two North Korean masters during his time living in the China-North Korea border region in 2003. According to Kim, there were around 500 detention facilities, with the Tumen center being one of the largest. The Tumen center alone returned an average of 40 North Koreans per week, out of a total estimated number of weekly repatriations of between 200 to 300.[147] Although the treatment of North Koreans in China was generally agreed to be better than in North Korea, there are occasional reports of sexual and physical violence in Chinese detention facilities. The experiences of rape, beatings and unethical body searches performed by guards in the detention centers were attributed to China under Articles 4 and 6.[148]

Additional information gathered by the COI also indicates that Chinese officials provide information about individual defectors to North Korea officials during the repatriation process. This information covers their personal details, their apprehension locations and their contacts in China. Based on testimony shared by a former North Korean border security guard, the documentation exchanged between the two sides mainly concerns the repatriated's marital status and religious orientation, since these are the two determining factors that decide their fates back in North Korea. The same witness also suggests it is a common practice for Chinese officials to stamp different color chops on the documentation to distinguish those defectors who have an intention to reach South Korea from those who do not. Such practices are consistent with the above- mentioned Protocol 1986 signed between the two States, Article 5 of which obligates both sides to provide the other with information

146.COI Report (n 12), para 439.

147.Mike Kim, "Escaping North Korea: Defiance and Hope in the World's Most Repressive Country," p. 72.

148. COI Report (n 12), para 438.

collected from the repatriated defectors.[149]

D. Legal Consequences

After establishing China's obligations, breaches, and clarifying its attribution of responsibility, the question on every North Korean defector's mind remains: What legal consequences, if any, will China face under international law?

No international body has been established by the UN to supervise the implementation of the Refugee Convention. Hence, in case of dispute, the only option available is founded under Article 38, under which state parties are allowed to refer their case to the International Court of Justice (ICJ). However, the Court only concerns the interpretation of the Convention and, more importantly, its exercising of jurisdiction is completely dependent upon state consent. The Handbook prepared by the ICJ states clearly, "*Jurisdiction of the Court is based on the consent of the States to which it is open*." Such consent can be expressed through unilateral declaration, treaties, and special agreements — none of which are applicable in the case of China and North Korean refugees.[150] From the author's perspective, it is extremely unlikely, if not impossible, that either China or North Korea will consent to the Court's settling of the defector's issue, since both are partly liable for breaches of International Law. In addition, unlike the operation of the Torture Convention, this particular Convention does not feature an individual complaint procedure. The absence of judicial access granted to an individual, together with the lack of supervisory power of the UNHCR in China due to China's policy of impeding its access to North Korean defectors, effectively results in a hopeless reality for the victims.[151]

Under the Torture Convention, the Committee against Torture has

149. COI Report (n 12), paras 448-451.

150. Swiss Federal Department of Foreign Affairs FDFA, Handbook on accepting the jurisdiction of the International Court of Justice Model clauses and templates (Bern, 2014), p. 6 .

151. Weissbrodt and Hortreiter (n 43), p. 27.

the power to handle applications lodged by individuals. Under Article 22, the state to which the victim belongs must expressly declare its consent in order for the Committee to consider the application. As such, once again, it is practically impossible for a North Korean to get access to the independent body. Although the convention states that an exception may apply if the victim can demonstrate that domestic remedies are not available, it is highly doubtful that a North Korean defector could satisfy this requirement without exposing himself to the risk of persecution from the Chinese or North Korean Government. Most important, even if his case were successfully brought to the Committee's attention, he is reminded that under the current system, any comment given by the Committee is legally non-binding. In other words, its opinions are attempts at mere moral persuasion.[152]

Under the Law of State Responsibility, Article 1 states clearly that "*every internationally wrongful act of a State entails the international responsibility of that State*." Building upon that, in the case of Barcelona Traction before the ICJ, the court drew the distinction between an obligation between two states and obligations towards "the international community as a whole" for the latter is derived "from the principles and rules concerning the basic rights of the human person." By applying this to the principle of non-refoulement, which arguably has acquired the status of a peremptory norm in which no derogation is permitted, every state in the world is, in theory, entitled to demand China's compliance with non-refoulement, or even to take active remedial actions designed to cease its wrongdoing and to make reparations.[153] Nevertheless, in practice, no state has as of yet brought any such action.

IV. CONCLUSION

To conclude, China has violated its non-refoulement obligation by forcibly returning North Koreans to conditions of extreme danger.

152. Weissbrodt and Hortreiter (n 43), p. 17.

153. Case Concerning Barcelona Traction, Light, and Power Company, Ltd [1970] ICJ 1.

Looking ahead, the fundamental question remains before the international community: how can justice be upheld if legal remedies are unavailable to the victims of some of the most serious human rights violations in the 20th century?

As mentioned above, this paper is dedicated to the author's grandfather, who fled China for freedom during the outbreak of the Cultural Revolution. Growing up listening to his story, the author can hardly imagine what his life would have been like had he been born in China during a time of unrest. As Elie Wiesel once said "*[W]e must always take sides. Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented.*" May we all speak up and end the silence, so that one day, the voices of the North Koreans can be heard. May freedom and peace flourish in this land.

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North Korea's Growing Nuclear Threat: Implications for the U.S. Extended Deterrence in the East Asian Region

Zafar Khan

North Korea has carried out more than six nuclear weapons tests, including delivery systems, since it quit the Non-Proliferation Treaty. In the wake of the Six Party Talks, North Korean leadership has offered numerous rationales for its growing nuclear weapons program. Many think that this program has increased its nuclear capability and undermined the strategic stability of the East Asian region. Since North Korea no longer agrees to denuclearization and the arms control processes, it offers rationales for its nuclear weapons. This article unpacks these rationales and offers explanations for why North Korea has increasingly demonstrated its growing nuclear capability, and how this in turn affects the U.S. policy of extended deterrence. This article concludes that the North Korean nuclear threat is credible and the U.S. and its Asian allies have few options to prevent North Korea from using its nuclear weapons.

Keywords: North Korea Nuclear Capability, Increasing Nuclear Threat, The U.S. and its Asian Allies, Nuclear Preemptive Strike, The East Asian Region

Introduction

North Korea warned that it would withdraw from the Non-proliferation Treaty (NPT) in the 1990s, and eventually withdrew in 2003, after evaluating the U.S. preemptive strike threat on Iraq, Iran, and North Korea itself. It tested its nuclear capability in 2006 and declared itself to be a nuclear weapons state. In subsequent years, North Korea conducted more nuclear weapons tests, including an H-bomb and an Inter-Continental Ballistic Missile (ICBM) in 2017 with ranges capable of reaching

some parts of the U.S. North Korea's program appears to be unstoppable, and the country could undertake further nuclear and missile tests in the East Asian region. The Democratic People's Republic of Korea (DPRK) maintains the option of carrying out H-bomb tests in the Pacific Ocean,[1] something the National Committee on North Korea (NCNK) has claimed it has already done. In January 2017, it stated: "We conducted the first H-bomb test-firing of various means of strike and nuclear warhead test successfully to cope with the imperialists' nuclear war threats…"[2] Also in 2017, the NCNK argued, "Our valiant People's Army reliably defended the security of the country and the gains of the revolution by resolutely frustrating the enemy's reckless moves for aggression and war, and gave perfect touches to its political and ideological aspects and military and technical preparations, as befits an invincible army."[3] It has further warned that attacks with Electromagnetic pulse (EMP) could become the "biggest threat" to the United States, capable of shutting down the U.S. power grid and killing 90% of Americans.[4] Since announcing its intention to acquire nuclear weapons, North Korea has become a security threat to the U.S. and its Asian allies. For example, former U.S. Secretary of Defense Robert Gates stated that North Korea's "continuing development of nuclear weapons and their development of ICBM is becoming a direct threat to the United States."[5] U.S. Senator Chuck Hagel views this as a "real and clear danger,"[6] and former ranking official Ashton Carter emphasizes, "How dangerous things are on the Korean Peninsula."[7] In 1994, the U.S. military commander in the

1. Hyonhee Shin and Linda Sieg, "A North Korea Nuclear Test over the Pacific? Logical, Terrifying," *The Reuters*, September 22, 2017.
2. NCNK, "Kim Jong Un's 2017 New Year's Address," The National Committee on North Korea, January 01, 2017.
3. *Ibid*,.
4. Paul Bedard, "Congress warned North Korean EMP Attack would Kill '90% of all Americans,'" *The Washington Examiner*, October 12, 2017.
5. Robert M. Gates, "Media Roundtable with Secretary Gates from Beijing, China," U.S Department of Defense, News Transcript, January 11, 2011.
6. "Hagel Calls N. Korea Real and Clear Danger, as U.S. Plans Defense System in Guam," *Fox News*, April 03, 2013.
7. Aditya Tejas, "Ashton Carter Condemns North Korean Missile Launch Just

Republic of Korea (ROK), Gary Luck, warned U.S. President Bill Clinton that the next Korean War would "kill one million people, cost the United States one hundred billion dollars, and cause one trillion dollars' worth of industrial damage."[8]

Despite multiple open warnings by the U.S. to the North Korean leadership – calling its leader "rocket man," threatening "fire and fury" and "total destruction of North Korea"[9] – it is interesting to observe that the international community, including those major nuclear weapons states Party to the international non-proliferation regime, has failed in six-party talks with North Korea on its nuclear development issue to prevent North Korea from acquiring and testing nuclear weapons. Today, North Korea appears to have achieved an operational nuclear weapon capability, and has walked away from negotiations on denuclearization, disarmament and arms control. This seems to have complicated the U.S. decision-making process, and dissuaded U.S. leadership from carrying out a direct preemptive strike on North Korean leadership and its nuclear deterrent forces, although the U.S. has kept the military strike option on the table. Although the U.S. and its Asian allies have tremendous potential to disrupt and destroy the North Korean leadership and its nuclear deterrent forces, the U.S. continues to show a strategy of "strategic patience," due to the fear that any military strike will escalate to a nuclear level. This, in turn, could further complicate the strategic equation involving China and Russia, a fact that encourages both sides to show restraint and resolve through political and diplomatic dialogue.

That being said, it is imperative to understand the rationale behind North Korea's growing nuclear threat, and its security impact on the U.S. and its Asian allies in the East Asian region. Much of the existing research on the central theme of this article – how North

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before Meeting in Seoul," *International Business Times*, September 25, 2015.

8. Gary Luck quoted in, Sung Chull Kim and Michael D. Cohen, *North Korea And Nuclear Weapons: Entering the New Era of Deterrence*, (eds) Washington: Georgetown University Press, 2017), pp. 5 & 6.
9. See, for example, Steven Lee Myers and Choe Sang-Hun, "Trump's 'Fire and Fury' Threats Raises Alarm in Asia," *The New York Times*, August 09, 2017.

Korea's growing nuclear threat and the rationales behind it affect the U.S. and its Asian allies in the East Asian region – focus on the question of why North Korea acquired nuclear weapons in the first place.[10] Other key readings on the North Korean nuclear issue focus on historical analysis of North Korea's nuclear weapons program.[11] Many articles engage specifically with China's role in the North Korean nuclear issue.[12] Other readings theorize about what nuclear strategy North Korea will adopt and why.[13] Many readings offer solutions to the North Korean nuclear issue associated with regime collapse,[14] while

10. S. M. Ahn, "what is the root cause of the North Korean nuclear program?" *Asian Affairs: An American Review*, 38 (4), 2011, pp. 175-187. Shaheen Akhtar and Zulfqar Khan, "Understanding the nuclear aspirations and behavior of North Korea and Iran," *Strategic Analysis*, 38 (5), 2014, pp. 617-633. B. Habib "North Korea's nuclear weapons programme and the maintenance of the Songun system," *The Pacific Review,* 24 (1), 2011, pp.43-64.
11. Lee. S. D. Lee, "Causes of North Korean belligerence," Australian Journal of International Affairs, 66 (2), 2012, pp. 103-120. F. Ying, T*he Korean nuclear issue: past, present, future*, Washington: Brookings, 2017).
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13. D. N. Anderson, "Explaining North Korea's nuclear ambitions: power and position on the Korean peninsula," Australian Journal of International Affairs, 2017, pp. 1-21. H. Gaertner, "North Korea, deterrence, and engagement," *Defense and Security Analysis*, 30 (4), 2014, pp.336-345. C. E. J. Hymans, "North Korea's Nuclear Neurosis," Bulletin of the Atomic Scientists, 63(3), 2007, pp. 44-74. J. Cotton, "North Korea's nuclear ambitions," *The Adelphi Papers*, 33 (275), 1993, pp. 94-106. Zafar Khan, "North Korea evolving nuclear strategy under the pretext of minimum deterrence: implications for the Korean peninsula," *International Journal of Korean Unification Studies*, 24(3), 2015, pp. 181-216. Vipin Narang, "Nuclear strategies of emerging nuclear powers: North Korea and Iran," *Washington Quarterly* 38 (1), 2015, pp. 75-77.
14. Zafar Khan, "North Korean nuclear issue: regime collapsism or negotiation?" *International Journal of Korean Unification Studies*, 25 (2), 2016, pp. 105-129. J. K. Choi, "The perils of strategic patience with North Korea," *The Washington Quarterly*, 38 94), 2016, pp. 57-72.

others find greater risk in this scenario.[15] Yet, there are few key readings whose central argument urges the major players to revisit the diplomatic and political negotiations with the North Korean leadership, with the aim of resolving the growing and increasingly complex North Korean nuclear issue.[16] This chapter begins with an analysis of North Korea's rationale for its growing nuclear threat, followed by a closer analysis of how this threat affects the U.S. policy of extended deterrence in East Asia.

The rationale for North Korean increasing nuclear threat

There are multiple rationales behind North Korea's growing nuclear assertiveness in the face of what it perceives as a preemptive strike threat on the Korean Peninsula. Amongst them, the pre-dominant factor involves state security and regime survivability. As long as North Korea perceives a threat of being preemptively attacked, it will continue to justify its nuclear status, capability, and willingness to use nuclear forces in the event of a crisis in the East Asian region. In 2017, the NCNK stated, "our country achieved the status of a nuclear power, a military giant, in the East which no enemy, however formidable, would dare to provoke."[17] It is, therefore, essential to closely analyze the rudimentary rationales of North Korean nuclear assertiveness amid the increasing threat of nuclear weapons use in East Asia, so that the international com-

15. D. V. Cha, "Can North Korea be engaged?" Survival, 46 (2), 2004, pp. 89-107. Kihl, W. Y. "Confrontation or compromise on the Korean peninsula: the North Korean nuclear issue," *Korean Journal of Defense Analysis*, 6 (2), 1994, pp.101-129. S. D. Lee, "A nuclear North Korea and the stability of East Asia: a tsunami on the horizon?" *Australian Journal of International Affairs*, 61(4), 2007, pp. 436-454. Y. Kim and M. Kim, "North Korea's risk-taking vis-à-vis the U.S. coercion in the nuclear quagmire," *Korean Journal of Defense Analysis*, 19 (4), 2007, pp. 51-69.
16. Khan, "North Korean nuclear issue: regime collapsism or negotiation?" B. M. Reiss, "A Nuclear-armed North Korea: Accepting the 'Unacceptable'? Survival, 48 (4), 2006, pp. 97-109. H. Gaertner, "North Korea, deterrence, and engagement," *Defense and Security Analysis*, 30 (4), 2014, pp. 336-345.
17. NCNK, "Kim Jong Un's 2017 New Year's Address."

munity may prevent a major crisis that could escalate up the nuclear ladder.

State security and regime survivability

More broadly, a state's security remains one of the fundamental factors in its decision to acquire nuclear weapons. Arguably, it is the pre-dominant factor, although other factors such as prestige, organizational imperative, and technological pull also shape a state's intention for acquiring nuclear weapons and their delivery systems.[18] Through the security lens, if one has to closely analyze this puzzle, one may reach a logical conclusion that almost every nuclear weapon state has acquired nuclear weapons in order to address the issue of insecurity. The U.S. first acquired nuclear weapons because of the fear that Germany would quickly acquire this capability and use it against the U.S. and its allies. Russia went nuclear because it believed the U.S. nuclear deterrent undermined its security. China developed nuclear weapons for security purposes when it was threatened with the use of nuclear weapons during the Korean civil war (1951-1953). India acquired nuclear weapons because of its short war with China in 1962 and the subsequent Chinese acquisition of nuclear weapons in 1964. Pakistan followed suit after India's nuclear weapons tests in 1974 and 1998. In the existing literature, security remains the predominant factor in state's decision to acquire nuclear weapons.

It was in a similar context that North Korean leadership vowed to protect the state's independence and freedom in the early 1950s, after it was confronted during the civil war by South Korea largely supported by its ally the U.S., who later posed a threat to use nuclear weapons in East Asia. Kim II-sung stated, "Although the U.S. is threatening our country with nuclear bombs, it does not affect our people's will to fight the U.S. for retaining freedom and independence."[19] North Korea's

18. Bradley A. Thayer, "The Causes of Nuclear Proliferation and the Utility of the Nuclear Non-Proliferation Regime," *Security Studies*, 4(3), 1995, pp. 463-519.
19. Kim II-sung, "Report for the 6th Anniversary for the Liberation (August 14, 1951)," *Kim Jong-il Seonjip* [Kim II-sung Works], vol. 6 (Pyongyang: Workers

departure from the Non-proliferation Treaty (NPT) in 2003, and its declaration of itself as a nuclear weapon state in 2006, followed a similar security logic against the background of a perceived potential threat emanating from the U.S. and its allies. The U.S. Nuclear Posture Review (NPR) 2001 depicted North Korea as part of an "axis of evil" along with Iran and Iraq, that posed a security threat to the U.S. and its close Asian allies. Also, in subsequent years, the Quadrennial Defense Review (QDR) and National Security Strategy, the two crucial U.S. policy documents, mentioned North Korea as one of the greatest challenges and threats to the U.S. and its allies.

The U.S. could utilize the option of a preemptive strike against North Korea to defend its homeland and guarantee the security of its Asian allies. While observing the U.S. preemptive strikes against Iraq and others, North Korea feared it could be next. North Korea then withdrew from the NPT and used the term "nuclear deterrence" for the first time in 2003 prior to its nuclear tests in subsequent years. For example, North Korea's foreign ministry declared, "as far as the issue of nuclear deterrent force is concerned, the Democratic People's Republic of Korea (DPRK) has the same legal status as the United States and other states possessing nuclear deterrent forces."[20] The Central North Korean News Agency also stated in response to a possible U.S. preemptive strike against the North Korea, "the DPRK will have no option but to build up a nuclear deterrent force."[21] These statements reflect the intention of North Korea's leadership to ensure state security and the continuation of the Kim regime.

The Kim regime has survived for many decades despite international pressure and sanctions. It has learned how to live through the complexity and hardship created by its decision to go nuclear. It has learned to effectively convey messages to the international community regarding the survivability of its regime by testing and acquiring

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Party of Korea Publishing, 1980), p. 429.

20. Korean Central News Agency (KCNA), "Choseon oemuseong 8gaeguk sunoejahoweui seoneone choseonmunjega phamdeonde dehayeo" [spokesperson for DPRK Foreign Ministry on Declaration Adopted at G8 Summit], June 6, 2003.
21. KCNA, "Our nuclear deterrent is no a means of threat," June 9, 2003.

nuclear weapons. The North Korean byeongjin strategy under the Kim regime and its associates pledges to the nation both nuclear and economic development.[22] It is interesting to note that North Korean nuclear leadership under the command of Kim's regime combines nuclear and economic strategy to appease the population and win their favor. Those who disfavor and/or challenge the regime may face punishment and possible death. Many from Kim's own family, including high ranking military officials, have been killed recently under the young and inexperienced regime.[23] It is not wrong to assume that one of the fundamental rationales for North Korea's growing nuclear assertiveness is the protection of state sovereignty and the survivability of the regime.

Ensuring escalation dominance in its favor

After successfully ensuring state security and enabling the protection of the regime, North Korean nuclear leadership defends its assertive nuclear strategy as a hedge against South Korea's much more advanced conventional forces. An assertive reliance on nuclear forces offers North Korea an effective countermeasure and equalizer, given the conventional force asymmetry between the two adversaries. This disparity also existed between the U.S. and the Soviet Union during the Cold War. South Asia's nuclear rivals likewise experience conventional force asymmetry in a way that may be applicable to the Korean Peninsula, though North Korea may not be able to achieve escalation dominance quite yet. North Korea appears to rely on its nuclear forces and delivery systems to not only offset the conventional asymmetry against the South Korean modernized conventional forces, but also to keep escalation dominance in the Korean Peninsula. Although North Korea has recently shown

22. Chaesung Chun, "The North Korean Nuclear Threat and South Korea's Deterrence Strategy," in Sung Chull Kim and Michael D. Cohen, *North Korea and Nuclear Weapons: Entering the New Era of Deterrence*, (eds) Washington: Georgetown University Press, 2017), pp. 113-128, p. 114.
23. K.J. Kwon and Ben Westcott, "Kim Jong-Un has executed over 300 people since coming to power," *CNN*, December 9, 2016.

rapid development in the nuclear domain, its conventional forces are no match for the advanced South Korean conventional deterrent forces, including a U.S. security commitment that could offset the North Korean strategy for ensuring escalation dominance. Nevertheless, to keep escalation dominance in the region, North Korean leadership could craft a strategy involving more nuclear and missile tests. It could also demonstrate its ability to carry out low intensity attacks in the future.

One, North Korea continues to conduct more nuclear and missile tests. After successfully carrying out five nuclear weapons tests as of 2016, North Korean carried out a sixth using an H-bomb, followed by a successful test of an ICBM that could deliver the H-bomb to some parts of the U.S. In the wake of the H-bomb test, North Korea pledged to carry out another H-bomb test in the Pacific Ocean, directly threatening U.S. overseas forces and its Asian allies. Two, North Korea has developed tactics for keeping escalation dominance in its favor by carrying out low-intensity warfare while using its nuclear deterrent force as a shield. North Korea has carried out multiple low-intensity attacks against South Korea to demonstrate its assertiveness in achieving its economic and military goals. For example, the *Cheonan* and Yeonpyeong shelling incidents of 2010 reflect the North Korean strategy of keeping escalation dominance against South Korean while using its nuclear weapons as a shield to protect from and deter a response by South Korean conventional forces. Interestingly, South Korea has not carried out counterattacks or reprisals following these low-intensity episodes, which inflicted casualties and caused material damage to the South Korean forces. This indicates a classic stability-instability syndrome: North Korea, due to its heavy reliance on nuclear weapons to deter all-out nuclear war at the strategic level, also enjoys the freedom to wage limited and/or low-intensity strikes without being punished severely.

The dynamic described above could allow the North Korean leadership to achieve and maintain escalation dominance in the Korean region. With more nuclear and missile tests, North Korea could demonstrate its nuclear assertiveness in the East Asian region. The more North Korea increases its nuclear capability in favor of its perceived strategy of escalation dominance, the more it increases its confi-

dence in nuclear weapons to deter the U.S. and its Asian allies from counter-conventional attack following low-intensity North Korean strikes. This provides a strong motive for North Korea to use nuclear weapons to dim the long-term prospects of the extended deterrence security guarantee that the U.S. provides to its Asian allies.

Discouraging the prospects of U.S. extended deterrence in the Korean region

One of the rationales of North Korea's growing nuclear assertiveness as part of its strategy is to discourage the prospects of the U.S. extended deterrence in East Asia. Just as the U.S. and its Asian allies, in particular South Korea, fear the unpredictable North Korean nuclear situation and the Kim regime's consistently stated intention to acquire and use nuclear weapons, it is expected that Kim's regime likewise fears being preempted by a stronger military power like the U.S., bolstered by advanced conventional forces. Yet, the Kim regime appears to be willing to accept this risk. Both sides on the Korean Peninsula fear an all-out nuclear war that would kill millions of people. Therefore, it would be ideal for North Korea to prevent the U.S. security commitment as part of its extended deterrence in Asia, and keep the escalation dominance in its favor, thus offsetting the existing conventional asymmetry on the Korean Peninsula through its nuclear weapons, though it is not yet clear whether the North Korean leadership will be able to shift such dominance in its favor. Patrick Morgan argues that North Korea is motivated by "a belief that the United States would not fight for the ROK if faced with a DPRK nuclear threat."[24]

That being noted, the DPRK could demand of the U.S. to disengage its security commitment in Northeast Asia; remove its nuclear umbrella from South Korea; withdraw its military forces form the Korean Peninsula; and develop a U.S.-DPRK strategic relationship on

24. Partrick Morgan, "North Korea and Nuclear Weapons: Nonproliferation or Deterrence? Or Both?" in Sung Chull Kim and Michael D. Cohen, *North Korea And Nuclear Weapons: Entering the New Era of Deterrence*, (eds) Washington: Georgetown University Press, 2017), pp. 15-30. p. 25.

the level of the ROK-U.S. alliance.[25] This scenario assumes that North Korea's increasing nuclear threat may become gradually associated with the U.S. extended deterrence towards its Asian allies. For example, it may be argued that the more pressure the U.S. puts on the DPRK in terms of the denuclearization of the Korean Peninsula, the more North Korea will opt for more nuclear and missiles tests, thus increasing its nuclear threat in the Korean region. However, it is imperative to ask whether or not the North Korean nuclear threat could realistically be mitigated by reducing and/or removing the U.S. extended deterrence over the ROK. It is also important to consider whether North Korea would threaten to use its nuclear forces against the ROK, which is not a nuclear weapons state. As part of North Korea's evolving nuclear policy, North Korea may not use its nuclear weapons against a non-nuclear weapon state, particularly when that state is not supported by the nuclear security guarantee of another state.[26]

It may be encouraging that, as part of its evolving nuclear policy, North Korea would not use nuclear weapons against South Korea, when and if South Korea chooses not to acquire its own nuclear deterrent forces, and when the Americans no longer offer a nuclear guarantee to South Koreans. But although this may be partially convincing, essentially it remains unclear if North Korea will actually carry out a nuclear preemptive strike against either the U.S. homeland or its Asian allies. Arguably, doing so could have adverse effects on the U.S. and its Asian allies: 1) the withdrawal of the U.S. extended deterrence from East Asia could result in a feeling of abandonment in its Asian allies; 2) since states do not really trust each other in the realist paradigm of international politics, this could increase the chances that North Korea

25. Jonathan D. Pollack, "North Korea's Nuclear Weapons Development: Implications for Future Policy," (Proliferation Paper, Security Studies Center, spring 2010).

26. See, Sung Chull Kim, "North Korea's Nuclear Doctrine and Revisionist Strategy," in Sung Chull Kim and Michael D. Cohen, *North Korea And Nuclear Weapons: Entering the New Era of Deterrence*, (eds) Washington: Georgetown University Press, 2017), pp. 31-54.

would preempt South Korea while observing the U.S. withdrawal of its extended deterrence; 3) it could trigger an arms race between Asian allies, with South Korea developing its own nuclear deterrent forces against the increasing threat by North Korea. Japan, meanwhile, could also quickly mobilize its program for acquiring an independent nuclear weapons capability.

That being noted, the U.S., as part of its non-proliferation responsibility to the international non-proliferation regime in general, and to sustaining its power projection in Asia in particular, cannot allow its Asian allies to acquire nuclear weapons. However, it could convey a message to the North Korean leadership that, as part of its "basing strategy," the U.S. could continue to stay and will not soon withdraw its extended deterrence from Asia. To this affect, North Korea may argue as part of its nuclear policy that it could consider the use nuclear weapons against South Korea when and if it is granted a nuclear security guarantee by the U.S. The North Korean leadership could say that it may not be ready to negotiate as long as the U.S. threatens it with a preemptive strike strategy. North Korea might also not desire denuclearization, but rather opt to develop a strategy to secure nuclear legitimacy in the East Asia region, thus justifying its acquisition of nuclear weapons for security and deterrence purposes.

Nuclear legitimacy

When North Korean leadership institutionalizes its nuclear deterrent forces, and crafts a nuclear policy that these weapons are not like conventional weapons, there may exist an understanding that North Korean nuclear forces are for deterrence purposes, and that the country acquired nuclear weapons for security, rather than military, purposes. That is, if North Korean leadership opts to use its nuclear weapons against the U.S. and its Asian allies, it could have disastrous consequences for Kim's regime and its associates. The international community Party to the NPT does not recognize North Korea as a nuclear weapons state. Nevertheless, after withdrawal from the NPT, and following a number of nuclear tests, North Korea appears to be crafting a nuclear

policy with a broader motive related to nuclear legitimacy, one that justifies its acquisition of nuclear weapons on familiar grounds of deterrence and security. It will be beyond the scope of this piece to elaborate as to why and how states acquire nuclear weapons, but security remains the predominant paradigm for a state's decision to go nuclear.

However, in this context, it is interesting to note that North Korean leadership has already attempted to associate its nuclear weapons capability with state law that it believes will provide its nuclear legitimacy in the East Asian region. In April 2013, North Korea's Supreme People's Assembly successfully institutionalized its nuclear weapons capability by adopting a law called Nuclear Weapons State Law concerning its nuclear deterrent forces. This included the following ten rudimentary provisions: 1) nuclear weapons are a self-defensive means of coping with the hostile policy of, and nuclear threat from, the United States; 2) nuclear weapons serve the purpose of deterring and repelling aggression and retaliation against enemies; 3) the DPRK is strengthening its nuclear deterrence and retaliatory strike power both in quantity and quality; 4) nuclear weapons will only be used on the final order of the Supreme Commander of the Korean People's Army; 5) nuclear weapons will not be used against non-nuclear weapons states unless they join a hostile nuclear weapons state in its invasion of the DPRK; 6) the DPRK maintains the safe management of nuclear weapons and ensures stable nuclear tests; 7) the DPRK has established a mechanism to prevent the illegal export of nuclear technology and nuclear materials; 8) the DPRK will cooperate with international efforts toward nuclear non-proliferation and the safe management of nuclear materials; 9) the DPRK strives to avoid a nuclear war and fully supports international nuclear disarmament efforts; and 10) the relevant institutions will take steps to implement this ordinance.[27]

North Korean nuclear leadership appears to have taken encouraging measures to officially institutionalize its nuclear weapons doctrine and make sure that nuclear weapons remain under the tight control of

27. KCNA, "The adoption of the law on consolidating the status of a self-defensive nuclear weapons," April 1, 2013, quoted in Kim and Cohen, *North Korea and Nuclear Weapons: Entering the New Era of Deterrence*, p. 34.

centralized safety and security mechanisms. These measures ensure that its nuclear weapons will not be used for military purposes unless absolutely not needed – that is, following the theoretical dictum and dichotomy of "always/never" proposed by Peter D. Feaver.[28]

In further unpacking and analyzing the North Korean Nuclear Weapons State Law, the following assumptions should be considered regarding how North Korean nuclear deterrent forces could impact the policy of North Korean leadership and security on the Korean Peninsula. One, this official nuclear policy paper shows that North Korean nuclear leadership largely perceives its nuclear weapons acquisition as driven by security needs. Two, it is intended to discourage the U.S. policy of extended deterrence in East Asia that in turn puts mounting pressure on North Korea to expand its nuclear deterrence forces, and make them more credible as a threat to the U.S. and its Asian allies. Three, North Korean policy documents clearly indicate that these deterrent forces are under proper command and control mechanisms (i.e., both civilian and military) that prevent their illegal export and ensure their safety and security. Four, North Korea seemingly holds a conditional no-first use doctrinal posture, declaring that it will not use its nuclear weapons against non-nuclear weapon states. At the same time, it states that it would consider using its nuclear forces if a non-nuclear weapons state is in close alliance with a nuclear weapons state. In practice, the North Korean nuclear threat appears to contradict the doctrinal use of nuclear forces as codified in the Nuclear Weapons State Law. Kim and Cohen have correctly assumed that, while closely analyzing North Korea's evolving nuclear strategy, "North Korea's nuclear doctrine is associated with a revisionist strategy. It aims at breaking the status quo on the Korean Peninsula and in the Asia-Pacific more broadly."[29]

Nevertheless, this is just one of the first institutionalized steps North Korean leadership has undertaken to secure international nuclear legitimacy. It will not be easy for North Korea to achieve nuclear

28. Peter D. Feaver, *Guarding the Guardians: Civilian Control of Nuclear Weapons in the United States,* (Ittacha: Cornell University Press, 1992).

29. Kim, "North Korea's Nuclear Doctrine and Revisionist Strategy," p. 36.

recognition, and will have to confront a number of challenges. The experiences of other nuclear states that are not Party to the NPT – such as Israel, believed to have acquired nuclear capability in 1960, and both India and Pakistan which tested their nuclear capabilities in 1998 – suggest that it is extremely hard for nuclear weapons states to secure nuclear legitimacy despite longstanding efforts. Unless there is a dramatic reform to the NPT on the part of the major nuclear weapon states party to the Treaty, there appears to be a little or no possibility of these states accepting the legitimacy of North Korea's nuclear status within the international nonproliferation regime.

Regardless of North Korea's ability to secure nuclear legitimacy, it can continue to change and challenge the status quo, despite the policies found in its official nuclear doctrine. It could show its nuclear assertiveness by increasing the number of nuclear warheads and their related delivery systems. This, in turn, could affect the threat perception of the U.S. and its Asian allies to whom the U.S. protects through its policy of extended deterrence.

The U.S. extended deterrence amid North Korean increasing nuclear threat

Both Japan and South Korea have been under the U.S. security guarantee umbrella since the Cold War era. The U.S. continues to extend security guarantees to both Japan and South Korea in the East Asian region in order to prevent North Korean direct preemptive strikes. Although the U.S. security guarantee has successfully prevented the North Korean nuclear strike, it has failed to prevent conventional, low-intensity attacks. This has been challenging for the U.S., and more importantly for South Korean leadership. Also, North Korea recently tested its long-range missile over Japan. Japan considers this an increasing threat to its security. North Korea's intention for carrying out H-bomb tests in the Pacific could potentially increase this threat to both Japan and U.S. overseas bases. It is imperative to analyze how North Korea's growing nuclear assertiveness affects the U.S. policy of extended

deterrence in East Asia, and whether Japan and South Korea will revisit the decision to go nuclear, as they once desired, or whether they will continue to enjoy the U.S. security commitment to deter North Korea's increasing nuclear threat at both the strategic and tactical level.

Japan

The United States continues to offer its policy of extended deterrence to Japan almost three decades after the end of the Cold War. In 2005, the U.S. Department of Defense published a document on the value of his policy: "U.S. strike capabilities and the nuclear deterrence provided by the U.S. remain an essential complement to Japan's defense capabilities in ensuring the defense of Japan and contribute to peace and security in the region."[30] The continuity of U.S. extended deterrence covering Japan can be seen in statements made by the current U.S. State Secretary Rex Tillerson during his first major foreign trip to Japan, where he expressed his view that the North Korean nuclear issue required a "different approach" as "the diplomatic and other efforts of the past 20 years to bring North Korea to a point of denuclearization have failed despite the U.S. economic assistantship up to $1.35 billion."[31] However, it is not clear what he meant by this. This could convey signals to the North Korean leadership that the U.S. continues to maintain extend deterrence toward Japan, and that the U.S. along with its Asian allies could keep a military strike option on the table against North Korea. Mr. Tillerson also expressed his hope for deep cooperation among the United States, Japan and South Korea "in the face of North Korea's dangerous and unlawful nuclear and ballistic missile programs."[32]

Japan has been and remains one of the closest U.S. allies in East Asia under the U.S. nuclear security guarantee, even though Japan was

30. Minister of Foreign Affairs Machimura and Minster of State for Defense Ohno, "Security Consultative Committee Document U.S.-Japan Alliance: Transformation and Realignment for the Future," October 29, 2005.

31. Motoko Rich "Rex Tillerson, in Japan, says U.S. needs 'different approach' to North Korea," *The New York Times*, March 16, 2017.

32. *Ibid*,.

the first country to suffer the effects of atomic bombs at the close of WWII in 1945. Since then, most Japanese have favored a world free from nuclear weapons. Japanese posture becomes complex and interesting when 1) it relies on the U.S. for extended deterrence; 2) it has expressed a commitment to and responsibility for global disarmament and non-proliferation; and 3) when it openly acknowledged its possession of a latent deterrent – that is, the ability to quickly develop nuclear weapons.[33] However, amongst the three elements of its complex posture, the reliance on the U.S. extended deterrence remains the central policy pillar.[34] The strategy for the U.S. policy of extended deterrence was crafted during U.S. President Lyndon Johnson's January 1965 meeting with Japanese Prime Minister Eisaku Satō, which led to the Mutual Security Treaty that codified the U.S. security guarantee to Japan. This followed the Chinese nuclear test in 1964. The U.S. successfully committed Japan and Satō to the principles of non-proliferation and a mutual understanding that Japan would not produce, possess and allow nuclear weapons in its homeland.[35]

However, interestingly, Japan later developed a middle path between the latent deterrent state with the capability to acquire nuclear weapons when and if Japan needs to, and the path of non-proliferation commitment, due to the so-called "nuclear allergy" of the Japanese public that opposes the acquisition of nuclear weapons. That being said, Japan can be called a "virtual nuclear weapons state" that has the capability to acquire nuclear weapons quickly against any rising threat.[36] More importantly, when and if the U.S. security guarantee is uplifted, Japan could consider the nuclear option. For now, the U.S. consistently promises the cover of extended deterrence to assure Japan that it has no need to go nuclear. The U.S. commitment, past and recent, of security guarantees to Japan and other Asian allies reflects

33. F. Hoey, "Japan and extended nuclear deterrence: security and non-proliferation," *The Journal of Strategic Studies*, 39 (4), 2016, pp. 484-501, p. 485.
34. *Ibid*,. p. 485.
35. *Ibid*,. p. 495.
36. Rajesh, M. Basrur, *Minimum Deterrence and India's Nuclear Security*, (California: Stanford University Press, 2006), pp. 28-29.

the U.S. intention to continue maintaining extended deterrence in order to retain its power projection over its Asian allies and retain its position as the pre-dominant player in the region.[37] The U.S. may not allow Japan to go nuclear for two obvious reasons: 1) allowing Japan to go nuclear would undermine the non-proliferation regime to which both Japan and the U.S. are signatories; 2) it could provide incentive for Seoul to consider its own nuclear option; and 3) it could weaken U.S. power projection in East Asia at a time when more states in the region could emerge as nuclear weapons states. Whether the ROK eventually decides to go nuclear, or continue relying on the increasing extended deterrence by the U.S., is our next subject.

The ROK

The Republic of Korea (South Korea) came under the U.S. nuclear security guarantee after the end of Korean War. The United States made a security commitment to South Korea to defend it from external aggression in the form of Mutual Defense Treaty, signed in October 1953. In accordance with the Treaty, both the U.S. and South Korea would "consult together" to "develop appropriate means to deter arms attack" and "act to meet the common danger in accordance with its constitutional process." U.S. forces were stationed in South Korea to deter the possible military aggression from Pyongyang. As part of U.S. President Eisenhower's "New Look" policy, including his Defense Secretary John Foster Dulles's doctrine of "Massive Retaliation," the U.S. began to deploy tactical nuclear weapons.[38] In addition to this, the U.S. deployed five other weapons systems in South Korea: the Honest John surface-to-surface missile, the Matador cruise missile, the Atomic-Demolition Munition nuclear landmine, the 280-mm gun, and the eight inch (203-mm) howitzer.[39]

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37. Matthew Kroenig, "Force or friendship? Explaining great power nonproliferation policy," *Security Studies*, 23 91), 2014, pp.1-32.
38. Y. Se. Jang, "the evolution of U.S. extended deterrence and South Korea's nuclear ambitions," *The Journal of Strategic Studies*, 39 (4), 2016, pp. 502-520, p. 505.
39. *Ibid*,. p. 513.

Despite a deepening strategic partnership that included the presence of tactical nuclear weapons in South Korea, it is interesting to ask why South Korean leadership wanted to acquire nuclear weapons, as coded in its "Project 890" to attain "self-sufficiency" in the late 1960s.[40] Jang provides an interesting analysis of the South Korean leadership's desire to acquire nuclear weapons. According to Jang, multiple historical factors played a role in South Korea's decision to opt for nuclear weapons technology. Among them, a few deserve special attention: U.S. President Nixon's 1969 Guam Doctrine, which ultimately led to the reduction of U.S forces; the cold U.S. response to episodes of North Korean military aggression in the 1960s and 1970s; and more importantly the U.S. reluctance to take any unnecessary military action against the rival states in Asia that could drag the U.S. into unexpected conflicts.[41] Nevertheless, the then South Korean leadership officially ordered suspension of Project 890 in December 1976, after U.S. intelligence revealed Seoul was about to go nuclear, and after Henry Kissinger sent his Assistant Secretary Philip Habib to threaten the South Korean leadership with the withdrawal of the United States security commitment if South Korea attempted to acquire nuclear weapons. Most of these instances could take place again, creating a trust deficit between the U.S. and the ROK.

In sum, U.S. extended deterrence has and continues to have a central significance for both the ROK and Japan, even after the disintegration of the Soviet Union (Russia) and the end of Cold War. The U.S. has no desire to see Tokyo or Seoul go nuclear, and has come up with a "different approach" strategy against rising threats in East Asia. This different approach could further sustain the life of extended deterrence, while at the same time asking allies for more burden sharing. Nevertheless, as the North Korean nuclear leadership shows greater nuclear assertiveness, the U.S. appears to be coming closer to its Asian allies with whom it has had long-standing security pacts. The U.S. Defense Secretary James Mattis, and later U.S. State Secretary Rex Tillerson, have both visited Asian allies to reaffirm the U.S. policy of

40. *Ibid*,. p. 513.

41. *Ibid*,. pp. 508-513.

extended deterrence in defense of both Japan and South Korea. That has restored the confidence of Seoul and Tokyo, and enhanced the prospects for the U.S. policy of extended deterrence in Asia.

Extended deterrence revisited: security, power, and prestige?

The recent security commitment made by the U.S. to Japan and South Korea indicates that the prospects for its policy of extended deterrence in East Asia will not dim anytime soon. There are no plans to reduce U.S. forces in the region from its current numbers – 28,000 in South Korea alone, and 50,000-plus including Japan – which testifies to the strength of the U.S. security guarantee toward these Asian allies against the rising threat of North Korea's growing nuclear assertiveness (Price 2017).[42] To sustain the current U.S. policy of extended deterrence, the U.S could continue to hold military exercises, improve the conventional capabilities of both Japan and South Korea while retaining the U.S. forces in these countries, develop tactics to bring U.S. naval forces closer to East Asia, and deploy the Terminal High Altitude Area Defense (THAAD) system, whether China likes it or not.

First, the U.S. could continue to sustain its diplomatic, political and military support to Asian allies to ensure its security guarantee against the threat emitting from North Korea. Here, the security factor as conceptualized earlier remains predominant. The current U.S. administration's frequent visits to Asia have the same purpose: to ensure its policy of extended deterrence stays intact, and signals to the North Korean leadership that the U.S. remains committed to its Asian allies security. In this context, the U.S. could potentially increase its security assistance to its Asian allies by further expanding military assistantship, including conducting more military exercises by displaying and using advanced conventional force capabilities during planned joint military exercises. More U.S. military support could potentially show its adversary that the U.S. remains highly committed

42. G. Prince, "U.S. military presence in Asia: troops stationed in Japan, South Korea and beyond," *The Newsweek*, April 26, 2017.

to its Asian allies and partners. It could also put pressure on the North Korean leadership into forgoing more nuclear tests, thereby reducing its nuclear assertiveness in the region.

Second, to strengthen the prospects of U.S. extended deterrence, the U.S. could show its commitment to gradually deploy THAAD in Asia in order to protect its Asian allies, and especially South Korea, from incoming North Korean missiles. THAAD deployment would ensure the security of its allies, most importantly South Koreans, from the incoming North Korean missiles. This could become a security concern for the Chinese, but that would depend on how effectively U.S. and South Korean leadership can argue that such a deployment is not as threatening to China as it might otherwise think. One, the U.S. could say that this is not to undermine the credibility of the Chinese deterrent forces, but rather is being deployed to protect U.S. allies from the incoming missiles from North Korea, and thus avoid bigger wars in the region. Two, the U.S. and its Asian allies could show some transparency on such a deployment, in order to increase Chinese confidence in its deployment. Transparency in this regard would go far toward drawing a clear line of mutual understanding regarding the true aim and objectives of the deployed defense system. A clarity of argument on the part of the U.S. and South Korean security leadership could help generate confidence-building measures between the U.S. and China, which in turn could avert unnecessary pressure from China on U.S. Asian allies regarding the deployment of THAAD. Three, the U.S. and its Asian allies can clearly convey the message that their military posture is defensive, and they want peace and stability in the Korean Peninsula. By saying this to the North Korean leadership, the U.S. and its allies could enhance transparency and avert the possibility of miscalculation.

A third important aspect of U.S. extended deterrence is a burden-sharing approach. This is also true in the security arrangement between the U.S. and its European allies in the post-Cold War period. Conceptually, the U.S. could ask its Asian allies for more security-burden sharing in order to sustain the life of extended deterrence. Given the changed strategic environment, the U.S. may not remain patient

forever with the strategy of freeriding in Europe and Asia. Much depends on the U.S. threat perception level. For example, escalating threats generally lead to a stronger U.S. commitment to its policies of extended deterrence commitments to its European and Asian allies. Presumably, North Korean nuclear assertiveness makes the U.S. more committed to its extended deterrence to its allies in East Asia. Still, none of the U.S. allies in the region should expect to enjoy endless freeriding in the security partnership.

Last but not least, the U.S. cannot afford to lose part of its extended deterrence responsibility for a variety of reasons related to security, power and prestige. Weakening its policy of extended deterrence would be a clear signal to adversaries that the U.S. might not help them out in case of military attack. Although the U.S. policy of extended deterrence has not completely diminished the possibility of smaller border skirmishes or conflicts, it has successfully prevented major wars between its Asian allies and North Korea. Two, the absence of a U.S. security guarantee has the potential to make its allies more vulnerable to military strikes. However, it is because of the U.S. nuclear umbrella that North Korea has not carried out a full-fledged military action against U.S. Asian allies. Three, the absence of U.S. extended deterrence could provide its allies with a sense of abandonment, and such abandonment means that these allies are of their own when it comes to their own security. This, in turn, could lead them to acquire their own nuclear deterrence. Four, U.S. power and prestige could be affected if it lifts its security umbrella from its allies. The U.S. could no longer expect to wield influence over security matters in the region, as it does in the contemporary politics of Asia.

Conclusion

Amongst the many rationales that explain North Korea's increasing nuclear threat, state security and regime survival are predominant. Its nuclear program allows North Korean leadership to prevent a U.S. preemptive strike, as well as discourages U.S. security guarantees to its

Asian allies that may involve the use of nuclear weapons. North Korean leadership appears to have learned how to manipulate the international community by utilizing its nuclear deterrent. It has also learned to manage its nuclear forces well when it comes to the safety and security of nuclear weapons and their related facilities. It has declared its official nuclear policy in the form of a Nuclear Weapons State Law that deals with all the essential elements of nuclear weapons and their related delivery systems, as well as the institutionalization and regulation of their command and control structure, and even arms control and disarmament. This law signals the DPRK's longstanding effort to secure nuclear legitimacy and find a space within the existing international non-proliferation regime. Nevertheless, it is unlikely the international non-proliferation regime will accept North Korea's quest for nuclear legitimacy. Other nuclear weapons states that have long tested their nuclear weapons are also in the queue to secure legitimacy and acceptance.

North Korea's evolving nuclear policy, bolstered by the rationales analyzed above, appears to be moving away from either "normalization or denuclearization." North Korea has learned how to live with its strategy of increasing its nuclear capability, despite the looming threat of a U.S. preemptive strike. Despite the international community's sanctions and mounting pressure on North Korea, it continues to go for more credible tests of nuclear weapons and their related delivery system. As the U.S. and its Asian allies continue to be affected by North Korea's growing nuclear threat, there remain a few options. First, the threat of a military strike can be utilized, including the use of nuclear weapons, to create fear and deter the North Korean nuclear leadership at the strategic and tactical level. This remains more abstract, and may not have much credibility with North Korean leadership. Such a threat remains complex and difficult, particularly since the U.S. has already failed to prevent North Korea from acquiring and testing nuclear weapons. Two, the U.S. and its allies could create contingency plans for carrying out military strikes on the North Korean leadership and its nuclear deterrence forces and their delivery systems. But this could complicate the strategic situation by involving Russia

and China in a military crisis, as the DPRK's deterrent forces are kept close to the borders of China and Russia. Three, the U.S. can better utilize the Chinese and Russians in finding a political resolution to the North Korean nuclear issue. This remains one of the most feasible options in dealing with the complex problem of North Korean nuclear assertiveness. The U.S., for one, perceives that the dialogue process has not produced results. North Korea continues to possess nuclear weapons, and continues to conduct nuclear tests that affect the security of the U.S. and its allies in East Asia. Another option, as Scott D. Sagan recently commented, is for the U.S. and its Asian allies to simply keep calm and continue to deter North Korea until the Kim regime collapses, much as the Soviet Union did in 1991 "under the weight of its own economic and political weakness."[43]

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