

CHAPTER II

NORTH KOREAN DEFECTOR: ITS LEGAL STANDING, ENCOUNTER, AND SINO-KOREA RELATIONS

This chapter explains what is a refugee in general according to the 1951 Convention and 1967 Protocol. Moreover, the writer also elaborates on the position of North Korean defectors whether in their home country or China. This chapter covers the relations between two countries along the years, and how it leads to China's actions and policy regarding the defectors.

A. Definition of Refugee

UNHCR or United Nations of High Commissioner of Refugees is the sole of the international organization that conducts all activity and responsibility of assisting the refugees. UNHCR has published two significant agreements that becoming the centerpiece of refugees protection nowadays. First is the "1951 Convention Relating to the Status of Refugees" and followed by "The 1967 Protocol Relating to the Status of Refugees". These two agreements defined a refugee as a person who was owing to a well-founded fear of being persecuted because of the reason of race, religion, nationality, membership of a particular social group, or political opinion (Lee J. H., 2016, p. 29). There are two key phrases in the definition of refugee, "well-founded fear" and "persecution." It reflects the main element of refugee's characteristics (Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees , 1992)

The term "well-founded fear" includes both a subjective and objective aspect. In order to determine the well-founded

fear has occurred, both aspects must be taken into account. In law and practice, subjective fear is considered as the secondary compared to the objective one. It is the subjective aspect of the refugees' own experience of fear. (Clayton, 2010, p. 446). Subjective aspect mainly based on the refugees' psychological condition. However, fear must be reasonable, exaggerated fear can be considered as a well-founded, if in all the circumstances and conditions of the case, such a state of mind can be regarded as justified (Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees , 1992).

Thus, the objective aspect is the basis for believing that the well-founded fear has occurred. It is the applicant's testimony of their home of origins' situation. Indeed, it is necessary to assess the statements made by the applicant. Not only through the statement, but the knowledge regarding the actual condition of the applicant's country of origin is an important component in assessing the applicant's credibility. Understanding the real circumstances is one of the vital factors in achieving reliable testimony (Lee J. H., 2016, p. 30). In general, the applicant's fear can be considered as a well-founded fear when they can prove at a reasonable level that they stay or return to their home country will become intolerable.

1. Persecution

The well-founded fear is closely related to persecution. Persecution is the central concept of recognition of the refugee's status. There is no exact definition of persecution. Indeed, the UNHCR Handbook expressly avoid any such of an attempt on defining the persecution (Clayton, 2010, p. 451). However, from Article 33 of the 1951 Convention, persecution may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social

group is always persecution. Other severe violations of human rights – for the same reasons – would also constitute persecution (Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees , 1992).

To make it more transparent, Directive 2011/95/EU of the European Parliament and the Council elaborate the qualification of being refugees, precisely the act of persecution can take the form of :

- a) Acts of physical or mental violence, including acts of sexual violence;
- b) Legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- c) Prosecution or punishment, which is disproportionate or discriminatory;
- d) Denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- e) Prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses;
- f) Acts of a gender-specific or child-specific nature (Directive 2011/95/EU of the European Parliament and of the Council, 2011).

Nevertheless, the UNHCR has gradually acknowledged refugees in broader terms beyond the definition of the 1951 Convention and the 1967 Protocol. UNHCR classified refugees in four different categories: political, economic, wartime, and humanitarian. Political refugees are those who defined in the Convention and Protocol. Then,

economic refugees are the people who escape because of starvation and economic deprivation. Wartime refugees are those who flee due to the war within the country. Humanitarian refugees are the people affected by the natural disaster or the victim of human rights violations in their home country. Indeed the actual interpretation of refugee is broader, and this leads to many misconceptions regarding refugees status in a different region (Lee J. H., 2016, p. 31).

2. Principle of Non-Refoulement

One of the fundamental element in the 1951 Convention is the Non-Refoulement principle which the refugees cannot be sent home to their origin country when the risk of being persecuted and any other forms of torture is still going on (Lee W. , 2016, p. 56). Article 33 of the 1951 Convention stated the prohibition of expulsion or returned of the refugee as below:

"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."

Being a refugee means they left their foundation of life and tend to be very vulnerable. They usually came with nothing, and without legal protection, they will get into a defenseless position. This non-refoulement principle aims to protect those refugees from unjustified used power from the host country to coerce them back to the country of origin (Lee W. , 2016, p. 56).

The non-refoulement principle is not only defined in the 1951 Convention, but also on many other refugee agreements related, such as OUA Convention governing the Specific Aspects of Refugees Problem in Africa, 1984 UN Convention against Torture, and 1969 American Convention on Human Rights. It reveals that the non-refoulement principle is being embraced implicitly to the extent that this reflects the fact that refugee should not be forced back or refused entry (Lee W. , 2016, p. 57). Moreover, in 1981 the executive board of UNHCR, the Executive Committee of the High Commissioner's Programme (EXCOM) emphasized that the principle of non-refoulement should be strictly obeyed (Lee J. H., 2016, p. 33).

In terms of non-refoulement, it needs to be highlighted that a determination of refugee status is only a declaratory nature. It is better not be assumed that solely because a person has not been formally recognized as a refugee, they do not protect by the principle of non-refoulement (UNHCR, 1977). Regardless of whether they have accepted the refugee status or not, when they own a well-founded fear of being persecuted, then they should be protected under the principle of non-refoulement.

B. North Korea's Dictatorship

North Korea is a closed state. Therefore it is difficult to identify any interest articulation function performed by individuals or social or interest group for the political purpose. The outsider merely does not know enough about North Korea's society to make a reasonable interpretation of the North Korean political system (Kim S. S., 2001, p. 65). However, Japanese and South Korean scholar developed the theory namely "*suryongche* (Great Leader System)" to describe the whole of

North Korea. *Suryong* system concept characterizes North Korea as an absolute dictatorship (Kim S. S., 2001, p. 46). *Suryong* system refers to a

“system whose purpose is to perpetuate the guidance of the leader through hereditary succession” (Suzuki, 1992, p. 6).

Long story short, the leader have the infinite power towards its citizen. North Korean is forced to have obedience to the guidance of the Leader. Kim Il-Sung the one who founded the country was named as the Supreme Leader. He was depicted as the father's father and the mother's father, an invincible warrior who saved the country. He was pictured magically that can travel for days without resting, and through his presence flowers bloomed, and snow melted. (Lee H. , 2015, p. 64). The second leader, Kim Jong-il was named as the Dear Leader. He was pictured as a miraculous son, whose birthday was celebrated as the Day of the Bright Star (Lee H. , 2015, p. 86). Last, the recent leader, Kim Jong-un was portrayed as the Guiding Leader. All North Korean is worshipping them.

The people are obliged to hang the Leader's picture on their home, and it needs to be the highest objects in the room and perfectly aligned. They cleaned them with a special cloth provided by the government. The picture is sacred; even no one is allowed to point the finger at them (Lee H. , 2015, p. 53). The way they worship the leader was only a simple example of how the North Korean is under an absolute dictatorship of the Kim regime.

Aside of *Suryong* system, North Korea also operates a *Songbun* system which is a caste system that frankly the government did not announce it publicly, but the people knew the class they have been designated to (Eschborn & Ines Apel, 2014, p. 5). A family is categorized as loyal, wavering, or hostile, depending on what the father's family was doing at the

time just before, during, and after the founding of North Korea in 1948. If he were fought on the right side in the Korean War, then the family would be classified as loyal. If he has worked for the Japanese or anyone who had fled to South Korea during the Korean War, then the family would be categorized as hostile (Lee H. , 2015, p. 27).

People in the hostile class made up about 40% of the population. They have the least opportunity in society. The hostile class assigned to works in farms, mines, or manual labor. People in the wavering class might work as a minor official, teachers, or a lower military ranks. Only the loyal class whose made up about 10-15 percent of the population got the opportunity to live in Pyongyang and had the freedom to choose a career. It is effortless to fall from their recent class but almost impossible to rise (Lee H. , 2015, pp. 27-30). If someone committed a political crime, they do not only got downgraded in their *Songbun*, but they also can be sentenced to prison for life, and even three generations of their family can get the punishment and arrested as a traitor (Eschborn & Ines Apel, 2014, p. 6).

North Korea is a secretive country that even its citizens are controlled entirely by the state. The people got a very tight space to move, every single action or word that considered as betrayal can be punished harshly, and it will affect their family as well.

C. North Korean Defector

It needs to be understood first that there are many terms on referring the North Korean who fled from their home country. Generally, they have been referred to as migrants, defectors, refugees, or asylum seeker. However, the most commonly used is "defector." According to the Cambridge Dictionary, a defector is a person who leaves his or her own country or group to join an opposing one. Many international communities such as the United Nations and many other official government

documents used this term to refer the North Korean who fled from their origin country. (Eschborn & Ines Apel, 2014, p. 2). Even though another term also can be used interchangeably and have the same main concern, in this thesis, the writer will mainly use the term “defector” since it has a distinct term compare to the "refugee" due to the fact that the North Korean defector got a different case with any other refugee.

There are many reasons why North Korean are escaping from their home of origin. Most of the defectors aim to go to South Korea where they are welcomed, but because of the impassable Korean Demilitarized Zone (DMZ), their only way out of North Korea is through China (Park, *The Forgotten Genocide: North Korea's Prison State*, 2013, p. 69).

Historically, the first exodus of the North Korean defector was when an extreme famine hit North Korea in the 1990s. North Korean was suffered from starvation and malnutrition to the point they only can eat roots, grasses, and tree bark (O'Neill, 2009, p. 3). Even worse, in the biography of Lee Hyeonseo, a North Korean defector, she stated that the famine could drive people insane. The action of cannibalism proved it. The situation was so bad when it comes to the point North Korean people willing to eat the corpses of the dead to keep alive (Lee H. , 2015, pp. 194-195). Here is the table that shows the North Korea’s annual economic growth rates in the 90s, it was below 0 and no wonder the country experienced such a severe famine.

Table 2.1 North Korea’s Annual Economic Growth Rates

Year	1992	1993	1994	1995	1996	1997	1998	1999	2000
Growth Rate	-6.0	-4.2	-2.1	-4.1	-3.6	-6.3	-1.1	6.2	1.3

Source: Bank of Korea, *The Major Economic Indicators of North Korea*, 2003

The tragic condition and the collapse of food shortage is the primary cause of suffering, the North Korean have no other choice other than to survive by seeking for food in another region, and the closest one they can reach in China. Indeed, the DPRK's most devastating famine was struck on the 1990s, however according to *Tokyo Shimbun* newspaper, they reported that

"from December 2011 until April 2012, twenty thousand people have starved to death in South Hwanghae Province, in some regions, over one thousand people starved to death in one day" (Park, *The Forgotten Genocide: North Korea's Prison State*, 2013, p. 66).

On May 26, 2010, North Korea's Worker Party even announced publicly that the government would not give any immediate support, *"The government cannot take any immediate measures due to the worse-than-expected food situation."* This bold decision of the government shown that even the government did not take this issue seriously and indirectly demand its citizen to find help by themselves (Lee & Kim, 2011, p. 63). North Korea had more than 25 million population and reported a quarter of them are grievously suffering from food shortage. North Korea always identified with its nuclear arms, and indeed the government was allocating much of the state's budget on weapons production and nuclear arms development rather than for the prosperous of its citizen. It resulted in the people starved to death because there is nothing else to eat (Genocide Alerts: North Korea, 2012). It shows that the famine has not stopped and still underway.

1. Prison Camps and Genocide

As mentioned earlier that North Korean faced very severe starvation that forced them to survive up to the point where they need to get away from their

homeland. However, crossing the border without permission can be sentenced in a prison camp. Besides, trying to get in touch or reach South Korea is considered treason, with offenders, starved, tormented, and sometimes publicly executed (O'Neill, 2009, p. 2). Public execution is something familiar in North Korea, and even it is mandatory from the elementary grade to attend the public execution. This is for the purpose that no one can against the state and lessen the tendency for a riot.

Those people who defect from North Korea and caught by the authority was facing the worst of their life. North Korea known for its brutal prison camps. There are two kinds of prison; one is for the prisoner sentenced to "revolutionary re-education through labor." If they survive, they will be released back to society but will be monitored closely for the rest of their lives. The other prison is the no return prison, where the prisoners stay there until they die. Prison camps are pictured as horror for the North Korean that no one wants to get into. People in prison camps is treated like an animal. They got physical and sexual abuse, starvation, disease, and overwork. The prisoners could starve to death, and since the hunger was so extreme, the cannibalism occurred at one point. (Gauthier, 2015, pp. 113-115).

The existence of the prison camps and the violations sparked the anger of the international community. As a member of the UN, North Korea is obligated to uphold the human rights regulations of the UN Charter. As a member of the International Covenant on Civil and Political Rights (ICCPR) North Korea has violated the "prohibition of torture" (Article 7), the "prohibition of forced labour" (Article 8), "arbitrary detention" (Article 9(1)), 'the right to

trial' (Article 9(4)) and 'the right to humanitarian treatment' (Article 10) under the ICCPR. Thus, the prison camps with all the harsh treatments have gone beyond the limits of tolerance (Report on Human Rights in North Korea, 2014).

Furthermore, North Korea was believed as state-induced famine, and mass atrocities within its prison camp system that have taken on the proportions of a homemade genocide (Park, *The Forgotten Genocide: North Korea's Prison State*, 2013, p. 64) North Korea is extensively violating the UN Genocide Convention. They demonstrate by aiming for destroying groups protected by international law and also making moves defined as genocidal in Article 2. Thus, article 2 of the UN Genocide Convention explained that genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such :

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Transferring children of the group to another group.

Genocide Watch stated that there is plenty of proof that genocide has and mass killing is still going on in North Korea (Genocide Alerts: North Korea, 2012). Based on seven years of research by Christian Solidarity Worldwide (CSW) in 2007 they published a report that confirmed there is an indicator of

genocide in North Korea targeted to the religious group, specifically against Christian (Park, Genocide in North Korea, 2012). The North Korea government guarantees freedom of religion through its Socialist Constitution, thus in Article 68 stated,

"Citizens shall have freedom of religion. This right shall be guaranteed by permitting the construction of religious buildings and the holding of religious ceremonies. Religion shall not be used in bringing in outside forces or in harming the state and social order."

The North Korea government claimed that their country had given freedom of religion and belief under this constitution. However, the reality has shown the other way around (Report on Human Rights in North Korea, 2014). The United States Commission on International Religious Freedom (USCIRF) in its Annual Report 2013, stated that *"the government tightly controls all religious activity and perpetuates an extreme cult of personality venerating the Kim family as a pseudo-religion."*

In reality, all citizen obliged to worship the leader. For those who found they owned any religious icon such as the Bible could be sentenced into a prison camp. The extermination of Christian and any other religious group is justified as the national security action. The North Korean defectors that forcibly returned will brutally be interrogated whether they have any contact with the religious group outside. If they had any or suspected converted to Christianity, they are either killed or sentenced to the prison camps for life along with their entire families. According to the Open Doors, the Christian people who now imprisoned in the prison camp estimated around

50.000-70.000 (Park, Genocide in North Korea, 2012).

Genocide also happened on national, ethical, and racial grounds through North Korea's policy of killing the half-Chinese babies of North Korean women that have been forcibly repatriated by China. Other than that, North Korea also brutally banished the children who suspected to be fathered by non-North Korean through infanticide and forced abortions. The UNHCR has officially recognized and acknowledged this brutal action by stating,

"continued violation of the human rights and fundamental freedoms of women, which in particular refers to the trafficking of women for prostitution or forced marriage, ethnically motivated forced abortions, including by labor inducing injection or natural delivery, as well as to infanticide of children of repatriated mothers, including in police detention centers and labor training camps." (Park, Genocide in North Korea, 2012)

The massive human rights violations within the country and the ongoing famine is the most prominent reasons why North Korean is looking for another place to live. They deal with a more significant risk when they choose to leave the country, and once they out of North Korea, the risk did not vanish. The defectors still need to face another problem when they reach their first escape place, China.

2. Defectors Reside in China

North Koreans have been crossing the border into China, since the height of North Korea's famine in the 1990s. The official Chinese authorities estimated the

range of defectors from 10.000 to 300.000 or more. In 2006, the State Department estimated the number around 30.000 to 125.000. Also in 2006 UNHCR estimated the defectors are range 30.000-50.000. UNHCR itself has not been given access to conduct any systematic survey to counts the number of defectors. Indeed, it is challenging to range the total of defectors since most of them are in hiding and some are moves back and forth from China to North Korea. (Margesson, Chanlett-Avery, & Bruno, 2007). Hundreds of thousands of North Korea defectors came into China, and it was becoming a worry for the China government. China began to build a barbed-wire fence to hinder the defectors from crossing the borders. Not only preventing the defectors from coming to China, but China also repatriated them if the defectors found residing in China (Albert, 2018).

The crossing point for North Koreans migrated to China is through northeastern China by crossing Yalu and Tumen Rivers. Both China and North Korea authorities guarded the border; therefore the defectors must be hiding by crossing the river. If truth be told, this was the scariest part. They crossed the border illegally; therefore they need to prepare themselves both strategically and psychologically. The defector needs to stay cautious of the conditions around, so they will not get arrested. It should be mindful of that if the defector caught in the act, they would harshly be punished by seized them into the prison camps or even a death penalty. According to the interview from the defector conducted by Sung Ho Ko, Kiseon Chung, and Yoo-seok Oh, crossing the border was carried grave anxiety for all defectors. No matter how carefully they prepared, it is still not easy to make a safe defection. Board authorities are stationed every fifty meters, and the transportation system is in

unbelievably poor condition. It would take several days to get to the border, and they would hardly find a place to hide and had an overnight (Ko, Chung, & Oh, 2004, pp. 83-84).

After the defectors arrived in China, they will either go to their relatives who lived in China or lived in hiding, avoiding any contact who will risk them getting repatriated. Since China does not acknowledge the defectors as a refugee, they do not get any protection and very vulnerable to getting exploited by organized gangs and intermediaries. Human smuggling, trafficking, extortion, and exploitation are thought to be a growing problem. Women are particularly vulnerable to prostitution, rape, arranged marriages, and bride traffickers. It is reported that perhaps 80%-90% of North Koreans in China end up as trafficking victims (Margesson, Chanlett-Avery, & Bruno, 2007).

In order to survive in a foreign country without any legal protection, those defectors tried to behave and resemble the Chinese. They were forced to change their identity, their way of thinking, and also their appearance and behavior in order to conceal their true identity. Nonetheless, if anyone ever finds out their identity as a defector, they might be reported to the authorities and immediately being repatriated. Thus, the defector lived in constant fear of inspections, according to a report by Good Friends, 63.2% of the defector feel they were not secure in China (Lee & Kim, 2011, pp. 65-66). According to the defector's testimony, while in China they would carry either arsenic or a razor with them in case Chinese police caught them, they would better to die than face what awaits them when they are returned home (Park, The

Forgotten Genocide: North Korea's Prison State, 2013).

According to The Database Center for North Korean Human Rights (NKDB) a non-governmental organization with the objective of improving North Korean human rights and also operates a comprehensive database information regarding the North Korean defectors, they have a total of over 8.000 cases of North Korean defectors reside in China whether they are being deported or exercised any human rights violations. Here, some of the cases obtained by the NKDB (NKDB Database Search, n.d.)

Table 2.2. NKDB Database of North Korean Defectors in China

ID (IncidentD)	Type of right1	Type of right2	Type of right3	Information of victim
Incident code1 / code2	Incident place(kind)	Incident place(name)	Incident year	Information source
44567 ()	Right to movement and residence	Forced Deportation		30s / Female
Border Crossing / Defect(border transgression, maritime exfiltration)	Unidentified /	China /	2004	Self Interview
44543 ()	Right to life	Legal execution	Public Execution	50s / Female
Political Offense / National treason (motherland treason, espionage, flee to South Korea)	Educational Facility /	North Hamgyong /	1986	Self Interview
44541 ()	Personal integrity and right to liberty	Forced Prostitution and Human Trafficking	Human Trafficking	20s / Female
Felony / Human traffic(gangster)	Unidentified /	China /	2003	Self Interview
44539 ()	Personal integrity and right to liberty	Unjustified Detention and Incarceration	Other Incarceration or Interdiction	20s / Female
Border Crossing / Defect(border transgression, maritime exfiltration)	Detention Facilities in China(Chinese prison including border guards) /	China /	2007	Self Interview
44538 ()	Right to movement and residence	Forced Deportation		20s / Female
Border Crossing / Defect(border transgression, maritime exfiltration)	Unidentified /	China /	2007	Self Interview

Source: The NKDB Database, 2018

3. China's Action Towards Defector

The North Korean defector began to be known internationally around 1998-1999 when some South Korean civic group disclosed the punishment and repatriation that be done by the Chinese government towards the defectors. Seoul was proposed to Beijing to stop repatriating, and instead allowing the UNHCR to organize a refugee camp along the China-North Korea border. However, Beijing declined the proposal and insisted that the defectors are not a refugee but temporary migrants who were seeking for food. China also claimed that this matter was an internal affair between PRC and DPRK (Liu, 2003, p. 353).

China tends to take a reluctant stance when it comes to international cooperation regarding the defector issue. However, on 1999-2001 China was reducing the number of repatriated defectors except in cases if the authority found the defectors roaming around or involved in criminal activities. China also distinctively allowed some South Korean humanitarian groups and another foreign NGOs to helped the defectors in the border area in the name of providing food assistance, as long as such activities by the NGOs carried out quietly. It comes with China's interests in reducing the transnational marriage between the defectors and local people. (Liu, 2003, p. 353).

However, after the incident of the defectors sought refugee in the Spanish embassy in Beijing with the help of Japanese NGO in 2002, China realized that they could not loosen up towards the foreign NGOs. NGOs might take it as a welcome sign to help another more defectors. In order to control the situation, Beijing did a massive search for defectors in the three

northeastern provinces and Beijing. It leads to the action of repatriated them immediately to their home country. Chinese government emphasized that all NGOs have to obey Chinese law and regulations. Alternatively, we can say that China prohibits the NGOs to help the defectors enter diplomatic mission to seek asylum (Liu, 2003, pp. 355-356).

Furthermore, Chinese Government commanded its citizen including the Korean Chinese and South Korean religious and civic organization to not providing any shelter for the defector, if they did, they will be fined \$3000 or more which three times of average Chinese citizen earns annually. China also saw the defector as "nuisances" those who engage in illegal action and behavior such as robbing, criminal action, human trafficking, and forging official documents (Ko, Chung, & Oh, 2004, p. 73). China's policy towards the defectors indeed is harsh and strict. China will not repatriate the North Korean defectors if they are *"married to or cohabit with Chinese persons who live in agricultural areas"* which most defectors did not. According to many reports, in 2003 China forcibly repatriated an average of 150 North Koreans per week (Ko, Chung, & Oh, 2004, p. 74).

China's hard-line policy towards the defectors triggered international pressure. In March 2006, this issue was brought up in high-level talks between the UN High Commissioner for Refugees and the Chinese Foreign Ministry (Margesson, Chanlett-Avery, & Bruno, 2007, p. 12). On February 17, 2014, the United Nations Commission of Inquiry report on human rights in the Democratic People's Republic of Korea (DPRK) found China has violated its obligations under international human rights and refugee law towards its treatment of North Korean

refugees. The report concluded that Chinese actions, particularly its practice of repatriating refugees to the DPRK, could be considered aiding in crimes against humanity. However, China has rejected the report and expressed it as an "unreasonable criticism" (UN Report Criticizes China for Treatment of North Korean Refugees Amid Worsening Situation, 2014).

China has been encouraged by the North Korean authorities to repatriate their citizen who fled to China under the Agreement on Repatriation of Border Crosser that was signed in 1987 (Ko, Chung, & Oh, 2004, p. 73). However, on the other side, China is also a party to the 1951 UN Refugee Convention and 1967 Protocol, yet China continuously violated their commitment by returning the defectors to North Korea. The principle of non-refoulement under the Convention 1951 and Protocol 1967 and the prohibition of torture and the principle of non-refoulement under the Convention against Torture are fundamental principles of international human rights laws. The human rights law are superior compared to all other international laws which well-known as *jus cogens*. This regulation makes the treaty between North Korea and China null and void. Thus, China did violate the International Law (Report on Human Rights in North Korea, 2014). Furthermore, these defectors are internationally recognized as *refugee sur place*, and they are people who risk persecution upon return and deserve protection regardless of why they left their home country (Robertson, 2017).

By not recognizing the defector as a refugee and even repatriated them, China is violating the international law of the principle non-refoulement under the 1967 Protocol. On the other hand, North Korea which has the world's worst human rights

record also cannot let go of their citizens that easily. Both states have their interest which intertwined one another in terms of the defector. The historical relations of both countries might have an effect on their decision regarding the defectors. However, their harsh action also sparked the anger of the international community, especially the humanitarian one.

D. China and North Korea Relations

The fact that China and North Korea share a fairly long border, made them influence each other's history from the earliest time. The geographical location indeed played a huge role in shaping both countries relations in terms of cultures and politics. Lee Chae-jin said that China and the Korean peninsula shares "a long history of the complex, intimate relations."

It was started on the Cold War in September 1948 when Kim Il Sung established the Democratic People's Republic of Korea (DPRK) in a territory which under the control of the Soviet Union since the end of the World War II. Both DPRK and RoK wanted to unify the whole peninsula under their respective governments. Thus, Kim Il Sung asked Soviet and China to support him in launch a military offensive against South Korea. Then in 1950 was the beginning of the destructive Korean War. Mao Zedong's intervention by sending troops was actually to ensure the US will not get into China territory. The famous slogan by the Chinese Communist Party (CCP) was said: *"Resist America, Aid North Korea, and Defend the Chinese homeland."* China gave about 7.3 trillion yuan to North Korea during the war and another 8 trillion yuan for North Korea to build up their countries after the war ended. China was given all the aid, not for nothing, this was one of China's strategy to secure its security and independence. (Kim P. , 2018). It was related to the 1950s when China saw the US as their primary threat. China allied with the Soviet Union and

DPRK against the American-backed South Korea regime (Hoa, 1989).

The relations between these two countries is not far from the security issue. The location of the Korean peninsula that surrounded by all significant power was one of the reasons why China put so much interest in North Korea mainly. Both China and Russia share common land borders with the Korean peninsula while Japan is the maritime neighbor. Moreover, the United States occupied the southern part of the peninsula after World War II ended, while the Soviet Union take control of the northern part. This concludes that Korean peninsula has always been a place where the critical interest of China and other great powers intertwined. It leads to the role of the Korean peninsula as the buffer zone between China and the hostile powers. According to the English Cambridge Dictionary, a buffer zone is an area intended to separate two armies that are fighting. Thus, China was involved in several military conflicts in the Korean peninsula, this action was done in order to protect China's national interest and as the way to protect their security against the hostile power (Xiaoming, 1998, p. 260).

The Cold War did not put much difference. The Cold War-style relations between the North and the South remains. The Korean peninsula was becoming the most dangerous place as more than 2 million soldiers confront each other across a narrow corridor. The high-level tension between the South and the North was proved by the nuclear crisis in 1993-1994 and also the submarine incident in 1996. However, both North Korea and South Korea have not embraced another military offensive after the Korean War. This might sound better compared to the 1950s when both South and North dealt with the bloody retaliation, nevertheless, the ongoing North and South confrontation will always directly affect the security and stability of China (Xiaoming, 1998, p. 263).

During the 1980s, the relations between China and North Korea are relatively going well. In order to maintain their cooperative relations, China continued to support North Korea through political, diplomatic, military, and economic sector as China also assure the US and Japan that Kim Il Sung did not have any intention on invading the South and the hot war will not happen shortly. At the same time, China also persuaded North Korea that another war will not be good and could be a disaster for the North (Hoa, 1989, p. 193).

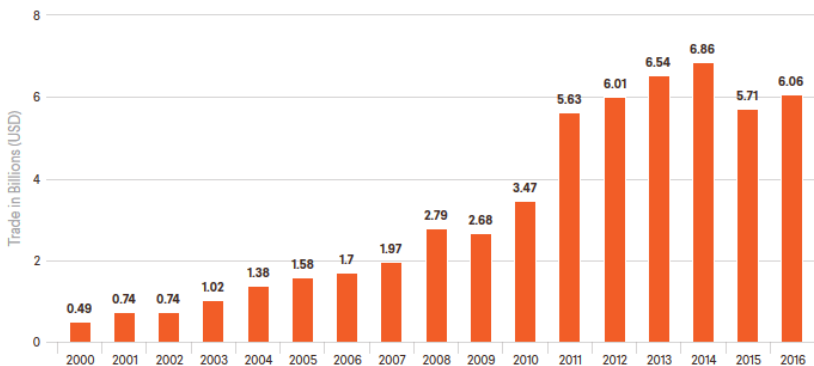
Seeing through both countries history, indeed the dominant factor of China's interest in North Korea is the national security. The Korean peninsula, in this context North Korea is having a very critical role to China's security, especially in geopolitical terms. The location of North Korea which in the middle of all the strong power made North Korea act as a buffer zone for China. Moreover, to ensure China's national interest, China needs to work for peace, stability, and prosperity of the Korean peninsula.

However, politic is such a dynamic thing. China's effort on maintaining its stability with North Korea can be rather an abstract concept. The interest of China is balanced and fluctuate according to the changing situation on the peninsula (Liu, 2003, p. 349). On October 2006, Pyongyang tested a nuclear weapon and sparked the UN Security Council Resolution 1718 which urged sanctions on Pyongyang. Here, Beijing supported the UNSC and saw the nuclear weapon as a signaled of a shift in tone from diplomacy to punishment. Another North Korea's missile launch in November 2017 also concerned China that it could increase tension in the Korean peninsula (Albert, 2018).

Despite the ups and downs of support to North Korea, China has always been provided North Korea with most of its food and energy supplies. The number was up to 90% of North Korea's total trade volume. Not only from the food and energy supplies. China also established a high-speed rail route between

the Chinese border in order to boost bilateral economic relations. The high-speed rail route opened in Dandong which a hub for trade, investment, and tourism for both countries. Chinese and North Korean people also made the informal trade along both countries border, despite the sanctions for the illegal smuggler, they continue to operate up until now, the items that were sold such as cell phones, DVD, and fuel (Albert, 2018). Here the chart of the China and North Korea trade volume, below.

Figure 2.1 China and North Korea Trade Volume



Source: Korea Trade-Investment Promotion Agency (KOTRA), 2019

Historically, China and North Korea have an excellent mutual relation. North Korea was helped and protected by China, and China got the feedback in terms of national security by assisting North Korea. However, the interest of both countries is changing over time. The aggressive action of North Korea towards its nuclear arsenal is one of the reasons China grew concern and opposition. However, it cannot be denied that the stability of Korean peninsula is always the primary interest of China. As Jennifer Lind, a professor at Darmouth University stated that Chinese would prefer that North Korea

did not launch or have their nuclear weapon, because China's greatest fear is the North regime would collapse (Lind, 2017).