

China's Obligations under International Law to Protect North Korean Escapees

Jung-hyun Cho

Research Fellow, Center for North Korean Human Rights Studies

Online Series CO 12-06

It has been reported that since early this month many North Korean escapees in China have been arrested by Chinese police and currently face forcible repatriation back to North Korea. According to estimates by North Korean human rights groups, the number of detainees has been steadily growing and presently stands at around 80 people, scattered in places such as Yanji, Shenyang, Changchun, Longjing, Helong, Qingdao, and Zhengzhou. The South Korean government has asked China for confirmation of the actual situation, stressing China's observance of international conventions, but China has officially only offered very formal and concise statements in response. Regarding the request to stop forcible deportations, on 20 February Chinese Foreign Ministry Spokesman Hong Lei reiterated China's basic position that it "has been handling the issue in accordance with international and domestic laws and humanitarian principles." But what are the specific contents of this "international law" that China refers to first, without any detailed explanation, among the standards by which it handles such situations?

The Obligation of *Non-Refoulement* under the 1951 Refugee Convention

The 1951 Convention Relating to the Status of Refugees (the “Refugee Convention”), to which China acceded on 24 September 1982, stipulates in Article 33 that “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” This Article specifies the so-called principle of *non-refoulement* of refugees, and even though it uses the term “refugee,” the contents are generally interpreted to include not only those formally acknowledged as refugees but also those whose refugee status has not yet been determined but who still have an undeniable possibility of being recognised as refugees, *i.e.*, “asylum-seekers.” Therefore, this clearly shows that even in the case of North Korean escapees, who face a very high risk of having their “life or freedom … threatened” if they are repatriated, China is violating its obligations under the Refugee Convention by considering “all” of them simply “economic migrants” or “illegal immigrants,” foregoing any proper domestic procedures for determining refugee status, and sending them back to North Korea. If these North Koreans could undergo proper procedures to assess their refugee status, the majority would qualify on the grounds that they face a high likelihood of “political” punishment upon repatriation, and thus they have a “reasonable possibility” of persecution based on their “imputed political opinion.”¹⁾

The Obligation of *Non-Refoulement* under the 1984 Torture Convention

The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (the “Convention against Torture”), which China signed on 12 December 1986 and ratified on 4 October 1988, also provides for the principle of *non-refoulement*. Article 3 states that “No State Party shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” This applies to not only refugees but all human beings, and thus its target scope is broader than that of the aforementioned Refugee Convention. Also, the principle of *non-refoulement* under Article 3 applies to both “torture” and the somewhat weaker “ill-treatment,” giving it a considerably wide scope. Furthermore, in addition to the acts of “expulsion” and “return” prohibited by Article 33 of the Refugee Convention, the Convention against Torture also explicitly forbids

1) For details, see Cho, Jung-Hyun, “The issue of ‘Republikflucht’ and its application to the North Korean Escapee (NKE) case,” *Seoul International Law Journal*, Vol.15 No.2 (2008.12).

“extradition.” Thus China’s policy of “blanket” arrest and return of all escapees back to North Korea without proper procedures, even when there are “substantial grounds for believing that [they] would be in danger of being subjected to torture [or ill-treatment],” is a clear violation of its obligations under the Convention against Torture.

Further, even though China claims it has an obligation to repatriate escapees under its bilateral extradition treaty with North Korea, if that treaty conflicts with the prohibition of torture and the related principle of *non-refoulement* that are *jus cogens* (peremptory norms) of international law, then it is null and void in principle. China has also established its position that the principle of *non-refoulement* under Article 3 of the Convention against Torture takes precedent over its extradition obligations under bilateral treaties, a position that it has affirmed repeatedly in its reports to the Committee against Torture in 1993, 2000, and 2007.

Other Obligations under International Law

China’s refusal to grant North Koreans access to a refugee status assessment process, its refusal to grant the UNHCR access to North Korean escapees, and its discrimination between North Korean escapees and the 300,000 Indochinese refugees residing in China, are clear violations of Articles 31, 35, and 3 respectively of the 1951 Refugee Convention. Furthermore, China is also a party to the 1966 Convention on the Elimination of All Forms of Racial Discrimination, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 1989 Convention on the Rights of the Child, and the 1966 International Covenant on Economic, Social and Cultural Rights, all of which corroborate China’s international obligations regarding North Korean escapees. All monitoring committees of these various conventions have already urged China to change its treatment of North Korean escapees.²⁾

The Chinese authorities shall observe their obligations under the “international laws” stated above. At the same time, considering their self-professed “humanitarian principles,” it should stop the inhumane practice of sending North Korean escapees back by force to probable persecution and torture. As a State Party to core international human rights conventions, if China shares a minimal recognition of human rights as a universal value of mankind, then it should understand why

2) For details, see Jung-hyun Cho, “The Protection of North Korean Escapees under International Human Rights Law and its Practice: with special reference to the International Human Rights Treaties to which China is a Party and their Monitoring Mechanisms,” *The Korean Journal of International Law*, Vol.54, No.1(2009.4).

international society is so concerned about the forcible repatriation of North Korean escapees. As it rises to become a responsible global power, China is compelled to show its resolution to comply with international human rights conventions. The Korean government may also need to remind China of its forgotten obligations under international law.