

# China and the International Refugee Protection Regime: Past, Present, and Potentials

Lili Song\*

## ABSTRACT

This article considers China's engagement in the international refugee protection regime. It examines China's experience with outgoing and incoming refugees, its accession to and implementation of the Refugee Convention and Protocol, and its interaction with the United Nations High Commissioner for Refugees and other key actors in the international refugee protection regime. It finds that, despite China being a long-time source of refugees and an emerging destination and transit for refugees, it has not prioritised refugee protection. And even though it has consistently emphasised addressing root causes as a solution to refugee crisis, it sometimes failed to demonstrate a consistent readiness to honour the provisions and spirit of the Refugee Convention and Protocol. It submits that China's demonstrated emerging interest in refugee issues in recent years presents an opportunity for the international community to further the engagement and integration of China in the international refugee protection regime and that greater involvement in international cooperation in refugee protection is in China's interest. It recommends for the international community, especially international and regional organisations that have experience in working with China on refugee matters, to take the opportunity to further involve and integrate China.

**KEYWORDS:** China, Refugee Convention and Protocol, UNHCR, AALCO, refugee protection

## 1. INTRODUCTION

The People's Republic of China (China)<sup>1</sup> is well-known for being a major source of refugees. China's other roles in the international refugee protection regime have long been overlooked or forgotten. Many people would be surprised to know that China admitted and locally settled more than 250,000 Vietnamese refugees from 1978 to 1982,<sup>2</sup> or that China was one of the first Asian States to become a party to the 1951

\* Lecturer, School of Law, The University of the South Pacific. Email: lili.song@usp.ac.fj. This research was supported by an Australian Endeavour Research Fellowship (ERF-PDR-4851-2015) awarded by the Australian Government Department of Education and a 2015 Human Rights and Asia Fellowship awarded by the Human Rights Centre, Seoul National University.

1 For the purposes of this article, China refers to the mainland of the People's Republic of China, excluding Hong Kong Special Administrative Region, Macau Special Administrative Region, and Taiwan, unless otherwise indicated.

2 See United Nations High Commissioner for Refugees (UNHCR), Bureau for Asia and the Pacific, "Regional Update", Fact Sheet, Mar. 2014, 5, available at: <http://www.unhcr.org/5000139a9.pdf> (last

Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol (collectively the Refugee Convention and Protocol),<sup>3</sup> having acceded to both instruments in 1982.<sup>4</sup> More recently, as China's economic strength and political influence continue to grow, it is also emerging as a transit and destination country for refugees.<sup>5</sup> In the past 20 years, China experienced at least four mass influxes of displaced foreigners from neighbouring countries, namely the continuous inflow of North Korean escapees since the mid-1990s,<sup>6</sup> the influxes of the ethnic Kokangs from Myanmar in August 2009 and then from February 2015 to present,<sup>7</sup> and the ongoing arrivals of the ethnic Kachins from Myanmar since June 2011.<sup>8</sup>

As noted by Betts and Loescher, although China has remained on the margin of global refugee policymaking, it is one of the countries that are most potentially influential to the global refugee regime.<sup>9</sup> Indeed, as the second largest economy in the world, a permanent member of the United Nations (UN) Security Council, and a member of the Executive Committee (ExCom) of the United Nations High Commissioner for Refugees (UNHCR), China has recently come to the attention of State leaders faced with refugee issues. For example, in 2015, German Chancellor Angela Merkel asked China to assist in solving the refugee crisis in Europe.<sup>10</sup> In 2017, Malaysia's Deputy Prime Minister Datuk Seri Dr Ahmad Zahid Hamidi sought China's assistance in tackling the Rohingya refugee crisis.<sup>11</sup>

However, China's engagement in the international refugee protection regime has rarely been studied in-depth. This article aims to shed light on China's approach to the international refugee protection regime by examining China's engagement in the

visited 13 Feb. 2018); J. Song, *Vietnamese Refugees Well Settled in China, Await Citizenship*, Guangxi, UNHCR, 10 May 2007, available at: <http://www.unhcr.org/464302994.html> (last visited 13 Feb. 2018).

- 3 Convention relating to the Status of Refugees, 189 UNTS 150, 28 Jul. 1951 (entry into force: 22 Apr. 1954), Protocol relating to the Status of Refugees, 606 UNTS 267, 31 Jan. 1967 (entry into force: 4 Oct. 1967).
- 4 UN, *Status as at: 11-03-2017 Convention Relating to the Status of Refugees*, available at: [https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=\\_en](https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en) (last visited 13 Feb. 2018); UN, *Status as at: 11-03-2017 Protocol Relating to the Status of Refugees*, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-5&chapter=5&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&clang=_en) (last visited 13 Feb. 2018).
- 5 UNHCR, *2013 Regional Operations Profile – East Asia and the Pacific*, Geneva, UNHCR, 2013, available at: <http://www.unhcr.org/pages/49e45b276.html> (last visited 14 Jul. 2017).
- 6 UN Human Rights Council (UNHRC), *Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, UN Doc. A/HRC/25/CRP.1, 7 Feb. 2014, para. 385; UNHRC, *Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, UN Doc. A/HRC/25/63, 7 Feb. 2014, para. 43.
- 7 "The Han that Rock the Cradle", *The Economist*, 14 Mar. 2015, available at: <http://www.economist.com/news/asia/21646248-kokang-conflict-causes-problems-china-too-han-rock-cradle> (last visited 13 Feb. 2018).
- 8 "Kachin Refugees in China in Need", Yunnan, *IRIN News*, 27 Jun. 2012, available at: <http://www.irinnews.org/news/2012/06/27> (last visited 13 Feb. 2018).
- 9 A. Betts & G. Loescher, "Introduction: Continuity and Change in Global Refugee Policy", *Refugee Survey Quarterly*, 33(1), 2014, 1–7, 6.
- 10 A. Delfs & P. Donahue, "Merkel Seeks China's Support on Refugees as Crisis Follows Her", *Bloomberg*, 30 Oct. 2015, available at: <http://www.bloomberg.com/news/articles/2015-10-29/merkel-seeks-china-support-on-refugees-as-crisis-follows-her> (last visited 18 Feb. 2018).
- 11 A. Lai, "Malaysia Asks China to Help Tackle Rohingya Refugee Crisis in Bangladesh", *The New Strait Times*, 27 Sep. 2017, available at: <https://www.nst.com.my/news/nation/2017/09/284599/update-malaysia-asks-china-help-tackle-rohingya-refugee-crisis-bangladesh> (last visited 18 Feb. 2018).

legal and institutional frameworks of the regime. Section 2 of this article provides a brief historical review of China's experience with outgoing and incoming refugees, giving the context for the rest of the discussion in this article. Section 3 considers China's accession and implementation of the Refugee Convention and Protocol, which are the cornerstones of the modern international refugee protection system. Sections 4 and 5 examine China's interactions with UNHCR and other key actors in international refugee protection. Section 6 makes concluding observations as well as recommendations.

## 2. CHINA'S EXPERIENCE WITH REFUGEES

The People's Republic of China was founded on 1 October 1949. In the two years following its establishment, more than 700,000 Mainland Chinese citizens escaped to Hong Kong,<sup>12</sup> which was then a British Colony. The exodus of Chinese mainlanders to Hong Kong, known as the "Great Escape to Hong Kong" (*dataogang*), continued well into the 1970s.<sup>13</sup> The Chinese authorities at that time viewed the action of leaving China for Hong Kong equivalent to betrayal of China and as anti-Chinese Government,<sup>14</sup> and sent the Chinese People's Liberation Army to the Shenzhen-Hong Kong frontier to stop people from leaving.<sup>15</sup> Many escapees drowned or were shot dead during the course of trying to cross into Hong Kong.<sup>16</sup> The exodus, however, continued.

In the late 1970s, Deng Xiaoping pointed out that the exodus was not a problem that could be solved by sending soldiers to the frontier,<sup>17</sup> and that the economic gap between Mainland China and Hong Kong was a main cause of the continuous exodus.<sup>18</sup> One of the measures the Chinese authorities took to narrow the economic gap was to establish a Special Economic Zone in Shenzhen City, which borders Hong Kong, in 1979.<sup>19</sup> The Shenzhen Special Economic Zone soon proved to be an economic success, as well as an effective way to end the exodus to Hong Kong. The number of people fleeing to Hong Kong quickly declined in the early 1980s, ending the "Great Escape to Hong Kong". Nowadays, the Chinese leadership has considered the battle against the "Great Escape to Hong Kong" an important historic lesson on "people vot[ing] with their feet" that must not be forgotten.<sup>20</sup>

12 G. Loescher, A. Betts & J. Milner, *UNHCR: The Politics and Practice of Refugee Protection into the 21st Century*, Abingdon, Routledge, 2008, 23.

13 H.F. He, "Forgotten Stories of the Great Escape to Hong Kong", *The South China Morning Post*, 13 Jan. 2013, available at: <http://www.scmp.com/news/china/article/1126786/forgotten-stories-huge-escape-hong-kong> (last visited 18 Feb. 2018).

14 *Ibid.*

15 H.X. Liu, "zhenjing zhongyang de 'dataogang' fengchao [The Great Escape to Hong Kong' that Shocked the Chinese Central Government]", *People's Daily Online*, 1 Aug. 2010, available at: <http://www.people.com.cn/GB/198221/198819/198857/12308776.html> (last visited 18 Feb. 2018).

16 He, "Forgotten Stories of the Great Escape to Hong Kong".

17 Liu, "The Great Escape to Hong Kong".

18 *Ibid.*

19 *Ibid.*

20 "mingji 'yongjiao toupiao' de lishi jingshi [Remembering the Historic Lesson of 'Voting with Foot']", *Xinhua*, 4 Nov. 2013, available at: [http://news.xinhuanet.com/politics/2013-11/04/c\\_117988157.htm](http://news.xinhuanet.com/politics/2013-11/04/c_117988157.htm) (last visited 13 Feb. 2018).

The possible impact of China's experience with the "Great Escape to Hong Kong" on its view on solutions to refugee problems should not be underestimated. At various occasions where high-ranking Chinese diplomats talked about refugee issues, they consistently emphasised the need to address the root causes of refugee flows and often highlighted that poverty and underdevelopment were among the root causes.<sup>21</sup> For example, the Chinese foreign Minister, Wang Yi, has repeatedly stated that poverty is one of the root causes of the Syrian refugee issue and emphasised that the root causes must be addressed to solve the issue.<sup>22</sup> At the UN Summit for Refugees and Migrants in 2016, the Chinese Premier, Li Keqiang, noted that conflict, poverty, and underdevelopment were among the root causes of migration.<sup>23</sup> The "three-phase solution" (see Section 5.2 below) China recently proposed to solve the Rohingya refugee crisis also appears to reflect China's focus on root causes, with the first phase focusing on achieving a ceasefire "so that local residents can no longer be displaced" and the third phase focusing on poverty alleviation as "a long-term solution".<sup>24</sup>

After the "Great Escape to Hong Kong", China's economy gradually improved as China pursued its reform and open-up process, which started in the late 1978,<sup>25</sup> and there has been no exodus of Chinese nationals at the same scale or speed as the exodus to Hong Kong.<sup>26</sup> However, China remains a major source country of refugees in

- 21 See for example, Chinese Permanent Mission to the UN (CPMUN), *Statement by Counsellor YAO Shaojun during the General Debate on the Item of Refugees at the Third Committee of the 72nd Session of the General Assembly Ministry of Foreign Affairs of China*, New York, 2 Nov. 2017, available at: <http://www.china-un.org/eng/hyyfy/t1507214.htm> (last visited 13 Feb. 2018); Chinese Ministry of Foreign Affairs, *Dai Bingguo Meets with UN High Commissioner for Refugees Guterres*, 3 Sep. 2010, available at: <http://www.fmprc.gov.cn/eng/wjb/zjjg/gjs/gjxw/t738076.shtml> (last visited 13 Feb. 2018); CPMUN, *Statement by Mr. LUO Cheng of the Chinese Delegation at the Third Committee of the 64th Session of the UN General Assembly, on Refugees*, New York, 3 Nov. 2009, available at: <http://www.china-un.org/eng/hyyfy/t624524.htm> (last visited 13 Feb. 2018); G.Y. Wang, PRC Vice Foreign Minister, *Statement at the Ministerial Meeting of States Parties to the 1951 Convention Relating to the Status of Refugees*, Geneva, 12 Dec. 2001, available at: <http://pg.china-embassy.org/eng/zt/rqwt/t46963.htm> (last visited 13 Feb. 2018); G.Y. Wang, PRC Vice Foreign Minister, *Remarks at the Opening Ceremony of the Third APC Mekong Sub-regional Meeting on Refugees, Displaced Persons and Migrants*, Beijing, 8 Aug. 2002, available at: <http://www.fmprc.gov.cn/eng/wjdt/zyjh/t25088.htm> (last visited 13 Feb. 2018).
- 22 Chinese Ministry of Foreign Affairs, *Wang Yi Talks about Issue of Refugees in the Middle East*, Beijing, 24 Jun. 2017, available at: [www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1473802.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1473802.shtml) (last visited 13 Feb. 2018); Chinese Ministry of Foreign Affairs, *Wang Yi: Both Temporary and Permanent Solutions Should Be Adopted to Eliminate Root Causes in Addressing Syrian Refugee Issue*, Beijing, 28 Oct. 2015, available at: [http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1310429.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1310429.shtml) (last visited 13 Feb. 2018).
- 23 UN, *General Assembly Adopts Declaration for Refugees and Migrants, as United Nations, International Organization for Migration Sign Key Agreement*, Meeting Coverage, GA/11820, New York, 19 Sep. 2016, available at: <https://www.un.org/press/en/2016/ga11820.doc.htm> (last visited 13 Feb. 2018).
- 24 "China Proposes Three-Phase Solution to Rakhine Issue in Myanmar: FM", *Xinhua*, 20 Nov. 2017, available at: [http://news.xinhuanet.com/english/2017-11/20/c\\_136764392.htm](http://news.xinhuanet.com/english/2017-11/20/c_136764392.htm) (last visited 13 Feb. 2018).
- 25 K. Brown, *Thirty Years On – China Celebrates the Reform Process*, London, Chatham House, Briefing Notes, Oct. 2008, available at: [https://www.chathamhouse.org/sites/files/chathamhouse/field/field\\_document/Briefing%20Note%20Thirty%20Years%20On%20-%20China%20Celebrates%20the%20Reform%20Process.pdf](https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/Briefing%20Note%20Thirty%20Years%20On%20-%20China%20Celebrates%20the%20Reform%20Process.pdf) (last visited 13 Feb. 2018).
- 26 The first few decades of Communist China also saw two more waves of Chinese nationals receiving asylum overseas. The first is the exodus of Tibetans to India and Nepal following Dalai Lama's escape to India in 1959. The second is the large numbers of Chinese students receiving asylum after the 1989 Tiananmen Square Incident.

the world. It has been ranked a top-20 refugee-producing country every year since 2003.<sup>27</sup> The total number of refugees originated from China stood at 212,375 worldwide at mid-2016.<sup>28</sup>

In comparison, except the 280,000 Vietnamese refugees, who arrived mainly between 1978 and 1982 and most of who were accepted and settled as Chinese nationals returning from Vietnam (see Section 3 below), the number of refugees China received had been very small until the mid-1990s.<sup>29</sup> However, in recent years, China is emerging as a transit and destination country for refugees.<sup>30</sup> As mentioned above, North Korean escapees displaced ethnic Kokangs and ethnic Kachins from Myanmar have sought refuge in China in the past two decades.<sup>31</sup> Although these groups are considered as refugees by UNHCR as well as other international organisations and scholars,<sup>32</sup> the Chinese authorities have not recognised these groups as refugees and have barred UNHCR and other mainstream international organisations from accessing or assisting them.<sup>33</sup> The North Korean escapees are considered as illegal migrants by the Chinese authorities and face forcible deportation if caught by the Chinese authorities.<sup>34</sup> The ethnic Kokangs and Kachins are considered as “border residents” and received some humanitarian assistance from the Chinese authorities,<sup>35</sup> but incidents of forced repatriation have taken place from time to time.<sup>36</sup>

27 UNHCR, *Global Trends 2015*, Geneva, UNHCR, 2016, 56, available at: [www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html](http://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html) (last visited 13 Feb. 2018).

28 UNHCR, *Mid-Year Trends 2016*, Geneva, UNHCR, 2017, 34, available at: [www.unhcr.org/statistics/unhcrstats/58aa8f247/mid-year-trends-june-2016.html](http://www.unhcr.org/statistics/unhcrstats/58aa8f247/mid-year-trends-june-2016.html) (last visited 13 Feb. 2018).

29 For discussion on refugees received by China after 1949, see L. Song, “Who Shall We Help? The Refugee Definition in A Chinese Context”, *Refugee Survey Quarterly*, 33(1), 2014, 44–58.

30 UNHCR, *2013 Regional Operations Profile – East Asia and the Pacific*.

31 UNHCR, *Report on Human Rights in the Democratic People’s Republic of Korea*; “The Han that Rock the Cradle”; “Kachin Refugees in China in Need”.

32 See for example, UNHCR, *Report on Human Rights in the Democratic People’s Republic of Korea*, para. 43; E. Chan & A. Schloenhardt, “North Korean Refugees and International Refugee Law”, *International Journal of Refugee Law*, 19(2), 2007, 215–245; Human Rights Watch (HRW), *Isolated in Yunnan: Kachin Refugees from Burma in China’s Yunnan Province*, New York, HRW, Jun. 2012, 23, available at: [http://www.hrw.org/sites/default/files/reports/china0612\\_forinsertForUpload.pdf](http://www.hrw.org/sites/default/files/reports/china0612_forinsertForUpload.pdf) (last visited 13 Feb. 2018); UN Committee on the Rights of the Child (CRC), *Concluding Observations on the Combined 3rd and 4th Periodic Reports of China, adopted by the Committee at its sixty-fourth session (16 September–4 October 2013)*, UN Doc. CRC/C/CHN/CO/3-4, 29 Oct. 2013, para. 81.

33 K. Janowski, *UNHCR Seeks Access to North Koreans Detained in China*, Beijing, UNHCR, 21 Jan. 2003, available at: <http://www.unhcr.org/3e2d81b94.html> (last visited 13 Feb. 2018); A. Mahecic, *China: UNHCR Calls for Access to Myanmar Refugees*, Geneva, UNHCR, 4 Sep. 2009, available at: <http://www.unhcr.org/news/briefing/2009/9/4aa108159/china-unhcr-calls-access-myanmar-refugees.html?query=kokang> (last visited 13 Feb. 2018); A. Mahecic, *UNHCR Reaches Kachins Sent Back from China*, Geneva, UNHCR, 7 Sep. 2012, available at: <http://www.unhcr.org/5049cdba9.html> (last visited 13 Feb. 2018).

34 Chan & Schloenhardt, “North Korean Refugees and International Refugee Law”, 222.

35 See L. Song, “Border Residents or Refugees? The Status of Displaced Ethnic Kachins and Kokangs in Yunnan Province, China”, *International Journal of Refugee Law*, 29(3), 2017, 466–487.

36 UNHCR, *UNHCR Reaches Kachins Sent Back from China*; HRW, *Isolated in Yunnan*, 30.

### 3. CHINA AND THE REFUGEE CONVENTION AND PROTOCOL

#### 3.1. Accession

In May 1979, a UNHCR mission visited China.<sup>37</sup> According to Liang, the then United Nations High Commissioner for Refugees, Poul Hartling, told the Chinese authorities that the displaced Vietnamese in China qualified for refugee status under international law and that China should make use of international assistance available for refugees.<sup>38</sup> At that time, the Chinese authorities had let in and locally settled more than 200,000 displaced persons from Vietnam.<sup>39</sup> Most of them were of Chinese descent and China had previously insisted that they were returning Chinese nationals, despite Vietnam's claim that they were Vietnamese nationals.<sup>40</sup>

UNHCR's advice was appealing to the Chinese authorities, which was facing financial difficulties in supporting the large numbers of displaced persons from Vietnam.<sup>41</sup> In early August 1979, the Chinese authorities declared that all the displaced persons from Vietnam should be called refugees.<sup>42</sup> On 1 September 1979, the then Chinese Minister of Foreign Affairs, Mr Hua Huang, wrote in his reply to UNHCR that China agreed to "consider carefully" the invitation to become a party to the Refugee Convention and Protocol.<sup>43</sup> Later that year, upon the request of China, UNHCR Excom approved an assistance programme to be carried out in co-operation with the Chinese Government for the Indo-Chinese refugees in China.<sup>44</sup> The aid programme became one of the first United Nations aid programmes in China.<sup>45</sup>

Three years later, on 24 September 1982, China acceded to both the Refugee Convention and Protocol.<sup>46</sup> It made reservation on the following articles: (1) the

- 37 UNHCR, *UNHCR Fonds 13 Records of the High Commissioner: Sub-fonds 2 Poul Hartling 1968-1987 (predominant 1977-1985)*, Geneva, UNHCR, 2009, available at: <http://www.unhcr.org/4b2610be9.pdf> (last visited 13 Feb. 2018).
- 38 S.Y. Liang, *guoji nanmin fa [International Refugee Law]*, Beijing, Intellectual Property Publishing House, 2009, 252.
- 39 United Nations General Assembly (UNGA), *Meeting on Refugees and Displaced Persons in South-East Asia, Convened by the Secretary-General of the United Nations at Geneva, on 20 and 21 July 1979, and Subsequent Developments: Report of the Secretary-General*, UN Doc. A/34/627, 1979.
- 40 See for example, Spokesman of the Overseas Chinese Affairs Office of the State Council, "Statement on Viet Nam's Expulsion of Chinese Residents", 2 Jun. 1978, *Beijing Review*, 16; M. Godley, "A Summer Cruise to Nowhere: China and the Vietnamese Chinese in Perspective", *The Australian Journal of Chinese Affairs*, 4, 1980, 50; Paomin Chang, *Beijing, Hanoi, and the Overseas Chinese*, Berkeley, University of California Institute of East Asian Studies, 1982, 39.
- 41 W. Shi, "28 wan yinzi nanmin zai zhongguo [280,000 Indo-Chinese Refugees in China]", *China Society*, 10, 1999, 52.
- 42 Liang, *International Refugee Law*, 274.
- 43 The People's Republic of China State Council, Public Announcement 1982 NO. 14, 10 Jun. 1982, 621, available at: <http://www.gov.cn/gongbao/shuju/1982/gwyb198214.pdf> (last visited 13 Feb. 2018).
- 44 Letter of Intent between the Government of the People's Republic of China and the Office of the United Nations High Commissioner for Refugees, signed on 8 May 1985, Beijing, available at: <http://www.refworld.org/docid/3edf390b4.html> (last visited 13 Feb. 2018).
- 45 Y.T. Long, "Jieshou lianheguo de yuanzhu, jiushi jieshou yizhong hezuo de jingtin [Accepting United Nations Assistance Is Embracing Cooperation Spirit]", available at: <http://data.book.hexun.com/chapter-2482-3-6.shtml> (last visited 13 Feb. 2018). Prior to 1979, China refused to accept United Nations aid.
- 46 UN, *Status as at: 11-03-2017 Convention relating to the Status of Refugees*; UN, *Status as at: 11-03-2017 Protocol relating to the Status of Refugees*.

latter half of article 14 of the Refugee Convention, which concerns artistic rights and industrial property; (2) article 16(3) of the Refugee Convention, which concerns access to courts; and (3) article 4 of the Refugee Protocol, which concerns settlement of disputes.<sup>47</sup>

China was one of the first Asian State parties to the Refugee Convention and Protocol.<sup>48</sup> It was also one of the first communist countries to accede to these instruments.<sup>49</sup> As a background of China's accession to the Refugee Convention and Protocol, the following historical events need to be highlighted. First, as mentioned above, more than 200,000 displaced persons from Vietnam had been locally settled as Chinese nationals returning from Vietnam by the time of mid-1979. Having been treated as Chinese nationals, they generally had the same rights as other Chinese nationals. China's subsequent recognition of their refugee status in August 1979 and accession to the Refugee Convention and Protocol in 1982 hardly created any additional obligations for the Chinese Government towards the Vietnamese refugees, but allowed China to avail itself to the international assistance for refugees.

Second, in late 1978, China began its reform and open up (*gaige kaifang*) process.<sup>50</sup> As a result, the Chinese authorities desired to integrate into the international community and there was a revival of interest in international law. Between 1981 and 1984, China acceded to eight international human rights treaties, which amount to almost a third of the 27 international human rights treaties China has acceded to.<sup>51</sup> It is likely that China's accession to the Refugee Convention and Protocol in 1982 was partly driven by Beijing's desire to integrate into the international community.

### 3.2. Implementation at national levels

In the first decade following China's accession to the Refugee Convention and Protocol, the Chinese authorities did not show a good understanding of the provisions of these instruments. For example, in 1989, seven years after China's accession to the Refugee Convention and Protocol, a provincial office submitted an enquiry to the Chinese Ministry of Public Security (MPS) regarding the Vietnamese refugees' eligibility for Chinese ID cards. In the enquiry, the provincial office referred to the Vietnamese refugees as "*guiguo nanmin* [refugees who returned to China]",

47 *Ibid.*

48 Japan acceded to the Convention and Protocol in 1981 and 1982 respectively. The Philippines acceded to both instruments in 1981. Turkey and Yemen were also parties to the Refugee Convention and Protocol prior to China's accession. UNHCR Bureau for Asia and the Pacific, *Regional Update*, Geneva, UNHCR, Mar. 2014, 5, available at: <http://www.unhcr.org/5000139a9.pdf> (last visited 13 Feb. 2018).

49 J. Sztucki, "Who is a Refugee? The Convention Definition: Universal or Obsolete?", in F. Nicholson & P. Twomey (eds.), *Refugee Rights and Realities*, Cambridge, Cambridge University Press, 1999, 55.

50 Brown, *Thirty Years On – China Celebrates the Reform Process*.

51 Chinese State Council Information Office, "2012 *zhongguo renquan shiye de jinzhan* [2012 Progress of Human Rights in China]", *Xinhua*, 14 May 2012, available at: [http://news.xinhuanet.com/politics/2013-05/14/c\\_115758619.htm](http://news.xinhuanet.com/politics/2013-05/14/c_115758619.htm) (last visited 13 Feb. 2018); China Human Rights Studies Association, "*zhongguo jiaru le naxie guoji renquan gongyue he yidingshu* [Which International Human Rights Treaties and Protocols Has China Ratified]", *People's Daily Online*, 27 Mar. 2006, available at: <http://theory.people.com.cn/GB/49150/49152/4239175.html> (last visited 13 Feb. 2018).

seemingly confusing the concept of refugees and that of overseas Chinese nationals returning to China.<sup>52</sup> In its reply, the MPS stated:

Regarding people who reside in China as a “refugee”, their nationality should be identified first. Refugees should refer to persons who, due to reasons of race, politics and religion, etc., stay outside of their country of origin, and are unable or unwilling to receive protection from that country, including stateless persons who, due to such reasons, are unable to stay in their country of habitual residence, and unable or unwilling to return to that country.<sup>53</sup>

In comparison, the Refugee Convention, when read with its 1967 Protocol, defines a refugee as any person who:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>54</sup>

The definition of a refugee given by the MPS reply, which is no longer in force, omitted the requirement of well-founded fear for persecution, which is central to the definition of a refugee under the Refugee Convention. In addition, the MPS reply did not mention “membership of a particular social group”, which is a ground for refugee status under the Refugee Convention, and used the term “politics (*zhengzhi*)” rather than “political opinion (*zhengzhi jianjie*)” as a ground for refugee status.

In 1992, the MPS issued a notice on handling aliens illegally entering or overstaying in China (the 1992 Notice) to provincial public security authorities. The 1992 Notice mentioned that the number of Pakistanis, Iranians, and Afghans overstaying in China was increasing year by year and that most of these people, “using the excuse of escaping wars, applied for refugee status with UNHCR’s office in China, and after registered with UNHCR, lived on charity provided by UNHCR”.<sup>55</sup> The Notice

52 Between the 1950s and 1970s, due to anti-Chinese movements in Malaysia, Indonesia and India, several waves of overseas Chinese nationals returned from those countries on ships sent by the Chinese Government to collect them. Most Indochinese refugees are ethnic Chinese and they received treatment on a par with those Chinese nationals returning from Indonesia and India. This is probably the cause of the Jiangxi office’s confusion.

53 The People’s Republic of China Ministry of Public Security (MPS), Security Management Bureau, Reply to Jiangxi Province Resident ID Card Issuance Office’s Enquiry about Whether to Issue ID Card to Refugees Returning to China 1989, GONGSAN[1989]NO. 350, 1989, available at: [http://www.pkulaw.cn/fulltext\\_form.aspx?Gid=87608&Db=chl](http://www.pkulaw.cn/fulltext_form.aspx?Gid=87608&Db=chl) (last visited 13 Feb. 2018). Translation by the author.

54 Art. 1A(2) of the Refugee Convention.

55 The People’s Republic of China MPS, *Notice on Handling Illegal Entry and Illegal Stay of Aliens in accordance with Law*, GONGTONGZI[1992]NO 39, 6 Apr. 1992, available at: [http://www.pkulaw.cn/fulltext\\_form.aspx?Db=chl&Gid=922beab5289d584&keyword=%E9%9D%9E%6%B3%95%E5%85%A5%E%A2%83&EncodingName=&Search\\_Mode=accurate&Search\\_IsTitle=0](http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=922beab5289d584&keyword=%E9%9D%9E%6%B3%95%E5%85%A5%E%A2%83&EncodingName=&Search_Mode=accurate&Search_IsTitle=0) (last visited 13 Feb. 2018). Translation by the author.



required local level public security authorities to repatriate all aliens who illegally entered or were overstaying in China “regardless of whether they have registered with UNHCR” and stated that “UNHCR shall not intervene in China’s sovereign matters”.<sup>56</sup> In 1992, China repatriated 172 aliens who allegedly entered China illegally or were overstaying in China, including more than 30 UNHCR refugees.<sup>57</sup>

As of December 2017, China has incorporated few provisions of the Refugee Convention and Protocol into its domestic law and has not established a national mechanism for refugee status determination. Domestic Chinese law contains no provisions on who qualifies as a refugee, which organisation or government body is responsible for refugee status determination, or how an application for refugee status can be made. The only provisions in Chinese law which concern asylum or treatment of refugees are article 32 of the 1982 Chinese Constitution and article 46 of the 2012 Law on Exit and Entry Administration. The former provides that “[t]he People’s Republic of China may grant asylum to foreigners who request it for political reasons”.<sup>58</sup> The latter allows foreigners who have been recognised as refugees to stay or reside in China and to obtain identity certificates from public security organs and foreigners who are applying for refugee status to stay temporarily in China and to obtain temporary identity certificates from Chinese public security organs during the refugee status determination process.<sup>59</sup> Article 46 of the 2012 Law on Exit and Entry Administration is the first provision in Chinese law regarding the treatment of refugees.<sup>60</sup>

In theory, by acceding to the Refugee Convention and Protocol, China made a commitment to be bound by the provisions of these instruments; it also has the obligation to implement the Refugee Convention and Protocol in good faith according to the principle of *pacta sunt servanda* enshrined in article 26 of the 1969 Vienna Convention on the Law of Treaties,<sup>61</sup> to which China is a party. However, generally speaking a treaty can only be enforced domestically in China after a Chinese law has transformed the treaty into domestic Chinese law or authorised the direct application of the treaty in China.<sup>62</sup> The Chinese Constitution is silent on the legal status of

56 *Ibid.*

57 C.D. Liu, “*dui gongan churujing guanli bumen jiaqiang nanmin guanli de jidian sikao* [Several Thoughts on Improving Refugee Administration by Border Exit and Entry Administration Department of Public Security System]”, *Journal of Beijing People’s Police College*, 4, 2000, 47.

58 Official English translation available at: [http://www.npc.gov.cn/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm) (last visited 13 Feb. 2018).

59 Official English translation available at: <http://www.mps.gov.cn/n16/n84147/n84196/3837042.html> (last visited 13 Feb. 2018).

60 UNHCR, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights’ Compilation Report – Universal Periodic Review: People’s Republic of China*, Geneva, UNHCR, Mar. 2013, 1, available at: <http://www.refworld.org/pdfid/5135b0cb2.pdf> (last visited 13 Feb. 2018).

61 Art. 26 of the Vienna Convention on the Law of Treaties, 1155 UNTS 331, 23 May 1969 (entry into force: 27 Jan. 1980).

62 Xue Hanqin & Jin Qian, “International Treaties in the Chinese Domestic Legal System”, *Chinese Journal of International Law*, 8(2), 2009, 322; G.Q. Jiang, “*guojifa yu guojitiaoyue de jigewenti* [Several Issues of International Law and International Treaties]”, Beijing, National People’s Congress of the People’s Republic of China, 29 Apr. 2000, available at: [http://www.npc.gov.cn/npc/xinwen/2000-04/29/content\\_1459914.htm](http://www.npc.gov.cn/npc/xinwen/2000-04/29/content_1459914.htm) (last visited 13 Feb. 2018).

international treaties ratified by China within the Chinese domestic legal system;<sup>63</sup> no consensus has emerged among jurists and scholars on the subject.<sup>64</sup> According to Judge Hanqin Xue of the International Court of Justice, and Qian Jin, strictly speaking, treaties ratified by China do not automatically become part of Chinese domestic law and therefore do not automatically become enforceable in China.<sup>65</sup> Since article 46 of the 2012 Law on Exit and Entry Administration is the only provision concerning the treatment of refugees in Chinese law and the direct application of the Refugee Convention and Protocol has not been authorised by any Chinese law, the Refugee Convention and Protocol are not enforceable in China as of December 2017.

Although the Refugee Convention and Protocol do not impose a legal obligation for States Parties to establish a national refugee status determination mechanism, it is in line with the spirit of these instruments for States Parties to establish a fair and effective refugee status mechanism.<sup>66</sup> The Chinese authorities, specifically the Ministry of Foreign Affairs, the MPS, and the Ministry of Civil Affairs, have been working on the draft Rules for Identification and Administration of Refugees with the assistance of UNHCR since the mid-1990s.<sup>67</sup> The draft Rules contain provisions on definition of a refugee, authorities in charge of refugee affairs, refugee status determination, temporary settlement and repatriation of refugees, and loss of refugee status.<sup>68</sup> The draft Rules were presented to the Chinese State Council (the Chinese central Government) for deliberation in 2008, but were never adopted.<sup>69</sup> The fact that the Chinese authorities have been working on a national refugee regulation, to some extent, indicates political willingness to improve refugee protection in China. The delay in the process, however, suggests that such political willingness is still not strong enough to provide a legal guarantee for the protection and rights of refugees under Chinese law.

#### 4. CHINA AND UNHCR

China is a member of the UNHCR ExCom, UNHCR's governing body. It succeeded to the ExCom membership from Taiwan, which represented the State of China at

63 Constitution of the People's Republic of China, promulgated on 4 Dec. 1982, last amended on 14 Mar. 2004, available at: [http://www.npc.gov.cn/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm) (last visited 13 Feb. 2018).

64 For discussions on domestic implementation of treaties in China, see for example Xue and Jin, "International Treaties in the Chinese Domestic Legal System", 300; S.Z. Guo, "Implementation of Human Rights Treaties by Chinese Courts: Problems and Prospects", *Chinese Journal of International Law*, 8(1), 2009, 161; Y.W. Liu, "guoji tiaoyue zai zhongguo shiyong xinlun [New Thoughts on Application of International Treaties in China]", *Jurists Review*, 2, 2007, 143.

65 Xue and Jin, "International Treaties in the Chinese Domestic Legal System", 306.

66 UNHCR, *Fair and Efficient Asylum Procedures: A Non-Exhaustive Overview of Applicable International Standards*, Geneva, UNHCR, 2 Sep. 2005, available at: <http://www.refworld.org/docid/432ae9204.html> (last visited 13 Feb. 2018).

67 The People's Republic of China, *Combined Seventh and Eighth Periodic Reports on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/CHN/7-8, 17 Jan. 2013, para. 225.

68 *Ibid.*

69 UNHCR, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: People's Republic of China*, 2.

the UN until 1971 and which became a member of UNHCR ExCom in 1958.<sup>70</sup> When the representation of the State of China at the UN transferred from Taiwan to China in 1971,<sup>71</sup> the UNHCR ExCom membership also transferred from Taiwan to China. Prince Sadruddin Aga Khan, the then UN High Commissioner for Refugees, noted in February 1972 that the entrance of China into the UN:

[...] is important not only in the political field but also to UNHCR specifically because [the State of] China is a member of our Executive Committee. [...] When the People's Republic became a member, it automatically had the right to avail itself of their seat on our governing body.<sup>72</sup>

Cooperation between UNHCR and China, nevertheless, dates back to the early 1950s, when a UNHCR Special Office operated in Shanghai to evacuate European refugees between 1952 and 1956.<sup>73</sup> UNHCR did not return to China until almost a quarter century later when it established a task office in Beijing in February 1980 to respond to the Vietnamese refugee influx.<sup>74</sup> On 1 December 1995, the Task Office in Beijing was upgraded to a Mission Office, which was further upgraded to a Regional Office in May 1997.<sup>75</sup> Nowadays, the UNHCR Regional Office in Beijing covers Mainland China, Hong Kong, Macau, and Mongolia.<sup>76</sup> Additionally, UNHCR maintains a Sub-Office in Hong Kong.<sup>77</sup>

At present, the UNHCR Beijing Office is responsible for conducting refugee status determination in China and for providing life-sustaining assistance to refugees in China, including accommodation, living allowances and access to basic health care.<sup>78</sup> Although China and UNHCR had agreement on cooperation in refugee status determination,<sup>79</sup> the Chinese Government has not substantially involved itself in the refugee status determination procedures administered by UNHCR.<sup>80</sup>

70 UNHCR, *Executive Committee's Membership by Year of Admission*, Geneva, UNHCR, undated, available at: <http://www.unhcr.org/40112e984.html> (last visited 13 Feb. 2018).

71 For more information about historical background, see E. Luard, "China and the United Nations", *International Affairs*, 47(4), 1971, 729–744.

72 UNHCR, *Oral Statement of Prince Sadruddin Aga Khan, United Nations High Commissioner for Refugees, to UNHCR Headquarters Staff on 1 February 1972*, Geneva, UNHCR, 1 Feb. 1972, available at: <http://www.unhcr.org/3ae68fb314.html> (last visited 13 Feb. 2018).

73 G. Peterson, "The Uneven Development of the International Refugee Regime in Postwar Asia: Evidence from China, Hong Kong and Indonesia", *Journal of Refugee Studies*, 25(1), 2012, 328.

74 UNHCR, *UNHCR Regional Representation in China*, Geneva, UNHCR, undated, available at: <http://www.unhcr.org/hk/en/134-china-2.html> (last visited 13 Feb. 2018).

75 China–UNHCR Agreement on the Upgrading of the UNHCR Mission in the People's Republic of China to UNHCR Branch Office in the People's Republic of China, Beijing, 1 Dec. 1995 (entry into force: 1 Dec. 1995), available at: <http://www.nkfreedom.org/UploadedDocuments/UNHCR-China1995Treaty.pdf> (last visited 13 Feb. 2018).

76 *Ibid.*

77 *Ibid.*

78 *Ibid.*

79 Art. 3(1) of the China–UNHCR Agreement on the Upgrading of the UNHCR Mission in the People's Republic of China to UNHCR Branch Office in the People's Republic of China.

80 Y.J. Wang, "guanyu jianli woguo nanmin baohu falv zhidu de jidian sikao [Several Thoughts on Establishment of Refugee Protection Mechanism in China]", *Public Security Research*, 12, 2005, 47.

The Chinese Government does not provide financial support to refugees in China either.<sup>81</sup>

China claimed to have maintained a cooperative relation with UNHCR.<sup>82</sup> Since the 1980s, China and UNHCR have worked together to support the Vietnamese refugees in China.<sup>83</sup> UNHCR provides training for Chinese Government officials every year,<sup>84</sup> and held several symposiums jointly with the Chinese Government on refugee protection issues.<sup>85</sup> China has donated annually to UNHCR since 1990.<sup>86</sup> Before 2009, its annual donation was USD 250,000 in most years.<sup>87</sup> Since 2011, China's financial contribution to UNHCR increased rapidly. In 2013, China's contribution to UNHCR was nearly USD 1,500,000, representing a more than 210 per cent increase from 2012 and a nearly 500 per cent increase from 2011.<sup>88</sup> In 2014, China announced that it would raise its regular annual donation to UNHCR from USD 250,000 to USD 800,000.<sup>89</sup> China's contribution to the UNHCR further increased in 2015 and 2016, standing at USD 941,841 and USD 2,808,971 respectively.<sup>90</sup>

Despite the recent increase, China's annual contribution to UNHCR is still significantly lower than that of the United States or Japan. In 2016 and 2015 respectively, China ranked 39th and 51st in terms of the amount of annual contribution to UNHCR, while the US and Japan ranked the first and the second.<sup>91</sup> Given that China has been the second largest economy in the world since 2010,<sup>92</sup> its financial contribution to UNHCR does not appear to be commensurate with its economic volume.

81 UNHCR, *UNHCR Regional Representation in China*.

82 Chinese Permanent Mission to Geneva (CPMG), *China's Relationship with United Nations High Commissioner for Refugees (UNHCR)*, Geneva, CPMG, 16 Apr. 2004, available at: <http://www.china-un.ch/eng/rqrd/jblc/t85094.htm> (last visited 13 Feb. 2018); Y.S. Ke, Adviser of the Chinese Delegation, Statement at the Third Committee of the 62nd Session of the General Assembly, on the Report of UNHCR (Item 42), New York, 8 Nov. 2008, available at: <http://www.fmprc.gov.cn/ce/ceun/eng/xw/t380695.htm> (last visited 13 Feb. 2018).

83 UNHCR, *UNHCR Regional Representation in China*.

84 Interview with UNHCR officials, Beijing, Aug. 2015.

85 *Ibid.*

86 Liang, *International Refugee Law*, 254, footnote 1.

87 *Ibid.*

88 UNHCR, *Government Contributions to UNHCR*, Geneva, UNHCR, 2014, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e487cd6&submit=GO> (last visited 23 Apr. 2017).

89 CPMG, zhongguo daibiao Ren Yisheng gongcan zai lianheguo nanmin zhiweihui di65ci huiyi yibanxing bianlun zhongde fayan [*Statement of Chinese Representative Ren Yisheng at 65th UNHCR ExCom Meeting*], Geneva, CPMG, 2 Oct. 2014, available at: <http://www.china-un.ch/chn/hyyfy/t1197675.htm> (last visited 13 Feb. 2018).

90 UNHCR, *Contributions to UNHCR for the Budget Year 2016 (as at 30 September 2016) in US Dollars*, Geneva, UNHCR, 2016, available at: <file:///localhost/Users/lilisong/UNHCR%C2%A0-%20Contributions%20to%20UNHCR%20for%20Budget%20Year%202016,%20as%20at%2030%20September%202016.html> (last visited 13 Feb. 2018); UNHCR, *Contributions to UNHCR for Budget Year 2015 (as of 31 December 2015)*, Geneva, UNHCR, 2015, available at: <http://www.unhcr.org/558a639f9.pdf> (last visited 13 Feb. 2018).

91 *Ibid.*

92 D. Barboza, "China Passes Japan as Second-Largest Economy", *The New York Times*, 15 Aug. 2010, available at: [http://www.nytimes.com/2010/08/16/business/global/16yuan.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2010/08/16/business/global/16yuan.html?pagewanted=all&_r=0) (last visited 13 Feb. 2018).

The relations between China and UNHCR are not always free from fractions. For example, China deported 15 UNHCR refugees before the 2008 Olympic in Beijing.<sup>93</sup> In response, UNHCR expressed concerns:

On this occasion as always in the past with similar cases, UNHCR has made it clear to China that any deportation of refugees must scrupulously observe the relevant articles of the 1951 Refugee Convention, to which the People's Republic of China is a party, and depending on the circumstances may well constitute a violation of the *non-refoulement* provision of the Convention.<sup>94</sup>

Indeed, it was not the first time China forcibly repatriated UNHCR refugees. As mentioned above, in 1992, more than 30 UNHCR refugees were repatriated by the Chinese authorities.<sup>95</sup> In the 1992 Notice, the MPS reminded UNHCR that it had no right to intervene in China's internal affairs.<sup>96</sup> Such statements indicate that in the early 1990s China probably viewed UNHCR's protection of refugees as potential intervention in China's internal affairs. China's view of UNHCR probably has not completely changed since then. As noted by Margesson, Chanlett-Avery and Bruno in 2007, China was suspicious of UNHCR's intentions and UNHCR could not provide assistance to North Korean escapees in China in an open, transparent manner.<sup>97</sup> China also repeatedly denied UNHCR's requests to access the Chinese–Myanmar border and the displaced ethnic Kokangs and Kachins from Myanmar,<sup>98</sup> even though it acquiesced several Chinese and Myanmar religious and non-governmental groups to access and provide assistance to the displaced ethnic Kokangs and Kachins in Yunnan Province.<sup>99</sup> This indicates that the Chinese authorities probably remain mistrustful of UNHCR.

In recent years, the Chinese authorities publically expressed disagreement with UNHCR at more than once occasions. For example, in 2013, a spokesman of the Chinese Ministry of Foreign Affairs warned UNHCR not to make “irresponsible comments” on China's treatment of North Korean escapees at one of its regular press conference in Beijing.<sup>100</sup> In 2015, China accused UNHCR of interfering China's judicial sovereignty when UNHCR's Bangkok Office tried to prevent the

93 S. Nebehay, “China Deports Refugees Ahead of Olympics: UN”, *Reuters*, 8 Apr. 2008, available at: <http://www.reuters.com/article/2008/04/08/us-china-un-refugees-idUSL086328120080408> (last visited 13 Feb. 2018); UNHCR, *China: Concerns over Deportation*, Geneva, UNHCR, 8 Apr. 2008, available at: <http://www.unhcr.org/47fb4ed42.html> (last visited 13 Feb. 2018).

94 UNHCR, *China: Concerns over Deportation*.

95 Liu, “Several Thoughts on Improving Refugee Administration”, 47.

96 MPS, 1992 Notice on Handling Illegal Entry and Illegal Stay of Aliens in accordance with Law.

97 R. Margesson, E. Chanlett-Avery & A. Bruno, *North Korean Refugees in China and Human Rights Issues: International Response and U.S. Policy Options*, Washington, United States Congressional Research Service, 26 Sep. 2007, 11, available at: <https://www.fas.org/sgp/crs/row/RL34189.pdf> (last visited 13 Feb. 2018).

98 Janowski, *UNHCR Seeks Access to North Koreans Detained in China*; Mahecic, *China: UNHCR Calls for Access to Myanmar Refugees*; Mahecic, *UNHCR Reaches Kachins Sent Back from China*.

99 “The Han that Rock the Cradle”.

100 T.Y. Jones, “China Warns U.N. against ‘Irresponsible Remarks’ on North Koreans”, *Reuters*, 3 Jun. 2013, available at: <http://www.reuters.com/article/2013/06/03/us-korea-north-china-idUSBRE95209W20130603> (last visited 13 Feb. 2018).

Thai authorities from deporting, upon extradition requests from China, two Chinese nationals who had been identified as refugees by the UNHCR's Bangkok Office.<sup>101</sup> The Chinese authorities summoned UNHCR's representative in China to express China's discontent about the UNHCR Bangkok Office's "interference" and demanded the representative to report China's concerns to the Headquarters of UNHCR in Geneva.<sup>102</sup>

On the other hand, as noted by Greenhill, UNHCR has been criticised by non-governmental organisations and media for being "soft", "powerless" vis-à-vis the Chinese authorities, especially on the issue of North Korean escapees in China.<sup>103</sup> In fact, UNHCR's non-confrontational approach may have pragmatic advantages given the mistrust that the Chinese authorities already have of UNHCR. It is worth noting that China's attitude towards international human rights institutions has been described as "engagement and resistance".<sup>104</sup> The Chinese authorities are known for their defensive attitude to open criticism on China's domestic human rights issues.<sup>105</sup> Avoidance of direct confrontation and maintaining a relatively amiable relation with the Chinese authorities may allow UNHCR to build trust with the Chinese authorities in the long term and to optimise UNHCR's chance of influencing China on less sensitive issues.

Indeed, UNHCR has been playing a vital role in engaging China in the global discourse on refugee protection. For example, in 2012 UNHCR arranged for an international refugee law expert from New Zealand to present New Zealand's national refugee legislation to China as a case study.<sup>106</sup> In 2015 UNHCR also arranged for a seven-person Chinese delegation to visit the Mahama refugee camps in Rwanda, where the Chinese delegation displayed "special interest in the health clinic and the camp extension site".<sup>107</sup> In his visit to China in June 2017, the UN High Commissioner for Refugees, Filippo Grandi, said China could play a key role in solving refugee crises, noting that "[through] its many development projects, China can help to stabilize areas in conflict and address the root causes of displacement".<sup>108</sup>

101 L.Z. Fan, "zhongtai hezuo yindu xianfan zao lianheguo nanminshu ganshe zhongfang ti yanzheng jiaoshe [China Protested against UNHCR's Interference in Extradition of Criminal Suspects from Thailand to China]", *The Global Times*, 25 Nov. 2015, available at: <http://world.huanqiu.com/exclusive/2015-11/8044932.html> (last visited 13 Feb. 2018).

102 *Ibid.*

103 K.M. Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy*, Ithaca, Cornell University Press, 2010, 238; see also Radio Free Asia, "China: Criticism over Deportation", *Radio Free Asia*, 5 Jun. 2011, available at: <http://www.rfa.org/english/news/uyghur/refugee-06052011164247.html> (last visited 13 Feb. 2018).

104 R. Peerenboom, *China Modernizes: Threat to the West or Model for the Rest?*, New York, Oxford University Press, 2007, 83.

105 See for example E. Brems, *Human Rights: Universality and Diversity*, The Hague, Kluwer Law International, 2001, 51.

106 UNHCR, *UNHCR Regional Representation in China*.

107 UNHCR, *Highlights – UNHCR Data Portal*, Geneva, UNHCR, 16 Jun. 2015, available at: [data.unhcr.org/drc/download.php?id=1177](http://data.unhcr.org/drc/download.php?id=1177) (last visited 13 Feb. 2018).

108 V. Tan, *China Can Play Key Role in Solving Refugee Crises – UNHCR Chief*, Beijing, 8 June 2017, available at: <http://www.unhcr.org/en-au/news/latest/2017/6/593946b64/china-play-key-role-solving-refugee-crises-unhcr-chief.html> (last visited 13 Feb. 2018).

## 5. CHINA'S INTERACTION WITH OTHER KEY ACTORS IN INTERNATIONAL REFUGEE PROTECTION

### 5.1. China and Asian-African Legal Consultative Organization

The Asian-African Legal Consultative Organization (AALCO) is an intergovernmental organisation headquartered in New Delhi, India. In 1966, the AALCO adopted a set of principles concerning the Status and Treatment of Refugees (the Bangkok Principles), which was revised in 2001.<sup>109</sup> The Bangkok principles, although not legally binding, are the only codified and comprehensive standards of refugee protection in Asia.<sup>110</sup>

China became a member of the AALCO in 1983.<sup>111</sup> Since then, China has been actively involved in the AALCO's activities. It hosted two AALCO annual conference in Beijing in 1990 and 2015. Several Chinese nationals have served as the Secretary-General or Deputy Secretary-General of the AALCO.<sup>112</sup>

China was not a Member State of the AALCO when the Bangkok Principles were first adopted in 1966. However, it participated in the process of drafting the revised text of the Bangkok Principles. For example, in 1996 China sent a delegation to the AALCO-UNHCR seminar (AALCO was then the Asian-African Legal Consultative Committee) to commemorate the 30th anniversary of the Bangkok Principles;<sup>113</sup> the point of departure of that seminar was "a review of the Bangkok Principles".<sup>114</sup> The members of the Chinese delegation included Hanqin Xue, who was then the deputy director general of the department of treaties and law of the Chinese Ministry of Foreign Affairs and who would later serve as a Judge at the International Court of Justice.<sup>115</sup> Sending Xue, an international law expert valued by the Chinese authorities, indicates that China attached considerable importance to the seminar. At the seminar, Xue served as the moderator of the working group on asylum and treatment of refugees.<sup>116</sup> Following the adoption of the revised text of the Bangkok Principles in 2001, the AALCO adopted a resolution in 2002 which directed the AALCO Secretary-General to explore the possibility of convening a workshop in cooperation with UNHCR and led to a seminar on strengthening refugee protection

109 Final Text of the AALCO's 1966 Bangkok Principles on Status and Treatment of Refugees, as adopted on 24 June 2001 at the AALCO's 40th Session (Bangkok Principles), New Delhi, available at: [www.refworld.org/docid/3de5f2d52.html](http://www.refworld.org/docid/3de5f2d52.html) (last visited 13 Feb. 2018).

110 P. Oberei, "Regional Initiatives on Refugee Protection in South Asia", *International Journal of Refugee Law*, 11(1), 1999, 197.

111 People's Daily Online, "yafei falü xieshang zuzhi (AALCO) [Asian-African Legal Consultative Organization (ALLCO)]", *People's Daily Online*, 30 Mar. 2006, available at: <http://world.people.com.cn/GB/8212/60991/60995/4254971.html> (last visited 13 Feb. 2018).

112 Chinese Ministry of Foreign Affairs, "zhongguo yu yafei falü xieshang zuzhi [China and AALCO]", available at: [www.fmprc.gov.cn/tyfls/bjzl/t84239.html](http://www.fmprc.gov.cn/tyfls/bjzl/t84239.html) (last visited 13 Feb. 2018).

113 Asian-African Legal Consultative Committee, *Report of the AALCC UNHCR Seminar to Commemorate the 30th Anniversary of the Bangkok Principles Concerning the Treatment of Refugees, Manila, Philippines*, New Delhi, Asian-African Legal Consultative Committee Secretariat, 1996, 167.

114 *Ibid.*, 1.

115 *Ibid.*

116 *Ibid.*, 6. The seminar had four working groups to debate the following issues respectively: "definition of refugee", "asylum and standards of treatment", "durable solutions", and "burden sharing".

during migratory movements in 2003.<sup>117</sup> At this seminar, “interesting accounts of the refugee situation and preoccupations in several countries, in particular China, Egypt, India, Kenya, Syria and Tanzania”, were listened to.<sup>118</sup>

Since 2007, refugee issues have not been included in the AALCO’s agenda.<sup>119</sup> However, during the 2016 China-AALCO Research and Exchange Programme held in Beijing from 29 August to 18 September 2016, “global refugee crisis” was one of the four issues discussed by the AALCO Secretary-General, indicating a mutual interest in the issue from China and the AALCO.

## 5.2. Germany, Australia, and Myanmar

In recent years, there has been emerging international interest to further involve China in the response to refugee crises. Germany, for example, has at several occasions tried to engage China in dialogues about the refugee crisis in Europe. In October 2015, the German Chancellor, Angela Merkel, asked China to assist in solving the refugee problem in Europe during her visit to China.<sup>120</sup> In the same month, the German ambassador to China stated in an interview with Hong Kong’s *South China Morning Post* that “any contribution from China’s side would be more than welcome”.<sup>121</sup> In January 2016, Merkel discussed with Chinese Premier Li Keqiang about China’s potential role in responding to the refugee crisis during a telephone conversation.<sup>122</sup> During the 2016 China–German Human Rights Dialogue, Germany invited and arranged for the Chinese delegation to visit refugee protection organisations in Traunstein, Bavaria state and to also talk to refugees.<sup>123</sup> European researchers have recommended that Europe should establish sustainable mechanism to involve China in management of Europe’s refugee crisis.<sup>124</sup> They also reminded China that helping to curb the refugee crisis in European could be a significant trust-building measure between China and Europe, as well as a public relation victory for China.<sup>125</sup>

On the other hand, although China has provided financial assistance to Middle Eastern refugees, it has shown no sign of willingness to host them.<sup>126</sup> As evidenced

117 AALCO, *Status and Treatment of Refugees*, AALCO/43/BALI/2004/SD/S 3, undated, Annex, “Summary of Discussions”, available at: <http://www.aalco.int/refugees-2004.pdf> (last visited 13 Feb. 2018).

118 *Ibid.*

119 Interview with AALCO officer, New Delhi, Aug. 2015.

120 Delfs & Donahue, “Merkel Seeks China’s Support on Refugees as Crisis Follows Her”.

121 W. Wu & Z. Liu, “China’s Help in EU Refugee Crisis Would be Welcome, Says German Ambassador to China”, *The South China Morning Post*, 29 Oct. 2015, available at: <http://www.scmp.com/news/china/diplomacy-defence/article/1873546/chinas-help-eu-refugee-crisis-would-be-welcome-says> (last visited 13 Feb. 2018).

122 M. Rudolf & A. Stanzel, “China Should Do More to Solve the Syrian Refugee Crisis”, *The Diplomat*, 2 Feb. 2016, available at: <http://thediplomat.com/2016/02/china-should-do-more-to-solve-to-syrian-refugee-crisis/> (last visited 13 Feb. 2018).

123 Chinese Ministry of Foreign Affairs, *China and Germany Hold the 14th Human Rights Dialogue*, Beijing, 9 Nov. 2016, available at: [http://www.fmprc.gov.cn/mfa\\_eng/wjbxw/t1414635.shtml](http://www.fmprc.gov.cn/mfa_eng/wjbxw/t1414635.shtml) (last visited 13 Feb. 2018).

124 Rudolf & Stanzel, “China Should Do More to Solve the Syrian Refugee Crisis”.

125 *Ibid.*

126 J.T. Shi, “China Willing to Open Its Pockets, but not Borders, to Middle East Refugees”, *The South China Morning Post*, 26 Jun. 2017, available at: <http://www.scmp.com/news/china/diplomacy-defence/article/>



by the many articles published in leading Chinese State media, the Chinese Government appears to view the West's hegemonic diplomacy in the Middle East and Africa as the root cause of the refugee crisis in Europe and asserts that the West, especially the US, should bear the main responsibility.<sup>127</sup>

Nevertheless, in recent years, the Chinese Government has demonstrated growing interest in refugee issues, especially regarding those in the Asia Pacific Region. In February 2014, China's Vice Foreign Minister, Mr Li Baodong, criticised Australia's treatment of refugees during the 15th bilateral human rights dialogue between China and Australia.<sup>128</sup> Li told Australian media that China was concerned "especially [about . . .] the protection of refugees and asylum seekers, the right of the children of refugees in education and other rights".<sup>129</sup> He said they had also "asked about whether these refugees will be illegally repatriated to other countries". It probably was the first time China initiated conversations on refugee issues with another country. Although some Australian commentators accused China being "hypothetical",<sup>130</sup> others believed that China's criticism was genuine.<sup>131</sup> Incidentally, during the China–German Human Rights Dialogue in November 2015, China also criticised Germany's refugee policy.<sup>132</sup> China's interest in bringing up refugee issues in bilateral human rights dialogues with Australia and Germany, both prominent actors in global refugee policymaking, could be seen as a signal of China's emerging interest in the global discourse on refugee protection.

2099908/china-willing-open-its-pockets-not-borders-middle-east?utm\_source=businessinsider&utm\_medium=partner&utm\_campaign=contentexchange (last visited 13 Feb. 2018).

- 127 For example, J.L. Wang, "West Responsible for Creating Refugee Crisis", *China Daily*, 23 Oct. 2015, available at: [http://www.chinadaily.com.cn/opinion/2015-10/23/content\\_22261216.htm](http://www.chinadaily.com.cn/opinion/2015-10/23/content_22261216.htm) (last visited 13 Feb. 2018); H. Wang, "US Can't Shun Its Responsibility in Refugee Crisis", *China Daily*, 16 Sep. 2015, available at: [http://www.chinadaily.com.cn/opinion/2015-09/16/content\\_21889795\\_2.htm](http://www.chinadaily.com.cn/opinion/2015-09/16/content_21889795_2.htm) (last visited 13 Feb. 2018); W.L. Tian, "oumei dang fansi nanminchao genyuan [Europe and the US Ought to Reflect on the Root Cause of Refugee Crisis]", *People's Daily*, 7 Sep. 2015, available at: <http://opinion.people.com.cn/n/2015/0907/c1003-27549251.html> (last visited 13 Feb. 2018); Xinhua, "nanminchao: ouzhou zishi qiguo [Refugee Crises: Europe Eats the Bitter Fruit It Planted]", *Xinhua*, 8 Sep. 2015, available at: [http://news.xinhuanet.com/world/2015-09/08/c\\_128207912.htm](http://news.xinhuanet.com/world/2015-09/08/c_128207912.htm) (last visited 13 Feb. 2018); N. Wang, "meiguo jiqi ouzhou mengyou yingwei cici nanmin weiji fuze [US and Its European Allies Should Bear Responsibility for Refugee Crisis]", *People's Daily*, 15 Jun. 2016, available at: <http://world.people.com.cn/n1/2016/0615/c1002-28447625.html> (last visited 13 Feb. 2018); Xinhua, "ouzhou nanmin weiji: xifang nantao lishi zeren [Refugee Crisis in Europe: The West Cannot Escape Historical Responsibility]", *Xinhua*, 7 Sep. 2015, available at: [http://news.xinhuanet.com/world/2015-09/07/c\\_1116488257.htm](http://news.xinhuanet.com/world/2015-09/07/c_1116488257.htm) (last visited 13 Feb. 2018).
- 128 "A Hypocritical, Hollow Critique", *The Australian*, 22 Feb. 2014, available at: <http://www.theaustralian.com.au/opinion/editorials/a-hypocritical-hollow-critique/story-e6frg71x-1226834198413?nk=435b3b55a6999c3aea51f56645fd3005> (last visited 13 Feb. 2018).
- 129 S. McDonnell, "China Criticises Australia's Asylum Seeker Policies during Human Rights Talks", *ABC News*, 18 Mar. 2014, available at: <http://www.abc.net.au/news/2014-02-20/china-criticises-australia-human-rights-record/5273478> (last visited 13 Feb. 2018).
- 130 *Ibid.*
- 131 T. Cowie, "China Joins Criticism of Australian Asylum Policy", *Special Broadcasting Service*, 21 Feb. 2014, available at: <http://www.sbs.com.au/news/article/2014/02/21/china-joins-criticism-australian-asylum-policy> (last visited 13 Feb. 2018).
- 132 Rudolf & Stanzel, "China Should Do More to Solve the Syrian Refugee Crisis".

Such emerging interest is perhaps more clearly demonstrated by China's recent involvement in solving the Rohingya refugee crisis.<sup>133</sup> During his visit to Bangladesh and Myanmar in November 2017, the Chinese Foreign Minister offered to mediate between Myanmar and Bangladesh and proposed a "three-phase solution" to the Rohingya refugee crisis.<sup>134</sup> First, a ceasefire should be achieved to restore order and stability in Rakhine state, Myanmar, where the Rohingyas are currently forced to flee; second, Myanmar and Bangladesh, where large numbers of the Rohingyas are fleeing to, should find a way to solve the refugee issue through consultation on the basis of equality; third, as an effort to find a long-term solution, the international community should help alleviate poverty in Rakhine state.<sup>135</sup> Development can lead to stability, Wang said.<sup>136</sup> The impact of China's "three-phase solution" on the deepening Rohingya refugee crisis remains to be seen.<sup>137</sup>

### 5.3. Efforts in seeking refoulement of Chinese refugees

China has sought forced repatriation of Chinese nationals in recent years, who had been recognised as refugees individually or qualified for *prima facie* refugee status, from other countries such as Thailand,<sup>138</sup> Nepal,<sup>139</sup> Cambodia,<sup>140</sup>

- 133 For background of the Rohingya refugee crisis, see S. Cheung, "Migration Control and the Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience", *Journal of Refugee Studies*, 25(1), 2012, 50–70; A.A. Ullah, "Rohingya Refugees to Bangladesh: Historical Exclusions and Contemporary Marginalization", *Journal of Migrant and Refugee Studies*, 9(2), 2011, 135–161. For discussions on motivations for China's direct engagement in the Rohingya refugee crisis, see The Hindu Business Line, "Myanmar, Bangladesh Accept China's Mediator Role to End Rohingya Crisis", *The Hindu Business Line*, 20 Nov. 2017, available at: <http://www.thehindubusinessline.com/news/world/myanmar-bangladesh-accept-chinas-mediator-role-to-end-rohingya-crisis/article9967524.ece> (last visited 13 Feb. 2018); H. Lu & S.F. Shan, "zhongguo teshi tuti woxuan luoxingya Beijing xun nanya xinzhiyu [Chinese Special Envoy Suddenly Proposed to Mediate the Rohingya Issue: Beijing Seeks New Order in South Asia]", *DW News*, 25 Apr. 2017, available at: <http://news.dwnews.com/global/news/2017-04-25/59812351.html> (last visited 13 Feb. 2018).
- 134 L. Zhou, "China Lays out Three-Point Plan to Ease Rohingya Crisis", *The South China Morning Post*, 19 Nov. 2017, available at: <http://www.scmp.com/news/china/diplomacy-defence/article/2120607/china-lays-out-three-point-plan-ease-rohingya-crisis> (last visited 13 Feb. 2018).
- 135 *Ibid*; Xinhua, "China Proposes Three-Phase Solution to Rakhine Issue in Myanmar: FM".
- 136 Xinhua, "China Proposes Three-Phase Solution to Rakhine Issue in Myanmar: FM".
- 137 For more discussion on China's "three-phase solution", see J. Lynch, "How China's Three-Step Approach Can Help Solve the Rohingya Crisis", *The South China Morning Post*, 25 Nov. 2017, available at: <http://www.scmp.com/week-asia/opinion/article/2121496/how-chinas-three-step-approach-can-help-solve-rohingya-crisis> (last visited 13 Feb. 2018); The Indian Express, "US Doubts China's Move to Resolve Rohingya Refugee Crisis", *The Indian Express*, 23 Nov. 2017, available at: <http://indianexpress.com/article/world/us-doubts-chinas-move-to-resolve-rohingya-refugee-crisis-4951167/> (last visited 13 Feb. 2018).
- 138 A.S. Lefevre & P. Temphairojana, "UN Agency Protests Thailand's Deportation of Chinese Refugees", *Reuters*, 19 Nov. 2015, available at: <https://www.reuters.com/article/us-china-thailand-refugees/u-agency-protests-thailands-deportation-of-chinese-refugees-idUSKCN0170J720151118> (last visited 13 Feb. 2018); E. Wong & P. Amatatham, "Ignoring Protests, Thailand Departs about 100 Uighurs Back to China", *The New York Times*, 10 Jul. 2015, available at: <http://cn.nytimes.com/asia-pacific/20150710/c10uighur/enus/> (last visited 13 Feb. 2018).
- 139 HRW, *Nepal: Increased Pressure from China Threatens Tibetans*, Kathmandu, HRW, 2016, available at: <https://www.hrw.org/news/2014/04/01/nepal-increased-pressure-china-threatens-tibetans> (last visited 13 Feb. 2018).
- 140 S.Mydans, "20 Uighurs Are Deported to China", *The New York Times*, 19 Dec. 2009, available at: [http://www.nytimes.com/2009/12/20/world/asia/20uighur.html?\\_r=0](http://www.nytimes.com/2009/12/20/world/asia/20uighur.html?_r=0) (last visited 13 Feb. 2018).

Kazakhstan,<sup>141</sup> Malaysia,<sup>142</sup> and Albania.<sup>143</sup> In some cases, China's efforts in seeking forced repatriation of Chinese refugees not only led to forced repatriation of refugees whose repatriation it pursued, but also had a negative impact on the host country's refugee law and policy.

In December 2009, Cambodia, which is a party to the Refugee Convention,<sup>144</sup> forcibly repatriated 20 ethnic Uighurs who were Chinese nationals and whose refugee claim was under review by UNHCR.<sup>145</sup> A spokesperson of the Cambodian Ministry of Foreign Affairs admitted that the Chinese Embassy had sent a note regarding the Uighurs to the Cambodian Ministry of Foreign Affairs in early December 2009,<sup>146</sup> but the details of the content of the note were not disclosed. The Chinese Government thanked the Cambodian Government for repatriating the Uighurs,<sup>147</sup> which took place only one day before the then Chinese Vice-President Xi Jinping (who became the Chinese president in March 2013) visited Cambodia and signed off on a package of grants, loans, and infrastructure development deals worth more than USD one billion.<sup>148</sup> A spokeswoman for the Chinese Ministry of Foreign Affairs later said at a press conference and in a written statement that the Uighurs repatriated from Cambodia were suspects of criminal offences without providing further details,<sup>149</sup> and that criminals should not be allowed to take advantage of the UN refugee protection system.<sup>150</sup>

Two days before the Cambodian authorities forcibly repatriated 20 Uighurs, Cambodia amended its Sub-decree on Procedures for Examination, Recognition, and Provision of Refugee or Asylum Status for Aliens in the Kingdom of Cambodia to empower the Cambodian Interior Minister to decide over the recognition of a refugee, the termination of refugee status, and the removal of refugees.<sup>151</sup> Analysts have criticised that the "last-minute change" of the Sub-decree was made to pave the way for the forced repatriation of the Chinese Uighurs.<sup>152</sup>

Another example is China's pressure on Nepal to change its policy towards Tibetans fleeing China. Nepal, which is not a party to the Refugee Convention, used

141 H. Beech, "China's Uighur Problem: One Man's Ordeal Echoes the Plight of a People", *Time*, 28 Jul. 2011, available at: <http://world.time.com/2011/07/28/chinas-ughur-problem-one-mans-ordeal-echoes-the-plight-of-apeople/> (last visited 13 Feb. 2018).

142 Associated Press, "Malaysia Accused over Deporting Uighur Asylum Seekers to China", *The Guardian*, 5 Feb. 2013, available at: <https://www.theguardian.com/world/2013/feb/05/malaysia-ughur-asylum-seekers-china> (last visited 13 Feb. 2018).

143 I. Jeffries, *Political Developments in Contemporary China: A Guide*, Oxon, Routledge, 2010, 329.

144 UN, *Status as at: 11-03-2017 Convention relating to the Status of Refugees*.

145 Mydans, "20 Uighurs Are Deported to China".

146 BBC, "zhongguo jinggao jian buyao bihu weizu taofan [China Warns Cambodia Not to Shelter Uighur Fugitives]", *BBC*, 12 Dec. 2009, available at: [http://www.bbc.com/zhongwen/simp/china/2009/12/091215\\_cambodia\\_ughurs.shtml](http://www.bbc.com/zhongwen/simp/china/2009/12/091215_cambodia_ughurs.shtml) (last visited 13 Feb. 2018).

147 J. Ferrie, "Cambodia Tightens Economic Links with China", *Reuters*, 21 Dec. 2009, available at: <https://www.reuters.com/article/idINIndia-44897820091221> (last visited 13 Feb. 2018).

148 Mydans, "20 Uighurs Are Deported to China".

149 E. Wong, "China Is Disputing Status of Uighurs in Cambodia", *The New York Times*, 17 Dec. 2009, available at: [www.nytimes.com/2009/12/18/world/asia/18xinjiang.html](http://www.nytimes.com/2009/12/18/world/asia/18xinjiang.html) (last visited 13 Feb. 2018).

150 *Ibid.*

151 S. Strangio & C. Sokha, "Analyst Rips Uighur Deportation", *The Phnom Penh Post*, 4 Mar. 2010, available at: <http://www.phnompenhpost.com/national/analyst-rips-ughur-deportation> (last visited 13 Feb. 2018).

152 *Ibid.*

to recognise and register Tibetans crossing the Chinese–Nepalese border as refugees between 1959 and 1989.<sup>153</sup> Following a diplomatic rapprochement with China in 1989, Nepal stopped allowing Tibetan refugees to settle permanently in the country,<sup>154</sup> although it continued to permit the “safe passage” of Tibetans fleeing China under the terms of a Gentleman’s Agreement with UNHCR.<sup>155</sup> China explicitly objected to the term “refugee” to be used to refer to the displaced Tibetans in Nepal.<sup>156</sup> On various occasions, Chinese high-ranking officials and diplomats stated that the Tibetans in exile in Nepal were not refugees but illegal migrants.<sup>157</sup> Since the mid-1990s, Nepal have repatriated or denied entry of thousands of Tibetans fleeing China from time to time.<sup>158</sup> According to a Nepalese official, the level of Chinese pressure on the Tibetan refugee issues was so high that Nepal had “no capacity to fight back against this pressure”.<sup>159</sup>

Even when China did not succeed in its efforts in seeking forced repatriation of the Chinese refugees, it could still affect the host country’s future asylum policy towards Chinese nationals. In 2006, Albania accepted five Uighur detainees, who were held at Guantanamo Bay by the US Government, and granted them refugee status.<sup>160</sup> China openly urged Albania to repatriate the Uighur refugees.<sup>161</sup> The Chinese ambassador to Albania met with the Albanian Prime Minister three times, seeking repatriation of the Uighur refugees.<sup>162</sup> At that time, Albania resisted the

153 HRW, *Under China’s Shadow: Mistreatment of Tibetans in Nepal*, Kathmandu, HRW, 1 Apr. 2014, available at: <https://www.hrw.org/report/2014/04/01/under-chinas-shadow/mistreatment-tibetans-nepal> (last visited 13 Feb. 2018).

154 *Ibid.*

155 *Ibid.*

156 *Ibid.*

157 For example, CPMUN, *Chairman of Tibet Autonomous Region Answers Questions from Journalists*, New York, CPMUN, 25 Aug. 2003, available at: <http://www.china-un.org/chn/zt/xzwt/t39608.htm> (last visited 18 Jan. 2017); L.P. Lin & L. Chang, “*waijiaobu: youguanguojia yinggai jiaqiang peihe gongtong fangfan feifa yimin* [Ministry of Foreign Affairs: Relevant Countries Should Strengthen Cooperation in Jointly Preventing Illegal Migrants]”, *Xinhua*, 26 Feb. 2008, available at: [http://news.xinhuanet.com/newscenter/2008-02/26/content\\_7673957.htm](http://news.xinhuanet.com/newscenter/2008-02/26/content_7673957.htm) (last visited 13 Feb. 2018).

158 Canadian Immigration and Refugee Board Research Directorate, *Nepal: Situation of Tibetan Refugees and Those not Recognized as Refugees; Including Legal Rights and Living Conditions (1995-1999)*, 22 Dec. 1999, available at: <http://www.refworld.org/docid/3ae6ad7060.html> (last visited 13 Feb. 2018); Tashi, “UN ‘Concerned’ Over Nepal’s Forcible Repatriation of Tibetan Refugees”, *Central Tibetan Administration*, 29 Jul. 2010, available at: <http://tibet.net/2010/07/un-concerned-over-nepals-forcible-repatriation-of-tibetan-refugees/> (last visited 13 Feb. 2018).

159 HRW, *Under China’s Shadow: Mistreatment of Tibetans in Nepal*.

160 Jeffries, *Political Developments in Contemporary China*, 329; S. Hegarty, “The Uighur from Guantanamo Cooking Pizza in Albania”, *BBC*, 15 Aug. 2012, available at: <http://www.bbc.com/news/magazine-18631363> (last visited 13 Feb. 2018).

161 *Xinhua*, “*Liu Jianchao duncu mei qianfan ‘dongtu’ xianfan* [Liu Jianchao Urges the United States to Repatriate ‘East Turkistan’ Suspects]”, *Xinhua*, 10 May 2006, available at: [http://news.xinhuanet.com/video/200605/10/content\\_4528338.htm](http://news.xinhuanet.com/video/200605/10/content_4528338.htm) (last visited 13 Feb. 2018); “*zhongguo yaoqiu a’erbianya qianfan wuming Xinjiang weiwuerzu renshi* [China Demands Albania Repatriate Five Uighur Ethnicities]”, *Radio Free Asia*, 9 May 2006, available at: [http://www.rfa.org/cantonese/news/china\\_uighur\\_deathpenalty-20060509.html?encoding=simplified](http://www.rfa.org/cantonese/news/china_uighur_deathpenalty-20060509.html?encoding=simplified) (last visited 13 Feb. 2018).

162 “*A’erbianya: zai zhongmei zhijian xunzhao pingheng* [Albania: Searching for Balance between China and the United States]”, *BBC*, 12 Jul. 2010, available at: [http://www.bbc.com/zhongwen/simp/mobile/world/2010/07/100527\\_albania4\\_uighurs.shtml](http://www.bbc.com/zhongwen/simp/mobile/world/2010/07/100527_albania4_uighurs.shtml) (last visited 13 Feb. 2018).

pressure from China.<sup>163</sup> However, in 2009 Albania told Washington that, although it would continue to take detainees from the Guantanamo Bay Prison, it could not take more Uighur detainees.<sup>164</sup>

## 6. ENGAGING CHINA: OBSERVATIONS AND RECOMMENDATIONS

This article considers China's engagement in the international refugee protection regime. It examines China's experience with outgoing and incoming refugees, its accession to and implementation of the Refugee Convention and Protocol, and its interaction with UNHCR and other key actors in the international refugee protection regime.

China is a major source of refugees as well as an emerging transit and destination for refugees. Having generated large numbers of refugees and received few until the mid-1990s, refugee protection has not been a prioritisation on the Chinese Government's agenda. For example, as mentioned above, China has not enacted national laws to fully implement the Refugee Convention and Protocol, although it acceded to both instruments in 1982;<sup>165</sup> it has not substantially involved itself in refugee status determination procedures administered by UNHCR in China, although the Chinese Government agreed to cooperate in such procedures with UNHCR.<sup>166</sup>

Compared to other world powers such as the US and the European Union, China has remained on the margin in the international discourse on refugee protection. In published statements and comments on refugee issues made by high-ranking Chinese diplomats and officials, there is a notable, consistent emphasis on addressing the root causes of displacement, which according to them include poverty and underdevelopment, as a solution to refugee crises.<sup>167</sup> Such emphasis is reflected in China's proposal of a "three-phase solution" to the Rohingya refugee crisis,<sup>168</sup> and seemingly has been noticed by UNHCR, which said China could play a key role in addressing the root causes of displacement and solving refugee crises through wide-ranging development initiatives.<sup>169</sup>

China has sometimes failed to demonstrate a consistent readiness to honour the provisions and spirit of the Refugee Convention and Protocol. For example, as

163 *Ibid.*

164 Jeffries, "Political Developments in Contemporary China", 329; "Albania: Searching for Balance between China and the United States".

165 UN, *Status as at: 11-03-2017 Convention relating to the Status of Refugees*; UN, *Status as at: 11-03-2017 Protocol relating to the Status of Refugees*.

166 Wang, "Several Thoughts on Establishment of Refugee Protection Mechanism in China", 47.

167 See CPMUN, *Statement by Counsellor YAO Shaojun during the General Debate on the Item of Refugees at the Third Committee of the 72nd Session of the General Assembly Ministry of Foreign Affairs of China*; Chinese Ministry of Foreign Affairs, *Dai Binguo Meets with UN High Commissioner for Refugees Guterres*; CPMUN, *Statement by Mr. LUO Cheng of the Chinese Delegation at the Third Committee of the 64th Session of the UN General Assembly, on Refugees*; Chinese Ministry of Foreign Affairs, *Wang Yi Talks about Issue of Refugees in the Middle East*; Chinese Ministry of Foreign Affairs, *Wang Yi: Both Temporary and Permanent Solutions Should Be Adopted to Eliminate Root Causes in Addressing Syrian Refugee Issue*; UN, *General Assembly Adopts Declaration for Refugees and Migrants, as United Nations, International Organization for Migration Sign Key Agreement*.

168 Xinhua, "China Proposes Three-Phase Solution to Rakhine Issue in Myanmar: FM".

169 Tan, *China Can Play Key Role in Solving Refugee Crises – UNHCR Chief*.

mentioned above, it repatriated UNHCR refugees at more than one occasions;<sup>170</sup> it also actively lobbied several countries, most notably its neighbours in Southeast Asia, for the *refoulement* of certain Chinese nationals, knowing that these Chinese nationals had been granted refugee status or were awaiting UNHCR's decision on their refugee status application.<sup>171</sup>

However, China's gradual emergence as a transit and destination for refugees in recent years may introduce new opportunities for further engagement and integration of China into the international refugee protection regime. On the one hand, China has shown growing interest in refugee matters in recent years. At the national level, for example, it included for the first time in Chinese law an article on treatment of refugees in its 2012 Law on Exit–Entry Administration.<sup>172</sup> At the international level, its financial contribution to UNHCR has increased significantly since 2011;<sup>173</sup> it included refugee policy as a topic in bilateral dialogues with Germany and Australia,<sup>174</sup> and even proposed a solution to Rohingya refugee crisis and mediated between Myanmar and Bangladesh.<sup>175</sup> Simultaneously, there is emerging international interest to further involve China in managing refugee flows. For example, as mentioned above, Germany and Malaysia have called on China to help tackle refugee crises in Europe and Asia.<sup>176</sup>

The international community should take the opportunity presented by China's emerging interest in refugee issues to further engage China in the international discourse on refugee protection and persuade China to contribute more to the global effort to manage refugee crises. There are good reasons why greater involvement in international cooperation to solve refugee problems is in China's interest. First, as China's economic and political influence continue to grow, it is likely to attract more asylum seekers. Two top-10 refugee-producing countries, namely Myanmar and Afghanistan,<sup>177</sup> border China. Several of China's neighbours, including India, Malaysia, Thailand, Indonesia, and Vietnam, are not yet a party to the Refugee Convention or Protocol.<sup>178</sup> If China's neighbours push refugees away, there is a good chance that they will eventually try to go to China. It would be in China's interest to work in partnership with international and regional organisations and other countries in the Asia-Pacific Region to promote coordinated response to refugee problems in the region.

170 Liu, "Several Thoughts on Improving Refugee Administration", 47.

171 For example, Lefevre & Temphairojana, "UN Agency Protests Thailand's Deportation of Chinese Refugees"; Beech, "China's Uighur Problem"; Mydans, "20 Uighurs Are Deported to China".

172 Art. 46 of the 2012 Law on Exit–Entry Administration.

173 For example, UNHCR, *Government Contributions to UNHCR; UNHCR, Contributions to UNHCR for the Budget Year 2016 (as at 30 September 2016) in US Dollars*.

174 McDonnell, "China Criticises Australia's Asylum Seeker Policies"; Rudolf & Stanzel, "China Should Do More to Solve the Syrian Refugee Crisis".

175 Xinhua, "China Proposes Three-Phase Solution to Rakhine Issue in Myanmar: FM".

176 Delfs & Donahue, "Merkel Seeks China's Support on Refugees as Crisis Follows Her"; Lai, "Malaysia Asks China to Help Tackle Rohingya Refugee Crisis in Bangladesh".

177 UNHCR, *Mid-Year Trends 2016*, 8.

178 UN, *Status as st: 11-03-2017 Convention relating to the Status of Refugees*.

Second, as China furthers its One-Belt-One-Road initiative to strengthen economic and diplomatic ties with other countries,<sup>179</sup> Chinese overseas investment is bound to continue to increase in volume and to expand to more areas of the world. As large-scale refugee movement is becoming a global phenomenon, more and more Chinese overseas investment will be exposed to the threat of destabilisation caused by large-scale refugee flows. Having noted that much of China's recent contribution to refugee programmes was on the sidelines of the One-Belt-One-Road Forum, UNHCR encouraged China to invest in countries hosting large numbers of refugees under the One-Belt-One-Road initiative.<sup>180</sup> Indeed, China's desire to protect Chinese strategic and economic investments abroad, notably those in the One-Belt-One-Road regions, is likely to provide a motivation for China to contribute to solving issues caused by large-scale refugee movements.<sup>181</sup>

A challenge for the international community to engage China in refugee protection would be to persuade and pressure China to fully respect the provisions and spirit of the Refugee Convention and Protocol, including ensuring sufficient protection for refugees within China and refraining from actively seeking *refoulement* of Chinese nationals abroad who deserve the protection of the Refugee Convention and Protocol. More research needs to be done to understand how refugee issues are interlinked with China's key policy concerns, such as domestic stability, border security, foreign relations with neighbouring countries, in order for the international community to formulate a more effectively strategy for persuading the Chinese Government to conform with the Refugee Convention and Protocol. In the meantime, international organisations which have experience in working with China in relevant fields, such as UNHCR and the AALCO, should play a leading role in initiating high-level dialogues with the Chinese Government on refugee protection issues to further the engagement and integration of China in the international refugee protection regime.

179 See for example, McKinsey & Company, *China's One Belt, One Road: Will It Reshape Global Trade?*, McKinsey & Company, Jul. 2016, available at: <http://www.mckinsey.com/global-themes/china/chinas-one-belt-one-road-will-it-reshape-global-trade> (last visited 13 Feb. 2018).

180 Tan, *China Can Play Key Role in Solving Refugee Crises – UNHCR Chief*.

181 Y.F. Pei, "nanmin wenti dui 'yidaiyilu' anquan baozhang de yingxiang [Refugee Problems' Impact on Security along 'One-Belt-One-Road']", *China Think Tanks*, 2 Mar. 2016, available at: <http://www.china-thinktanks.org.cn/content/detail?id=2934325> (last visited 13 Feb. 2018).