UiT The Arctic University of Norway

Center for Peace Studies

Biopolitics and Human Agency of North Korean border crossers

The Ethics of Coexistence, Mobility-Identity-Security Analysis (MISA), and Risk Analysis (RA)

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List of Abbreviations and Acronyms

A4P	Action for Peacekeeping (A4P)
APA	American Psychological Association
APADP	American Psychological Association Dictionary of Psychology
AVR	Assisted Voluntary Return
CAT	Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment
CCKCRI	Constitutional Court of Korea Constitutional Research Institute
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CoE	Council of Europe
CPAS	Comprehensive Performance Assessment System
CPS	Center for Peace Studies
CRC	Convention on the Rights of the Child
CRC-OP-SC	Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography
CRPD	Convention on the Rights of Persons with Disabilities
CSS	Critical Security Studies
DCRK	Democratic Confederal Republic of Koryo
DIKRA	Development of Inter-Korean Relations Act
DO	Diskriminerings Ombudsmannen
DPRK	Democratic People's Republic of Korea
EASO	European Asylum Support Office
EC	European Commission
ECtHR	European Court of Human Rights
EP	European Parliament
EU	European Union
FAO	Food and Agriculture Organization
FRA	European Union Agency for Fundamental Rights
GFP	Global Firepower
GoC	Government of Canada
HRC	Human Rights Council
HRW	Human Rights Watch
IAEG-SDGs	Inter-agency and Expert Group on SDG Indicators
ICBM	Intercontinental Ballistic Missile
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Covenant on the Elimination of All Forms of Racial Discrimination

ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearances
ICRC	International Committee of the Red Cross
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
IKECA	Inter-Korean Exchange and Cooperation Act
ILO	International Labour Organization
ISEAS	Institute of Southeast Asian Studies
KBS	Korean Broadcasting System
KINU	Korea Institute for National Unification
KLIC	Korea Law Information Center
KOSIS	Korean Statistical Information Service
MCP	Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas
MIS	Mobility, Identity, and Security
MISA	Mobility-Identity-Security Analysis
MND	Ministry of National Defense
MOFA	Ministry of Foreign Affairs
MOJ	Ministry of Justice
MOU	Ministry of Unification
MSF	Médecins Sans Frontières
NCUF	National Community Unification Formula
NHRC	National Human Rights Commission of Korea
NIUE	National Institute for Unification Education
NKHRA	North Korea Human Rights Act
NKRPSSA	North Korean Refugees Protection and Settlement Support Act
NUPI	Norwegian Institute of International Affairs
NSA	National Security Act
NSF	Norsk Senter for Forskningsdata
OAU	Organisation of African Unity
OESSE	Law on Emergency Situation and State of Exception
OHCHR	Office of the United Nations High Commissioner for Human Rights
PPP	People Power Party
PUAC	Peaceful Unification Advisory Council
RA	Risk Analysis
RAM	Risk Assessment Matrix

RE	Risk Exposure
RI	Risk Index
RL	Risk Level
ROK	Republic of Korea
RRC	UNHCR Refugee Reception Centre
RSD	Refugee Status Determination
SLBM	Submarine-Launched Ballistic Missile
SPSD	State Political Security Department
SUUKG	Stabilisation Unit of the UK Government
TLC	The Library of Congress
UiT	Universitet I Tromsø
UK	United Kingdom
UN	United Nations
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council
UNTFHS	United Nations Trust Fund for Human Security
UPR	Universal Periodic Review
USA	United States of America
USCIS	U.S. Citizenship and Immigration Services
USDS	United States Department of State
USFK	United States Forces Korea
USGAO	United States Government Accountability Office
WHO	World Health Organization
WWF	World Wide Fund for Nature

Dedication

This thesis is the *first fruit offering* to honor the Lord.

Acknowledgements

Abstract

This thesis discusses mobility, identity, and security (MIS), risk to life, emancipatory everyday peace in the context of biopolitics and human agency of North Korean border crossers. It begins with providing a new concept of human agency comprised of ability and answerability laid on the ground of the ethics of coexistence. Next, the thesis provides prevalent definitions of three identity groups of human mobility – defector, refugee, and international migrant – and reconceptualizes them into descriptive definitions adjusted to North Korean border crossers rest on legal frameworks of five states – South Korea, China, Russia, the US, and the UK. Based on the findings gained from the empirical cases, the thesis develops its mobility-identity-security analysis by reconfiguring the relationship between state and non-state actors and human agents, depoliticizing the identity groups of border crossers, and tracing the emancipatory journey of everyday peacebuilding. At the heart of the analysis is interrelatedness in which coexistence and human agency are two main pillars. Noting that attention to the risk of the border crossing at the individual level in previous academic and professional literature has been insufficient, this thesis sets forth its risk analysis using individual border crossers as a research unit and explains the risk to life circulating in the ecology of border crossing. Specifically, risk assessment methods are developed in this thesis by applying theoretical grounds of human security and peace to the practice of migration politics. The thesis presents a set of analytical tools covering from theoretical exploration of bare life in the international scapegoat system to the quantification of life-threatening risks in border crossing at the individual level, having direct policy relevance to migration management and humanitarian practices. It attempts to empower the disempowered life, *border crossers*, in the discussions of their identity and security and shape the vision of peace, emancipation, and coexistence freed from negation, competition, and disciplines. The thesis concludes with its contributions to Korean politics, biopolitics, and peace studies and suggests avenues for future research to improve the values that this thesis has unveiled.

Keywords: biopolitics, human agency, migration, human security, peace, emancipation, conflict transformation, North Korea

1 Introduction

1.1 A reorientation

The story of North Koreans' border crossing is as old as the Korean War, and certainly as persistent as human rights violations in North Korea. It is a story of emancipatory peacebuilding of human agents, often in very complex mobility, identity, and security politics and biopolitical risk to their life, as this thesis will illustrate. Traditionally, securitizing North Korean border crossers has often been discussed from the state-to-state or government-to-government approaches in which individuals are perceived as in the triptych of recipients of rights protection, targets for law and policy, and competitors of state security. This thesis challenges these perceptions. Before discussing the securitization of North Korean border crossers, it suggests cultivating an outlook capturing the biopolitical nature of border crossing, human agency immanent in border crossers, and the ethical foundation of social world – coexistence.

The practices and theories of biopolitics have made huge advances throughout history, notably with the emergence of demography. However, the story of the ungoverned space of biopolitics is so rarely told despite its ubiquity. Border crossing indicates this ungoverned space, closely associated with a variety of political, social, and economic struggles against the limitation and deterioration of life and living under biopolitics. In this sense, North Koreans as border crossers are no longer victims of the autocratic regime but human agents on their emancipatory journey of building everyday peace actively seeking recognition of their rights, which the states fail to respond. Nevertheless, many analysts prefer to imagine that states are responsible for the *status quo* and order of security and migration systems rather than appreciate the dignity of human agents and social, political, or economic harmony that the border crossers can bring into the security and migration discourses.

This perspective tends to confine the actors and agents into specific roles for problem-solving and crisis management and gives major control to the states. It is no exception to the human security issues that are in disarray, if not in crisis. Addressing security issues of border crossers is inseparable from the question of identification that falls into the state discretion and in the continuity of politicization from the national to international levels. Simultaneously, border crossing as a matter of survival requires risk measurements that are not diluted before reaching individual border crossers. More understanding is needed of the ability the border crossers as human agents have, the transitions of their identity and mobility, and what they demand from the non-border crossers on their emancipatory journey. Similarly, more knowledge is required

about legal and political frameworks producing border crossers as bare life in the international architecture, incompetent humanitarian measures hovering around the difficulties at the surface level, and deep-seated conflicts remain in the issues of migration and peace. It means that the human agents themselves are as much a performer of risk transformation toward the peaceful coexistence of agents and actors as are the state and non-state actors. In this strand of thought, this thesis provides a novel approach and a whole set of analytical tools that would shift the focus of research move beyond the traditional perspectives, boundaries, and levels of analysis. Situating human agency at the center of the new approach, this thesis sheds light on the empowerment of border crossers through three thematic analyses of biopolitics, MIS, and risk.

1.2   Research questions

The thesis aims to answer theoretical and empirical research questions by employing both qualitative and quantitative approaches. The main questions below are developed into operational questions presented and discussed in the respective chapters concerned.

Theoretical research questions: *How can biopolitics and human agency be theorized to analyze North Korean border crossers? What are human agency, ethics of coexistence, and emancipatory everyday peace? What is the risk to life of border crossers, and how to categorize and assess it?*

Empirical research questions: *In which identity are North Koreans categorized by others and themselves? What mobility, identity, and security features are in the border crossing of North Koreans?*

1.3   Literature review

Due to the limited space of this thesis, literature review focuses on relevant studies that deal with the case of North Korean border crossers. The scholarly community has consistently discussed the human rights and human security situations of North Korean border crossers. Ko et al. (2004) focus on the life and well-being of North Koreans during the border crossing. They point out the lack of necessities such as food and shelter when transiting Northeast Asian countries. Ryang (2009) problematizes the dichotomized rhetoric in which North Korea is described either as an 'enemy' or a 'threat' to security in a liberal nation-state sense and attempts to include social, cultural, and ethnic aspects of North Korea in the security discourse. Chung (2009) and Kim (2012) highlight the different identities of North Koreans and changing environments that affect their identities and lives. Koh (2011) analyzes the legal gray zone of

North Koreans and asserts that North Koreans are *prima facie* refugees whose refugee status is not precisely accorded with international law. He illustrates the human security paradigm in the nexus between politics and refugees. Song (2015) analyzes North Korean migration in connection to the levels of human security and explains diplomatic relations between the two Koreas and China, Southeast Asian countries, and the UK. Lastly, Suh (2016) suggests the combination of human rights and human security as a resolution to the conflict on the Korean Peninsula and a key to sustainable peacebuilding.

Despite a wide range of themes covered by the prior research on North Korean border crossers, this thesis will discuss two features that leave much to be desired. First, there is a problem of stereotyping North Korean border crossers as 'victims' through similar and recurring discourse on security and human rights. Such rhetoric seems premised on the notion of deserving victims and unaware of the ongoing conflict that North Koreans are facing (Richmond & Mac Ginty, 2019). It is not difficult to understand that the dearth[1] of information on North Koreans may

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[1] The official statistics and survey provided by the countries (e.g., MOU) should tell more information with clear causal relations that allow researchers to grasp the human rights and security situations of North Korean border crossers in each country. In this regard, the author requested the KOSIS, the government body that provides and handles statistics and data of the MOU, for the statistical information on the re-border crossing of North Koreans (i.e., resettlement in other countries after settlement in the South) and North Koreans' (voluntary) return – in July 2020, MOU announced that 11 North Korean defectors reentered the North for the last five years, but the statistics were based on North Korean official media releases and could not explain about 900 defectors whose current location was unknown (Jung, 2020). Moreover, in 2016, a collective border crossing of North Korean defectors who worked at the regime's North Korean restaurant in China was investigated by MOU after the border crossers had disclosed their circumstance via South Korean media release. Although MOU takes charge of the resettlement of North Koreans in South Korea, it seems that their management system is ineffective in terms of entry and exit of defectors. The author's request turned out in vain as no relevant information was provided. In addition, there is a recent case in which MOU (2022) pointed out the misinformation in a news article that used the research from Lee & Baek (2021), without citing a reference for the correction. In the article of Lee & Baek, the total number of departures was presented as the number of re-border crossings. It is doubtful whether the researchers were given a chance to improve their study with the help of accurate information that MOU could have provided. Although the reliability of their research was damaged due to incorrect information, the author sympathizes with the researchers concerning the necessity to research the re-border crossing and the return of North Koreans. As far as there is a lack of opportunity to research the returned North Koreans, comprehending North Koreans' human security and human rights situations in the hosting country is inevitably limited and inadequate. The survey results in which North Koreans answered that they have experienced discrimination and feel insecurity with their living (Hana Foundation, 2021; 2022), and the news reports on North Koreans who suffered their living difficulties and passed away in isolation (Ahn, 2019; Park, 2019) imply that the human rights and security situations of North Korean border crossers in hosting countries can be threatened. It can be argued that the weakening of social integration and basic living support reflected in surveys and reported in the media are the issues of the social safety net of the hosting society and therefore are not specific issues about the North Korean border crossers. However, they imply that there should be more attention to North Korean border crossers from the host society as a whole, including the academic communities. Information on the voluntary return of North Koreans can give researchers, policymakers, and fellow Koreans more insights into what must be done for the human rights and security of North Koreans. Without adequate data, the research environment compels the researchers to consume the 'easily blamable North Korean regime' instead of investigating the human rights and security situations in the host

discourage researchers from developing discourse in domains other than human security and human rights which are already an agenda due to North Korea's notorious human rights abuses. However, this does not justify the habit of depicting North Koreans as victims. The problem with such victimization practice is that the dignity of North Koreans is often untold while the wounds of the North Koreans are explicitly discussed. This tendency is worsened with the particular languages referring to North Korean border crossers, such as 'escapees' and 'victims'. The principle of do no harm[2] and research ethics should be considered in human rights and security discourses. Second, there are rarely quantitative methods developed or used for addressing the issues of North Korean border crossers. The main arguments and research results on North Koreans rely heavily on qualitative analysis, which can lead to subjective conclusions without confirming a clear causal relationship. Besides, the lack of analytical tools can also lead to narrow and monotonous analyses. In turn, North Korean border crossers as a research topic tend to be described either too abstractly or too complex. This is problematic as it can aggravate the shortcomings of the current research tendency together with the first feature. Drawn on the above reflections, this thesis will attempt an in-depth analysis of North Korean border crossers using both qualitative and quantitative approaches and discuss North Korean border crossers' human rights and security issues without romanticizing or victimizing them.

1.4 Positionality

This thesis locates itself at the intersection of several fields of studies including biopolitics, migration politics, and human geography while placing peace and security studies at its center. Biopolitics and human agency serve as theoretical framework, politics of migration as conceptual framework, and peace and security as analytical framework.

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countries where North Korean border crossers should no longer be abandoned by the society or hidden by the government.

[2] 'Do no harm' is a widely recognized referent point of academic research and field practices. It is first introduced by Mary B. Anderson (1999). In her academic work on do no harm, she emphasized that "aid inevitably does have an impact on warfare". This phrase can be applied in this thesis context as follows: research inevitably has an impact on perceiving who North Koreans are. Although research itself does not determine the identity of North Koreans, it inevitably influences how the identity is presented. Recently, there is a growing sense to step forward to 'ethics' beyond do no harm. Researchers increasingly acknowledge that 'human suffering ought only to be justifiable if it contributes to the ending of that suffering' (Hugman et al., 2011). This tendency can be seen as in the same line as this thesis theoretical concept, the ethics of coexistence. 'Do no harm' and the academic trend revolving around are useful to grasp the context of this thesis' main arguments and analysis.

When it comes to its methodological position, this thesis utilizes quantitative and qualitative approaches. Specifically, it takes advantage of both case study and collective study[3]. The thesis benefits from case study to gain in-depth knowledge in a specific context. For example, it selects the North Korean border crossers' perspective to understand border crossing in the historical, political, social, and economic context of North Korea. However, this approach has shortcomings incapable of providing full definitions or generalizable findings that can be applicable across cases (Peter, 2014). It can also produce empirical bias. In contrast, collective study focuses on the generalizable characteristics of the research topic. Many scholars in this approach prefer to use quantitative analysis to find relations between variables and propose 'data-driven' inferences rather than 'case-oriented' empirical observations. When it applies to peacebuilding research, it often translates peacebuilding as an instrument indicating the quality of third-party intervention and concludes its goals in abstract languages such as 'sustainability' and 'hybrid' without going through agenda-setting with the people targeted for peacebuilding (ibid.). The problem is that in much research the operation and evaluation of peace do not come down to the individual level, and conflict-affected people such as North Korean border crossers are treated as mere beneficiaries or assistants of human rights activities.

This thesis argues that peace can differ between conflict-affected people who experience it and those who observe it outside. This implies that the diminished role of target people and the absence of conflict-affected people's view in peace research cannot effectively explain the peacebuilding or human rights, nor can it connect the advantages between case study and collective study. This is because individuals (i.e., conflict-affected people) are primary contributors of peacebuilding and human rights and at the intersection of case study and collective study. Looking at it the other way round, combining the two approaches can provide insights that each approach could not offer and complements the shortcomings. In this vein, this thesis uses both case study and collective study and extends its analysis from the specific case of North Korean border crossers to the general phenomena of border crossing. In doing so, this thesis seeks its interpretive position as concretizing the abstract and contested concepts such as emancipation, redefining the research unit as individual border crossers, and suggesting peacebuilding in the appropriateness of 'do no harm' by empowering conflict-affected individuals. The positionality of this thesis as a provider of theoretical grounds and analytical

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[3] The author could not find an academic concept theoretically opposing and at the same time complementing the 'case study'. Therefore, the author uses the latter term to denote the study that generates the analysis applicable across cases.

and operational tools for understanding border crossers imparts both academic and professional values to the analyses.

1.4.1   Relevance to peace and conflict studies

The thesis has its academic relevance to peace and conflict studies in terms of both objective and subjective dimensions. Objectively, this thesis concerns a group of people who can be argued as politicized and ideologized refugees for the grounds that they are from a war-divided country with frequent security threat[4] and under human rights abuses of the autocratic regime. In addition, it deals with the security situation in which political-ideologically contrasting ideas and plans for peacebuilding by two Koreas compete and sacrifices individual border crossers for political interests of the regimes. However, this thesis takes a bottom-up and human-oriented security perspective giving attention to border crossers as human agents who can bridge the two Koreas in the transformative process toward peace, rather than analyze the security situation with a traditional state-centric approach. In this vein, this thesis focuses on empowerment of North Korean people on the move (i.e., border crossers, defectors, refugees, and international economic migrants) and their emancipatory journey of peacebuilding through border crossing. Based on the awareness of the current misled divisions between border crossers and non-border crossers and between state and non-state actors and human agents, this thesis attempts to reconcile the privileged and the marginalized by reconceptualizing the social world as an ethical time and space. Furthermore, by theorizing border crossing as an emancipatory journey of everyday peacebuilding and border crossers as active peacebuilders, this thesis contributes to peace studies by broadening the sense of peace and understanding of peacebuilding.

Subjectively, this thesis participates in shaping a vision of conflict *transformation*. This thesis views that the value of peace and conflict studies is in the *vision-shaping* for peaceful coexistence which translates conflict into a catalyst for constructive changes (Brunk, 2012). This approach is fundamentally distinguished from competitions for all-or-nothing, confinement of human agency, normalization of roles of actors and agents in peacebuilding, and the tendency to use violence as a response to conflict. The thesis asserts that this vision

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[4] Although South and North Koreas are in an armistice that denotes a suspension of hot war, the tension between the two has not fully dissolved. Notably, there has not been a peace treaty that both parties have fully implemented and maintained in their inter-Korean relationship. Moreover, several battles at the borders and failed economic and social cooperation have constantly threatened the security situation on the Korean Peninsula and in East Asia as witnessed by history. It implies that peacebuilding in inter-Korea is crucial not only for 'border crossers' whose life and living will be directly improved but also for enhancing the security in international society (see, chapter 2 and 5).

shaping is the strength of and what differentiates peace and conflict studies from other similar fields turning the events, issues, and people that are also relevant and often examined by other disciplines into a process for peace.

1.4.2 Reflexivity

The author acknowledges her prior experience, knowledge, and beliefs are part of the research process. Stance herself as neutral and ethical as possible, the author has focused on securing reliability, validity, and transparency throughout the research project. This thesis increases its reliability in terms of both intersubjectivity and intrasubjectivity. In order to enhance the intersubjectivity, the researcher rests mainly on the official documents of the state and non-state actors for analysis so that other researchers can access the data and form the basis for study in line with this thesis. Intrasubjectivity has been improved by cross-checking and tuning the main arguments and the outcomes to be coherent. Since this thesis extensively uses a variety of concepts and theories and produces rich analyses and results, the author has particularly paid attention to intrasubjectivity to prevent self-defeating arguments and errors. When it comes to the validity, the thesis develops its own concepts and methods in the context of research topic so that the components are well-adjusted to the study case. Furthermore, it has applied appropriate theories, models, and citations in each section and analysis, some of which are developed by the author considering the need and importance. The transparency of the research is secured through gatekeeping of research materials using the official documents and proven academic papers, direct reflection of the viewpoints of the study subject in the analysis, and thick descriptions that the readers can easily follow the process of analyses. In particular, the survey of this thesis is confirmed by and conducted within the ethical and general guidelines of the Norwegian Centre for Research Data (NSD), the Center for Peace Studies (CPS), and the responsible institution, the Arctic University of Norway (UiT).

1.5 Defining terms

Throughout this thesis, the term *life* will mainly refer to biological life and physical survival but also to human beings and an individual's unique way of life. The term *living* will be mainly used to describe well-being and way of life. The terms life and living can be used interchangeably depending on the context of the text because the two terms are intertwined with and indispensable from each other. *North Koreans* are termed in varied yet recognizable ways. Among the terms is 'North Korean border crossers' which necessarily needs clarification on what it exactly stands for. This term will be discussed in chapter 6 as it contains one of the main

analyses of this thesis. In this thesis, the terms *non-state actors* and UN and its suborganizations are used interchangeably to refer to the international community that seeks and believes in an active, responsible, and sustainable international cooperation between international actors including the states. On the other hand, the term *state-actors* refers to the states and implies a state-centric approach of the individual states to the self-help of the international system. A variety of definitions of the term *human rights* will be illustrated in this thesis yet this thesis will selectively use the term to refer to the fundamental rights and freedoms that are necessary to each and every human being with equal dignity and deservingness of secured life and decent living. The term *human security* will be used in its broadest sense to indicate all endeavors to protect human rights while human insecurity will be used in the opposite sense referring to 'threatened' human security and human security 'at risk'. This thesis extensively uses abbreviations and acronyms considering the page limit and efficiency of writing, and footnotes facilitate the understanding of the readers by providing additional background knowledge.

1.6 Structure of the thesis

The thesis consists of 8 chapters, in which qualitative analyses, including empirical case studies and MISA takes the first half of this thesis, and quantitative analysis revolving around RA takes the latter half. The introduction has been given in the current chapter 1, and the main body starts with chapter 2 providing a brief background of the border crossing of North Koreans and an overview of the main arguments of the subsequent chapters. Chapter 3 provides the theoretical framework of this thesis illustrating key concepts of biopolitics and suggesting the novel concepts of human agency and the ethics of coexistence developed by the author. The methods and the rationale for selected methods are briefly explained in chapter 4. As many of the methods are the parts of the main analyses in this thesis, the chapter on methods and methodology is relatively lighter than other chapters. Instead, in-depth descriptions of the methods are given in the respective sections and chapters of relevance. Chapter 5 deals with the empirical cases of North Korean border crossers. It conceptualizes three identity groups of North Koreans based upon the law and legal decisions of five states. Taken from the findings in chapter 5, the complexity of mobility, identity, and security of border crossing is analyzed in chapter 6. Here, survey results and geopolitical maps are given adding in-depth interpretations to the analyses. In chapter 7, the risk to life is conceptualized, categorized, and formulated through Risk Analysis (RA) and assessment methods. Contributions to related studies and avenues for future research conclude this thesis in chapter 8.

2 Contextual framework

It is widely acknowledged that North Koreans under the autocratic regime of Kim Jong-un suffer from human rights violations and insecurity [5] despite North Korea's obligation to guarantee rights protection according to its accession to international human rights treaties (see Table 1). The predicament is often described as chronic and pervasive human rights abuses, inequitable access to resources, and political oppression (Koh, 2011; Lee & Kim, 2011; Song, 2015; Suh, 2016). However, there is little access to observe or investigate the human security situation in North Korea, making it difficult to ascertain what is going on. Perhaps the most problematic of such incompetence is not the scarcity of information itself but the mythical and arbitrary presentation that portrays North Koreans either as devotional nationalists or helpless victims of the dictatorship (Ryang, 2009). It is not much to say that there seems to be an identity spectrum of North Koreans in which 'nationalists' and 'victims' are placed at each end. However, it is arguable to perceive North Koreans based on this spectrum as it is unlikely to provide a holistic view on North Koreans, particularly those *crossing borders*. This is because the identity of North Koreans is not solely defined by observation; it is instead a product of the internal mind of North Koreans and the external mind of observers in the interactional processes (Waterman, 2014; Schachter, 2014). It is thus apprehensible that the testimonies of North Koreans do not always match the observers' descriptions, particularly regarding the identity of North Koreans (chapter 6). The discrepancy between reality and observation and the lack of information about North Korea imply that North Koreans need more opportunities to speak about themselves.

Table 1. International human rights treaties and North Korea

Contemporary international treaties on human rights	Number of State parties	Ratified or acceded by North Korea (dd/mm/yyyy)
International Covenant on Economic, Social and Cultural Rights (ICESCR)	166	14 Sep 1981

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[5] The issues are raised by relying heavily on testimonies from North Koreans who have crossed borders, academic research, and reports from non-state actors such as UNHCR and other human rights organizations, while the official data from Pyongyang is not considerably included. This is due to the insufficient data provided by Pyongyang itself. However, the information created and gathered by non-state actors is insufficient as well due to the restricted access in North Korea. The insufficiency of information is reflected in the limited data on North Korea from widely used indicators for measuring the security and fragility of the states such as the Human Capital Index (World Bank) and Human Development Indicators (UNDP). However, the validity of these indexes in terms of emancipatory peace vis-à-vis 'peace arbitrage' needs to be critically examined, and this will be further discussed in chapter 7.

International Covenant on Civil and Political Rights (ICCPR)	172	14 Sep 1981
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	189	27 Feb 2001
Convention on the Rights of Persons with Disabilities (CRPD)	175	06 Dec 2016
Convention on the Rights of the Child (CRC)	196	21 Sep 1990
Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (CRC-OP-SC)	176	10 Nov 2014
International Convention on the Rights of All Migrant Workers and Their Families	56	
Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT)	162	
International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED)	165	
International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD)	179	

Created by the author based on data from UN Treaty Body Database.

2.1 Decisions of human agents

Under the same dictatorship over their life and living, different decisions are made by individual North Koreans. While the majority decide to remain under Kim's reign, some still cross the borders and leave their homeland. The decisions they make in the ability to act intentionally, distinctly, and independently in response to the same external situation (i.e., a highly regulatory society under dictatorship) can be seen as the practice of *human agency*, and individuals as human agents pave the way for their chosen future (Mayr, 2011). However, the two different decisions are sharply contrasting in the sense that the consequence of leaving can risk the life of the decision-maker oneself. In other words, even if the purpose of leaving is to flourish and thrive in living, the very decision can lead to the opposite consequences and cost life. The death of 'human agent' does not mean a simple loss of biological function, but it means the total elimination of the ability to make life-threatening, or more appropriately, 'life-betting' decisions. In this vein, the maneuver between leaving and staying in North Korea should be distinguished although the decisions to leave and stay are both the practice of human agency. This is because the act of crossing borders can be seen as the most devoted practice of human agency. In light of this, interpreting North Koreans who cross borders as mindless nationalists or helpless victims seems less plausible.

Once North Koreans cross the borders, their identity becomes complicated in a legal sense (Lee, 2018; CCKCRI, 2019; Song, 2020; Lee, 2020). They are categorized into *refugees*, *international migrants*, and *defectors* according to the state's legal interpretation of their status (Kim 2012). The authority that determines North Korean's identity at the transit or destination countries is not often given to the North Korean being scrutinized. It is given to legal entities, international communities, and states (Haas et al., 2020). The decisive role is played by the state that exercises sovereignty over its territory on which the movement of North Korean takes place (Goodwin-Gill, 2014). It implies that North Koreans are considered with reference to the nation-state and its borders (Hansen, 2014). For North Koreans to enter and settle in the country, it is decisive whether North Koreans are eligible and desirable in the eyes of the country concerned. However, identifying North Koreans is complex and challenging to the states due to the highly *politicized* nature of their identity affected by the intertwined history, security situation, and legal and political backgrounds of the two Koreas.

2.2 Historical backgrounds of two Koreas

The root cause can be traced back to the division of the North and South derived from the inter-Korean war in an armistice without a substantive peace treaty for the last 70 years. The nature of the Korean War is not simply political, but *ideological* (Ohn, 2010; Suh 2016) and laid the legal and political foundations that have made North Koreans politicized. The Korean War between 1950 and 1953 functioned as a proxy war that demonstrated the competition between socialism and liberalism in the Cold War setting. The permanent divergence on the Korean Peninsula was taken place when the North and South adopted two contrasting political orientations and establish their independent regimes rather than reconciliation after the war. As a consequence, North Korea is founded on people's democracy and South Korea is on liberal democracy. Introducing the two different regimes was affected by the politico-ideological blocs during the Cold War and the Korean Peninsula remained as the frontline and the test board of political and ideological power games of the international system. The lifelong division of the two Koreas is the consequence of the self-help that each regime has secured its authority on the Peninsula and international allies based on artificial and intentional politico-ideological differentiation from each other. In other words, the two Koreas are strategically positioned in contrast to one another in international architecture.

2.3 Security on the Korean Peninsula

The historical context is intertwined with the security situation on the Korean Peninsula. South Korea allocates its 13% budget to the national defense (Statistics Korea, 2022), and the amount of allocation has gradually increased circa 5~6% per year between 2001 and 2022 (Kwon et al., 2021; Park, 2022;). According to GFP (2022), military strength of South Korea is ranked 6th in world ranking. Compared to its latest GDP data of year 2020 which was 10th in the world ranking, military defense is a significant national task to South Korea (Word Bank, 2022). The fundamental reason can be found in the lack of peace between the two Koreas which is aggravated due to Pyongyang's frequent provocations, including persistent attempts at nuclear armaments and missile tests. It is problematic that both Koreas rely primarily on military or nuclear power to coexist with one another. The security issues on the Peninsula are arduously managed rather than solved. This is also reflected in Pyongyang's adherence to a 'muddling-through' embodied in the pattern of brinkmanship and charm offensive (KINU, 2012). According to Sagan (1996), Pyongyang's nuclear armament and provocations against South Korea and its allies can be explained as a political strategy to ensure the dictatorship through escalation dominance. In other words, the nuclear armament of North Korea is in line with the 'security model' that can be resolved when the regime's security threat is removed, as in the cases of South Africa (nuclear weapons) and Argentina and Brazil (nuclear development) have shown. Seven South Korean administrations since late 1980 developed policies to address North Korean nuclear armament. Considering the ongoing nuclear development of the North, none of them resulted in a fruitful outcome. It is evaluated that Seoul underestimated the nuclear development in Pyongyang from the beginning and failed to address the fundamental causes (Ji, 2009; Nah, 2013).

2.3.1 Three recent administrations of the South

The security situation on the Peninsula can be further explained by the North Korea policy of the South Korean administrations. Among all, this thesis focuses on the recent Lee (2008-2013), Park (2013-2017), and Moon (2017-2022) which are in the Sixth Republic of Korea (1988-)[6]. The South Korean administrations have developed their own policy to North drawn on two main approaches known as the 'hardline policy' and the 'sunshine policy' (ref. Engagement

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[6] The Sixth Republic of Korea has featured a 5-year single presidential term and direct election system, which are interpreted as the beginning of the civil government in South Korea after the military occupation of the Fifth Republic (Lew & Im, retrieved from https://www.britannica.com/place/South-Korea/Relations-with-the-North).

policy of the US) that are respectively preferred by conservative and progressive political parties. As the names of each policy imply, the hardline policy pursues a hawkish approach to the North and the sunshine policy seeks a dovish approach to the relationship with the North. To be specific, conservative administrations Lee and Park implemented 'Vision 3000, Denuclearization and Openness Plan' and 'Trust-Building Process on the Korean Peninsula' respectively, and the progressive Moon administration carried out 'Peace and Prosperity on the Korean Peninsula' (Lee et al., 2017).

Table 2. A digest of North Korea policy of three former South Korean administrations (2008-2022)

Administration	Lee Myung-bak (2008-2013)	Park Geun-hye (2013-2017)	Moon Jae-in (2017-2022)
Policy	Vision 3000: Denuclearization and Openness Plan	Trust-Building Process on the Korean Peninsula	Peace' and Prosperity on the Korean Peninsula
Political inclination	Hawkish/Hardline	Hawkish/Hardline	Dovish/Sunshine
Key features	Forceful persuasion and coercive diplomacy through Economic inducement: conditional comprehensive aid to North Korea to bring its per capita income to 3,000 U.S. dollars and, Sanctions: North's denuclearization	Trustpolitik: establishing a minimum level of trust, assured consequences for actions that breach the peace, institutionalization of resilient confidence-building measures in Asian security network and, Alignment Policy of balancing between tough line and flexible negotiation	Three goals: Resolution of the North Korean Nuclear Issue and Establishment of Permanent Peace, Development of Sustainable Inter-Korean Relations, Realization of a New Economic Community on the Korean Peninsula Four strategies: Taking a Step-by-Step and Comprehensive Approach, Tackling the Issues of Inter-Korean Relations and the North Korean Nuclear Threat Simultaneously, Ensuring Sustainability through Institutionalization, Laying the Foundation for Peaceful Unification through Mutually Beneficial Cooperation Five principles: Korea-led Initiative, Strong Defense, Mutual Respect, Interaction with the People, International Cooperation
Important events	July 2008: ROK's suspension of inter-Korean tourism project of Kumgang mountain in DPRK November 2008: DPRK's suspension of tourism in Kaesong 2009 & 2010: official visit reunion[7] of inter-Korea Separated Families March 2010: DPRK's attack and the Cheonan warship	2014 & 2015: official visit reunion of inter-Korea Separated Families September 2014: ROK hosted the 17th Asian Games and DPRK participated August 2015: rocket and artillery fire over Yeoncheon in ROK	April and May: reunion of inter-Korea Separated Families September 2017: North Korean nuclear test February 2018: ROK hosted PyeongChang 2018 Winter Olympics and DPRK's Kim Yo-jong, sister of Kim Jong-un and senior official in the state propaganda ministry, made her first politico-diplomatic appearance in the dialogue between the two Koreas April, May, and September 2018: Inter-Korean Summit and Panmunjom Declaration August 2018: official visit reunion of inter-Korea Separated Families

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[7] Official visit reunion arranged by the government (KOSIS, 2022).

explosion at the Yellow Sea November 2010: DPRK's bombardment of Yeonpyeong and naval skirmishes December 2011: Kim Jong-un, the third Supreme Leader, succeeded his father Kim Jong-il.	February 2016: ROK's suspension of joint inter-Korean economic project 'Gaesong Industrial Complex (GIC)' in DPRK.	June 2020: DPRK's demolition of Gaesung inter-Korean joint liaison office October 2020: DPRK displayed new missile ICBM January 2021: DPRK test fired SLBM December 2020: ROK amended (Act No. 17763) criminalization of inter-Korean propaganda leaflet campaigns[8] March 2022: DPRK launched ICBM.

Created by the author drawn on the data from Kim, 2009; KBS, 2010; Park, 2011; KINU, 2012; Park, 2013; MOU, 2013; MOU, 2014; Choe, 2015; Park, 2015; Hwang, 2015; Kim, 2019; IISSF, 2020; TLC, 2021; Ray, 2022; Im & Lew, 2022.

The administrations had to back and forth, loosen and tight the relationship with the North in the issues of economy, politics, and military. The ambivalence of cooperation and hostility between the two Koreas is well-illustrated through the shifts of security strategies. On the one hand, the absence of reassured cooperation and commitment to peacebuilding seems the biggest obstacle to securitizing the Korean Peninsula despite multiple attempts over the last two decades. On the other hand, such insecurity on the peninsula results in the people of both Koreas not being considered in the policies and negotiations between the regimes while being reduced to mere pawns of economic projects and military tactics played by the two Koreas. For instance, reunion of separated families which has been a long-cherished wish to both Koreans since the division has been consumed as a 'political event' at disposal of the two regimes. In fact, there was no reunion in 2017 because North Korea turned away from the consensus due to the issue of collective border crossing assisted by Seoul (see the case in 2.5). Moreover, the reunion has been suspended since 2019 as a result of deteriorated inter-Korean relations. This implies that the reunion is less a humanitarian obligation but a political instrument between the two regimes that can be at any time abandoned depending on the political gains and costs. The fact that there have frequently been political hostilities at the inter-Korean level before and after the reunion event underpins this criticism. Considering the ruthless reign in the North, the reunion event seems not genuinely intended for a free meeting of the separated families. Instead, it can be rather interpreted as a coerced and manualized political event. The biggest problem is that the

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[8] The UN special rapporteur on human rights in North Korea, Ojea Quintana, expressed concern regarding the vague wording of the Act which can be applied in a broad sense leading to the disproportionate penalization of some forms of political expression and legitimate activities of some civil society actors (Lee, 2021). Nevertheless, Ojea Quintana admitted the need to limit the anti-North Korea propaganda activities in line with a justifiable purpose (KBS World, 2022; Kim, 2022).

family life of separated Koreans is highly contextualized and can depend on inter-Korean politics regardless of individuals' will and decisions.

A similar problem is seen in the economic dimension. The suspension of GIC implies many Koreans had to suffer by being taken away from their means of living due to the political relationship between the two Koreas. From the individual Koreans' perspective, these are fundamentally issues of unstable working environment and infringement of their labor rights imposed at the national level. It raises the concerns that fundamental rights are violated by the regimes. Cultural events and social rights are no exception. Olympic détente (Mitchell et al., 2021), which showed sociocultural affinity between ordinary Koreans and raised hopes for an improved relationship between the Koreas through soft diplomacy did not result in sustainable commitment to keeping peace on the Peninsula. Regardless of whether the easing of tensions between the two Koreas seen in the public-participating events was derived from the grassroots level or was a mere reflection of the momentary easing led by the regimes, basic family life and basic rights of individual Koreans were threatened. The biopolitical power of the regimes through the ambivalent care and control politicizes Koreans in the dynamics of military assaults, economic suspensions, and political instability.

2.4 Legal and political backgrounds

The politico-ideological complexity between the two Koreas is manifested through the law and government authorities of South Korea where discrepancies are observed between what is officialized and what is applied in practice. At its most primary level, the law of South Korea posits that the North Koreans are South Korean nationals at birth (see 5.1.2.1). This denotes that South Korea is unlikely to recognize North Korea as a sovereign nation-state in the sense of domestic law (e.g., the Constitution). It leads to a question of legal egalitarianism – whether North Koreans as South Korean nationals are equally treated as South Koreans according to the proclamation that two are equated with one another (ref. Kim v Canada, 2010 FC 720). It is about the essence of the 'Rule of Law' that the rules are accepted then the effect is to negate the difference in power or assure access to force that the eligible might enjoy (Mansell & Openshaw, 2019). However, it is dubious that North Koreans can avail themselves of receiving protection as nationals from the distant South Korean government (chapter 5). In this respect, what the law actually says is the loophole that South Korean nationality can only be in actual effect for North Koreans when the South Korean government's protection can be normally provided to North Koreans as it is to South Koreans (Kim v Canada, 2010 FC 720).

When it comes to the South Korean government authorities, the basic stance of authorities is that North and South Koreas are in the 'special relations' that are temporarily recognized in the course of the division as specified in the DIKRA. This approach is straightforwardly represented through the presence and mission of the Ministry of Unification (MOU). MOU is a government body responsible for all issues pertaining to inter-Korean relations and unification, and its main mission is based on the law that specifies the South Korean government to seek peaceful[9] 'unification' on the Korean Peninsula. However, strictly saying, the diplomacy with the North is performed by the Ministry of Foreign Affairs (MOFA) not MOU (MOU, 2022). This shows that North Korea is virtually treated as an independent sovereign as like any other state. At the same time, North Korea is being specified either as a threat or a major enemy (*jujeog*) by the Ministry of National Defense (MND) since 1995. The largest conservative party of South Korea, People Power Party (PPP) has also consistently made official statements that North Korea is the main enemy of South Korea (PPP, 2004; 2010; 2017; 2020; 2022). The new president Yoon Suk Yeol elected in March 2022 is interpreted as hawkish in his approach to North Korea and highly likely to establish the relationship between the two Koreas in an opposite direction than the previous progressive Moon administration. For instance, Yoon articulated North Korea as major enemy during his presidential election campaign (Ryu, 2022) and in his first interview concerning foreign policy with international media (Lee, 2022).[10] The frequent shift the stance of Seoul toward Pyongyang implies a lack of coherent strategy for the long term. Contrary to the dividing positions in South Korean politics, there has been constant public support for establishing a peace treaty with the North regardless of the regime shift (Rich, 2022).

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[9] Approaches to peace can differ depending on the administration. For example, the recent Moon administration announced peace as "beyond political and diplomatic peace, for the lives of ordinary people" (Cheongwadae, 2019). On the other hand, the new presidential-elect Yoon articulated that "peace comes from deterring opponent provocations by force" (Huh, 2022; Kim & Park, 2022). The former emphasizes the public, and the latter stresses power. The contrast here shows that 'peaceful unification' is a competed concept within the South Korean governments and can be interpreted differently over time. This implies that unification and its approaches are politicized agendas in South Korea.

[10] According to the media (Park, 2022; Lee, 2022), President-elect Yoon is supported by North Korean communities in South Korea. About 90% of 34 thousand North Korean new settlers supported Yoon during the presidential election campaign. One of the main reasons for support was allegedly the repatriation case of the fishermen in 2019 (see 6.4.2.1) (Park, 2022). It was a controversial decision by the Moon administration that they handed defectors over to the North Korean military via Panmunjom in which a peace declaration was made just the year before (Kim, 2019). The two defectors were tied in a rope, their eyes were covered, and escorted by the Police, not knowing that they were repatriated to the North. This showed how peace at the national level can be disconnected from and indifferent to the life of individuals.The case received criticisms, among other things, that it was an unusual repatriation case carried out by the Police but not by the Red Cross and that the constitutional protection of North Koreans as nationals and the notion of nationality were severely damaged(ibid.).

Table 3. The concept of unification from the perspectives of South Korea and North Korea

Category	ROK's National Community Unification Formula (NCUF) of 1994	DPRK's Democratic Confederal Republic of Koryo (DCRK) of 1991
Ideology	Liberal democracy	*Juche* idea (Independence, self-Reliance, and self-defense)
Principles	Autonomy, peace, democracy	Autonomy, peace, national independence (Revolutionization of South Korea including anti-US, pro-communism, cooperation after the unification)
Agent	All national members	Proletariats
Prerequisites	N/A	Abolishment of National Security Act, Legalization of communistic activities, withdrawal of the United States Forces Korea (USFK)
Procedural stages	Three-stage process: reconciliation and cooperation, confederation, unification (National unification first, state unification afterwards)	N/A
Transitional system	Adoption of the unified Constitution at the inter-Korean summit and organization and operationalization of the united organ through the referendum	N/A
Methods	Democratic inter-Korea election based on the unified Constitution	Political negotiation based on joint meeting
Form of unified Korea	Unified Korea (one nation-state, one system, and one administration)	Confederal state (one nation-state, two systems, and two regimes)
Responsible body after the unification	Unified administration and unified bicameral parliament	Supreme confederal council and permanent confederal council
Future vision	Advanced democratic nation-state ensuring freedom, welfare, and human dignity	N/A

N/A not applicable.

Created by the author based on data from NIUE (2020).

In fact, the conflict among South Koreans often occurs regarding the treatment of North Korea by the government, which is influenced by the political inclination of the ruling party, and this reflects the political division within the South. Sharply conflicting main two parties of South Korea – conservatives and progressives – have their favorable voting constituency in the divisions of generations, gender, and regions. In other words, inter-Korean issues feed the populism in South Korean politics and division among the public. According to the surveys from PUAC (2021), public opinions in South Korea regarding the inter-Korean relationship seem to be divided in various aspects. The regional dimension is clearly seen between

Gyeongsang and Jeolla Provinces. Gyeongsang Province, which generally supports the conservative party, approaches the inter-Korean issues somewhat skeptically while the opposite trend is seen in, Jeolla Province, which has progressives root. The regional division is cross-checked by the result in the political inclination dimension which also indicates a clear contrast between the conservatives and the progressives. Generational division shows that youngsters in South Korea are less favorable of North Korea compared to older generations.

Table 4. Horizontal and vertical social divisions[11] in South Korea regarding inter-Korean issues in 2021 and 2022

Category	Main results
Region	Jeolla Province: highest in positive answer for development prospect after unification (74.4%); agree that the Yoon administration continue the 'North Korea policy' from the Moon administration (82.7%) Gyeongsang Province: lowest in positive answer for development prospect after unification (40.9%); disagree that the Yoon administration continue the 'North Korea policy' from the Moon administration (47.3%)
Gender	Men generally mark higher % in unification is necessary Male in 20s disagree to partial easement of sanctions on the North (64.6%); female in 20s agree the partial easement (66.6%)
Political inclination	Conservatives: highest in disagreement to partial easement of sanctions on the North (50.7%), disagreed that North Korea's participation in East Asian multilateral cooperation will lead to improvement of the inter-Korean relationship (61.2%); disagree that the Yoon administration continues the 'North Korea policy' from the Moon administration (55.3%) Progressives: highest in agreement to partial easement of sanctions on the North (85.1%), agreed that North Korea's participation in East Asian multilateral cooperation will lead to improvement of the inter-Korean relationship (80.4%); agree that the Yoon administration continues the 'North Korea policy' from the Moon administration (82.7%)
Generation	20s: lowest in positive answer for development prospect after unification (53.1%), highest in disagreement to partial easement of sanctions on the North (46.6%) 40s: highest in partial easement of sanctions on the North (73.6%) 50s: highest in positive answer for development prospect after unification (75.4%)
	Male in 20s: unification is unnecessary (49.8%), lowest expectation in DPRK's reform (77%), highest in disagreement to partial easement of sanctions on the North (64.6%) Male in 30s: North Korea's participation in East Asian multilateral cooperation will not lead to improvement of the inter-Korean relationship (55.4%); perceive North Korea as counter party of 'alert and hostility' (62.6%) Male in 50s: unification is necessary (83.7%), North Korea's participation in East Asian multilateral cooperation will lead to improvement of the inter-Korean relationship (74.3%)

Created by the author based on data from PUAC (2021; 2022).

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[11] Drawn on the concepts of horizontal and vertical (in)equality, this thesis conceptualized its own terms horizontal and vertical divisions. Horizontal division is used to refer to the division that occurs based on identities, and vertical division denotes division that takes place based on the sociocultural hierarchy. Region, gender, and political inclination are considered categories of the horizontal division while generational division can be regarded as a vertical division (ref. horizontal and vertical (in)equality).

The gap between the younger generation and the older generation can be interpreted as a difference in cohort memory. For example, South Koreans have undergone different phases of inter-Korean relations depending on the era of North Korea – reign under the first, second, or the current third supreme leader – in which different and evolving inter-Korean issues emerged on the Peninsula. Gender dimension can be interpreted as the mandatory military service of young males in their 20s and 30s is generally influential in perceptions of the security situation on the Peninsula and the inter-Korean relationship different from the females'. For example, this is seen in the result that the young male group has the strictest view of inter-Korean relationships and sanctions on the North among all respondents' groups by generation and gender. The survey results imply that horizontal and vertical social divisions among South Koreans can contribute to the politicization of North Korean individuals through domestic political discourses and populistic movements while complicating the inter-Korean relationship by affecting the government decisions. Clearly, peaceful coexistence seems necessary both on the Korean peninsula and among Koreans.

The vibrant political dynamics in South Korea toward North Korea clash between themselves and with South Korean law. In this regard, one might find orchestrating the politics and law of South Korea into the governing ecosystem on the Peninsula is a complex task. What is more important here is that the discrepancies derived from law and politics made North Koreans 'politicized beings' in a formal, structural, and systemic manner.

2.5 Politicization at international level

The politicization of North Koreans at the national level affects international actors in interpreting the identity of North Koreans. The identification of North Koreans by the states is open to interpretations because the states can use different sources of legal grounds and ways of applying them when identifying North Koreans (Lee, 2018; Lee, 2020). For instance, if a state considers citizenship a primary legal ground for interpreting North Korean's identity, different decisions can be resulted depending on whether the state considers the Northerner dual citizen of the two Koreas or a citizen of North Korea or South Korea (ibid.). Suppose the legal decision-making country puts more importance on the jurisprudence of South Korea than on the gap between the law and the reality of the two Koreas. In that case, the North Korean is likely to be regarded as a dual citizen or a citizen of South Korea who is then an international migrant and ineligible to receive refugee status (Lee, 2018). However, identifying North Koreans crossing borders is not solely based on legal grounds. It also takes political

considerations such as strategic relationships between the decision-making country and the two Koreas (Song, 2015) and domestic political costs that North Koreans might engender in the host country (Bakewell, 2014; Milner, 2014; Song, 2020). In other words, North Koreans are politicized at the international level, which is in a continuity of the politicization at the national level; North Koreans are under the circulating rule of the states exercised through legal and political decisions.

This can take an example of a group border crossing of North Koreans. In 2016, 13 North Korean abroad workers – waitresses and managers of North Korean restaurants – who were dispatched by the Kim regime to China crossed borders to South Korea. What was interesting in this event was the different stances of the states related. Pyongyang asserted that the event was a planned abduction by Seoul (Choe, 2016) because the manager of the restaurant stayed in contact with the national intelligence service of South Korea (NIS) and the border crossing of 13 people took only three days by using a flight as the main transportation for their journey (Hancocks et al., 2018). China was unpleased with Pyongyang's insistence and asserted that the border crossing took place in a legitimate manner on the Chinese territory and thus was not an abduction (Channel A, 2022). Seoul reported this event as the first group border crossing of North Koreans and analyzed the border crossing was influenced by international sanctions on North Korea, which exacerbated the burdens of 13 North Korean workers to fulfill their sales quota and made them on this journey (Mok, 2016). The Special Rapporteur claimed that South Korean government had responsibility and obligation to investigate the event whether it was forcible and against individual North Koreans' will (Lee, 2018). On 9 September 2019, the National Human Rights Commission of Korea dismissed the case for lack of objective evidence because respective border crossers gave contrasting testimonies. Moreover, the allegation that Seoul planned the event for political gain (winning the domestic general election) was also dismissed because there was no evidence. Seoul assisted seven waitresses in their voluntary return to North Korea (ref. assisted voluntary return). All 13 North Koreans had to go through life-changing experiences because of border crossing. Their life was affected either by being parted from and adding life-threatening risks to their families in the North who became the families of treason criminals or by experiencing a series of unwanted events (Channel A, 2022). The dignity of North Koreans was unseen in this event and human rights was being put aside in the dialogues of the states.

2.6 Interrelatedness of mobility-identity-security

This thesis argues that border crossing of North Koreans is at the intersection of mobility, identity, and security. The politicized identity of the North Koreans is affected by their mobility as they are interpreted differently depending on the country of their location (Collyer, 2014). In this interplay of identity and mobility, security issues occur during and after the border crossing. There are threats to physical safety during the border crossing because primary protection for North Koreans on the move and secretly crossing borders is unavailable. North Koreans secretly cross borders to prevents themselves from detection and repatriation to North Korea which at the same time puts them into an unavailable situation for state and international protections. The reason why border crossing has to be a secret is that the secret border crossing is in fact the only option to leave North Korea for average North Koreans. A legal and authorized travel from North Korea is only permitted to the privileged who can secure money, time, and most importantly, the trust of the regime. In fact, even those who are permitted to travel are not given the freedom to move and are under the strict surveillance of the regime at a distance (Channel A, 2022). North Koreans abroad are obliged to monitor each other on a daily basis and report any illegalized activities. For example, reading prohibited classics such as 'the Prince' can be the ground to punish the North Korean and cancel the authorized travel (ibid.). That is to say, leaving North Korea itself can be a threat to any North Korean, both low and high profiles.

Border crossers are considered to have committed 'unauthorized border crossing (*bibupwolgyong* in North Korean)' and 'treason (*jogukbanyeokjoe*)' (see note 33). The illegalization of border crossing might allow transit countries in a friendly relationship with North Korea to transfer North Korean border crossers to their home country upon detection (bilateral treaties of Sino-DPRK and of Russia-DPRK in chapter 5). What makes the deportation of North Koreans problematic is that border crossing is a severe crime in North Korea that can destroy the life and living of border crossers as well as their whole families'[12] (Ha, 2015). The home country – North Korea – is rather a source of threat than a security provider to North Koreans as a refugee *sur place,* and transit countries can foster the insecurity

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[12] If the border crosser is sentenced to more than two years of punishment, he or she is encamped in a prison called '*gyohwaso*', and the three generations of the border crosser's family are put in the prison called '*kwanliso*' due to the guilt by association (Channel A, 2020). The punishment for border crossing can be the death penalty at maximum (see note 33). According to the allegations from the North Korean experts and testimonies from North Koreans, Pyongyang violates the Nelson Mandela Rules and treats the prisoners inhumanely (Hawk, 2012).

of North Koreans for their political gain. The other security threat to North Koreans occurs when they fail to receive asylum from the states. North Koreans as unsuccessful asylum seekers can be put in deportation which can threaten their life unless they can receive subsidiary protection. However, it can be difficult for North Koreans as unsuccessful asylum seekers to receive humanitarian support from state and non-state actors (see 5.4).

2.7 Conflict of security interest between the state and individuals

The interrelatedness of mobility, identity, and security is vividly illustrated in the clash of state-centered and human-oriented security approaches. The conflict of interest between the states and the individuals arises when the securitization of the state and the human rights of individuals collide in their operationalization. The interest of individuals at borders is linked to their life and living (i.e., human security). That is to say, the interest of individuals is not a matter of concessions unless willingly or forcibly sacrificed. The problem is that meeting their interest often requires positive and active engagement of the state which serves the conditions for the enjoyment of human rights and protection of the individuals' interests in its territory and within the ambit of sovereignty. However, the border crossing of North Koreans is also related to the state's interest, and the state may be hesitant about the interests of border crossers. This is because permitting individuals to enter the territory of the state denotes more than a physical and direct change of the individuals' location. The presence of individuals holds social, economic, and political implications that can affect the state as a whole, across the domains and in the long term. In other words, the identity and mobility of border crossers make *security* an important issue to the state, and this influences the state to perceive border crossers as aliens in an administrative and legal sense rather than people in need of protection in the humanitarian context.

2.8 Absence of peace and politicized life of individuals

This chapter has explained that individual North Koreans make distinctive and independent decisions for their life and living but at the same time are politicized by the state and international politics. Border crossing places North Koreans at the intersection of mobility-identity-security in which the biopower of the states inevitably influences their life and living. Here, conflict over security interests between the states and individual North Koreans often emerges because the interest of border crossers does not always in the line with the interest of the states. States matter to border crossers as they are the primary security providers to individuals in the international architecture where the sovereignty of the states has arguably

dominance over mandates of other political entities. However, the fundamental cause that makes security become an important interest for North Korean border crossers in the event of border crossing is the malfunctioning North Korean regime fails to protect North Koreans from physical and structural violence. It is also because of the absence of peace at the inter-Korean level which complicates the border crossing in a legal and political context by politicizing North Koreans' identity.

The insecurity over the Korean Peninsula without sustainable peacebuilding between the two regimes has led North Koreans to suffer their family life and fundamental rights. In the calculations of the political, military, and economic gains and costs between the two Koreas, the life and living of individual Koreans are often unseen. Precarious life and living of North Koreans are continued at the borders of transit and destination countries where sharp conflicts of security interest between the states and North Korean border crossers emerge. The conflicts of interest are often settled through the administrative and legal procedures in a way that favors the interest of the state which has authority over its territory where the movement of border crossers takes place. That is to say, the eligibility and desirability of border crossers take precedence over the protection of the human rights of border crossers.

This chapter has shown that state-to-state or government-to-government approaches are not the best way to respond to North Korean border crossers' security and rights issues or, more fundamentally, the insecurity on the Korean Peninsula. Attempting to secure peace at national and international levels may fail to capture the microphysics of peace from the below practiced by the human agency of North Koreans. Dissolving conflict in an asymmetric power relationship between the states and individuals can be itself biopolitical violence over the life and living of individuals when the humanitarian considerations are lacking. In sum, this thesis argues that it is necessary to approach human rights issues at borders from the human security dimension, highlight the biopolitical nature of the border crossing, and understand border crossers as human agents and active peacebuilders.

3 Theoretical framework

Korean security is often considered a hardline security issue. This implies that border crossing is often discussed in line with the security situation on the Korean Peninsula, focusing on the state-centric security perspectives. However, such traditional approaches cannot effectively address the human rights issues which interplay with national and international politics and security, nor can they suggest sustainable peacebuilding empowering individuals as contributors to peaceful coexistence among the states and between the state and individuals. An effective and innovative approach is desired, which this thesis can provide. This thesis attempts a novel approach to untie the intertwined security issues on the Peninsula and in the international system and the human rights issues in the border crossing of North Koreans. By highlighting human security and human agency, the approach offers a practical and distinctive view to analyze the ecology of security. It means that the usefulness of this approach is not limited to a case of border crossing of North Koreans but extended to addressing border crossing cases in which security interests between the states and individuals require a resolution. At the same time, this thesis empowers border crossers as human agents who can contribute to peace in the ecology of security. It means that this approach can effectively explain the relationship between state and non-state actors and human agents in the processes of peacebuilding at national and international levels. This chapter on theorization is itself one of the valuable analyses and arguments of this thesis.

3.1 Biopolitics and human agency

This thesis does not discuss necropolitics (Mbembe, 2003) which mainly explores biopower in the context of postcolonialism and racism. Instead, this thesis focuses on Foucauldian and Agambenian biopolitics, more suitable for highlighting human agency. Human agency is reconceptualized with the two qualities – ability and answerability, respectively developed in this thesis on reflection of the Foucauldian and Agambenian biopolitics. This thesis also reconceptualizes the ethics of coexistence and suggests it as a basis of the social and political world, which can logically explain the relationship between human agency and peace. The presented theoretical concepts are further developed throughout the thesis.

3.1.1 Foucault on biopolitics

The main idea of Foucauldian biopolitics is that the biological phenomena of human beings are converted into demographic information and normalized by society's regulatory mechanisms. Biopower is a new technique of power that specifically deals with management of life and

death[13]. This means that life (i.e., biological life) and living (i.e., way of life), which used to appear and disappear in random births and deaths, are no longer inaccessible (Rabinow, 1991). The literal interpretation of this argument can cause a misunderstanding; the argument does not imply that the life or death was *ahistorical*. Life and living were less an 'unknown' of history and 'uninterest' of the power and knowledge than a missing, untraceable, or unnamable of the history (Elie, 2014). In other words, phenomena peculiar to the life of the human species became an interest of knowledge and power, received more attention from history, and entered the sphere of political technique which deals explicitly with life and living plans (Hansson & Hellberg, 2015).

In this vein, the death of life becomes mortality but not a death of natural life (Rabinow, 1991), and human movement translated into migration or 'border crossing' is now susceptible to measurement, prediction, and control. By converting life phenomena into demographic information, biopower aims at the whole groups of people in their capacity as populations (Hansson & Hellberg, 2015), and life becomes a target of explicit calculations (Foucault, 1998). For example, biopower takes its control on population by evaluating the relationship between resources and inhabitants and analyzing it into wealth and its circulation (Rabinow, 1991). In the logic of biopolitics, life and living are taken at 'face value' in the statistics. The purpose of calculating life and living is to make populations to the desired level of outcome in the eyes of the decision-maker (e.g., sovereign) (Hansson & Hellberg, 2015), and to maximize the economic utility of the body of individuals while increasing its political docility (e.g., compliance and obedience) [14]. In other words, it aims to diminish the *resistance* of the body by correcting the deviations (Ibid.).

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[13] Sovereign power which is also the technique (Foucault, 1990) or the face (Digeser, 1992) of power, exercised its right to take life or let live in the ancient time. Life has been always closely tied with power regardless of the type of it, but the focus of power shifted in biopolitics to 'manage' life and death. This does not mean the extinguishment of sovereign power, but the emergence of a new technique/face of power. However, management of life and death does not always flourish human life. In fact, it raises much more sophisticated questions of ethics such as abortion and euthanasia which the modern states exercise the old 'right to kill' in a modern manner.

[14] Compliance and obedience can be further illustrated as 'anticipatory obedience' and 'contained compliance' applied at the individual level (Blauberger, 2014). From this thesis' perspective, anticipatory obedience can be understood as active interference of biopower in individuals' life affairs due to the insufficient disciplinary mechanism of the society for implementing follow-up regulations at a distance. On the other hand, contained compliance can be interpreted that discordance between law and policy increases the resistance of individuals against the disciplinary practice of biopolitics. To be specific, the resistance can be reinforced if either the rules of law or politics themselves can be questioned or there are no sanctions available or unenforceable on the resistance (Mansell & Openshaw, 2019). Therefore, in theory, resistance can be more observed in the contained compliance than in the anticipatory obedience.

3.1.1.1 Regulation and deviant

Biopolitics requires constant regulatory and corrective mechanisms – discipline, and the normalization practice of reducing the resistance through discipline is called governmentality (Foucault, 1979). In other words, an implicit system of obligation is established between the body and society; the body is compelled to accept the physical and moral constraints of confinement (Rabinow, 1991). In the logic of governmentality, the law and politics become less focused on what the individuals have done and more focused on establishing who individuals are (Foucault, 1988 as cited in Digeser, 1992). This implies that the law functions more and more as a norm while judicial system incorporating into a regulatory government body (Ibid.). This does not mean that law and its institutions disappear. As 'one way [that] the practice of politics increases the efficacy of its disciplinary power is through *approval'* (emphasis added) (Digeser, 1992), both the politics and law reinforce and legitimate the power of the state. Consequently, the 'regulation' as the objective of power becomes more important than the 'control' (Hansson and Hellberg, 2015).

This mechanism of power does not directly impose regulation on the body of life/individuals. It rather lets things take their course (*laisser-faire*) (ibid.). It does not mean that freedom from discipline is given more to the individuals in such a system, because this freedom rather serves the power to efficiently govern over life/individuals 'at a distance' (Rose & Miller, 1992 cited in Hansson & Hellberg, 2015). This regulated society aims to cultivate individuals as active and responsible according to the norms of society disseminated through apparatuses of discipline, and individuals learn to work on themselves not to be a 'deviant' whose interest does not correspond to those of the society as a whole (Hansson & Hellberg, 2015).

3.1.2 Resistance as human agency

Knowing the interest of society and complying with the system does not take place naturally. Biopolitics requires the prerequisite of 'knowing subjects/individuals' who are both willing and capable of subscribing to its regulation (Digeser, 1992). To be specific, the authority of biopolitics relies on shared values of dos and don'ts (i.e., norms of the society) by interacting with the ability of individuals to act independently and the reason-giving which underpins such act (Flathman,1980 cited in Digeser, 1992). This implies that power and knowledge are not the same; power cannot be equated with knowledge. Knowledge, including the knowledge from experience, invites individuals to conceive unconfined and unregulatable thoughts on their own life and living. The act of individuals can be understood as a unique product of the internalization of constructed knowledge (e.g., dos and don'ts). This means that knowledge

becomes biased through internalization but itself is neutral by allowing different responses from individuals. All individuals think and act upon reflection of their knowledge while turning themselves into subjects of a particular order of the society based on such perception (Hansson & Hellberg, 2015). This implies that there is a fundamental limit of biopower; individuals are governed but not fully governed (ibid.). This space of ungoverned is 'resistance' which translated in this thesis as the (first) quality of human agency – *ability*[15].

3.1.2.1 Ability and suicide

The absence of biopower in ungoverned space does not automatically mean enhancement of ability and the increase of biopower does not necessarily mean extinguishment of ability. Resistance, thus ability, plainly refers to the space ungoverned where different, distinctive, and independent decision of action is made. In this regard, Rabinow (1991) insists the limit of biopower is the *death* of life which is the very moment a body 'escapes' from biopower to its most private. He continues that *suicide*, in this vein, can be seen as the ultimate expression of resistance of the body against biopower which manages life and aims to 'increase' utility and docility of the body. This thesis suggests a different interpretation of what it means to have resistance/ability by counterarguing the insistence of Rabinow. What this thesis finds as a fallacy of the insistence is that Rabinow did not distinguish the meaning of death/suicide - whether suicide means merely the end of physical function or the 'suicidal' determination of a human agent. There is a huge difference between the two; the latter emphasizes human agency itself while the former denies the human agency itself. The end of physical function because of biological death is understood as the total elimination of human agency (ability) in this thesis' point of view, and this thesis argues that the total elimination of human agency should not be considered and justified as a practice of human agency. Suicide is the death of a human being but never the practice of a human agent. This is because human agency has its value of existence when it continues in the human agent. The ability of a living being, the ability of an individual, and thus human agency in a human agent is given for continuing the life and overcoming every moment of decision, but not for terminating the life and eliminating the human agency itself.

The argument of Rabinow that uses suicide as an instance of resistance is denying that resistance is human agency and that individuals are human agents. In fact, such an approach is what paralyzes human agency and undervalues human agents. Nevertheless, human agency is

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[15] Ability is distinguished from autonomy which refers to both ability and willingness to make choices independently (Littlewood, 1996).

as much powerful as biopolitics as it can prevent biopolitics from becoming the politics of death (*thanatopolitics*) which Agamben concerns as the ultimate of biopolitics. This thesis steps forward than being worried or skeptical about biopolitics by providing the prescription, human agency, to the politics of death (note 16). In other words, this thesis views biopolitics as neutral and acknowledges its advantages such as efficiency in promoting convenient and self-plannable living. For example, chapter 7 provides the methods to quantify and assess the impact and exposure levels of risk to life of individuals, which can be seen as 'managing life' in the logic of biopolitics. From this thesis' point of view, what is important in discussing biopolitics is the 'direction' to improve biopolitics to become beneficial to human agents. In the same way, this thesis does not consider resistance as skeptical or related to death but associates resistance with life and living and views that it can even surpass the threat of death.

The argument of this thesis is supported by the border crossing of North Koreans, where human agency is vividly observed. Border crossing is a 'suicidal' act that can cost a North Korean his/her life (see chapters 2 & 6). However, such a decision is not to end one's own life and living but to challenge the limit of biopolitics exercised by the dictatorship of the society which predetermines the person's life path and living quality. By deciding such a suicidal act of border crossing, the border crosser seeks one's dignity and desired (or borrowing the term from an anonymous North Korean border crosser who responded to this thesis' survey in chapter 6) *rational* living; seemingly 'suicidal' and thus observers might presume it an irrational act, the border crossing is rational enough for North Korean border crossers who are human agents. The ability/resistance of the human agent is not 'escaping' to one's private from biopolitics, unlike the insistence of Rabinow. This is because human agent is not subordinated to biopolitics, and human agency is the ungoverned space regardless of the increase or decrease of biopower. The ability is the independence of human agents.

3.1.2.2 Self-emancipation and self-mastery against self-discipline

Still, this thesis embraces Rabinow's view that the most extreme expression of human agency is related to the decision of the human agent's own life and death. However, it is clear to this thesis that such decisions do not refer to a direct action of taking one's own life away; this thesis appreciates the decision as *self-emancipation*. Taking an example from the border crossing of North Koreas, human agents take the risk of death and transform that risk into an investment for their pursued living which the system of biopolitics cannot offer to the human agents. In other words, the action of taking a 'life-betting' risk for investing in better living against biopower can be seen as the most devoted expression of human agency. It shows that even the

possibility of eliminating such ability (i.e., death) cannot interfere with the determination devoted to one's life and living. This is a self-emancipatory decision that frees oneself to pursue deserved life from the limitation and expectations under biopolitics. In fact, the term emancipation originated from its root in slavery (ref. the Emancipation Proclamation/ the Proclamation 95 of 1863); self-emancipation has historically been used to refer to when the enslaved people pay themselves the price of their own bodies and free themselves from slavery. Emancipation has a similar context to the border crossing of North Koreans and shares a common emphasizing 'human agents and their decisions'. Thus, the most devotional practice of North Korean human agents, the border crossing, is not blind obedience to one's own authority over one's own body/life (e.g., suicide). The devotion of the human agent should be understood as a self-emancipation that leads the human agent to a 'self-mastery' as distinct from mere self-discipline. The devotion in the latter sense, self-discipline, can be possessed by the 'mindless nationalists' or 'helpless victims' (see chapter 2), but the former, self-mastery, is inherent in and constantly developed by human agents.

3.1.3 Agamben on biopolitics

In this section, the thesis summarizes Agambenian biopolitics with four categories and four concepts of life: political, marginalized, biological, and disapproved life, each representing good bios, less eligible[16], zoe, and bare life (*homo sacer*). In Agambenian biopolitics, politics is a privilege of *bios* that is life under the concern of polity and law (Shinkel, 2010). Bios itself is a target for inner differentiation which results in *good bios* that is a desirable citizen of the society and *less eligible* who is pushed to the cultural, political, and economic margins of the society (De Giorgi, 2010). To be specific, *less eligible* is subordinated under the ambivalent *care* and *control* of economic inclusion and legal exclusion. In its background is globalization which fosters interdependent economic and financial conditions of societies and de-bordering, giving rise to the struggle to control mobility against global migration and consequent changes in the states' sociocultural, political, and economic systems (ibid.). Less eligible is compelled to fill up the shunning parts of labor which gives them fewer opportunities and resources than other members (i.e., good bios) of society while being prevented from committing crimes; less eligible is institutionally being exploited and increasingly marginalized. In this mechanism, less eligible is given limited access to civil, social, and political rights. The shared expectations of

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[16] Less eligible is not developed by Agamben but effectively illustrates the 'threshold' between the lives and thus is explained in this section on Agambenian biopolitics together with bios, zoe, and bare life.

the society about 'less eligible' will often be controls and sanctions to prevent less eligible from committing crimes rather than improvement of the rights, opportunities, and resources of less eligible. This is because 'less eligible' has to fill up shunning parts of labor and margins of the society. In this institutionalized confinement for the status quo, less eligible are often exposed to the process of hyper-criminalization which reinforces the symbiosis between illegalization and criminalization (ibid.). Being left to be in the grey zone of legal vulnerability, less eligible are targeted for further policies of selective control on less eligibility. The mechanism of less eligibility is also seen in the empirical cases of North Korean border crossers in China and Russia (chapter 5). In society's ambivalent and selective care and control, it is difficult for less eligible to cross the threshold and become a good bios. Therefore, this thesis categorizes less eligible as marginalized life and good bios as political life with full enjoyment of their rights.

The opposite of bios is zoe which is biological life, and between bios and zoe is bare life (*homo sacer*) which is disapproved life. Bare life can be seen as being outside the order of law because it is excluded from both state protection and international protection despite its dignity as a human being.[17] Although less eligible is pushed to the margins of society, it is still included in the society and therefore distinguished from bare life. Instead, bare life is closely tied to zoe because it is a 'threshold' when bios is reduced to zoe.

3.1.3.1   The state of exception

The sovereign produces bare life by separating it from the life under law (Schinkel, 2010). This implies that the question of the law is inseparable from the question of biopolitics (ibid.). However, bare life is not the only being outside the law order; the state as a sovereign can deviate itself from the order of law. This happens as the sovereign identifies itself with the law by suspending the effect of the law. In doing so, the sovereign can place itself outside the order of law because it is the sovereign who creates the exception. On the one hand, this 'state of exception' can be seen as the increasing incorporation of the judicial system (Schinkel, 2010). On the other hand, it indicates the law's threshold or limit concept (Agamben, 2005). Nonetheless, the state of exception is clearly distinguished from state of emergency (martial law). Seemingly alike but the state of exception is distinguished from state of emergency

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[17] According to the original terms, bare life refers to a man excluded from the polity and abandoned by God. This thesis has rephrased the ancient concept of bare life, adjusting to the context of North Korean border crossers. Therefore, bare life is illustrated as excluded from 'state protection' and 'international protection'. Nonetheless, the main characteristics of bare life remain in the original intention that bare life is unprotected by the polity (citizen and state protection) and God (human rights holder and international human rights protection).

(martial law). According to Latvian law, OESSE of 2014 the state of emergency is a special legal regime in that commandership can restrict the rights and freedoms of central and local government institutions and legal and natural persons while being able to impose additional duties on them (Section 4). The state of exception is also a special regime that is declared if the state is endangered by external enemy or internal disturbance (Section 11(1)). Similar to the state of emergency, the state of exception restricts the rights and freedoms of natural and legal persons and impose additional duties on them (Section 11 (2)). Comparing the essential characteristics of the two states, the biopolitical nature of state exception comes out vividly in that it targets individuals but not the regulatory body of the state itself and that it governs over the life and living of individuals by limiting their rights and freedoms. In this light, the state of exception can be interpreted as the regime for the sovereign's sake, unlike the state of emergency that concerns the public good of society when exercising its discretion. This implies that when the state deals with migration issues, the sovereign's discretion that is in the state of exception can disguise itself as it is in a state of emergency for the public good by translating migration as a threat to its society, although migration is fundamentally a matter of management but not a threat (see 6.2.4).

3.1.3.2   Inclusive exclusion

The state of exception is the differentiation of bare life from life under the law by the sovereign. However, it is paradoxical because bare life incorporates into the differentiation itself. This critical concept of Agambenian biopolitics is inclusive exclusion. This differentiation technique is exercised not only by the sovereign but also by life. The differentiation between life performs through a constant negation (Agamben, 2005), and life/body itself becomes the ultimate source of legitimacy (Fassin, 2001). For instance, bios defines itself by negating zoe however bios cannot escape from zoe because the negation inevitably accompanies the relationship with zoe. The law performs according to this dichotomy in order for a normalized society where (good) bios shape boundaries for eligibility that are in fact created in the 'relationship' between zoe and bios. In other words, zoe influences shaping the eligibility/boundary of society, which paradoxically excludes zoe from politics and law. To be excluded paradoxically means to be included. Agambenian biopolitics posits that the basis of life and politics is harmful competition and negation between lives. However, the life that must define and prove its existence through constant negation of one another is a tragedy for both bios and zoe. Instead, this thesis suggests a foundation of the social and political world that acknowledges the coexistence of lives and is

emancipatory for lives. This will be further discussed through the second quality of human agency – answerability.

3.1.4 The ethics of coexistence and human agency

On the reflection of Agambenian biopolitics, this thesis proposes the emancipatory foundation of life and the second quality of the human agency. To be specific, the section attempts to unveil the overarching and underlying theoretical system where biological and political lives are produced and transforms it as the foundation where this thesis seeks reconciliation between the lives. The section begins with the motivation for the suggestion. It then outlines the ethics of coexistence and its importance to biopolitics. The second part of the section introduces the concept of answerability and explains the relationship between coexistence and human agency.

3.1.4.1 Motivation for proposal

This thesis argues that intellectual honesty and self-awareness on the part of academics need to be emphasized in terms of researching and addressing disempowered people, such as bare life of biopolitics (Ward, 2021).[18] This argument contains an alert that controversial ideas of biopolitics expressed innocently enough at the professional level without giving proper guidelines to interpret can result in unintended effects when taken and used more negatively in people's life (ibid.). Migration control detached from human rights (e.g., camp) can be seen as an example of this (see 6.1.2). In other words, this thesis asserts that ethics should be more considered in discussing biopolitics. The special focus on ethics is because the self-purification capacity of politics can be found in the discussion of ethics. Ethics makes politics to be *democratic* politics by giving voice to all lives as equal beings. In other words, the discussion of the 'ethics' is political as its recovery can shed light on unmasterful relationships (i.e., paradox) in biopolitics and pave the way for rethinking the political foundation beyond the mechanism of obligation and reciprocity based on the social contract while rejecting replicated observations relying on self-sufficient understandings of life from the perspective of those empowered (Odysseos, 2007).

Coexistence

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[18] This does not mean that this thesis demonizes biopolitics or loses its academic objectivity by being in favor of bare life. The focus of this thesis is to listen to the disempowered and provide the tools for facilitating the understanding between empowered and disempowered by utilizing and improving the advantages of biopolitics.

Coexistence in this thesis does not mean mere prevention or management of the conflict between individuals (e.g., zoe and bios). Instead, it is an active and transformative concept that seeks the engagement of all social members and attempts to resolve deep-rooted causes of the conflicts in society while turning it into the catalyst for 'peaceful' coexistence. Coexistence is a foundation of social and political worlds and, at the same time, is a process for building peace – peaceful coexistence.

3.1.4.2   The ethics of coexistence

The ethics of coexistence is a system of ethics that is inevitably related to the concepts such as harmony, symbiosis, and peace. As it deals with the abstract concepts, the concept inevitably includes ambiguity which is necessary to be clarified in this thesis. The ethics of coexistence frequently appears in various scholarly discussions on the themes such as international relations (Brown, 1988; Odysseos, 2007), disability (Ulrich, 2011), and biology (Kaplan et al., 2019). Although the ethics of coexistence can be applied in vast disciplines, its central argument seems to be relatively straightforward – do we really discover ourselves as capable (*ability*) and responsive (*answerability*) human beings (*human agents*)? Based on this perception, this thesis regards the ethics of coexistence as political and, more specifically, the ethical self/individual as a political being. In other words, this thesis considers coexistence as the foundation of life and thus of politics.[19] At the heart of this thesis' ethics of coexistence is human agency. The ethics of coexistence does not denote that the ethics is limited to an individual's character or habit; it is embodied in the consciousness of coexistence among individuals who as social and coexistential beings will eventually reach the thought to seek *peaceful* coexistence with one another. In this vein, this thesis views the ethics of coexistence as an approach that may redress the paradox in the relationship between zoe and bios. This thesis acknowledges that the outcomes of processes in the coexistence can be bad, not only good, as there is not only 'peace' but also conflict and violence. At the same time, it also recognizes that the performer of conflict, violence, or peace is not the values such as good or bad themselves but individuals, states, and political communities who can, for example, 'cultivate' good (Galtung, 2013). In other words, this thesis argues that before discussing peace, individuals, states, and political communities

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[19] This perspective focuses on acknowledging the plurality and diversity of individuals, states, and political communities. It does not consider uniformization, disorganization, or abandonment of the foundation of life. In other words, coexistence is distinguished from thanatopolitics or anarchy.

should understand the ethical foundation of coexistence in order to achieve the peace – peaceful coexistence (Gasper, 2005).

Ethics and biopolitics

This thesis argues that biopolitics is the source as well as the object of ethical judgment (Nardin, 1992). In this respect, the negation-based relationship between biological and political lives needs to be modified in the context of ethics because biopolitics is often understood as having the potential to threaten the sustainable society and reinforce the system of scapegoating the marginalized/disempowered[20]. To put it another way, the fundamental idea of governing in biopolitics according to the observations by Foucault and Agamben tends to emphasize a regulation-driven nature of the society than its response-oriented nature (i.e., ethics). The focus on regulation can be practical to diagnose the exploiting system of the society but seems not actively engage in deriving possible remedies for the illness of the system, which can be a more beneficial and meaningful outcome of the analysis. Researchers should include ethics in their discussions and analyses of biopolitics because ethics can provide new perspectives to suggest constructive theoretical and practical applications.

3.1.4.3 Bakhtinian *Answerability*

This thesis conceptualizes answerability as the second quality of the human agency. Answerability is developed by Bakhtin (1990) and can be summarized as consciousness of coexistence. 'I' is the one who lives this life, but possessing life is shared with others who coexist with me. This is because 'I' is defined by others regardless of whether 'I' is zoe or bios – "you were born" and "you are dead" (Choi, 2009). Thus, 'I' is in the world surrounded by others who are now recognized as 'you[21]' because they are in a meaningful relationship with 'I'; 'I' need to create and plan life with 'you' (ibid.). This mechanism of recognizing 'I' and the world can be compared to Agamben's negation; the foundation of answerability is different from negation because the fundamental question of answerability is laid on 'meaning of the action' but not on establishing who 'I/you' is. This view denotes that 'I' and 'you' as human agents encounter every specific event that is thus irreversible and unrepeatable (ibid.).

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[20] Given that the ultimate stage of biopolitics is illustrated as thanatopolitics in Agambenian biopolitics that is resembled the ancient sovereign power to kill in Foucauldian biopolitics, the scapegoat is latent and embedded in the mechanism of biopolitics.

[21] Answerability is distinct from Levinas's ethics of the other in this regard. Answerability refuses that the other is the externality of 'I' and 'I' is incapable to make meaningful interactions with others (Choi, 2009). However, this thesis accepts that pain/suffering can connect individuals/human agents with one another (see 3.1.4.4).

However, this does not mean that action is wholly random or arbitrary because the action of 'I' rests upon numerous requisites of the situation, environment, and internal condition of 'I' (ibid.). This can be understood as the same process as obtaining knowledge in the context of resistance in Foucauldian biopolitics. In this vein, the coexistence is not what 'I' and 'you' should be toward or ought to establish together. Instead, it is a transformative *process* in which 'I' and 'you' participate as new 'I' and 'you' who are no longer the same individuals before the specific and irreversible event.

Here and *Now*

What does it mean by a specific and irreversible event? Every moment of (un)consciousness and desires of 'I' and 'you' converge into now (i.e., time) and here (i.e., space) and create one rhythm of history (ibid.). In other words, time, space, 'I', 'you', and environment exist together and simultaneously participate in *here-and-now* event which is specific and irreversible. Therefore, coexistence is not a numerical uniformity such as unanimity or ideological uniformity that does not accept different opinions, unlike negation (ibid.). Neither does it mean the elimination of *ability*. A human agent, 'I', is the actual performer of the event, and a series of other events can occur if the conditions (e.g., the act of 'I') change. Therefore, coexistence as the foundation of the social and political world is not enchained with determinism (ibid.). Instead, it consists of accidental and conditional here-and-now events - *mise en série* (Deleuze[22], 1972). This means that the event and its consequences are always the combinations of specific time and space in a particular formation and order (Choi, 2009). 'I/you', who as 'we' participate in here-and-now, cannot make an excuse for the event of here-and-now (ibid.). Even the denial of coexistence influences the coexistence by participating here-and-now because the existence of one itself is the composition of coexistence (ibid.). Only an event called coexistence is constantly constructed, but not bios, less eligible, zoe, or bare life.

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[22] In the book, On the Shores of Politics, Deleuze (1990) mentions ethics as follows: "ethics, which is to say, a typology of immanent modes of existence, replaces morality, which always refers existence to transcendent values" and he continues "Morality is the *judgement of God*, the system of Judgment. But Ethics overthrows the system of judgement." (Deleuze, 1988; emphasis in original). This thesis may rephrase ethics as the gift from God (to human agents) vis-à-vis morality which is judgement of God. Agreeing with the view of Deleuze, this thesis suggests coexistence as the ethics, not the set of moral values that attempts to confine the human agent rather than emancipate.

3.1.4.4 Answerability

The meaning of 'being together' on the coexistence as foundation gives a thought that the performers of the ethics are not 'I' or 'you', but rather 'we' as *communality* of the time and space (ibid.). In this sense, coexistence is not a coercive norm that regulates individuals but simply laid in the dimension of time-space that creates ethics of the very moments. When coexistence is 'good' - when it becomes a drive for peace and constructive changes in the conflicts, it might be fair to call it peaceful and ethical coexistence. On the other hand, this implies that ability and answerability can collide with one another when the coexistence is constructed not in the way of peaceful coexistence. In this context, this thesis suggests the second quality of human agency, *answerability*, which can be understood as 'ability based on ethics and ethical source of ability' that can create life with others (ibid.). The first quality of human agency, *ability*, challenges the limit over the life and living, and the second quality, *answerability*, seeks the fundamental change of dichotomized and paradoxical frames of biopolitics.

This thesis' answerability is distinguished from *non-resistance* (ref. Tolstoy). Non-resistance can lack respondents (i.e., 'you'/other human agents) who actively engage in conflict transformation. On the contrary, answerability means that the human agent has 'ability based on ethics and ethical source of ability' to respond to the other and actively engage in conflict transformation in pursuit of peaceful coexistence. In this respect, good bios is not a predator of the hierarchy in biopolitics when empowered with answerability. Furthermore, answerability is different from (moral) responsibility which is often labeled with attributability and accountability and closely tied to the agency (Smith, 2015). Answerability does relate to common sense morality, which can be understood as knowledge 'to judge about the character and action of other people' (Frederick, 2009). However, the thesis highlights answerability's relationship with coexistence. This is because morality is a changing set of values; 'it is unlikely that there is a single set of logically consistent, compatible, and systematic commonsense rules' (ibid.). In this respect, the theory of the ethics of coexistence proposes permanent social and political foundation – coexistence – and human beings as coexistential beings that require and pursue peaceful coexistence for their life and living; coexistence as the foundation underpins the inevitableness of 'choosing peace' and recognizes specific and irreversible here-and-now which connects human agents/performers between themselves and make their existence as inevitably meaningful. This thesis' theory, the ethics of coexistence, in which human agents'

ability based on ethics and ethical source of ability (i.e., answerability) is explained, attempts to give a set of answers to the dilemma/excuse and the reason/motive of human agent.[23]

3.1.4.5 A remedy for scapegoat

Answerability can discourage the exploitation and scapegoating systems of society and protect the disempowered. Namely, answerability can be a desirable aim to biopolitics which wishes to prevent itself from developing into the politics of death. The fact that coexistence is 'constantly constructed' implies a fundamental vulnerability of humans that is not a suppressible incidental feature of humanity (Gasper, 2005); human agents, more precisely human beings, cannot ideally be competent in a constantly changing world. Therefore, the negation of vulnerability makes humans inhuman and as incapable of resonating with others (ibid.). In this sense, total security is not only impossible but also undesirable (Ramphele, 2004). For instance, in the logic of negation, good bios cannot perfectly secure its eligibility because good bios is inevitably exposed to the risk of constant change. If a good bios refuses to make a meaningful relationship with others of coexistence, good bios becomes reduced as a zoe that does not hold political meaning in the society. This can be understood as a *social suicide* in which a human agent does not respond to the answerability of others (see chapters 7). In other words, this implies life/human agent, based on coexistence, acknowledges that every life has vulnerabilities and continues to put efforts into the empowerment of oneself and others and into the resonance with others. This means that no individual should be sacrificed through the governing systems of society because of one's vulnerability. This coexistence system works differently from the scapegoat system, which exploits the vulnerability of the disempowered to maintain the privileged through violation and negation.

3.1.4.6 Reconciliation between lives

From this perspective, this thesis argues that the coexistence between the governing body (e.g., sovereign) and the governed body (e.g., bare life) based on answerability can provide the reconciliation between lives and promote peaceful and ethical coexistence. This view is not stuck in the dilemma of class (e.g., class, gender, and race trilogy) or justice (e.g., distributive

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[23] One might raise the question 'For what a human agent should practice human agency, and how does one know?'. The simplest answer from this thesis can be the 'Good Samaritan principle' and the 'pain/suffering' borrowed from the ethics of the other/face (Levinas, 1991; 1995). The two are useful ethical sources explaining how to link between human agents with different knowledge and thus who cannot respond appropriately to one another, and how human agents act beyond mere knowing. Regarding the former, this thesis sympathizes with the pain/suffering in line with answerability, and Good Samaritan in the context of coexistence for the latter.

justice and transitional justice) between zoe and bios; it focuses on 'cultivating' answerability. In other words, this thesis asks whether there is answerability in lives and coexistence. This is because argument of this thesis is not about zoe becoming bios but about presenting the reality where zoe is bios, more precisely, about the 'communality' of here-and-now events. Although negating coexistence can be artificially practiced through techniques of biopolitics such as inclusive exclusion, this thesis does not consider 'systemic differentiation' as its primary concern because the foundation of lives and thus of biopolitics is always coexistence. The thesis points out the fundamental lack of consideration and interest in life disenfranchised in biopolitics based on the dichotomy of presence and absence (e.g., entry into history and unknown of history).

Figure 1. The interactional process of ability and answerability
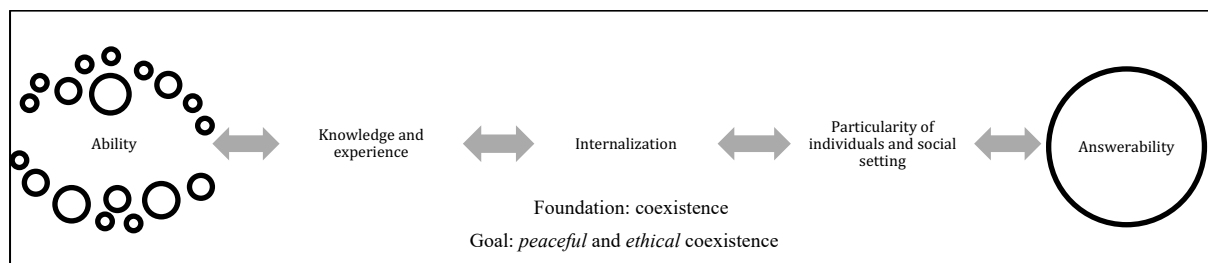
In summary, answerability is different from the first quality, ability, which is independent of external forces. Human agent with the second quality of human agency now considers the agent's position in the world and does not simply act upon one's own interest and desire. Ability, the act of independently and distinctively to the same external force always exists and is neutral, but human agent now recognizes ability based on ethics and ethical source of ability. It means that the human agents are no longer disconnected from one another or ignorant about the foundation of the social and political world, coexistence. This is the paradigm shift for the human agent who practiced ability only for one's own sake and for the coexistence where ethics and peace now became the goal of lives. This is *the ethics of coexistence* where the consciousness of coexistence between lives is observed and based on this perception the advanced quality of human agency that is the action of answering to others (i.e., engaging in conflict transformation) takes place. Answerability as a quality of human agency is inherent in all life (i.e., bios and zoe or biological and political lives) and is what the analyses of biopolitics often fail to capture in their observation of paradoxical relationships between lives. At the same time, answerability is what biopolitics needs and looks for to prevent itself from developing into the politics of death and the mechanism of scapegoating.

4   Methods and Methodology

This thesis uses mixed methods employing both qualitative and quantitative approaches to analyze the border crossing of North Koreans. This is to capture the interrelatedness and untie the complexity laid in the empirical case of border crossing. Interrelatedness and complexity often require social scientists to use study-tailored approaches and methods which can theoretically range from positivist experiments to post-structural criticisms (although some are rarely employed in studying the 'unpatterned' social world and its phenomena). In this vein, this thesis selects methods appropriate to discuss the difference between state-centric and human-oriented perspectives reflected in the empirical cases (chapter 5), MIS (chapter 6), and risk (chapter 7) in the context of biopolitics and human agency of North Korean border crossers. Namely, they are discourse analysis, survey, Mobility-Identity maps (MIMs), Risk Index (RI), Risk Level (RL), Risk Exposure (RE), Risk Assessment Matrix (RAM), and the concept of Urgency. Specifically, several risk analysis methods are created in this thesis to enrich the quantitative approach to examining border crossing of North Koreans, which has been rarely analyzed from quantitative approaches. This means that risk analysis methods are one of the primary analyses in the subsequent chapters of this thesis and therefore are not dealt with in this chapter. Instead, this chapter briefly explains other methods used and the rationale for chosen methods.

4.1   Discourse Analysis (DA)

'Discourse' includes all social phenomena and social systems of relations (Boréus & Bergström, 2017). This means that discourse includes non-linguistic interactions and meaning creation which occur discursively through symbols and practices in the social world (ibid.). Therefore, it is an effective tool for discussing border crossers of North Koreans under biopolitics, which requires analyses that are not limited to text material but extended to the dynamics between actors, agents, and power relationships interplaying at the individual, national, and international levels. DA is necessary for this thesis which focuses on human agency and security dimensions of border crossing in order to precisely capture the asymmetric power relationships between biopower and life. Namely, DA in this thesis approaches the issue of border crossing by highlighting its human agency and human security dimensions. DA as a core qualitative tool is extensively used throughout this thesis. To be specific, in the following conceptualization chapter, DA is used to adjust the concepts of identity groups to the cases of North Korean border crossers and captures political and legal discourses of their identity. Chapter 6 uses DA to

analyze the interrelatedness of MIS based on the empirical cases of North Korean border crossers, and chapter 7 utilizes DA to analyze the risk to the life of individuals from three different scopes.

4.2 Survey

The North Korean community is generally closed to outsiders and is challenging to get in contact with the members, not only because they are a rare population outside North Korea but also because their personal information can be abused by Pyongyang in tracking and punishing their families in North Korea or getting the 'border crossers' forcibly back to their 'fatherland' (i.e., abducting; ref. Lim Ji-hyun case[24]). This is because their border crossing and settlement outside North Korea are forbidden and subjected to punishment. Another reason for closeness is due to the perceived or actual discrimination and stigma from the majority of the society[25] which were also mentioned in the survey result (see 6.2.2). This means a new approach to selecting and contacting candidates for the survey is necessary. At the same time, the approach must be able to contact eligible candidates who are North Koreans with experience in border crossing and securitize the personal information of the respondents. Thus, the survey is designed to ensure the authenticity of the responses and anonymize the profile of the respondents. The candidates had to meet the following criteria:

- Genuineness: candidates must be able to prove their border crossing experience.
- Voluntariness: candidates have already voluntarily opened their profile and North Korean background to the public.
- Capability: candidates must be able to participate in an 'online' survey by having the appropriate device and skills to utilize the survey form.
- Openness: candidates have already publicly provided their contact information for business or other relevant purposes.

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[24] BBC. (2017, July 18). *North Korean TV star defector Lim Ji-hyun feared abducted*. BBC News. Retrieved May 3, 2022, from https://www.bbc.com/news/world-asia-40640047.

[25] The result of the independent survey in this thesis, as well as the national survey "북한이탈주민 사회통합조사(*bukhanitaljumin sahoetonghapjosa*)" conducted by the Hana Foundation (2021; 2022), underpins this statement. According to the results of both surveys, the main reason for discrimination is observed as cultural differences (e.g., ways of living and speaking). This implies that the cultural dimension should be more considered in addressing the social integration or division concerning North Korean communities within South Korea, and it seems that the responsible organization for North Korean resocialization, Hanawon, needs to develop effective sociocultural support programs other than the current settlement packages. On the other hand, this implies that culture can be effective to consolidate Koreans (e.g., Olympic détente) within South Korea and on the Peninsula. It can be argued that the cultural dimension of peaceful coexistence is important for the two Koreas and among Koreans.

The author considered candidates who met the criteria were North Korean YouTubers who had channels where they published their narratives of border crossing from North Korea and life stories in North Korea. Also, North Korean activists (e.g., LNGOs), who publicly promoted and worked for the human rights of North Koreans. The survey used the online semi-structured survey form open to access and modify the answers through the unique link sent to the respondents via their email. Participation in the survey was randomly assigned and based on the voluntariness of the candidates; the author only sent the invitation and explanation of the survey (e.g., purpose and data storage etc.). To be specific, the invitation email clarified that the recipients of the email have the right to ignore the invitation, refuse the participation, or answer only the particular questions on their preference. Namely, the participation and response are decided by the respective candidate/respondent. The invitation was sent to the business/public email address openly provided on the candidates' YouTube channels or published on the activities' websites. In doing so, the author remotely contacted North Korean worldwide who were selected candidates with full eligibility – potential survey respondents. As a result, 20 pseudonymized (or 'anonymized' as the survey analysis in this thesis' deleted the linkage between the answers that can specify the respondents at any chance) North Koreans responded to the survey. The survey consisted of 21 questions, including three key questions. This thesis focuses on the survey result of three key questions concerning their self-identification, the most influential factors for their identity as an individual and as a group of border crossers, and a comparison of the perceived risk exposure and urgency level of three identity groups. The rest 18 questions were asked in order to build up the context of the answers and improve the interpretation of the three key questions. The survey result is presented and analyzed in 6.2.1.

4.3 Mobility-Identity Maps (MIMs)

The geopolitical maps in this thesis aim to analyze the relationship between mobility and identity of North Korean border crossers in line with the human geography aspect. Human geography is the 'study of the interrelationships between people, place, and environment, and how these vary spatially and temporally across and between locations'[26]. In other words, this can be a meaningful addition to this thesis' discussions on the relationships between human agency, peace, and human security in the event of border crossing and the interrelatedness

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[26] *Human geography: Defining human geography*. Research Guides. (n.d.). Retrieved April 20, 2022, from https://researchguides.dartmouth.edu/human_geography

between mobility and identity, which requires both spatial and sequential process tracing of border crossing. The primary purpose of the maps is to effectively visualize the differences in border crossing of North Koreans by the location of border crosser and route of border crossing. In other words, the maps concentrate on the 'transitions' of mobility and identity of border crossers. The transitions are the focus of the map analysis. The maps themselves contain one of the main analyses of this thesis; therefore, the maps and detailed explanation are not provided in this section but can be found in 6.3.2.

5　Conceptual framework

North Korean border crossers are often identified as defectors, refugees, and international migrants. This thesis calls these identities observed in North Koreans' mobility (i.e., border crossing) identity groups of human mobility. To be specific, this chapter conceptualizes the identity groups into normative and descriptive definitions. Normative definitions are conceptualized drawn on the international law and the domestic law of five states (i.e., South Korea, Russia, China, the UK, and the US). The descriptive definitions are based on the implications of the identification of North Koreans by five states. The descriptive definitions show the identity politics of North Koreans, which consists of identity discourses of five states and three identity groups. The conceptualization aims to illustrate the identity politics of North Koreans created through the diverse practices of biopolitics, the discordance between state-centric and human-oriented security approaches, and the complexity of mobility-identity-security. In the context of biopolitics, this thesis uses the law (i.e., international law and national law) as the primary material for analyzing empirical cases because law legitimates the states' governmentality. In other words, the law has advantages in this chapter's analysis as it clearly shows power relationships in any domestic or international dispute resolution by depending on the reference to the agreed norms of society which regulate individuals at a distance rather than through direct control (Mansell & Openshaw, 2019). Thus, law is appropriate to describe the biopolitical relationship between states and individuals at the national and international levels. The empirical cases of North Korean border crossers and the analysis of this chapter are the milestone of further discussions in chapters 6 and 7.

5.1　Defector

5.1.1　Normative definition

The normative definition of defector can be described as 'a person who has abandoned their country or cause in favor of an opposing one'. [27] The definition implies that the defector is self-evidently an ideological and dividing term by nature and *voluntary* abandonment is at the core. This voluntariness denotes the *ability* of the defector as a human agent. The ability of defector can be further explained by defection motives and self-identification. According to Altier et al. (2014), motives to defect are determined by considering the push-and-pull factors that arise in

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[27] Lexico Dictionaries. (n.d.). *Defector*. Lexico Dictionaries | English. Retrieved March 19, 2022, from https://www.lexico.com/definition/defector.

confrontations between two (or more) ideologically contrasting groups. The push factors can be defined as 'aspects related to an individual's personal experiences that drive them away' and pull factors as 'outside influences that induce individuals to leave the group' (SUUKG, 2019). The factors are closely related to how the groups establish relationships with individuals (e.g., alluring individuals with incentives or nurturing their loyalty to the leadership). This means that not all the motives for defection are purely ideological but can be mixed with financial, psychological, kinship- or community-based motives (see 6.2.1). In other words, the individual defectors internalize their knowledge, including the knowledge from experience regarding two ideologically and politically contrasting groups, evaluate and compare the values of leaving and staying, and use them as the ground for their decision to defect. The defection process is similar to the development process of resistance as a human agency (see 3.1.2). In the same vein, the self-disclosure of defectors to a counter group can also be understood as a practice of ability because the defector voluntarily initiates the verification of his/her profile, unlike the disclosure undertaken by the counter group.

5.1.2 North Koreans as defectors

The descriptive definition of North Koreans as defectors[28] can be inferred from South Korean law because South Korea can be viewed as a political and ideological opponent of North Korea with the background of the Korean War and because South Korea officially uses the term *bukhanitaljumin*[29] to refer to North Koreans in South Korea. The official term 'North Koreans in South Korea' has changed several times in South Korea in historical and sociopolitical contexts. After the Korean War, North Koreans were initially called defectors (*talbugja*) to indicate deserters and returnees of the diaspora within the Korean peninsula who were distinguished from spies (*gancheop*) from the North. However, the term defector (*talbugja*) still had a negative impression among the public that North Koreans in South Korea were once a 'collaborator of the enemy'. Therefore, a new term resettler (*saeteomin*) was introduced in 2005. Again, the term had to change due to the opposition from the North Korean communities,

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[28] North Koreans caught during their border crossing to South Korea receive a special red stamp on their official documents, unlike those who cross the borders to China or other countries. Failed border crossers with the red stamp suffer discrimination from the North Korean society and harsh interrogation by the State Political Security Department (SPSD) of North Korea (Channel A, 2019). It can be argued that North Korea considers South Korea with a distinction that the association with the South can be the legal ground for stricter control and harsher punishment of 'collaborators'. In this sense, the two Koreas can be seen as political opponents, and therefore, North Koreans who cross borders from North Korea to South Korea as defectors.

[29] This term means defector in the original language, distinguished from *nanmin* which is refugee, or *iminja* which is immigrant.

who were concerned about the discrimination in South Korean society, and the new term 'resident escaped from North Korea (*bukhanitaljumin*)' was introduced in 2010. The latest term is officially used in law and domestic policy as of 2022. There is an opinion[30] that the term such as 'new settler' is depoliticizing the ideological cleavage between the two Koreas, with which this thesis disagrees. The birth of the term and fundamentally, the group of North Koreans in South Korea appeared in history due to the ideological and political Korean War, affecting Koreans live in its relic since the armistice. It is doubtful that the terms, regardless of their different level of rejection sensitivity[31], positively influence the division between North Koreans and South Koreans within the South Korean society considering that discrimination still goes on even after several times of term changes (note 23). In other words, 'naming' itself should be reexamined whether it is the best way to address the identity issue of North Koreans in South Korean society as it practices inclusive exclusion over the living of North Koreans.

Nevertheless, it can be insisted that the term referring to North Koreans has been developed in a more inclusive way of acknowledging the dignity of North Koreans. Unfortunately, however, the consensus on terminology has not been established at the international level, which often leads media, policy circles, and the academic community to interchangeably use 'defectors' and 'escapees' to describe North Koreans who cross borders – even the South Korean government refers to North Koreans as 'refugees' in official translation for internationals, while they are called defectors in original versions. The changing terms at the national and international levels imply the identity politics of North Koreans. Specifically, the various terms reflect difficulties in interpreting the North Korean border crosser's identity which may differ depending on what legal basis is used to identify the North Korean border crosser. In this respect, it can be viewed that the tendency to define North Korean border crossers as North Korean defectors is more influenced by Korean law than other legal grounds.

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[30] International Society for Education through Art. (2017). *InSEA 2017: 35th World Congress of the Int'l Society for Education through Art*. Retrieved May 3, 2022, from https://www.insea.org/wp-content/uploads/2021/09/InSEA2017_Proceedings.pdf

[31] Rejection sensitivity is an outlook characterized by an anxious expectation of rejection that develops when an individual's desires to belong are repeatedly unrealized (Anglin et al., 2014). This presumed rejection is often based on personal characteristics, such as personality, or on stigmatized social identities, such as "North Korean background" (ibid.). Such expectations can easily increase the likelihood of maladaptive behaviors, such as hostility, aggression, and a wide range of social and emotional responses, including distress, depression and loneliness (ibid.). Rejection sensitivity affects individuals' relationships with those from the "majority" or non-stigmatized group (Calhoun, 2018). intervening at the level of cognitive-affective reactions has the potential to prevent behavioral reactions as well as subsequent behavioral consequences. (Meyer, 2019).

5.1.2.1 North Koreans as *de jure* South Korean nationals

The fundamental premise of South Korean law concerning defectors from North Korea is that they are 'South Korean nationals' before defectors. This view is illustrated through the articles of South Korean laws *inter alia* the Constitution and the Nationality Act. Article 3 of the Constitution postulates that "the territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands" and Article 2 of the Nationality Act posits that South Korean national is "a person whose father or mother is a national of the Republic of Korea at the time of the person's birth". Given the two articles, people of North Korea are South Korean nationals from birth as they were born in North Korea which is part of South Korean territory. For this reason, the treatment of North Korean defectors by the South Korean law is distinguished from those of international migrants or refugees and is specified in the North Korean Refugees Protection and Settlement Support Act (NKRPSSA). [32] The application of this Act through government authorities and policies is as important as the Act itself because it represents how North Koreans are treated by South Korea in the administrative context which can be considered as crucial legal grounds to other countries when identifying North Koreans' citizenship (e.g., Kim v Canada, 2010 FC 720). [33]

Table 5. Number of North Korean defectors entering South Korea[34]

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021 (provisional)

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[32] One can quickly notice that the official translation of the title of the Act refers to the North Koreans as refugees while articulating them as defectors in Article 2(1). The title of the Act in the original version refers to the North Koreans as 'resident escaped from North Korea' which is *bukhanitaljumin* (defector), a distinguished term from *nanmin* (refugee) used in the translation. The translation seems in a deliberate purpose to portray North Koreans as refugees because they are generally viewed as refugees in the humanitarian context widely accepted by the international community. On the other hand, it can be argued that there are complications in interpreting the identity of North Koreans, and the advisors and official translators of South Korean law might fail to find an appropriate international term and concept of identity to describe such complications in the translation of the Act.

[33] Although the South Korean Act itself considers them as defectors, whether North Koreans are actually treated as citizens and their rights are sufficiently protected by South Korea play an important role in assessing the eligibility of North Koreans as refugees in other countries.

[34] North Koreans as defectors in South Korea are 'gendered'. The table shows that defection to South Korea is highly gendered – female takes up 70% on average. Economic reasons can be understood as the background of such a gap. Economic activities of women increased sharply after the North Korean famine (1994-1998), and the black market (*jangmadang*) took up an expanded share of households' daily life and paradoxically improved the quality of living by providing one's 'own choices' to individuals. In the hardship of hunger and shift in (unofficial) economic structures and activities, people started to accumulate and secure their own assets that are independent of the distributions by Pyongyang. Here, women played an important role in the households as they had relatively more freedom in economic activities than men who had to participate in organizational activities by Pyongyang. Women actively sought economic means and some of them headed to China which was easier to cross river 'Yalu' between Sino-DPRK borders than that of 'Tuman' between Russia and North Korea which is under tighter

Male	608	662	591	795	404	369	305	251	302	188	168	202	72	40
Female	2,195	2,252	1,811	1,911	1,098	1,145	1,092	1,024	1,116	939	969	845	157	23
Total	2,803	2,914	2,402	2,706	1,502	1,514	1,397	1,275	1,418	1,127	1,137	1,047	229	63
Percentage of female defectors	78.3	77.3	75.4	70.6	73.1	75.6	78.2	80.3	78.7	83.3	85.2	80.7	68.6	36.5

Source: Ministry of Unification (2021).

5.1.2.2 From South Korean nationals to defectors

The legal position of South Korea toward North Korea is problematic concerning its claim over the South Korean nationality of North Koreans. In principle, North Koreans are South Korean nationals, but there are exceptions. It is because the legal position of South Korea is self-contradictory.[35] According to Articles 1 and 8 of NKRPSSA, if North Koreans have acquired any foreign nationality after their border crossing or if there is a likelihood that national security could be affected, they are not regarded as defectors. North Koreans are virtually seen as foreigners and ineligible defectors in the former, while bogus defectors and criminal offenders in the latter. It implies that there can be a discrepancy between the narrow confines of the law and the plight of North Koreans and that can produce North Koreans as bare life. In this regard, several problems with eligibility for defectors in South Korea are observed. According to Lee (2020), North Koreans who have lived abroad and the children born to North Korean parent(s) and have no official documents can be excluded from the recognition as defectors by South Korean law. The cases illustrate the predicament of North Koreans, who might have had to be compelled into such situations. For example, a child born to a North Korean woman trafficked in China may face legal difficulties because there is no official document proving their North Korean nationality.[36]

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surveillance of 'border crossing' control. They dreamed of better workplaces and living conditions, but not all could achieve their ambitions because of trafficking and smuggling. In sum, active economic activities pushed women to step outside of the safe boundaries of North Korea (i.e., engagement in both the black market and border crossing) and this contributed to the large portion of female defectors out of the total number of defectors in South Korea.

[35] For instance, the North Korean Human Rights Act of 2016 provides the term North Koreans in this Act as "persons who have their domicile, lineal ascendants and descendants, spouse, workplace, and other bases of living north of the Military Demarcation Line (MDL)". In Article 4 of this Act which stipulates the relationship with other Acts of South Korea, the Nationality Act, which defines North Koreans as South Korean nationals, is omitted.

[36] In fact, a child whose one parent is a Chinese national is eligible to obtain Chinese nationality according to Article 4 of the Chinese Nationality Law (Song, 2020). However, it is not easy for the child to attain his/her

Another problem with the legal positions of South Korea can be seen in the Panmunjom Declaration and the Development of Inter-Korean Relations Act of South Korea (DIKRA). In the Declaration and the Act, South Korea recognizes that the two Koreas are two parties to the special relations. The special relations do not mean "relations between nations [but] temporarily established [relations] in the course of pursuing unification" (Article 3(1) of the DIKRA; Article 1(1) of the Panmunjom Declaration). The purpose of the special relations is to achieve the peaceful reunification of the Korean Peninsula as prescribed in the Constitution of South Korea (Article 1 of the Panmunjom Declaration). The problem is found when comparing this purpose to the purpose of other laws. Expressly, the Constitution proclaims that the Korean Peninsula is South Korean territory (Article 3) which implies that it does not recognize North Korea as a sovereign nation-state. Article 2(1) of the National Security Act of South Korea (NSA) defines the threat to national security as 'anti-government organization'. Traditionally, the anti-government organization has been interpreted as the North Korean regime (Ryu, 2004; NHRC, 2004; Jhe, 2010). The implicit association between the concept anti-government organizations and North Korea is demonstrated through the judicial precedents[37] that judged domestic pro-North organizations, persons, and activities as guilty under the NSA.

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nationality in China. This is because many North Koreans live in China without legal status as they are deprived of the opportunity to apply for recognition of refugee status in China. This means that North Korean parent may face detention and deportation to North Korea upon the detection by the Chinese authority (see Table 6). The deportation to North Korea generally imposes on North Koreans legal punishment ranging from labor to execution and therefore can be a life-threatening risk to North Korean parent and the child left in China. Moreover, when it comes to North Korean law, international marriage itself is illegal in North Korea, and delivering a child to a non-North Korean can be a ground for doubling the punishment of treason (Yoon, 2020).

[37] There is a case associated with the North which referred to Article 27(1(1)) of the IKECA instead of the NSA. The referent text can be translated as follows: "the activity considered jeopardizing the existence of the state, security, or fundamental order of free democracy after the unauthorized visit to North Korea for the purpose of exchange or cooperation [unless there are other unavoidable reasons] shall be judged according to Article 27(1(1)) of the IKECA." (Chuncheon District Court 2014. 10. 1. Sentencing 2013 No 786). The case is an example depicting a recent change in the legal position of the South in referencing specific laws to the cases associated with North Korea. In other words, it seems when referring to the 2019 IKECA, the interpretation of legal cases related to North Korea is not often judged as a violation as much as when the NSA is applied to a judgment. Compared to the precedents before the 2010s, the cases associated with the North judged and sentenced according to the NSA have been reduced over the last decade. Notably, the number of cases indicted pursuant to Article 7 of the NSA was 40 in 2015, 17 in 2016, 14 in 2017, 3 in 2018, and 3 in 2019, showing a 92.5% decrease from 2015 to 2020 (MOJ, 2020). On the one hand, it can be argued that the IKECA might engender legal ambiguity in the interpretation of South Korean law and complicate the South's legal position by creating more clashes with other laws such as the NSA and the Constitution. On the other hand, the new phase of the inter-Korean relationship reflected in the Panmunjom Declaration of 2018 seems to have influenced the legal position of the South regarding the North-related cases. The recent change can be also argued it reflects a rights-based approach to legal interpretation. To be specific, the NSA, together with the NKHRA of 2016, received a recommendation of repeal by UPR on the ground that the laws did not comply with international human rights standards (UPR, 2017 as cited in Kim, 2018). Moreover, the NSA received abolishment recommendations by NHRC in 2004 and 2018 (NHRC, 2004; Kim, 2018). Particularly, Article 7 (Praise, Instigation, etc.) of the NSA is the most controversial provision, and NHRC (CCPR/C/KOR/4; CCPR/C/KOR/5) has consistently reported that it infringes the freedom of

The different positions of South Korean laws pertaining to North Korea, the two Koreas' different envisagement of peace on the Peninsula (see Table 3), and practically inconsistent inter-Korean relations imply what the South Korean laws actually suggest is securitizing the Peninsula from the South Korean government's perspective (Lee, 2009). This means that Seoul can translate North Koreans not just simply as South nationals and defectors but also as hostages or collaborators of insecurity in political tactics and strategies. Therefore, the South's constitutional claim that North Koreans are South Korean nationals can be seen as a political and ideological discourse with security interests. In other words, North Koreans in South Korean laws are not simply legal concerns but also political and security concerns (Chang, 2004; Kang, 2013; Lee, 2018). By being interpreted as a security interest at the national level, the identification of North Korean border crossers by transit and destination countries can be complicated at the international level with the question of their politicized identity – whether North Korean border crossers are North Korean refugees or South Korean migrants.

5.2 Refugee

5.2.1 Normative definition

The 1951 Refugee Convention and its 1967 Protocol are widely adopted international instruments at the universal scope and can provide the normative definition of refugees. To be a refugee, a person must demonstrate a well-founded fear of persecution that may occur if the person returns to the country of origin or habitual residence. In addition, the fear must have a causal link with one or more "reasons of race, religion, nationality, membership of a particular social group or political opinion" (UNHCR, 1992). In principle, the Convention or its Protocol's condition binds all organs of the state party to the Convention or its Protocol (ibid.). This means that the Convention and its Protocol function as customary law even though the lack of sanction is often questioned (Mansell & Openshaw, 2019). Determining a refugee consists of subjective and objective elements (UNHCR, 1992). The subject element concerns examining the applicant's profile and background to ascertain whether *fea*r is a key motive of the applicant's true state of mind (ibid.). The object element is to check whether the *fear* appears

expression and the principle of legality (nulla poena sine lege); the interpretation of praise or incitement can, for instance, include the cheering inter-Korean team in international sports events (Lee, 2011). However, MOJ (2020) defended that "the Constitutional Court and the Supreme Court recognize the constitutionality and the necessity of Article 7 […] the Government protects the freedom of expression, assembly, and publication to the most extent and prevents the occurrence of arbitrary arrest and detention by limitedly applying the act only when there is a *clear risk that actually damages democratic fundamental order*." (emphasis added) (at issue 22 paras. 177-178).

reasonable and accurate to the facts of the time and place concerned (ibid.). Although the assessment of the validity of fear relies upon each case, the legal ambiguity in the abstract terms such as 'well-founded' and 'fear' leave considerable room for diverse interpretations that could lead to different decisions on the refugee status of the same person. This implies that the Convention can paradoxically produce bare life at the international level as contrary to its purpose to ensure the protection of people who cannot receive available state protection in their home countries.

5.2.2 North Koreans as refugees

This section discusses the Chinese and Russian legal frameworks on refugees and their implications for North Koreans. The two countries were selected because of their geographical proximity to North Korea, which makes them a primary route for border crossing, and because of their friendly relations with North Korea – China and Russia have been important allies to the North since the Cold War era (Gannushkina et al., 2020); the three countries are closely tied with each other through their political and economic exchanges. For instance, Pyongyang periodically sends its female laborers (e.g., waitresses) to China and male laborers (e.g., loggers and construction workers) to Russia[38]. The authorized workers in China and Russia have contributed to reporting the human rights abuses by Pyongyang and poor working conditions and discriminations by their employers such as Russian-North Korean companies and introducing North Korean border crossers as *prima facie* refugees through media and non-state actors (Napalkova, 2019; Yoon, 2022). Regarding the human security approach to North Koreans as refugees, it is noteworthy that the legal decisions in China and Russia tend to be 'punitive' to North Koreans (Gannushkina et al., 2020; Song, 2020). For this reason, the two countries often receive criticism from the non-state actors and academic communities whose prevailing opinion is that many North Koreans in China and Russia should be recognized as refugees (ibid.). In this respect, China and Russia's legal frameworks and criticisms help comprehend the diverse aspects of and conflict views in the discourses on North Koreans as *refugees*.

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[38] Testimonies of labor workers sent to Russia are available in the following link: Channel A. (2020, October 13). YouTube. Retrieved April 16, 2022, from https://www.youtube.com/watch?v=xkFLQdg45Mk.

5.2.2.1 China

China acceded to both the Convention and the Protocol; however, the refugee adjudication process and the responsible bodies for the RSD[39] and the qualification of refugees are omitted in the Chinese law. In other words, the Convention and the Protocol are insufficiently incorporated at the national level and may not be effective when bringing application and appeal for refugee status to Chinese courts (Song, 2020). In the context of Chinese law, North Koreans are often discussed over their identity – whether they are economic migrants or *bona fide* asylum seekers (Knowles, 2019). However, the influx from the North – humanitarian crisis –is one of the unwanted situation for China (Koh, 2013)[40], and it seems clear to the Chinese government to consider North Koreans as irregular international migrants than refugees because the government routinely labels the North Koreans in China as illegal immigrants who entered China by illicit means and for economic motives (CEDAW, 2004; Song, 2020; HRW, 2021). This insistence often points out the root causes, such as factors under economic pressure in North Korea (e.g., poverty and underdevelopment). In addition, the Chinese government claims the legality of the Sino-North Korean bilateral treaty[41] when legitimizing the repatriation of North Koreans (Song, 2020; HRW, 2021).

On the one hand, the arguments of the Chinese government seem plausible given that the political and economic potential threats such as perceived or actual drain on resources because of accepting North Koreans as refugees can undermine China's will to host and protect them as refugees (Bakewell, 2014; Milner, 2014; Hammond, 2014). In addition, individual North Koreans might deliberately destroy documents to impede procedures of return or simply disappear in big cities where China requires to put laborious efforts to find 'illegal stayers' (Hansen, 2014). On the other hand, it is impugnable whether generalizing North Koreans as economic migrants and their motives as purely economic can be a valid argument. The pattern

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[39] Refugee Status Determination (RSD) is the legal or administrative process by which governments or UNHCR determine whether a person seeking international protection is considered a refugee under international, regional, or national law (UNHCR, 2020).

[40] It is related to China's desire to secure a buffer zone concerning the US blockade in the Korean Peninsula. China prevents North Korean border crossers from entering its territory by monitoring social changes in North Korea and securing and controlling the border (Na & Lee, 2017).

[41] Article 5 of the Agreement on Mutual Cooperation in the Work of Maintaining National Security and Social Orders at Border Areas between China and North Korea of 1998 states as following "If the deceased is a resident of the other area, it must be handed over to the other side[.]" (MCP, 1988).

of illegalization and criminalization of North Koreans appears to contribute to the exclusion of North Koreans from human rights protection in China.

Table 6. The latest report on North Koreans in China as of 2021

Category	Number of North Koreans
Repatriated	50
Detainee	1,170

Created by the author based on data from HRW (2021).

Criticisms

The criticisms are often made by non-state actors such as the UNHCR and academics who tend to regard North Koreans in China as refugees within the framework of the Convention and the Protocol (Chan & Schloenhardt, 2007; Cohen, 2010; UN, 2014). One of the main criticisms is that China gives UNHCR limited or no access to North Koreans crossing into China (USDS, 2003; Cohen, 2010). Such restrictions on access have often discouraged the non-state actors from open and transparent ways to help North Koreans who seek asylum in China (USDS, 2003; Song, 2020). The competence of non-state actors is limited in achieving constructive changes alone or in isolation, even though their mandate empowers them to provide room for political and social mediation on the conflicting issues between the state and individuals (Forsberg, 2020). In this regard, UNHCR, which plays a vital role in the issue of North Korean refugees in China, faces great difficulties before the Chinese "wall" of humanitarian aid (Song, 2020); UNHCR serves as the guardian of the Convention and its Protocol, under which the states are obligated to cooperate with UNHCR to ensure that the rights of refugees are respected and protected[42]. Given that China is a state party of the Convention and its Protocol, China is obligated "not to" force back North Koreans who can be at risk of persecution or torture upon return (HRW, 2021) and to cooperate with UNHCR. This is a substantial and imminent life-depending matter taking place in China and by Chinese authority. According to HRW's recent observation in 2020, 50 North Koreans were repatriated to North Korea by the Chinese government, and 1,170 North Koreans were detained without receiving a fair opportunity to advocate for themselves or enough rights protection from the international community. This implies that the security of North Koreans in China can be easily threatened in the setting where

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[42] *The 1951 Refugee Convention - UNHCR*. (n.d.). Retrieved April 5, 2022, from https://www.unhcr.org/1951-refugee-convention.html.

the Chinese refugee law itself is unlikely to advocate for refugee protection due to its lack of legal scheme, and humanitarian aid outside cannot meaningfully reach people with the urgent need (UNGA, 2014).

5.2.2.2 Russia

The refugee law of Russia has distinctive features that can be critical to North Korean border crossers. Article 5 of Russian refugee law denies the recognition of refugee status of "persons who have illegally left the home country and the persons who have fear in returning to home country because of possible punishment" (Lee, 2020). UNHCR has vehemently opposed this article based on the fact that some countries regard unauthorized departure itself as committing a crime that can form a ground for punishment and that such departure may be the 'result' of well-founded fear or other persecution (UNHCR Moscow, 2000 cited in Lee, 2020). Despite the recommendation from UNHCR, the article has not been modified or abolished. It can be argued that the article considers the Agreement between Russia and North Korea[43] that obligates both parties to hand over to the other party persons who illegally enter or stay from that party (Gannushkina et al., 2020). Specifically, Article 3 of the Agreement directly states that person who left North Korea and entered Russia can be deported to North Korea regardless of the person's citizenship (ibid.). It does not appear to guarantee the principle of non-refoulement by giving the Russian government an excuse to repatriate North Koreans who may be eligible for asylum in Russia (see Yoon, 2022). In this respect, the Agreement can be understood as based primarily on political reasons.

Table 7. North Koreans in Russia 2011-2019

Year	2011	2012	2013	2014	7 June 2015	4 Dec. 2015	31 May 2016	30 Nov. 2016	31 May 2017	30 Nov. 2017	31 May 2018	30 Nov. 2018	31 May 2019	30 Nov. 2019
Number of North Koreans in Russia	N/A	N/A	N/A	N/A	32,204	34,775	36,472	36,413	32,483	33,281	25,552	17,586	17,289	16,012
Applications for a refugee status	67	32	27	9	25		27		11		5		4	
Granted refugee status	1	-	-	-	-		-		-		-		-	

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[43] Agreement on the transfer and reception (readmission) of persons who illegally entered and illegally stayed in the territory Russian Federation and the Democratic People's Republic of Korea (FMS, 2016).

Applications for a temporary asylum	43	64	22	32	38	31	32	23	20
Grants of asylum	13	47	20	26	31	23	25	16	12
Asylum holders	23	66	72	54	70	77	75	56	49

N/A not available.

- represents zero.

Created by the author based on data from ФМС России & ГУВМ МВД РФ; Gannushkina et al., (2020).

It is noteworthy that the Federal Migration Service of Russia (ФМС России) and the Ministry of Internal Affairs of the Russian Federation (ГУВМ МВД РФ) granted refugee status to only one case out of 207 North Korean applicants between 2011 and 2019 (ibid.). The numbers of applications, grants, and asylum holders marked their lowest in the latest year reported (ibid.). Compared to the total number of North Koreans in Russia, it is skeptical that the decline in the numbers is because of a lesser need for asylum protection. In fact, more information is required to grasp how many North Koreans in Russia are actually given the opportunity to apply for asylum, and how many are staying legally (ibid.). This is because North Korean border crossers often live hidden in Russia due to the risk of repatriation according to the Agreement and lack access to information and help for asylum application and protection[44]. Therefore, they are often hidden as illegal stayers and omitted from the statistics. Along with the lack of information, at the heart of the difficulties of North Koreans in Russia is the judicial system. According to Gannushkina et al. (2020), the Russian judiciary does not often enjoy complete

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[44] Since 1994, the most preferred method for North Korean border crossers in Russia to apply for refugee status has been through UNHCR (Park, 1994; Park & Kim, 1994; Song, 2022). As both Russia and North Korea are UN member states, Russia is obliged to recognize border crossers, notably 'loggers' who meet the criteria as refugees, and in principle, North Korea is impeded from raising objections to its loggers' refugee status granted in accordance with the International Refugee Law and assisted by the UNHCR on the grounds of abduction or diplomatic issues. Therefore, loggers prefer to go through the UNHCR process instead of applying for protection directly to Russia. However, applying for asylum is itself challenging for loggers who need to protect themselves from the risks of detection upon their unauthorized leaving of the working and living area, which is under the surveillance of the North. According to the testimonies, loggers are not given the freedom to move under the supervision of the North unless they receive refugee status (Yoon, 2012). Moreover, leaving the designated place can risk them a disability by violence; North Korean agents overseeing loggers often break the "deviants" knees with hammers to keep the loggers incapable of fleeing from their surveillance (ibid.). The working and living place of loggers is in Siberia, but they have to go far distant Moscow and other major cities in order to apply for asylum via the South Korean embassy, UNHCR office, or other human rights organizations and missionary groups. However, their physical condition, risk of detection, and lack of resources often make them live as hidden and illegal stayers and are omitted from the statistics. Even when the loggers come under UNHCR's custody, the Russian government does not often allow them to leave the country, and the protection is "safe but hopeless" (ibid.).

independence in dealing with the matters such as the identification or deportation of North Koreans. Instead, it functions as part of the government's regulatory body (see 3.1.1.1).

5.2.3   Implications for North Korean border crossers

The above characteristics of Chinese and Russian laws and judicial systems show that both countries can face difficulties in systematic and consistent refugee protection while producing North Korean as bare life who are not protected by domestic or international law. Although China and Russia acceded to the Convention and its Protocol (Song, 2021; Lee, 2020), this does not mean that jurisprudence at the international level is implemented by itself in the law systems or court decisions in China and Russia at the domestic level (Blauberger, 2014). Given the current legal frameworks of both countries, the customary law-binding power of the Convention and its Protocol is unlikely to result in active and consistent engagement of both governments (Song, 2021). For instance, North Koreans in China and Russia are not often recognized as refugees or asylum seekers because they may fail to issue the required documents or miss essential steps of the status determination procedure due to insufficient legal and administrative schemes (Song, 2021; Lee, 2020). The two countries appear to institutionalize the deprivation of opportunities for potential refugees to receive humanitarian protection which must be ensured with due respect by the rules of the Convention and its Protocol[45]. In addition, the lack of legal transparency in the two countries appears to weaken society's watchdog role which can help North Koreans who have suffered administrative errors or irregularities in the process of examining their cases and protect North Koreans from discrimination and infringement; concerns have been raised that The Chinese authorities are threatening Chinese citizens for providing humanitarian aid to North Koreans (Wolman, 2011). In sum, the current adjudication process in both countries can be viewed as an 'institutionalizing process' to discourage North Korean refugees and distance them from enjoying human rights and protection.

In the background of the two countries' punitive legal systems toward North Koreans as refugees is the nature of the laws in the two countries, which predominantly focus on maintaining the state's organizational structure rather than protecting human rights (Song, 2021). To be specific, national decision-makers may prefer to continue to apply domestic

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[45] *Right to asylum*. Migration and Home Affairs. (n.d.). Retrieved April 12, 2022, from https://ec.europa.eu/home-affairs/pages/glossary/right-asylum-0_en

statutes and policies to maintain the *status quo* (e.g., organizational structure of the state), and the advocates of the international legal framework and challengers of the domestic legal framework may withdraw their initiatives due to the burden of risk and uncertainty (Kelemen & Tarrant, 2011). When viewed with the international architecture instead of domestic structure, China and Russia are in a more powerful position than individual North Korean border crossers who are reduced to bare life. Both states seem unwilling to see their power advantage negated by 'rules' when pursuing state interests and national security (Mansell & Openshaw, 2019). In other words, the legal frameworks of the two countries raise a concern that they can engender conflicts over security interests between the state and North Korean border crossers. From the state-centric perspective, China and Russia rarely recognize North Koreans as refugees *sur place*[46] because economic burdens, political costs, and border insecurity can threaten their state interest and national security (CEDAW, 2004; Song, 2020). In contrast, receiving humanitarian protection in China and Russia is a significant human security issue for North Koreans whose right to free movement and return to their home country are not guaranteed by the authoritarian regime of their home country. It can be argued that even those who left North Korea solely for economic reasons are *prima facie* refugees *sur place* (Song, 2020) because North Koreans can be subjected to the punishment of the death penalty[47] in North Korea due to their unauthorized departure[48]. This argument is supported by the declaratory nature of refugee status determination in which "a person does not become a refugee because of recognition but is recognized because he or she is a refugee" (UNHCR, 2007). In sum, the border crossing of North Koreans in China and Russia should be approached to seek a compatible security framework for both the states and individual North Koreans.

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[46] A refugee *sur place* is a person who was not a refugee on leaving the home country but becomes a refugee afterward due to subsequent circumstances arising in the home country during the person's absence (Paragraphs 94 and 95 of UNHCR, 1979 reedited 1992).

[47] According to the testimonies of North Koreans, the death penalty can denote various ways of execution, such as firing, hanging, and stoning to death (Channel A, 2020; 2022). The execution itself is a severe violation of human rights, and the ways of conducting it are ruthless and disdainful. The trauma of North Koreans, particularly the children who are compelled to "watch and learn" the order of Pyongyang through execution, must be addressed when discussing the human rights situation in North Korea.

[48] Article 62 (Treason against the Fatherland) of the North Korean Criminal Code states that "[a] citizen of the Republic who commits treason against the Fatherland by defection, surrender, betrayal; or disclosure of secrets shall be punished by reform through labor for more than five years. In cases where the person commits a grave offense, he or she shall be punished by reform through labor for [life or death penalty and assets forfeiture]" (edited according to the original version in Korean) (North Korean Criminal law 1999 translated by CANKHR, 2009). Furthermore, Articles 117 and 233 of the Code can be applied to the border crossing of North Koreans depending on the circumstances of individual cases.

5.3   International migrant

5.3.1   Normative definition

There are diverse definitions of international migrants. According to IOM, an international migrant can be defined as "any person who is moving or has moved across an international border regardless of the person's legal status, voluntary or involuntary movement, causes for the movement, or the length of the stay"[49]. When it comes to the DESA, international migrant is described as "someone who changes his or her country of usual residence, irrespective of the reason for migration or legal status"[50]. From these perspectives, an obvious change in residence of the person and the border crossing of at least two countries under administrative recognition can be conditions that characterize international migrants (Haas et al., 2020). Given the definitions, international migrants can be seen as an umbrella term to refer to a wide range of human movements at the international level, including refugees (UNHCR 2017). However, conflating the terms international migrant and refugee dilutes the different legal meanings and can have negative consequences for refugees (ibid.). According to UNHCR (2017), international migrants are understood as those whose motives for crossing borders do not stem from fear of persecution and whose migration process, including the return to their home country, is voluntary and available. Unlike refugees, international migrants can be deported without humanitarian support if they do not have a valid legal status (e.g., visa and permit) in transit or destination countries. This is because principles of international humanitarian protection such as non-refoulement are not applied to the international migrants (IOM, 2004).

5.3.2   North Koreans as international migrants

Identifying North Koreans as international migrants denotes that their predicament (e.g., violation of human rights in the country of origin) is attributed to other reasons than direct and severe persecution or other threats that could qualify for refugee status. North Koreans as international migrants are covered by universal human rights prescribed in the UDHR[51], the general principles of equality and non-discrimination according to the ICCPR[52] (Weissbrodt &

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[49] *Who is a migrant?* International Organization for Migration. (n.d.). Retrieved April 5, 2022, from https://www.iom.int/who-migrant-0.

[50] United Nations. (n.d.). *Definitions | refugees and migrants*. United Nations. Retrieved April 5, 2022, from https://refugeesmigrants.un.org/definitions.

[51] Article 3 of the UDHR guarantees the right to life, liberty, and the security of everyone.

[52] Article 6 of the ICCPR states that the right to life is inherent to human beings and shall be protected by law. Article 9 provides that everyone has the right to liberty and security. Article 13 protects non-nationals from arbitrary expulsion.

Divine, 2012), and rights as migrant workers and members of their families according to the ICRMW. However, they are not guaranteed international protection, unlike refugees whose particular need is specified in international law (IOM, 2000). At the heart of distinguishing whether North Koreans are international migrants or refugees is 'available state protection'. If the North Koreans belong to a country that can provide adequate and available protection, this forms the reason to regard them as international migrants and not refugees in need of protection at the international level (Lee, 2018).

Table 8. North Korean asylum seekers in the US 2009-2022

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Applications	25	8	23	21	17	8	15	14	10	5	D	D
Grants of asylum	N/A											
Refused asylum	Fewer than 10 individuals granted asylum defensively per year; fewer than 10 individuals granted asylum affirmatively per year[53].											
Not yet known												

D data withheld to limit disclosure.

N/A not applicable.

Created by the author based on data from DOJ (2022).

The descriptive definition of North Koreans as international migrants is illustrated through the precedents of two North Koreans who received a decision by US and UK courts, respectively. North Koreans are often identified as international migrants when their refugee status claim is rejected. Therefore, the two precedents concern North Koreans who applied for refugee status but were found to be international migrants by the courts. The US and the UK cases are selected for analysis because the US has a particular act on the human rights of North Koreans, and the UK is one of the most preferred destinations for North Koreans[54] together with Canada[55]. The

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[53] "North Koreans can seek asylum protection through two processes—the affirmative or the defensive. In the affirmative process, individuals who are physically in the United States may present an asylum application to USCIS and undergo a non-adversarial interview to determine their eligibility for asylum. In the defensive process, applicants request that the Department of Justice grant them asylum as a repeal against removal from the United States. USCIS data do not include information on North Koreans who first claimed asylum before an Immigration Judge in the defensive process" (USGAO, 2010).

[54] Between 2006 and 2009, there were 655 cases for a humanitarian protection status of North Koreans in the UK, of the UK government granted 350. During the same period, Germany received 14 applications and rejected all; Canada received 213 and granted 74; 85 cases (27 cases in 2006; 48 cases in 2007; 10 cases in 2008) were in the US and 68 were approved (9 cases in 2006; 22 cases in 2007; 37 cases in 2008) (USGAO, 2010); (No, 2011).

[55] Canada has the Private Sponsorship of Refugees Program (PSR), which was initiated to protect Vietnamese refugees in the 1970s (Kim, 2021); and accepted private sponsorship for North Korean 'refugees' in 2021 (Kim, 2021). It is the third country running a reception program for North Koreans; the other two countries are South

two countries do not often have conflicts with the international community regarding their treatment of North Koreans, and there are multiple cases in which North Koreans were recognized as refugees or at least received subsidiary humanitarian support from the governments. Therefore, it is worth examining the exceptional cases in the two countries to investigate the decisive grounds for North Koreans becoming refugees or international migrants and comparing them with Chinese and Russian cases would help understand the identity politics of North Koreans.

Table 9. North Korean asylum seekers in the UK 2009-2022

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Applications	36	32	17	19	29	20	28	6	7	8	3	4
Grants of asylum	6	5	5	6	7	2	0	1	1	0	0	0
Refused asylum	18	23	9	10	19	15	19	3	5	3	0	0
Not yet known	3	1	0	0	0	0	2	1	1	2	3	4

Created by the author based on data from HO (2022).

5.3.2.1 The US

The decision to grant refugee status does not rely solely on the legal definition of a refugee in 8 U.S. § 1101 (a)(42)(A)[56]. The Firm Resettlement Act (FRA) plays a significant role in examining the applicants. The Act does not concern the applicant's nationality for asylum but discusses whether the applicant has been offered permanent residence in other countries[57]. In other words, this implies that the applicant's citizenship can have a decisive influence on the judgment. The primary purpose is to distinguish individuals who have nowhere to go and thus need legal support from the US from those whose intention for asylum claims is 'country shopping' (Lee, 2018). However, the decision of whether a North Korean applicant is a *bogus* refugee or a genuine refugee takes another important act into consideration, the North Korean Human Rights Act (NKHR) of 2004. NKHR spatulates that the humanitarian approach of the courts is necessary due to the predicament of North Koreans when determining the eligibility

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Korea, which recognizes North Koreans as South Korean nationals, and the United States, which enacted the NKHR (Kim, 2021).

[56] "Any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion" (8 U.S. § 1101 (a)(42)(A)).

[57] Jang v Lynch, No. 11-73587 (9th Cir. 2015).

of North Korean applicants and appellants for refugee status. Notably, Section 302(b) of the NKHR specifies that "a national of the Democratic Republic of Korea shall not be considered a national of the Republic of Korea."[58]. The fact that both acts are important implies that proportionality and interpretation matter. If the section is examined with attention to the FRA, the court may consider that "North Koreans who became citizens of South Korea are precluded from eligibility for asylum as to North Korea on the basis of their firm resettlement in South Korea"[59]. On the other hand, it can be argued that the acquisition of South Korean 'citizenship' does not justify that North Koreans should be considered South Korean 'nationals' in the refugee and asylum law of the US[60]. In regard to the latter, there is a case a North Korean with South Korean citizenship appealed against removability ordered according to the Aliens and Nationality Code[61]. The final decision was that the appellant was not eligible for asylum in the US as he was firmly settled in a country, South Korea, where he would not be threatened or persecuted. Therefore, he was determined as an international migrant who does not meet the refugee criteria of fear of persecution. In other words, the court regarded the North Korean appellant as a South Korean national who could voluntarily return to South Korea. However, scholars and North Korean experts criticized this decision because it did not fully consider NKHR, another legal basis expressly designated to provide provisions for interpreting the eligibility of North Koreans in a humanitarian context (Haggard & Ryu, 2012; Lee, 2018).

5.3.2.2 The UK

The asylum applicant of the UK case was a North Korean child born in 2001 and arrived in the UK alone in 2011[62]. She applied for asylum in 2012, citing religious persecution in North Korea. The court denied her claim in 2015 but granted her a temporary residence permit until 2017 [63]. An appeal of the denial was filed, including reports from an independent social worker and a clinical specialist describing the claimant as follows: "[…] understandably unable to fully articulate how she would feel about an unknown set of procedures such as removal from the UK and repatriation (at 15.) […] she should be included in the decision-making process […] (at 17.)"[64]. The court of appeal held that the decision considered the general principles regarding

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[58] H.R.4011 - 108th Congress (2003-2004).
[59] In re K-R-Y- and K-C-S-,24 I&N Dec. 133 (BIA 2007).
[60] Ibid. at 16.
[61] Jang v Lynch, No. 11-73587 (9th Cir. 2015).
[62] GP (A MINOR) [2016] AA/01316/2015 (IAC)
[63] Ibid.
[64] Ibid.

North Korean cases found in the country's guidance specifying that all persons born on the Korean Peninsula are regarded as citizens of South Korea and will be treated as citizens of South Korea on return. In addition, the court problematized that the claimant did not demonstrate a well-founded fear of persecution [in] South Korea (at 44) [65]. The decision received criticism that it did not sufficiently consider the claimant, who was a child; the was a child asylum claim demanding special attention to its differences from the adult asylum claim and its dependence on the attorney and legal decision-makers (Lee, 2018). In addition, it is skeptical whether acquiring South Korean nationality is a matter within the control of the individual North Korean, and therefore equating the North Korean's nationality with the disqualification of refugee status can be justifiable.

5.3.3   Implications for North Korean border crossers

The two cases show that each country's legal basis for identifying North Koreans may result in a different decision and interpretation of their status even when they are in the same conditions. For instance, suppose the North Korean case in the UK was adjudicated in the US, the applicant would likely receive refugee status because the applicant was not firmly resettled as she came from the North directly without living in any transit countries (ibid.). The different decision implies the biopower exercised over the North Korean through legal treatments, which can lead a North Korean to different life and living settings. Although the identification demands a case-by-case approach when determining the eligibility of North Korean border crossers as refugees or international migrants, a comprehensive approach that can deal with both universal issues such as human mobility and human rights and the specific predicament is also required. This is because the complexity laid in the identification of North Koreans is challenging to be solved by individual legal decisions at the national level (ibid.). In this regard, a collective engagement at the international level can more effectively address the causal relationships of the migration issues of North Koreans and enable North Koreans to expect more consistent decisions on their status regardless of their location. However, on the other hand, standardized legal grounds and decisions can decrease opportunities for North Koreans to appeal the decision. Professionalizing the states to establish a solid and robust international framework for legal reference can be a homogenizing practice under the guise of consistency (Kelemen & Tarrant, 2011). A more elaborate practice of inclusive exclusion can be made in the normalized decision-making systems where exceptions are hardly allowed. In this regard, the discretion of the state

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[65] Ibid.

can be paradoxically seen as a space for escaping from governmentality at the international level.

Another problem observed in the US and the UK cases is proportionality. This implies a clash between the application of laws when identifying North Koreans. The proportionality between laws can leave considerable room for interpreting legal ground, and itself become an agenda when applied to new facts and cases (Blauberger, 2014). This can shape the judgment to focus on jurisprudence itself rather than a comprehensive examination encompassing a right-based approach. All in all, the US and the UK cases are asking what the most effective way can be to fairly examine the identities of North Koreans while protecting their rights and dignity regardless of their identity (Chang, 2004). To be specific, the questions arise whether the opportunity for North Koreans to receive humanitarian support is guaranteed as much as the state's opportunity to exercise its discretion in selecting the legal basis of identification and whether the capricious treatment of North Koreans due to the lack of rights-based security practices of the states can be justifiable.

5.4 Findings

The section presents several findings which were observed in the five empirical cases. First, the decision between acceptance and refusal of North Koreans' status by the potential or destination countries can be continued as the biopolitical impact on the security of individual North Korean border crossers. Protection of the destination country is crucial for the life and living of the North Koreans, whose predicament reduces them to a bare life unavailable for protection from North Korea or the international community before the state protection. Even simple removal from the destination country can be devastating to North Koreans. Border crossers do not often have the chances and resources to continue their journey for asylum while being exposed to the risk to life as they are not under the protection of the states or a priority of international humanitarian support[66]. This thesis argues that burden sharing and responsibility sharing are

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[66] UNHCR sees itself as responsible for responding not just to risks of being persecuted but to any risk giving rise to a protection need in the context of involuntary migration (Hathaway, 2012). However, it is necessary for UNHCR to cooperate with the states in order to gain access to and help people across borders. Moreover, non-state actors are required to prioritize the tasks considering the limited resources and opportunities and their organizational and operating systems. Although universal human rights can be the fundamental ground for unsuccessful asylum seekers to request humanitarian aid and protection, it is difficult for non-state security providers to put unsuccessful asylum seekers who lack eligibility as their priority in handing out support. Failed asylum-seekers can hardly be regarded as a priority for humanitarian support over unexamined asylum seekers who are therefore potentially genuine refugees. Instead, failed asylum claimers can be regarded as "illegal foreigners" (Crisp, 2020). Once individuals are rejected on the ground that they are not eligible for receiving

closely linked to this. The levels of impact and risk of accepting or refusing to host North Korean border crossers can differ by state. For instance, humanitarian considerations can be luxurious to the states with fragile social, economic, and political integration systems[67]. Considering that migration does not see borders – a borderless issue not limited to certain countries – effective burden and responsibility sharing is necessary. In this regard, another problem of the dominant burden and responsibility sharing discourse is that it generates a misperception that the receiving state of refugees or international migrants is the sole or ultimate body of responsibility, which makes the states calculate refugees or international migrants as economic and political costs (De Haas, 2021). In this vein, individuals are not often included in the discourse as equal decision-makers in matters in which their life and living are discussed and directed, while the states are empowered with excessive, if not total, control and authority over individuals in migration. The asymmetric decision-making power can provide a pretext to policies the law and policy to restrict human mobility and undermine human security in the name of the stability and security of the states. It should be emphasized that the migration problem does not stem from human mobility, and economic, social, and cultural insecurities should not be interpreted as problems. This is because movement (human mobility) and conflict (insecurity) are natural and embedded phenomena in the history of humankind before being framed as problems. Instead, the focus of migration discourse should be on the incompetence of regimes and policies which do not effectively respond to the rapidly changing causal relationships and patterns of migration. This argument is valid as demonstrated through the lack of state ability failed to capture the complex reality of North Koreans when examining their eligibility for legal status in which a focus on the circumstances of the rights holder might be more critical than establishing who the person is.

Second, universal human rights rarely appear as a fundamental legal basis in precedents and tend to be treated as recommendations when judging North Korean individual cases. In this

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asylum/refugee status, appealing to UNHCR for support can be difficult as they will no longer be considered a person of high priority to UNHCR (ibid.).

[67] In this respect, this thesis uses the 'burden (sharing)' as well as term 'responsibility (sharing)', despite criticism that the term 'burden' can relate the migration issues to negative characteristics (ECRE, 2006; EP, 2010; ICMPD, 2014). This thesis insists that recognizing and measuring both responsibility and burden can provide practical and realistic self-assessment, such as the level of resilience of individual countries. As a result, the state can secure strategic and systemic migration management plans considering its current status and prospects and of fellow countries. Moreover, by reducing the uncertainties, the rights-based migration system can be incorporated into the other mechanisms of society. Understanding responsibility and burden as the comprehensive commitment of various domains and actors of the domestic and international community can make the sharing system more feasible and effective in responding to complex migration issues.

respect, the criticism in the US case seems valid that the identification of North Koreans should be considered in the humanitarian context. However, the states seem to underestimate human rights in their migration management and tend to separate rights from the treatment of border crossers. This implies that the states consider it intractable to harmonize human rights and migration management. In other words, the empirical cases illustrated that the states appear to be more inclined to regulatory practices rather than cultivating their competency for advancing human migration. This thesis argues that the latter would free both individuals and the states suffering from the reverberating question of '(in)compatibility' between state-centric and human-oriented security approaches (see note 68).

Third, given that international law gradually moves human mobility and human security issues from the ambit of the sovereignty to the agenda for international cooperation, border crossing as an issue of human security will continue to be highlighted at the international level. Migration issues such as border crossing shows the changing meaning of sovereignty (Lee, 2018). It means that they need to be remapped in a global context. This approach enables role and function distribution between the state and non-state actors by modifying the view that the migration is left entirely to the discretion of the states. One possible approach in this respect is introducing the regimes that have shown effective results in the field of the environment (ibid.). This is beneficial for improving the migration system itself and for harmonized and integrative cooperation between the fields of migration and environment, which are closely linked to each other and equally require global commitment; it is necessary to develop iterative and actionable plans for migration relief and support as migration interplays with various domains of the social and natural world.

Last but not least, the quality of humanitarian support, including subsidiary and (re)settlement support, matters. Due to the predicament of North Koreans, humanitarian aid and protection are necessary both at the national and international levels are often necessary for North Koreans. For instance, the South Korean government supports North Korean 'defectors' in its settlement program, providing three months of socializing training and subsidy for housing. However, it is unlikely that all governments will provide North Korean border crossers with guaranteed and quality support, even when non-state actors such as UNHCR identify North Koreans as qualified for humanitarian protection. Unlike the three other states in the empirical cases, subsidiary humanitarian support for North Koreans can hardly be expected in China and Russia, as the two countries do not have a legal scheme for subsidiary support. In addition, the life and living of North Koreans cannot be reduced to a single legal case considering that a failed North

Korean asylum seeker in the UK could be identified as eligible to receive asylum in the US. In sum, country identifying North Korean border crossers is critical to the life and living of border crossers because the politicized identity of border crossers is influenced by the biopolitical governing of the state. In this respect, border crossers need to be understood in the triptych of MIS interplaying at the national and international levels.

Based on these findings, this thesis further discusses the border crossing of North Koreans through the analysis of MIS and assesses the risk to the life of individual border crossers in subsequent chapters 6 and 7.

6 Mobility-Identity-Security Analysis (MISA)

The empirical cases in chapter 5 show that border crossing can be complicated with the mobility, identity, and security (MIS) of individuals. Nevertheless, the interplay of MIS does not imply that the border crossing is a chaotic social phenomenon, relations, and processes or absent with regularities, patterns, and structure (Stjernström, 2004). Instead, MIS show that border crossing is multifaceted and multilayered. Therefore, analyzing the MIS of border crossing is not an intractable task but demands sophistication. In other words, this thesis goes beyond the simple discovery of complexity and attempts to analyze it – moving forward by decomposing the interrelatedness of MIS and reconfiguring the abstract concepts and theoretical imaginaries of border crossing into a concrete illustration. The case of North Korean border crossers is not limited to an anthropological observation, a legal claim, or microhistory of North Korean individuals; MISA as an analytical tool is applicable and valid for any research that seeks to transform the migration and security conflicts between the states and individuals into the cultivation of peaceful coexistence.

6.1 Security

The section discusses security from the two approaches, which occupy different positions in the logic of security: the human security approach and the Copenhagen School securitization approach (Floyd, 2007). The former sets an agenda of security, and the latter deals with applying such interpretation (ibid.). The two are the second generation of securitization theory and have responded to the critical security studies' requests for individual, community, and global security (Yoon, 2019). Furthermore, both approaches propose 'alternatives' to a normative understanding of security and have advantages in demonstrating discursive practices and the complicated nature of security by highlighting analytical and practical utility rather than restricting security in its normative utility (Floyd, 2007). This section develops its argument by combining the advantages of the two approaches so as to be flexible in responding to the different security interests of actors and agents in the issue of border crossing. In other words, the section devotes itself to its analysis but does not aim to describe the two approaches.

This section posits two dimensions of security as state-centric and human-oriented. However, the analysis does not dichotomize the security interest of both parties, nor does it encourage a mythical rivalry between state and individuals. This thesis understands security as a matter of peaceful coexistence that is not based on zero-sum competition. Conflict of the security interest is not between parties (i.e., states and individuals) but between inappropriate approaches,

means, and assumptions[68]. Therefore, this thesis does not attempt to construct state-centered security as a vice, human-oriented security as a virtue, or vice versa. Instead, while acknowledging that there are conflicting yet complementing security ideas, this thesis focuses on human agency and coexistence, which are looming but unseen presence in security discussions of border crossing compared to border security and control measures.

6.1.1 Facilitation

As denied asylum seekers, North Koreans are bare life who seek a breakthrough to securing their safety by themselves. Their self-help from danger to safety is trading insecurity for injustice, facilitated by state actors' insufficient humanitarian engagement. In other words, it is difficult to legitimate the noninterference of the state actors, which facilitates producing bare life by excusing a lack of authority, justification, or resources to protect North Koreans. To be specific, state actors other than transit or destination countries of North Koreans might advocate their 'good enough' level of support by compromising that they are not a major security provider. However, it is dubious whether such a compromise can form fair consent, given the presence of coercion and plight that North Koreans as bare life undergo at the international level. In that sense, nominally carried out 'burden and responsibility sharing' cannot be justified because it can be translated as 'inaction', which denotes shifting the portion of burden and responsibility to the transit and destination states and non-state actors. This reflects the support that actually reaches individuals matters (see chapter 7). Also, it denotes that all state actors are obliged to protect vulnerable populations and should hold to a higher standard of protecting individuals so that they will not be reduced to bare life in the self-help of the international architecture (Gerver, 2016).

Non-state actors are not immune from the criticism either, as they may contribute to the facilitation of repatriating the rejected asylum seekers. The problem arises when, for example, a non-state actor's engagement can be viewed as encouraging the governments to provide fewer and poorer humanitarian aid and make rejection easier because the non-state actor assists the

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[68] This thesis has a slightly different perspective than the insistence of Galtung (2013) that "conflict is not between parties, but between incompatible goals". First, 'compatibility' has always existed in the 'coexistence', which is the basis of social relations (see chapter 3). Because of compatibility, colliding concepts such as security and threats exist in the ecology of coexistence and participate in and are derived from the here-and-now events (3.1.4.2). Second, the goals are eventually the same – it is to improve the basis for a peaceful one, peaceful coexistence. In sum, 'incompatibility' does not exist in the coexistence but can be used to refer to 'operational errors' between inappropriate approaches, means, and assumptions. Such 'inappropriateness' for peaceful coexistence creates conflict, but the 'goal' for peaceful coexistence does not cause conflict.

governments by aiding rejected asylum seekers/refugees (ibid.). In other words, non-state actors cannot justify their facilitation in producing bare life by appealing to their statistical outcomes as 'good support' without examining their activities' actual consequences. In other words, non-state actors might have a survivor bias which highlights individuals who could overcome the difficulties with 'good enough' support and provide non-state actors with narratives to continue to perform according to the bias. Before establishing a treatment of individuals according to the decision of acceptance or denial of their asylum/refugee status, it should be first investigated whether the individuals were able to file their applications and whether their applications were examined in fair procedures (see Chinese and Russian cases in chapter 5). This is so as to develop humanitarian engagement in a way supporting the fair chance of right to asylum and right to enjoy asylum, not romanticizing the statistical outcomes. In sum, rejected from the transit and destination countries, being out of the priority of non-state actors, and tossed by state actors, North Koreans as bare life are endangered as institutionalized scapegoats[69] in the facilitation of the state and non-state actors.

6.1.2 Exploitation

The exploitation of the human agency is another biopolitical security issue for the North Korean border crossers. The example concerning 'rights' can describe the omittance and illegalization of human agency, and the instance regarding 'detention' can illustrate the isolation and infringement of human agency. Border crossers are given the right to leave, the right to return, and freedom of movement prescribed as human rights. However, the right 'not' to return is omitted in international law. In the same vein, the right to 'seek' asylum and the right to 'enjoy' asylum are guaranteed, but the right to 'receive' asylum is absent (UNHCR, 2007; Lynch, 2022). A collision can arise, for example, when translating an individual's unwillingness to repatriate as a "right not to return" (Noll, 1999); in this case, examining the 'unwillingness' should interpret in consideration of the individual's plight, which cannot be covered by the 'right not to return'. Given the two omitted rights, it can be argued that the recognition of asylum is created in a way recognizing the right to 'ask' for asylum rather than the right to

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[69] Scapegoat denotes a sacrifice unwilling to or incapable of fighting back. One may find it contradictory that two different concepts, *bare life* and *scapegoat*, are referring to the same situation. 'North Koreans' as bare life are abandoned by the state and international protection and simultaneously being sacrificed for the organizational and structural maintenance of non-state and state actors and the international hierarchy of laws and political systems. Here, the human agency, which is sincerely fair to all human beings, empowers North Koreans to find a space to survive on their own. Nonetheless, not all can survive in the institutionalized and systemic abandonment both at national and international levels. Perhaps, a scapegoat in the modern era denotes 'the disempowered' by the world that manages the life and death of bios but simply allows bare life to survive.

asylum itself (Hansen, 2014). The states are not obliged to acknowledge refugees but to not return them based on *the principle of non-refoulement*[70] (ibid.).

On the one hand, the insufficient rights and the way the rights are shaped in relation to the state's practice appear to be problematic by leading to a narrow interpretation of the rights of border crossers, including rejected asylum claimers. On the other hand, the lack of rights can be an exploitation of the human agency by illegalizing the human agent's decision and practice of 'not to return'. Exploitation can easily occur when the normalization function of the law is combined with the structural and institutional prevention of deviation. In this context, legal rights can be viewed as functioning that compels individuals to take certain risks enforced by the rule of law. For instance, unsuccessful asylum seekers often fall into the state of limbo, isolated from society by being structurally limited in their enjoyment of rights as citizens in the hosting country (UNHCR, 2004; Bendixen, 2021); the marginalized individuals of society are not much different (see 3.1.3). More problematic is when the regulatory mechanism is combined with punitive measures. A notable example is 'detention[71]'. Detention is used for holding people until they are either expelled from the host country or released into the community (Turnbull, 2014). In this vein, the whole detention process can be viewed as detaching individuals from society and fundamental human rights. It demonstrates that the punitive measures of regulative society can exploit human agency by depriving human agent with opportunities to practice their human agency.

6.1.3 Exception

Last but equally important security issue can be explained through the 1951 Convention and the ICCPR, which are two pivotal human rights conventions. In principle, the two Conventions do not give governments in a state of emergency the unrestricted right to suspend or withhold human rights outlined in the Convention. However, there are exceptions. Impermissible

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[70] The principle of non-refoulement "asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom". It is widely understood as a *jus cogens* of international law due to its universal and non-derogatory character. (UNHCR). *The 1951 Refugee Convention - UNHCR*. (n.d.). Retrieved April 5, 2022, from https://www.unhcr.org/1951-refugee-convention.html

[71] The concept of detention is paradoxical from a biopolitical perspective. Forced confinement by direct power over the body itself is problematic. However, its purpose is also violative, which is 'not' to correct, reform, or transform the detainees' habits or qualities to empower them as 'citizen subjects' (Turnbull, 2014). Such empowerment through 'resocialization' to correct deviants to be 'normal' citizen subjects is biopolitical regulation. In sum, detention is problematic by confining the body and engendering a biopolitical dilemma of whether it should be for resocialization or merely confinement.

discrimination in emergencies is outlined in Article 4(1)[72] of ICCPR and Article 9[73] of the 1951 Convention. The Conventions allow the governments to 'take measures derogating from their obligations under the present Covenant (Article 4(1) of ICCPR)' and 'provisional suspension of rights of persons (Article 9 of the 1951 Convention)' who are not yet confirmed as refugees (Hathaway, 2021). In other words, provisional unprotection of human rights in the context of an emergency is legally authorized according to the two pivotal human rights conventions. It is problematic that the hierarchy among interpretive sources of the text of the Conventions can be unclear (ibid.), and it is precisely in such applicability that the risk of undermining the security of individuals can occur. The exceptions here can hardly be a space for escaping from governmentality as they are to fix the deviation from the perspective of the sovereign by utilizing exceptions as the practical point of departure for justifying the state action. In this vein, state practice will be the interpretation of security not by virtue of the Articles but as a consequence of the Articles that rely on national jurisprudence and the settled interpretive positions of the governments (see empirical cases in chapter 5) (ibid.). It means that the function of law is incorporated into governmentality. Therefore, it can be argued that the 'exceptions' of securing human rights is the mechanism of approval that underpins the biopolitical risk over the individuals.

6.2 Identity

The three identity groups are distinguished from 'ordinary citizens' through target policies and laws that push them to the margins of rights and security. This reflects the asymmetric power relations in the implicit and patterned hierarchical order of society. According to each identity's position in the power relations, individuals are (dis)empowered by expectation and limitations of the society. In other words, each identity group of North Korean border crossers takes a different space in the political, legal, and social order, and this makes them distinctive. The ambivalence that identity groups are distinguished but at the same time share a common

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[72] "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant *may take measures derogating from their obligations under the present Covenant* to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin" (emphasis added) (Article 4(1) od the ICCPR).
[73] "Nothing in this Convention shall prevent a Contracting State, *in time of war or other grave and exceptional circumstances*, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security" (emphasis added) (Article 9 of the 1951 Convention).

character at the margins of society imparts the theoretical validity to the comparison of the identity groups as it is secured with the referent point for comparison. In addition, this section compares the perception of the identity of North Korean border crossers between the states' views represented in the legal decisions and the border crosser's views presented in the survey result.

6.2.1 Suggestion

This thesis proposes that the various terms referring to North Koreans crossing borders (as described in 5.1.2) need to be standardized across academia, policy circles, and media. There are several reasons for this suggestion. First, it helps separate the phases of border crossing into before and after the legal and administration stages. North Koreans are identified as three identity groups after legal and administrative processes. However, there are no term concerns before these processes. Separating the term is directly linked to the objectivity of identification process. Therefore, a neutral term for covering North Koreans who are not yet determined their status is required to fairly deliver their narratives and motives before the legal and administrative deliberation and assessment. The term asylum seeker is often used to refer to the North Koreans awaiting a decision on their status. However, the term asylum seeker dilutes other identity groups' legal meaning other than refugee and thus an impartial term that does not disregard all three identity groups is needed. A phase-to-phase approach using separate terms can help practical and systemic law and policymaking and operations that are tailored and synchronized for the predicament of North Koreans and effective in explaining the biopolitical nature of border crossing North Koreans.

Second, it is economical and efficient. Standardization saves unnecessary demand for resources and bureaucracy. For example, South Korean law uses two terms with different legal meanings (refugee and defector) to indicate the same persons (ref. NKRPSSA). South Korean law is often opted for as legal basis for other countries when determining a North Korean border crosser's relationship with South Korea and research sources used for various legal, political, and social science academic fields. Therefore, the discrepancy in law can engender confusion and complication. Moreover, the law can lack completeness and consistency because two legal norms that belong to the same system of treating North Koreans can ever contradict each other (Bulygin, 2013). Although it can be argued that "the legal order cannot have any gaps" (ibid.), the terms require different legal actions according to their different legal meanings. It implies that reconstructing the legal norms of the different identities of North Koreans is necessary.

Third, it empowers North Korean border crossers to discuss their plight and dignity and enables non-North Korean border crossers to empathize with them. This viewpoint recognizes North Korean border crossers as human agents. Therefore, the frequently appearing terms such as escapees and victims consume North Korean border crossers from the observer's perspective. This trend is particularly salient in the media. The terms frame the perceptions that lead professionals and the public to understand the border crossing issues in a specific and limited way. The new term needs to increase the answerability of the society and media to reflect the different circumstances of North Koreans that are beyond escapees or victims. North Koreans, as human agents, are interpreters of the world, interacting with social systems as equally as those who naming them. Therefore, a neutral term is required, and this thesis suggests the term 'border crosser', which the highlights self-emancipatory character of human agents and depoliticizes the three identity groups of border crossing.

6.2.2   Depoliticizing the politicized identity

Identity can be perceived differently by the holder and observer. Therefore, analysis cannot fully explain identity if the analyst only relies on one aspect of identity. Instead, identity should be analyzed in the interactional process of the internal and external minds. The section considers this interaction a starting point for depoliticizing the politicized identity. In the independent survey of this thesis, border crossers' perceptions of their identity and border crossing are interpreted and compared with the perception of the states reflected in the empirical cases in chapter 5. In addition, the term international migrant is rephrased in 'economic migrant' to highlight different key motives between the three identity groups and because the respondents may consider border crossing between the two Koreas as an intranational movement.

According to the survey result, North Koreans consider themselves economic migrants on the ground that 'motives for border crossing come from economic reasons, and the process of border crossing and settling down is similar to that of economic migrants'. Given that respondents selected economic migrants and economic motives the most, it can be viewed that the economic aspects are the determinant of crossing borders and influential to the self-identification of the border crossers. In light of this survey and the empirical cases in chapter 5 (see also note 34), this thesis suggests that North Koreans should be specified as *economic*

refugees where the fuzzy boundaries between international migrants and refugees intersect[74]. Finally, the interpretation is supported by the opinion left by an anonymous commenter as the below:

> "I consider myself a refugee. I crossed the border from North Korea for economic reasons and am subject to extreme punishment if I return to North Korea. Therefore, I am a politico-economic refugee."

Again, "economic reasons" grabs the attention. Most respondents also selected economic motives as a primary reason for border crossing, followed by other bases left in the comments, such as human rights and freedom and 'crossing the borders without knowing it'. However, unlike other reasons easy to grasp the context, the last reason invites several interpretations; human trafficking, human smuggling, lack of experience and knowledge of travel to other countries/border crossing, including its implications and consequences (see testimonies in Channel A, 2022). Regardless of whether the 'border crossing without knowing it' took place due to the criminal activities or controlling and repressive society, it reflects human rights abuses in North Korea. On the other hand, it is noteworthy that the respondents selected 'border crosser oneself' and 'kinship-based relationships' as the most influential to their border crosser identity as an individual and as a group of people. This implies motive for border crossing – economic motive – can be closely tied with the responsibility and duty to support family members.

Table 10. Identity of North Korean border crossers (unit: the number of respondents in persons)

Identity group	Reason*
Economic migrant (11)	a (8), b (4)
Refugee (5)	a (7), b (8)
Defector (3)	a (8), b (3)

*See Appendix 2.

Regarding why they choose refugees as their identity, the number of votes for reasons a and b is almost the same, unlike the other two identity groups showing a doubled gap between the selecting options. This can be interpreted that the politicized identity of North Korean border

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[74] Defector is not included in this suggestion because it is a political and ideological term and thus inappropriate for the purpose of depoliticizing. Moreover, 'defector' is a specific term that concerns North Korean border crossers who enter South Korea, which means that usage is geographically restricted.

crossers is influenced by the inter-Korea relationship (i.e., armistice) as much as their predicament under the autocratic regime. When it comes to the question asking the reason for choosing defectors, the selecting options were intended to figure out whether border crossers consider North Korea a sovereign state and to which Korea they consider themselves belong. Based on the survey results, it can be regarded that North Korean border crossers consider North Korea as a sovereign state. Although border crossers tend to be hostile to the Kim regime (see note 10), it is unlikely that the border crossers will support South Korea's 'anti-government organization' discourse. In fact, the very opposite can be expected given the following comment:

> "I believe different levels of knowledge and experience by individual border crossers will influence the period of identity reintegration. In the initial stage of settling down in South Korea, border crossers would genuinely feel a sense of resistance against the criticisms of Kim and North Korea because of ego and self-respect. However, one may think later that 'I used to live in that unreasonable, abnormal, and criminal system; I too belong to those criticisms in the end'. I think it is a natural response for human beings to be daunted for a while when their surroundings change."

The comment implies that behind the 'hostility' against the Kim regime and the 'recognition' of North Korea as a sovereign state can be a sense of *humiliation*. A similar sentiment is captured in the changes on 'how to call them' which were influenced by potential or actual discrimination and stigma of the major society (5.1.2). It is also seen in the answer from the respondents that the attitudes and perceptions of South Korean society toward North Koreans 'change' according to the domestic and inter-Korean political situations. The humiliation, a mixture of shame and anger (McCauley, 2017), can explain the respondents' description of North Korea, which is covered with ambivalent hostility and recognition. An anonymous respondent directly expressed a state of mind in the comment: "as long as South Korea gives us 'nationality' while simultaneously discriminating against us from time to time, I think we North Koreans are perpetual refugees". Given the embedded sentiment, regardless of whether it is stemmed from humiliation or *frustration*, the comments show that the North Korean border crossers community is influenced by the society, where the majority is 'non-North Korea border crossers' (see note 31). Considering that there can be dividing social perceptions of 'North Korea' (e.g., Table 4), an unstable political environment might affect border crossers to feel humiliated by identifying themselves with the North Korean regime or frustrated as a minority group of the society. The sentiments underpin the thesis argument that North Korean border crossers should be more considered human agents capable of contributing to the peaceful coexistence of society, not as victims or collaborators.

Rgarding the biopolitical nature of border crossing, the survey asked respondents about the most influential body to their rights and security of three different phases of (failed) border crossing: before and during the border crossing and repatriation. The options included North Korea, South Korea, transit country, state actors other than the two Koreas and transit country, international organizations (e.g., UN), and NGOs[75]. Respondents answered the most with North Korea for the pre-border crossing phase, transit country for the course of border crossing, and North Korea for the repatriation. In the question evaluating the whole phase of border crossing, transit country was answered as the most influential. Transit country can be translated as China, Russia, the US, and the UK, where North Koreans hold the risk of detection or deportation, as the analysis of empirical cases has discovered. The answers on biopolitical nature of the border crossing underpin the analyses in 5.4 and 6.1.

Table 11. Perceived levels of Risk Exposure and Urgency of identity groups (scale: 0-10)

Identity group (number of respondents)	Risk Exposure*	Urgency**
Economic migrant (8)	4	5.7
Refugee (9)	5.1	5.6
Defector (8)	6.7	7.5

Closer to 0 denotes negligible or insignificant, and nearer to 10 means severe or significant.

* Risk Exposure = exposure to hazards such as the absence of resources or physical unsafety.

** Urgency = the need for recognizing one's identity/status over other identities/statuses.

Given that many respondents selected economic migrants the most as their identity, the level of Urgency implies that the respondents consider themselves in urgent need of recognition to the similar level of refugees in general. Evaluation on defector grabs the attention as it received the highest scores in both Risk Exposure and Urgency despite its low popularity shown in the identity question. Due to the small number of gathered responses and ungraspable knowledge beyond the text, the survey interpretation may fail to deliver a complete analysis of North Korean border crossers. Nevertheless, the perception of North Koreans can be a meaningful addition to the policy and law makings and operations of host countries.

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[75] In the survey, non-state actors were divided into international organizations and NGOs. The difference between the two is whether the state government is officially involved.

Figure 2. Scatter plot of the three identity groups

(X = Risk Exposure, Y = Urgency)
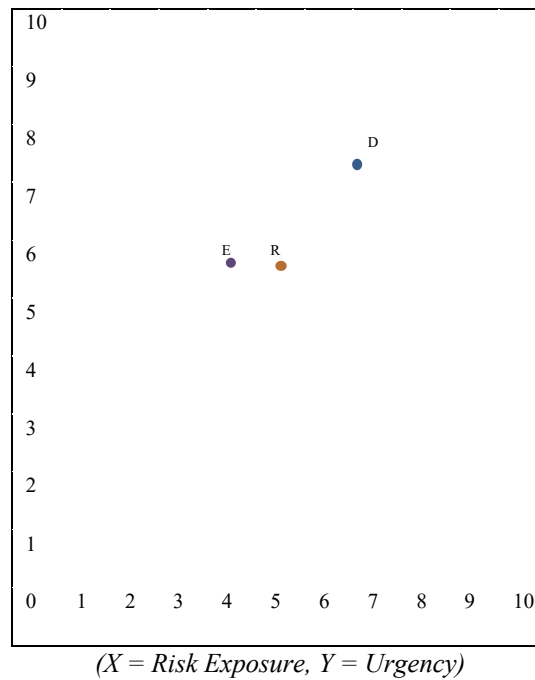
This survey asked about both identities as individuals and as a group of North Korean border crossers. This is to depoliticize the politicized identities by exhibiting the border crossers' perspective on their identity, discussing the identity politics from a bottom-up approach, and emphasizing that individual border crossers are human agents. The importance of nurturing the answerability of non-North Korean border crossers has been discussed in the previous sections. Therefore, this section concludes with the third vantage point that the individual border crossers are human agents; it is important to recognize that North Korean border crossers themselves contribute to their identity groups as a whole. In other words, individual border crossers are not only affected by the identity groups, but they also shape and influence their belonged identities, such as 'North Koreans', 'border crossers', 'defectors', 'refugees', and 'international migrants'. This implies that border crossers are not only human agents or members of identity groups but also ethical and coexistential human beings; their answerability is as significant as their ability or claim. Thus, establishing the identity of North Korean border crossers is not predefined by objective criteria, instead is about a reconfiguration of the reality by North Korean human agents who share similar positions in the social world and can respond to each other and the society (Brubaker, 2006).

6.2.3   Contextual sub-identities

Another salient feature regarding identity in empirical cases of North Korean border crossers is sub-identities. In other words, the identity of North Koreans can be specified into three

'contextual' subgroups additional to the defector, refugee, and international migrant: laborer, unsuccessful asylum seeker, and illegal economic migrant. These three subgroups are subjugated to the selected three groups but help elaborate the different identities of North Koreans. For example, North Koreans can be categorized as laborer when they are international 'economic' migrants sent to China and Russia. However, this category only applies to those dispatched to the two countries under the authorization of Pyongyang. Among sub-identities, 'unsuccessful asylum seeker' can be translated as 'bare life'. This is because unsuccessful asylum seeker can hardly be under the protection of the states and of the non-state actors – rejected from both the state and non-state actors (see note 64). Last but not least, North Koreans can be identified as illegal economic migrants. This view is often expressed when the interpreter relates North Koreans with purely economic motives – notable is the Chinese case[76] in chapter 5. This implies that identity can be discorded through the adjustment process of the administrative and legal specification of the status of individuals. That is to say, states might confine the identity of North Korean border crossers in the form of a passport, permits, and visas, however, for border crossers, identity is a collection of endeavor for survival and the everyday achievements as a human agent.

6.2.4 Art of *othering*

Categorizing individuals into certain identity groups is the art of othering - a practice of inclusive exclusion based on the group binary, 'us' and 'them' (Hall et al., 2013). The mechanism of othering relies on both redistribution and recognition of identities. Redistribution decomposes the collectivity by pursuing equality between the members (i.e., identity holders) and thus contradicts the asymmetric power relationships – intersectionality – between the members. On the other hand, recognition imparts social, cultural, and/or political values to collectivity and strengthens the like-minded members of a collectivity (ibid.). Redistribution and recognition can be rephrased into politics of difference and identity politics (Stokke, 2017). Identity politics revolves around the affirmative action of the collectivity, which consists of members with common qualities that provide them with shared experiences that are often in the

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[76] Another claim by the Chinese government is that North Koreans enter China by 'illegal means'. However, this thesis does not consider the argument valid and avoids generalizing North Korean border crossers as illegal international migrants. Instead, it considers North Korean border crossers eligible asylum seekers. In this respect, the principle of non-refoulement, which "applies regardless of lawful or unlawful entry into the territory of the State" (Perruchoud, 2012) may neutralize the presumable illegality of North Koreans' entry into the territory of China.

form of conflicts (Young, 1990). Contrarily, politics of difference seeks to dismiss the mythical commonalities between members of the collectivity in order to secure equality within the collectivity (Stokke, 2017). Both require constant (de)construction and reconstruction of subjectivity. This thesis understands the reconstruction of reality through the mechanisms of redistribution and recognition in the context of everyday peace toward self-mastery and peaceful coexistence. In other words, this thesis does not perceive othering as relies on negation. The migration surge in Europe in 2015 can be useful in describing the negation-based othering. The states who encountered the influx used the term 'crisis' for referring to their migration issue, which was fundamentally a matter of migration management. The problem of 'crisis' framing is that it quickly relates migrants to 'threats'. In sum, this thesis argues that identity is itself neutral and open to interpretations of human agents who are interpreters of the social world. Therefore, the biopolitical practice of inclusive exclusion in the othering of identity must return to its origin, the coexistence, which is the foundation of the sociopolitical world; this is not to undermine the neutrality of identity, but to use it in a beneficial way.

6.3 Mobility

This thesis analyzes mobility focusing on the 'place' where individual decision-making of state and non-state actors and human agents and its process take place (Stjernström, 2004). The place accumulates and reorganizes its memory, adjusting to the *here-and-now*. This does not mean that the place disappears every moment of its adjustment. Instead, the place is a collectivity of experiences that gains memories of the passage of time (ibid.). Therefore, changes or social actions organically occur in the series of the here-and-now events (ibid.). From the border crossers' perspective, the place is a reconfiguration of the geopolitical territory shaping by individual border crossers' experience of legal and political instruments during their movement (Collyer, 2014). Thus, the place interacts with the border crossers who interpret the place and attempt changes to the collectivity. In other words, the place reflects the consequences of human agency but is detached from the geographic sense of territory.

This perspective is also represented through the concept of 'his own country'. According to OHCHR[77], his own country is a concept that applies to both nationals and aliens. At the core of

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[77] Human Rights Committee, General Comment No 27: Freedom of Movement (Article12), 67, UNDocCCPR/C/ 21/Rev.1/Add.9 (2 November 1999): "The right of a person to enter his or her own country recognizes the special relationship of a person to that country [and] the wording does not distinguish between nationals and aliens"

his own country is an individual's "specialties to or claims in relation to a given country" which make the individual be considered more than "mere alien". This relationship between the individual and his own country protects the individual's right to enter that country. Although 'his own country' is not precisely in the traditional juridico-political sense of the relationship between individuals and the states, it is as crucial as traditional approaches to defining the relationship between individuals and countries/place (e.g., country of origin and country of nationality). His own country shows that the relationship is potentially 'transferable'. Although border crossers are often identified by their legal status in the eyes of the states, the transferability shows that the identity of border crossers in connection to the place needs 'denaturalizing' the concept of the nation-state by focusing on the experience of individuals (ibid.). In this vein, this thesis attempts to analyze mobility with a particular focus on 'transitions' where the experience of individuals interacts not only with their transition of location but also with identity.

6.3.1 Transitions

Each combination of places in the here-and-now event is unique, and the places as 'communalities (see 3.1.4.3)' of here-and-now change with time as they are no longer the same as before the event (Stjernström, 2004). This implies that the place in the here-and-now event enables as well as constrains the human agent by delimiting the courses of possible action (ibid.). This is demonstrated through this thesis' analysis concept of *transition*, which encompasses both mobility and identity dimensions of border crossing. The thesis defined transition as the change from one 'dominant representation' to another. In the analysis of border crossers, the transition can be seen as a 'micro paradigm shift' that occurs in place (mobility) and perception (identity). In other words, the transition refers not only to geographical and physical changes but also to change in the *discourse*, in which conflicts – as a catalyst for constructive change – between actors and agents can be effectively observed.

Supposing that border crosser is bare life, they experience diminished or missing personal objectives, strategies, processes, and outcomes during the transition due to structural incompetence rather than a defect in the self-directed human agency – ability (Plunkett, 2001).

(edited.), and "his own country [is] not limited to nationality in a formal sense which can be acquired at birth or by conferral[…]it embraces, at the very least, an individual who, because of his or her specialties to or claims in relation to a given country cannot be considered to be a mere alien[…]. In no case may a person be arbitrarily deprived of the right to enter his or her own country" (edited.).

On the one hand, this raises how individuals, both non-border crossers and border crossers, can challenge the normalized structural incompetency (Ruhrort & Allert, 2021). On the other hand, this shows that the answerability of non-border crossers who are structurally more empowered, is vital in leading the society to peaceful coexistence. Focusing on transition is to comprehend experiences of transition as well as the transition of experience. The transition allows tracing the adjustment of human agents to here-and-now events.

6.3.2 Visualization

The Mobility-Identity Maps (MIMs) visualize the transitions in place and the (external) perception of North Korean border crossers according to primary and secondary border crossing movements. North Koreans, who are on the secondary movements, are 'border crosser'; colors of circles and arrows indicate 'mobility' relationships but not identity. Red refers to the Chinese area, blue is Russian, green is Southeast Asian, and yellow stands for other countries. The circles indicate mobility transition, and the text boxes show the (external) identity transition marked by the legal status in which North Koreans are often classified. The identities assigned to each area are based on the empirical cases in chapter 5. North Koreans will likely be 'border crossers' in the green area because the countries are often 'transit' countries and have been reported for repatriation[78]. Notably, Vietnam, Cambodia, and Laos were the North's allies during the Cold War, and each country in Southeast Asia is often understood to have a distinctive 'dependence path' of Cold War history, diplomatic relations, and interests with each Korea (ibid.) The countries in the green area have received criticism that they recognize North Koreans as irregular migrants according to trade, investment, and developmental aid (ISEAS, 2005 cited in Song, 2015). In this sense, North Koreans in the green area are bare life-border crossers whose main concern is the border crossing itself but not asylum claims.

The maps depict simplified main routes, and border crossers can take numerous other routes that the maps do not show in detail. As explained in 6.2.2, the circles and arrows can be further particularized in sub-identity groups. The maps depict that the discourse on North Koreans

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[78] Kang, B.-cheol. (2013, May 29). *"라오스서 추방된 탈북고아 9 명 어제 북송"(종합)* | 연합뉴스. Retrieved April 5, 2022, from https://www.yna.co.kr/view/AKR20130529190652043; Jung, K.-sung. (2019, January 28). *태국 낯선 땅에서 만난 어머니와 여동생.* 월간조선. Retrieved April 5, 2022, from http://monthly.chosun.com/client/news/viw.asp?ctcd=&nNewsNumb=201902100037; Park, J.-yup. (2019, February 26). *김정은 남행열차 루트는 '탈북자 루트'였다.* 조선일보. Retrieved April 5, 2022, from https://www.chosun.com/site/data/html_dir/2019/02/26/2019022601315.html

changes following the dominant external perception of their identity. In this regard, two contrasting analyses can be derived. On the one hand, border crossing of North Koreans occurs under the states-centric security system (e.g., border control), where international law and related international institutions have underpinned building a static international architecture that considers state sovereignty as the primary referent point to shape individuals' (im)mobility (Richmond & Mac Ginty, 2019). In this sense, international architecture appears to encourage the immobility of individuals (ibid.). As the maps demonstrate, the state-perceived identity of the individuals plays a crucial role in the mobility of individuals, directly influencing the lifepath of border crossers. For instance, border crossers as refugees *sur place* can encounter illegalization and hyper criminalization, which institutionalize their ability to move as part of border control and state security practice. This is precisely how human agents are directed to act within the 'fixed boundaries' – international borders and the norms and regulations of society – during their mobility and identity transitions. This implies that border crossers may encounter structural incompetency incapable of underpinning their practice of human agency.

Figure 3. The triangular border crossing route of North Koreans
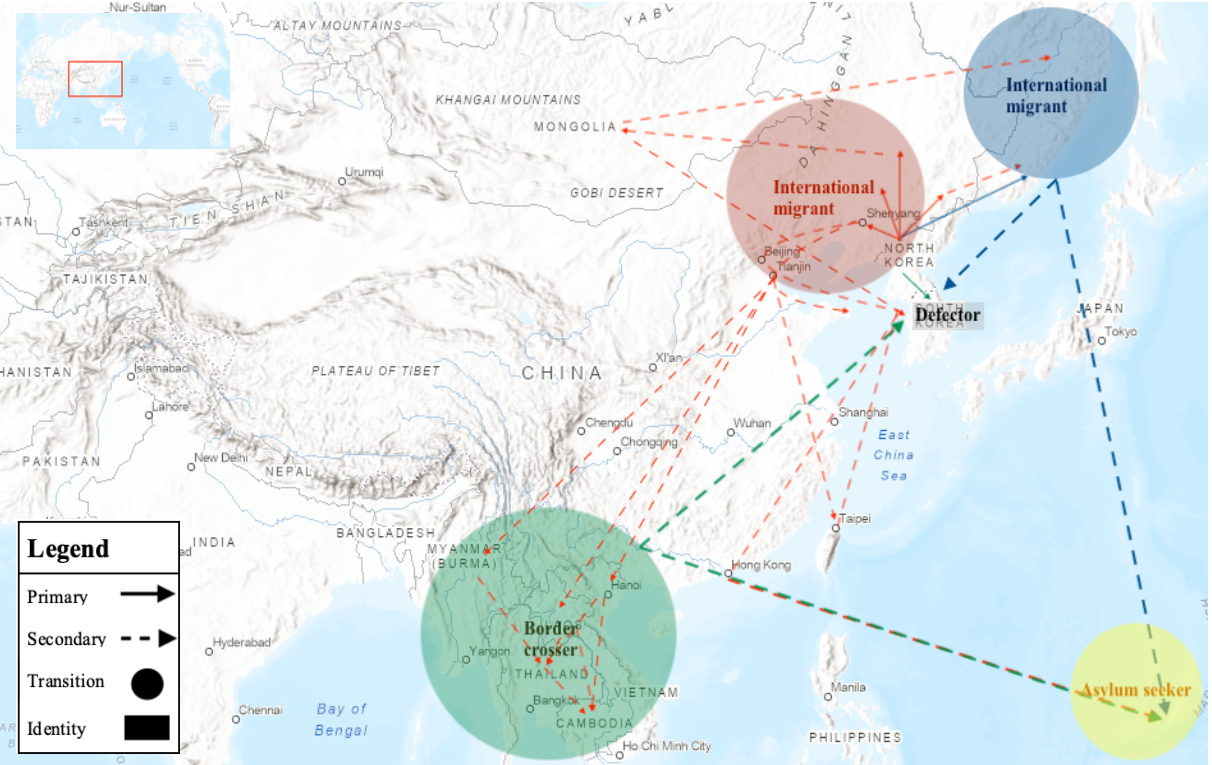
Created by the author based on data from Kang (2013); Song (2015); Hwang (2018); Jung (2019); Park (2019).

On the other hand, the mobility-versus-immobility binary can be an inappropriate simplification (ibid.). The structural incompetence fostering the immobility of individuals should not be equated to the ability of border crossers as human agents. This is because 'border crossing' itself is a self-emancipation of the North Korean border crossers. Regardless of the transition,

its process is self-emancipatory. In other words, although 'transition' is impactful to border crossing by affecting the life and living of individuals, it is not the same as *transformation*, which is fundamental change. Shifting the focus from (im)mobility to the self-emancipation of border crossers and from biopolitical transition to the emancipatory transformation may allow a new approach to the mobility-versus-immobility binary. This is because peace is established in the everyday self-emancipatory practice (or adjustment to transition in the here-and-now events) of the 'human agents'. The acknowledgment and development of everyday peace can bring constructive changes to the current structural incompetence.

*Figure 4. The border crossing triangle on China-North Korea-Russia*

In other words, the experience of transition leads to the transformation of experience. The transition denotes communalities of the here-and-now events where human agents, both border crossers and non-border crossers, interact with one another. Border crossers and non-border crossers as human agents internalize the experience and use it for their decision-making. This 'adjustment' to mobility and identity transitions results in one's own unique combination of compliance and refusal to structural incompetency. Although the degree of compliance and refusal differs by individual human agents, compliance and refusal converge in the here-and-now and influence the 'normality' of the transition. Border crossers practice their ability through self-emancipatory border crossing, and non-border crossers respond to the border crossers with their answerability. Border crossers and non-border crossers are not disconnected

or are limited to using only certain 'quality[79]' of human agency; both are in the interactional process where they 'interchangeably' use the ability and answerability and shape social awareness[80] in relation to the normalizing practice of the state. Answerability and ability are exercised by human agents to emancipate themselves from normalization and to construct peaceful coexistence. In other words, the two qualities of human agency practiced during the border crossing are everyday peacebuilding toward peaceful coexistence where North Koreans as bare life are no longer the disempowered. Individuals (i.e., border crossers and non-border crossers) as human agents can challenge the normalization through the transformative process where they modify the discrepancies in policy, law, and norms. When human agency is exercised to transform the conflict into constructive changes for coexistence, it can be argued that border crossing is a practice of everyday peace. This view does not deny the state or international system as political entities but focuses on human agents and emphasizes the basis of coexistence in which communalities create a rhythm of history.

6.4   Interrelatedness

Figure 5. Mobility, Identity, and Security
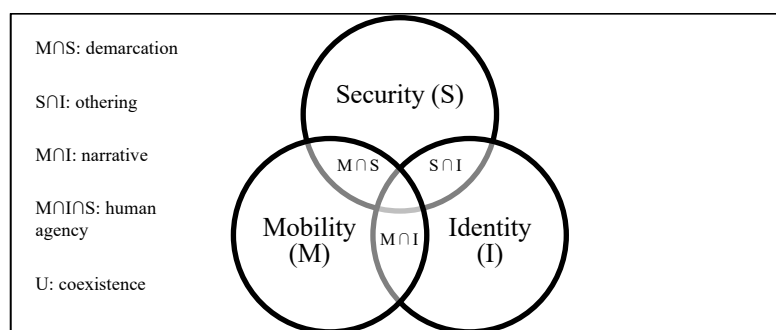
Based on the analyses in chapters 5 and 6, the mobility, identity, and security of North Korean border crossers can be summarized as the Venn diagram, which shows the interrelatedness laid on the triptych of MIS. The overarching basis of the three subsets is coexistence, while human agency (i.e., ability and answerability) underlies the intersection of the three. At the intersection of mobility and security is (politics of) demarcation between immobility-mobility and between securitization of the state and bare life which take places on the territory, borders and

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[79] Ability and answerability are not the 'types' of human agency. In this sense, the term 'quality' has been used to stress that they are the constituents of human agency.
[80] Social awareness is thinking about different things from different perspectives in the course of social encounters (Wegner & Giuliano, 1982) and can be contextualized as 'agent-hood' in this thesis.

boundaries, and space (e.g., detention and confinement of body). At the intersection of mobility and identity is (politics of) narrative, which denotes a sequence of triggering the action of actors and agents (e.g., recognize oneself/others, move to somewhere or transit or transform something). Finally, at the intersection of security and identity is (politics of) othering which regards the body as the ultimate site of legitimacy. Instead of reiterating the analysis on intersections reflected through the previous sections on each subset, the below section will discuss coexistence which is the 'foundation' of MIS and emancipation which is the 'process' of MIS and suggest reexamining the problematic concepts in MIS – the latter aims to build the context for the risk analysis (RA) in chapter 7.

6.4.1   MIS, coexistence, and emancipation

The argument of MISA is not the "expansion of all capabilities of actors and agents in an open-ended fashion" (Alkire, 2003). Instead, MIS are about the specific claim for and by the human rights of individuals or sovereignty of the states and specific obligations imposed on the individuals and states (Gasper, 2005). In this vein, the insistence of Alkire (2003) that the "human rights approach holds the notion of obligation and duty centrally" and brings an "automatic sense of moral obligation" seems valid except for the opaque concept of 'moral obligation'. This thesis argues that ethics is more desirable for discussions than morality (see note 22), and therefore, it emphasizes that nurturing the consciousness of coexistence is important. Apart from it, this thesis questions 'moral obligation'. Although there is a consensus that human rights are significant and must be ensured for all persons (e.g., the UDHR and the ICCPR), moral obligation is often left unspoken in the discussions of human rights. Therefore, the focus is usually placed on the 'needs' of human rights[81], which are relatively clear to grasp. However, from this thesis' perspective based on the 'ethics of coexistence' (see 3.1.4), the answerability, which is probably the closest concept to moral obligation, should not be left as disembodied words and detached from action and power (Gasper, 2005).

6.4.1.1   MIS and coexistence

However, this does not mean that MIS are equated with coexistence. For instance, security should be distinguished from coexistence. Security is often understood as "the absence of

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[81] This thesis understands human rights with a special focus on cultural relativism. However, this thesis does not discuss human rights in-depth due to its limited space. However, chapter 7 purposefully interprets human rights as basic rights and freedom for survival and well-being of individuals in order to apply the concept of human rights practically to the analysis.

threats" (Booth, 1991). On the other hand, *coexistence* which deals with conflict, is a universal set of its subset, security, and is the basis of 'social relations' from which the issue and demand for security arise (see Figure 5). In the same way, conflict is an overarching conception of the threat. Just as violence is one possible means to react to conflict, the threat is a form of conflict. Although MIS have intersections with one another, they are independent and do not subdue one another. This is because they are conceptually separated; each three has its own conceptual opponent distinguished from the opponents of the other two. For example, security which can be regarded as the absence of threat has 'threat' as its opponent. In the same way, the opponent of mobility can be defined as immobility and identity as discordance[82] according to ingroup and outgroup theory[83]. MIS are subsets of coexistence, and their opponents are subsets of conflict.

6.4.1.2 MIS and emancipation

This thesis briefly discusses its theoretical concept of self-emancipation in 3.1.2.2. This section develops the concept further by comparing it with the emancipation discourse in the Critical Security Studies (CSS). Emancipation matters in MISA of North Korean border crossers because border crossing is a self-emancipatory journey of human agents. To be specific, it is closely related to protecting the rights and security of border crossers. Rights and security can be threatened in the context of feudalism, slavery, imperialism, discrimination, a class system, and racism, as witnessed in the previous decades (Richmond, 2022); however, it is unclear what emancipation means to security. What is a constructive way to understand emancipation in the conflict over security interests between the states and individuals (i.e., inappropriate approaches to the coexistence of actors and agents in the dimension of security)?

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[82] Discordance is "the state or condition of being at variance" (APADP, 2022). This thesis views that discordance is a combination of misidentification from the society and disidentification from the human agent. Misidentification is "a failure to identify individuals correctly" (APADP, 2022) and disidentification is "a psychological phenomenon that occurs when individuals belong to groups they do not wish to belong to" (Becke & Yausch, 2013). In this sense, the relationship between discordance and identity can be described as, for example, the relationship between non-rationality and rationality (i.e., accordance). However, on the other hand, negation, which can be exemplified as irrationality, is not regarded as an opponent of identity in this thesis. This is because 'existence' itself has meaning to others in the relationship based on coexistence. Thus, the human agent has always at least one identity – an existential being.

[83] According to APADA, "outgroup is any group to which one does not belong or with which one does not identify". On the other hand, "ingroup is any group to which one belongs or with which one identifies, but particularly a group judged to be different from other groups". "Ingroup bias at regional, cultural, or national level are often termed ethnocentrism". See https://dictionary.apa.org/.

Borrowing the term from Booth (2007), emancipation can be defined as '*practice of resistance* [which] is a framework for attempting to actualise both nearer-term and longer-term emancipatory goals through strategic and tactical political action based on immanent critique' (emphasis in original) (Peoples & Vaughan-Williams, 2020). Emancipation and security are often expressed as the two sides of the same coin, particularly by CSS (Booth, 1991; Peoples & Vaughan-Williams, 2020). However, it is unconvincing to equate security with emancipation. According to Aradau (2004), if emancipation is equated with security, 'emancipation becomes problematic as it can no longer envisage social transformations outside of the logic of security[...]. The struggle for security is re-styled as a struggle for emancipation, without any qualms about the relationship between emancipation and security'.[84] Aradau pinpoints an important difference of emancipation in that it pursues the transformation of conflict not limited to the logic of security. In this respect, the viewpoint of CSS that presumes emancipation is achieved through security raises two questions; the viewpoint implies either mobility and identity are irrelevant to emancipation or that it misses a link explaining how other variables than security are (un)related to emancipation. Given the relationships between MIS which are independent yet established on the same foundation – coexistence – the former seems less plausible. This thesis acknowledges that security seeks and achieves human emancipation of individuals and of communities, but at the same time, it argues that emancipation can also be achieved without security or, more precisely to say, 'securitization'. For instance, considering the border crossing of North Koreans, this journey of emancipation may require human agents to exchange their security (more precisely, life and living) for emancipation. On the other hand, it means that emancipation can be achieved by the human agent oneself without security and not by securitization. Emancipation is not in the dependent relationship with 'threat', unlike security or securitization. In the context of human agency, emancipation is also achievable through identity and mobility by reducing or eliminating discordance or immobility.

6.4.1.3 Emancipation does not see nationality

In this section, the analysis expends its theoretical application to border crossers, not limited to 'North Koreans'. Although MISA takes North Korean border crossers as its study case, the analysis is not limited to a specific national group. Emancipation in this thesis does not see

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[84] This view is also shared by French post-Marxists such as Jacques Rancière, Alain Badiou and Étienne Balibar in the sense that emancipation is distinguished from security and linked to democratic politics, equality and fairness, voice and slow procedures open to public scrutiny (Peoples & Vaughan-Williams, 2020).

nationality. However, emancipation often suffers from Western and non-Western dichotomy. For instance, Ayoob (2003) argues the potential inappropriateness of the concept of emancipation interpreted as the right of every ethnic group to self-determination with which emancipation can turn out to be a recipe for grave disorder and anarchy (Barkawi & Lafey, 2006 cited in Peoples & Vaughan-Williams, 2020). This thesis insists that the Western and non-Western binary is unnecessary in the discussions of emancipation. This thesis exhibits emancipation in the very matters of life and living; it does not aim to describe the 'recipients' and 'providers' of emancipation (according to the logic of Western and non-Western binary) or the tension between groups of peoples (e.g., border crossers and non-border crossers and actors and agents). As described in the previous section, emancipation is self-achievable and can be independent of the external forces because the human agent who performs it has the space of ungoverned (i.e., human agency).

The advantages of focusing on human agents and their life and living are that this approach enables the analysis of emancipation to include the everyday practice of peace and the risk to life and living at the individual level, not limited to the populational level. This bottom-up approach to emancipation translates peace or risk as an explicable element for the analysis that does not fail to capture the dynamics at the individual level. This thesis's theoretical and analytical findings are not necessarily about a specific ethnic or national group of people but about individuals. It takes human beings as a research and analysis unit that can address the discrepancies that subnational, national, or international levels cannot address. The division of ethnicities or levels themselves should not be the focus of the research on emancipation because emancipation allows examining the niche of social relations and bonding different individuals (e.g., border crossers and non-border crossers; North Koreans and non-North Koreans) dimensions (e.g., MIS) and levels (e.g., individual and supra individual).

6.4.2 Suggestion

Reexamining the 'taken for granted' is required for several concepts in MIS. Examples can be security concepts such as expulsion, refoulement, voluntary and forced repatriation and border crossing; mobility concepts such as traditional understanding of territory[85] and confinement and

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[85] If the 'territory' is defined as the site under the ambit of sovereign power, the sites such as cyberspace, Arctic and Antarctic, and outer space in which the modern techniques and practices of power (e.g., hybrid warfare) take place should be regarded as 'territory'. This is a more inclusive approach than the traditional territory based on the physical and demarked land of the states.

isolation of illegalized individuals in the modern liberal state; identity concepts such as the normative definitions (e.g., legal definition) of identities. This thesis finds that problematic concepts tend to be taken for granted in research and praxis (see chapters 5, 6, & 7). Due to the limited space of this thesis, this section focuses on discussing reexamination from the security dimension, which helps build context between the current and the following chapters.

6.4.2.1 Reexamining the *taken for granted*

MISA demonstrates that MIS are essential dimensions of border crossing. It effectively illustrates the interrelatedness of mobility and identity over individual border crossers through transitions. However, the current MISA has a limit that it is incapable of detailed account for the security situation of border crossers. It is still unknown what kind of 'threats' and how much they affect the security of individuals on movement. In other words, border crossing is closely related to rights and security protection. Therefore, the threats they may encounter during the border crossing can directly damage their life and living. Security threats for border crossers can be inferred from empirical cases. Among various types of potential threats, this thesis finds removal measures as the most problematic and fatal to the life and living of border crossers. In this regard, it can be necessary to reexamine the principle of non-refoulment. Non-refoulment prescribed in the 1951 Convention contains provisional exception Article 33(2)[86]. According to the UHCHR (2007), "the provisions of Article 33(2) of the 1951 Convention do not affect the host State's non-refoulement obligations under international human rights law, which permit no exceptions". This means that "host State would be barred from removing a refugee if this would result in exposing him or her, for example, to a substantial risk of torture".

It appears that UHCHR (2007) recognizes and prevents the misuse of the provisional exception from the state's discretion that can exploit it and *de facto* refoulement which can be practiced by employing other legitimate removal measures. Compared to 1951, the awareness of the plight of border crossers was improved in 2007 because 'less well-defined situations of need such as famine, drought, war, or civil strife' (Goodwin-Gill, 2017) emerged and produced the border crossers that were not initially considered in the instruments. Changing grammar of migration led to several debates such as in the case of the Sale v. Haitian Centeres Council[87].

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[86] Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, at 11.

[87] It can be argued that the Haitian refugee litigation enabled the recognition of geographic zones or issue areas to which the law supposedly does not apply with respect to migration issues, such as the extraterritoriality of human rights treaties (Koh, 2017). On the one hand, it represented the rise of transnationalism in the 1990s and the

Nevertheless, the effectiveness of non-refoulement still remains debatable precisely for the same points that UHCHR raised concerns about. Three controversial repatriation cases of North Korean border crossers illustrate that the problem still takes place. Two North Korean fishermen murdered other 16 fellow fishermen who bullied them and drifted into South Korean waters in November 2019 (see note 10). The fishermen demonstrated their will and desire to live in South Korea, however, the South Korean government denied and repatriated them according to Chapter 6 on Deportation, etc. of the Immigration Control Act of South Korea and the provisional exception[88] of the 1951 Convention. However, the case was controversial in that North Koreans who were South Korean nationals (see 5.1.2.1) and refugees *sur place* (5.2.3) were refused protection by South Korea and repatriated. In April 2013, seven North Korean border crossers, including an 8-year-old girl, were caught at their border crossing in China and subjected to the repatriation to North Korea[89]; in the same way, nine juveniles[90] were forcibly repatriated to North Korea from Laos during their border crossing in June of the same year. From human rights and security perspective, the repatriations of the underaged do not appear justiciable. The repatriation of underaged North Korean border crossers, particularly

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complex "transnational legal process" in which international norms infiltrate domestic law (ibid.). On the other hand, it taught enduring lessons about human rights advocacy (ibid.).

[88] Article 33(2) states that "The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country".

[89] It is assumed that the juveniles were sent to the '927 office', a reform center for the underaged who were caught for their unauthorized movements and other relevant reasons for detention. The purpose of detention is to office culturally re-educated the detainees (Channel A, 2019). However, according to the officer's testimony who worked at 927, toddlers and little kids who can hardly be regarded as appropriate for cultural reeducation are also detained at the office without primary care such as nutrition and food (ibid.). Therefore, based on the testimony, the 927 office does not comply with the Convention on the Rights of the Child of 1989, Article 72 of North Korea's Constitution, which stipulates that children who have no means of support are entitled to material assistance, or Article 18 of Childcare Education Law, which states that children who are not under the protection of parents shall be taken care of at nurseries and orphanages (KBS World, 2022). North Korea claims that children are the kings and queens of the nation and upholds the principle of "the best for children" (ibid.). However, unlike its laws and slogan, many North Korean children suffer from detention, threatening their right to live (ibid.).

[90] In May 2019, the mother of the repatriated 17-year-old juvenile, Kwang Hyuk Ryu, testified on the broadcaster that she first heard about the repatriation of her son in December 2013 by SPSD and that Pyongyang forged the facts about his son. For example, Ryu testified at the interview with Pyongyang that he lost hearing in his right ear due to the violence of a missionary whom he met during the border crossing, but his mother testified that her son's hearing functioned fine when she met her son in December 2013. The mother could only meet her son three times – once in December 2013 and twice in January 2014 because Pyongyang isolated the juveniles from their families and detained them in poor living conditions (Channel A, 2019). According to her, Ryu and failed border crossers were under harsh surveillance in their detention and had no freedom to leave the detention system. The reason for the detention was to prevent the failed border crossers from attempting another border crossing. Ryu and other failed border crossers were used in Pyongyang's propaganda aimed at North Koreans to show that North Korea was better than other countries visited by border crossers who returned 'voluntarily'. Although her son was portrayed as a patriotic young man in the propaganda, her neighbors discriminated against her and denounced her and her son as traitors to the country. Her mother said she could not see her son again as of May 2019 (ibid.).

without a guardian is a serious human rights and security violation and should be carefully considered as the case of unsuccessful child asylum seekers (5.3.3). In other words, both cases show that, in practice, the state's discretion can be prioritized over the state's humanitarian obligation to protect vulnerable individuals. Although the principle of non-refoulement prohibits various forms of expulsions additional to the refoulement (UHCHR, 2007), there are still removal measures in the grey area of the law that may have the effect of refoulement. This implies that removal from the territory can be a legal and appliable measure in the eyes of the states but has destructive consequences to border crossers. On the other hand, this shows the current conceptual and methodological incompetency in analyzing and addressing the actual risk reach individual border crossers. In other words, there may be a discrepancy between what a law or state is concerned about as a risk and what affects border crossers. Even when the intention of law or a policy is designed to "protect" individuals in need, the grey zone of the protection and discretion of the state can instead potentially harm the individuals' rights and security. This implies that the law and policy should consider the actual risk reaching border crossers and include individuals as a unit for risk assessment. Based upon this perception, analysis of risk to life of individual border crossers is discussed in the following chapter.

7 Risk Analysis (RA)

7.1 Introduction

This thesis attempts to develop RA in the combination of generalizable aspects for measuring risk to border crossers and unique aspects adjusted to a specific event of border crossing. RA considers long-term consequences and mandates implementation and reflects them throughout the analysis. In other words, it avoids 'normatively unfair and scientifically unproductive' (Johansen, 1994) risk analysis by balancing academic and practical approaches and providing both theoretical background and analytical tools. RA exhibits ethical and emancipatory peacebuilding approach based on its unique understanding of the transformation of risk in relation to the human agency. The approach is distinguished from the traditional conflict and risk approach from security studies which often translates risk to individuals as political loss and gains in the grammar of interstate or intergroup conflicts. On the contrary, this thesis focuses on the event of life and living during the border crossing, and therefore border crossers are conflict-affected individuals who are exposed to immediate physical threats to life or deprived of life-sustaining resources fundamentally due to their reduction to bare life. Still, it captures the human agency inherent in border crossers and views border crossing as a peace operation and implementation from the grassroots level (see 6.3.2).

This unique approach to risk analysis is based upon the learning from the past couple of decades of peace operations. The previous quantitative academic research and field practice often lacked operational utility for case studies because they often translated peace operation as an instrument of third-party intervention or measured the process and outcomes by relying heavily on the robust yet contested definition (Peter, 2016). On the other hand, qualitative studies and initiatives were easily lost in the spectrum of 'standards' in their attempts to provide definitions and criteria for peace operations. For example, minimalist focuses on mandate implementation, and maximalist look into whether international interventions improve the chances of peace (ibid.). This thesis evaluates that the previous endeavors of academics and practitioners were insufficient in looking at risk-peace relations from an individual level placing human agency on the focus. Therefore, it attempts to increase the performance of academic exploration and field practice by improving the synchronization between theory and methods through a novel RA approach.

In sum, this chapter aims to underpin the analyses in the previous chapters by providing risk analysis tools and mini theories for border crossing. The risk methods of this thesis seek to explore the situations of risk in which institutions, both state and non-state, have insufficiently dealt with the human agency of individuals or otherwise created insecurity for individuals during the administrative and legal processes. It considers individuals as a research unit and takes a bottom-up approach while placing human security at the heart of the analysis. The analytical tools are drawn upon peace and security studies and explained with their applicability through the thick descriptions.

7.1.1 Appropriateness and utility

Analyzing the issue of border crossing using RA has several advantages. First, it complements state-centric risk analysis, which uses collective risk indicators and dilutes the impact and meaning of risk before reaching individuals. The traditional state-centric approach contributed to security studies by calling the attention of academics and practitioners. However, unfortunately, it has provided no explicit security guarantee for individuals (Gasper, 2005). Many individuals are still sacrificed in the course of border crossing, and this is often justified to bring a broad range of 'good things' to the majority (ibid.). On the one hand, it can be assumed that limited resources and opportunities contributed to such centralization of rights and security, and 'structures of deprivation and insecurity' discourage the state from being truly committed to promoting human security agendas (Newman, 2020). On the other hand, it depicts human rights and security from the state-centric perspective are being moved from the humanitarian consideration to the logic of the economy.

Although the risk prevention and reduction frameworks at the national level can affect individuals by changing the condition and environment of the risk at a distance, such an approach still tends to revolve around the government and organization and therefore is fundamentally a top-down problem-solving approach. Therefore, human security approaches receive criticism that it has a paradox of questioning the conditions that produce human insecurity while endorsing these structures and norms (Newman, 2020). Newman (2020) comments that the human security idea appears to rely upon the state to operationalize human security policy, thus exposing a contradiction in practice. Contrarily, RA attempts to fundamental reframing of human security issues. It does not neglect that state and non-state actors play an important role and encourage them to actively engage in promoting human rights

and security because concerning border crossing, they hold the most if not monopoly of means of (in)security and resources including the biopolitical ones.

RA criticizes 'a fixed international architecture in which "sovereign" peace and security spreads to all states' (Richmond & Mac Ginty, 2019) and avoids 'security arbitrage' that ranks the condition of security from state and non-state actors' perspectives (ibid.). However, RA does not deny power and mandate (note 19), nor does it reject the advantage of life, peace, or risk management skills. Instead, RA lists, categorizes, and calculates the risk while situating its focus on empowering individual border crossers and effectively demonstrating and comparing the risk reaching the individual level with risk dissolved at the supra-individual levels. It seeks to human security policies and projects reframed with the language of individuals in the very event of survival. In this regard, this thesis analyzes risk to life by focusing on basic needs[91] as rights of individual border crossers. This is in consideration of everyday mobile peace (i.e., border crossing) that comes with the people on the move (i.e., border crossers), introduces new rights claimants that are expanding the traditional understanding of rights (Moyn 2018). Therefore, focusing on border crosser and their matter of survival challenges fixed boundaries of rights, state sovereignty, and liberal institutionalism. This reconstructed 'legitimacy' includes more hybrid approaches such as RA to the mediation of political claims across time (e.g., historical justice) and space (e.g., distributive justice) (Richmond 2015). In other words, RA highlights individuals who are communalities shaping one rhythm of history together with the state and non-state actors. In this regard, the previous chapters have argued that border crossing is a multilayered issue and should be understood in a global context; but the current chapter steps forward by providing individual-specific risk analysis tools and mini theories that 'enable' to look at the border crossing in the global context.

By translating border crossers into human agents, RA incorporates the concept of risk with the notion of human agency. In doing so, insecurity relates human agency to individuals and makes it an empirical reference point (Jang, 2019). That is to say, this approach can describe the suffering and insecurity of individuals who are not only at isolated dimensions of nutrition, longevity, or violence (Gasper, 2005) but are often omitted in the statistics or converted into demographic information (e.g., disease and disability). By portraying more about people who

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[91] According to Schabas & Nowak (2019) basic needs can be defined as "food, clothing, medical care, sanitary facilities, education, work, recreation, communication, light, opportunity to move about, privacy, etc." at 276.

strive and feel, RA urges policy framework and the exercise of integration to include emotions and ethics (Gasper & Truong, 2004). It means that RA can be helpful to migration management and emergency remedy. This is because border crossing is linked to policy and thus can provide political implications. Considering that the risk to individuals can occur during the administrative and legal process of identifying individuals (see chapter 5), comparing the level of risk to individuals (i.e., applicants and appellants of status claim) in the respective stage of the administrative and legal identification process can help assess the efficacy of the migration management system. By adding the perspective of individuals, a rights-based approach to civil procedures can also be expected. This vantage point adds insights from the human rights and security dimensions to the current peacekeeping initiatives, notably the latest initiatives such as the Comprehensive Performance Assessment System (CPAS) and Action for Peacekeeping (A4P) which may need to improve their competency to capture the actual impact and meaning of risk to conflict-affected individuals.

7.1.2 Challenges and limitations

Classifying the risk into types and exposure level is necessary for quantifying and comparing the risk to individual border crossers. In this regard, specific information on the actual conditions of a given period is necessary (Olsen et al., 2001). However, no previous study has investigated North Korean border crossers with risk analysis taking individuals as a research unit. The lack of precious research does not allow cross-checking between risk methods developed, nor does it specify the types of risk that North Korean border crossers often encounter. This applies to the other border crossers because there is a paucity of data at the individual level regarding risk during the border crossing in general and in administrative stages of legal decisions, in which 'transition' plays an important role (Gerver, 2016; Crisp, 2020). Therefore, it is difficult to know how many and to what extent border crossers at risk can receive humanitarian support because they rarely appear in statistics and documents of state and non-state actors (see note 1). Not only the types of risk but also their assignment to risk level and relative assessment that needs to specify deterring factors in detail require the data.

For these reasons, listing risks to life at the individual level uses data at national and international levels to secure the sources' reliability; however, the purpose is to contrast the RA's border crosser-oriented perspective in interpreting and analyzing the same data from the traditional interpretation hovering around at the supra-individual level. In other words, listing, labeling, and calculating risk demonstrate the risk to life and living, reaching individuals vis-à-

vis state-centric risk indicators, and discovering the inefficiency of the administration process. On the one hand, this attempt can have risk fostering 'security arbitrage' at the individual level. Nevertheless, on the other hand, insufficient data implies that analysis methods are inadequately developed. While reducing the adverse effects such as the former in the analysis, in regard to the latter, RA's suggestions of human agency-focused analysis and the tools are themselves contributing to advanced analysis of risk-affected individuals from the bottom-up approach despite the insufficient support from the existing material and research. A criticism may also arise that RA can only be applied to the case of '(North Korean) border crossers'. This paradoxically shows the validity and applicability of RA to general cases of human security issues because RA deals with the very event of survival of human beings. Border crossing has not been the focus compared to war and emergency and therefore presents novel research value. The interplay of power relations in the issues of life and living can be vividly observed in border crossing through biopolitics and human agency (see also 6.4.1.3) and thus appropriate to explain the complexity of human security in its condition, which might produce insecurity of individuals.

7.2 Risk

Risk is at the heart of this chapter's understanding of border crossing and human security. Risk is a significant area of interest in security studies and an increasingly important area in peace studies in which it is closely related to warfare, insecurity, and violations. This thesis views that risk takes place not only during the border crossing but also in the process of administrative and legal decisions on the identification of border crossers. Therefore, the conceptual place and time of risk encompass the period and process of border crossing until the settlement. RA specifies risks concerning the needs and rights of individuals in the context of refugee and migration issues. This is because the risk is identified when imposed on needs and rights, and border crossing is based on MIS, encompassing migration and refugee issues. Risk can be discussed with different definitions and types, but this thesis posits that risk conceptually stands the opposite of human agency and threatens the life and living of border crossers.

Chapter 6 illustrated that MIS as essential dimensions of border crossing is a process of self-emancipation and everyday peacebuilding toward peaceful coexistence. However, inappropriate approaches to the goal of peaceful coexistence can create conflict. The chapter also explained the opponents of MIS, which are subsets of conflict. This section discusses the opponents of MIS, which are three dimensions of risk: *threat, immobility*, and *discordance*

(MIS¢), which are three opponents of MIS. Specific types of risks (e.g., malnutrition, detention, and discrimination) emerge in the interaction of this triptych of the risk. It means that needs and rights are incorporated into the dimensions of risk when they are endangered. When analyzing them in the context of biopolitics, the risk can be further specified into risks to life and living, which are discussed in 7.3 and added its analytical precision through RI.

Figure 6. Dimensions of risk
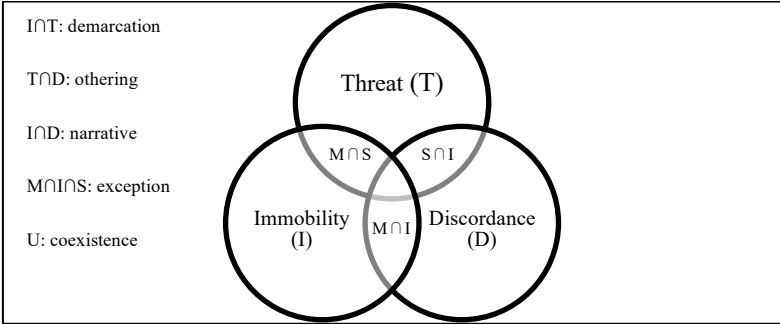
Dimensions of risk show the source of risk and process of its emergence based on the theoretical (i.e., the ethics of coexistence, biopolitics, and human agency) and empirical (i.e., border crossing) explorations of risk in relation to its opponent, MIS. The (politics of) demarcation, othering, and narrative are also seen in the subsets of risk because these inappropriate approaches arise conflicts in MIS and highlight MIS′ on the social and political foundation, coexistence. It means that MIS′ are not separated concept from the coexistence but are in the here-and-now event and create history together with other communalities. Although MIS′ has the same universal set as MIS, at its intersection of the three is (the states of) exception, described in 3.1.3.1, 6.1.3., and 6.4.2.1. Exception attempts to damage human agents by practicing a combined MIS′. An emergency that is a similar risk to an exception turns into an exception when biopower intervenes (see 6.1.3).

7.2.1 Normative concepts of risk

The three different sources are used for exploring the normative concepts of risk: UNTFHS, UNHCR, and peace theory. According to UNTFHS (2021), damaging, exploiting, deterring freedom from fear, freedom from want, and freedom to live in dignity can be defined as risk. The *three types of freedom* can be seen as the main composition of human security from a traditional approach. This view understands the concept of risk not only limited to violent threats such as poverty, disease, and environmental disaster but in a broader spectrum encompassing people's needs, vulnerabilities, and capacities (ibid.). On the other hand, the risk

can be defined in the context of the SPHERE project of UNHCR (2011) as 'human suffering arising out of disaster or conflict that affect a right to life with dignity'. In this regard, UNHCR identifies *key life-saving sectors* as water supply, sanitation, and hygiene promotion; food security and nutrition; shelter, settlement, and non-food items; and health action. Borrowing the term from Galtung (2013), key life-saving sectors can be translated into *four basic needs*: survival need, well-being needs, identity need, and freedom needs. The basic needs are 'not values or aspirations but conditions for living with and living for' (Galtung, 2013). In this regard, 'we can more readily state norms in the form of rights that imply duties by specific actors and impeded by "wrong" structures' (Galtung, 1994). The three definitions of risk revolve around the needs and rights of individuals. The emphasis on needs and rights from academia and practitioners underpins the validity of this thesis' RA that focuses on the event of survival border crossers whose needs and rights are closely tied to their fundamental standard for life. As normative concepts share the common with RA, they are utilized in the accounts of RA in later sections.

7.2.2 Human security-based risk

Several scholars (Krause, 2004; Mack, 2004; Newman, 2010; 2020) argue that human security ought to be about freedom from fear not about freedom from want. The argument revolves mainly around the two reasons. First, human security can be used as an umbrella term to refer to 'bad things that can happen' and loses its criticality and sharpness in analysis to researchers and utility to policymakers. This makes human security difficult to define the scope of threats or prioritize amongst them (Newman, 2020). Second, human security hardly provides substantive improvements to the issues such as education, fair trade practices, and public health (Floyd, 2007). From this perspective, human security is normatively attractive but analytically weak (Newman, 2004) because the approaches can be problematic in that they can arbitrarily include or exclude types of threats, which can lead to subsequent problems related to human security measures or variations in human security (Newman, 2020).

In regard to the arbitrariness of human security, this thesis intentionally takes the case of border crossing of North Koreans. By concretizing the risk and its relationship to human agency in the reflection of border crossing, RA objectifies the specific risk (i.e., life-threatening risks created in the three dimensions of risk harm needs and rights by actively) as 'risk' to survival, underpinned by both theoretical and empirical explorations of this thesis (7.1.2). This thesis' RA argues that freedom from want is as crucial as freedom from fear because they are not

separated but in the same process toward peaceful coexistence. Also, human security should not narrow its ambitions and goals to a minimum. This is because justice and equality between human beings cannot be effectively discussed in an approach that limits and restricts needs and rights to specific types to cover the theoretical and operational incompetence of approaches. In other words, the approach to human security should not be developed in such a way that the lack of resources and opportunities is excused as a basis for sacrificing freedom from want. Therefore, RA considers and seeks both freedoms from fear and want translated in this thesis's language – concepts such as peaceful coexistence and mini theories such as risk transformation strategy.

7.2.3 Passive reasoning of peace

RA deals with the pressing issues in the event of survival therefore it depicts peace relying mainly on passive reasoning. In other words, peace tends to be conceptualized by eliminating the opponent concepts rather than peace itself as a start point of conceptual reasoning has been developed. In this reasoning, the simplest way of defining peace would be an absence of war or conflict which John Galtung called a negative peace – an absence of violence. However, the purpose of RI is not to content with the status quo of peace (i.e., pre-risk restoration) but to raise the standards of peace (i.e., constructive change). This thesis argues that including border crossers' perspectives in comprehending risk to individuals is crucial not only to deal with the risk and to secure the follow-up measures effectively but also to advance the understanding of risk across the levels/scopes and of human rights and human security.

7.3 Risk to life

Risk is categorized into risk to life and risk to the living in the biopolitical context because biopolitics governs over life and living of individuals. RA separates the time frame for its analysis into two: the phase between the course of border crossing and before the settlement and the phase after the settlement. It relates the former to the risk to life, which deals with the survival of individuals in a life-dependent event, border crossing. On the other hand, the latter is associated with the risk to living which is more closely related to the way of life and quality of living rather than the direct survival of individuals. The focus of RA is on the former, which is also mainly discussed in the previous analyses. The risk to life is distinguished from other types of risk in that its prerequisite is that the general living conditions of risk-affected individuals (i.e., border crossers) are already significantly below the minimum standards of living (UNHCR, 2011).

The international level is not regarded in the analysis of risk to life because this thesis views that the state plays a decisive role in providing security to border crossers within its territory (UN Special Rapporteur, 2009; UNSC, 2021). In addition, the state holds a totality of legal powers and competencies regulated by contemporary international law (Crawford, 2006 cited in Perruchoud, 2012) and therefore international actors need to deal with the state in order to access or provide protection to the border crossers (see note 65). In this regard, RA delimits its geographic and thematic boundaries to the state level and scope. This approach is not intended to proliferate the understanding of security and peace from a 'sovereign' centered perspective; RA acknowledges the state's role and importance and focuses on reframing the risk in which the state can contribute to the human security of border crossers. Non-state actors and other state actors who are not the transit or destination countries also play an essential role in the descriptive assessment of risk to life. This is because the influence and intervention of the international community are incorporated into the 'risk' as factors with the deterring effects (see 7.3.2).
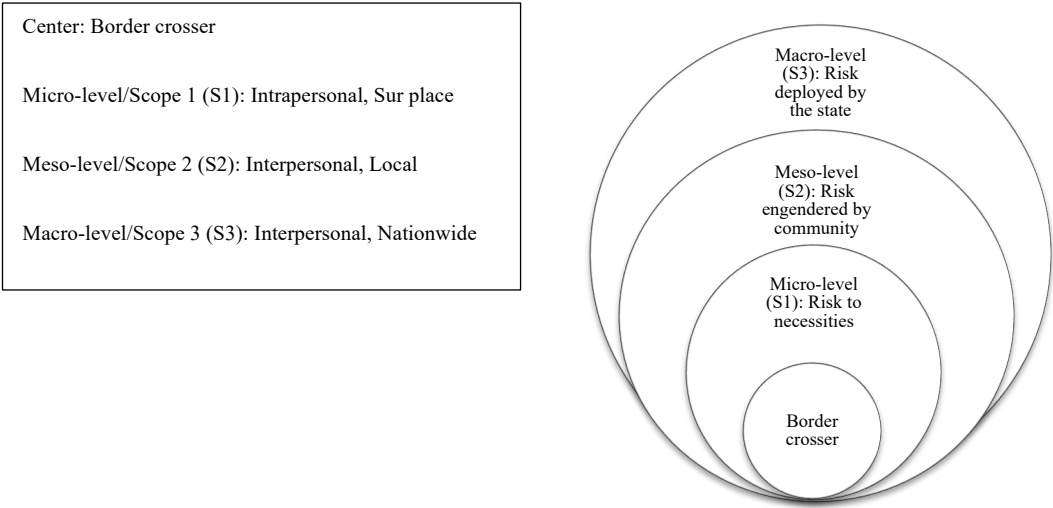
7.3.1   Thematic levels and geographic scopes

The risk to life is categorized into three thematic levels and geographic scopes: macro-level/nationwide-scope, meso/local, and micro/sur place. Macro-level risk is the risk imposed by or affects the state; meso is the risk from or concerning the local community where the border crosser belongs; micro is the risk to necessities. Micro-level risk is associated with intrapersonal risk while meso and macro levels are related to interpersonal risk. The risk to necessities means the risk relates to the physical survival of the border crosser on the spot. All three levels of risk can affect the life of border crossers in different ways. Macro risk threats life through law and policy that may engage with punitive measures; meso risk threats life through crime; micro risk concerns direct physical survival. Micro and meso level risks take place in the first half phase of border crossing, but the macro risk can occur in both phases of border crossing – in the course of physical border crossing and period and process of administrative and legal decisions until the settlement. In this analysis, border crosser is at the center of risk areas. According to the conceptual distance of the risk, the risk to necessities is placed the nearest to the epicenter, while the risk concerning the local community covers the center and the first circle in a larger scope. At the outermost level is the risk imposed by the state covering all three scopes. The simplified and delimited levels and scopes of the risk are designed to effectively illustrate the risk in relation to biopolitics and human agency. In practice, the risk consists of more layers than the delimited three. For instance, the international

community, history, and the inner state of border crossers can be considered additional layers to the three.

Specifying the analysis into thematic and geographic aspects is because the risk to life has geographic and thematic aspects. However, these aspects are not always synchronized at the same level and scope. In other words, the risk may have a different level and scope depending on its causality and requires adaptive interpretation. For example, a risk to food is geographically sur place risk, but if the leading cause is famine in the country, then the thematic level of the risk can be macro level, and the geographical scope can also be broadened to the nationwide scope, and it can be linked with the other risks such as risk to water. On the other hand, if the leading cause is a corruption of community which led a failure in serving basic living necessities to the risk-affected individuals, the thematic level of the risk can be at the meso level, and the geographic scope can be broadened to the local scope. If the leading reason is that the border crosser cannot find something edible in an isolated place, the geographic scope remains at sur place. The focus of geographic and thematic approaches to risk is to set an unbiased analytical framework for RA that relates the 'needs' to 'rights' rather than emphasizing geostrategic order and hierarchy of risk (Richmond & Mac Ginty, 2019). The risk is categorized for facilitating the grasp of the interrelatedness of risks and the coexistence of the levels/scopes. In doing so, the disconnected and well-defined societal limits are questioned from the view of the interrelatedness of risks and coexistence of the scopes (Stjernström, 2004), and RA can claim that there are no single isolated level or scope, but they depend on and mutually interact with other levels and scopes (ibid.). The relationship between risks and the border crosser is as follows:

Figure 7. A socio-ecological model for understanding risk to life

Center: Border crosser

Micro-level/Scope 1 (S1): Intrapersonal, Sur place

Meso-level/Scope 2 (S2): Interpersonal, Local

Macro-level/Scope 3 (S3): Interpersonal, Nationwide

7.3.2 Risk to living

Risk to life concerns survival, while the risk to living concerns well-being and therefore dying well. On the one hand, the risk to living concerns extended dimensions than the risk to life because living deals with more diverse living domains after resettlement, such as leisure and resocialization. On the other hand, the risk to living includes the issues such as compensation for loss and unfortunates during the border crossing (e.g., note 43) and following up measures such as protection of border crosser's families in North Korea who are punished due to the guilt by association (note 12).

7.3.3 Risk classification strategy

Risks to life are classified according to the risk classification strategy, which consists of two assessment approaches: absolute assessment and relative assessment. These two are important in classification as they emphasize different aspects of risk while complementing each other's analytical approaches. Absolute assessment investigates normative facts and denotes the categories themselves. Relative assessment, on the other hand, describes the interactions between internal and external elements of the risk. Classification is based on both immediacy (impact at the time) and the consequence over the period, which may vary depending on the risk and circumstances of the border crosser. Although risks to life are all fatal, classification aims to increase the validity of the analysis by reflecting the deferring and aggravating effects of internal and external elements of each risk in assessment.

Table 12. Classification strategy
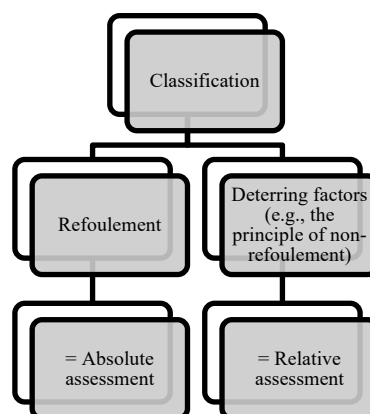
Created by the author drawn on the model from Olsen & Hauschild (2001).

For example, 'refoulement' is itself classified in the absolute assessment, but the alternatives to refoulement, such as deterring factors from the principle of non-refoulement and interventions by the international organizations and other states are considered in the relative

assessment of refoulment. It means that the two assessment approaches can derive different results from the same data. The deferring and aggravating effects of the relative assessment complement absolute assessment by including particular 'settings' of the states (e.g., governing system, jurisprudence, and civil dynamics) and emphasizing their 'functions' in the risk analysis (Olsen & Hauschild, 2001). The alternatives are interactive factors that can be reduced or reinforced depending on the here-and-now events. Relative assessment considers structural violence across elements – one element with aggravating effect may systematically exploit, repress, and alienate other(s) (Galtung, 2013). It means that the classification of the risk itself creates a discourse on risk. However, classification is fundamentally by logic, not by ideology, although it may deal with politicized risk such as the state of exception.

7.3.4   Risk transformation strategy

Drawn upon the theory of peace by Galtung (1967), 'positive peace' can be conceptualized as the absence of structural and systemic violence, and 'negative peace' as the absence of physical violence. This thesis translates the terminology 'absence' not as extinction from coexistence (see 6.4.1.1) but as a state of not being a dominant representation of peace (see 6.3.1). In this sense, 'violence' in the spectrum (Figure 8) can be regarded as both structural and physical violence and translated as 'risk' in this thesis. According to Caparini et al. (2017), migration can be somewhere between negative peace and positive peace and forced displacement between negative peace and violence. The difference between migration and forced displacement is whether the movement is voluntary. Although the placing of each social phenomenon can be much different when the relative assessment comes into the classification, the spectrum is still useful to show the contesting nature of border crossing. In other words, assigning border crossers to a specific batch in migration or forced migration or violence-negative peace or negative peace-positive peace is complicated.

Border crossing has both voluntary and forced characteristics and the identity of border crossers is open to interpretation before they attain legal status. If a border crosser is identified as an international migrant, he/she would be likely to be in 'migration'; but if identified as a refugee, then he/she appears to be in 'displaced migration'. Although all border crossers are human agents who make independent decisions, human agency cannot be the full ground to regard border crossers as voluntary migrants. Assigning border crossers in migration batch should accompany the examination of their motives and circumstances in order not to romanticize the predicament of border crossing. On the other hand, the predicament of border crossers can be

insufficient to recognize them as forcibly displaced persons. Motives and circumstances of border crossing should be considered in examination not to victimize the persons. If a border crosser is recognized as a forcibly displaced person, fundamental 'changes' in the domestic and international architecture must be taken to alleviate their plight which cannot be reduced to a single identification case (5.4).

Figure 8. A violence-peace spectrum and manifestations of violence and peace (Caparini et al., 2017)
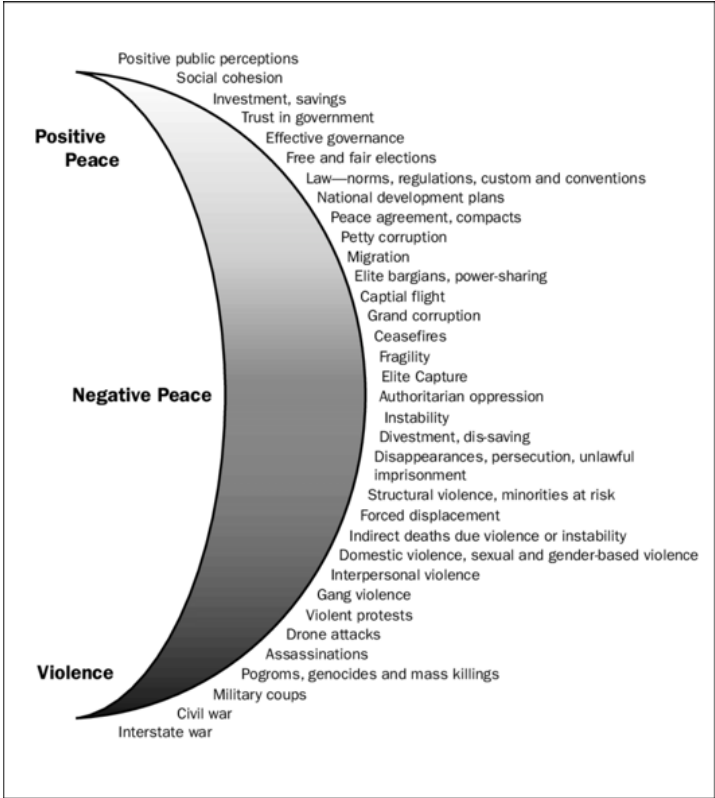
Source: Caparini et al., 2017.

Although case-by-case examination will be required to determine whether a border crosser is a migrant or a forced displaced person, the spectrum provides a vantage point to transform the risk of border crossers into peaceful coexistence. Given the spectrum, this thesis posits that 'border-crossing' which can be both migration (negative peace-positive peace) and forced displacement (violence-negative peace) covers all range of violence-peace. This means that border-crossing needs to be independent from its relationships with positive peace, negative peace, and violence. Considering the importance of human agency in border crossing, it is necessary to address the relationship between human agency and border crossing in transforming the risk into peace. Going further than situating the 'border crossing' somewhere in the transition process of violence to peace and vice versa, a risk transformation is needed.

7.3.4.1 Resilient human agent

Negative peace is achievable when the imminent risk of survival is eliminated (Jang, 2019). Positive peace seeks a process toward peaceful coexistence by transforming the conflicts (e.g., physical and direct risk and violence). Positive peace is relatively challenging to 'articulate' its status of achieved as a whole since many elements and dynamics interplay in the processional improvement of positive peace[92]. Given the characteristics, negative peace seems attainable by removing physical threats. In contrast, positive peace seems challenging to achieve if the approach of human agents does not correspond to those of society in a biopolitical sense; and if the approach of society discords with that of human agents (ibid.). Positive peace in the former is when it is approached from the society's perspective and the latter is from the human agent's perspective. In this sense, peace can be seen as closely related to human agents' biopolitical risk (e.g., risk to life). The absence or presence of risk influence different types of peace (i.e., positive and negative) to emerge and be pursued by society and human agents. But the relationship between risk and peace is interactive and human agents (e.g., border crossers and non-border crossers) shape this relationship (see 6.3.2). Human agents create and learn their 'non-victimhood[93]' by coping with and bouncing back the risk (Cannon, 2008). In other words,

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[92] This insistence needs to clarify two things: whether positive peace is a mere theoretical concept and what is positive peace. First, some scholars argue that positive peace is a Sisyphean task and merely refers to the status quo without a substantive and objectifiable outcome (Eckhardt, 1986). This thesis disagrees with the argument on the ground that it views improvements in the process of transforming conflicts as achievements of positive peace. For example, peace education nurtures and educates the answerability of human agents, which can contribute to the positive peace of society. Regardless of its scope and level of impact on society, such an endeavor deserves to be acknowledged as an achievement of positive peace. In addition, the science of peace cannot be helpful in research or policy-shaping if it considers positive peace as a mere reflection of utopia having no realistic and practical utility – this approach has no choice but to stick to a narrow concept and practice of peace which can only deal with physical and direct violence such as war; in fact, it cannot even provide an in-depth account of its subject because it is incapable of comprehending and addressing the ecology of peace and conflict beyond the visible physical and direct violence. This thesis views the concept of positive peace as advancing the society toward ethical and peaceful coexistence where the imperfectness of people and society keep binding human agents together in sympathy to each other despite constant changes of here-and-now (see 3.1.4.5). It means that the goal of positive peace or peaceful coexistence is not a utopia but a sociopolitical foundation with answerability and ethical human agents. Second, this thesis deliberately avoids associating positive peace with 'a set of values' which is often used for describing positive peace (Lawler, 1989). Instead, it views positive peace as an interactional process of here-and-now events where ethics is desirable to be the focus than the changing set of morality (note 22). Ethics is immanent in human beings who are social and coexistential beings and therefore founded on a permanent premise but the premise of a set of values, morality, can change over time as here-and-now events take place. This thesis acknowledges that having a set of values can be useful for positive peace during a specific period. However, such improvement at the moment itself is not positive peace and positive peace cannot be reduced to 'seeking a set of values'. This creates the error that 'positive peace' itself is an agenda. Objects for achievements of positive peace can be the agendas – how to understand positive peace and what constitutes positive peace can be agendas, but positive peace itself cannot be an agenda.

[93] The responsibility and burden sharings are used in this thesis for the purpose of encouraging the realistic self-assessment and capacity building of the states as a whole and as separately (note 66), despite the criticism of its negative wording. In the same way, despite the potential 'security arbitrage' at the individual level, this thesis lists, categorizes, and analyzes risk vis-à-vis state and non-state-oriented risk analysis and measurements that may

constant changes in here-and-now events do not make the human agents or their human agency static and the same as before the here-and-now event where human agents coped with particular risk at the moment. This means that when the human agent encounters risks, one seeks not just restoration of pre-risk status but to improve the performance and maintain the newly developed improvements from the previous experiences (Jang, 2019). It implies that human agency (i.e., ability and answerability) is resilient and therefore it can be developed into self-mastery (3.1.2.2). Resilience is a core mechanism of human agency to transform the risk into peaceful coexistence because it functions both negative peace by avoiding the internal and external elements that produce risk and positive peace by pursuing the elements that support human agency.

7.3.4.2 Transformation of *risk to life*

Given the above sections, three important relations are observed in border crossing: risk-human agent, risk-peace, and negative peace and positive peace.

- Risk-human agent: risk to life presents in border crossing, and border crossers who are resilient human agents practice human agency to transform it into peaceful coexistence. The relationship is underpinned by human agency and is observed when analyzing the border crossing in a biopolitical sense.
- Risk-peace: 1) physical and direct risk affect negative peace and structural and systemic risk influence positive peace; 2) absence and presence highlight a particular type of peace – the dominant representation of peace in the very here-and-now event; 3) peaceful coexistence denotes that risk to life is resolved when analyzing the border crossing from a human security perspective. This implies security approaches to security interests between the state and individual border crossers are operationally compatible (see note 68). (Negative and positive) peace can be explained by its relationship with the risk to the life of three levels and scopes.
- Negative peace-positive peace: 1) the risk of border crossing can vary depending on whether it is migration or forced displacement (Figure 8) – the risk of border crossing ranges from violence to positive peace; 2) dominant representation of peace means the changes in the relationship between the two peace; 3) securing both types of peace is the peaceful coexistence – positive or negative peace alone cannot

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dissolve the meaning and impact of risk before they reach individuals. The intention is to highlight the different meaning and impact of risk approached from the perspective of border crossers who are the human agents. The terminology of 'non-victimhood' is used to emphasize that border crossers are human agents before conflict-affected individuals. Conflict-affected is itself neutral and therefore used in RA because it relates border crossers with the risk of border crossing. However, when the expression conflict-affected is disconnected from the context of human agency, it can quickly be associated with victimization. Non-victimhood is to remind that border crossers are not helpless victims (see 2.1). Similar to this thesis' approach, Campbell & Manning (2008) assert that their notion of "victimhood culture shares with honor culture".

achieve peaceful coexistence, but their goal is peaceful coexistence. This relationship is observed when analyzing the border crossing from a combined biopolitical and security approach.

Borrowing the table of Galtung (2013) on positive peace and negative peace, the transformation of risk to life in border crossing can be illustrated as follows:

Table 13. Transformation of risk to life

	Low on positive peace (high on structural and systemic risk)	High on positive peace (low on structural and systemic risk)
High on negative peace (low on direct and physical risk)	Local risk [2]	Peaceful coexistence/ compatible security of state and individuals [4]
Low on negative peace (high on direct and physical risk)	Nationwide risk [1]	Risk *sur place* (risk to necessities) [3]

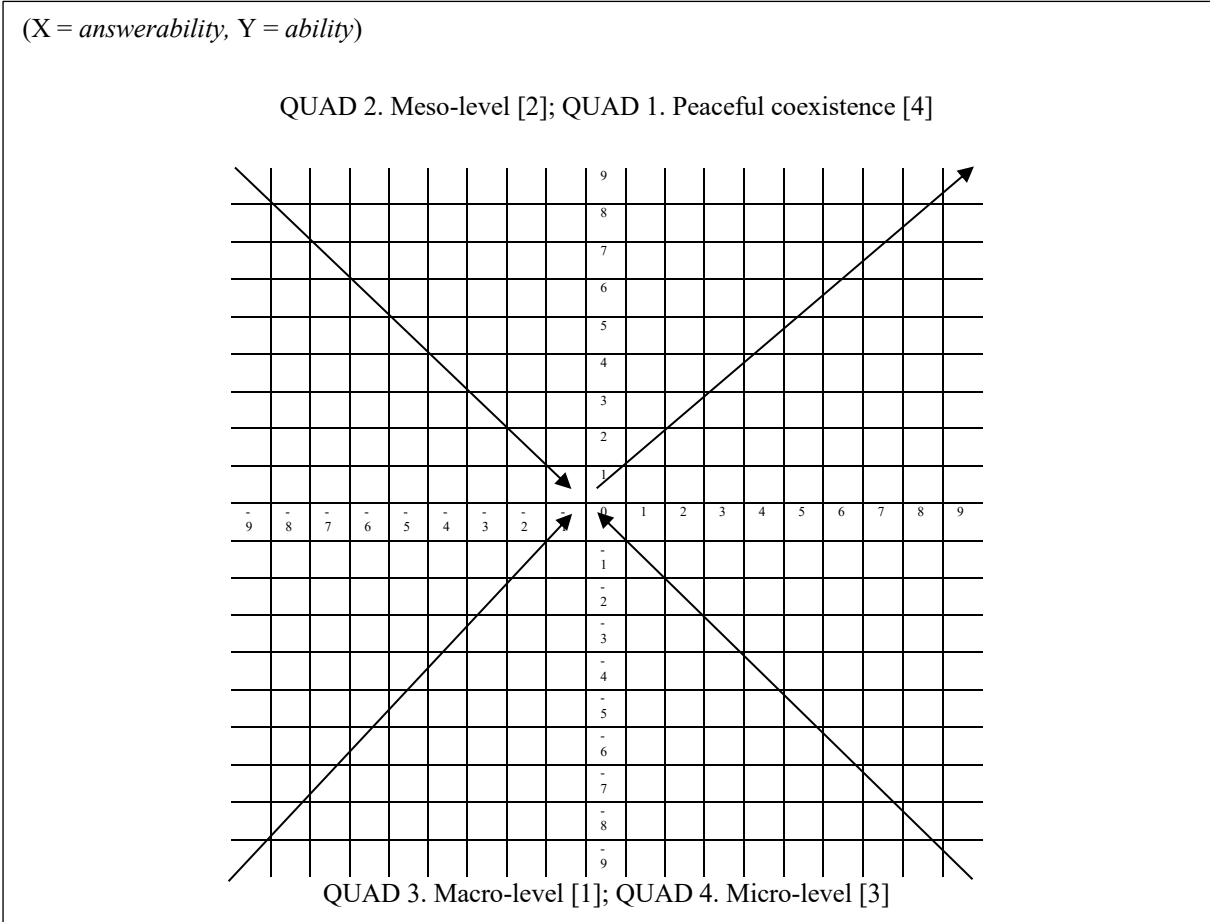Risk transformation (toward [4]) = negative peace + positive peace

Created by the author drawn on the model from Galtung (2013).

High and low denote the relativity between peace and between risk. The notable in the table is a nationwide risk [1] which contains both physical and structural risks to border crossers because sovereign can directly impose [2] and/or [3] on border crossers in its ambit of sovereignty (i.e., territory) via law and direct punitive measures such as detention and refoulment or via policy and regulatory measures. [1] nationwide risk denotes the state's biopower over life and incompatibility in security interests between state-centric and human-oriented approaches. This risk conceptually contrasts with [4], which is peaceful coexistence and the compatible security situations between the state and individuals. [2] is when structural risk is dominant and negative peace is highlighted in the course of border crossing. Contrarily, the direct and physical risk is high and positive peace is relatively more salient than negative peace in [3]. However, Table 14 theoretically exhibits the relationship between risk and peace in border crossing based on absolute assessment. The relationship can change when risk is classified with the relative assessment (7.4.1). The numbers in the square brackets indicate a comparative degree of risk-peace; closer to 1 and far from 4 means that the risk is more influential to other levels/scopes; since all risks to life are fatal, influence does not mean the criticality of risk to life. Local risk is assigned with a lower rank than the risk to necessities because the risk to necessities is removable when the necessities are secured, but the local risk can be more challenging to resolve; negative peace is attainable while positive peace is more challenging. Nevertheless, the table is simplified to show the risk transformation strategy and reality is much more complicated. Risk formation strategy together with the relative assessment of the three levels/scopes of risk to life should be tailored to the circumstance of border crossers.

7.3.4.3 Risk, peace, and human agency

What is the process by which resilient human agents develop their human agency when encountering the risk? How is this improvement related to peaceful coexistence? Given the transformation of risk to life, risk, peace, and human agency can be further explained drawn on 'a mini-theory of peace' by Galtung (2013). Human agent in a series of here-and-now events encounters risks. This process can be divided into three stages: *past, present*, and *future*. The three stages concern the here-and-now events 'during' the border crossing and do not refer to the two phases of border crossing set by RA as a time frame. Human agency in relation to past risk needs to overcome unprocessed trauma from the risk and pursue (re)conciliation with people and recover the damage after risk. This process concerning risk from the past resembles Transitional Justice because both resolve the risk by settling down the remnants and curing the wound. Ability is practiced when overcoming the trauma and answerability when restoration (3.1.4.6). Two qualities of human agency are improved through the risk and remain in the human agent in new here-and-now events. New here-and-now events follow the past here-and-now events in a consequential continuity. The past risk as irreversible and specific here-and-now event in the past is embodied in the history, therefore, avoiding the past risk (Galtung, 2013) is not available. Human agents make decisions every moment, overcoming the past and building up history (3.1.2.1). Human agency with present risk needs to avoid violence as a tool for dealing with the risk and seeks the transformation of risk. The former is related to practicing ability and the latter to answerability. Human agency concerning the future needs to avoid the elimination of *ability* (e.g., suicide which is not an emancipatory practice of human agency but a death) and pursue the advancement of *answerability*. Ability is practiced in the relation to the independent and distinctive decision-making situation, and answerability is practiced in consideration of the others (3.1.4.6). When risk transformation is applied in human agency regarding the past-present-future frame looks like the below graph. The second, third, and fourth quadrants effectively show the past and present where risk is overcome and coped with, while the first quadrant, *peaceful coexistence*, illustrates the future.

Figure 9. A graph of human agency and risk

(X = *answerability*, Y = *ability*)

QUAD 2. Meso-level [2]; QUAD 1. Peaceful coexistence [4]

QUAD 3. Macro-level [1]; QUAD 4. Micro-level [3]

Created by the author drawn on the model from Galtung (2013).

The relationship between ability and answerability is either symbiosis or antibiosis; abiosis which denotes non-relationship and independence from each other does not establish due to coexistence. This can be drawn as figure 9 (above) and table 15 (below) in relation to the *Table 15. Transformation of risk to life*.

Table 14. Three-stage process for interpreting human agency

Stage 1: mapping experience	
past, present, or future?	
Stage 2: case analysis	
High ability	Low answerability
if	*if*
traumas from risk	(re)conciliation and recovery after risk
violence as a tool for dealing with risk	transformation of risk / coexistence

or	or
elimination of *ability*	advancement of *answerability*
Low ability	High answerability

Stage 3: interpretation
Human agency (ability + answerability) = factors of ascent ÷ factors of descent
Peaceful coexistence = high ability + high answerability
Social murder = high ability + low answerability
Social death = low ability + high answerability
Thanatopolitics = low ability + low answerability

Friedrich Engels introduced the concept of *social murder* in 1845 to describe that the economic and social systems of capitalism can bring misery and death to the unprivileged in starvation and disease (Taylor, 2013). The systems themselves can be understood as structural violence. On the one hand, this is due to the power inequalities built into structures yielding violent results from risk. On the other hand, the invisibility of individuals reduced them to dealing with biological events, which are in fact biosocial phenomena (ibid.). *Social death* is a widely explored concept in health science and can be defined as the "social effect of individuals' reactions to a living person as if he or she is dead, as sometimes seen among people in the presence of a comatose patient or someone with severe dementia" (APADP, 2022). This thesis interprets social death in the biosociological context to refer to the state when a human agent is no longer able or willing to make meaningful interactions with others. *Peaceful coexistence* does not refer to passive coexistence but is active and responsible and seeks transformative change of deep-rooted conflict between a human agent and others (e.g., actors and agents) in constantly changing social relations and systems. On the other hand, in a situation of *thanatopolitics*, the human agency of agents and actors and biopower of society malfunction and draw a vicious cycle of vandalizing and neglecting the coexistence as the sociopolitical foundation.

This thesis describes the border crossing of North Koreans as the most dedicated practice of human agency (see 3.1.2.2). This is because the ability of human agent does not accept social murder but takes over the dominant role of 'deciding one's death – not by society but by one's own determination' and leading the other human agents (i.e., non-border crossers) toward peaceful coexistence, by taking the risk of total elimination of ability (i.e., death) which invokes answerability of others. In the setting of social murder, the human agent is bare life whose voice

is muted, the border crossing is a practice of human agency to make one's voice to be heard by others who lack answerability.

7.4 Risk Index (RI)

RI (see Appendix 1) consists of *category* (absolute classification), *dimension*, *description* (relative classification), *measurement* (indicators), *direct/physical risk*, and *structural/systemic risk*. RI is formulated with risks that are rarely discussed together in the same measurement and analysis. Notable example is *exception* (in which the state's discretion strongly affects the life and living dependent events of individual border crossers) which is seldom analyzed with the risks such as food, water, and shelter. Unlike the traditional approaches to risk in academia and practitioners, this thesis selects and explains the risks with their characteristics and impacts in the biopolitical sense. For instance, *emergency* in which the protection of human rights and security can be dismissed by a 'special regime' is often illustrated as natural disaster and its damage on individuals. However, this thesis focuses on the 'special regime' of the sovereign that dismisses in a state of emergency. Like other security approaches, this approach captures the deprived needs and rights of risk-affected individuals; but it also analyzes the system responding to emergencies and risks other than direct deprivation from the emergency imposed on individuals (e.g., unprotection of human rights and security).

7.4.1 RI and risk to life

RI (Appendix 1) is a list of risks categorized according to the three levels/scopes of risk to life. Risks concern the needs and rights of individuals. Although RA specifies and lists the risk to life, it does not assign a risk level for each risk in the index. This is partly because risks affect 'life' and therefore all risks are fatal for border crossers. In other words, the risk to life is itself fatal, and RI aims to illustrate it. Also, this is because insufficient data may distort the interpretation of the correlation between risk level and specific risk. To be specific, the interrelatedness of risk can prioritize one category of risk over another artificial and discrepant from reality (Jang, 2019). In sum, RI deals with the risks that are non-negotiable as they directly deal with survival and are interconnected to one another on the coexistence as the sociopolitical foundation. For these reasons, it is unnecessary to compare the criticality between the risk per se at this stage of research. Instead, the focus is placed on other goals of RA such as the relationship between the risk and the human agency of border crossers and the risk calculation system (i.e., quantification of risk). In other words, RI is designed to compare the criticality of risk as a whole. It demonstrates the approaches to and interpretations of the same phenomenon

and data regarding border crossing as distinct from measurements designed and presented by the state and non-state actors that may not have individuals as the unit of analysis.

7.4.1.1 Interpretation

The index (Appendix 1) shows that the risks may have twofold meanings; they can save border crossers but equally kill them (Thielbörger, 2019). In other words, the security through need and security from need is vividly observed at this level. *Security through need* means access to the resource for individuals. It implies a human rights-based approach to security because it denotes ensuring the minimum levels of access to required resources for life even in a state of emergency such as pandemic. On the other hand, *security from need* perceives need as a source of danger and denotes the absence of resource-related dangers, which can be natural or artificial (ibid.). For instance, 'water' is necessary to survive, but flood or contaminated water can threaten the life of border crossers.

Moreover, the index indicates that many elements overlap between the risks within the same level/scope and across the levels/scopes. This describes the interrelated nature of risk to life. For example, the risk to shelter (micro-level) and risk of detention (macro-level) resemble each other; they often demand the same requirement of necessities[94], and at the core of their dimension is accessibility which denotes the actual 'use' of necessities. The core elements and dimensions between related risks circulate on multiple levels. This means that all related risks can be mitigated by removing the common element, and the related risks can be reinforced if the common element is firmly rooted at least in one of the risks. On the other hand, the interrelatedness of risk to life can attract criticism about whether the risk can be precisely measured at each level/scope despite the overlaps between the risks. This thesis argues that there cannot be a clear threshold of three levels/ranges, as risks such as natural disasters are not always predictable or preventable. Even risks in the same category may differ in detail. RI does not limit the risks in each level/scope with certain expectations and situated knowledge (Haraway, 1988). Instead, it focuses on broadening the understanding of risk that can lead to potential discoveries in new phenomena of risk that are currently unknown to RI. In this sense, capturing the common elements such as necessities or accessibility is a meaningful contribution to grasping the risks in their circulation on the three levels/scopes because interrelatedness

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[94] "UNHCR suggests that the necessities to which detainees/asylum seekers should have access are "beds, climate-appropriate bedding, shower facilities, basic toiletries, and clean clothing" (UNHCR, 2012).

means that the risks are sophisticated but not intractable (see chapter 6). RI should be constantly updated to better account for risks.

Last but not least, RI exhibits that the indicators should reflect the individuals more and be developed concerning operational processes such as risk resolution and follow-up – what RI raises as problems here are not only the resource deprivation of risk-affected individuals or the defect in indicators but also the legitimacy of the structure and system in which deprivation and indicators are produced. Risks to necessities may have less variability and disparity between themselves than the interpersonal risks, which take the variables of all people involved in the risk and their combinations when measuring risk. This is because the risk to necessities is a physical threat to survival and can be eliminated by securing the minimum resources necessary for survival. However, the current indicators hardly reflect basic status of risk-affected individuals such as age, health status, gender, and disability, and the interaction between them is hardly reflected in the measurement, so it is questionable whether it can provide the standards for minimum access of resources. This doesn't mean that indicators for age or gender differences don't exist, but they are often isolated and not synergistic in understanding how they interact. In this context, current indicators are not best practices for risk measurement unless the interactions are measurable and explainable. Another problem is that there are relatively less indicators reporting the performances of the measures taken for the risk. This means that risk resolution and follow-up measures may be insufficient to deal with the actual plight beyond the indicators or recovery of the risk-affected individuals because the current risk-focused indicators do not focus as much on the individual as the risks. In other words, individuals seem excluded from the statistics and decision-making process of the risk resolution and follow-up.

7.4.2 Needs as rights

RI shows the relationship between the risks, which are closely linked to the needs and rights (Appendix 1). Therefore, risks in RI can be further explained through the relationship between needs and rights. In border crossing, the needs of human agents are rights, not just needs. The two modes of need explain this. Drawn upon Gasper (2005), needs can be categorized into instrumental and normative modes. Needs as instruments are the requisites (X) for attaining a goal (G), while needs in normative mode are prioritized based on the 'relational formula': *a person or subject A has a right to entity X against duty-bearer B by virtue of ground Y* (ibid.). The instrumental mode requires examining whether entity X is 'required' for achieving goal G;

when it comes to the normative mode, whether G is or should be a 'priority' is important for legitimate process and negotiation between the parties (ibid.).

When applying to RI, the instrumental mode associates the risk to life with a simplified physical survival. It can explain that border crossers' security, mobility, and accordance (i.e., X) is required to secure human rights and security and accomplish their journey to the desired future (G). However, it cannot describe the structure and system that produces opponents of X or G. The normative needs analyze border crossing from a biopolitical context that recognizes the structure and system behind the deprivation of X and G. In other words, the needs are biopolitical, and negotiation/process recognize the structural and systemic deprivation not only the direct and physical deprivation. Although the 'needs (X)' are the same in both instrumental and normative modes, the interpretation of X and the achievement process of G are different. When the need is a mere instrument, the fundamental change in the system that produces resource deprivation and exclusion from the decision-making can hardly be expected. Therefore, the process from G′ to G is often a transition (6.3.2). On the other hand, when need is recognized as the rights, border crossers are empowered to advocate their X in the negotiation with counterparty, 'sovereign' which practices biopower over the life and living of individuals. In this setting, changes in the structure and system of deprivation of X and G can be observed and thus the process from G′ to G can be viewed as a transformation. Needs as rights are effectively explained by biopolitics. Border crossing as a biopolitical event should be recognized as the (needs as) rights-based issue, not reduced to a mere needs-based issue.

In this sense, the argument of Galtung (1994) that 'needs rather than rights direct us to look for causal factors rather than evil actors' seems plausible when interpreting evil actors as structural and systemic deprivation of resources and exclusion of border crossers (Gasper, 2005). If the needs discourse simply displaces rights discourse, the causal relationship of risk relies on needs alone. However, the rights discourse based on human agency can bridge the concepts in relation to prioritization and exclusion (ibid.). In other words, rights discourse can bring concrete life situations and actions into abstract and contested notions such as equity or freedom when discussing the risk. Doing so enables reconceptualization from a bottom-up approach and influences the development and application of laws and policies. The rights discourse of this thesis is preemptive and preventative in analyzing risk-need-right by proposing a more effective 'boundary object' to take over the baton from 'Basic Human Needs' of Maslow and the like (ibid.).

7.4.2.1 Inclusive rights

RI emphasizes that the risks are tied to the rights which must in principle be guaranteed to non-citizens, including border crossers (Hathaway, 2021). This means developing the rights-based approach more inclusive by shifting the focus of rights in the text and context of the country's specific obligations designated exclusively for nationals. As a matter of principle, obligations to protect the rights of border crossers underpinned by the recognition of human rights which should be understood to compel states not only to avoid any intentional disfranchisement of individuals but also to ensure affirmatively adopt measures providing them with the substantive benefit of all public goods (ibid.). Theoretically, even the levels of provisions established by international instruments are subject to scrutiny to ensure that withholding of benefits from individuals does not unreasonably risk them (6.4.2.1). However, inclusive human rights do not imply blinded rights; the rights of non-border crossers are as much sacred as the rights of border crossers. Rights are fundamentals but need to be interpreted in the context of fairness.

This is to prevent misuse of rights in the absence of fairness. It means that deprivation and exclusion of others (i.e., agents or actors) can take place by the border crossers when lacking answerability to others. For example, the right to adequate housing contains access to adequate, sustainable, and non-discriminatory access but is not equated to the right to property (OHCHR, 2009). It intends to ensure that *everyone* has a safe and secure place to live in peace and dignity, including non-owners of property, but it is not related to ownership. Shelter as a necessity is essential and non-negotiable. However, shelter as a human right can be the subject of fairness which is not only applied to border crossers but to everyone. In short, in accordance with human rights, more inclusive human rights and their application, developed in a way to benefit all human rights holders, are necessary and important. Fundamentality and fairness are two the pillars of extending universal human rights to cover all human beings genuinely.

7.5 Risk Analysis Methods

RA methods are provided to increase accuracy in analyzing risk patterns in border crossing and prepare primary and secondary plans to deal with materialized and potential risks centered on border crossers. Regardless of whether the errors in analyzing the risks are inevitable harm or unexpected mistakes, the advantage of utilizing RA methods is correcting the errors more efficiently with the given resources and limited opportunities. Although RA avoids rigid artificial ranking of the risks (7.4.1), RE needs to be classified and ranked to improve the performance of RA in dealing with the risk where people's lives are at stake.

RA methods do not discuss *hazard* and *risk monitoring*. Hazard is a risk factor (e.g., event, process, phenomenon, or human activity) that influences a North Korean to cross the border to another country (UNHCR, 2021). Since hazard concerns the phase before border crossing in North Korea, it is not in the two-phase time frame of RA and therefore is not dealt with in RA. Another reason for excluding hazards in the analysis is the lack of information about the situation in North Korea, which makes it difficult to cross-check the fact of the time and place related to the testimonies of border crossers. However, presumable hazards were discussed in the previous chapters. For example, the natural hazard, notably the famine between 1994-1998, affected many fatalities and unauthorized border crossing (note 34). It led to economic hazards such as a decrease in distribution which brought the economic structure change from the national distributional system to the market economy – as illustrated with the emergence of *jangmadang* in note 34. The survey in 6.2.2 presented motives for border crossing such as human rights and freedom, and empirical cases in chapter 5 described the plight of North Koreans in foreign countries where the North Korean regime officially dispatched them. Given the two accounts, violations of human rights or international humanitarian law can be viewed as hazards compelling North Koreans to cross borders. Lastly, interpersonal and intercommunal conflicts can also be hazards (UNHCR, 2021). Risk monitoring is not discussed in RA because real-time monitoring is not available for each border crossing. Instead, risk monitoring will be replaced by examining testimonies of individual border crossers and cross-checking them with factual information from the sources such as media, human rights reports, country-specific statistics, and expert reports.

7.5.1   Risk Level (RL)

RL measures the level of Impact (I) and Likelihood (L) of a risk. The impact denotes the cost to a North Korean border crosser if the risk materializes while the likelihood is the probability that the risk will materialize. The risk is not simply classified in binary terms such as 'whether or not a risk exists'. Instead, different levels of impact and likelihood are distinguished. For instance, the spectrum of the impact of risk is based on the extent of the ability of border crossers to respond to the risk. Impact and likelihood are divided into four levels from I1/L1 to I4/L4. The levels in RL do not refer to the three levels/scopes of risk to life discussed in the previous sections. There cannot be 100% and 0% in the levels. In terms of likelihood, the former denotes certainty that risk presents at all times without exception and the latter means *no risk*. Given the border crossing processes illustrated in empirical cases and testimonies, it is unlikely that a border crosser will encounter no risk. When it comes to impact, the former denotes the

death of a border crosser, and the latter denotes that border crossing has no risk, which is not the case for North Korean border crossers (see chapter 5). Therefore, the ranges of impact and likelihood can be theoretically between just above 0 % and just below 100 %. They are translated in the tables as a continuous scale from 1% to 99%. 50% in likelihood represents the threshold at which an event becomes more likely to occur than not. Risk is considered probable-frequent-most certain when the probability that it will be realized rises above 50%.

Table 15. Impact

Level	Percentage (%) *	Description**
I1	1-25	Escapable: border crosser seeks a chance of not being committed to the predicament. Risk and subsequent events are less likely to result in unnecessary damages afterward.
I2	26-50	Confrontable: border crosser can work to mitigate the impact of risk and its subsequent events.
I3	51-75	Bearable: border crosser endures the risk by passively responding to the predicament in order to survive which is better than death.
I4	76-99	Fatal: border crosser has to deal with the risk at the very time and place for survival. Different reaction to external forces is still practiced because human agency is not totally eliminated.

* Percentages represent the proximity of a risk impact to life.

** Description illustrates the meaning of the level from the perspective of border crossers based on the testimony.

Table 16. Likelihood

Level	Percentage (%)	Description
P1	1-25	Rare-Occasional: risk can occur but is less likely.
P2	26-50	Occasional-Probable: risk occurs at some time.
P3	51-75	Probable-Frequent: risk occurs repeatedly.
P4	76-99	Frequent-Most certain: risk is observed in almost events of the border crossing.

Table 17. Risk Assessment Matrix (RAM)

	P1	P2	P3	P4
I1	I1×P1	I1×P2	I1×P3	I1×P4
I2	I2×P1	I2×P2	2×P3	I2×P4
I3	I3×P1	I3×P2	I3×P3	I3×P4
I4	I4×P1	I4×P2	I4×P3	I4×P4

The risk is relatively lower when closer to I1×P1; the risk is comparatively higher when closer to I4×P4.

7.5.2 Risk Exposure (RE)

The purpose of RL and RE is to quantify and compare the risk. Assigning a specific category of risk with a certain level of impact or likelihood should vary depending on the border crosser's circumstance. Based on RL, RE measures whether there is a risk and how severe it is (Bratterud et al., 2020). Here, not only the category of risk (i.e., absolute assessment) but also relative risk assessment should be considered when assigning the levels. RE is the product of the impact and likelihood levels of the risk. An example with randomly assigned levels of impact and likelihood of the risks is given below to demonstrate how to use RL and calculate RE.

$$Risk\ Exposure = Impact \times Likelihood$$

7.5.2.1 Example

The duration of border crossing until resettlement is 500 days. The border crosser has encountered 50 days of I1 level risk; 150 days of I3; 100 days of I4. The likelihood of I1 is 0.1; I3 is 0.3; I4 is 0.2; and I0 (no-risk days) is 0.4. RE of the example E(R) is 37.7. The number in parentheses is median, L refers to likelihood and E(R) stands for risk exposure of the example.
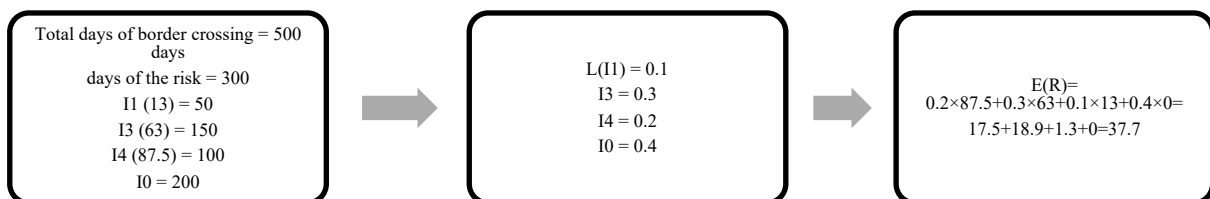
7.5.2.2 Comparison
a. The US (USCIS, 2020)
An eligible adult asylum seeker in second priority and took the scheduled interview on time: await duration for the asylum interview (21days), decision (14 days).

An ineligible adult asylum seeker but in lawful immigration status in second priority and missed a scheduled interview: await duration for the asylum interview (21days), close and dismiss the application (46 days).

An ineligible adult asylum seeker in second priority, not in lawful immigration status without exceptional circumstances and missed a scheduled interview: await duration for the asylum interview (21days), case sent to the immigration judge for adjudication (46 days).

If a border crosser is regarded as a victim of human trafficking or criminal activities, the border crosser can be subject to a U visa.

b. Russia (RRC)

Preliminary review and temporary document (5 days), asylum-seeker certificate and asylum decision three months; additional three months will be required in exceptional and rare cases.

c. The UK (GOVUK, 2022)

The identification process can take up to six months, from submitting an asylum application to receiving a decision. Permission to stay for five years for humanitarian reasons if the applicant does not qualify for asylum, or two years in prison or removal from the UK if a bogus asylum seeker.

d. Canada (GoC, 2022)

The sponsorship refugee process can take up to 4 months: application process (7 days), visas and permits (56 days), travel documents and travel (21-42 days).

With the given data, the most straightforward comparison of risks will be comparing the duration of the days for await; the applicant will suffer the least from the risks during the administrative process if he/she is in the US as an eligible asylum seeker in second priority and takes the interview on time. However, a simple comparison of the duration does not reflect what risks and deterring factors interplay in the processes. The absolute assessment (i.e., categories of risks) should be considered based on the reports of authorities and non-state actors and testimonies of border crossers. Moreover, a relative assessment that will include country-specific risk or mitigation such as reregistration every 18-month (Russia), humanitarian permission to stay (the UK), and NKHR (the US) should also be considered in RE. In general, identifying defectors or refugees (and thus failed refugees as international migrants) relies on disclosure or testimony of border crossers which are examined according to the relevant regulations such as refugee eligibility prescribed in the convention and compared with the factual information from other sources (see 5.1.1 and 5.2.1). However, it is skeptical whether the current refugee reception processes can sufficiently provide the data to measure the risk from the perspective of border crossers. This is because the risk to border crossers is often excluded from the procedural consideration[95].

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[95] For example, a border crosser who is a victim of trafficking or criminal activities is obliged with a responsibility to assist the investigation in the US (USCIS, 2020). The victim's compliance, that is current and future helpfulness, is included as a subject for evaluation of the investigation. The guide specifies that "the key is the victim's helpfulness, not the timing of the helpfulness", which means that the monitoring of victim's compliance to enforcement activities can be unspecified with the timeframe because helpfulness does not only concern the present but also the future helpfulness. What is problematic with this responsibility is that it does not guarantee border crosser humanitarian assistance or control of the situation. USCIS states that "there is no requirement that an investigation or prosecution be initiated or completed after the victim reports the crime and makes themselves available to reasonable requests for assistance" and continues that "the initiation or progress of an investigation or prosecution is outside of the victim's control". It suggests that the purpose of the U-visa given to victims is more focused on investigation than victim protection and that humanitarian protection for border crossers as victims can

Figure 10. The two-phase risk timeline of border crossing
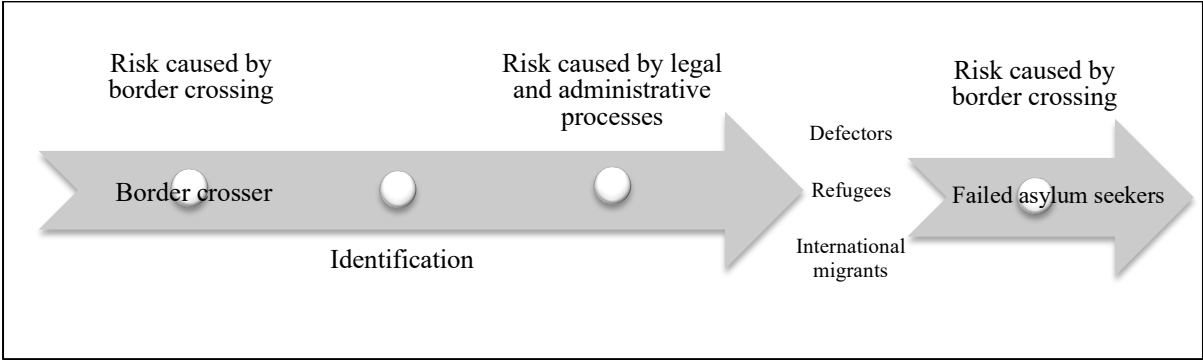
This thesis proposes that the risk dimension concerning the risk to border crossers during the border crossing and during the legal and administrative processes should be considered in the determination processes of border crossers. RE has two significant advantages in this regard. First, analyzing the risk during the border crossing helps to examine the validity and transparency of motives and narratives of border crossers in their identification process and prioritize the applications in consideration of the actual risk that the process might cause applicants. Considering that examining the motives of border crossers (i.e., defectors, refugees, and international migrants) depends heavily on the qualitative interpretations, an effective and objective method that can prevent the fair examination from damages is required. To be specific, there can be examiners who might have biases on nationality, transit countries, or simply stereotypes of applicants and fake applicants whose false statements exaggerate their situation in order to attain a particular status. RE can provide an objective and scientific tool for examination based on the actual risk that border crossers underwent during their journey which allows the examiner to set priority in processing applications by comparing the levels of risk of individual applicants. RE can provide objective and scientific standards for examination based on the actual risk that border crossers underwent during their journey and allow the examiner to assess their motives based on an objective scale and severity of risk. It also helps to set priority in processing applications by comparing the levels of vulnerability of individual applicants during the procedures because the process itself might create additional risk to them. This approach is not only benefiting examiners but also applicants who might face difficulty in

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be insufficient and inopportune. USCIS determines whether the victim is, has been, or will be helpful by considering the facts of each case such as the level of assistance that law enforcement requests of the victim; the victim's responsiveness to requests from law enforcement for assistance; and the victim's individual circumstances (such as age/maturity, trauma, etc.).

explaining their plight during the border crossing or during the administrative proceedings as it allows them to objectify their claims by demonstrating the actual level of risk. In other words, RE can improve the objectivity and fairness of qualitative examination in the identification of border crossers.

Second, investigating the risks in the administrative and legal stages improves the reliability of the identification by increasing the likelihood of detecting irregularities and mistakes in administrative and legal procedures that may pose a risk to border crossers. It is also useful for planning efficient and effective subsidiary protection of border crossers during the examination. Since RE measures the risk caused by the procedures, border crossers can advocate themselves from irregularities or mistakes during their examination on the ground of their actual suffering caused by the risk. RE is designed to be human-centric (e.g., need, rights, and human agency) rather than risk-centric. This is because the purpose of quantifying the risk is to demonstrate that the risk to border crossers is not diluted at the supra-individual level. However, the impact of a risk may vary depending on circumstances and individual perceptions. In addition, risks can occur simultaneously in multiple scopes and reinforce each other (Jang, 2019). Therefore, when conducting RE, it is helpful to analyze the risks both separately and comprehensively in order to concretize and compare the risks according to the criteria proposed in the RA methods.

7.6 Urgency

This thesis argues that identity groups of border crossers can be themselves the subject for comparison in RA. In this regard, this thesis suggests the concept of urgency. It is a relative indicator between identities regarding the need to recognize one's identity/status over other identities/statuses. The reason identity is rephrased as identity and status is that status helps describe administrative and legal meanings, whereas identity is useful in explaining political meanings. RA translates urgency as the ratio of grant and rejection by identity/status. Urgency is closely related to biopolitics over the life and living of border crossers, because it shows the links between synchronized law and policies that target particular individuals, identity groups, or population.

Table 18. Basic explanation of Urgency

	Same identity group	Different identity groups

Same host country	Unit: individual Purpose: comparing the case urgency by measuring the effectiveness and efficacy of the administrative system (stage by stage and system as a whole) regarding identification; finding determinants of different legal decisions or core eligibility establishing certain identity group in the legal sense of the host country.	Unit: identity group(s) Purpose: capturing the underlying standards and philosophy of the host country in distinguishing different identity groups; measuring the policies and their underpinning law tailored to the certain identity group (e.g., refugee resettlement act and policy compared to defector resettlement act and policy).
Different host countries	Unit: border crossers of the same nationality/citizenship Purpose: comparing legal interpretations and decisions regarding a particular identity group (i.e., defector, refugee, international migrant) by country.	Unit: population Purpose: analyzing the trend, pattern, and discourse of migration policy of the states.

8 Conclusion

This thesis has explored the biopolitics and human agency of North Korean border crossers in the context of MISA and RA. This section summarizes the findings of this thesis from the institutional, political, and human agency dimensions.

From the institutional dimension, improved legal and political frameworks for the rights and security protection of the border crossers are required. Here, the reconceptualization of the current definitions of identity groups and reexamining core principles are necessary to reduce the gap from reality. In the same vein, risk analysis and assessment need to take a bottom-up approach to capture the risk to the life of individuals that does not dissolve at the supra-individual level and respond to risk effectively. Concerning the institutionalized scapegoating system of bare life in international architecture, the role of non-state and state actors is crucial in preventing the facilitation of bare life and exploitation of human agency. In the same vein, the role of non-border crossers is significant in shaping society toward peaceful coexistence based on answerability. In accordance with these endeavors, human rights should be developed to be more inclusive and ensure the enjoyment of human rights of all human rights holders.

When it comes to the political dimension, the life and living of border crossers are brought into the sphere of politics, while law and politics reinforcing each other through *approval*. This mechanism was seen in the complex inter-Korean relations where the life and living of North Korean border crossers are politicized both at the national and international levels by being translated into political loss and gains. When it comes to domestic level, a tension between advocates and challengers of domestic legal framework hindered the application of international instruments at the domestic courts and therefore rights and security of border crossers were not effectively protected. On the other hand, the lack of an effective burden and responsibility sharing system at the international level created the myth that the reception state is the sole and ultimate responsibility bearer to border crossers. In the international architecture where promote immobility of individuals, border crossers were seen easily reduced to bare life. Therefore, border crossing is not simply a political phenomenon but a biopolitical struggle. This struggle was vividly illustrated through the identity politics of North Korean border crossers. The survey showed that there could be discordance between perceived identities by the holders and by the observers, and different narratives for border crossing that cannot generalize border crossers. In this regard, this thesis suggested that the term to refer to North Korean border crossers should be standardized in order to secure impartiality in addressing border crossing

issues, reflect the dignity of border crossers, and improve the companionship between border crossers and non-border crossers. This thesis also attempted to depoliticize the security discourse by elucidating the relationship between MIS, coexistence, and emancipation. It argued that the emancipation discourse is not necessarily associated with the postcolonial context or securitization.

Finally, this thesis analyzed North Korean border crossers as human agents who practice ability and answerability from the human agency dimension. In other words, this thesis refused to depict them as *victims* or subject to *romanticization*. Based on this point of view, this thesis presented a foundation, coexistence, which is based on ethics rather than morals or values. This is because ethics is inherent in human agents, unlike morality or values that can change over time. Border crossing was interpreted as an emancipatory journey of everyday peacebuilding where the ability and answerability of border crossers and non-border crossers interact and synergy. When it comes to RA, several risk analysis methods were developed to measure the actual risk reached by border crossers, and mini theories were proposed to demonstrate that the 'needs' of border crossers are the 'rights'. Here, border crossers were translated as resilient human agents who can transform the risk into negative and positive peace. The independent survey demonstrated that the identity of North Korean border crossers could be seen as laid on the blurring boundaries between the identity groups, and their motives for border crossing can be complex. Therefore, *generalizing* border crossers seems less plausible. Instead, the focus should be acknowledging North Korean border crossers as the interpreters of the social world, human agents who make independent decisions, and human rights holders who deserve to enjoy equal rights and security as non-border crossers and non-North Koreans regardless of their perceived identity.

8.1 Contributions

This thesis finds its contributions to Korean politics, biopolitics, and peace studies.

Korean politics

This thesis contributes to inter-Korean politics, which is in the mission of 'unification'. Although each Korea's approach to unification is contrasting, it is clear that the unification should and will eventually be based on peaceful coexistence. Not because both regimes consider peace as a core principle of unification, but because the relation of Koreas is established upon coexistence. The current conflict-driven approaches to coexistence on the

Peninsula rendered long-lasting tension that has hindered peaceful coexistence – the unification of the two Koreas. This new approach to inter-Korean politics based on peace and conflict transformation can be a milestone on a sustainable basis for improving inter-Korean relations. This thesis argues that peaceful coexistence has direct policy relevance to the new Yoon administration in South Korea, allegedly more hardline than the previous Moon administration and more pro-US. Considering the security situation on the Peninsula, North Korean border crossers might find the new South Korean government more secure for defectors because North Korean new settlers in South Korea prefer the government, which posits a hardline policy toward the North due to their security. Nonetheless, this thesis suggests a novel approach to coexistence on the Peninsula from the human security perspective, which can build up the sustainable foundation of inter-Korean relationship at the grass-root level instead of the traditional state-centric approaches that often considers peacebuilding as a negotiation between the regimes through treaty.

Biopolitics

The thesis exhibited a unique approach to the human agency regarding biopolitics. It developed a unique concept of human agency, which consists of two qualities – ability and answerability. Human agents with ability and answerability are independent yet connected to other human agents, and coexistence as a foundation solves the dilemmas of motive, justice, and class in regard to human agency. The thesis also described human agents as resilient and can transform the risk into constructive changes. Human agency and coexistence are active concepts that seek to cultivate peace in society and the self-mastery of the human agent oneself, not mere self-discipline. Self-mastery emancipates human agents from self-disciplinary, and peaceful coexistence emancipates society from the politics of death. The ethics of coexistence emphasizes that the direction and focus of studying biopolitics should place ethics at the core in order to develop the advantages of biopolitics, such as improved life management skills tailored for individuals to foster peaceful coexistence. It also empowered border crossers as the communality of here-and-now, a meaningful existence surpassing space and time. This emphasis on human agency made synergy with the human security approach by placing border crossers in the analysis and interpretation.

Peace studies

Last but not least, this thesis provided a new approach based on human security and peace to border crossing issues which is normally understood from a political and legal sense. Border crossing in this thesis was directly related to the empowerment and emancipation of repressed people whose human rights and security are not guaranteed in their home country and on their journey crossing borders. This thesis analyzed that biopolitical violence circulating in the continuity of national and international levels produces border crossers as bare life. The identity of North Korean border crossers was complicated through the historico-ideological context and juridico-political instruments, and it drew a discrepancy between legal decisions on the status of North Korean border crossers and their plight. This thesis directly suggests the milestone of conflict transformation for the politicized border crossers from a fragile state that remained in the relic of war without a peace treaty. In order to capture the difference between top-down and bottom-up approaches in interpreting the identity politics of North Korean border crossers, this thesis empowered North Korean border crossers to comment on their identity politics and presented the reality from the border crossers' perspective. In doing so, this thesis exhibited a hybrid approach to understanding the identity politics of border crossers that can strengthen the answerability of actors and agents toward peaceful coexistence. The thesis also proposed novel approaches to understanding peace-risk-human agency. For example, it suggested the transformation strategy of the risk to life which is in the four-stage to reach peaceful coexistence, and the relationship between risk-human agency, which describes social murder, social death, thatanopolitics, and peaceful coexistence. This thesis selected an extensive range of interdisciplinary approaches and knowledge to develop diverse models and in-depth analyses of rights, security, risk, and peace. For example, it illuminated its unique understanding of negative and positive peace based on its theory of the ethics of coexistence and attempted to develop CSS from a critical perspective.

8.2 Avenues for future research

This thesis found insufficient data generated and collected with individuals as a unit for developing a RI to assess risk to life which limited RA to describe the risk to life over individuals fully. Although RE and RAM theoretically demonstrate their applicability, testing them out with the actual administration cases is required to show their practical usage. A suggested concept, urgency, also needs to be further discussed to obtain its applicability in practice. Another difficulty is the 'threshold' of advanced concepts in RA – impact, likelihood, and urgency. For example, impact and likelihood were divided into four thematic levels, but the difference between datasets within the same level was not explained. In the same way, the

concept of urgency was proposed, but the threshold between research units was not specified. Removal measures of the states that are *de facto* refoulement to North Korean border crossers should be examined its actual impact while reexamining the principle of non-refoulement concerning the protection and rights of border crossers. Surveys and other data collecting methods with a larger sample and population than this survey can benefit future research by cross-checking the result and interpretation presented in this thesis. Also, the survey of border crossers other than North Koreans can enhance the valuable concepts of this thesis, such as human agency, emancipation, everyday peace, and peaceful coexistence. The ethics of coexistence, mini theories, concepts and models developed in this thesis can extensively used in future research in peace, security, and migration studies.

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Appendix 1. Risk Index

Risk to life

Table 19. Micro-level (sur place) risk

Category (absolute classification)	Dimension	Description (relative classification)	Measurement	Direct/physical risk	Structural/systemic risk

Food and nutrition: secure access at all times to sufficient food for a healthy life (Maxwell and Frankenberger, 1992); hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round; all forms of malnutrition, the internationally agreed targets on stunting and wasting in children under 5 years of age, and address the nutritional needs of adolescent girls, pregnant and lactating women and older persons [edited] (UNGA, 2017).	Availability (FAO, 2006; 2008); Accessibility (Sen, 1981; FAO, 2008); Utilization (FAO, 2006; 2008); Sustainability (Chambers, 1989); Stability (FAO, 2008); Vulnerability (Watts and Bohle, 1993); Affordability (UNHCR, 2019).	Local poverty (WDI, CIA); Food imports compared to exports and GDP (WDI); Population food insecure and needing emergency aid (USDA); Productive land per capita 2000+ (WDI); Change in productive land 2000+ / 1960+ (derived from WDI); Drought; Monoculture; Poor storage; transportation problems; Unnecessary waste; spoilage (Selendy, 2016); Privatization and liberalization of trade (Kapunda, 1994).	• SDG Indicators 2.1.1 (Prevalence of undernourishment (PoU)) and 2.1.2 (Prevalence of moderate or severe food insecurity in the population, based on the Food Insecurity Experience Scale (FIES)) (UNDESA) • Severe food insecurity and Moderate food insecurity: (FAO, 2009) • The Global Hunger Index (GHI). • Global Acute Malnutrition (GAM); Emergency food assistanc	Undernutrition; Malnutrition (FAO/IFAD/WFP 2015b as cited in Mucke, 2015); Hunger (Walter, 2015; Timmer, 2017) Disease (Walter, 2015); Unbalanced diet (Walter, 2015); Undernourishment; Child Wasting; Child Stunting; Child Mortality (Garschagen et al., 2015).	Dietary change; Unvaried food (Timmer, 2017); Increase in the vulnerability to natural hazards (Walter, 2015; Garschagen et al., 2015).

			e standard; Infant and young child feeding threshold (UNHCR Emergency Handbook).		

Water: Achieve universal and equitable access to safe and affordable drinking water for all (UNGA, 2017); and, achieve access to adequate and equitable sanitation and hygiene for all [edited] (ibid.).	Accessibility (Young, 2021); Availability; Affordability; Reliability; Quality (Young et al., 2019).	Safely managed drinking water services; Domestic and industrial wastewater flows safely treated; Good ambient water quality; Water-use efficiency Water stress (freshwater withdrawal as a proportion of available freshwater resources); Integrated water resources management; Transboundary basin area with an operational agreement for water cooperation (UNGA, 2017). Drought; Flooding (Young et al 2019); Evaporative; Pollutants (bacteria) (Selendy, 2016); Dumping, Release of hazardous chemicals and materials; Untreated wastewater	• JMP Ladders: Safely managed, Basic, Limited, Unimproved-No facility, Surface water-Open defecation (WHO/UNICEF, 2021) • HWIS; HHWI Scale; Objective Water Security Index; HWISI; HWIAS; HWISE Scale; IUWSI; WSI; Domestic Water Security Index; RWII; GWSI; UWS Assessment; UWSI; Water Security	Limited access to safe water for drinking and for practicing basic hygiene (UNICEF[96]); Mortality and morbidity (Selendy, 2016); Insufficient sanitation; Scarce potable water (Mucke, 2014); Lack sufficient water (Matuschke and Kohler, 2014); Water-borne illness[97].	A shortage of water in schools impacts student enrolment, attendance and performance (UNICEF[98]); Disempowerment from school and work[99]; Economic decline (WWF, 2014).

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[96] *Water scarcity*. UNICEF. (n.d.). Retrieved March 31, 2022, from https://www.unicef.org/wash/water-scarcity
[97] *Water scarcity*. WWF. (n.d.). Retrieved March 31, 2022, from https://www.worldwildlife.org/threats/water-scarcity
[98] *Water scarcity*. UNICEF. (n.d.). Retrieved March 31, 2022, from https://www.unicef.org/wash/water-scarcity
[99] *Water crisis - learn about the global water crisis*. Water.org. (n.d.). Retrieved March 31, 2022, from https://water.org/our-impact/water-crisis/

		Pathogens (UNGA, 2017); Salinization, Contamination (Selendy, 2016); The Action Plan of the UN Water Conference in 1977; Article 24(2) of the Convention on the Rights of the Child; Privatization of water (Thielbörger, 2019).	Assessment Framework; MIWSA; Freshwater Security Index; FEW Security Index; Water Security Sustainability (WSS) Indicator; Water Security Status Indicators (WSSI); CWVI; Water Resources Sustainability Evaluation Model; Water Security System (WSS) Index; Urban Water Security Index (UWSS); STE FEEW Security Index (Octavianti and Staddon,		

			2021); Emergency Sanitation Standards; Emergency water standard; Hygiene Standards (UNHCR Emergency Handbook).		
Shelter: Protection against forced evictions and the arbitrary destruction and demolition of one's home; The right to be free from arbitrary interference with one's home, privacy and family; The right to choose one's residence, to determine where to live and to freedom of movement (OHCHR, 2009).	Confidentiality(UN Women, 2012); Accessibility; Safety; Security; Accountability; Sustainability; Affordability; Habitability; Location; Cultural Adequacy; Non-discrimination (OHCHR, 2009).	Lack of land; Shortages of material for soundly built housing; Overcrowded and unsafe shelters (Selendy, 2016); Rural or urban settlement; Climate and environmental conditions (seasonally-appropriate shelter); timing and duration of risk (EC, 2017); Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).	• S&S indicators (EC, 2017) • Shelter Cluster Indicator (Global Shelter Cluster Accountability Working Group, 2013). • Emergency shelter standard (UNHCR Emergency Handbook).	Death and injury, loss of personal and household goods, debris, and damage to land and infrastructure; Insecure settlements, and destroyed, damaged, looted or booby-trapped houses; Access to shelter and settlement at the place of origin may be lost, severely restricted or intermittent; Conflicts, chemical or biological threats (EC, 2017); Communicable disease	Invisibility; Desocialization; Marginalization; Shelter as 'public place' can be presented as disorderly, thereby justifying intervention to life and living [edited] (Taylor, 2013); Encampment; Confinement.

					(Selendy, 2016).
Health and medical service: a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health; The right to prevention, treatment and control of diseases; and, access to essential medicines; Free from non-consensual medical treatment, such as medical experiments and research or forced sterilization, and to be free from torture and other cruel, inhuman or degrading treatment or punishment (OHCHR, 2008).	Non-discrimination; Availability; Accessibility; Gender-sensitive; Cultural appropriateness; Quality (OHCHR, 2008).	The Right to Health; Article 25(1) of the Universal Declaration of Human Rights, (UDHR); Article 12 of the Covenant on Economic, Social and Cultural Rights (ICESCR); Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Social protection in health (SPH) mechanisms (Gama, 2016); Constitution of the World Health Organization of 1946; Declaration of Astana on Primary Health Care of 2018.[100]	• Health, Nutrition and Population (HNP) statistics • SDG Indicators 3.8.1 (Coverage of essential health services) and 3.8.2 (Proportion of population with large household expenditures on health as a share of total household expenditure or income) (UNDESA) • Global Burden of Disease (GBD) • Primary health care	Unintentional loss of life; Sterilization against will (Cook, 2003); Termination of pregnancy; Deterioration.	Pharmaceutical monopoly (Sell and Williams, 2019); Discrimination (Cook, 2003).

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			coverage standard(UNHCR Emergency; Primary health care utilizatio n threshold Handboo k).		
Legal aid: contribute to the elimination of obstacles and barriers that impair or restrict access to justice by providing assistance to people otherwise unable to afford legal representation and access to the court system (UN Special Rapporteur, 2009).	Autonom y; Independ ency; Effective ness; Sustaina bility; Availabil ity (UN Special Rapporte ur, 2009).	Legal remedies; Legal aid to those in need to be able to seek judicial redress (OHCHR, 2009).	• Handboo k on Procedur es and Criteria for Determi ning Refugee Status under the 1951 Conventi on and the 1967 Protocol relating to the Status of Refugees (UNHC R, 1979) • Dublin III Regulati on.	Impair or restrict access to justice (UN Special Rapporteur, 2009); Unfair treatment (The Scottish Government, 2013).	Institutional or systemic barriers; Prejudice (The Scottish Government , 2013).

Table 20. Meso-level (local) risk

Category	Dimension	Description	Measurement	Direct risk	Structural risk
Interperson al violence: intentional use of	Interperson al violence: Family violence;	Community Violence Intervention (CVI);	• SDG Indicato rs 16.1.1,	Psychologi cal abuse; Premature death;	Relationships in the family, between generations

physical force or power, threatened or actual, by a person or a small group of people against another person or small group that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation (WHO, 2014) **and**, **Group conflict**: a process emerging from perceived incompatibilities or differences among group members (De Dreu & Gelfand, 2008).	Community violence (Rosenberg et al., 2006) Group conflict: Task; Relationship (Medina et al., 2005); Process (De Wit et al., 2012); Value (Shonk, 2021).	Community-Based Violence Prevention (CBVP) program; Group Violence Intervention (GVI) (MOPAC, 2016); Gang violence (WHO, 2014); Homicide; Dangerous peer networks; Victimization; Low levels of parental involvement (HUDUSER, 2021); Interpersonal violence prevention programmes (WHO, 2004); heft, robbery, burglary, racial attacks, drug-related crimes, juvenile delinquency and illegal possession of firearms, taking into account all the factors that may directly or indirectly cause such	16.1.2, 16.1.3, and 16.1.4 (UNDESA).	Injury; absenteeism; Long-term disability; Lost potential; Diminished quality of life; Decreased ability to care for oneself or others; Disruption of daily life as a result of fears for personal safety (WHO, 2002).	or between social groups etc.; Education, religious, moral and civic values, culture etc. (UNESC, 1995).

		problems or contribute to them (UNESC, 1995).			
Human trafficking and Human smuggling: illegal activities treating people as commodities (UNODC[101]).	Trafficking: Exploitation; Transnationality; Consent (UNODC, 2010); Act; Means; Purpose (UNODC[102]); Forced labour; Forced criminal activities; Sexual exploitation; Removal of organs (Interpol[103]) Smuggling: Source of profit; Transnationality; Victimization (UNODC, 2011); Regular; Irregular; Organization;; Transportation; Profile (UNODC, 2018).	Anti-trafficking laws, programmes and interventions; (UNODC, 2006); The rights to protection and assistance (Articles 4 and 16 of the Smuggling of Migrants Protocol); Protocol to Prevent, Suppress and Punish Trafficking in Persons (UN, 2000); Recommended Principles and Guidelines on Human Rights and Human Trafficking (OHCHR, 2002).	• Human Trafficking Indicators (UNODC) • Operational indicators of trafficking in human beings (ILO/EC, 2009) • Trafficking in Persons Indicators (GPC, 2020) • SDG Indicators 16.2.1, 16.2.2, and 16.2.3 (UNDESA).	Threat; Coercion; Fraud; Deception; Exploitation; Forced labour or services; Slavery or practices similar to slavery; Servitude or the removal of organs (UNODC, 2006).	Criminalization; Repartriation; Immi-gration detention or other forms of custody (UNODC, 2006).

[101] *Human trafficking faqs*. United Nations : Office on Drugs and Crime. (n.d.). Retrieved March 31, 2022, from https://www.unodc.org/unodc/en/human-trafficking/faqs.html#h2

[102] Ibid.

[103] *Types of human trafficking*. INTERPOL. (n.d.). Retrieved March 31, 2022, from https://www.interpol.int/Crimes/Human-trafficking/Types-of-human-trafficking

Gender-based violence (GBV): violence directed against a person because of their gender (EIGE[104]) or violence that affects persons of a particular gender disproportionately (EC[105]).	Physical; Sexual; Psychological; Economic (Istanbul Convention of 2011).	Committee on the Elimination of Discrimination against Women (CEDAW); Istanbul Convention; Beijing Declaration and Platform for Action; White ribbon campaign; Elimination of violence against women and girls.	• Indicators to measure violence against women (UNECE, 2007) • Indicators on violence against women (VAW) (UN Women, 2012) • SDG Indicators 5.2.1 and 5.2.2 (UNDESA).	Unwanted pregnancy; Sexually transmitted diseases; Sexual dysfunction (WHO, 2002); Exploitation of the prostitution of others or other forms of sexual exploitation (UNODC, 2006); Female genital mutilation; Femicide; Intimate partner violence (IPV); (EIGE[106]); Sex-based harassment; Forced marriage; Domestic violence (EC[107]); Honour killings (UNICEF, 2020).	Victim-blaming; Stereotype; Excusing perpetrators from the crimes they have committed; Rape culture (UN Women, 2020). Ostracization from families and communities (UNICEF, 2020); Harmful gender norms (Liabunya, 2021).

[104] *What is gender-based violence?* European Institute for Gender Equality. (2021, October 7). Retrieved March 31, 2022, from https://eige.europa.eu/gender-based-violence/what-is-gender-based-violence

[105] *What is gender-based violence?* European Commission - European Commission. (2021, February 5). Retrieved March 31, 2022, from https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence_en

[106] *What is gender-based violence?* European Institute for Gender Equality. (2021, October 7). Retrieved March 31, 2022, from https://eige.europa.eu/gender-based-violence/what-is-gender-based-violence

[107] *What is gender-based violence?* European Commission - European Commission. (2021, February 5). Retrieved March 31, 2022, from https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence_en

Discrimination: a person is treated disfavourably or when a person's dignity is violated (DO, 2022) or people are treated less favourably than other people are in a comparable situation only because they belong, or are perceived to belong to a certain group or category of people (COE[108]) **and**, **Intolerance**: lack of respect for practices or beliefs other than one's own (COE[109]).	Social rejection; Stereotyping; Direct threats/attacks; Politcs mistreatment (Chin et al., 2020); Direct; Indirect (Cossette-Lefebvre, 2020); Intersectional (English et al., 2020; Amnesty International, 2020); Structural (Systematic); Multiple (COE[110]).	Principles of equality and non-discrimination in the Universal Declaration of Human Rights (UDHR) (UNGA, 1948); International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (UNGA, 1965); Discrimination (Employment and Occupation) Convention (ILO, 1958); Convention against Discrimination in Education (UNESCO,1960); Article 14 of the European Convention on Human Rights and Article 1 of Protocol No. 12 to the	• Indicators for evaluating municipal policies aimed at fighting racism and discrimination (UNESCO, 2005) • Indicators of Discrimination against Immigrants, Indigenous Peoples and National Minorities (Bråthen et al., 2016).	Unemployment; (One-to-one) discriminatory or abusive behavior; Deportation; Unequal treatment; Physical attack; Fears for safety; Murder (COE[111]).	Deprivation from freely exercising their full potential for themselves and for society; Obstacles in achieving real equality or equal opportunities; Institutional bias; Affirmative action (positive discrimination); Tyranny of majority; Marginalization; Stereotype; Prejudice; Misrepresentation; Xenophobia; Racism; Antisemitism; Segregation; Isolation; limited access and denied basic rights; Religious intolerance; Pathologization;

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[108] *Discrimination and intolerance*. Manual for Human Rights Education with Young people. (n.d.). Retrieved March 31, 2022, from https://www.coe.int/en/web/compass/discrimination-and-intolerance
[109] Ibid.
[110] Ibid.
[111] Ibid.

		Convention (ECHR, 2021).			Criminalizati on (COE[112]).

Table 21. Macro-level (nationwide) risk

Category	Dimens ion	Description	Measurem ent	Direct risk	Structur al risk
Detention: deprivation of liberty of non-citizens because of their status (Flynn, 2011); confinement of an applicant by a state within a particular place, where the applicant is deprived of his or her freedom of movement [edited] (RCD 2013/9/EC); and, deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres	Spatial (Brouw er & Berlo, 2016); Guarant ees for detaine d applica nts; Conditi ons of detentio n; Detenti on of vulnera ble persons and of applica nts with special receptio n needs; Materia l receptio n conditio ns and health care (RCD	Alternatives to detention (ATD); Article 31 of the 1951 Convention; Article 5 of the 2000 United Nations Anti-Smuggling Protocol; Article 37 of the United Nations Convention on the Rights of the Child (UNCRC); Principles of necessity and proportionalit y; Due diligence; Respect for human dignity; National law Reception guarantees (RCD, 2013/9/EC); Detention of Asylum-seekers and Refugees	• EA SO Gui dan ce on asyl um proc edur e • The Hu man Rig hts Indi cato rs on the Con vent ion on the Rig hts of Pers ons with Disa bilit ies (CR	De facto deprivation of liberty (EASO, 2021) and freedom of movement; Exclusion from the 'receiving society'; Mental and physical health and development concerns (Bosworth and Turnbull, 2014); Self-harm (Parr, 2005).	'Technol ogy of citizenshi p', Minimiz ation of ability to access resources (Rygiel, 2011); 'Mandat ory detention ' (Boswort h & Kaufman , 2011); Immobili zation; Crimmig ration; mutatis mutandis and heighten ed risk of arbitrary detention (UNHCR , 2012).

[112] *Discrimination and intolerance*. Manual for Human Rights Education with Young people. (n.d.). Retrieved March 31, 2022, from https://www.coe.int/en/web/compass/discrimination-and-intolerance

or facilities (UNHCR, 2012). **and**, **Punishment**: "every sanction that has not only a preventive but also a retributive and/or deterrent character is . . . to be termed a penalty, regardless of its severity or the formal qualification by law and by the organ imposing it" (Nowak, 1993).	2013/9/EC); Facility type; Security level; Segregation; Privatization; Custodial authority (Flynn, 2011).	(UNHCR, 1999); Article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR); Torture Convention (UNGA, 1984); Istanbul Protocol (OHCHR, 2004); Exception from penalties for illegal entry (UNHCR, 2012).	PD) (UN, 2020) • UNHCR Detention Guideline (UNHCR, 2012).		
Reviewing inadmissibility or rejection decisions: a decision rejecting an application for international protection, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period (Eurostat, 2022).	Inclusion; Cessation; Exclusion (The 1951 Convention); Statelessness; Durable solutions (UNHCR, 2006); Humanitarian; Protection; Harmonization (EP, 2016)	Refugee status determination (RSD); Asylum shopping (Scipioni, 2018); Responsibility-sharing mechanisms; The axiom of burden-sharing (Kaufmann, 2020).	• Practical Guide to the Systematic Use of STANDARDS & INDICATORS in UNHCR Operations	Repatriation (Crisp, 2020); Deportation; Spent decades in the asylum system (Bendixen, 2021).	Use of 'safe' countries and insufficient justification (AEDH/EuroMed Rights/FIDH, 2016); Appealing to UNHCR for support is not an option - no longer be considered as a person of concern to

			(UNHCR, 2006) • Global Compact on Refugees (UNHCR, 2019).		UNHCR (Crisp, 2020); State of limbo (UNHCR, 2004); Mistakes and wrong decisions during the asylum procedure (Bendixen, 2021).

| Repatriation: the personal right of a refugee, prisoner of war or a civil detainee to return to his or her country of nationality under specific conditions laid down in various international instruments (IOM Glossary, 2011) **Expulsion**: an act by an authority of the State with the intention and with the effect of securing the removal of a person or persons (non-nationals or stateless persons) against his or her will from the territory of that State (ibid.) and, **Deportation**: the act of a State in the exercise of its sovereignty in removing a non-national from its territory to his or her country of origin or third state after refusal of admission or | Legality (Noll, 1999); Safety (OAU, 1969; UNHCR, 1992); Dignity (UNHCR, 1992); Voluntariness (UNHCR, 1996); Responsibility and burden sharing; Self-resilience; Non-refoulement (UNHCR, 2021); Reasonableness (Hathaway, 2021). | 'Assisted voluntary return and reintegration' programmes (AVRR); The right to leave and the right to return (Article 13(2) of UDHR); Right to free movement (Article 13(1) of UDHR); UN laissez-passer (Bendixen, 2021); Right to Non-coercive departure; Freedom of residence and internal movement (Hathaway, 2021). | • Global Compact on Refugees indicators (UNHCR, 2021) • Global Migration Indicators (IOM, 2018). | Mental diseases; Frustration (Bendixen, 2021); Violence; Torture; Inhuman treatment; Robbery (MSF, 2021). | Failure to protect (AI 1997); Arbitrary Expulsion; Expulsion en masse; Afoul of international refugee law and international human rights law (UNHCR, 2021); Pushback; Hot return (CEPS, 2020; Thym, 2020); Criminalization (MSF, 2021); Voluntary repatriation; Reservation (Hathaway, 2021); Best endeavors (The Bangkok Principles, 1966). |

termination of permission to remain (ibid.).					

| Refoulement: In the global context, a core principle of international refugee and human rights law that prohibits States from returning individuals to a country where there is a real risk of being subjected to persecution, torture, inhuman or degrading treatment or any other human rights violation (EC)[113]; In the refugee context, a core principle of international refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened on account of their race, religion, nationality, | Threat to the national security of the host country; Proven criminal nature and record constitute a danger to the community (Article 33(2) of the 1951 Convention); Physical presence in the host country (The US Supreme Court, 1993)[114]; Non-admittance at the frontier (refoulement) (Article | The principle of non-refoulement (Article 33(1) of the 1951 Convention); The right to seek asylum; The right to enjoy asylum (UDHR); The right to leave (ICCRR); Suspension of certain rights of refugees in time of war or other grave and exceptional circumstances (The 1951 Convention); Freedom from torture, cruel, inhuman, or degrading treatment; Right to life; Freedom from deprivation. | • Ratification of 18 International Human Rights Treaties; International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil | Persecution; Fear; Torture, Inhuman or degrading treatment; Punishment (Baxewanos, 2013); Threats to the dignity of refugees (Hathaway, 2021). | Failure to protect (Hathaway & Foster, 2014); Non-Existence of a Right to Receive Asylum (Lynch, 2022); Restrictive interpretation of the Refugee concept (Llain, 2015); First country of arrival and safe third country regimes; Safe country of origin rules; Non-admittance; Ejection; Voluntary repatriation; Failure to identify |

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membership of a particular social group or political opinion (ibid.).	3 of the1933 Refugee Convention). Life; Physical integrity; Liberty (OAU, 1969); Application; Interpretation (Hathaway, 2021).		and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNHCR		refugees; *Opinio juris* (Hathaway, 2021).

			Indi cato rs) [115].		
State of exception: is a special legal regime to be declared if: 1) the State is endangered by an external enemy; 2) internal disturbances which endanger the democratic structure of the State have arisen or are in danger of arising in the State or any part thereof (OESSE, 2014); allows to restrict the rights and	Legal framew ork; Operati onal framew ork (DCAF, 2005); Tempor ality; Excepti onal threat; Declara tion; Commu nication ; Proporti onality; Legalit y; Intangi bility (ECHR/	Public emergency (ICCPR); Derogations during a State of Emergency (UNHCR, 2001); Omissions of discrimination on the grounds of political or other opinion; national origin; property; birth or other status (UN 2001 Special Rapporteur on the Rights of Non-Citizens); Articles 4(1)-(2) of ICCPR; Article 9 of the 1951	• Rul e of law indi cato rs (UN HC R, 201 1) • Glo bal Stra tegi c Prio ritie s (GS P) • Eme rgen cy prio ritie		Grounds of impermis sible discrimin ation for emergen cy derogatio n purposes [compare , Articles 2(1) and 4(1) of ICCPR] (Hathaw ay, 2021); War or other exceptio nal circumst ances (Article

[115] *OHCHR Dashboard*. (n.d.). Retrieved April 1, 2022, from https://indicators.ohchr.org/

freedoms of natural persons and legal persons to the extent and according to the procedures laid down in law, as well as to impose additional duties on them (ibid.). **and, State of emergency**: is a special legal regime, during which the [commandership] restricts the rights and freedoms of [central] administrative and local government institutions, natural persons and legal persons, as well as to impose additional duties to them [edited] (ibid.); and, may be declared in case of such threat to national security, which is related to a disaster, danger thereof or threat to the critical infrastructure, if safety of the State, society, environment,	ICCPR); Transparency and accountability; Integrity and independence; Effectiveness and efficiency; Access to justice; Public confidence; Treatment of members of vulnerable groups; Capacity (UNHCR, 2011)	Convention; Dispute between states; Diplomatic relations (Hathaway, 2021); Red Crescent intervention (ICRC, 2008); Non-derogable human rights (i.e., the right to life; prohibition of torture; freedom from slavery; freedom from post facto legislation and other judicial guarantees; the right to recognition before the law; freedom of thought, conscience and religion).	s and related indicators; Minimum Standards for Child Protection in Humanitarian Action (UNHCR Emergency Handbook) • Guidelines for assessment in emergencies (ICRC, 2008).		9 of the 1951 Convention); International crisis (The 1951 Conference of Plenipotentiaries); Self-judging clause (Schill & Briese, 2009); Cogent reasons (ECtHR, 2020); Exceptional measures (UN Ad Hoc Committee, 1950).

economic activity or health and life of human beings is significantly endangered (ibid.).					

Appendix 2. Survey (key questions in translation)

Q1. What identity group do you think North Korean border crossers belong to?

    a.   Economic migrants: persons leaving their home country for economic improvement in living conditions that are not related to the definition of a refugee.

    b.   Refugees: persons leaving their home country for the reason(s) of persecution, war, terror, severe poverty, famine, and natural disaster.

    c.   Defectors: persons leaving their country, party, or organization particularly in order to join the opposite or adversary country, party, or organization.

Q2

Q2-1. What do you think is the most appropriate reason to consider border crossers as 'economic migrants'?

    a.   The motives for border crossing come from economic reasons, and the process of border crossing and settling down is similar to that of economic migrants.

    b.   North Koreans are South Koreans and thus the border crossers are neither refugees nor defectors but (intranational) economic migrants.

Q2-2. What do you think is the most appropriate reason to consider border crossers as 'refugees'?

    a.   War refugees due to the armistice without a peace treaty.

    b.   Well-founded fear of persecution in North Korea due to racial, religious, or national reasons, the status of social organization, or political opinion.

Q2-3. What do you think is the most appropriate reason to consider border crossers as 'defectors'?

    a.   North Korea is an independent sovereign country whose passport is recognized by international society. Thus, border crossing to South Korea and other countries is considered a defection to another country.

    b.   North Korea, which is located in the South Korean territory according to the Constitution of South Korea, is an anti-government organization from the South Korean perspective, and North Koreans are considered South Korean nationals. Therefore, leaving North Korea is defection.

Q3. Please indicate perceived levels of Risk Exposure and Urgency for the three identity groups on a scale of 0 to 10.

Closer to 0 denotes negligible or insignificant, and nearer to 10 means severe or significant.

Risk Exposure = exposure to risks such as the absence of resources or physical unsafety.

Urgency = the need to recognize one's identity/status over other identities/statuses.

Ex)

Economic migrant (1,6); Refugee (8,7); Defector (4,5).