

How to Build a New Peace Structure on the Korean Peninsula

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Through a statement by a spokesman of the North Korean Ministry of Foreign Affairs on 28 April 1994, Pyongyang proposed replacing the Korean military Armistice Agreement signed on 27 July 1953 between the United Nations Command on the one side and the North Korean People's Army and the Chinese People's Volunteer's Force on the other with a peace treaty between the DPRK and the United States. The proposal went further: replace the armistice bodies with a peace-guaranteeing regime to lessen the sharp antagonism between the two countries. Immediately afterwards the North intentionally violated the current Armistice Agreement, first paralyzing the Military Armistice Commission (MAC) by withdrawing its own delegation and compelling China to recall its delegation from the commission, and then closing down the Neutral Nations Supervisory Commission (NNSC) by expelling its Polish members from North Korean soil.

From that time on, North Korea has persistently been undermining the armistice bodies and reinforcing its peace offensive to sign a peace treaty with the US. On 24 May 1994 Pyongyang established a "Representative Office of the DPRK People's Army at Panmunjom," which was intended to replace the MAC. In this attempt to supplant the Armistice Agreement it also proposed

direct talks with the US military. On 3 May 1995, the North Korean People's Army Mission at Panmunjom took measures that could potentially de facto abolish the Joint Security Area (JSA), which straddles the Demilitarized Zone (DMZ) at Panmunjom and which is the site of the MAC and the NNSC. The mission issued a statement that it would take measures to change the status of the JSA: prohibition of NNSC personnel from access to North Korean facilities in the JSA and prohibition of NNSC personnel and "personnel and journalists of the U.S. Army side" from entering the portion of the JSA north of the Military Demarcation Line (MDL).¹

Such unilateral acts have resulted in the virtual suspension of the operation of the armistice regime. As a consequence, a sense of crisis looms larger now on the Korean peninsula than ever before. Against this background, how to build a new peace structure is attracting a good amount of attention here and abroad.

More often than not when citing preconditions for the fulfillment of Agreed Framework signed on 21 October 1994 between the DPRK and the US, either in the mass media or through diplomatic channels, Pyongyang has demanded the replacement of the Armistice Agreement with a North Korea-US peace treaty.² Thus it is quite likely that future US-DPRK high-level talks will deal with the issue of creating a new peace mechanism between the two countries.

1 Such North Korean acts not only mean the violation and weakening of the 1953 Armistice Agreement but also constitute the unilateral abrogation of the 1976 agreement on security regulations in the JSA signed between the United Nations Command (UNC) and the North Korean Military Command. In accordance with this agreement, North Korean and UNC personnel assigned to the MAC have the right to move across the MDL in the Joint Security Area. US military personnel make up the most of the staff of the UN delegation on the MAC. See Larry Nicksch, "Rising Threats to the Korean Armistice," *Washington Times*, 21 May 1995, p. 4.

2 See statements by a spokesman of the DPRK Ministry of Foreign Affairs on 28 February and 19 April 1995. Refer to the reports by Chosen Chungang Bangsong (North Korean Central Broadcasting Station) on 30 May 1995.

Seoul must at this stage take a firm position on the transition to a peace regime, as a countermeasure against the North's proposal. Peace-treaty making and peace-regime building are not exactly the same. Building a peace regime cannot be attained with a peace treaty alone, rather it needs an accumulation of documents including a peace treaty, a nonaggression pact, arms control arrangements, etc. Formation of a peace regime on the Korean peninsula would begin with a nonaggression pact (or declaration), then a peace treaty if necessary, an international guarantee of peace on the peninsula, a treaty on inter-Korean arms control, and eventually the affiliation to a multilateral military control regime on the regional level in Northeast Asia. This paper examines the principles, conditions and alternatives for the establishment of a perpetual peace regime on the Korean peninsula.

The Nucleus of the Issue

The issue can be outlined as follows.

First, the Korean Armistice Agreement signed on 27 July 1953 is unique in that it has been in effect for nearly half a century. Usually, a peace treaty is signed within a short period after the conclusion of an armistice agreement. The San Francisco Peace Treaty, for example, was signed in September 1951 six years after the Japanese government surrendered unconditionally to the allied powers on the USS *Missouri* on 2 September 1945.

Second, peace has been maintained on the peninsula through a military balance. Note that North and South Korea adopted the July 4 Joint Declaration in 1972, and later the Agreement on Reconciliation, Nonaggression and Exchanges and Cooperation between the South and the North come into force in February 1992 (the 1992 Inter-Korean Basic Agreement or the Basic Agreement), but failed to build a more reliable peace. As the Armistice Agreement has not been able to establish a permanent peace,

new documents produced by the two Koreas would not be able to do so any better.

Third, the issue of building a peace regime is basically political. North Korea wants a peace treaty only with the United States. This, together with its behavior of the past decades, clearly reveals its unwillingness to recognize the legal and political entity of South Korea, not to mention peaceful coexistence between the two Koreas. A peace regime can be founded on the peninsula only if the two Koreas are sincere in their will to coexist.

Fourth, required at the moment is not another document but the fulfillment of the details of those already agreed by the two Koreas. Rather than a new peace treaty right now, let us observe the spirit and letter of the Armistice Agreement. It is more important to build political and military confidence as a step prior to a peace treaty making.

Fifth, transformation of the armistice regime into a peace regime should take place in the form of a document confirming or declaring the consolidation of peace on the Korean peninsula through the sincere implementation of the Armistice Agreement. The Basic Agreement can help consolidate peace if it is properly carried out by the parties concerned. A peace regime is not produced by letters alone; it needs both parties to sincerely carry out their obligations in existing agreements.

Sixth, sincere implementation of the Basic Agreement is what can replace the armistice and produce peace. Such a state would make an agreement on a peace regime easier.

In essence, political and military confidence building between the two Koreas should precede any transformation of the armistice regime into a peace regime; it is not at all proper to talk about a peace treaty that harbors ill-intent on the part of Pyongyang to ignore the South Korean government.

Principles and Conditions for a Transition to a Peace Regime

Principles—Peace and unification issues on the Korean peninsula should be resolved between the two Koreas based on principles of autonomy, national self-determination and resolution by the concerned parties. This is the national commitment by which the two Koreas should abide, and the spirit that conforms to the Basic Agreement.

In this light, Seoul should hold fast to the following principles on the issue of transforming the current armistice regime into a new peace regime on the Korean peninsula.

First, the issue should be discussed and resolved between the parties directly concerned, the two Koreas, because it is deeply concerned with national existence and security of South and North Korea who were the main parties to the Korean War. It is quite natural that they should be the ones to resolve it based on the principles of autonomy and resolution between the parties directly concerned.

Second, the existing armistice regime should be maintained and obeyed until the transition to a peace regime is completed. It is absolutely impossible to sign a peace treaty under flagrant violation of the Armistice Agreement, and as clearly stated in Article Five of the Basic Agreement, it can be promoted only under full observance and sincere implementation of the Armistice Agreement.

Third, transforming the current armistice regime into a peace regime should be pursued gradually and incrementally. To attempt to change the status quo rapidly on the peninsula could bring about instability rather than peace, which would make it hard for the two Koreas to gain understanding and support from the surrounding nations in building a peace structure and moving towards reunification. In this context, existing treaties and friendly relations with other countries must be respected.

Fourth, the transition to a peace regime should proceed under the confirmation of a commitment to a mutual peace, and an

alternative should be sought that guarantees a lasting peace on the peninsula. It should be promoted under the initiative of the two Koreas. If necessary, they may also seek international guarantees of a new peace regime on the peninsula, through cooperation and support from the surrounding countries.

Conditions—The acute inter-Korean military confrontation of the past four decades still continues. The current armistice regime has recently come under a serious challenge due to North Korean unilateral measures to undermine and enervate the Armistice Agreement. A sense of crisis looms larger than ever before, especially at the DMZ.

It is thus evident that permanent peace building on the peninsula cannot be brought about simply by adopting some new document to replace the Armistice Agreement. Seoul should approach the question of peace building essentially as a process to be completed over time, not something that can be realized immediately by the conclusion of a treaty or agreement, and the first step should be reducing tension and building confidence.³

This means that a transition to a peace regime must be promoted after the internal and external conditions have matured, or at least in a gradual and procedural way corresponding with the fulfillment of conditions suitable for it on the peninsula.

The "internal conditions" are well detailed in the 1992 Inter-Korean Basic Agreement. For example, Articles one to four of the Basic Agreement can be summarized as mutual recognition and respect of each other's system between the South and the North, and especially North Korea's renouncement of its communist revolution strategy. Even after having signed the Basic Agreement, Pyongyang is still unwilling to recognize and respect South Korea as a country. So long as the North continues to

3 Jin-Hyun Paik, "Myths and Realities of Building a Peace Structure on the Korean Peninsula," prepared for the International Conference on Fifty Years of National Independence: Past, Present, and Future of National Security in the Republic of Korea, by the Korean Association of International Studies, 16-17 June 1995, p. 5.

denounce and vilify—not to mention attempting subversive acts against—the South, defining it as a colony of American imperialism, no stable peace regime can be expected on the peninsula.

Sincere implementation of the Basic Agreement with political and military confidence building should precede the replacement of the armistice regime. It would require establishment of a hot-line between the military authorities of both Koreas, a mutual observation system of military exercises and maneuvers, and enhancement of their transparency to ensure any perpetual peace mechanism. To secure peace on the peninsula, confidence building and restoration of national homogeneity through exchanges and cooperation between the two Koreas are also necessary. They are important means of consolidating stable and durable peace.

If a peace treaty is signed between North and South Korea, issues of arms reduction, withdrawal of foreign troops and the dissolution of the United Nations Command will be raised. Therefore, South Korea must possess credible independent deterrence in order that a peace treaty may be negotiated.

As “external conditions,” I refer to fostering an international environment that can make possible the signing of a peace treaty between the two Koreas. Such conditions can be secured through scaled reduction of US troops on the southern part of the peninsula, restoration of operational control authority by the South Korean army in preparation for the complete withdrawal of US troops, and readjustment of US-ROK military relations. Closer consultation between Seoul and Washington is also needed to block North Korea’s demand for a peace treaty with the United States.

Seoul could obtain international recognition of its legitimate qualification as a party to a peace treaty. Because Pyongyang has been avoiding inter-Korean dialogue on the matter of building a peace regime, such international recognition has legal and political implications.

Seoul may consider the following alternatives to procure international recognition as a party to both the Armistice Agreement and a peace treaty. Based on a few legal and political lines of argument, South Korea should foster circumstances for the transition to a peace regime by arguing to the outside world that the Republic of Korea is the very party to a peace treaty, especially, for example in the United Nations Security Council or General Assembly or both. Let the two Koreas be confirmed as the legitimate parties to a peace treaty through a UN resolution recommending a South–North Korean peace treaty under the principle of resolution of Korean affairs by the parties directly concerned.

Alternatives for the Transition to a Peace Regime

From the perspective of international law, the following alternatives could be considered as a means of transforming the current armistice regime into a new peace regime: (1) signing of a peace treaty; (2) sincere implementation of the Basic Agreement, particularly the nonaggression clauses and clarification of what is meant by restoring and completing a state of stable peace through revising the Basic Agreement; (3) adoption of a charter for the Korean National Community; (4) adoption of a “Joint Declaration of Peace on the Korean Peninsula” (5) a slight revision or reinforcement of the Armistice Agreement in accordance with its Articles 61 and 62.

However, a revision of the Armistice Agreement would not be possible because North Korea considers the armistice as nearly nullified and would reject the idea, so the fifth option will not be further mentioned. The third, of course, is also infeasible at this time, but will be discussed below.

The Making of an Inter-Korean Peace Treaty

The typical method of ending the state of war and restoring the state of peace is signing a peace treaty. In general, a peace treaty

would include an unambiguous statement that a war has ended and a state of peace is being restored from antagonistic and abnormal relations, clarification and resolution of the causes of the war, mutual pledge of nonaggression, mutual respect for national boundaries, pacific settlement of disputes, transformation of any demilitarized zones to peace zones, responsibilities for the war and reparations or compensations.⁴

Restoring the state of peace that existed before a war broke out is the goal of a peace treaty, but what is more important is to renounce any will to reopen a war and to materialize the real will of the parties to peaceful coexistence. In that sense, a war-detering mechanism is necessary to prevent counter-provoking another war. In the case of Korea, withdrawing military facilities, arms and personnel from the demilitarized zone and removing them rearward would not only be a means of deterring the provocation of a new war but would also be a prerequisite for building up confidence and security.

It is desirable that the two Koreas should conclude a peace treaty to end the Korean War if they could do so. Considering the sharp conflict between the South and the North over who should be the parties to a peace treaty, however, it is difficult to anticipate signing any such treaty between the two Koreas in the near future. In addition, clarifying and removing the original cause of the Korean War is not at all a simple matter. It is hard to expect either of the two Koreas to admit responsibility for having started the war.⁵ Therefore the issue of reparations or compensation cannot be resolved easily.

Mutual recognition of each other's political entities and systems is prerequisite to signing a peace treaty between the two

4 On the general content of a peace treaty, see Wilhelm G. Grewe, "Peace Treaties," *Encyclopedia of Public International Law*, Vol. 4 (Amsterdam-New York-Oxford: North Holland Publishing Company, 1982), pp. 102-10.

5 Jang-hie Lee, "Some Means for Converting the Korean Armistice Agreement to a Peace Treaty," *The Korean Journal of International Law*, Vol. 39 (1994), p. 29.

Koreas. This demands abolition of any laws that deny recognition and respect of the other's political entity and system. North Korea would need to revise its declared intent of communizing the entire peninsula by overthrowing South Korea as is stipulated in the Covenant of the North Korean Workers' Party and implied in Article Nine of the DPRK Socialist Constitution, and abolish the criminal law provisions on the banning of exchanges and cooperation between common people of the two Koreas as well, because they are against mutual recognition and respect of each other's systems. South Korea would be obliged to amend or abolish Article Three, on territory, of its constitution as well as its National Security Law, on the basis of the principle of reciprocity and the spirit of reconciliation. Considering the political burden in abolishing the laws, however, it would be difficult for the two Koreas to anticipate any such measures on the basis of reciprocity in the short run.

Revision and Supplementation of the Basic Agreement

Transition to a peace regime is possible without concluding a peace treaty. A peace regime can be consolidated on the peninsula if the two Koreas sincerely implement the 1992 Inter-Korean Basic Agreement and its protocols on reconciliation, nonaggression and exchanges and cooperation.

But sincere implementation of the Basic Agreement would not bring about a peace regime in the legal sense. Article Five of the Basic Agreement states that "The two sides shall endeavor together to transform the present state of armistice into a solid state of peace between the South and the North and shall abide by the present Military Armistice Agreement of July 27, 1953, until such a state of peace has been realized." The article has the following legal implications.

First, the present inter-Korean relationship is in a state of armistice. A state of armistice is legally an extension of a state of war, not a sound state of peace.

Second, the two Koreas promise to endeavor together to transform the state of armistice into a solid state of peace. Therefore North Korea's efforts to sign a peace treaty with the United States by excluding South Korea is in the violation of Article Five of the Basic Agreement.

Third, the two Koreas shall observe and comply with the existing Armistice Agreement until a state of peace has been realized and consolidated. That is, the North and the South shall maintain the armistice regime until an explicit agreement is reached on ending the armistice and restoring a peace between the two Koreas. Thus the Basic Agreement embodies a common will of the two Koreas to maintain a state of armistice until the moment a peace mechanism is established on the peninsula.

In consequence, the two Koreas cannot end the state of armistice or replace the Armistice Agreement in the framework of the Basic Agreement alone as it is, according to its Article Five.⁶ Sincere implementation of the Basic Agreement, of course, may be a condition for the transition to a peace regime but it will not necessarily bring about its realization. A possible alternative would be to revise or supplement the Basic Agreement, declaring a definitive end of the armistice (a state of war) and restoration of a state of peace. Thereafter the South and the North would be able to regulate the inter-Korean military relationship and establish a perpetual and solid peace regime on the peninsula in accordance with the revised Basic Agreement.⁷

6 Neither can the Armistice Agreement itself be transformed into a peace regime, even if it is well abided by and implemented sincerely by the two Koreas. This conforms to international law theory and the spirit of the Basic Agreement. Seong Ho Jhe, "The Proposal of North Korea on Peace Treaty with USA: A Comment on South Korea's Position," *Seoul International Law Journal*, Vol. 1, No. 1 (1994), pp. 130-1.

7 Seong Ho Jhe, "It Is Urgent to Build a Peace Regime with the Help of UN," *Chayoo Kongron*, No. 320 (November 1993), pp. 78-84.

Adoption of Charter for a Korean National Community

In international law, a peace treaty that stipulates a definite will to end the state of war and restore the state of peace need not be necessarily labeled "peace treaty." This is true both in theory and in practice. Therefore, as envisioned in the Korean National Community Unification Formula announced in September 1989, adoption of a charter for this Korean national community could be a means to transform the armistice to a peace regime. This charter could define political relations between the two Koreas and contain the main contents of a peace treaty, so it could be a practical alternative to establish a peace regime on the peninsula. According to the unification formula, the charter for a Korean national community would include pledges of nonaggression and prescriptions for peace and unification. A permanent peace could be established on the peninsula through the adoption of the charter.

If the two Koreas agree to go further into the stage of a North-South confederation or a Korean commonwealth, a breakthrough may be secured through an inter-Korean summit-level conference. When the top leaders of the two Koreas come together and discuss matters of the Korean nation with open minds, tangible results are very likely to come about. Prior to the summit meeting, working-level contacts would need to be held to agree on its form and agenda. The following might be the topics at the summit conference: the basic characteristics of inter-Korean relations during the transition period to unification; discussion over the unification formula; negotiation method and procedures as well as establishment of inter-Korean confederation, its management and organization.

In order to set up a peace regime with the adoption of a charter like this, matters of resolution of antagonistic relations and state of war should be defined, mutual non-aggression and renouncement of use of force, mutual respect for territorial borders, peaceful resolution of conflicts and others that comprise the

nucleus of a peace treaty should all be contained in the charter. It should be treated by international law as a legal document that regulates special intra-national relations rather than a treaty signed between two sovereign states.

This charter may also be termed as agreement, treaty or anything else appropriate. Unlike the Basic Agreement which has not been ratified nor regarded as a treaty, it is desirable that the charter would be ratified as well as registered in the UN Secretariat so as to secure the document's domestic and international legal effect.

**Adoption of a Joint
"Declaration of Peace on the Korean Peninsula"**

Adoption of a joint declaration to end the state of war and restore peace on the Korean peninsula (call it the Declaration of Peace on the Korean Peninsula) may be considered as an alternative to the revision of the Basic Agreement. Under international law, a declaration to end a state of war is regarded as one of the means to the cessation of war.⁸

Such a peace declaration could be adopted in a summit conference between the two Koreas. It would have a predominantly political character, in spite of having a legal value and connotation in a measure, so it would not be sufficient to complete the transformation of the current armistice regime into a peace regime.

The declaration could be attached to the Basic Agreement as an additional protocol in order to nullify Article Five, but it might be more desirable to revise Article Five and supplement the agreement by adopting the peace declaration as its protocol.⁹

8 Han-kee Lee, *International Law I* (Seoul: Parkyoungsa, 1977), pp. 406-9.

9 Registering the declaration at the UN Secretariat could also be considered, which could secure its effectiveness in the international setting as well as supply legal validity. Due to North Korea's position, such a declaration will probably not be adopted any time soon, but it must be considered as inter-Korean relations improve.

If such a declaration were to be adopted, it is quite unlikely that a peace treaty would be signed. It could be utilized, however, as a measure preliminary to peace-treaty making, a symbolic gesture in the process of reconciliation and confidence building between the two Koreas.

International Guarantee of the Korean Peace Regime

A new peace regime on the Korean peninsula could be supplemented with an international guarantee in order to help secure a permanent peace regime.

The means for such a guarantee could take various forms: cross-nonaggression pact; a peace-guaranteeing agreement by related countries; endorsement, support or guarantee by related countries or by the United Nations; or a multilateral security guarantee within the framework of a regional security cooperation regime.¹⁰

A cross-nonaggression pact would imply the accumulation of various mutual nonaggression pacts concluded among the surrounding major countries which are deeply concerned with peace and stability on the peninsula. The surrounding countries could be two, China and the US, or four including Russia and Japan. The idea of two is based on the legal logic that they each participated in the Korean War and that they each have a voice in building a durable peace structure on the Korean peninsula. The latter idea is based on international realities and power politics surrounding the peninsula.

Such nonaggression pacts, however, would not be necessary if the two Koreas were to seek an international guarantee of peace through a peace-guaranteeing agreement signed by related countries. There might arise problems as to the number and

10 See Dong-jin Chun, *A Case Study on International Guarantee of Peace* (Seoul: RINU, 1991), pp. 52-61; Kyu-Sup Chung, Kang Weon Sik & Moon Heung Ho, *An Alternative to Foster Favorable Environment for Unification of the Korean Peninsula under a New Northeast Asian Order* (Seoul: RINU, 1992), pp. 141-4.

scope of nations participating in such a peace-guaranteeing agreement. It would be desirable for the two Koreas to induce the participation of many countries, from Northeast Asia and the outside world as well, in order to enhance the effectiveness of an inter-Korean peace mechanism—the more the better. Expanding the number and scope of the participating countries, however, would mean inviting excessive and unnecessary intervention by external powers, which is against the principle of autonomy and national self-determination.

In the case of an international guarantee of peace, as in the case of the nonaggression pact idea, we could assume that the participating nations might be either two or four. In terms of effectiveness and guaranteeing power of stable peace, four major powers' participation may be better than two, but from a legal perspective neither Russia nor Japan has any legitimate voice in building an international peace-guaranteeing regime on the peninsula. The participation by the two major powers is estimated to be more desirable in terms of legality, national prestige and peace-guaranteeing power as a whole.

The two or four major powers could support or endorse or guarantee the inter-Korean peace regime through a joint communiqué or joint declaration after the transition to a state of peace is completed. In this case, the guaranteeing power would be lower than in the case of conclusion of a peace-guaranteeing treaty.

A guarantee of peace by the United Nations is also possible, but it would have only a symbolic meaning. To enhance the role of guaranteeing the peace on the Korean peninsula, the two Koreas would invite the UN to dispatch a UN peacekeeping operation forces or a peace observation commission at the Demilitarized Zone.¹¹ Such a peace guarantee by the United

11 Jae Shik Pae, "Some Legal Issues on the Admission of the Two Koreas to the United Nations: An Analysis and Assessment," *The Korean Journal of Unification Policy*, Vol. 2, (1993), p. 22.

Nations, however, might result in an intervention by other foreign powers or at least render the issue of building a peace structure on the peninsula dependent on the UN in a measure. North Korea is highly supposed to object to UN intervention, especially a UN peacekeeping operation at the DMZ.

Provided that a government-level consultative organization on Northeast Asian multilateral security and cooperation is constituted in Northeast Asia, one similar to the European Conference on Security and Cooperation, an inter-Korean peace regime could within its framework be supplemented over the long run with an international guarantee.

Relevant Issues to be Raised in a Transition to a Peace Regime: An ought-to-be Position for Seoul

Response to the Argument for Dissolution of the United Nations Command

North Korea is now attempting to sign a peace treaty with the US in order to effect the withdrawal of the US forces stationed in South Korea as soon as possible. Taking advantage of the issue of concluding such a treaty, Pyongyang may also argue for, or attempt to set up as a precondition for the peace treaty making, the dissolution of the United Nations Command in South Korea.

Questions arise whether the Armistice Agreement loses its validity simultaneously with the dissolution of the UN Command (UNC). South Korea may counter the North Korea's supposed allegation with the following logic.

The UNC is merely a subsidiary organ of the UN that is constituted by a resolution of UN Security Council in accordance with Article 29 of the UN Charter. The supreme commander-in-chief of the UNC, having no international legal personality, only signed the Korean Armistice Agreement on 27 July 1953. On the side of the United Nations Forces and the South Korean Forces, the party to the Armistice Agreement is not the United Nations Command but the United Nations itself and South Korea.

Therefore so long as the UN exists, the Armistice Agreement retains its validity even if the UNC is dissolved.¹²

Therefore unless and until a peace agreement between the North and the South is concluded, the dissolution of the UNC will have no influence on the present Armistice Agreement. Validity of the armistice ceases when the two Koreas sincerely implement and comply with the Armistice Agreement and the Basic Agreement in accordance with Article Five of the Basic Agreement, build mutual political and military confidence, and adopt an inter-Korean peace agreement under the "principle of resolution of Korean affairs by the two Koreas." In case the UNC dissolves on condition that the Armistice Agreement remain valid, there arises an issue of the replacement of the armistice-implementing body representing the side of the UN and South Korean forces with a new one, because the UNC would cease to exist. Above all, the maintenance, observation and implementation of the armistice is a great concern for Seoul in that it greatly affects the political and military interests of South Korea.

To secure and maintain its vital interests in regard to this matter, South Korea may set up a new implementing body and mandate the role of monitoring observation and implementation of the Armistice Agreement to that organ through negotiation and consensus with the relevant parties, including the UN, North Korea and China. For example, such new implementing body could be a UN peacekeeping operation command.

12 According to the "coalition army theory," it may be that they regard South Korea and the sixteen countries having participated in the Korean War as parties to the Armistice Agreement on the one hand, in admitting China and the DPRK as its parties on the other hand. Then despite the dissolution of the UN Command, the armistice is still valid so long as the parties to it, that is, South Korea and the sixteen nations, retain their entities. On the coalition army theory, See Richard Baxter, "Constitutional Forms and Some Legal Problems of International Military Command," *British Yearbook of International Law*, Vol. 29 (1952), pp. 325-59; F. Seyersted, "United Nations Forces," *British Yearbook of International Law*, Vol. 37 (1961), p. 420; Byung-Hwa Lyou, *Peace and Unification in Korea and International Law, Occasional Papers/Reprint Series in Contemporary Asian Studies*, No. 2-1986 (73) (Maryland: School of Law, University of Maryland, 1986), pp. 61-3.

Of course, such a role could be mandated to the existing command by agreement among the relevant parties: US-ROK Combined Forces Command or the ROK military Command.¹³

**Response to the Argument
for Withdrawal of US Forces from South Korea**

North Korea argues that the UNC is actually composed of US troops and that its dissolution would bring about the withdrawal of the US troops from South Korea. South Korea should counter North Korea's logic by maintaining that the dissolution of the UNC and the withdrawal of the US troops are totally separate issues.

As is well known, the US troops began to be stationed in South Korea in accordance with Article Four of the US-ROK Mutual Defense Treaty signed on 1 October 1953. The multinational forces constituting the UNC were dispatched to South Korea in accordance with the resolution of the UN Security Council adopted on 7 July 1950. This makes it clear that the United Nations forces and the US troops are legally separate entities.¹⁴

As a consequence, the procedures for the dissolution of the UNC would be entirely different from those for the withdrawal of the US troops of the South. A decision of the UN Security Council would be needed as a form of adoption of its resolution in order to dissolve the UNC. In case of its dissolution, the mandate to establish the UNC rendered to the US by the UN Security Council resolution on 7 July 1950 would have to cease to be effective.

Withdrawal of US troops, however, can be implemented by terminating the US-ROK Mutual Defense Treaty only through

13 Myung-ki Kim, *United Nations Command in South Korea and International Law* (Seoul: Institute for International Studies, 1990), pp. 141-6.

14 *Ibid.*, pp. 64-70.

consultation and agreement between the United States and the Republic of Korea.

The South, by mentioning the example that the US troops have been stationed in Japan up to the present after a peace treaty was signed in San Francisco in September 1951 between Japan and the allied powers, may claim successfully that concluding a peace treaty and the withdrawal of foreign troops do not necessarily bear any relation with each other. If Pyongyang argues that the US forces must be withdrawn from South Korea in case of replacement of the current Armistice Agreement with a peace treaty, South Korea must make it crystal clear that such argument is groundless and unwarranted.

Seoul should also make it clear that an inter-Korean peace treaty has no influence on the US-ROK Mutual Defense Treaty. The latter is not aimed at launching an attack on the North. Its goal is defending the South from military attack or threats from the North and other foreign countries. Therefore the US forces can play a role as a stabilizer guaranteeing peace and security in Northeast Asia as a whole.

If Pyongyang demands the withdrawal of US forces from South Korean soil or nullification of the US-ROK Mutual Defense Treaty, it may constitute unlawful intervention in domestic matters. This is a matter of ROK national sovereignty.

Even in case Seoul effects the withdrawal of the US troops, it should emphasize that an inter-Korean peace agreement should first be signed under the principle of resolution of affairs between the two Koreas and international guarantee of peace be secured to safeguard against the reopening of a war on the peninsula.

Conclusion

North Korea's proposal of a peace treaty with the United States is certainly closely related with its attempt to foster favorable conditions for unification on its own terms of federation by

weakening of the US-ROK alliance and effecting the withdrawal of US troops. As far as it is Pyongyang's ultimate objective, the South should firmly counter the North's machinations.

South Korea has been emphasizing that a discussion over the establishment of a peace regime on the peninsula should be conducted between the two Koreas—the legal and main parties of the Korean Armistice Agreement. Seoul should continue to insist upon the principle of autonomy and the principle of resolution of Korean affairs between the parties directly concerned.

Building an inter-Korean peace regime is significant for the South in that Seoul can get the North to recognize South Korea and ascertain Pyongyang's real will to coexist with it. Only when Pyongyang renounces its proposal to sign a peace treaty with Washington and discuss with Seoul the issue of transforming the armistice regime into an inter-Korean peace regime, can Seoul confirm the DPRK's recognition of the Republic of Korea as a legal and political entity. This is the very reason why Seoul cannot renounce the principle of resolution of Korean affairs between the two Koreas in a transition to a peace regime.

Besides such political cause, North and South Korea have already affirmed this principle in Article Five of the Basic Agreement and Articles Nineteen and Twenty of the Protocol on the Compliance with and Implementation of Chapter I (Reconciliation) of the Basic Agreement between the North and the South. Therefore the South should be steadfast that for a transition from the armistice to a peace regime, North Korea should sincerely implement and comply with the Basic Agreement and the Declaration on Denuclearization of the Korean Peninsula to build mutual confidence between the two Koreas, and that the transition to a peace regime (including the signing of a peace treaty) should be based on the principle of resolving Korean affairs between the two Koreas.

Although it is important to make a peace regime for perpetual peace, we should not overlook the importance of internal and external circumstances favorable to bring about such outcome.

In other words, a transition to a peace regime should be promoted after both internal and external conditions have matured, or at least in a gradual and incremental way corresponding with the fulfillment of conditions suitable for it on the peninsula. It is absolutely necessary that the two Koreas sincerely abide by the existing Armistice Agreement until a state of consolidated peace takes firm root on the peninsula.

Therefore the North first of all should take no actions to weaken the armistice regime any further, but should normalize the function of the MAC and guarantee the role and activities of the NNSC before it intensifies its peace offensive, proposing the signing of a peace treaty with the US.

In light of this, Seoul should make known to the world the North's self-contradictory logic of proposing a peace treaty while nullifying the Armistice Agreement and enervating the Armistice bodies, and demand that Pyongyang stop immediately. The South must maintain close cooperative relations with Washington to counter Pyongyang's proposal for a peace treaty with the US and its argument on related issues, such as for dissolution of the UNC, withdrawal of US forces from South Korea, etc.

In conclusion, replacement of the present armistice regime with a peace regime should be pursued in a gradual and piecemeal way, especially in seeking a transition to a peace regime and international guarantee of peace, in consideration of the reality of inter-Korean relations and international circumstances. The most appropriate alternative must be selected and promoted among above-mentioned alternatives. It depends on whether the Korean people can exercise independence from external powers and take the initiative in forging a peace regime.