

Marking the 70th Anniversary of the Korean Armistice Agreement: A Means to Peace

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This year marks the 70th anniversary of the signing of the Korean Armistice Agreement that ceased the military hostilities on the Korean peninsula in 1953. The Agreement successfully maintained the cessation of hostilities on the Korean Peninsula and prevented the resumption of the Korean War. However, tensions remain high. It is time to take the next step to end the Korean War and bring lasting peace to the Korean peninsula through a peace treaty. This article aims to analyze the legal implications of the Korean Armistice Agreement and the temporary nature of the Agreement. This article further argues that with the existence of a peace treaty, a new justification will be needed for any of the parties to use force against another or otherwise, such use of force would be a violation of international law.

Keywords: International Law, Korean Armistice Agreement, Peace Treaty, Korean War, Just War Theory

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*We shall fervently strive to ensure that this armistice will bring free peoples one step nearer to their goal of a world at peace.*¹

This year, on July 27, 2023, marks the 70th anniversary of the signing of the Korean Armistice Agreement that halted the Korean War in 1953. Notwithstanding the signing of the Armistice Agreement, the Korean Peninsula remains a territory of military and political tension. For example, there are continuous nuclear threats by the Democratic People's Republic of Korea and other attacks, such as the 2010 Yeonpyeong Island attack and the sinking of *Cheonan*. How does the Armistice Agreement prohibit such attacks against each other? These incidents show that the 1953 Armistice Agreement is not the end of the Korean War but a means to perpetual peace in the Korean War.

The Armistice Agreement has successfully kept the war from breaking out again, but now marking its 70th anniversary, it is time to take the next necessary step to bring permanent peace to the Korean peninsula. This article aims to answer the following research questions: (1) what are the legal implications of the Korean Armistice Agreement and (2) whether the armistice agreement is a permanent agreement in bringing peace to the Korean Peninsula? More specifically, why do tensions remain on the Korean Peninsula despite the existence of an armistice agreement that halted the Korean War, and what is legally required in the international legal context to bring permanent peace and an ultimate end to the Korean War? To answer these two questions on the establishment of permanent peace on the Korean Peninsula, this article answers two sub-questions: (1) what are the legal effects of the Korean Armistice Agreement and (2) what are the legal differences between a peace treaty and an armistice agreement? The author of this article approaches this research through a doctrinal analysis of international law dealing with armistice agreements

1 Dwight D. Eisenhower, "Eisenhower, Radio and Television Address to the American People Announcing the Signing of the Korean Armistice," Online by Gerhard Peters and John T. Woolley, The American Presidency Project, July 1953, accessed March 19, 2023, <https://www.presidency.ucsb.edu/node/231814>.

and peace treaties, as well as the method of treaty interpretation of the Korean Armistice Agreement to determine the role of the agreement in maintaining peace on the Korean Peninsula. This article takes a narrow approach to analyzing the legal effects of a peace treaty in bringing permanent peace to the Korean Peninsula in the international legal context, rather than a merely political context. Through the legal analysis of an armistice agreement and a peace treaty, the author argues first that the Korean Armistice Agreement is temporary in establishing permanent peace and second that a peace treaty is legally required to officially end the Korean War because, absent a peace treaty, a justification to use force continues to exist for both Koreas. However, with the signing of a peace treaty, a new justification to use force is required and any use of force without justification would be a violation of international law.

This article will first discuss the concept of war and peace in international law and then provide the legal framework of an armistice agreement and the legal framework of a peace treaty in the context of international law. The article will then analyze the legal implications of the Korean Armistice Agreement on the Korean War and the legal implications of a peace treaty on the Korean Peninsula.

International Legal Perspective on War and Peace

In international law, “war is a contention between two or more States through their armed forces for the purpose of overpowering each other and imposing such conditions of peace as the victor please.”² Peace, on the other hand, while there is no universal definition, has two important components: (1) absence of war or armed conflict (“negative peace”)³ and (2) presence of cooperation, respect for human rights, and elimination of

2 Hersch Lauterpacht, *Oppenheim’s International Law* (London: Longmans, Green and Co., 7th ed., 1952), 202.

3 Cecilia Marcela Bailliet and Kjetil Mujezinovic Larsen, *Promoting Peace Through International Law* (Oxford: Oxford University Press, 1st ed., 2015), 2-3.

‘structural violence’ (“positive peace”).⁴

International law promotes and strives to maintain peace, while it prohibits any use of force against other States or territories. More specifically, the UN Charter prohibits any use of force.⁵ The UN Charter implies that any resort to war is prohibited, unless in self-defense pursuant to Article 51 of the UN Charter or through the authorization of the UN Security Council under Chapter VII of the UN Charter. Accordingly, legal justification is required to use force against another. To understand what it means by a legal justification to use force against another, it is inevitable to discuss the basic principles of the just war theory.

Jus Ad Bellum, Jus in Bello, Jus Post Bellum

There are three keywords to consider under the just war theory: *Jus Ad Bellum*, *Jus In Bello*, and *Jus Post Bellum*. *Jus ad bellum* (“right to war”) refers to the legitimate grounds for when a state may engage in war. *Jus ad bellum* asks, “Is it justifiable to go to war”? The use of force is prohibited in international law, pursuant to Article 2(4) of the UN Charter.⁶ However, the use of force may be justified if a State acts in self-defense as provided in Article 51 of the UN Charter or if war is the only necessary means to remove the thing disturbing the peace.⁷

Jus in bello (“justice in war”), on the other hand, refers to the laws governing the war. *Jus in Bello* asks, “How should the justified war be conducted”? More specifically, *jus in bello* deals with the lawful conduct of hostilities through compliance with the law of armed conflict, also known as International Humanitarian Law (“IHL”). IHL is primarily based upon

4 Ibid.

5 UN Charter, Article 2(4).

6 Ibid.

7 Robert E. Williams and Dan Caldwell, “Jus Post Bellum: Just War Theory and the Principles of Just Peace,” *International Studies Perspectives* 7, no. 4 (2006): 311.

customary international law through practices of war and based upon treaties such as the Hague Regulations (1899 and 1907) and the Four Geneva Conventions of 1949, which protect war victims, including the sick and wounded, the shipwrecked, prisoners of war, and civilians in the hands of an adverse party. The primary purpose of *jus in bello* is to prevent excessive use of force during the war and protect the people, mainly civilians and non-combatants.

The words mentioned – *jus ad bellum* and *jus in bello* – are widely accepted principles in international law, specifically under just war theory. However, the term *jus post bellum* is a fairly new principle that covers the post-war aspects. *Jus post bellum* asks, “What happens after the war’s end or when the fighting ends”? For example, *jus post bellum* focuses on the reconstruction of the States after the war, such as transitional justice and restoration of the economy and infrastructure.⁸ This fairly new principle, *jus post bellum*, remains the least developed among the three abovementioned principles.⁹

Nonetheless, this principle makes the just war theory complete. *Jus ad bellum* covers what happens before a war begins, *jus in bello* covers what happens during a war, and *jus post bellum* covers what happens after a war has ended. These principles are essential to know when looking at the implications of an armistice agreement, like that of the Korean Armistice Agreement, in the sense that an armistice agreement merely suspends the military actions and not the war itself, therefore, when there is a recommencement of military actions, a new justification of the war (*jus ad bellum*) is not required. Because the war is technically “ongoing,” *jus in bello* continues to be effective even with the suspension of hostilities. One of the ways a war can and should end is through a peace treaty, in which the principle of *jus post bellum* would apply.

8 Gary J. Bass, “Jus Post Bellum,” *Philosophy & Public Affairs* 32, no. 4 (2004): 385.

9 Williams, 311.

Just War Theory Applied in the Korean War

The question arises whether the Korean War was a just war. Although it is beyond the scope of this article to discuss in-depth the justification of the Korean War, it is important to mention the Korean War was an armed conflict.

First, the Korean War can be argued to be in compliance with *jus ad bellum* because the UN Command fighting for and protecting the Republic of Korea was an act of self-defense against the illegitimate attack made by the North Korean army on June 25, 1950. However, there are some opposing views as to the justification of war, for example, that the UN forces primarily consisted of US armed forces acting impartially or using force for their own self-interest.¹⁰ Nonetheless, it is inarguable that the attack against North Korea's attack was an act of self-defense, which was permitted under Article 51 of the UN Charter.

Second, the question is regarding *jus in bello* of the Korean War. As aforementioned, *jus in bello* regulates the conduct of the war in protecting the non-combatants of armed conflict. Once a war is justified, *jus in bello* is triggered. As long as the force is conducted within the law of armed conflict, such as proportionality, the use of force may be justified.

If the Korean War officially ended, then any use of force would need to be justified under international law. However, with the temporary and ambiguous armistice agreement, the Korean War is technically ongoing and therefore a new justification to use force is not required. Before textually interpreting the Korean Armistice Agreement, the following sections would first discuss the international legal frameworks of an armistice agreement and a peace treaty to understand where the Korean Armistice Agreement fits in the international legal context.

¹⁰ Hoeun Choi, "Just War or Not: A Reassessment of the Korean War," *International Journal of Social Science and Humanity* 5, no. 3 (May 2014).

International Legal Framework of Armistice Agreements

An armistice agreement and a peace treaty are agreements between parties to an armed conflict to end hostilities between them. While they both serve similar purposes, international law clearly distinguishes them. The former brings about a stalemate between the belligerent parties, while the latter brings about a complete end to a state of armed conflict between the two states. An analysis of the difference between an armistice agreement and a peace treaty is vital concerning the Korean Armistice Agreement to determine the status of the Korean War and the implications of international law on the current hostilities on the Korean Peninsula. This section will analyze the legal framework of an armistice agreement followed by an analysis of a peace treaty and how they are distinctively different.

What is an Armistice Agreement?

An armistice agreement is “an agreement between belligerents which results in a complete cessation of all hostilities for a specific time, usually of some considerable duration, or for an indeterminate period.”¹¹ Rules governing an armistice agreement are covered by international humanitarian law which governs the law of armed conflict. One of the main treaties covering the law of armed conflict is the Hague Conventions signed in 1907. The 1907 Hague Convention describes the key characteristics of an armistice agreement. For example, it states that an armistice is a mutual agreement between parties in which they agree to suspend military operations. Generally, the duration of an armistice is defined, but in the case in which the duration is not defined, the parties are free to recommence military operations at any time, upon a warning to the other party.¹² Regulation 36 explains that an armistice merely “suspends”

11 Howard S. Levie, “The Nature and Scope of the Armistice Agreement,” *The American Journal of International Law* 50 (1956): 881, <https://doi.org/10.2307/2195628>.

military operations, not permanently ceasing military operations. Moreover, Regulation 36 provides that the belligerent parties may always resort back to military operations at any time.

The 1907 Hague Convention further provides that an armistice “must be notified officially and in good time to the competent authorities and to the troops.”¹³ Following the notification, hostilities are to be suspended immediately or on the date fixed by the armistice agreement.¹⁴ Any violation of the armistice agreement by one of the parties gives the other party the right to denounce the armistice agreement, with the possibility of recommencing hostilities immediately.¹⁵ Regulation 38 provides that a formal notification is needed to the necessary parties regarding the date on which the military operations must be suspended. Regulation 40, however, provides that any of the belligerent parties may recommence military operations if any of the parties violate the armistice agreement. The regulations of the 1907 Hague Convention imply that with an armistice agreement, the military operations are merely suspended, and the recommencement of the hostilities remains open. Accordingly, the status of war remains ongoing. With the status of the war ongoing, the belligerent parties do not need a new justification for war as they are already at war and the parties only need to comply with the rules of *jus in bello*.

Characteristics of an Armistice Agreement

The characteristics of an armistice agreement provided by the Hague Convention and the Geneva Conventions are as follows:

- (1) suspension of military operations by mutual agreement;

12 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annexes: Regulations Concerning the Laws and Customs of War on Land, October 18, 1907, Regulation 36.

13 1907 Hague Convention (IV), Regulation 38.

14 1907 Hague Convention (IV), Regulation 38.

15 1907 Hague Convention (IV), Regulation 40.

- (2) notification of the cessation of hostilities;
- (3) denouncement of an armistice agreement upon violation of the armistice; and
- (4) the use of armistice to permit the removal, exchange, and transport of the wounded on the battlefield.

Based on these characteristics, an armistice agreement is temporary in nature. It leaves open the possibility of the recommencement of military operations, whether upon the armistice agreement's violation by one of the parties or the end of the effect of the armistice agreement. However, it is important to note that not all armed conflict ends with a peace treaty and may end with an armistice agreement with no formal peace treaty concluded.¹⁶

Looking at the history of a series of armistice agreements signed to cease hostilities between belligerent parties, the effect of armistice agreements is temporary in nature. For example, on June 21, 1807, France and Russia signed an armistice agreement to end the war, which divided the two nations. Article 1 of the France-Russia Armistice Agreement (1807) provides “[a]n armistice shall take place between the French and Russian, in order, in the meantime, a peace may be negotiated, concluded and signed, to put an end to that bloodshed which is so contrary to humanity.”¹⁷ The armistice agreement also provides that if one of the two Contracting Parties violates the armistice agreement, hostilities may recommence one month after notification.¹⁸ Another example is the 1918 Armistice Agreement signed between the Allies (represented by France and Great Britain) and Germany. Article XXXIV of the 1918 Armistice Agreement provides a specific duration of 36 days of the armistice, with an option to extend.¹⁹ Moreover, it provides that during the designated 36 days of the

16 Jan Klabbbers, *International Law* (Cambridge: Cambridge University Press, 2017), 218.

17 Armistice Between France and Russia, June 21, 1807, Article 1.

18 Armistice Between France and Russia, Article 2.

19 Armistice Agreement between Germany and the Allies, November 11, 1918, Article XXXIV.

armistice, if any of the Contracting Parties fail to execute the provisions of the armistice agreement, the armistice may be repudiated upon a 48-hour previous notice by one of the contracting parties.²⁰ According to Article XXXIV of the Armistice Agreement, the duration of the armistice agreement was extended to one year on June 28, 1919, the date on which the Treaty of Versailles was signed to establish permanent peace between the Allies and Germany.

An armistice agreement may stop the hostilities between the belligerent parties, but can the armistice agreement be a permanent cessation of hostilities between the parties and end a war? The answer is no. Municipal courts and most contemporary scholars agree that an armistice ceases hostilities but does not entirely terminate the war.²¹ Moreover, as seen from the characteristics of an armistice agreement under international humanitarian law and the examples from past armistice agreements, armistice agreements generally cannot bring a permanent cessation of hostilities between the parties. Accordingly, like the 1918 Armistice Agreement leading to the signing of the Treaty of Versailles, an armistice agreement is only a means to bring permanent peace between belligerent parties through a peace treaty, not an end itself. The following section will define a peace treaty and how it differs from an armistice agreement.

20 Ibid.

21 Howard S. Levie, "The Nature and Scope of the Armistice Agreement," *The American Journal of International Law* 50 (1956): 880-906, <https://doi.org/10.2307/2195628>, "[T]he United States Supreme Court, confronted with the question of whether the 1918 Armistice had brought about a state of peace, ruled that 'complete peace, in a legal sense, had not come to pass by the effect of the Armistice and the cessation of hostilities.' Similarly...the French Court of Cassation stated that 'an armistice convention concluded between two belligerents constitutes only a provisional suspension of hostilities and cannot itself put an end to the state of war.'"

International Legal Framework of a Peace Treaty

A peace treaty is an “agreement[] concluded between the parties to an armed conflict that ends the state of war or the armed conflict between them.”²² One type of peace treaty is peace treaties *stricto sensu*, which are concluded between belligerent States in written form and governed by international law that brings to an end the formal or material state of war between them.²³ The term “peace treaty” remains undefined and unexplored.²⁴ Some scholars define a peace treaty as a “document[] produced after discussion with some or all of a conflict’s protagonists to end the military conflict” and others define a peace treaty as a “formalized legal agreement between two or more hostile parties - either two states, or between a state and an armed conflict and sets forth terms that all parties are obliged to obey in the future.”²⁵ Czepek found the definition proposed by Rybicki as the most pertinent. Rybicki’s definition of a peace treaty is as follows:

*[A] peace agreement (peace treaty) is an international agreement concluded between hitherto warring parties, the purpose of which is to end the armed conflict in a final and permanent manner, establish peace, and restore normal relations between them.*²⁶

Here, according to Rybicki’s definition of peace, the purpose of a peace treaty is to end an armed conflict in a final permanent manner, however, the definition of a peace treaty should be more precise by clarifying what

22 Jann K. Kleffner, “Peace Treaties,” Max Planck Encyclopedias of International Law, Oxford University Press, March 2011, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e367?rskey=k9kpYO&result=3&prd=MPIL>.

23 Kleffner.

24 Christine Bell, “Peace Agreements: Their Nature and Legal Status,” *The American Journal of International Law* 100, no. 2 (2006): 374.

25 Vita Czepek and Elzbieta Karska, “Peace Agreements as International Legal Acts Protecting National Minorities: The Scope Ratione Personae,” *Bialystok Legal Studies* 25, no. 5 (2021): 77, <https://doi.org/10.15290/bsp.2021.26.05.05>.

26 Czepek, 77.

it means to end the state of war or armed conflict. In other words, how is ending the state of war different from a cessation of hostilities by an armistice agreement?

Types of Peace Agreements

Bell provides three types of peace agreements: Pre-negotiation agreements, framework/ substantive agreements, and implementation/ renegotiation agreements. The pre-negotiation stage of a peace process (“talks about talks”) deals with some of the involved parties of the conflict to come to the negotiating table with an agreed-upon agenda.²⁷ During this pre-negotiation stage, agreements generally take the form of pacts or declarations rather than formal, legally binding agreements. The substantive/framework agreement stage aims to sustain cease-fires and generally takes the form of peace agreements. Substantive/framework agreements aim to “end military violence” by linking them to new constitutional structures addressing governance, elections, and legal and human rights institutions.²⁸ The implementation/renegotiation agreement stage of the peace process generally involves all parties to the agreement. The peace agreements are implemented into the municipal law of the State in the form of constitution-making or legislation.²⁹

As Klabbers stated, “where no peace treaty is concluded...there is room for the argument that the states are formally still at war, and that acts of force are to be regarded as legitimate wartime acts.”³⁰ Looking at past peace treaties and agreements on the normalization of relations, the critical characteristics of peace agreements are (1) ending the armed conflict/war and (2) containing provisions on reconstruction and transitional justice. Post-conflict reconstruction includes social and

²⁷ Bell, 376.

²⁸ Bell, 376.

²⁹ Bell, 378-80.

³⁰ Klabbers, 218.

economic reconstruction, beginning with emergency relief and ending with long-term social and economic development.³¹ Social and economic reconstruction includes restoring internal security, building administrative and governance capacities, repairing physical infrastructure, establishing functioning financial infrastructures and economic restructuring, and ensuring social well-being.³² Moreover, a peace agreement should contain provisions on transitional justice.

According to the United Nations, transitional justice provides the processes, mechanisms, and standards to restore and repatriate the abuses and damages caused by armed conflicts, such as keeping those who violate international law accountable and seeking reconciliation between the parties.³³

To keep the violaters accountable, to serve justice, and to seek reconciliation, transitional justice tools include trials, truth commissions, reparations, apologies, and purges.³⁴ Transitional justice not only provides reparations and compensations but also provides a method by which a State can be restored.³⁵

Characteristics of a Peace Treaty

Unlike the characteristics of an armistice agreement defined by international treaties, the characteristics of a peace treaty are not defined by international treaties and conventions. Rather, to determine the

31 Sanam Naraghi Anderlini and Judy El-Bushra, "Post-Conflict Reconstruction, Inclusive Security, Sustainable Peace: A Toolkit for Advocacy and Action," *Conflict Prevention, Resolution and Reconstruction* (2012): 51-53.

32 Anderlini, 51-53.

33 United Nations Security Council, Report of the Secretary-General, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, S/2004/616 (August 23, 2004).

34 Eric A. Posner and Adrian Vermeule, "Transitional Justice as Ordinary Justice," *Harvard Law Review* 117, no.3 (2004): 766, <https://doi.org/10.2307/4093461>.

35 Posner, 766.

characteristics of a peace treaty, it is inevitable to look at the peace treaties concluded in the past, dating back to 1648 when the Treaty of Westphalia was signed between the Holy Roman Emperor and the King of France and their respective Allies. Moreover, it is vital to identify the purposes of a peace treaty in general. Whereas an armistice may be proposed to cease military hostilities, a peace treaty aims to establish peace between the belligerent parties. This section will discuss historical peace treaties and their effects, along with the purpose of peace treaties.

For example, the Treaty of Westphalia in 1648 ended the Thirty Years' War in Europe (1618-1648). The Treaty of Westphalia (The Peace of Westphalia) constituted two treaties - the treaty signed between the Holy Roman Emperor and the King of France and the treaty signed between the Holy Roman Emperor and the King of Sweden - which aimed to end the conflicts. Article 1 of the Treaty provides a 'Proclamation of Peace' stating the following:

There shall be a Christian and universal peace, and a perpetual, true, and sincere amity, between his Holy Imperial Majesty, and his most Christian Majesty [the king of France]; as also, between all and each of the allies...And this peace and amity shall be observed and cultivated with such sincerity and zeal, that each party shall endeavor to procedure the benefit, honor and advantage of the other; that thus on all sides they may see this peace and friendship in the Roman empire, and the kingdom of France flourish, by entertaining a good and faithful neighborhood.³⁶

Moreover, articles 2 and 3 provide a general amnesty (or pardon) of all that has been committed since the Thirty Years' War and general restitution of the imperial estates.³⁷ After the parties signed the Treaty of Westphalia, they agreed that they would not only cease all hostilities but

³⁶ Treaty of Westphalia, Peace Treaty Between the Holy Roman Empire and the King of France and their Respective Allies, October 24, 1648, Article 1 (Treaty of Westphalia).

³⁷ Treaty of Westphalia, Articles 2 & 3.

also execute what has been concluded in the treaty through the ratification of the peace treaty.³⁸ Article 17(2) provides that “[f]or the greater firmness of all and every one of these articles, this present treaty shall serve for a perpetual law and established sanction of the Empire, to be inserted like other fundamental laws and constitutions of the Empire in the acts of the next Diet of the Empire.”³⁹

The Treaty of Westphalia provides some key characteristics of a peace treaty: (1) proclamation of peace between the belligerent parties; (2) restitution and amnesty; and (3) ratification of the treaty and domestic implementation of the treaty.

Following WWI, a series of peace treaties, also known as the Paris Peace Treaties, were signed. The first treaty, as aforementioned, is the Treaty of Versailles, signed on June 28, 1919. According to the Treaty of Versailles, the boundaries of Germany were determined. Moreover, Germany recognized the independence of the European states by renouncing all rights and titles over the territories.⁴⁰ Other peace treaties following WWI include the Treaty of Saint-Germain (1919), the Treaty of Neuilly (1919), the Treaty of Trianon (1920), and the Treaty of Sevres (1920).

Related to the characteristics of a peace treaty derived from the Treaty of Westphalia and the Paris Peace Treaties, the United Nations stated, “the maintenance of peace in the long term cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice.”⁴¹ While peacekeeping operations and the United Nations may assist with justice reconstruction and transitional justice, it is ultimately the role of the national state to develop its reform and agenda for transitional justice, along with developing a plan to address the grievances and injustices of the past.⁴² To bring justice for the severe

38 Treaty of Westphalia, Articles 16 & 17.

39 Treaty of Westphalia, Article 17(2).

40 Treaty of Peace with Germany, June 28, 1919, Annex I (Treaty of Versailles).

41 United Nations Security Council (2004).

violations of human rights and humanitarian law, ad hoc criminal trials may need to be established. For example, ad hoc international criminal tribunals were established to restore justice such as the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and a mixed tribunal for Sierra Leone and Cambodia. Criminal tribunals can help restore justice through retribution by having the wrongdoers tried and prosecuted for their actions during the conflict.

The characteristics of a peace treaty reflect the principle of *jus post bellum*, which indicates post-war reconstruction. As aforementioned, a peace treaty, although there is no clear definition of the term, is characterized as follows:

- (1) an agreement between the parties to end a state of war;
- (2) restitution and reparation of the injuries sustained throughout the conflict;
- (3) a striving for perpetual and long-lasting peace; and
- (4) recognition and determination of territories. Moreover, once a peace treaty is concluded, the state of war has formally come to an end, meaning any use of force will require a new justification.⁴³

A peace treaty is clearly different from an armistice agreement. The former seeks perpetual and long-lasting peace through reparations, restitution, and recognition of wrongs. The latter seeks a temporary suspension of the military hostilities. Although an armistice agreement is distinct from a peace treaty, it is the means to achieve the end of peace between the belligerent parties.

Accordingly, the 70th year of the Armistice Agreement ceasing the hostilities of the Korean War is an outstanding achievement; however, it should not be the end itself. As the Koreans enter the 70th year of the Armistice Agreement, it is time to take the next step in ending the Korean War and establishing permanent peace on the Korean peninsula through

42 Ibid.

43 Klabbers, 218.

a peace treaty. The following section will explain why the Korean Armistice Agreement is an armistice, not a peace treaty.

The Temporary Nature of the Korean Armistice Agreement

The Korean War, which began on June 25, 1950, is technically ongoing because only an armistice agreement, not a peace treaty, was signed. On July 27, 1953, the Commander-in-Chief of the U.N. Command, the Supreme Commander of the Korean People's Army, and the Commander of the Chinese People's Volunteer Army signed the Korean Armistice Agreement suspending the military hostilities on the Korean Peninsula.⁴⁴ The Commanders mutually agreed that the cessation of all hostilities in Korea by all armed forces, including all ground, naval, and air forces units, would be effective 12 hours after the armistice agreement was signed.⁴⁵ The Armistice Agreement suspended open hostilities, withdrew all military forces and equipment, established the Demilitarized Zone as a buffer zone, prevented both sides from entering the other's air, ground, or sea areas, and allowed the repatriation of the prisoners of war.

The Provisions of the Armistice Agreement

Commemorating the 70th anniversary of the Armistice Agreement, looking back at the text is inevitable. How did the military hostilities on the Korean Peninsula halt with the Armistice Agreement? What were the points of agreement between the Commander-in-Chief of the United Command, the Supreme Commander of the Korean People's Army, and the Commander of the Chinese People's Volunteers? How do the provisions of the Korean Armistice Agreement meet the characteristics of an armistice agreement defined by the Hague Conventions and the Geneva Conventions?

⁴⁴ The Korean War Armistice Agreement, July 27, 1953 (Korean Armistice Agreement).

⁴⁵ Korean Armistice Agreement, Art. II, para. 12.

The Armistice Agreement consists of the Preamble and five articles. Article I establishes the military demarcation line and the demilitarized zone as a buffer zone between the two Koreas. This buffer zone protects both Koreas from possible military confrontations.⁴⁶

The Armistice Agreement prohibits any hostile acts or movement of persons (military or civilian) in the demilitarized zone, except by the Military Armistice Commission, its assistants, its Joint Observer Teams, the Neutral Nations Supervisory Commission and its assistants.⁴⁷

Article II deals with the concrete arrangements for cease-fire and armistice. Here, the military commanders agreed that twelve hours after the signing of the armistice agreement, all military hostilities, including ground, naval, and air forces, would cease.⁴⁸ Article II further provides that the Armistice Agreement applies to all ground, naval, and air forces.

Article II also establishes the Military Armistice Commission, which is composed of 10 senior offices, five from each signing party, including the United Nations Command and the Korean People's Army.⁴⁹

Article III provides the arrangement relating to prisoners of war (POWs). Article III provides that within 60 days after the Armistice Agreement becomes effective, all POWs must be sent back for those who seek repatriation.⁵⁰ The military commanders designated Panmunjom as where prisoners of war would be delivered and received by both sides.⁵¹ A committee for the Repatriation of Prisoners of War is also established under Article III of the Armistice Agreement.

Article IV deals with recommendations to the Governments concerned on both sides, stating that even after the signing of an Armistice

46 Korean Armistice Agreement, Art. I, para. 1.

47 Korean Armistice Agreement, Art. I, para. 11.

48 Korean Armistice Agreement, Art. II, paras. 14-16.

49 Korean Armistice Agreement, Art. II, para. 20.

50 Korean Armistice Agreement, Art. III, para. 51(a).

51 Korean Armistice Agreement, Art. III, para. 55.

Agreement, both sides, including the U.S., should come to the table to negotiate and discuss the withdrawal of foreign troops, from Korea and discuss establishing permanent peace on the Korean peninsula.⁵² Article V then discusses the miscellaneous provisions, including when the Armistice Agreement will become effective.

The Characteristics of the Armistice Agreement

Unquestionably, the armistice agreement is an armistice and not a peace treaty. The Preamble of the Armistice Agreement recognizes that the agreement will cease all hostilities and acts of armed forces in Korea only “until a final peaceful settlement is achieved.”⁵³ Furthermore, the Armistice Agreement meets all the characteristics conceptualized in international humanitarian law. The following section will look at each characteristic and the corresponding provisions of the Armistice Agreement that meet the characteristics of an armistice agreement. As aforementioned, the characteristics of an armistice agreement provided by the Hague Convention and the Geneva Conventions are as follows: (1) suspension of military operations by mutual agreement; (2) notification of the cessation of hostilities; (3) denouncement of an armistice agreement upon violation of the armistice; and (4) the use of armistice to permit the removal, exchange, and transport of the wounded on the battlefield.

First, the Armistice Agreement was signed to suspend military operations. Pursuant to Article IV, parties to the Korean Armistice Agreement agreed that further high-level talks are needed to establish permanent peace on the Korean peninsula.⁵⁴ Article II, paragraph 13 also provides that the purpose of this armistice agreement is not to end the war but to help the two sides reach an agreement on peace.⁵⁵ Moreover, Article

52 Korean Armistice Agreement, Art. IV, para. 60.

53 Korean Armistice Agreement, Preamble.

54 Korean Armistice Agreement, Art. IV.

55 Korean Armistice Agreement, Art. II, para. 13.

V of the Armistice Agreement further provides that the Korean Armistice Agreement remains in effect when until it is superseded by both parties or if there is a peaceful settlement between the parties.⁵⁶ The commanders signed the armistice agreement with the intent that the concerned parties would achieve a subsequent peace settlement.

Second, the Armistice Agreement was signed by mutual agreement. The Armistice Agreement was not signed by one side of the conflict but by both sides - the United Nations Command and the Korean People's Army, along with the Chinese People's volunteers. The agreement was mutually signed at Panmunjom, Korea at 10:00 hours on July 27, 1953, by U.S. Lieutenant General, William K. Harrison, Jr., a senior delegate of the United Nations Command Delegation and Korea People's Army General Nam Il, a senior delegate of the Korean People's Army and the Chinese People's volunteers.

Third, notification of the cessation of hostilities has been made. For example, President Eisenhower made a public television address after the signing of the Armistice Agreement stating the following:

“Tonight we greet, with prayers of thanksgiving, the official news that an armistice was signed almost an hour ago in Korea...Soldiers, sailors, and airmen of 16 different countries have stood as partners beside us throughout these long and bitter months...And so at long the carnage of war is to cease and the negotiations of the conference table is to begin...all nations may come to see the wisdom of composing differences...[n]ow as we strive to bring about that wisdom, there is, in this moment of sober satisfaction, one thought that must discipline our emotions and stead our resolution. It is this: *we have won an armistice on a single battleground - not peace in the world. We may not now relax our guard nor cease our quest...[a]nd as we do so, we shall fervently strive to ensure that this armistice will, in face, bring free peoples one step nearer to their goal of a world at peace.*”⁵⁷

⁵⁶ Korean Armistice Agreement, Art. V.

Public announcements and notifications to the armed forces have been made following the signing of the Armistice Agreement.

Fourth, the possibility of denouncing the Armistice Agreement upon violating the agreement is found in Articles II, paragraphs 13(b) and 13(e). Article II, paragraph 13(b) provides that if the parties do not comply with the terms of the Armistice Agreement such as withdrawing its armed forces by the agreed time without reason, the other party is permitted to take any action that is needed to bring security and order pursuant to the armistice.⁵⁸ Article II, paragraph 13(e) provides that those violating this armistice agreement's provisions are subject to punishment. Although these provisions do not denounce the Armistice Agreement, they imply that using force may be necessary if a provision of the Agreement is violated.

Lastly, the Armistice Agreement provides a cessation of hostilities to repatriate war prisoners, including those injured and wounded.⁵⁹ The Commanders required the repatriation of the prisoners of war to be completed within 60 days after the Armistice Agreement entered into force.⁶⁰

Other Implications of the Temporary Cessation of the Korean War

The temporary status of the Korean War is implied not only by the text of the Armistice Agreement but also through subsequent conduct of the two Koreas following the signing of the Korean Armistice Agreement. Following the cessation of hostilities and the signing of the Armistice Agreement, the two Koreas made efforts to bring peace to the Korean peninsula, however, without much success. More specifically, the two Koreas signed several inter-Korean agreements, implying the temporary

57 Eisenhower (1953).

58 Korean Armistice Agreement, Art. II, para. 13(b).

59 Korean Armistice Agreement, Art. III, para. 53.

60 Korean Armistice Agreement, Art. II, para. 54.

nature of the armistice agreement and the necessity of making peace on the Korean Peninsula. The first joint agreement was signed in 1972, titled North-South Joint Communiqué, to bring about a peaceful unification of the nation. Articles 2 and 5 of the Joint Communiqué imply that military tensions on the Korean Peninsula exist. Article 2 prohibits both Koreas from acts of slander and defamation against each other and prohibits any acts of armed provocations against each other.⁶¹ However, provocations continued. Although the joint communiqué was not successful in bringing permanent peace and unity between the two Koreas, it was the first step jointly taken by the two Koreas attempting to communicate. Subsequently, the two Koreas continued to end the armistice and seek permanent peace on the Korean Peninsula. In 1991, the two Koreas signed the Agreement on Reconciliation, Non-aggression, and Exchanges and Cooperation between the South and the North.⁶² Article 5 of the Inter-Korean Basic Agreement acknowledges that the two Koreas are in a state of armistice. Moreover, the two Koreas imply in Article 5 that both seek to achieve peace on the Korean Peninsula, indicating the temporary status of the Korean Armistice Agreement.⁶³

Notwithstanding the 1991 Inter-Korean Basic Agreement to promote peace on the Korean Peninsula, hostilities remained. For example, DPRK's provocations and violations on the Northern Limit Line increased, including an exchange of fires in the West Sea between the combat vessels of the two Koreas in 1999.⁶⁴ Since 1993, the average number of NLL violations by the DPRK has increased. The data provides the following: 1993-1997 (18.8 NLL violations), 1998-2002 (38 NLL violations), 2003-2007 (20.6 NLL violations), and 2008-2010 (55.7 NLL violations).⁶⁵

61 North-South Korean Joint Communiqué, July 4, 1972, Art. 2.

62 Agreement on Reconciliation, Non-Aggression and Exchanges and Cooperation between the South and the North, December 13, 1991 (Inter-Korean Basic Agreement).

63 Inter-Korean Basic Agreement, Art. 5.

64 Insoo Kim and Monyoung Lee, "Has South Korea's Engagement Policy Reduced North Korea's Provocations?" *North Korean Review* 7, no. 2: 60, DOI:10.3172/NKR.7.2.57

Moreover, the two Koreas most recently signed the Panmunjom Declaration at the “Peace House” at Panmunjom on April 27, 2018. In the Preamble, Chairman Kim Jong Un and former President Moon Jae In declared that there should be no more war, implying that the two Koreas are still technically at war and that there should be a new era of peace, implying that further action is required to establish permanent peace between the two Koreas.⁶⁶ Article 3 of the 2018 Panmunjom Declaration mentions that an armistice is “unnatural” and the two Koreas agree that the unnatural, temporary, vague state of the armistice must come to an end. The two leaders agreed that there needs to be a declaration of an end to the Korean War.⁶⁷

While 2018 showed hope for Korean unification, that hope quickly dissipated with the continuous hostilities between the two Koreas. For example, the DPRK launched 70 ballistic missiles as of November 18, 2022, tested intercontinental ballistic missiles, and blew up the joint South-North Korea’s liaison office in Kaesong.⁶⁸ At the same time, the Republic of Korea and the United States of America continued their military drills to maintain readiness, deploy ability, and maintain logistical and combat proficiency and also to show the determination to defend the national territory and interests.⁶⁹

For the past 70 years, the Korean Armistice Agreement has protected the Korean Peninsula from breaking back out into a full armed war. With the Korean Armistice Agreement, subsequent inter-Korean agreements

65 Kim, 60.

66 Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula, April 27, 2018 (Panmunjom Declaration).

67 Panmunjom Declaration, Art. 3.

68 Laura Bicker, “North Korean Blows Up Joint Liaison Office with South in Kaesong,” *BBC News*, June 16, 2020, <https://www.bbc.com/news/world-asia-53060620>.

69 Myong-Hyun Go, “North Korean Provocations and the Assurance Challenge for the ROK-US Alliance,” *Center for Foreign Policy and National Security Issue Brief* (Dec. 28, 2022).

were concluded to bring an end to the war and peace on the Korean peninsula. However, the Armistice Agreement and the inter-Korean agreements were not the end of bringing peace to the Korean Peninsula. Tensions still exist. The text of the Agreement and the subsequent conduct of the two Koreas after the signing of the agreement shows that the agreement itself is only temporary in nature. *Jus in bello* continues to operate on the Korean Peninsula. The DPRK continues to pose nuclear threats by firing missiles and ICBMs and conducting ad hoc attacks, such as the bombing attack on Yeonpyeong Island and the sinking of South Korea's navy ship, the *Cheonan*.⁷⁰ South Korea's capital, Seoul, with a population of about 9.7 million, remains one of the proximate targets of the DPRK's nuclear missiles. While the Armistice Agreement successfully maintains the cessation of hostilities on the Korean peninsula, ultimate peace needs to be declared for the people of both Koreas to live without the fear that military and armed attacks will break out again.

The Signing of a Korean Peace Treaty

The end of the Korean War is the declaration of peace on the Korean peninsula. The declaration of peace implies the absence of war and the presence of cooperation along with respect for human rights and elimination of 'structural violence' on the Korean peninsula. The reason is that under the just war theory, the temporary nature of an armistice agreement does not complete the picture of *jus post bellum*. Rather, something more is needed. The answer to fulfill *jus post bellum* is a peace treaty because the terms the parties agree upon goes beyond the end of the Korean War but also cover the restoration of justice on the Korean Peninsula.

70 Scott Snyder and See-Won Byun, "Cheonan and Yeonpyeong: The Northeast Asian Response to North Korea's Provocations," *RUSI Journal* 156, no. 2: 77, <https://doi.org/10.1080/03071847.2011.576477>.

The Legal Implication of a Korean Peace Treaty

A peace treaty is needed to bring permanent peace to the Korean peninsula, as implied in the Korean Armistice Agreement and the inter-Korean agreements. The agreements provide that “peace on the Korean Peninsula” means the replacement of the Korean Armistice Agreement with a peace treaty to bring permanent peace to the Korean Peninsula.⁷¹ Considering Bell’s types of peace agreements, the two Koreas are likely still in the pre-negotiation stage. With its lack of legal formality, the Armistice Agreement, while a signed agreement between the military commanders, remains questionable as to its status as an international treaty. Article 2(1)(a) of the VCLT provides that a treaty is an “international agreement concluded between States.”⁷² However, the Armistice Agreement was signed by the United Command, the KPA, and the Chinese People’s Volunteers, not necessarily by states. To bring permanent peace and stability to the Korean peninsula, an international treaty, in the form of a peace treaty, is needed.

With an international agreement, all signatories will be obligated to comply with the provisions of the peace treaty, which would include not just an agreement to end the war but provisions regarding reconstruction and transitional justice. First, all parties involved must sign the peace treaty, including the Republic of Korea and the DPRK.⁷³ Article 3(3) of the Panmunjom Declaration states that meetings should be held between the two Koreas, the United States and China. The Panmunjom Declaration implies that the United States of America and China should also be involved in the peace-making talks in the historical events leading to the Korean War. The United States supported South Korea with former President Truman’s efforts to prevent the spread of communism, and China

71 Panmunjom Declaration, Art. 3(3).

72 VCLT, Art. 2(1)(a).

73 Byung-Hwa Lyou, “Peace and Unification in Korea and International Law,” *Occasional Papers/Reprints Series in Contemporary Asian Studies* (School of Law, University of Maryland) 73, no. 2 (1986): 37.

supported the DPRK by providing military aid and support.⁷⁴ It is important to note that the US will be a signatory as a representative of the unified command, in accordance with the position it adopted during the signing of the Armistice Agreement in 1953. However, it is to be noted that one of the barriers or obstacles to the peace process on the Korean Peninsula is the efforts to bring all parties involved to the negotiation table to sign a peace treaty due to the increased rivalry between the United States and China.⁷⁵ For example, peace-making between the two Koreas could have a two-sided effect: (1) Korean peace talks can bring cooperation between the US and China or (2) Korean peace talks can further escalate the rivalry between the US and China with regard to the further cooperation and denuclearization of North Korea and how it would affect the US and China.⁷⁶

As stated by Bell, the implementation agreement stage provides for the implementation of a peace treaty - both internationally and domestically. A peace treaty can only effectively end the war if it is fully enforced and implemented. If a peace treaty is signed by the necessary parties to end the Korean War officially, it must be fully enforced and implemented. Article 24 of the Vienna Convention on the Law of Treaties (VCLT) provides that a treaty comes into force upon the parties' consent to be bound.⁷⁷ Once a treaty enters into force, it remains legally binding upon the parties. Here, once the four signatories agree upon and express their consent to be bound by the peace treaty, they are all obliged to comply with the peace treaty. Moreover, there must also be domestic legal implications of the peace treaty. For example, for the Republic of Korea,

74 National Archives, "US Enters the Korean Conflict," Online by National Archives, accessed March 6, 2023, <https://www.archives.gov/education/lessons/korean-conflict>.

75 Ihn-Hwi Park, "The Korean Peace System after the Korean War: International Factors and the Current Significance," *International Journal of Korean Unification Studies* 29, no.1 (2020): 73.

76 Ibid.

77 United Nations, *Vienna Convention on the Law of Treaties*, May 23, 1969, UNTS 1155: 331, Art. 24 (VCLT).

a State, taking a monistic approach, there is no separate procedure, in theory, to incorporate international treaties into its domestic law. Article 6(1) of the Republic of Korea Constitution provides that “[t]reaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law *have the same effect* as the domestic laws of the Republic of Korea.”⁷⁸ Accordingly, once a peace treaty is in force, it is legally binding to all signatories, both at the national and international levels.

Lastly, the implications of a Korean peace treaty are (1) an official end to the Korean War; (2) ease of tensions on the Korean peninsula; and (3) a means to Korean unification. Although it is beyond the scope of this article to discuss in-depth each of these implications, this section will briefly discuss the importance of the implications of a Korean peace treaty.

First, a Korean peace treaty will ultimately end the war, meaning there is no longer a justification for using force as a legitimate wartime act. To use armed force will require a new justification.⁷⁹ Moreover, prohibiting using and threatening force does not preclude states from using military action during a state of war under *jus in bello*, so long as the conflicting states comply with international humanitarian law. Accordingly, an official declaration of an end to war implies an official end to any use of force on the Korean peninsula.⁸⁰

Second, a Korean peace treaty implies an ease of tensions between the two Koreas. For example, a Korean peace treaty may result in the cessation of the operation of the unified command and ultimately affect the deployment of U.S. troops on the Korean peninsula. A Korean peace treaty does not automatically withdraw U.S. troops on the Korean peninsula as the US-Korea military alliance is based upon the US-ROK Mutual Defense Treaty and independent from the Armistice Agreement.⁸¹ Nonetheless, a

78 Constitution of the Republic of Korea, Art. 6(1).

79 Klabbbers, 218.

80 ICRC, *International Humanitarian Law: Answers to Your Questions* (Dec. 2014).

81 Mutual Defense Treaty Between the United States and the Republic of Korea,

peace treaty will affect how many U.S. troops are present as the biggest threat to the US-ROK alliance is the DPRK and its nuclear proliferation. The decrease in the deployment of U.S. troops in the Republic of Korea leads to diminished US-ROK military training activities, which the DPRK strongly opposes, and which is the primary reason for its nuclear proliferation. Moreover, an obstacle faced with the peace-making process in terms of ease of tensions between the two Koreas is the issue of denuclearization. While many experts agree that denuclearization should be a precondition to the peace-making process between the two Koreas, the more difficult question is how?⁸² How could the parties—the US, China and the Republic of Korea—agree with North Korea on giving up its nuclear weapons for peace? The other realistic question is would North Korea denuclearize? A point of hope can be found in the Panmunjom Declaration, which provides that the two Koreas agree to carry out disarmament and denuclearization in a phased manner. This provision shows that North Korea shows the possibility of denuclearizing and shares the common goal with South Korea of complete denuclearization and a nuclear-free Korean peninsula.⁸³

Just as the Korean Armistice Agreement is not an end to the Korean War, a peace treaty is not an end to Korean unification. Just because the two Koreas agreed to establish peace and restore justice on the Korean Peninsula following the Korean War, it does not mean that the two Koreas agreed to unify into one Korea. Rather, a peace treaty can be viewed as a means to unifying the two Koreas. The case of Germany is a prominent example of such a basis. Following the surrender of the Axis powers in World War II in 1945, the discussion was made at the Potsdam Conference with US President Truman, Churchill and Stalin regarding the war with Japan and the peace settlement with Germany.⁸⁴ During the Potsdam

October 1, 1953.

82 Ihn-Hwi Park, “The Korean Peace System after the Korean War: International Factors and the Current Significance,” *International Journal of Korean Unification Studies* 29, no.1 (2020): 72.

83 Panmunjom Declaration, Article 3(4).

Conference, it was agreed that Germany would be divided into four occupation zones, similar to that of the two Koreas where South Korea was occupied by the United States and North Korea was occupied by the Soviet Union. Following the end of World War II, while peace was sought between the Axis Powers and the Allied Powers, Germany did not unify until 1990 through the signing of two treaties: (1) The Treaty on the Final Settlement with respect to Germany (September 12, 1990) and (2) The Unification Treaty Between the FRG and the GDR (1990).

Likewise, this article argues that a peace treaty does not necessarily indicate Korean unification. Peace and unification are different and must be achieved independently. The Panmunjom Declaration discusses peace-making and unification separately from each other.⁸⁵ While different, a peace treaty can be a means to unification because it implies the two Koreas are on agreeable terms with each other to maintain peace on the Korean Peninsula. However, whether there is a causal link between peace-making and unification requires further research beyond the scope of this article.

The Policy Implications of a Korean Peace Treaty in View of International Law

Throughout the history of the Republic of Korea, there have been different approaches to achieving peace on the Korean Peninsula, primarily based upon the administrations of Korea, including those of the progressive and conservative governments. The policies toward achieving peace on the Korean Peninsula were generally divided into two main policies: Engagement Policy versus Pressure Policy. The engagement policy involves a soft approach with the DPRK such as Kim Dae Jung's Sunshine Policy and Moon Jae In's Korean Peninsula Policy. Former president Kim's Sunshine Policy emphasized a peaceful coexistence

84 Robin Edmonds, "Yalta and Potsdam: Forty Years Afterwards," *International Affairs (Royal Institute of International Affairs)* 62, no. 2 (1986): 209-213.

85 Panmunjom Declaration.

between the two Koreas with cooperation and exchanges in the fields of sports, culture, social, and politics.⁸⁶ Kim Dae Jung's Sunshine Policy had five major objectives: (1) reconciliation based on the 1992 Inter-Korean Basic Agreement; (2) normalization of relations with the US and Japan; (3) integrating North Korea into the world community; (4) arms control and the dismantling of the North's weapons of mass destruction; and (5) the replacement of the 1953 Korean Armistice Agreement with a peace treaty for the two Koreas.⁸⁷

Moreover, former president Moon Jae In's Korean Peninsula Policy had three major objectives: (1) Peace First; (2) Spirit of Mutual Respect; and (3) Open Policy. Former president Moon's objective of a spirit of mutual respect is the co-prosperity and co-existence of the two Koreas with 3-Nos: No desire for North's collapse, no pursuit of unification by absorption, and no pursuit of unification through artificial means.⁸⁸ Moon's Korean Peninsula Policy takes on a two-step comprehensive approach where pressure and dialogue are separate, not intertwined. The engagement policy promises a co-existence of the two Koreas where there is no desire for the DPRK's collapse nor the absorption of the DPRK.

On the other hand, the pressure policy involves a hard approach such as Park Geun-Hye's Trust-Building Process and the current administration, Yoon Seok Yeol's Peace by Overwhelming Power policy. Former President Park's Trust-Building Process focuses on building trust between the two Koreas and pressuring North Korea to pay the price for its provocations.⁸⁹ President Yoon's Peace by Overwhelming Power policy emphasizes that

86 Geetha Govindasamy, "Kim Dae Jung and the Sunshine Policy: An Appealing Policy Option for Inter-Korean Relations," *SARJANA* 27, no. 1 (2012): 2.

87 Govindasamy, 3.

88 Ministry of Unification, *Moon Jae In's Policy on the Korean Peninsula*, last accessed May 3, 2023, https://www.unikorea.go.kr/eng_unikorea/policyissues/koreanpeninsula/strategies/.

89 Han-Bum Cho, "Trust-Building Process on the Korean Peninsula Continues," *Korean Institute for National Unification Online Series CO16-07* (2016), <https://repo.kinu.or.kr/retrieve/4940>.

the US-ROK alliance should be strengthened to defend South Korea with all of its military capabilities to achieve peace on the Korean peninsula.⁹⁰ President Yoon's policy aims to strengthen the military capabilities of the Republic of Korea to protect one's nation and to protect peace. President Yoon's approach views power as a necessity for peace. Such policy led to the signing of the Washington Declaration between President Yoon and US President Joe Biden. The Washington Declaration aims to strengthen military cooperation between the two States and extend deterrence measures on the Korean Peninsula.⁹¹

Regardless of which approach, the primary aim of both policies is to bring peace to the Korean Peninsula. However, at this point, with the 70th anniversary of the signing of the Korean Armistice Agreement that halted the military operations on the Korean Peninsula, it is time to take a shift in policy for achieving peace on the Korean Peninsula consistent with international law principles. Taking into consideration both engagement and pressure policies, there are several common grounds that should be the new approach to achieving permanent peace on the Korean Peninsula. The common grounds include prohibiting any armed provocations by the North and seeking cooperation with the DPRK. These common grounds go in line with international law – prohibition of the use of force and state sovereignty. Prohibition of armed provocations by the North should not be enforced because of any hostile feelings towards the North but because international law prohibits any use or threat of the use of force on the territorial integrity of States, as provided for in Article 2(4) of the UN Charter. Moreover, state sovereignty in international law prohibits the use of force or intervention in the internal affairs of another nation. Seeking cooperation with the DPRK is not necessarily to concede or give in to its requests in exchange for peace, but to respect the State and discover means to negotiate and achieve permanent peace on the Korean Peninsula.

90 Haye-Ah Lee, "Yoon Vows to Build Strong Security Through Overwhelming Power," *Yonhap News Agency*, May 02, 2023, <https://en.yna.co.kr/view/AEN20230502003600315>.

91 Lee (2023).

Lastly, international law advocates for the respect of human rights and fundamental freedoms.⁹² Accordingly, to achieve peace, the topic of human rights should not be avoided or ignored at the negotiation table as that shows inconsistency with the principle of *jus post bellum*, which focuses on reparations and reconstruction. It must be remembered that in the international law plane, both the DPRK and the ROK are separate States, as both were recognized and admitted as separate UN Member States on September 17, 1991. Accordingly, looking at the international legal implications of a Korean peace treaty along with its political implications is inevitable.

Conclusion

Achieving peace on the Korean Peninsula is the common goal for both Koreas. The 1991 Inter-Korean Agreement provides that any differences in views or disputes between the two Koreas shall be resolved peacefully through dialogue and negotiation.⁹³ Moreover, in the 2018 Panmunjom Declaration, the two leaders agreed:

*to frequently have in-depth discussions on important matters for the nation through regular meetings and hotlines, deepened confidence, and jointly endeavor to expand further the favorable trend toward the sustained development of the north-south ties and peace, prosperity, and reunification of the Korean peninsula.*⁹⁴

Accordingly, entering the 70th anniversary of the Armistice Agreement, it is now time for the leaders of the two Koreas to resume high-level talks and deepen confidence in each other. Both Koreas agree that peace, prosperity, and reunification of the Korean peninsula are needed. The best route is not an intervention of third parties but a

92 UN Charter, Art. 1(3).

93 Inter-Korean Basic Agreement, Art. 10.

94 Panmunjom Declaration, Art. 3(4).

negotiation between them as this matter is between the two Koreas and should remain a matter between the two Koreas.

Marking the 70th anniversary of the Armistice Agreement, the signing of the Armistice Agreement must be celebrated. The Armistice Agreement halted the Korean War's military hostilities, withdrew military forces, established the Demilitarized Zone as a buffer zone, and allowed the repatriation of prisoners of war. However, the Armistice Agreement should not be the end goal in bringing peace to the Korean peninsula. The characteristics of the Armistice Agreement in only bringing a temporary cessation of hostilities and leaving open a possible resumption of the Korean War show that the two Koreas should begin high-level talks to conclude a peace treaty to end the Korean War officially.

The celebration of the 70th anniversary of the Armistice Agreement should be a reminder that the Korean War is only suspended in the international legal aspect, and an official peace treaty is needed. It is time for the parties to take seriously the conclusion of a peace treaty, which will not only bring an official end to the Korean War but will also ease tensions between the Republic of Korea and the DPRK and ultimately be a means to Korean unification.

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