

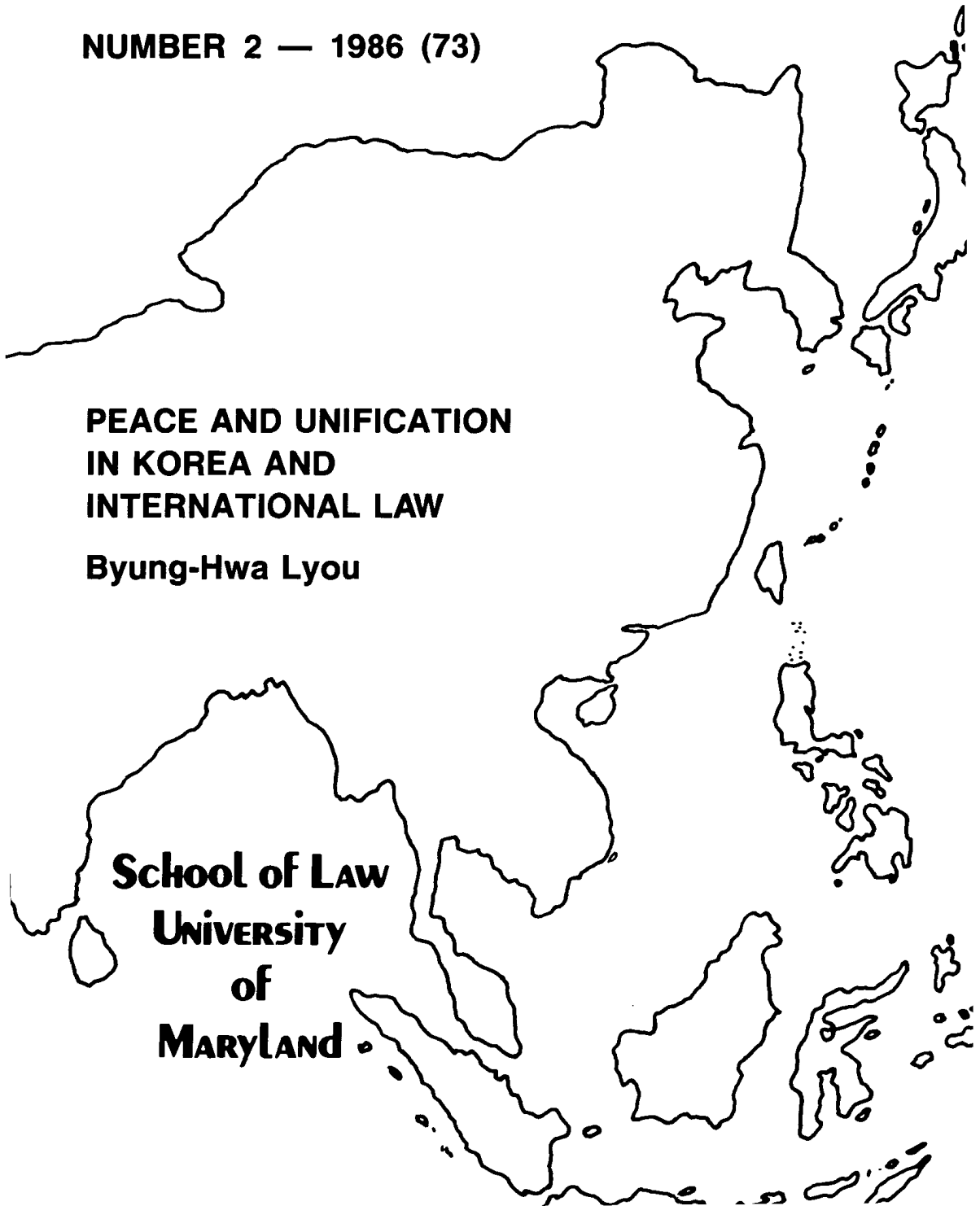
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**PEACE AND UNIFICATION  
IN KOREA AND  
INTERNATIONAL LAW**

**Byung-Hwa Lyou**

**School of LAW  
UNIVERSITY  
of  
MARYLAND**



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**PEACE AND UNIFICATION IN KOREA  
AND  
INTERNATIONAL LAW**

*Lyou, Byung-Hwa\**

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**PREFACE**

The Korean question is a long historical puzzle which has remained unsolved over four decades. Although, it has been regarded as a closed question by many, the Korean people are still suffering this national tragedy imposed by outside powers. The situation is analogous to having family members out of touch, sight, and sound on the opposite bank of a river. Almost all of the Korean people have some family members or friends on the other side. Furthermore, the Korean division is still the source of bitter troubles and tensions since it greatly hampers the development of the Korean nation. It thus remains a plaguing problem to the Korean people.

Voluminous books and articles on the Korean question have been published. Many of them concentrate on describing the expressed policies of South and North Korea. Many objective observers fail, however, to offer positive suggestions for unification, or a legal analysis for unification planning.

This book was not written by an objective observer, but by a Korean who is also suffering the national tragedy and who is determined to devote his whole life to the task of unification. Thus, this book studies feasible ways for Korean unification through the legal analysis of the various relations and facts connected to the Korean question. The book consists of three chapters. Chapter One analyzes under the principles of international law the status of the parties to the Korean Armistice Agreement, and South Korea's status in the Agreement. Chapter Two deals with the de facto dissolution of the United Nations Command in Korea and the peace-keeping mechanisms in Korea without the Command. Chapter Three offers workable solutions and concrete means for Korean unification.

I am greatly indebted to Korea University and the Korean Ministry of Education for supporting my stay in the United States for one year, and to the Law School of the University of Maryland for receiving me as a visiting scholar. I am very grateful to Professor Hungdah Chiu for his kind arrangement for my stay in the United States and his assistance in this publication. I am also grateful to Professors Pak Zai-Sup and Park Choon-Ho, Former Agriculture Minister Chang Duk-Chin, Mr. Park Kye-Dong, Mr. Kim Hyung-Soo, Mr. Lee Sang-Hap and Mr. Roh Kun-Woo for their assistance to me during my stay in the United States. I would also like to extend my gratitude to several persons who edited and corrected this book, particularly Mr. Mitchell

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*Lyou, Byung-Hwa*

# PEACE AND UNIFICATION IN KOREA AND INTERNATIONAL LAW

*Lyou, Byung-Hwa*

## CHAPTER ONE. THE KOREAN ARMISTICE AGREEMENT AND INTERNATIONAL LAW

The international legal problems stemming from the Korean Armistice Agreement are principally related to the definition of the legal parties to the agreement. The complex composition of the legal parties confuses the legal situation of the agreement. As is well known, South Korea opposed in vain, after much sacrifice, the conclusion of the Korean Armistice Agreement, which did not solve the problem of the division of Korea. As a result, the question whether South Korea is a legal party to the Korean Armistice Agreement or not has been subject to much dispute.<sup>1</sup> The answer would be a decisive factor in legal interpretation and a future solution of the Korean problem.

This study concentrates on analyzing the legal reality of this problem, based on the concrete situation and historical facts of the Korean problem, and tries to offer a reasonable solution to this delicate problem.

### Section A. Conclusion Of The Korean Armistice Agreement

#### 1. *Negotiations between the United Nations Command and the Communist Side*

Just after the North Korean invasion of South Korea on June 25, 1950, the United Nations demanded that North Korea halt its attack and withdraw its troops to the north of the 38th Parallel.<sup>2</sup> Given its strategically favorable position, it would have been out of the question for North Korea to agree. Negotiations became possible only after the United Nations Forces' victorious amphibious operation of Inchon on September 15, 1950 and the North Korean retreat to the north of the 38th Parallel. The question whether the United Nations Forces might cross the 38th Parallel or simply conclude an armistice agreement

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1. Lyou Byung-Hwa, *Le Commandement des Nations Unies en Coree et Ses Problemes Juridiques*, Seoul: 1980, pp. 74-93.

2. UN Security Council Resolution 82, 25 June 1950, UN Document S/1501, in Republic of Korea (ROK) Ministry of Foreign Affairs, *Resolutions of the United Nations Principal Organs Relating to Korea (1947-1976)*, Seoul, 1976, pp. 132-133.

arose among the states composing the United Nations Forces. From a political and military viewpoint, crossing the 38th Parallel and destroying North Korean forces was the most certain way of guaranteeing peace on the Korean peninsula; but, on the other hand, that would risk triggering Communist Chinese<sup>3</sup> intervention in the War.<sup>4</sup> After some discussion and hesitation, the United Nations Command under the leadership of United States finally decided to cross the 38th Parallel and destroy North Korean forces. At the same time, the Command tried to persuade Communist China not to intervene, explaining that the United Nations Command would not encroach on Chinese interests. Although Communist China repeated warnings that it would not tolerate the United Nations Command crossing the 38th Parallel,<sup>5</sup> on October 7, 1950, the United Nations General Assembly adopted a Resolution which confirmed the United Nations Command's decision to cross the 38th Parallel.<sup>6</sup> Then on October 26, 1950, Communist China intervened "unofficially" *en masse* in the Korean war, changing the war radically.

Confronted with this new development, the Commander-in-Chief of the United Nations Command requested authorization to extend the combat area outside the Korean peninsula to prevent the continuing participation of Communist Chinese forces. He also asked for reinforcement of the UN Forces in order to defeat the massive Chinese forces. The Allied Nations feared the expansion of war, and limited the military operation to the Korean Peninsula.<sup>7</sup> Furthermore, they hesitated in condemning the intervention of Communist China and tried to induce the Chinese to negotiate an armistice.

In October 1950, the UN General Assembly held a meeting to discuss the possibility of an armistice. In the First Committee of the General Assembly, thirteen Arab-Asian nations proposed to establish the Group of Three, composed of India, Iran, and Canada. The

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3. In the early 1950s, only a small number of countries recognized the People's Republic of China. It was generally referred to as Communist China. Thus, in Chapter I "Communist China" is used, while in Chapters II and III the "People's Republic of China" is used.

4. U.S. Dept. of State, *Foreign Relations of the United States* (1950), (hereinafter referred to as *FRUS*) VII (Korea), Washington, D.C.: Government Printing Office (GPO), 1976, pp. 813-816.

5. Leland M. Goodrich, *Korea: A Study of U.S. Policy in the United Nations*, New York: Council of Foreign Relations, 1956, reprint 1972, pp. 136-139.

6. U.N.G.A. Res. 376(V) (Oct. 7, 1950), no. 16.

7. Courtney Whitney, "The War McArthur Was Not Allowed to Win," *Life*, Sept. 5, 1955, p. 68; U.S. Dept. of State, *FRUS* (1951), vol. VII, Washington, D.C.: GPO, 1983, pp. 41-60.



Group of Three discussed an armistice with the United Nations Command, while the United States proposed basic conditions for an armistice: a complete cessation of hostilities in the Korean peninsula; the establishment of a demilitarized zone about 20 miles in width; the disposition of armed forces to assure the cease-fire; the supervision of the cease-fire by the United Nations Commission; a cessation of the enforcement of armed forces; an exchange of prisoners of war; and a confirmation of the cease-fire arrangement by the UN General Assembly.<sup>8</sup>

The other Allied Nations worried about Communist China and urged the United States not to expand the war outside Korea, and to seek all available means to achieve the armistice. One of the Group of Three, the Canadian, Pearson, supported by the British Commonwealth, proposed the so-called Five Principles, which even included elements of appeasement: an immediate cease-fire; the pursuit of further steps toward peace; the gradual withdrawal of all foreign troops, combined with the appropriate arrangements for the establishment of a Korean Government in accordance with the principles of the United Nations; an appropriate interim arrangement would be made for the administration of Korea and the maintenance of peace; after the cease-fire, the establishment of appropriate committee for the settlement of the Far Eastern problem, including the problem of Taiwan and the representation of China in the United Nations.

However, Communist China, being in a favorable strategic position, continued to reject all the propositions of armistice, demanding unacceptable conditions, such as the withdrawal of all foreign troops from Korea, the withdrawal of U.S. forces from Taiwan, and the replacement of Nationalist China by the People's Republic in the United Nations.<sup>9</sup>

Finally, the United States Secretary of State Acheson declared the futility of trying to negotiate with Communist China, and proposed a resolution of the UN General Assembly condemning Communist China as an aggressor. The worries and pressure of other Allied Nations were not quelled.<sup>10</sup> Through long and tiresome efforts, the United States persuaded the other Allied Nations and the United Nations General Assembly adopted Resolution 498(V) on February 1, 1951, which condemned Communist China as an aggressor, and au-

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8. Goodrich, *supra* note 5, p. 159.

9. UN Bulletin (Jan. 15, 1951), vol. 10; U.N. Doc. A/C 1/653, *FRUS*, *supra* note 7, pp. 91-92.

10. U.S. Dept. of State, Bulletin, Vol. 24 (January 29, 1951), p. 164; *FRUS*, *supra* note 7, pp. 92-93.

thorized the necessary additional measures of the Collective Measure Committee to repel Chinese forces. The Resolution also expressed the Allied Nations desire for a cease-fire in Korea.<sup>11</sup>

Still, however, the attitude of the Allied Nations did not change after the adoption of Resolution 498(V). They continued to urge the United States to seek a cease-fire. Nevertheless, the Commander-in-Chief of the United Nations Command, General MacArthur, insisted on strong measures against Communist China and after he expressed his view directly in the United States Congress through Congressman J.W. Martin on April 5, 1951, President Truman replaced him with General Ridgway on April 11, 1951.<sup>12</sup> With this unfortunate event, the direction of the policy of the United Nations Command changed, leaning toward arriving at the negotiation of an armistice with the Communist counterpart as soon as possible, rather than attempting to solve the Korean question concretely. In other words, the policy of the United Nations Command was to get out of the Korean War without damaging its honor. It thus lacked a positive objective, most notably the reunification of Korea.

From January of 1951, the war situation began to change in favor of the United Nations Command. In March, the United Nations Command again faced the problem of recrossing the 38th Parallel. However, the Allied Nations were extremely reluctant to do so. They intended neither to reinforce the United Nations Forces enough to defeat Communist Chinese forces, nor to wage a major attack against the enemy. The United States Government instructed the Commander-in-Chief of the United Nations Command not to cross the 38th Parallel without prior consultation with the Joint Chiefs of Staff of the United States. As a matter of fact, it is clear now that they wanted to get out of Korea without damaging their honor.<sup>13</sup>

However, the Communists never seemed to pay attention to the armistice proposal of the Allied Nations. The Allied Nations thus very reluctantly adopted Resolution 500 of the UN General Assembly on May 18, 1951, as an additional measure, recommending an embargo on Communist China and North Korea.<sup>14</sup> On the other hand, the powerless South Korean Government utilized every effort to persuade the United States to continue their military operation until the Korean problem was solved.

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11. U.N.G.A. Res. 498(V), A/PV 327, (February 1, 1951).

12. *FRUS*, *supra* note 7, pp. 298-301.

13. *Ibid.*, pp. 189-194, 320-330, 353-362.

14. U.N.G.A. Res. 500(V) (18 May 1951).

Facing the continued deterioration of the war situation, the Communists began to express hope for an armistice. On June 23, 1951, the Soviet Representative to the United Nations, Yakov Malik, expressed such hope in a radio broadcast on "The Price of Peace" sponsored by the United Nations radio:

The Soviet people further believe that the most acute problem of the present day — the problem of the armed conflict in Korea — could also be settled. This would require the readiness of the Parties to enter on the path of a peaceful settlement of the Korean question. The Soviet people believe that as a first step discussion should be started between the belligerents for a cease-fire and an armistice providing for the mutual withdrawal of forces from the 38th Parallel. Can such a step be taken? I think it can, provided there is a sincere desire to put an end to the bloody fighting in Korea.<sup>15</sup>

As soon as this broadcast was delivered, the U.S. Department of State issued a welcoming statement. The statement said that the Allied Nations were ready, as they had always been, to play their part in bringing an end to hostilities and in preventing their resumption, if the Communists were willing to end the aggression in Korea. Two days later, President Truman also made a similar statement.<sup>16</sup>

Communist China's official newspaper, the *People's Daily*, on June 25, 1951, endorsed the armistice proposal of Malik.<sup>17</sup> On June 27, the Soviet Union's Deputy Foreign Minister Gromyko also confirmed this idea to the U.S. Ambassador in Moscow, Mr. Kirk, but also indicated that the arrangement would have a purely military disposition without involving any political or territorial matters.<sup>18</sup>

Finally, at the United States Government's instruction, the Commander-in-Chief of the United Nations Command, General Ridgway, broadcast a concrete proposal for the negotiation of an armistice through the United Nations Forces Radio on June 30, 1951. According to the proposal, if the Communist side desired a meeting to discuss an armistice providing for the cessation of hostilities, with adequate guarantees for the maintenance of such an armistice, the United Nations Command would be prepared to name its representative. This proposal also suggested a Danish hospital ship, Jutlandia in Wonsan

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15. *FRUS*, *supra* note 7, p. 547.

16. U.S. Dept. of State Bulletin (July 9, 1951), p. 45; *Harry S. Truman: Public Papers of the President of the United States*, Washington, D.C.: GPO, 1951, pp. 362-363.

17. Goodrich, *supra* note 5, p. 183.

18. *FRUS*, *supra* note 7, p. 561.

Harbor, as a place of meeting.<sup>19</sup>

The Communist side responded quickly to the proposal of the United Nations Command, and confirmed their willingness to negotiate an armistice. The Communist side proposed that such a meeting should be held in Kaesong on the 38th Parallel. They also suggested that they would be prepared to meet the delegates of the United Nations Command between 10 and 15 July, 1951.<sup>20</sup>

After the exchange of several messages between the commanders of both sides,<sup>21</sup> they decided that the preliminary meeting would be held in Kaesong<sup>22</sup> on July 8.<sup>23</sup> They also agreed that each delegation would be composed of three liaison officers and two interpreters respectively.<sup>24</sup>

The first meeting of liaison officers of both sides took place in Kaesong on July 8. They agreed to open — and did in fact hold — the first conference in Kaesong on July 10, 1951.<sup>25</sup> The Communist delegation, under the North Korean General Nam Il, was composed of North Korean and Communist Chinese Generals. The United Nations delegation, whose head was Vice Admiral C. Turner Joy, was composed of American Generals and one South Korean General, Paik Sun-Yup. The other nations contributing forces to the United Nations Command did not participate in this negotiation.

Conflicts arose at the onset. There were difficulties even in adopting the agenda of the conference.<sup>26</sup> The Communist side insisted that certain political questions such as withdrawal of foreign troops from Korea should be included in the agenda, while the United Nations Command tried to limit the agenda to military questions. The Communist side also insisted that the establishment of the 38th Parallel as the military demarcation line between both sides should be pre-determined and included in the agenda.<sup>27</sup> In addition, the Communist side hampered the participation of the newsmen of the UN side at the conference. However, after some patient negotiations, both sides agreed to adopt the following agenda:<sup>28</sup>

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19. U.S. Dept. of State Bulletin, Vol. 25 (July 9, 1951), p. 43.

20. *FRUS*, *supra* note 7, p. 609.

21. U.S. Dept. of State Bulletin (July 9, 1951), p. 43.

22. *Ibid.*, p. 44.

23. *FRUS*, *supra* note 7, p. 623.

24. *Ibid.*, p. 624.

25. *Ibid.*, p. 652.

26. *Ibid.*, pp. 652-653.

27. *Ibid.*, p. 653.

28. U.S. Dept. of State Bulletin (August 6, 1951), pp. 231-232.

- i. adoption of the agenda
- ii. fixing a military demarcation line between both sides so as to establish a demilitarized zone as a basic condition for a cessation of hostilities in Korea
- iii. concrete arrangements for the realization of a cease-fire and an armistice in Korea, including the composition, authority and functions of a supervising organization for carrying out the terms of a cease-fire and armistice
- iv. arrangements relating to prisoners of war
- v. recommendations to the governments of the countries concerned on both sides.

Among the major differences between the two sides on the negotiation of the armistice, the first major obstacle was the location of the demarcation line.<sup>29</sup> The Communists insisted that the demarcation line should be based on the 38th Parallel because the war broke out at the 38th Parallel, and this was an historical fact that both sides had to respect. On the other hand, the United Nations Command proposed that the actual military battle line should be the demarcation line, on the grounds that it would reflect a military reality and it would be a more defensible line. Furthermore, the 38th Parallel would be only an imaginary line from a military viewpoint, because it did not reflect any physical conditions of the territory, and the Communists already had violated it.

Painful negotiations lasted for more than three months. The heated oral disputes were interrupted two times in August, and resulted in a long recess until October.

From the onset, the South Korean Government made it clear that it was ardently opposed to the demarcation line around the 38th Parallel. While the United States attempted to assure them of its inevitability, all stratas of Korean society still expressed an emotional shock over the idea of stabilizing the demarcation line, despite the fact that the war situation favored the United Nations Command. The United States Government explained that a major advance to the north of the 38th Parallel would risk a third world war which would bring disaster even to Korea. The Korean Government, however, insisted that an armistice without solving the Korean division would result in surrendering Korea and the defeat of the United Nations side. The end result was a stalemate.<sup>30</sup>

The difficulty of the conference was in part due to its location —

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29. *FRUS*, *supra* note 7, pp. 694, 710, 738, 763, 774.

30. *Ibid.*, pp. 737, 740-745.

Kaesong — because the Kaesong area belonged to the Communist zone. Therefore, both sides agreed to a move from Kaesong to Panmunjom, which was an adjacent area.<sup>31</sup>

This long, fruitless discussion tired both sides, and the United Nations Command proposed a new concrete proposal, which embodied the following points:

- The present line of contact as jointly determined by the sub-delegations will constitute a provisional military demarcation line, and two lines, 2 km from the demarcation lines, will constitute the southern and northern boundaries of a provisional demilitarized zone.

- The above provisional military demarcation line and the above provisional demilitarized zone based upon the present line of contact shall become effective with any armistice agreement signed within 30 days after this agreement is accepted by the two delegations in plenary session.

- If an armistice agreement is not signed by the end of the 30 day period, the then existing line of contact will be determined jointly by the sub-delegations, and will constitute a new provisional military demarcation line which will be the median line of a new provisional demilitarized zone, to be effective under such conditions as will be at the time generally agreed to by the delegations of both sides.<sup>32</sup>

The reaction of the Communist delegation to this proposal was comparatively favorable. Thus, after some minor modifications, both sides agreed to these principles, and concentrated on determining the actual line of contact, which was agreed on November 26, 1951.<sup>33</sup>

The second major difference in the armistice negotiations concerned the power and function of the supervisory organ which would carry out the terms of the armistice agreement. The Communists were opposed to a strong supervisory organ. They viewed a supervisory organ empowered to inspect and have access to North Korean territory as an interference in internal affairs. The United Nations Command insisted, however, that the effective function and free access of the supervisory organ were necessary to ensure the fragile peace of this region after the conclusion of the armistice agreement. The two sides finally compromised, agreeing to install inspection teams at five ports on each side, and establish several mobile inspection units to investi-

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31. *Ibid.*, pp. 848-854.

32. *Ibid.*, p. 1147.

33. *Ibid.*, p. 1186.

gate alleged violations of the armistice agreement."<sup>34</sup>

The third difference between the two sides involved the western coastal islands under the control of the United Nations Command. These five coastal islands were located substantially north of the general line of contact between the two sides. The Communists demanded that United Nations Forces withdraw from the coastal islands in accordance with the demarcation line on the mainland, while the United Nations Command sought to retain the islands unless suitable adjustments were made elsewhere. The Communists refused to accept the position of the United Nations Command and so the United Nations Command continued to occupy the islands.<sup>35</sup>

The fourth and most divisive difference concerned prisoners of war. First of all, the Communist count of prisoners of war differed greatly from the number claimed earlier. The total number listed by the Communists was only 11,559 prisoners, composed of 7,142 South Korean soldiers and 4,417 United Nations soldiers, while the total number claimed earlier exceeded 65,000. On the other hand, the number of the POWs listed by the United Nations Command totalled 132,000, with another 37,000 having been recently reclassified as civilian internees. The 132,000 POWs held by the United Nations Command were composed of 95,531 North Koreans, 20,700 Chinese and 16,243 South Koreans. The 16,243 South Koreans had been domiciled in South Korea before June 25, 1950, and a large number of them had been forced to fight against South Korean forces after June 25 by North Korean forces.<sup>36</sup> It appeared that there were many United Nations POWs alive but not included on the Communist list because the POW camps identified by the Communists comprised only a portion of the POW camps located in North Korea and omitted all POW camps located in Communist China.<sup>37</sup> Moreover, the South Korean Government pressured the United States Government to secure the release of more than 20,000 South Korean civilians kidnapped by the Communist occupation in 1950.<sup>38</sup>

The most difficult problem was how to exchange the prisoners of war. The Communists insisted on the unconditional exchange of all POWs they held, for all POWs held by the United Nations Command. The United Nations Command, however, proposed the exchange of

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34. *Ibid.*, pp. 1187-1193.

35. *Ibid.*, pp. 1216-1221.

36. Walter G. Hermes, *United States Army in the Korean War: Truce Tent and Fighting Front*, Washington, D.C.: GPO, 1966, p. 141.

37. *FRUS*, *supra* note 7, p. 1399.

38. *Ibid.*, p. 1252.

prisoners of war on an individual basis, according to the wishes of individual prisoners. In other words, the Communists insisted on an involuntary repatriation in which all prisoners of war would be returned to the side for which they were fighting at the time of capture. On the other hand, the United Nations Command refused the forced repatriation of prisoners against their own will.<sup>39</sup>

Several months passed without any progress. The reason why this problem was difficult to resolve was that many prisoners of war who had suffered so much under the Communist regime forcibly resisted their return to North Korea, even at the risk of seeing their families separated. The first global screening showed that among the 132,000 Communist prisoners of war and 37,000 civil internees held by the United Nations Command, as many as half of them resisted return to the Communist side. The Communists, knowing this fact, would not agree to the voluntary repatriation of prisoners of war. On the one hand, they would be in desperate need of human resources after the drastic reduction of population during the war. Yet, on the other hand, there would be a disastrous effect on public opinion due to the fact that as many as half of the Communist prisoners of war refused to return. Thus the Communists worried about the possible result of normal negotiations. They instigated several violent riots in the United Nations Command POW camps, with prisoners resisting and obstructing the screening operation. As a result, several prisoners and guards were killed and wounded.<sup>40</sup> The Communists also criticized the United Nations Command, claiming major violations of the international law of war, including the bombing of civilians, and the use of bacteriological weapons.<sup>41</sup>

Considering these facts, the United Nations Command did its best to reduce the number of prisoners of war resisting return to the Communist side. First, the United Nations Command informed the POWs of Communist broadcasts seeking to persuade the prisoners to return to the Communist side. Second, the questions in screening interviews were designed to encourage the maximum number of prisoners to return to the Communist side. Only the prisoners who expressed the strongest resistance, such as committing suicide or fighting to die in cases of forced repatriation, were excluded on the list for

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39. *Ibid.*, p. 1417.

40. *FRUS* (1952-1954), vol. XV (Korea), pt. 1, Washington, D.C.: GPO, 1984, p. 153.

41. Rosalin Higgins, *United Nations Peacekeeping 1946-1967*, vol. II, London: Oxford University Press, 1970, pp. 188-191.



repatriation.<sup>42</sup> As a result of such interviews, 753 prisoners of war reversed their initial decisions and decided to return to the Communist side. But still the number of 753 prisoners was not enough to mitigate the strong opposition of the Communist side.<sup>43</sup> Thus, the negotiations continued in a deadlock.

In an effort to end the war quickly, the United Nations Command proposed an overall settlement of remaining issues. The contents of the so-called "package proposal" were: (1) the United Nations Command would accept the Communist position on air-field reconstruction; (2) the Communist side would accept the United Nations Command's position excluding the Soviet Union from the Military Armistice commission; (3) the Communist side would accept voluntary repatriation of prisoners of war. However, the voluntary repatriation of prisoners of war was such an important concession to the Communist side that they categorically rejected the United Nations Command's proposal.<sup>44</sup>

Over the next several months the negotiations remained in a deadlock. Since the stalemate showed no sign of improvement, the problem was brought to the United Nations General Assembly in October.<sup>45</sup> The United States proposed a draft resolution endorsing the position of the United Nations Command and called on the Communist side to accept the voluntary repatriation of prisoners of war. Meanwhile, the Soviet Union proposed a draft resolution supporting involuntary repatriation of all prisoners of war. In an effort to find a compromise between the two extreme positions, India submitted an intermediate draft resolution which, while confirming that the Geneva Convention of 1949 did not permit the use of force in the repatriation of prisoners of war, proposed that all prisoners of war be turned over to a Neutral Nations Repatriation Commission which would handle the problem of prisoners of war in accordance with an agreement concluded thereafter between the two sides. After making some modifications to assure the effective function of the Repatriation Commission, and including guarantees for prisoners of war refusing repatriation not to be detained indefinitely, the United States supported this resolution. It was adopted on December 3, 1952, by a vote of 54 to 5 with 1 abstention. This Resolution 610(VII) was, however, rejected by the

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42. "44th Report of the United Nations Command in Korea," UN Doc. S/2700 (July 14, 1952); *FRUS*, *supra* note 40, p. 162.

43. *FRUS*, *supra* note 40, p. 183.

44. *Ibid.*, pp. 82-97, 179-10; Goodrich, *supra* note 5, p. 192.

45. *FRUS*, *supra* note 40, p. 588.

Communist side.<sup>46</sup>

The United States presidential election on November 4, 1952 also delayed the conclusion of an armistice agreement. Republican candidate Dwight Eisenhower pledged that, if elected, he would go at once to Korea to try to end the war. President-Elect Eisenhower visited Korea in early December, and concluded that an honorable armistice should be secured.<sup>47</sup> The Communist side may have wanted to delay the conclusion, hoping that a change in United States leadership would alter the odds, but that hope would be in vain. The new administration sought a new approach to break out of the deadlock. John Foster Dulles, who was designated as Secretary of State in the new administration, reported to Eisenhower that the dominant factor in the Korean War was the Soviet Union, and that the Soviet Union would encourage the present armistice stalemate, as long as it could obtain certain advantages without the expansion of war or military defeat. The advantages of the stalemate of war were: (1) tying down a large number of United States forces in the Far East and thereby weakening the American position in other actual or potential areas of conflict; (2) the absorption of a large amount of military equipment in Korea, slowing down the rearmament of Western Europe and other areas; (3) the generation of friction between the United States and the other NATO members. On the other hand, Dulles understood that the prisoner of war issue was important to the Communists beyond Korea and for the future. That is, voluntary repatriation might encourage defections elsewhere, whereas enforced repatriation would deter future desertions.<sup>48</sup>

In this situation, the new United States administration believed that the only way to break out of the deadlock was to threaten to expand the war to the outside of Korea. In his State of the Union Message of February 2, 1953, President Eisenhower stated that he was reversing the June 1950 decision ordering the Seventh Fleet to prevent an attack on Taiwan while ensuring that Taiwan would not be used as a base of operation against the mainland. He issued instructions that the Seventh Fleet no longer be employed to shield Communist China because Communist China had invaded Korea and refused the United Nations proposals.<sup>49</sup>

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46. U.N. Doc. A/PV 399 (December 3, 1952); *FRUS*, *supra* note 40, p. 702; Higgins, *supra* note 41, p. 281.

47. *FRUS*, *supra* note 40, p. 578; Higgins, *supra* note 41, p. 281.

48. *FRUS*, *supra* note 40, pp. 692-693.

49. Dwight D. Eisenhower, *Public Papers of the President of the United States*, Washington, D.C.: GPO, 1953, pp. 16-17.

At the 131st meeting of the National Security Council on February 11, 1953, President Eisenhower suggested that the United States should consider placing tactical atomic weapons in Korea in order to end the war expeditiously.<sup>50</sup> Previously, the National Security Council on several occasions discussed the possibility of using atomic weapons in Korea.<sup>51</sup>

After Stalin died on March 5, 1953, the new leadership of the Soviet Union was beset with the succession problem.<sup>52</sup> Therefore, the Communists became more anxious to conclude an armistice agreement. They responded to the United Nations Command's proposal on February 19, 1953 concerning the exchange of sick and wounded prisoners of war in accordance with appropriate articles of the Geneva Convention and the Resolution of the Executive Committee of the League of Red Cross Societies (December 13, 1952). The Communist liaison officers informed the United Nations Command on March 28, 1953 that they were ready to exchange sick and wounded prisoners of war in accordance with the humanitarian provisions of the Geneva Convention and to resume armistice negotiations at Panmunjom. Furthermore, Chinese Premier Chou En-lai broadcasted a statement and also sent a corresponding cablegram to the United Nations General Assembly proposing that negotiations should begin immediately on the exchange of sick and wounded, and that this would hopefully lead to an overall settlement of the prisoner of war question. He added that all prisoners of war insisting upon repatriation should be exchanged immediately following the cease-fire and that the remaining prisoners of war be handed over to a neutral state to ensure a just solution to the question of their repatriation.<sup>53</sup> This position conformed, as a whole, to the United Nations Command's position. As a result, an agreement for the exchange of sick and wounded prisoners of war was signed on April 11. It set April 20, 1953 as the date for the beginning of the exchange. According to the agreement, the Communist side would deliver a total of 600 United Nations Command personnel at the rate of 100 per day, while the United Nations Command would deliver 5,800 North Korean and Chinese personnel in numbers of 500 per day.<sup>54</sup>

At 11:00 a.m., April 25, 1953 (Seoul time), full negotiations resumed, and the discussions centered on the neutral nations assuming

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50. *FRUS*, *supra* note 40, p. 770.

51. *Ibid.*, pp. 845-850.

52. *Ibid.*, p. 898.

53. U.S. Dept. of State Bulletin (April 13, 1953), pp. 526-572.

54. *FRUS*, *supra* note 40, pp. 902, 919.

custody of the non-repatriate POWs, the place of custody, the duration of custody, and the ways and organs responsible for the ultimate decision on the fate of non-patriate POWs.<sup>55</sup> After patient negotiating, on June 8, 1953, United Nations' Representative William K. Harrison and Communist Representative Nam Il finally signed an agreement on the "Terms of Reference for the Neutral Nations Repatriation Commission," concluding the final agreement on the last and most difficult subject of the armistice talks.<sup>56</sup>

## 2. *Negotiations between the United States and South Korea*

Before signing the armistice agreement, the United Nations faced one remaining obstacle: assurance of the agreement and cooperation of the South Korean Government. This was, in a sense, the most complicated and difficult problem. The South Korean Government was opposed from the first to an armistice without a solution to the Korean division. The internal political crisis of South Korea during the months following May 1952 further complicated the situation. President Rhee's thirst for power resulted in the massive arrest of members of the National Assembly under martial law to stifle all opposition. He enacted a constitutional amendment consolidating his power, and created considerable consternation in the United States Government, which even considered his removal.<sup>57</sup> Thereafter, the South Korean Government continued to oppose an armistice without any solution to the problem of Korea's division. As the armistice negotiations progressed and prospects for conclusion became more certain, the opposition of the anxious South Korean Government grew stronger. On November 3, 1952, South Korean Foreign Minister Pyun Yung-Tai delivered a powerful speech before the First Committee of the United Nations General Assembly. He blamed the Soviet Union for supporting the Korean invasion, and opposed any armistice which left his country divided. In addition, the South Korean delegation to the United Nations General Assembly circulated a 46 page pamphlet demanding arms for two million men for the purpose of unifying Korea. Foreign Minister Pyun condemned the armistice negotiations as a Communist hoax and plot.<sup>58</sup>

On April 8, 1953, the Korean Ambassador to the United States, Yang You-Chan, met the United States Secretary of State, John F.

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55. Goodrich, *supra* note 5, p. 195; *FRUS*, *supra* note 40, p. 920.

56. *FRUS*, *supra* note 40, p. 1151.

57. *Ibid.*, pp. 242-376, 402-404.

58. *Ibid.*, p. 626; UN Doc. A/C 1/SR 518 (November, 1952).

Dulles, and communicated the South Korean Government's position relating to the armistice. He proposed the following preconditions for the conclusion of an armistice: (1) all of Korea must be reunited; (2) all Chinese forces must vacate Korean territory; (3) North Korean forces must be disarmed; (4) any third party must be prevented from providing arms to the Communists in Korea; and (5) the sovereignty of the Republic of Korea must be guaranteed and its voice in international discussion on the future of Korea must be guaranteed.<sup>59</sup>

In his letter to President Eisenhower on April 9, 1953, President Rhee expressed his strong opposition to the armistice. He said that he knew of President Eisenhower's determination to end the Korean War with honor as soon as possible, and he also knew of the strong opposition of foreign powers and some circles of the American administration against the policy of President Eisenhower. Under such circumstances, he said, the Korean people would again suffer disappointment. President Rhee expressed strong emotional protest: "At all events, either as a result of the Indian resolution or of the Communists' recent offer of peace negotiations, if they [some UN members] arrange a peace agreement allowing the Chinese to remain in Korea, we have to ask all the friendly nations whose armed forces are now fighting in Korea and who do not desire to join us in our determination to defeat aggressive communism and drive up to the Yalu River, to withdraw from Korea . . . we will not move one step beyond our age-old national boundary line without your request . . ."<sup>60</sup>

Furthermore, the South Korean Government supported mass rallies against the armistice in several principal cities in Korea. The United States Government worried about possible unilateral action, such as the withdrawal of South Korean forces from the United Nations Command or military use of South Korean forces.<sup>61</sup> In his answer to President Rhee, President Eisenhower also expressed his firm determination on April 23: ". . . the action taken by the United Nations in Korea was to assist your valiant country in repelling the armed attack directed against it, initially by the North Korean regime and subsequently by the Chinese Communists. This has successfully been accomplished . . . The United States and the United Nations have consistently supported the unification of Korea under conditions which would assure its freedom and independence. Neither the United States nor the United Nations has ever committed itself to re-

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59. *FRUS*, *supra* note 40, p. 897.

60. *Ibid.*, pp. 902-903.

61. *Ibid.*, p. 906.

sort to war to achieve this objective . . .”<sup>62</sup>

On April 24, 1953, South Korean Ambassador Yang You-Chan handed an Aide-Memoire from his Government to the United States Department of State, informing the President that President Rhee was preparing to withdraw South Korean forces from the United Nations Command when and if the United Nations would conclude any agreement with the Communist aggressors, allowing Chinese Communists to remain south of the Yalu River after a cease-fire agreement. The Aid-Memoire also said that South Korean forces, in this eventuality, would have to fight it out alone, either to win or lose, if necessary, but in either event, with honor as free men.<sup>63</sup>

After receiving this Aide-Memoire, the United States Government was very embarrassed. The United Nations Command prepared a contingency plan, if necessary, to replace President Rhee. Concurrently, however, the United Nations Command tried to clarify the conditions and timing under which South Korean forces might be withdrawn from the United Nations Command. In his classified telegram to the Chief of Staff of the United States Army on April 26, 1953, United Nations Commander Clark explained in detail his contingency plan. According to this plan, the United Nations Command would carry out drastic actions if one of the following three conditions would be fulfilled: (1) if the South Korean troops were not responsive to the United Nations Command directives; (2) if the South Korean Government and military units, through official announcement, public statements and other means, indicated a refusal to carry out the United Nations Command directives and manifested a determination to proceed along an independent course of action; (3) if the South Korean Government, military units or people were overtly hostile to the United Nations Command troops. The drastic actions covered several steps, from the control and limitation of supplies available to the South Korean forces, to the establishment of an interim government in the event of the breakdown of South Korean Government administration. The latter case contemplated, as an initial step of placing President Rhee in custody.<sup>64</sup>

Subsequently, Commander Clark met with President Rhee and was informed that President Rhee considered withdrawing South Korean forces from the United Nations Command as a last resort, and that he would take such an action only after thorough discussion with

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62. Dwight D. Eisenhower, *The White House Years: Mandate for Change, 1953-1956*, New York: Doubleday & Co., 1963, pp. 185186.

63. *FRUS*, *supra* note 40, p. 935.

64. *Ibid.*, pp. 940-943.

the United Nations Command.<sup>65</sup>

Due, perhaps, to this position of the South Korean Government, the United Nations Command had not discussed in advance the contents of armistice negotiations. Considering that South Korea was the host country for this event, the United Nations Command's attitude was not justified. From time to time, the Korean Member of the United Nations Command delegation to the armistice talks learned the contents of the negotiations in advance and informed their Government of them. After being informed, the South Korean government obstructed the armistice talks. For this reason, the United Nations Command tried to keep the Korean Government informed of current developments in the armistice negotiations and to discuss principal problems with the South Korean Government.<sup>66</sup>

President Rhee preferred the simultaneous withdrawal of both the Chinese Communists and the United Nations forces from Korea to the prospect of Chinese forces remaining indefinitely. But he adhered to the following conditions: (1) a Korean-American mutual defense treaty; (2) a buffer zone on the other side of the Korean boundary; (3) the continued naval blockade around the Korean coast and air defense until peace in East Asia would be firmly established; and (4) United States' aid to strengthen South Korean forces, and so on.<sup>67</sup>

Faced with the determination of the United States Government, the South Korean Government became more realistic and changed its position. South Korea continued to insist on the release of Korean non-repatriate prisoners of war and demanded the withdrawal of Chinese Communists with a guarantee against their reintervention. South Korea also asked the United States to strengthen South Korean forces, and to conclude a mutual defense treaty and increase economic aid. At the same time President Rhee asked the Commander-in-Chief of the United Nations Command to increase South Korean participation in the armistice talks.

As to the withdrawal of the Chinese Communists, the Commander-in-Chief of the United Nations Command tried to make President Rhee understand that this subject should be addressed at a political conference and not in the military armistice. In order to increase South Korean participation in the armistice talks, he promised to increase the number of administrative assistants for the South Korean delegation. The United States authorized the Commander-in-

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65. *Ibid.*, pp. 947-950.

66. *Ibid.*, pp. 955-956.

67. *Ibid.*, pp. 1007-1010.

Chief of the United Nations Command to activate additional South Korean divisions from the sixteen already activated to a total of twenty. They also agreed to some increase of personnel in the South Korean Marine Corps, Navy and Air Force.<sup>68</sup> However, the United States Government was reluctant to commit itself to a mutual defense treaty. Instead, the United States considered a comprehensive agreement on military assistance and other related matters.<sup>69</sup> In addition, the United States emphasized the so-called "Greater Sanction Statement," which was to be issued by the United States and the other Allied Nations immediately upon conclusion of the armistice agreement. According to the Statement, in the event of an armed attack against South Korea, the sixteen nations should again be united to resist it, and, furthermore, they would not confine the hostilities within Korea.<sup>70</sup> As to Korean non-repatriate prisoners of war, the United States tended to agree with the South Korean position, but the other Allied Nations insisted that the United Nations Command's position should be as close as possible to the Indian initiated Resolution of the United Nations General Assembly, December 3, 1952.<sup>71</sup>

The United States Government made it clear to President Rhee that it would take all necessary measures to ensure the security of the United Nations forces in the event that South Korea took unilateral military action and withdrew its forces from the United Nations Command.<sup>72</sup> In this way, the United States tried to ensure that South Korea would refrain from opposition and agitation against the armistice negotiations. The United States also persuaded the South Korean Government to use its influence to restrain all strata of South Korean society from agitating against the armistice negotiations. They also tried to ensure that South Korea would cooperate fully in implementing the armistice agreement, and that South Korean forces would remain under the operational control of the Commander-in-Chief of the United Nations Command until the governments of the United States and South Korea mutually agreed it was no longer necessary. The United States Government also hoped that President Rhee would make a public declaration that the South Korean Government would fully cooperate with the United States and the United Nations.<sup>73</sup>

However, South Korea was determined to maintain its position

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68. *Ibid.*, pp. 1010-1017.

69. *Ibid.*, p. 1030.

70. *Ibid.*, pp. 14, 1031.

71. *Ibid.*, p. 1047.

72. *Ibid.*, p. 1032.

73. *Ibid.*, p. 1088.



on the withdrawal of the Chinese Communists and the release of the non-repatriate Korean prisoners of war.<sup>74</sup> President Rhee refused to give the assurances that the United States Government had requested. In his letter to President Eisenhower on May 30, 1953, President Rhee once again confirmed his initial position. He was extremely worried about the possible continued presence of the Chinese forces in Korea after the armistice. He stated:

. . . [W]e are fearfully aware . . . that to accept any armistice arrangement which would allow the Chinese Communists to remain in Korea would mean to the Korean nation, in terms of eventualities, an acceptance of a death sentence without protest. It is a hard thing for a nation to do. Furthermore, even if I personally agree to such an arrangement, it will not help the matter very much, as subsequent developments, I fear, will show.<sup>75</sup>

In the same letter, President Rhee put forth a South Korean proposal for the armistice. The main points of the proposal were the following: (1) a simultaneous withdrawal of both the Communist and United Nations forces from Korea; (2) a mutual defense treaty between the United States and South Korea; (3) the strengthening of South Korean forces; and (4) the United States air and naval forces' continuing support for South Korea. President Rhee's letter came to a significant conclusion:

Our first choice, if we are allowed to make it, is still to have our allies by our side to actively help us fight out our common issue. But, if that is no longer possible, we would rather wish to have the right of self-determination to decide the issue ourselves conclusively one way or the other. Anyway, it is beyond question that we cannot any longer survive a stalemate of division.

The United States continued to try to persuade South Korea, offering a mutual defense treaty and economic aid. The United States also prepared a contingency plan to replace President Rhee if necessary. This was the so-called "Plan Everready." This extreme step never, however, came to fruition.<sup>76</sup>

As the armistice negotiations approached their conclusion, concrete actions defined the South Korean attitude. As President Rhee

74. *Ibid.*, p. 1098.

75. *Ibid.*, pp. 1124-1126.

76. *Ibid.*, pp. 965, 1114-1119, 1122-1124, 1132, 1134, 1144, 1148, 1151.

mentioned in his letter to President Eisenhower, the South Korean Government insisted on proposing its own armistice terms. Further, the South Korean Government recalled its delegate to the armistice negotiations, the plenary sessions of which it had been boycotting since May 15, 1953, on June 7, 1953.<sup>77</sup> Finally, President Rhee warned the United States that South Korea would fight on, even if it meant suicide.<sup>78</sup>

In spite of the stubborn opposition of South Korea to the armistice terms, the United Nations Command and the Communist side signed an agreement on the terms of prisoners of war solution on June 8, 1953.<sup>79</sup> The United Nations Command was fully alert to possible problems that would have been created by South Korea.<sup>80</sup>

Then, at dawn on June 18, 1953, a surprising event occurred. More than 25,000 anti-communist Korean prisoners of war escaped from the prisoner of war camps located in South Korea. Undoubtedly, they escaped with the help of South Korean guards, who had received instructions from their government for the release of prisoners of war. This incident resulted in a temporary suspension of work on the final details of the armistice.<sup>81</sup> The United States Government and the United Nations Command immediately protested the action taken by the South Korean Government. President Eisenhower warned President Rhee that unless he accepted the authority of the United Nations Command, another arrangement would be necessary.<sup>82</sup> At the same time the United Nations Command informed the Communist side of this incident, blaming the South Korean Government. The Command explained that in spite of its best efforts to recapture as many escapees as possible, there was little hope of success because they had already been sheltered by Korean civilians.<sup>83</sup> Among the 35,000 non-repatriate anti-communist prisoners of war, only 8,600 remained after this mass escape.<sup>84</sup>

After the incident, President Rhee made his position clear in a public statement on June 18, 1953. According to this Statement, the

77. *Ibid.*, p. 1148.

78. *Ibid.*, p. 1150.

79. U.S. Dept. of State Bulletin (June 22, 1953), pp. 866-868.

80. *FRUS*, *supra* note 40, pt. 2, pp. 1152-1154.

81. Higgins, *supra* note 41, p. 289; *FRUS*, *supra* note 80, pp. 1196-1197; Mark W. Clark, *From the Danube to the Yalu*, New York: Harper & Brothers, 1954, pp. 279-282; Hermes, *supra* note 36, pp. 451-452.

82. U.S. Dept. of State Bulletin (June 29, 1953), p. 907; Eisenhower, *supra* note 62, pp. 185-186.

83. U.S. Dept. of State, *supra* note 82, pp. 905-908; Higgins, *supra* note 38, p. 289.

84. *FRUS*, *supra* note 80, p. 1233.

anti-communist Korean prisoners of war should have been released long before, in accordance with the Geneva Convention and human rights principles. Since international complications hampered the release of the prisoners despite the sympathy of most of the United Nations authorities, President Rhee said he had ordered the release of the anti-communist Korean prisoners.<sup>85</sup>

In his letter dated June 18 to General Clark, President Rhee repeated his position and added that the South Korean Army would not draw back 2 kilometers from the front line in accordance with the armistice agreement. He also implied that South Korean forces might be withdrawn from the United Nations Command.<sup>86</sup>

Facing such stubborn opposition from South Korea, and outraged by the South Korean attitude, the United States Government considered withdrawing all its troops from Korea. At the National Security Council Meeting on June 18, 1953, President Eisenhower suggested that if President Rhee continued in his course, he would inform him that the United States would withdraw its troops.<sup>87</sup> On the other hand, the United States Government hoped and was prepared to encourage, if necessary, that South Korean forces would take action to replace the South Korean Government.<sup>88</sup> Before doing so, the United States Government tried every effort to persuade President Rhee to alter his position, proposing a mutual defense treaty, U.S. \$300 million in economic aid and cooperation in achieving reunification through a political conference following the conclusion of an armistice. The United States Government prepared a reconstruction plan for the destroyed South Korean economy which would support South Korean post-war security. This was the Tasca Report. This Report was submitted to President Eisenhower on June 15, 1953. It proposed more than \$1 billion in aid to South Korea during the three years following the armistice.<sup>89</sup>

In order to persuade the South Korean Government to accept the armistice terms of the United Nations Command, the United States sent Assistant Secretary of State for Far Eastern Affairs Walter S. Robertson to South Korea. He was accompanied by the Chief of Staff, General Collins, and several other high ranking officials.<sup>90</sup> He deliv-

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85. *Ibid.*, p. 1199.

86. *Ibid.*, pp. 1197-1198.

87. *Ibid.*, pp. 1200-1202.

88. *Ibid.*, pp. 1270-1272, 1287.

89. *Ibid.*, pp. 1245-1265.

90. Clark, *supra* note 81, p. 285; *FRUS*, *supra* note 80, pp. 1265-1269.

ered the Aide-Memoire to President Rhee on June 27, 1953, explaining the United States position:

1. The South Korean Government will direct its armed forces to carry out the orders of the United Nations Command in maintaining the security of the remaining Korean non-repatriate prisoners of war who are now in the custody of the United Nations Command. The South Korean Government will cooperate with the United Nations Command in moving those prisoners of war to the NNRC (Neutral Nations Repatriation Commission) in accordance with agreed terms of reference.

2. The United States Government cannot impose any time limit upon any other governments which may participate in the political conference following the armistice, but if at the end of 90 days after the opening of the political conference it becomes clear that the conference is not making progress and is being exploited by the Communists to infiltrate and propagandize or otherwise embarrass South Korea, the United States Government would be prepared to act in concert with South Korea, retiring jointly with South Korea from the political conference.

3. After signing the armistice agreement, the United States Government would be willing to have a high-level conference with President Rhee to confer on all aspects of common objectives at the political conference to follow within 90 days after the effective date of the armistice.

4. The United States Government is prepared to provide economic and military assistance to South Korea.

5. The United States Government is prepared immediately to begin negotiations with South Korea looking towards conclusion of a mutual defense treaty.

6. The above assurances from the Government of the United States are dependent upon agreement of the South Korean Government:

- a. to accept the authority of the United Nations Command to conduct and conclude the hostilities;
- b. to support the armistice entered into between the Commander-in-Chief of the United Nations Command and the commanders of the Communist forces;
- c. South Korean forces will remain under the operational control of the Commander-in-Chief of the United

Nations Command until Governments of the United States and South Korea mutually agree that such arrangements are no longer necessary.<sup>91</sup>

President Rhee was not, however, ready to give up easily his determination to have a unified Korea under his terms, even if he was less insistent. He agreed not to obstruct the armistice, provided the United States pledged to support South Korea, if fighting resumed due to a failure of the political conference, until Korean unification would be achieved.<sup>92</sup> However, with the patient persuasion of Special Envoy Robertson, President Rhee conceded most of his positions. Thus, the United States proposed a draft-treaty of mutual defense in accordance with the request of the South Korean Government.<sup>93</sup> They agreed to move all the anti-communist prisoners of war from their location to the demilitarized zone, where they would then be turned over to the Neutral Nations Repatriation Commission in order to eliminate the need of bringing Indian armed forces into South Korea since South Korea had opposed the presence of Indian soldiers on South Korean territory.<sup>94</sup> Finally, President Rhee formally agreed not to obstruct the armistice.<sup>95</sup>

President Rhee and Special Envoy Robertson issued a joint public statement on June 11, 1953:

During the past two weeks we have had many frank and cordial exchanges of views which have emphasized the deep friendship existing between the Republic of Korea and the United States and have gone far toward achieving mutual understanding of the troubled questions which have arisen in connection with arrangements for an armistice, the exchange of prisoners, and the forthcoming political conference. These discussions have cemented our determination to continue and extend in the post-armistice period the close collaboration for our common objectives, . . . .<sup>96</sup>

This joint statement clearly expressed the South Korean Government's agreement to the conclusion of the armistice, a very important fact in terms of international law. This internal agreement between

91. *Ibid.*, pp. 1279-1280.

92. *Ibid.*, pp. 1292-1295.

93. "U.S. Draft of Mutual Defense Treaty," *FRUS*, *supra* note 80, pp. 1339-1340; "Republic of Korea Draft," *supra* note 80, pp. 1359-1361.

94. *FRUS*, *supra* note 80, pp. 1351-1354.

95. *Ibid.*, p. 1362.

96. U.S. Dept. of State Bulletin (July 20, 1953), pp. 72-73.

the members of one group of belligerents (the coalition army) justifies the representative authority of the commander of the coalition army for the conclusion of an armistice. As a result, if the commander signs an armistice agreement, all the members of the coalition army become parties to the armistice agreement. This will be further explained in Section 3. President Rhee also expressed his agreement not to obstruct the armistice in his letter to President Eisenhower on June 11, 1953: “. . . . As you know, I have decided not to obstruct, in any manner, the implementation of the terms (of the armistice), in deference to your requests . . . .”<sup>97</sup>

This agreement satisfied both the United Nations Command and the Communists. The latter had required the assurance that the South Korean Government would abide by all the provisions of the armistice for the entire period when the armistice would be effective.<sup>98</sup> The United Nations Command assured the Communist side that the United Nations Command, including South Korean forces, would carry out the terms of armistice. The United Nations Command emphasized that such assurances had been received from the South Korean Government.<sup>99</sup>

At 10:12 a.m., Seoul Time, on June 27, 1953, Generals Harrison and Nam Il signed, *ad referendum*, the armistice documents at Panmunjom. The commanders of both sides formally signed the armistice agreement at their respective headquarters. At the United Nations Command's headquarters in Munsan-Ri, the Commander-in-Chief of the United Nations Command, General Clark, in the presence of a representative of South Korea, signed the armistice agreement on the same day, under the flags of the United Nations, the United States, and South Korea. The fighting stopped on the same day,<sup>100</sup> and the Korean Armistice Agreement entered into force.<sup>101</sup>

## **Section B. The Political Conference In Accordance With Article 4 Of The Korean Armistice Agreement**

### *1. Negotiations at Panmunjom*

After the conclusion of the Korean Armistice Agreement, the two sides attempted to convene a political conference for the solution

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97. *FRUS*, *supra* note 80, pp. 1368-1369.

98. *Ibid.*, pp. 1365, 1368, 1380.

99. *Ibid.*, p. 1382.

100. *Hermes*, *supra* note 36, pp. 489-491.

101. “Korean Armistice Agreement,” U.S. Dept. of State Bulletin (August 3, 1953), pp. 132-140; see also Appendix I.

of the Korean division, pursuant to Article 4 of the Armistice Agreement. Article 4, paragraph 60 provides:

Within three months after the Armistice Agreement is signed and becomes effective, a political conference of a higher level of both sides be held by representatives appointed respectively to settle through negotiation the questions of the withdrawal of all foreign forces from Korea, the peaceful settlement of the Korean question . . .

First, the seventh session of the United Nations General Assembly reconvened to discuss a political conference concerning the Korean question. Several proposals were submitted for this. The member states contributing armed forces in Korea proposed a joint draft-resolution providing that they should participate, with the Republic of Korea, in the political conference. The Soviet Union submitted a draft-resolution recommending that several Arab-Asian countries and Soviet bloc countries should be included in the political conference. Australia and New Zealand proposed a joint draft-resolution recommending that the Soviet Union should participate in the political conference if the other side desired it. Australia, New Zealand, Canada and the United Kingdom also submitted a joint draft-resolution recommending that India should participate in the political conference.<sup>102</sup> However, the United States maintained that the Korean Political Conference should represent the two belligerent sides as delineated by Paragraph 60 of the Korean Armistice Agreement, and that it should not be a round-table conference involving participation of neutral nations. The South Korean Government strongly opposed India's participation in this conference.<sup>103</sup>

The United Nations General Assembly finally adopted a resolution on August 28, 1953, that was in line with the joint proposal of the member states contributing armed forces to the United Nations Command, in addition to the Soviet Union's participation. According to this Resolution, the member states contributing armed forces under the Unified Command in Korea would participate in the conference, together with the Republic of Korea (South Korea). The participating governments were to act independently at the conference with full freedom of action. The United States Government, after consultation with the other participating countries, was to arrange with the Communist side for the political conference to be held not later than October 28, 1953 at a place and on a date satisfactory to both sides.

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102. *FRUS*, *supra* note 80, p. 1498; Goodrich, *supra* note 5, p. 203.

103. *FRUS*, *supra* note 80, pp. 1492, 1497-1501.

Finally, the Secretary General of the United Nations was, if agreeable to both sides, to provide the political conference with such services and facilities as deemed necessary. The Soviet Union could participate in the conference provided the other side desired it.<sup>104</sup>

The Secretary General of the United Nations informed the Communist side of the United Nations Resolution on August 28, but the Communist side insisted on a round-table conference with the participation of so-called neutral nations. The Communist side even considered the Soviet Union as a neutral nation.<sup>105</sup>

The United States Government appointed Arthur H. Dean as Deputy to the Secretary of State in preparation for the political conference on September 15, 1953. He arrived in Seoul on October 24, 1953 for preliminary negotiations with the Communist side concerning the preparation of the political conference. At the same time, he was to persuade President Rhee not to proceed with unilateral actions in contravention of the Korean Armistice Agreement.<sup>106</sup> President Rhee, in fact, distrusted the idea of political conference with the Communists. He believed the only one way to achieve a free independent and unified Korea was by force.<sup>107</sup>

The United Nations Command's Representative Dean began the negotiations with North Korean Ki Sok-Pok and Chinese Huang Hua on October 26 at Panmunjom.<sup>108</sup> However, the Communist side proposed what was perceived as an unacceptable table agenda, insisting on the round-table conference with the participation of so-called neutral nations. Meanwhile the United Nations Command made several proposals aimed at by passing the problem of agenda in order to get on with more substantive discussions.<sup>109</sup> Considering the long-term difficulties in the armistice negotiations under the heavy pressure of continued casualties, it was beyond question that the Communist side would not easily concede their position in the political conference. The preliminary talks at Panmunjom dragged on until middle of December without any solution to the basic differences between the two sides over the conference participants. The Communist side demanded that the Soviet Union be designated as a neutral nation. South Korea firmly opposed India's participation in the conference.

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104. U.N.G.A. Res. 711 (VII) (28 August 1953); U.N. Resolutions, *supra* note 1, pp. 175-178; U.S. Dept. of State Bulletin (September 14, 1953), pp. 361-366.

105. Goodrich, *supra* note 5, p. 204.

106. *FRUS*, *supra* note 80, pp. 1519, 1558-1561.

107. *Ibid.*, p. 1560.

108. *Ibid.*, p. 1578.

109. *Ibid.*, p. 1578.



Thus the basic differences on the role of neutral nations hampered the opening of the conference. Under such conditions, the United Nations Command proposed on December 8, 1953 a package proposal maintaining a bilateral conference (with participation of the Soviet Union as a voting member on the Communist side) and involving limited participation of neutral nations. But the Communist side rejected this. Thus, the negotiations were completely severed without solution on December 12, 1953. The final meeting devolved to an exchange of rude charges.<sup>110</sup>

After this, only the liaison meetings continued for one month without any positive result. And even these meetings became deadlocked after the release of the 22,000 anti-communist prisoners of war following the expiration of the detention term of the Neutral Nations Repatriation Commission (NNRC). The Communists, having lost face, intensified their insults and groundless charges against the United Nations Command. This resulted in the ultimate deadlock of the meeting.<sup>111</sup>

## 2. *The Geneva Political Conference*

At this juncture, the third quadripartite meeting of foreign ministers (France, the Soviet Union, the United Kingdom and the United States) convened in Berlin from January 15 to February 18, 1954. On January 27, Soviet Foreign Minister Molotov stated that the failure of the discussions at Panmunjom was due to the fact that the decision to hold the conference was made in spite of objections put forth by the Soviet Union and without participation of Communist China and North Korea. This implied that the Communist side had decided to avoid further discussion at Panmunjom.<sup>112</sup>

On February 18, 1954, the Four Foreign Ministers Meeting in Berlin proposed the Geneva Conference on the Korean question to work toward the establishment, by peaceful means, of a united and independent Korea, reducing international tension, and restoring peace in other parts of Asia. Representatives of the United States, France, the United Kingdom, the Union of Soviet Socialist Republics, the People's Republic of China, the Republic of Korea, the Democratic People's Republic of Korea (North Korea), and other contributing countries who desired to attend were to meet in Geneva on April 26 for the purpose of reaching a peaceful settlement of the Korean

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110. *Ibid.*, p. 1656; U.S. Dept. of State Bulletin (December 21, 1953), pp. 877-878.

111. *FRUS*, *supra* note 80, pp. 1725-1733.

112. *Ibid.* p. 1741.

question.<sup>113</sup>

There was no provision for neutral nations' participation in this conference. Therefore, this proposal was more preferable to the United States and South Korea than that proposed by the United Nations on August 28, 1953. Discussion on the restoration of peace in Indochina was also included on the agenda.

South Korea's attitude toward the Geneva Conference was pessimistic from the first. At a press conference, President Rhee stated that South Korea would give the United States and the United Nations a chance at attaining a peaceful solution of the Korean question, but that the Communists would never yield anything in negotiations. He also emphasized that force would be the only instrument that the Communists would understand.<sup>114</sup>

The United States Government, in consultation with South Korea and other Allied Nations, prepared the basic position paper for the Geneva Conference. This position paper analyzed the expected positions of the participant countries and presented the U.S. position. This paper also offered three specific plans for Korean unification.<sup>115</sup>

According to the position paper, the general purpose of the United States at the Geneva Conference was to seek an agreement to a plan for the reunification of Korea which would establish a non-Communist, independent and representative government constituted by independently supervised elections, and which would provide for the orderly, phased withdrawal of foreign troops. For this purpose, the United States established general principles concerning the negotiations at the conference:

1. Maintain a position of strength and stability in free Korea which will lessen South Korean fear of abandonment, and avoid actions which may weaken South Korean public morale;
2. Affirm that South Korea is the only sovereign, lawful government in Korea, and that it must not be equated with the North Korean regime;
3. Seek the unification within the constitutional framework of the South Korean State, and in keeping with the spirit and purposes of past United Nations resolutions;

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113. U.S. Dept. of State Bulletin (March 1, 1954), pp. 317-318.

114. *FRUS* (1952-54), vol. XVI (The Geneva Conference), Washington, D.C.: GPO, 1981, pp. 24-25.

115. *Ibid.*, pp. 131-139.

4. Maintain a united front at the Conference among the Allies, the United States and South Korea;
5. Maintain some tactical flexibility, while developing a full and common understanding of the basic principles regarding unification and withdrawal of foreign troops.
6. Acknowledge that the United States should assume leadership on the Allied side in close partnership, if possible, with South Korea, in view of the heavy sacrifices and commitments made by both the United States and South Korea to repel Communist aggression in Korea;
7. Determine whether the Communists will (a) insist on controlling parts of or all of Korea, or (b) renounce any special position in Korea and agree to set up a unified Korea for free Koreans. If the former is the case, recognize that no formula can succeed, and unmask Communist aggressive intentions.

According to the position paper, the expected positions of South Korea were to: (1) oppose any unification plan violating South Korean sovereignty and any proposals for a neutralized Korea or a coalition government placing the North Korean regime on an equal basis with the Republic of Korea; (2) propose the withdrawal of all Chinese forces from Korea, the extension of South Korean sovereignty over North Korea, and elections held by South Korea in North Korea to fill the seats in the South Korean National Assembly available for representatives from the North; and (3) argue against simultaneous elections in South and North Korea, but possibly acquiesce in such elections provided that South Korean sovereignty was preserved.

Meanwhile the position paper expected that other Allied Nations would want a fresh start in Korea to form a new government and consequently oppose the incorporation of North Korea into South Korea without some new constitutional act.

The position paper also analyzed the expected positions of the Communist side, which were to: (1) do their utmost to broaden discussion on deceptive lines, such as a general Far East security pact; (2) oppose any plans that would weaken their control in North Korea; and (3) propose (a) a withdrawal of all armed foreign troops in Korea so that the "Korean themselves" may bring about their own unification, (b) elaborate measures for the establishment of a provisional government over all Korea designed to give the Communists predominance in Korea, (c) national elections to take place at some indefinite time after the establishment of this provisional government

and to be carried out "by the Koreans themselves" without any international supervision.

In the light of the situation, the United States proposed to: (1) adopt a South Korean constitutional structure and preserve South Korean sovereignty; and (2) keep with the main points of past United Nations resolutions concerning Korean unification — that is, elections should be held on the basis of adult suffrage and by secret ballot and the number of representatives should be proportionate to population. Such elections should be observed by an international commission with freedom to administrate throughout Korea.

Within the framework of its basic stance, the United States prepared three possible plans for the Korean unification. Plan A was the simple incorporation of North Korea into the existing constitutional framework of South Korea. For this purpose, Plan A included free elections to be held only in North Korea to complete processes carried out under the United Nations supervision in 1948 in the area south of the 38th Parallel. According to this plan, North Korea was to supervise elections under the United Nations Commission for the Unification and Rehabilitation of Korea (UNCURK), in a manner similar to the supervision of the United Nations Temporary Commission of 1948 in South Korea, with regard to conforming North Korean electoral conditions to the principles of the General Assembly resolutions of 1947 and 1950-53 concerning the Korean unification. The United States commented that Plan A would meet the requirement for preserving the South Korean constitutional system. Therefore, South Korea would endorse it, while the Communists would reject it. Other Allied Nations would only reluctantly support this Plan because it called for elections in North Korea only.

Plan B was a modification of Plan A. Under Plan B, free elections would be held throughout Korea under the South Korean Constitution. UNCURK was responsible for supervising the elections. The National Assembly-elect would consider an amendment of the South Korean Constitution to provide a form of constitutional government satisfactory to all Korean people. The United States commented that Plan B was more likely to obtain the approval of both South Korea and other Allied Nations. Plan B also reflected the spirit and the provision of the General Assembly resolutions concerning the Korean unification, but the Communists were expected to oppose it.

Plan C was to hold all Korean elections for the constituent assembly and to form new national government. For this purpose, a new commission to supervise elections should be formed and this commission should establish the conditions for free elections throughout Ko-

rea. In addition, international assurances on the territorial integrity and political independence of a reunified Korea were to be given. The United States commented that Plan C would obtain a favorable reaction of other Allied nations, while South Korea would strongly oppose it. The Communists probably would not accept this Plan unless they considered it necessary as a precedent for Indo-China.

The United States planned that at first Plan A would be proposed through South Korea, and that after a deadlock they would introduce Plan B with full Allied backing. According to the position paper, the United States would keep Plan C in reserve possibly for consideration if the Communists showed signs of desiring seriously to negotiate the peaceful settlement of the Korean question that would provide for the independent and unification of a free Korea.

After some difficult negotiations between the United States and South Korea, the Geneva Conference was held on April 26, 1954 according to the schedule agreed upon by the Berlin Communiqué. Since President Rhee was pessimistic about the Conference with the Communists, he was very reluctant to participate in the Conference.

The Conference reached an impasse from the first due to the differences between the two sides. South Korean Foreign Minister Pyun Yung-Tai made an opening statement on April 27, 1954. He emphasized that opening North Korea to free elections under the supervision of the United Nations would be the only way to complete the United Nations task in a manner compatible with the United Nations resolutions.<sup>116</sup> His statement was, on the whole, in accordance with the above mentioned Plan A.

North Korean Foreign Minister Nam Il made a counter proposal on the same day. After attacking the United Nations collective action, the United States and South Korea, he proposed: (1) the withdrawal of all foreign troops within six months, and (2) all Korean elections prepared by an all-Korea Commission, the members of which were to be selected by each of the National Assemblies of South and North Korea, respectively. According to this proposal, this all-Korea Commission would facilitate contact between South and North Korea.<sup>117</sup>

On April 28, the United States Secretary of State Dulles supported the South Korean position, explaining that in accordance with the United Nations General Assembly Resolution of October 7, 1950, free elections should be held under the supervision in North Korea

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116. U.S. Dept. of State, *The Korean Problem at the Geneva Conference April 16-June 15, 1954*, Washington: GPO, 1954, pp. 34-39.

117. *Ibid.*, pp. 39-40.

where this kind of elections had not yet been held.<sup>118</sup>

The Communist China's Foreign Minister Chou En-lai repeated the North Korean proposal, attacking the United Nations, the United States and South Korea.<sup>119</sup> The Soviet Union's statement on April 29 followed the same line as the North Korean statement, focusing on the withdrawal of foreign troops.<sup>120</sup> In sum, the Communist side stressed the withdrawal of foreign forces, and rejected the authority of the United Nations on the grounds that the United Nations was a belligerent party in the Korean war, and that Communist China and North Korea were excluded from the United Nations.<sup>121</sup>

Since the Communist side rejected Plan A, the United States prepared a new proposal along the lines of Plan B. The South Korean Government strongly opposed Plan B, however, threatening the withdrawal of its delegation from the Conference.<sup>122</sup> After protracted negotiations among the Allied Nations, South Korea accepted free elections throughout all of South and North Korea but also continued to insist on the withdrawal of Chinese forces before these elections. In spite of some complaints from some Allied Nations, particularly the Commonwealth countries, South Korean Foreign Minister Pyun Yung-Tai issued a fourteen-point proposal, somewhat along the line Plan B, on May 22, 1954.<sup>123</sup>

118. *Ibid.*, pp. 45-53.

119. *FRUS*, *supra* note 114, p. 159; *British White Paper: Documents Relating to the Discussion of Korea and Indo-China at the Geneva Conference* (April 26-June 15, 1954), No. 9186, London, 1954, pp. 14-20.

120. *FRUS*, *supra* note 114, p. 159.

121. *Ibid.*, pp. 176-177.

122. *Ibid.*, pp. 205-207, 213-217, 226-228, 319-321.

123. The contents are summarized as follows:

1. With view to establishing united, independent and democratic Korea, free elections shall be carried out under the United Nations supervision in accordance with the previous United Nations resolutions concerning Korean unification;
2. Free elections shall be held in North Korea and in South Korea in accordance with the constitutional processes of South Korea;
3. Elections shall be held within six months from adoption of this proposal;
4. Local authorities shall aid United Nations personnel connected with election supervision in facilitating free elections;
5. The rights of candidates shall be recognized and protected;
6. Elections shall be based on the principle of universal adult suffrage and conducted by secret ballot;
7. Representation in a unified Korean legislature shall be directly proportionate to the population patterns of the entire Korean peninsula;
8. A census shall be taken under U.N. supervision to determine proportionate representation;
9. The legislature shall convene in Seoul immediately following elections;
10. The following questions shall be addressed by the new legislature:

In sum, the main contents of the South Korean proposal was the annexation of North Korea by South Korea, on the one hand, and fear and distrust of the North Korean regime on the other hand. The distrust was understandable and partially justified by the past behavior of North Korea. From a practical viewpoint, however, if there was any chance of success for negotiations leading to the peaceful unification of Korea, the South Korean leaders might have been more flexible and confident, even though there was little chance of success in negotiations with the Communists at that time. Further, blame for the failure of these negotiations should not be borne by the South Korean leaders since an analysis of the negotiations before and after the Korean War has pointed to the Communists as the frustrating side. However, considering the fact that the losing chance might have irrevocably damaged the Korean people as a whole, it might be better if the Korean leaders had not exhausted all their efforts in search of some positive result.

The Communist side rejected the South Korean proposal and continued to insist on their position concerning the withdrawal of foreign troops, and the denial of authority of the United Nations and its supervision for free elections<sup>124</sup> As a result, the Geneva Conference remained deadlocked. Thus, the Allied Nations were convinced that a solution was not forthcoming and thus resolved to terminate the conference.<sup>125</sup> It seemed that the Communist side also did not foresee an agreeable solution stemming from the conference. The Soviet Union's delegate, Molotov, privately expressed such an opinion to the United States Delegate Smith, stating that political settlement in Korea would come about possibly as a result of some years of living together, and that a period of living together and some form of commercial or other contact over an extended period might reduce the bitterness and permit some political solution.<sup>126</sup>

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(a) the election of a new president for a unified Korea, (b) the amendment of the existing South Korean constitution, and (c) disarmament;

11. The existing constitution of South Korea shall remain effective until it is amended by the new legislature;

12. Chinese troops shall completely withdraw from North Korea one month prior to the election date;

13. Withdrawal of the United Nations forces from South Korea may begin before elections but must not be completed until Korea is unified;

14. The integrity and independence of a unified, independent and democratic Korea shall be guaranteed by the United Nations.

See *ibid.*, at pp. 278-79, 313.

124. *Ibid.*, pp. 348-349.

125. *Ibid.*, pp. 314-315.

126. *Ibid.*, pp. 315-316.

However, the Communist side continued to put forth unacceptable proposals, probably for the purpose of internal propaganda. They pretended to outline a rational way for the conference to reach an agreement. For example, Soviet Foreign Minister Molotov outlined some principles on which he said an agreement could be reached. He submitted a draft-resolution along the lines of these principles on June 5, 1954.<sup>127</sup>

The United States' delegate, Smith, criticized the North Korean proposal supporting an all-Korean Commission to prepare for elections in Korea. He pointed out that North Korea would have equal representation on such a commission, despite the great disparity in the size of populations between South and North Korea (estimated to be 22-24 million in South Korea and nine million in North Korea). North Korea, then, would have a built-in veto on any proposal for a genuine free election. He emphasized that genuine free elections in Korea could be held only under the supervision of the United Nations. He also criticized Chou En-lai's proposal for a Neutral Nations Supervisory Commission to supervise elections in Korea. Smith cited the example of the Neutral Nations Supervisory Commission agreement over the Korean Armistice Agreement. Smith said that this Commission had been a dismal failure due to Communist trickery and intransigence, denying Chou's claim that the Commission played a successful role in the Korean Armistice supervision.<sup>128</sup>

On the other hand, North Korean Foreign Minister Nam Il said the Geneva Conference should reach some agreement leading to peace in Korea. He charged South Korea with continuing to threaten resumption of hostilities. Then, he proposed a six-point proposal on June 15. The major objective of this proposal was of propagandistic value and a lobby for the withdrawal of the United Nations forces from South Korea.<sup>129</sup>

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127. The contents are summarized as follows:

- 1) Free elections shall be held by secret ballot throughout Korea within six months of the conclusion of the present agreement. Representation in the new legislature will be proportionate to population of Korea as a whole;
- 2) An all-Korean body shall be established to facilitate free elections;
- 3) All foreign forces shall withdraw from Korea before the elections;
- 4) An appropriate international commission shall be established to supervise the elections;
- 5) The United Nations shall assume responsibility for ensuring the settlement of the Korean unification question;

See *The Korean Problem at the Geneva Conference*, *supra* note 116, at pp. 143-49.

128. *Ibid.*, pp. 149-153; UN Press Release No. 3309 (November 23, 1959); ROK Ministry of Foreign Affairs, *Documents on Korea — US Relations 1943-1971*, Seoul 1971, p. 173.

129. The main points of his proposal were:



The Soviet Union and the United States were at odds over this statement. Soviet Foreign Minister Molotov supported the North Korean proposals and urged the participants to adopt the following declaration: "The States participating in the Geneva Conference have agreed that, pending the final settlement of the Korean problem . . . no action shall be taken which might constitute a threat to the maintenance of peace in Korea. . . ." <sup>130</sup> Delegate Smith, however, made a statement rejecting Molotov's proposal, with a reminder that an existing armistice agreement would be a formal definitive arrangement with more force than Molotov's declaration. <sup>131</sup>

The Geneva Political Conference ended in failure with the Sixteen Nations Declaration of June 15, 1954. Thailand's Delegate Prince Wan read the Declaration on behalf of sixteen nations. The Declaration outlined two fundamental principles: (1) the United Nations, under its Charter, is fully and rightfully empowered to take collective action to repel aggression, to restore peace and security, and to extend its good offices to seeking a peaceful settlement in Korea; and (2) in order to establish a unified, independent and democratic Korea, genuinely free elections should be held under the United Nations supervision, for representatives in the National Assembly, in which representation shall be in direct proportion to the indigenous population in Korea. <sup>132</sup> This Declaration concluded that the Allied Nations had earnestly and patiently searched for a solution of Korean unification in accordance with these fundamental principles, but the Communists rejected the authority and competence of the United Nations in Korea and refused to accept impartial and effective supervision of free elections.

On November 11, 1954, the Allied Nations submitted their report on the Geneva Conference on the Korean question to the ninth session

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1. To recommend the withdrawal from Korea of all foreign troops;
  2. To reduce within one year the strength of the troops of North and South Korea, establishing a limit for each side at 100,000 troops;
  3. To form a North-South commission to negotiate the cessation of hostilities;
  4. To recognize military treaties involving any part of Korea and another state as incompatible with peaceful reunification;
  5. To form an all-Korea Committee to establish and develop economic cultural relations between South and North Korea;
  6. To recognize the necessity of the United Nations to insure the peaceful development and unification of Korea. See *FRUS*, *supra* note 114, pp. 376-377.

130. *Ibid.*, pp. 377-378.

131. *Ibid.*, p. 379.

132. *The Korean Problem at the Geneva Conference*, *supra* note 113, pp. 381, 385-387; U.S. Department of State Bulletin (June 28, 1954), pp. 973-974; *Documents on Korea-US Relations*, *supra* note 125, pp. 149-150.

of the United Nations General Assembly. This report reiterated the points made in the Sixteen Nation Declaration, but also added that the Geneva Conference should be regarded as the political conference referred to in Article 4 of the Korean Armistice Agreement and in the United Nations General Assembly Resolution 711 (VII) of August 28, 1953. Finally, the report made it clear that the failure of the Geneva Conference did not prejudice the armistice in Korea.<sup>133</sup> The armistice remained in effect in accordance with Article 62 of the Armistice Agreement, which provides that:

The articles and paragraphs of this Armistice Agreement shall remain in effect until expressly superseded either by mutually acceptable amendments and additions or by provision in appropriate agreement for peaceful settlement at a political level between both sides.

The United Nations General Assembly approved the report on the Geneva Conference concerning the Korean question by adopting Resolution 811 (IX) on December 11, 1954.<sup>134</sup>

### Section C. Legal Problems Of The Korean Armistice Agreement

#### 1. *Special Character of an Armistice Agreement in General*

##### a. Definition

Under the traditional international law of war, an armistice agreement is usually defined as a bilateral agreement concluded between belligerents, which results in a provisional suspension of the conduct of an armed conflict. The term "armistice" originates from the Latin *arma* (arms) and *interstitium* (interval) and thus means literally the provisional suspension of armed hostilities.<sup>135</sup> The concrete rules of the law of war generally conform to this definition. For example, Article 36 of the Regulations annexed to the Hague Convention (IV) with respect to the Laws and the Customs of War on Land in 1907, provides that "an armistice suspends military operations by mutual agreement between the belligerent parties, and that if its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed

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133. U.N. Document A/2786 (December 11, 1954).

134. *Ibid.*, *FRUS*, *supra* note 114, pp. 393-394; *Resolutions Relating to Korea*, *supra* note 2, pp. 201-202.

135. M. Sibert, "L'Armistice," *Revue General du Droit International Public*, 3eme Serie, tome VII, Paris: 1933, p. 657; S. Levie, "Nature and Scope of the Armistice Agreement," *American Journal of International Law*, vol. 50, No. 4 (October 1956), p. 881.

upon, in accordance with the terms of the armistice." Article 135 of the 1863 Instructions for the Government of Armies of the United States in the Field prepared by Francis Lieber contains a similar concept.

Such an armistice may apply generally or locally. According to Article 37 of the Regulations annexed to the 1907 Hague Convention IV, "a general armistice suspends the military operations of the belligerent parties everywhere, while a local armistice suspends the operations only between certain factions of the belligerent armies and within a fixed radius."<sup>136</sup>

To determine the legal nature of the Korean Armistice Agreement, one must first clarify the concept of armistice, and distinguish it from similar concepts. First, an armistice is different from a suspension of arms. A suspension of arms is a military agreement the objective of which is concrete and unrelated to military operations or political purpose, and is only binding for a short duration. For example, two belligerent parties may agree to a suspension of arms in order to bury the dead.<sup>137</sup>

An armistice is also distinguishable from a traditional peace preliminary (*preliminaires de paix*). A peace preliminary is a military agreement which prepares the basis of future peace between two belligerent parties without suspending the armed conflict. It is a mutual promise to conclude a peace treaty.<sup>138</sup>

According to traditional terminology, an armistice agreement also differs from a treaty of peace. A treaty of peace resolves the causes of war themselves, while an armistice agreement merely suspends armed hostilities between the belligerent parties. An armistice agreement thus may or may not eventually result in the conclusion of a peace treaty.<sup>139</sup>

Confusion may also arise in the difference between an armistice agreement and a capitulation. Superficially speaking, a capitulation is very similar to an armistice. Yet where there is a capitulation, the winning party merely imposes its terms on the losing party, so there is no true agreement between the two sides.<sup>140</sup> Interestingly, recent

136. A. Roberts and R. Guelff, *Documents on the Laws of War*, London: Oxford University Press, 1982, p. 55.

137. *Dictionnaire de la Terminologie du Droit International*, Paris: Sirey, 1960, p. 59; Sibert, *supra* note 135, p. 657.

138. *Dictionnaire de la Terminologie*, *supra* note 137, p. 468.

139. R. Monaco, "Les Conventions entre Belligerents," *Recueil des Cours de l'Academie de Droit International de La Haye*, tome II, 1949, p. 323; Sibert, *supra* note 135, p. 664.

140. Monaco, *supra* note 139, pp. 314-317.

treaty practices illustrate mixture of the two concepts, capitulation and armistice. For example, after World War I, Marshal Foch identified capitulation as an armistice.<sup>141</sup>

In conclusion, the traditional concept of armistice is just a military agreement suspending armed hostilities without ending the war, while the war itself would be settled only by a peace treaty. This concept and function has, however, developed and consequently changed, particularly after World War II. An armistice is no longer merely a suspension of war. Now, belligerent parties give up their will of armed activities through an armistice. Thus, an armistice results in a *de facto* end of a war. This intention of ending a war is expressed, for example, in the concept of a demilitarized zone. A demilitarized zone is established in order to prevent recurring war between the opposing sides. In order to assure this result, a supervisory organ would be established. The Korean Armistice Agreement is a model case of such an arrangement.<sup>142</sup>

There is another element that illustrates this change in the concept of armistice. Belligerents rarely conclude peace treaty after the conclusion of an armistice agreement. While some cases presuppose the conclusion of a peace treaty after the armistice, the parties rarely conclude such treaties in reality. Perhaps the only one clear exception after World War II is the peace treaty between Israel and Egypt concluded in 1979.<sup>143</sup> Thus, it can be said there is a general tendency not to conclude a peace treaty after an armistice, and an armistice results in a *de facto* end of the war, through a long duration without a recurrence of war. Under such circumstances, the initial causes of the war usually remain without remedy. This effect of an armistice agreement may be the result of mutual intentions to maintain the status quo due to the inability of either side to change the situation. Thus, the armistice signifies the freeze of the status quo, which, after a long time, becomes a legal reality.

#### b. Special Character

An armistice agreement is a kind of treaty. It thus has the legal character of an international convention, and should fulfill most of the legal conditions as a treaty. An armistice agreement as a military agreement between two belligerent parties does, however, possess a

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141. Sibert, *supra* note 135, p. 664.

142. *Ibid.*, p. 665; Levie, *supra* note 135, p. 906; Lyou Byung-Hwa, *Le Commandement des Nations Unies en Coree et Ses Problemes Juridiques*, Seoul: 1980, p. 50.

143. U.S. Dept. of State, *Treaties in Force* (1984), Washington, D.C.: GPO, p. 48.

unique character. This special character stems from the special circumstances under which the armistice agreement was concluded and applied.

First of all, an armistice agreement is a bilateral treaty between belligerents. There are some cases in which several belligerents may be involved, perhaps making the armistice resemble a multi-lateral treaty. However, even if more than two nations are engaged in a war, the armistice agreement is always a bilateral treaty. No matter how many nations may be involved, those nations are divided into two opposing parties, so that the two opposing parties form one consensual bilateral engagement. Therefore, an armistice agreement is a bilateral agreement between two belligerents or two groups of belligerents.<sup>144</sup>

One may point out certain particularities with regard to the conclusion of an armistice agreement. For example, the principal organ of negotiations for conclusion of an armistice agreement is usually the military commander. Sometimes, the foreign minister or diplomats, who are the ordinary negotiating organs for an international treaty, engage in the negotiations of an armistice agreement. However, due to the special circumstances of an armistice agreement, the participation of military commander is necessary. Since a military commander is responsible for the direction of military operation, he might be also responsible for the conclusion of an armistice agreement which terminate such military operations.<sup>145</sup> This does not mean that the authority for the conclusion of an armistice agreement rests with the military commander. It is a recognized rule of law that the head of state must delegate his treaty-making power to negotiate and conclude a military armistice agreement to his military commander in accordance with the provisions of municipal law. The conclusion of an armistice agreement by a military commander without the authorization of the head of state or beyond the authorization delegated to him may give rise to complicated problems concerning the legal effects of such an armistice agreement. The legal problem of an unlawfully concluded armistice agreement is not *sui generis* to armistice agreement practice, but rather is a common problem associated with all kinds of treaties. The solution is provided in detail by the Vienna Convention on the Law of Treaties (1969), particularly in Articles 46 and 47 which provide:

Article 46, 1. A state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to

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144. Monaco, *supra* note 139, pp. 284-285, 327.

145. Levie, *supra* note 135, p. 883; Monaco, *supra* note 139, pp. 326-327.

conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation was manifest and concerned a rule of its internal law of fundamental importance.

Article 47. If the authority of a representative to express the consent of a state to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating status prior to his expressing such consent.

Another major difference between an ordinary treaty and an armistice agreement is that an armistice must be implemented as soon as possible after its conclusion due to the precarious and dangerous character of military hostilities. For the belligerents to continue military hostilities while waiting for the ratification of the armistice agreement would result in heavy casualties, and therefore alter substantially the war situation on which the conclusion of the armistice agreement was based. Therefore, an armistice agreement must be an agreement in simplified form by its nature. For the conclusion of an armistice agreement, ratification or acceptance or approval is not required. In other words, the signature of an armistice agreement means the authentication of its agreement text and at the same time the expression of the consent to be bound by the agreement. There is no need for a separate step to express the consent to be bound by the treaty which is otherwise required in formal treaty.<sup>146</sup> As a matter of fact, the implementation procedure for an armistice agreement is simple. Usually within several hours after the signing of the armistice agreement or at the same time as the signing, according to the agreed terms, the armistice agreement should enter into force, and resulting in the cessation of armed hostilities.<sup>147</sup>

There is no fixed rule concerning the duration of an armistice agreement. Duration depends upon the individual armistice agreements. For example, the Armistice of Shimonoseki in 1895 provided a duration of twenty-one days, and the Armistice of Malmoe between Prussia and Denmark on August 26, 1848, provided for an armistice of seven months with automatic extension unless one month's advance

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146. The Vienna Convention, on The Law of Treaties, 1969, Article 12.

147. Monaco, *supra* note 139, pp. 298-299.

notice was given by either party.<sup>148</sup> However, armistice agreements concluded since World War II, have for the most part provided for either an indefinite duration, or contain no provision at all on this point. For example, according to the General Armistice Agreement between Israel and Lebanon, the agreement shall remain in effect until a peaceful settlement between the two parties is achieved.<sup>149</sup> The Korean Armistice Agreement remains in effect until superceded by an appropriate agreement for a peaceful settlement at a political level between the two parties.<sup>150</sup>

## 2. *The Korean Armistice Agreement*

### a. The Framework of the Korean Armistice Agreement

The Korean Armistice Agreement consists of a Preamble, five articles (63 paragraphs), and two annexes. The formal title of the Agreement is "Agreement between the Commander-in-Chief, United Nations Command, on the one hand, and the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, on the other hand, concerning a Military Armistice in Korea."

The preamble deals with the cessation of hostilities. In the Preamble the Commanders of both sides express the clear intention to end the war completely: ". . . (the Commander of both sides) . . . in the interest of stopping the Korean Conflict . . . and with the objective of establishing an armistice which will insure a complete cessation of hostilities and of all acts of armed force in Korea until a final peaceful settlement is achieved, do individually, collectively, and mutually agree to accept and to be bound and governed by the conditions and terms of armistice set forth in the following articles and paragraphs . . ."

Article 1 provides for the Military Demarcation Line and the Demilitarized Zone. This demarcation line was determined on the basis of the actual contact line of both armed forces. The demilitarized zone was established on the basis of the demarcation line, with each side withdrawing its forces two kilometers north and south of the demarcation line respectively. Both sides are prohibited from executing any hostile acts within, from or against the demilitarized zone. Further, no person, military or civil, may be permitted to enter the demilitarized zone except persons concerned with civil administration and re-

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148. Levie, *supra* note 135, p. 892.

149. *Ibid.*, p. 892.

150. See Appendix I of The Korean Armistice Agreement, Para. 62.

lief and persons specifically authorized by the Military Armistice Commission.<sup>151</sup>

Article 2 concerns the concrete arrangements for implementing the armistice. Both sides are bound to withdraw their military forces from the demilitarized zone and cease the introduction into Korea of reinforcement military forces and supplementary weapons. In order to supervise the implementation of armistice agreement terms, a Military Armistice Commission was established. This Commission, headquartered at Penmunjom, was composed of ten senior officers, five of whom were to be appointed by the United Nations Command and the other five by the Communist side. This Commission was to be aided by the Joint Observer Teams. Furthermore, in order to assure fair supervision by the Military Armistice Commission over the implementation of the armistice provisions, a Neutral Nations Supervisory Commission was established. This Commission was composed of four senior officers of Neutral Nations, two of whom (Swiss and Swedish) were to be appointed by the United Nations Command and the other two (Polish and Czech) by the Communist side.

Article 3 and its two Annexes concern arrangements bearing on prisoners of war and functions of the Neutral Nations Repatriation Commission.

Article 4 concerns the political conference for the peaceful settlement of the Korean question following the armistice agreement. This conference was to be held after the conclusion of the armistice agreement.<sup>152</sup>

Article 5 is the final clause providing for the agreement's entry into force, the amendment of, and other problems of the agreement itself.

#### b. Particularities of the Korean Armistice Agreement

The Korean Armistice Agreement has several particular characteristics not found in other armistices. This is attributable to the fact that the Korean War began as a civil war and evolved into a more grand regional war.

First, the legal parties to this armistice are unique in international practice. Take as evidence, for example, the title of the armistice: "Agreement between the Commander-in-Chief, United Nations Command, on the one hand, and the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volun-

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151. *Ibid.*, Para. 6, 9.

152. *Ibid.*, Para. 60; see Chapter One, section A on this Conference.



teers, on the other hand, concerning a Military Armistice in Korea." The signatory of one side is the Commander-in-Chief of the United Nations Command and the signatory of the other side is the Commander of the North Korean Army and the Commander of the Chinese Communist forces. Considering the fact that an armistice agreement is a bilateral treaty by nature, the Korean Armistice Agreement must be also a bilateral agreement between two groups of belligerents. The United Nations Command and South Korea compose one group of belligerents; North Korea and Communist China, the other. However, South Korea is hidden behind the United Nations Command, while a separate agreement between South Korea and the United Nations Command had to be reached through separate negotiations between South Korea and the United States. Besides, since one signatory is the Commander-in-Chief of the United Nations Command, the United Nations is involved as a party to the Korean Armistice Agreement. This is one of the important elements that the Communist side opposed, the United Nations supervision in all-Korean elections for Korean unification, at the Geneva Conference in 1954. At this Conference the Communist side rejected the United Nations as the supervisory agency on the grounds that the United Nations was a belligerent in the Korean War. Instead, they insisted that a Neutral Nations Commission should be created for the supervision of the elections and that this Commission should be composed of representatives from neutral nations.<sup>153</sup>

Second, the Korean Armistice Agreement put a de facto end to the Korean War without a concrete solution to remedy the causes of this war. That is, the Korean Armistice Agreement, as have many armistices since World War II, did not strike at the root of the war -- namely, the division of Korea. Although the demarcation line was somewhat different from the 38th Parallel, all the pre-war problems still remained and worsened, despite the heavy casualties and damages. The South Korean Government firmly opposed any armistice that failed to solve the Korean division. However, they eventually agreed to it, with a guarantee of South Korean security from the United States Government, *i.e.*, the Mutual Defense Treaty and economic and military assistance.<sup>154</sup>

Article 4 of the Korean Armistice Agreement recommends a high level political conference for the Korean unification and as a matter of fact this kind of conference was held in Geneva from April 26 to June

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153. *FRUS*, *supra* note 114, pp. 300, 350-353.

154. *FRUS*, *supra* note 80, pp. 1265-1445.

15, 1954. However, the conference failed to reach an agreement. As long as the basic circumstances surrounding the Korean question remained unchanged, a drastic solution was not to be expected.<sup>155</sup>

In spite of the failure of the Geneva Conference, both sides made clear their intentions of ending the Korean War. North Korean Foreign Minister Nam Il offered a six-point proposal ensuring peaceful conditions in Korea.<sup>156</sup> The Soviet Foreign Minister Molotov submitted a draft-declaration requesting that peace threatening action be restrained pending the final settlement of the Korean question.<sup>157</sup> The United States Delegate Smith reiterated that the existing Korean Armistice Agreement had the legal effect of ending the war.<sup>158</sup> Furthermore, United Nations General Assembly Resolution 811, December 11, 1954, confirmed this opinion, emphasizing Paragraph 62 of the Korean Armistice, in "providing that the Armistice Agreement shall remain in effect until expressly superceded by mutually acceptable amendment or the appropriate agreement for a peaceful settlement between both sides."<sup>159</sup>

In sum, the failure of the Geneva Conference meant a divided Korea. Thus, while the Korean War itself was over, the Korean problem remained unsolved.

As explained before, in traditional terminology, an armistice agreement is a military agreement between belligerent parties simply for the suspension of armed hostilities pending the conclusion of a peace treaty. However, armistice agreements have evolved to a point where they have the tendency to terminate the war itself without solving the cause of the war. The Korean Armistice Agreement exemplifies this modern character of armistice agreements. Both sides agreed to a complete cessation of hostilities. They also established a demilitarized zone along the demarcation line, and the Military Armistice Commission and the Neutral Nations Supervisory Commission.<sup>160</sup>

The Armistice also gave rise to favorable conditions enabling all parties in the war — except for North and South Korea — to resume diplomatic relations. That is, all nations, except South and North Korea, which participated in the Korean War, normalized diplomatic relations in the post-war era. Even the United States later normalized diplomatic relations with the People's Republic of China (Communist

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155. See section 2 of this volume.

156. *FRUS*, *supra* note 114, pp. 376-377.

157. *The Korean Problem at the Geneva Conference*, *supra* note 116, pp. 176-182.

158. *Ibid.*, p. 182.

159. *Resolutions Relating to Korea*, *supra* note 2, p. 201.

160. See Korean Armistice Agreement, Article 1.

China) on January 1, 1979.<sup>161</sup> Additionally, the same People's Republic of China which had been condemned as an aggressor in Korea became a permanent member of the United Nations Security Council.<sup>162</sup> Some of the Allied Nations such as Australia, New Zealand, and Ethiopia normalized their diplomatic relations with North Korea. These material developments support the proposition that, for most members of the belligerents, the Korean War was formally over. Only relations between South and North Korea remained vague. Thus, again, while the Korean War came to an end, the cause of the war — the Korean division — remained unsolved.<sup>163</sup>

Even North-South Korean relations took on a new form. South and North Korea issued a Joint Communiqué on July 4, 1972 in an effort to improve relations. It stated that “. . . the two sides, in an effort to remove the misunderstanding and mistrust and mitigate increased tension . . . as a result of long separation, and further to expedite unification of the fatherland, have reached full agreement on the following point . . . unification shall be achieved through peaceful means, and not through the use of force against each other . . . as a homogeneous people, a great national unity shall first be sought, transcending differences in ideas, ideologies . . .”<sup>164</sup>

In sum, the nature of the Korean Armistice, the state of post-war diplomatic relations, and the new nature of North-South Korean relations all reveal the inefficacy of the Korean Armistice in tackling the central issue in dispute — namely, Korean unification.

### 3. *Legal Parties to the Korean Armistice Agreement*

#### a. Superficial Parties to the Korean Armistice Agreement

##### i. The Signature and the Conclusion of an Armistice Agreement

Article 1 of the Vienna Convention on the Law of Treaties defines a party to a treaty as a State which has consented to be bound by the treaty and for which the treaty is in force. The Vienna Convention applies only to a treaty concluded between states; however, it does not deny other international legal subjects such as international organiza-

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161. U.S. Dept. of State Bulletin 79 No. 2022 (Jan. 1979).

162. U.N.G.A. Res. 498(V) (February 1, 1951).

163. Lyou Byung-Hwa, *supra* note 1, pp. 63-64.

164. National Unification Board of the ROK, *A White Paper on South-North Dialogue in Korea*, Seoul, 1980, p. 85-86; The Institute for East Asian Studies, *Foreign Policy for Peace and Unification*, Seoul, 1975, pp. 158-159.

tions to become parties to international treaties.<sup>165</sup> In fact, the International Law Commission, which prepared the Vienna Convention, is drafting another convention on the law of treaties governing treaties to which international organizations are parties. There has been a surge of activity by international organizations participating in the conclusion of treaties. Under such circumstances, the International Court of Justice clarified the legal personality of international organizations in its advisory opinion on the *Reparation for Injuries Suffered in the Service of the United Nations*. The Court stated that international organizations are subjects of international law capable of possessing international rights and duties, including the conclusion of international treaties and bringing international claims.<sup>166</sup> Thus, all subjects of international law are international legal persons, capable of participating in international treaties even though the nature and scope of the rights and capacity of each subject are different. This depends, however, upon the needs of the community and the development of the international society.

Parties to an armistice agreement are belligerents, who are by necessity subjects of international law. They include states, international organizations and other international legal subjects. Since an armistice agreement is a bilateral agreement in nature, the parties to an armistice agreement are two belligerents or two groups of belligerents. With regard to the Korean Armistice Agreement, the two opposing belligerents are the United Nations side and the Communist side. But several persons and organs of the United Nations also appear on each side. On the United Nations side, there are two signatures and several names of state and organization and organs (*i.e.*, the signatures of Mark W. Clark and William K. Harrison, the United Nations Command, the United Nations and the United States).

In order to determine party or parties (on the United Nations side) to the Korean Armistice Agreement, one must clarify the nature and the relation of the two signatures, and determine the composition and relation of members of the United Nations' side.

According to the formalities on treaty conclusion, under the Vienna Convention on the Law of Treaties of May 22, 1969, the conclusion of a treaty has several steps: negotiation, adoption and authentication of the text (*i.e.*, determining the treaty text as final, definite and authentic by the competent organ),<sup>167</sup> expression of consent

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165. The Vienna Convention on the Law of Treaties, 1969, Article 3.

166. International Court of Justice (ICJ) Report (1949), pp. 178-179.

167. The Vienna Convention, *supra* note 165, Article 10.

to be bound by a treaty, and entry into force. An armistice agreement as a treaty should follow all these procedures. However, owing to practical considerations, we need not explain all such procedures.

In concluding a formal treaty, authentication is done by signature, and expression of consent is achieved by ratification, acceptance, or approval.<sup>168</sup> Yet, since an armistice agreement is an agreement in simplified form, the signature of an armistice agreement carries the force of both the authentication of the text and the expression of the consent to be bound by the agreement. Thus, with regard to the Korean Armistice Agreement, mere signature will bind a party to the agreement.

## ii. The United Nations Side

As far as the Korean Armistice Agreement is concerned, there are two signatures on the United Nations side — those of Mark W. Clark, Commander-in-Chief of the United Nations Command and William K. Harrison, Jr., Senior Delegate of the United Nations Command. Questions arise as to: (1) the relation between the two signatures; and (2) which signature is the required signature under Article 12, Paragraph 1 of the Vienna Convention on the Law of Treaties — that is, the expression of the consent to be bound by the agreement. First, it is clear that Mark W. Clark possessed competent military authority to conclude the Korean Armistice Agreement on behalf of the United Nations since he was the Commander-in-Chief of the United Nations Command. He was competent to conclude the armistice agreement under international law and in accordance with the instructions of the United Nations. In fact, the United Nations authorized such action under Security Council Resolution 84 in 1950.<sup>169</sup> Concretely, the Resolution authorized the United States Government to organize a unified command and to operate this unified command under the responsibility of the United States Government. The United States was required to provide the United Nations with reports on the course of action taken under the unified command.<sup>170</sup> The United States Government authorized General Clark to conclude the armistice agreement. Furthermore, United Nations General Assembly Resolution 610 (VII) enumerated detailed instructions to the United Nations Command concerning negotiations for the armistice agree-

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168. *Ibid.*, Article 14.

169. U.N.S.C. Res. 84 (July 7, 1950), U.N. Doc. S/1588.

170. U.N. Security Council Resolution 84, UN Doc. S/1588 (7 July 1950), *Resolutions Relating to Korea*, *supra* note 2, pp. 135-136.

ment.<sup>171</sup> Finally, United Nations General Assembly Resolution 711 (VII), 28 August 1953, approved the terms of the Korean Armistice Agreement negotiated by the United Nations Command under the direction of the United States Government.<sup>172</sup> In accordance with the authorization and instructions of the United Nations and the United States Government, General Clark concluded the armistice agreement.

In light of this, one is led to inquire as to the effect of the signature of William Harrison, the Senior Delegate of the United Nations Command for the negotiations on the armistice agreement. As explained before,<sup>173</sup> at 10:12 a.m. (Seoul time) on July 27, 1953, Representatives Harrison and Nam Il signed the text of the Korean Armistice Agreement at Panmunjom, and at 13:00 on the same day, General Clark signed the text at Munsan-Ri, along with his military advisers and a South Korean Representative. General Clark delegated his subordinate, Senior Delegate Harrison, to sign the text. The armistice agreement without the signature of General Clark would not have been binding since he was the competent military organ to conclude the armistice agreement.

According to Article 12, Paragraph 2 of the Vienna Convention on the Law of Treaties, the consent to be bound by a treaty in an agreement in simplified form can be expressed not only by a signature, but also by a initial or a signature ad referendum, if it is confirmed by the competent authority afterward. The legal effect of such a signature becomes effective from the time of the signature ad referendum, and not from the time of signature of the competent organ who confirms it. Of course, unless the competent organ confirms it, there is no legal effect. Harrison's signature is the signature ad referendum, and General Clark's is the formal signature, the agreement became binding from the time of the signature ad referendum of Senior Delegate Harrison, provided that General Clark confirmed it, which he did.

After having determined when the Armistice came into effect, the more difficult question of the proper party to the Agreement arises. The discussion below will demonstrate that the United Nations alone, as a legal entity, is the proper party to the Armistice. As explained above, only legal subjects of international law with international legal personality may be a legal party to an international agreement.<sup>174</sup> For

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171. U.N.G.A. Res. 610(VII), UN Doc. A/2228 (December 3, 1952).

172. U.N.G.A. Res. 711 (VII) (August 28, 1953); *Resolutions Relating to Korea*, *supra* note 2, pp. 175-177.

173. See the last part of Section 1 of this volume.

174. UN Security Council Res. 84, UN Doc. S/1588 (July 7, 1950).

this reason, one may dismiss the Security Council, General Assembly, the United Nations Command and General Clark as legal parties to the Armistice. First, General Clark was the commander-in-chief of the U.N. Command. He merely represented the United Nations and did not possess the attributes amounting to international legal personality. Second, the U.N. Command was the military command created by the Security Council.<sup>175</sup> The Security Council operated the Command except when deadlocked by Soviet vetoes,<sup>176</sup> at which time the General Assembly assumed supervisory power. The United Nations Command was therefore a mere subsidiary organ of the United Nations (Article 29 of the UN Charter) and could not have been a proper party to the Armistice. Last, since the Security Council and the General Assembly are merely principal organs of an international organization — the United Nations — and should conduct international legal act in the name of the United Nations, not themselves. Thus, no matter how important they may be on the international plane, they cannot be subjects of international law. The relation between an organization and its organs would be analogous to the relation between a state and its domestic agencies.<sup>177</sup> Therefore, only the United Nations possesses sufficient legal personality to be the superficial party to the Korean Armistice Agreement.<sup>178</sup>

### iii. The Communist Side

There are three signatures for the Communist side on the Korean Armistice Agreement. They are the signatures of Kim Il-Sung, Supreme Commander of the North Korean Army, Peng Teh-huai, the Commander of "Chinese People's Volunteers" and Nam Il, Senior Delegate for armistice negotiations. The signature of Nam Il is equivalent to the signature of the Senior Delegate Harrison of the United Nations Command. In accordance with the principles outlined above, it is thus signature ad referendum for the Communist side. Nam Il's signature must, however, have been confirmed by the signature of the competent authority on the Communist side, in order to be binding.

A confusing issue arises with regard to the binding effect of the signatures of Kim Il Sung and Peng Teh-huai. Were this agreement a

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175. U.N.G.A. Res. 376(V) (October 7, 1950); U.N.G.A. Res. "Uniting for Peace Resolution," 377(V) (November 3, 1950); U.N.G.A. Res. 498(V) (February 1, 1951).

176. ICJ Report. *supra* note 166, p. 178.

177. Badie Kasse, *La Capacité de l'Organisation des Nations Unies de Conclure de Traités*, Paris: L.G.D.J., 1960, p. 175.

178. Lyou Byung-Hwa, *supra*, note 1, pp. 68-69.

multilateral treaty, the issue would be elementary. The question stems from the fact that the Korean Armistice Agreement is an armistice agreement and therefore a bilateral agreement by nature but is signed by two authorities for one party. Since there is no indication of which signature represents the competent authority, it is necessary to expand on the juridical status of the parties involved.

The first issue pertains to the Commander of Chinese People's Volunteers. Namely, was Peng Teh-huai commanding some Chinese who volunteered individually to fight against the United Nations Command or the regular army of Communist China. There is sufficient evidence to prove that real Chinese forces and not volunteers, were involved. A communique issued on November 6, 1950 by the Commander-in-Chief of the United Nations Command, General MacArthur, regarding the Chinese intervention in Korea, well explained the situation:

The Korean War was brought to a practical end with the closing of the trap on enemy elements north of Pyongyang and seizure of the east coastal area, resulting in raising the number of enemy prisoners of war in our hands to well over 135,000, which, with other losses amounting to over 200,000, brought casualties to 335,000, representing a fair estimate of North Korean total military strength. . . . In the face of this victory of UN Army, the Communists committed one of the most offensive acts of international lawlessness . . . by moving without any notice of belligerency. . . . alien Communists forces across the Yalu River into North Korea and massing a great concentration of possible reinforcing divisions with adequate supply behind the privileged sanctuary of the adjacent Manchuria border . . .<sup>179</sup>

Another communique issued on November 28, 1950 by General MacArthur further clarifies: "Enemy reactions developed in the course of our assault operations of the past four days disclose that a major segment of the Chinese continental armed forces in army, corps and divisional organization of an aggregate strength of over 200,000 men is now arrayed against the United Nations forces in North Korea . . ."<sup>180</sup>

According to the report from the United Nations Command to

179. U.S. Dept. of State Bulletin (November 13, 1950), p. 763.

180. "Military Situation in the Far East," *Hearings before the Committee on Armed Services and the Committee on the Foreign Relations*, Part 5, 82nd Congress 1st Session (August 17, 1951), p. 3495.



the Security Council during the period November 24 to December 1, 1950, the Chinese Communist forces took over direct responsibility for the entire front in North Korea, except for short line of contact north of Chongjin on the east coast. The Chinese transferred most of the North Korean forces to Manchuria for retraining and re-equipping. "At present, the only significant military power now confronting UN forces in Korea is Communist China." Identified and confirmed Chinese Communist units were as follows: 38th Army (112, 113, 114th divisions), 39th Army (115, 116, 117th divisions), 40th Army (118, 119, 120th divisions), 42nd Army (124, 125, 126th divisions), 50th Army (148, 149, 150th divisions), 60th Army (196, 197, 198th divisions), 20th Army (59, 60, 89th divisions).<sup>181</sup>

Before massive intervention by the Communist Chinese forces, the Government of Communist China issued several statements saying that it would not tolerate the advancement of the United Nations forces toward the Yalu River, and accusing the United States of alleged air attacks on Communist China.<sup>182</sup> It therefore stands to reason that the so-called "Chinese People's Volunteers" were the regular armed forces of Communist China. As a result, Peng Teh-huai stood as the military commander of Communist China's regular forces.

The second issue relates to the legal status of the North Korean regime. Before the Korean War, only a few Communist nations recognized the North Korean regime. Most nations and the United Nations recognized only the South Korean government, which was established under the auspices of the United Nations. Meanwhile the United Nations viewed the North Korean regime as illegal, because the Soviet Union rejected the entrance and activities of the United Nations Temporary Commission in Korea, and formed the North Korean regime on its own terms.<sup>183</sup> The UN Temporary Commission in Korea was established under United Nations General Assembly Resolution 112 on November 14, 1947 for the purpose of holding general elections to form an all-Korean government. United Nations General Assembly Resolution 195 (III) of December 12, 1948 declared that the South Korean Government was the only lawful government in Korea, based on free elections under UN supervision and representing the great ma-

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181. "The 10th Report of the United Nations Command in Korea," U.N. Doc. S/1953 (December 28, 1950).

182. U.N. Doc. S/1583 (July 6, 1950); U.N. Doc. S/1722 (August 28, 1950); Higgins, *supra* note 41, p. 257.

183. U.N.G.A. Res. 112(II) (November 14, 1947); *Resolutions Relating to Korea*, *supra* note 2, p. 39; U.N.G.A. Res. (February 26, 1948); *Resolutions Relating to Korea*, *supra* note 2, p. 57.

jority of Korean people.<sup>184</sup>

During the Korean War, both sides declared that they would abide by all humanitarian rules of the Geneva Conventions in 1949.<sup>185</sup> South Korea signed all four Geneva Conventions of 1949, on July 4, 1950.<sup>186</sup> North Korea replied, on July 15, 1950, to the request of the International Committee of the Red Cross to apply the humanitarian rules during wartime, saying that it was strictly abiding by the principles of the Geneva Conventions.<sup>187</sup> The United Nations Command instructed its forces to observe all the rules of the Geneva Conventions.<sup>188</sup> In sum, all participants in the Korean War, including the North Korean regime, applied the international law of war. This means legally that the participants in the Korean War recognized the North Korean regime as a belligerent.<sup>189</sup> Furthermore, the fact that the United Nations Command concluded the Korean Armistice Agreement with the North Korean regime proved that it recognized the North Korean regime as a belligerent. Therefore, the Communist side was a group of belligerents composed of North Korea and Communist China.

Having established the juridical status of North Korea and Communist China, the discussion now turns to each of their authority to conclude the Korean Armistice Agreement. Since an armistice agreement is a bilateral treaty by nature,<sup>190</sup> normally one competent authority, representing all the belligerents on each side, signs the agreement. The Korean Armistice Agreement bears, however, two signatures on the Communist side. Therefore, it is necessary to discern their representative authority.

The Korean War began with the North Korean crossing of the 38th Parallel, and initially was a civil war between North and South Korea. Later, the United Nations forces intervened on behalf of South Korea. Some months later, Communist China entered the Korean War, attacking the United Nations and South Korean forces. The principal belligerents were South Korea and North Korea. The United Nations supported South Korea, while Communist China as-

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184. U.N.G.A. Res. 195(III) (December 12, 1948); *Resolutions Relating to Korea*, *supra* note 2, pp. 58-59.

185. U.N. Doc. S/1834 (October 5, 1950).

186. Higgins, *supra* note 41, p. 191.

187. *Ibid.*, p. 191.

188. "The 5th Report of the United Nations Command in Korea," U.N. Doc. S/1834 (October 5, 1950), p. 75.

189. Permanent Court of International Justice (PCIJ) Report, Series A, No. 7, (May 25, 1926), pp. 27-28.

190. Monaco, *supra* note 139, p. 284.

sisted North Korea. The cause of the war was the Korean division. Thus, the war was directly related to South and North Korea, even though the United Nations and Communist China intervened.<sup>191</sup>

In conclusion, North Korea and Communist China were not on the same plane in terms of importance in connection with the Korean Armistice Agreement. Moreover, an armistice in modern times results in the de facto end of war. It is a legal means to guarantee peace in the area concerned. In light of this analysis, North Korea assumed the principal role for the Communist side, while Communist China took a secondary role. The implementation of the armistice agreement further supports the leading role of North Korea. Thus, even if one commander of the Communist coalition army had signed the armistice agreement, both North Korea and Communist China would become parties. In fact, both of two commanders signed the armistice agreement, and this gave rise to confusion in terms of legal practices.

b. South Korea and the Korean Armistice Agreement

As discussed above, the South Korean government stubbornly opposed the conclusion of an armistice agreement which did not remedy the Korean division. Further, it often took issue with the position of the Allied Nations. However, the agreement between South Korea and the United States made possible the conclusion and maintenance of the Korean Armistice Agreement. From a legal point of view, the latter fact is more important. If South Korea had not agreed to the conclusion of the Korean Armistice Agreement, the Armistice would not have been concluded or maintained. Unfortunately, South Korean opposition to the conclusion of an armistice agreement which did not result in Korean unification has been overemphasized. As a result, many contend that South Korea is not a party to the Korean Armistice Agreement. However, from a legal point of view, any armistice without participation of South Korea would not have been possible in South Korea unless the sovereignty of the Republic of Korea was challenged. Many do not even recognize this simple legal truth, including some South Korean governmental officials. Thus, it is necessary to present a legal analysis of this problem.

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191. Lyou Byung-Hwa, *supra* note 1, p. 74.

i. The Necessity of South Korea to be a Legal Party to the Korean Armistice Agreement

(a) South Korea is a Principal Belligerent

Upon careful analysis of the history of the Korean War, one can easily determine that the Korean War was divided into two periods — that of pre- and post- U.N. intervention. First, the Korean War began with the surprise attack by North Korean forces, which crossed the 38th Parallel at dawn on Sunday, June 25, 1950.<sup>192</sup> The North Korean forces advanced as far as in Seoul within three days and continued their drive southward. This unexpected event embarrassed the United States Government, which hurried to convene the United Nations Security Council and organize the United Nations Command under its direction. The United Nations forces arrived in Korea in the beginning of July, 1950. North Korea forces already held a large part of South Korean territory. During this period, only North and South Korean forces were engaged in the civil war. This first period of the Korean War is important in analyzing the complicated composition of the belligerent parties and clarifying the principal position of South Korea.

After the intervention of the United Nations, the composition of belligerents on the United Nations side became very complex. Under the United Nations Command, the armed forces of sixteen nations were unified. South Korean forces joined the United Nations Command. The Security Council of the United Nations, after condemning the North Korea invasion as a breach of peace and calling upon North Korea to withdraw its forces by Resolution 82 of June 25, 1950,<sup>193</sup> recommended that members of the United Nations furnish such assistances to South Korea as might be necessary to repel the armed attack, by Resolution 83 of June 27, 1950.<sup>194</sup> Following the recommendations of the Security Council, most nations offered military or humanitarian assistance to South Korea. In order to organize effective assistance, the Security Council, with the initiative of the United States, established a unified command by adopting Resolution 84 on July 7, 1950. The Security Council:

“. . . — recommended that all Members providing military forces and other assistance pursuant to the aforesaid Security Council resolutions make such forces and other

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192. U.S. Dept. of State, *FRUS*, 1950, vol. VII (Korea), Washington: GPO, 1976, pp. 125-127.

193. U.N. Doc. S/1501 (June 25, 1950).

194. U.N. Doc. S/1511 (June 27, 1950).

assistance available to a unified command under the United States;

— requested the United States to designate the commander of such forces;

— authorized the unified command at its discretion to use the United Nations flag in the course of operations against North Korean forces concurrently with the flags of the various nations participating; and

— requested the United States to provide the Security Council with reports as appropriate on the course of action taken under the unified command.<sup>195</sup>

In total, 42 member nations of the United Nations and five non-members made offers of assistance to South Korea.<sup>196</sup> Among the offers of military assistance from the member nations, only national contingents of more than one battalion were accepted. The armed forces of sixteen nations (the United States, the United Kingdom, France, Canada, Australia, Turkey, Union of South Africa, New Zealand, Belgium, the Netherlands, Greece, Ethiopia, Colombia, Thailand, the Philippines and Luxemburg) were accepted. Many other nations provided humanitarian assistance such as medical supplies and food. Nationalist China's offer of three infantry divisions was not accepted, fearing the possible intervention of Communist China.

Among the armed forces of the United Nations Command, South Korean and American forces comprised more than 90 percent, while the total forces of the other fifteen nations comprised less than 10 percent of the 750,000 UN forces.<sup>197</sup> At the end of 1951, South Korean proportion among UN forces was more than 40 percent,<sup>198</sup> and continued to increase thereafter. In a word, even after the intervention of the United Nations, South Korea remained the principal belligerent in terms of actual fighting forces.<sup>199</sup>

#### (b) South Korea As the Host Country

South Korea was the host country in terms of its role, interests, and causes of the war.<sup>200</sup> The Korean War broke out between South

195. U.N. Doc. S/1588 (July 7, 1950); *Resolutions Relating to Korea*, *supra* note 2, pp. 135-136.

196. *FRUS*, *supra* note 40, p. 761.

197. Goodrich, *supra* note 5, p. 117.

198. *Ibid.*, p. 117; *FRUS*, *supra* note 80, p. 1384.

199. Lyou Byung-Hwa, *supra* note 1, p. 79.

200. *Ibid.*, p. 80.

and North Korea, and stemmed from the Korean division. The war was conducted only on Korean territory. Although several countries were involved in this war, only a portion of their armed forces were engaged in the war, while all of the Korean armed forces were engaged. Moreover, the situation following the conclusion of the armistice agreement may suggest something. Every belligerent except South and North Korea established normal diplomatic relations with one another. This might mean that the Korean problem, including the implementation of the armistice agreement, would eventually become more and more the problem of the Korean people themselves, if not their exclusive problem. The South-North Joint Communiqué of July 4, 1972 supported this position: "Unification shall be achieved through independent Korean efforts without being subject to external imposition of interference."<sup>201</sup>

In the light of the situation, an armistice agreement without South Korean participation would be meaningless. Any attempt at legal explanations based on the faulty interpretations of the Korean Armistice Agreement, which deny the South Korean participation in this Agreement, is unrealistic.

### (c) South Korean Legitimacy

At the end of World War II, the United States and the Soviet Union agreed to disarm Japanese forces in Korea. The Soviet Union would deal with Japanese forces north of the 38th Parallel, while the United States would maintain those south of the 38th Parallel. This partition of Korean peninsula was the result of an impromptu decision made under pressure in an urgent situation. Due to the atomic bombings of Hiroshima and Nagasaki on August 6 and 8, Japanese forces collapsed unexpectedly soon. Stalin quickly entered in the war against Japan in Manchuria on August 8, and the Soviets rushed southward. Embarrassed by this unexpected situation, the United States proposed the 38th Parallel as the demarcation line between two occupational powers. This idea of partition was recommended by the State-War-Navy Coordinating Committee, after being prepared by two young military officers.<sup>202</sup>

The Soviets accepted this proposal, and on September 2, 1945, General MacArthur, as Supreme Commander of Allied Forces in the

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201. *White Paper*, *supra* note 164, pp. 85-86.

202. J. Lawton Collins, *War in Peacetime: The History and Lessons of Korea*, Boston: Houghton Mifflin Co., 1969, pp. 25-26; Bruce Cumings, *The Origins of the Korean War, 1945-1947*, Princeton: Princeton University Press, 1981, pp. 120-121.

Pacific, issued General Order No. 1 governing the conditions of Japanese surrender. This order included the partition of Korea. This was to be the source of all Korean tragedies to come.

The two separate regimes of Korea were formed under the two occupational powers, the United States and the Soviet Union. After the failure of negotiations of the Joint Soviet-American Commission for an independent and unified Korea, the United States brought this problem to the United Nations. The United Nations General Assembly adopted Resolution 112(II) on November 14, 1947, which established the United Nations Temporary Commission on Korea for the purpose of holding free elections and forming an all Korean government under its supervision.<sup>203</sup> However, the Soviet Union refused the activities of the United Nations Temporary Commission on Korea in North Korea, while the Commission carried out its task in South Korea with the cooperation of the United States forces. The Commission asked the Interim Committee of the General Assembly whether it should carry out the General Assembly's program in South Korea only, since it was unable to carry out its function in North Korea due to Soviet opposition. The Interim Committee of the General Assembly advised the Commission to implement the program in South Korea alone under the existing circumstances.<sup>204</sup>

A general election was held on May 10, 1948 in South Korea under the supervision of the United Nations Temporary Commission on Korea. Out of a population of 20 million, 7,036,750 voted, amounting to approximately 72 percent of qualified voters.<sup>205</sup> On May 31 the elected representatives convened as the Korean National Assembly. The United Nations Temporary Commission on Korea approved the result of the election.<sup>206</sup>

After the election, the National Assembly of Korea hurried to form a national government. The National Assembly adopted the Constitution of the Republic of Korea on July 12 and promulgated it on July 17. They elected Syngman Rhee as the first President of the Republic of Korea on July 20. The formation of a national government was completed on August 15, 1948, and received the authority of government from the United States Military Command. This Korean

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203. U.N.G.A. Res. 112(II) (November 14, 1947); *Resolutions Relating to Korea*, *supra* note 2, pp. 39-41.

204. U.N.G.A. Res. (February 26, 1948); *Resolutions Relating to Korea*, *supra* note 2, p. 57.

205. U.N. Doc. A/Ac.19/80, *Officials Records of the Third Session (1948)*, supp. no. 9, vol. 1; Goodrich, *supra* note 5, p. 59.

206. *Ibid.*, p. 59.

Government was inaugurated on August 15, 1948.<sup>207</sup> The United Nations General Assembly approved the newly formed Government of the Republic of Korea as a legitimate government:

The General Assembly . . . declares that there has been established a lawful government [the Government of the Republic of Korea] having effective control and jurisdiction over that part of Korea where the Temporary Commission was able to observe and consult and in which the great majority of the people of all Korea reside; that this Government is based on elections which were a valid expression of the free will of the electorate of that part of Korea and which were observed by the Temporary Commission; and that this is the only such government in Korea . . .<sup>208</sup>

South Korea's legitimacy prompted the United Nations to intervene in the Korean War. The Security Council, declaring "that the Government of the Republic of Korea is a lawfully established government . . . and that this is only such government in Korea,"<sup>209</sup> recommended that the Members of the United Nations furnish such assistance to South Korea as may be necessary to repel the armed attack.<sup>210</sup> Thus, given the relative weight placed on the issue by the United Nations, it would be unreasonable to exclude South Korea from the armistice agreement. Following this line of reasoning, it would be all the more unacceptable that the condemned North Korean regime as an aggressor, which had been recognized only as a belligerent by most nations, be a principal party to the agreement.<sup>211</sup>

- ii. Legal Foundations Supporting South Korea as a Legal Party to the Korean Armistice Agreement
  - (a) Legal Analysis of the Relations between the United Nations Command and the South Korean Armed Forces

When the United Nations forces arrived in Korea, the South Korean Government assigned the command authority over all South Korean forces to the Commander-in-Chief of the United Nations

207. *Ibid.*, p. 59.

208. U.N.G.A. Res. 195(III) (December 12, 1948); *Resolutions Relating to Korea*, *supra* note 2, pp. 58-59.

209. U.N. Security Council Res. 82, U.N. Doc. S/1501 (June 25, 1950).

210. U.N. Security Council Res. 83, U.N. Doc. S/1511 (June 27, 1950).

211. Lyou Byung Hwa, *supra* note 1, p. 83.



Command. President Rhee's letter to General MacArthur of July 15, 1950 documented this decision:

In view of the common military effort of the United Nations on behalf of the Republic of Korea, in which all military forces, land, sea, and air, of all the United Nations, fighting in or near Korea have been placed under your operational command, and in which you have been designated as Supreme Commander, UN forces, I am happy to assign to you the command authority over all land, sea, and air forces of the Republic of Korea during the period of the continuation of the present state of hostilities, such command to be exercised either by you personally or by such military commander or commanders to whom you may delegate the exercise of this authority within Korea or in adjacent areas . . .<sup>212</sup>

General MacArthur replied through then Ambassador to Korea John J. Muccio on July 18, 1950: "Please express to President Rhee my thanks and deepest appreciation for the action taken in his letter of July. It cannot fail to increase the coordinated power of the United Nations forces operating in Korea. I am proud indeed to have the gallant ROK forces under my command. . . ."<sup>213</sup>

After this move, South Korean forces performed military operations under MacArthur together with the other UN forces. The South Korean forces were different, however, from the other forces of the United Nations Command in terms of legal character. First, the United Nations forces were formed under Security Council Resolutions 83 and 84, which "recommend[ed] that the *Members of the United Nations* furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack . . ."<sup>214</sup> and "recommend[ed] that *all Members providing military forces* . . . pursuant to the aforesaid Security Council resolutions make such forces . . . to a unified command. . . ."<sup>215</sup> However, South Korean forces were not deployed under these resolutions, but rather had been engaged in the war before the resolutions. In addition, the resolutions were directed to members of the United Nations, South Korea was not, however, a member of the United Nations. Third, the United Nations forces were engaged in the Korean War to repel the North Korean attack, and to

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212. *Korea-U.S. Relations*, *supra* note 128, pp. 556-557; *FRUS*, *supra* note 192, p. 388.

213. *Korea-U.S. Relations*, *supra* note 128, pp. 557-558.

214. U.N. Doc. S/1511 (June 27, 1950).

215. U.N. Doc. S/1588 (July 7, 1950).

restore international peace and security, while South Korean forces were engaged in the war for their survival, which had been threatened by the North Korean attack. For this reason, the Allied Nations sent only a portion of their armed forces in Korea, while South Korea engaged all its troops in the war. Last, South Korean forces joined the United Nations Command through an assignment in the form of a letter, and not by United Nations resolutions.

Considering the importance of the assignment, it is appropriate to clarify its legal character. President Rhee's letter to General MacArthur of July 15, 1950, was clear on its purpose. "In view of the common military effort of the United Nations on behalf of the Republic of Korea in which all military forces . . . of the United Nations, fighting in or near Korea have been placed under your operational command . . ." The composition of troops and duration of assignment are also expressed: "I am happy to assign to you command authority over . . . all forces of the ROK *during the period of the continuation of the present state of hostilities*. . . ." Therefore, unless the South Korean Government recalled this assignment of command authority, it would continue in legal effect until the termination of the "present state of hostilities." In other words, if armed hostilities ceased, the assignment would also be terminated. In this sense, this act of assignment is a so-called "legal act under the resolute condition" or "legal act with the resolute clause," in which the subject of legal act preestablishes the end of its legal effects, bound to an uncertain event. This assignment's resolute condition or clause is "during the period of the continuation of the present state of hostilities," and the uncertain event was the end of the hostilities. Thus, since the armistice brought an end to actual armed hostilities, command authority automatically reverted to the South Korean Government. A separate legal act from either side was unnecessary to achieve this goal.<sup>216</sup>

In this regard, after the conclusion of the Korean Armistice Agreement, there was an agreed minute of conference between the governments of the United States and South Korea of November 17, 1954, based on the conference held between President Eisenhower and President Rhee during the latter's visit to the United States, July 27-30, 1954. It read:

. . . It is the intention and policy of the Republic of Korea to: 1) cooperate with the United States in its efforts to unify Korea . . . 2) retain ROK forces under the operational control of the United Nations Command while that Command

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216. Lyou Byung-Hwa, *supra* note 1, pp. 85-86.

has responsibility for the defense of the ROK, unless after consultation it is agreed that our mutual and individual interests would be best served by a change. . . . Based upon the conditions which the Republic of Korea declares it will create, it is the intention and policy of the United States to: 1) continue its program of helping to strengthen the Republic of Korea . . .<sup>217</sup>

The legal character of the agreed minute of the conference is not clear. The terms of the agreed minute are general global principles of cooperation. Its expression and form are different from an international treaty, as expressed in the language "it is the intention and policy of . . ." In light of the above considerations, the agreed minute of the conference is more akin to a statement of intent, and does not contain the legally binding nature of an international treaty between two nations. The document takes the form of a kind of gentlemen's agreement or some temporary agreed policy-cooperation between two friendly governments, the binding force of which is political and moral rather than legal.

In light of the foregoing discussion, we may now address the issue of the legal relation between the United Nations and South Korean forces. As explained above, South Korean forces under the United Nations Command differed from the other forces of the United Nations Command. South Korean forces were placed under the United Nations Command by a separate act of the South Korean Government simply for effective military operation. Therefore, it would be reasonable to conclude that the relation between the United Nations Command and South Korean forces is that of a coalition army. There are many examples of coalition armies in military history, especially in the two World Wars.<sup>218</sup>

(b) A Coalition Army and the Conclusion of an Armistice Agreement

As the argument above demonstrates, the United Nations forces and South Korean forces formed a coalition army under the commanding authority of the Commander-in-Chief of the United Nations Command. As relevant to this discussion, the question arises as to how to conclude an armistice agreement for a coalition army. This is

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217. U.S. Dept. of State Bulletin (November 29, 1954), pp. 810-811; *FRUS*, *supra* note 80, pp. 1875-1877.

218. Lyou Byung-Hwa, *supra* note 1, p. 88.

the key to the determination of parties to the Korean Armistice Agreement.

Several examples involving coalition armies can be found in armistice agreements relating to the two World Wars, such as: the Armistice between Austria-Hungary and the Allied Powers, November 3, 1918 (signed at Villa Giusti — Padua);<sup>219</sup> the Armistice Convention between the Great Britain and the Allied Powers, and Turkey, signed at Mudros on October 30, 1918;<sup>220</sup> the Armistice with Germany, signed at Compeigne on November 11, 1918;<sup>221</sup> the Armistice with Italy, signed at Fairfield, Sicily, September 3, 1943;<sup>222</sup> the Armistice with Italy: Instrument of Surrender, September 29, 1943;<sup>223</sup> the Armistice with Rumania at Moscow, September 12, 1944;<sup>224</sup> the Armistice with Bulgaria, October 28, 1944;<sup>225</sup> the Armistice with Hungary, Jan-

219. This armistice was concluded between Austria-Hungarian Representative Victor Weber Elder von Webnau and the Supreme Commander of the Italian Army, Pietro Badoglio. Badoglio signed the agreement on behalf of the Allied and Associated Powers. With his signature, all member nations of the Allied and the Associated Powers became parties to the armistice agreement. U.S. Dept. of State, *Treaties and Other International Agreements of the United States of America, 1776-1949*, vol. 2, Charles Bevans, ed., pp. 1-8.

220. This armistice agreement was signed by Vice Admiral Somerset Artur Gough-Calthorpe, British Commander-in-Chief of the Mediterranean Station and Turkish Minister of Marine, Recharh Hickmet Bey. British Commander Gough-Calthorpe signed for the Allied Powers. Clive Parry, *Consolidated Treaties Series 1918-1919*, vol. 224, New York: Oceana, pp. 169-171.

221. This armistice was concluded between Marshal Foch, Commander-in-Chief of the Allied Armies, acting in the name of the Allied and Associated Powers, and Admiral Wemyss, First Sea Lord, and Herr Erzberger, Secretary of State, President of the German Delegation, Marshal Foch signed on behalf of the Allied and Associated Powers. Bevans, *supra* note 219, pp. 9-19; Parry, *supra* note 220, pp. 286-299.

222. This agreement provides: "The following conditions of an armistice are presented by General Dwight D. Eisenhower, Commander-in-Chief of the Allied Forces, acting by authority of the Government of the United States and Great Britain and in the interest of the United Nations, and are accepted by Pietro Badoglio, Head of Italian Government." Bevans, *supra* note 207, pp. 769-775.

223. This armistice was concluded by letter from the Commander-in-Chief of Allied Forces Dwight D. Eisenhower to the Italian Supreme Commander Pietro Badoglio. Eisenhower signed on behalf of all Allied Forces. *Ibid.*, pp. 775-784.

224. The "Agreement between the Governments of the United States of America, the Soviet Union and the United Kingdom, on the one hand, and the Government of Rumania on the other hand, concerning armistice" was concluded between the Soviet Representative Malinovski and the Rumanian Representative Lucretiu Patrascanu. Malinovski signed this armistice on behalf of the United States, the United Kingdom and the Soviet Union. *Ibid.*, pp. 901-907.

225. The United States, the Soviet Union, and the United Kingdom concluded this armistice with Bulgaria. Representative of the Supreme Allied Commander in the Mediterranean Station J.A.H. Gammell signed the armistice for the United States, the Soviet Union and the United Kingdom, and P. Stainov signed it for Bulgaria. *Ibid.*, pp. 909-913.

uary 20, 1945.<sup>226</sup> All these examples indicate that if the Commander-in-Chief of a coalition army signs an armistice agreement, all member nations of the coalition army become parties to this armistice agreement. As a result, it is not necessary that all representatives of each composing member nation of the coalition army sign the armistice agreement. Rather, it is the general tendency and international custom that one representative of the coalition army signs the armistice agreement on behalf of all member nations of the coalition army.<sup>227</sup> There might be an expressed or implied agreement among the nations of the coalition army concerning the conclusion of the armistice before the representative signs it. It would be a reasonable legal interpretation that this expressed or implied agreement among the composite nations of the coalition army delegated to the representative of the coalition army to conclude the armistice agreement. Sometimes this internal agreement may be expressed in the text of the armistice agreement itself. For example, the Armistice between Turkey and the Allied Nations of October 30, 1918 reads "Conditions of an armistice agreed to and concluded between Vice Admiral Sommerset Arthur Gough-Calthorpe, British Commander-in-Chief of the Mediterranean Station, acting under authority from the British Government, *in agreement with their Allies*, H.E. Rechad H. Bey, Turkish Minister of Marine . . . acting under authority from the Turkish Government."<sup>228</sup> Usually, however, this internal agreement is not expressed within the text of the armistice agreement.

(c) The Signature of the Commander-in-Chief of the United Nations Command and South Korea as a Legal Party to the Armistice

The Korean Armistice Agreement of July 27, 1953 was concluded between the Commander-in-Chief of the United Nations Command and the Commanders of the Communist side. The legal effects of the signature of the Commander-in-Chief of the United Nations Command should be applied to the coalition army under his commanding authority. As explained above, he commanded a coalition army composed of the United Nations forces in proper sense and the

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226. "Agreement concerning an armistice between the USSR, the UK and the USA, on the one hand, and Hungary on the other hand," was signed by K. Voroshilov and Gyongyosi Janos." Voroshilov signed for the Soviet Union, the United Kingdom and the United States. *Ibid.*, pp. 994-1104.

227. Lyou Byung-Hwa, *supra* note 1, pp. 88-89.

228. Parry, *supra* note 220, p. 169.

South Korean forces. The United Nations forces in proper sense were created by the Security Resolutions 83 and 84 in 1950, while the coalition of the United Nations forces and South Korean forces were formed by the South Korean Government's assignment of the commanding authority to the United Nations Command on July 15, 1950. Thus, the signature of the Commander-in-Chief of the United Nations Command represents the composite members of the coalition army, i.e., the United Nations and South Korea. It was not necessary for the representative of South Korea to sign directly the text of the armistice agreement in order to be a legal party to this agreement.

In order for South Korea to be a legal party to the armistice agreement, two conditions should be fulfilled. First, there should be an internal agreement between the United Nations Command and South Korea concerning the conclusion of the armistice agreement; second, there should be a lawful conclusion of the armistice agreement by the Commander-in-Chief of the United Nations Command.

The first condition — that is, the internal agreement between the United Nations Command and South Korea, can be substantiated by several documents. The joint statement between President Rhee and Special Envoy Walter S. Robertson of July 11, 1953, is one of the documents. It reads:

During the past two weeks we have had many frank and cordial exchanges of views which have emphasized the deep friendship existing between the Republic of Korea and the United States and have gone far toward achieving mutual understanding of the troubled questions which have arisen in connection with arrangements for an armistice, the exchange of prisoners, and the forthcoming political conference . . .<sup>229</sup>

In addition, President Rhee's letter to the United States Secretary of State, July 24, 1953, President Rhee's letter to President Eisenhower, July 27, and President Eisenhower's letter to President Rhee, July 27, confirmed this internal agreement.<sup>230</sup>

The Communist Delegation was aware of this internal agreement and required South Korean agreement to the armistice. At the plenary meeting of armistice talks on July 12, 1953, United Nations delegate Harrison informed the anxious Communist delegate Nam Il about this agreement:

In consequence of negotiations completed with the Govern-

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229. U.S. Dept. of State Bulletin (July 20, 1953), pp. 72-73.

230. *FRUS*, *supra* note 80, pp. 1428-1445.

ment of the Republic of Korea, we have received suitable assurances from the ROK Government that it will, during the post hostility period, work in close collaboration for our common objectives. During this period provisions of the present draft armistice agreement will be implemented. You are assured that the United Nations Command, which includes the ROK forces, is prepared to carry out the terms of the armistice.<sup>231</sup>

The second condition — that is, the lawful conclusion of the armistice agreement, was also fulfilled. The two sides lawfully signed the armistice and continued to abide by its terms. Therefore, with the signature of the Commander-in-Chief of the United Nations Command, South Korea must be a *de jure* party to the armistice. However, there is an opinion that considers the United Nations forces themselves as a coalition army.<sup>232</sup> It is beyond question that the United Nations Command was created by the Security Council Resolutions 83 and 84 in 1950 and maintained for several decades, despite some procedural problems could be recognized in the course of the adoption of these resolutions. Therefore, the United Nations Command is a subsidiary organ of the United Nations, not a coalition army.<sup>233</sup>

It is clear now that the armed forces under the United Nations Command were a coalition army composed of the United Nations forces and South Korean forces. Furthermore, with the signature of the Commander-in-Chief of the United Nations Command, South Korea and the United Nations were made parties to the Korean Armistice Agreement. Thus, since South Korea was the host country, it is reasonable to state that South Korea should be a principal party to the Korean Armistice Agreement.

Over the course of several decades, the United Nations has experienced a structural change, particularly after the massive entry of the new third world countries after decolonization. This structural change modifies the legal status of the United Nations as a party to the Korean Armistice Agreement. This problem and the United States relationship to the Korean Armistice Agreement will be considered in the next chapter.

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231. *Ibid.*, p. 1378.

232. J. Stone, *Legal Controls of International Conflict*, London: Garland, 1973, p. 234.

233. For the details, see Lyou Byung-Hwa, *supra* note 1, Chapter 1.

(d) Practices

More than 30 years have passed since the conclusion of the Korean Armistice Agreement. This long period is sufficient to evaluate the South Korean legal status as a party to the Korean Armistice Agreement in light of actual practices. These practices shall be considered from several points of view.

iii. South Korean Participation in the Operation of the Military Armistice Commission

The Military Armistice Commission is a permanent organ for the implementation of the armistice agreement. It was established by Article 2(B) of the Korean Armistice Agreement. The general function of this Military Armistice Commission is to supervise the implementation of the armistice agreement and to settle through negotiations all the disputes arising from alleged violations of the armistice agreement. For this purpose, this Commission was to be assisted by the Joint Observer Team in supervision for the implementation of the armistice rules concerning the demilitarized zone and the Han River estuary. This Military Armistice Commission is composed of ten senior officers, five of whom are appointed by the Commander-in-Chief of the United Nations Command, and the other five are appointed by the Communist side.

South Korean participation in this Commission began on March 9, 1954. South Korean General Lim was appointed as one of the five representatives of the United Nations Command. General Lim's credentials were examined and accepted by the Communist side without any objection.<sup>234</sup> This acceptance implied that the Communist side had no objection to South Korean participation in the Military Armistice Commission. It also implied that they recognized the South Korean role in the implementation of the armistice agreement. South Korean participation in the Commission gradually grew more important. The present composition of the five representatives of the United Nations Command are two South Korean, one American and two representatives from other Allied Nations. The two representatives from other Allied Nations are appointed by turns among several Allied Nations and their actual role in the Commission is nominal. This confirms the important role of South Korea in the implementation of the Korean Armistice Agreement.<sup>235</sup> If one examines the actual opera-

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234. Chee Chong-II, "Legal Problems Involving the UNC in Korea and the Korean Armistice Agreement," *Korea Observer*, vol. VII, No. 2 (Spring 1976), pp. 133-134.

235. Lyou Byung-Hwa, *supra* note 1, p. 92.



tions of the Military Armistice Commission, it will become clear that operations are carried out by South Korea and the United States, on the one hand, and North Korea and China on the other hand. These practices support the proposition that South Korea is a legal party to the Korean Armistice Agreement.

#### iv. South-North Korean Dialogue

In the early 1970s Koreans harboured great hopes of peace and unification after long years of frustration over the Korean division. This began with the South-North Red Cross Contact negotiating the reunion of the families dispersed in South and North Korea. This dialogue culminated in the issue of South-North Joint Communiqué on July 4, 1972. This was the first agreement between the two governments since the conclusion of the Korean Armistice Agreement. This Joint Communiqué had special meaning in terms of the political future of the Korean Peninsula considering the hostile confrontation between the two sides over the three decades that had passed. This Joint Communiqué provided basic principles for Korean unification and South-North Korean relations. According to this Communiqué, Korean unification should be achieved through independent efforts without being subject to external imposition or interference, and the unification should be achieved through peaceful means, and not through use of force against one another. In order to implement these agreements, the two sides created the South-North Coordinating Committee.<sup>236</sup> Thus, the South-North Korean Dialogue clearly illustrated that the Korean problem, including the maintenance and implementation of the armistice agreement, should be solved by the Korean people themselves. This also indicated that South Korea should be an essential party to the Korean Armistice Agreement.<sup>237</sup>

#### v. Withdrawal of Foreign Forces from Korea

More than three decades have passed since the conclusion of the Korean Armistice Agreement. Since that time, most foreign troops, both United Nations forces and Chinese Communists have been withdrawn from the Korean peninsula. Only 40,000 United States forces remain in South Korea, in accordance with the Mutual Defense Treaty (October 1, 1954) between two countries. Thousands of troops of South Korea and North Korea are engaged in the maintenance and implementation of the armistice agreement. This actual situation

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236. *White Paper*, *supra* note 164, pp. 85-86.

237. Lyou Byung-Hwa, *supra* note 1, pp. 92-93.

clearly indicates that South and North Korea are principal parties to the Korean Armistice Agreement.<sup>238</sup>

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238. *Ibid.*, p. 93.

**CHAPTER TWO. THE DISSOLUTION OF THE UNITED  
NATIONS COMMAND AND INTERNATIONAL  
LEGAL MECHANISMS FOR PEACE IN  
THE KOREAN PENINSULA**

**Section A. Structural Change Of The United Nations And The  
International Political Situation Surrounding  
Korea**

*1. Decolonization and the New Situation in the United Nations*

Before the Korean War, the United Nations had only 59 member states. From the late 1950s, however, decolonization began and numerous new nations entered in the United Nations. By 1970 about 70 nations became new members, doubling the number of member states.<sup>239</sup>

This new situation drastically changed the United Nations. Until that time, the United States was the predominant power in the United Nations because most member states were dependent on American economic assistance after the destruction of World War II. However, in the 1970s the situation changed. Most new member states were newly born from European colonies. As a result, their tendency was to lean ideologically towards socialism. The Communist propaganda of equality appealed to those states who had suffered so much under the western colonialism.<sup>240</sup> These new states claimed to be non-aligned, but in fact, were opposed to the United States in the United Nations. Thus, the United States could not continue to exercise its predominant role in the United Nations. In other words, these states blocked many resolutions which the United States supported.

This drastic change also affected the United Nations' role in the Korean problem. Until 1960, South Korean legitimacy in the United Nations had been absolute because the Government of South Korea was established under the auspices of the United Nations and protected by it. On the other hand, North Korea was not even permitted to attend discussions of the Korean problem in the United Nations. Since the 1960s the situation has changed. Many newborn nations knew little about the Korean problem in the United Nations, nor were they interested in it. They simply were opposed to the "superpower" United States, and thus also its seeming protege, South Korea.

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239. C. A. Colliard, *Institutions des Relations Internationales*, Paris: Dalloz, 1978, pp. 378-380.

240. Lyou Byung-Hwa, *Le Commandement des Nations Unies en Coree et Ses Problemes Juridiques*, Seoul, 1980, p. 95.

The first concrete result of this change, in terms of the Korean question, appeared in the fifteenth session of the United Nations General Assembly in April 1961. After the United States proposed to invite the South Korean representative to the discussion of the Korean question at the First Committee,<sup>241</sup> the Soviet Union counterproposed to also invite the North Korean representative, saying that without participation of both parties, the discussion could not be fruitful.<sup>242</sup> The Indonesian representative proposed a simultaneous invitation of both representatives, slightly modifying the Soviet proposal. In the face of such circumstances, United States Delegate Stevenson proposed a compromise. Stevenson proposed a simultaneous invitation of both representatives under the condition that North Korea "first unequivocally accepts the competence and authority of the United Nations within the terms of the Charter to take action on the Korean question as has already been done by the Republic of Korea."<sup>243</sup>

North Korea did not participate in the discussion of the Korean question in the United Nations General Assembly, refusing to accept the competence and authority of the United Nations. However, this change would be very important, because it reflected the structural change in the United Nations. The change continued to evolve. Thus, the situation of the Korean question in the United Nations in the early 1970s differed greatly from that of the 1950s.

## 2. *The People's Republic of China's Entrance in the United Nations*

After Communist China took over mainland China from Nationalist China, the Communists cabled the President of the General Assembly and the Secretary-General of the United Nations on November 18, 1949, saying that Nationalist China should not represent the Chinese people in the United Nations. The Soviet Union, supporting this position, proposed that the Security Council should exclude the Nationalist delegate. But this proposal was defeated on January 13, 1950 by six to three with two abstentions. The Soviet delegate then declared that the Soviet Union would not participate in any further Security Council meetings until the delegate of Nationalist China was excluded, and that it would not recognize as legal any decision made by the Security Council with the participation of the Nationalist dele-

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241. UN Doc. A/C.1/L268 (April 10, 1961).

242. UN Doc. A/C.1/L270 (April 10, 1961).

243. UN Doc. A/C.1/837 (April 12, 1961).

gate.<sup>244</sup> The question of Chinese representation in the United Nations from then on confronted the General Assembly and other organs of the United Nations. The United States stubbornly opposed, however, the entrance of the People's Republic of China into the United Nations.

In 1961, the United Nations General Assembly adopted Resolution 1688 (XVI), deciding that any proposal to change Chinese representation in the United Nations was an important question requiring a two-thirds majority vote for approval under Article 18 of the United Nations Charter. This requirement was necessary for blocking the proposal of the replacement of Chinese representation in the United Nations because many nations leaned towards the People's Republic of China. In fact, Article 18, Paragraph 2 of the United Nations Charter is not so clear: "Decisions of the General Assembly on important questions shall be made by a two-thirds majority of members present and voting. These questions shall include recommendation with respect to the maintenance of international peace and security, . . . the admission of new members to the United Nations . . . the expulsion of members." There is no mention about the replacement of the representation. As a result, the question whether or not the replacement of Chinese representation is an important problem is not clear. But Article 18, Paragraph 3 of the Charter provides that decisions on other questions, including the determination of additional categories of questions to be decided by a two-third majority, shall be made by a majority of the members present and voting. Thus, every year the United Nations General Assembly reiterated the same decision on whether the replacement problem would be an important problem or not, and under the influence of the United States, tried to reject the replacement. The number of votes supporting the People's Republic of China continued to increase, however, and on October 25, 1971, the United Nations General Assembly rejected the opinion that the replacement question is an important problem requiring a two-thirds vote. On the same day, the General Assembly supported the replacement of the Chinese representation in the United Nations by a vote of seventy-six to thirty-five with seventeen abstentions, more than a two-thirds majority (Resolution 2758). Thus, the People's Republic of China was admitted into the United Nations, and became a permanent member of the Security Council, although the United States voted against the replacement. It is no question that the Sino-American rap-

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244. UN Doc. S/PV.461 (January 13, 1950); *Public Papers of the Secretary-General of the United Nations*, Vol. 1, Trygve Lie, 1946-1953, pp. 257-267.

prochement developed after Nixon's "Ping-pong diplomacy" of April 1971 greatly influenced this change.

This replacement of the Chinese representation in the United Nations deeply affected the Korean question in the United Nations. On one hand, North Korea now got the support of two permanent members of the Security Council. On the other hand, the influence of the United States in the United Nations was comparatively reduced.

### 3. *Sino-American Rapprochement*

Since the Korean War, in which the United States had fought against Communist China (the People's Republic of China), the two nations' relationship continued to be bad. In the 1960s, however, Sino-Soviet relations deteriorated, culminating in the Ussuri River clash in 1969. As a result, the People's Republic of China felt more imminent danger from the Soviet Union than from the United States. This worry was justified by the Soviet invasion of Czechoslovakia in August 1968.<sup>245</sup> On the other hand, the United States had suffered a lot of difficulties from the Vietnam War. President Nixon announced the Guam doctrine in July 1969, stating that the United States would gradually reduce its military involvement in Asia and try to avoid direct military involvement in local conflicts.<sup>246</sup> In this situation, both the United States and China tried to improve their relations. First, the United States showed its favorable attitude by permitting its citizens to travel in China. The United States also relaxed the trade embargo on the mainland of China and interrupted the Seventh Fleet's regular patrolling of the Taiwan Strait.<sup>247</sup> China invited the United States' table tennis team to China in April, 1971. The relations quickly developed and President Nixon announced on July 15, 1971 his plan to visit China. Nixon's advisor Henry Kissinger had prepared this plan in a secret visit to Peking. President Nixon visited China from February 21 to 28, 1972. This visit resulted in the issuance of the Shanghai Communiqué, on February 28, between President Nixon and Premier Chou En-lai:

During the visit, extensive, earnest and frank discussions were held between President Nixon and Premier Chou En-

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245. J. C. Hsiung, "The Conceptual Foundation of the United States China Policy," University of Maryland Law School Occasional Papers/Reprints Series in Contemporary Asian Studies, Baltimore: University of Maryland Law School Press, 1980, No. 1, p. 2.

246. "U.S. Foreign Policy for the 1970s: A New Strategy for Peace," *The President's Report to the Congress and the Nations on American Foreign Policy*, 1970, pp. 5-6.

247. Kim Hak-Joon, *Unification Policy of South and North Korea*, Seoul: Seoul National University Press, 1977, p. 236.

lai on the normalization of relations between the United States of America and the People's Republic of China. . . . The United States acknowledges that all Chinese . . . maintain there is but one China and that Taiwan is a part of China. . . . [i]t affirms the ultimate objective of the withdrawal of all U.S. forces and military installations from Taiwan. . . . They agreed to facilitate the progressive development of trade between their two countries. The two sides agreed that they will stay in contact through various channels . . . for concrete consultations to further the normalization of relations between the two countries and continue to exchange views on issues of common interest. . . .<sup>248</sup>

Sino-American relations continued to develop in accordance with the principles of the Shanghai Communiqué. In May, 1973, liaison offices between two countries were established in Peking and Washington to carry out the de facto function of regular embassies. As a result, the volume of trade between the nations increased from \$95 million in 1972 to \$937 million in 1974. Exchanges and cooperations in other domains were similarly increased. This development of Sino-American rapprochement culminated in the announcement of a joint communiqué on December 15, 1978 on the establishment of diplomatic relations between the two nations beginning January 1, 1979.<sup>249</sup>

This Sino-American rapprochement made great impact on the Korean question. It meant that China would accept the status quo in Korea and try to maintain it, saying that the Korean problem should be solved by Koreans themselves through peaceful means.

#### 4. *South-North Korean Dialogue*

The fundamental change of external environment surrounding Korean Peninsula naturally influenced both South and North Korea to seek new policy on Korean unification. That is, a South-North dialogue without external interference. This dialogue began in a humanitarian way. In a commemorative address on the twenty-fifth anniversary of national liberation on August 15, 1970, President Park

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248. U.S. Dept. of State Bulletin (March 20, 1972), pp. 435-438; Hungdah Chiu, ed., "Normalizing Relations with the People's Republic of China: Problems, Analysis and Documents," *Occasional Papers*, No. 2, 1978, Baltimore: University of Maryland School of Law Press, 1978, pp. 146-150.

249. U.S. Dept. of the Army, *China: A Country Study*, Washington: GPO, 1981, pp. 411-413.

of South Korea said that if North Korea would desist forthwith from perpetrating all sorts of military provocations and renounce their policy of communizing the whole of Korea by force, he would be "prepared to suggest epochal and more realistic measures, with a view to remov[e], step by step, . . . in the interest of laying the ground work for unification and on the basis of humanitarian consideration . . ." <sup>250</sup>

As a concrete proposal of this Declaration, the South Korean Red Cross proposed on August 12, 1971, a conference between the two Korean Red Cross delegates to discuss reunion of dispersed families. Two days later the North Korean Red Cross accepted this proposal. As a result, preliminary talks between the two Red Cross societies were held on September 28, 1972, at Panmunjom. <sup>251</sup> This humanitarian talk quickly developed into important political negotiations concerning the Korean question. These negotiations were secretly carried out by two high ranking delegates from South and North Korea. The secret negotiations resulted in the issue of the South-North Joint Communiqué on July 4, 1972. <sup>252</sup>

According to this Communiqué, in an effort to remove misunderstanding, mistrust, and to mitigate increased tensions that had arisen between the South and the North resulting from the long separation, the two sides agreed to the basic principles concerning the South-North relations and unification.

First, as the basic principles for unification, they agreed: 1) unification should be achieved through independent efforts without being subject to external imposition or interference; 2) unification should be achieved through peaceful means, and not through use of force; 3) a great national unity, as a homogeneous people, should be sought first, transcending differences in ideas, ideologies, and systems.

Second, in order to ease tensions and restore severed national ties, they agreed not to slander one another, and to carry out various exchanges in many areas.

Third, in order to prevent unexpected military incidents and to solve problems arising in South-North relations directly and promptly, they agreed to install a direct telephone line between Seoul and Pyongyang.

Fourth, they agreed to cooperate for successful South-North Red Cross talks. Fifth, in order to implement aforementioned agreements

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250. ROK, National Unification Board, *A White Paper on South-North Dialogue in Korea*, Seoul, 1982, pp. 313-319.

251. *Ibid.*, pp. 63-84.

252. *Ibid.*, pp. 85-86.



and settle other problems arising from South-North relations, they agreed to create a South-North Coordinating Committee.

Even after the South-North Joint Communiqué, the fundamental disparity between South and North Korea still remained, but this historical trend, together with the sudden changes of Korea's external situation, made a great change in foreign policy on both sides. South Korea, realizing the changing trend in the external environment, especially sought accommodations to the new political current rather than being forced to accept the imposing result of this change. On June 23, 1973, South Korean President Park Chung Hee announced the Special Statement Regarding Foreign Policy for Peace and Unification.<sup>253</sup> The main purposes of this Statement were the peaceful coexistence, gradual reconciliation between South and North Korea, and long-term unification of Korea. In his Statement, President Park explained the process of the South-North Korean dialogue: South Korea had taken the position that both sides should endeavor to gradually remove the artificial barriers between the South and the North by solving easier and more practical problems first and to phase out feelings of mutual distrust and replace them with those of mutual confidence through concrete results. On the other hand, North Korea, in disregard of the existence of deep-rooted feelings of distrust between the South and the North, insisted that military and political problems that might endanger South Korean security must first be dealt with as a package in the talks.

President Park continued to explain Korea's external environment: the era of cold war after World War II came to an end, and a new era of peaceful coexistence, based on the status quo, began.

In these circumstances, he declared a new foreign policy of South Korea:

- 1) The peaceful unification of the fatherland is the supreme task of the Korean people. We will continue to exert every effort to accomplish this task.
- 2) Peace must be maintained in the Korean peninsula by all means. The South and the North should neither interfere with each other's internal affairs nor commit aggression against each other.
- 3) We will continue to make efforts with sincerity and patience to secure concrete results from the South-North dialogue based on the spirit of the South-North Joint Communiqué dated July 4, 1972.
- 4) We shall not oppose North Korea's participation with us in

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253. The Institute for East Asian Studies, *Foreign Policy for Peace and Unification*, Seoul, 1975, pp. 161-167; *White Paper*, *supra* note 12, pp. 320-325.

international organizations, if it is conducive to the easing of tensions and the furtherance of international cooperation.

5) We shall not object to our admittance into the United Nations together with North Korea, if the majority of the member states of the United Nations so wish, provided that it does not cause hindrance to our national unification. Even before our admittance into the United Nations as a member, we shall not be opposed to North Korea also being invited to the United Nations General Assembly's deliberation of the Korean question in which the representative of the Republic of Korea is invited to participate.

6) The Republic of Korea will open its doors to all the nations of the world on the basis of the principles of reciprocity and equality. At the same time, we urge those countries whose ideologies and social institutions are different from ours to open their doors likewise to us.

7) Peace and good-neighborliness are the firm bases of the foreign policy of the Republic of Korea. It is reaffirmed that we will continue to further strengthen the ties of friendship existing between our friendly nations and our country.<sup>254</sup>

President Park added that these policies were interim measures during the transitional period pending the achievement of unification and that taking these measures did not signify the recognition of North Korea as a state.

This statement opened the United Nations' door and its Special Agencies to North Korea. As a result, several western countries established diplomatic relations with North Korea. Ironically, this statement had better results for North Korea than South Korea.

##### *5. North Korea's New Attitude Toward the United Nations*

Until the 1970s, the United Nations did not recognize the North Korean regime as a legal government, condemning it as an aggressor. As a result, the United Nations did not allow North Korean participation in its meetings, even in discussions of the Korean problem. Following the Special Statement Regarding Foreign Policy for Peace and Unification of President Park, however, North Korea established a permanent mission to the United Nations in New York in July 1973.<sup>255</sup> At the same time, North Korea took a seat in several Special Agencies. North Korea strategically chose leftist Algeria, not the Soviet Union, as its spokesman to get support among the majority third

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254. *Ibid.*, pp. 323-325.

255. *Ibid.*, pp. 84-91.

world countries in the United Nations.<sup>256</sup> Now the North Korean regime not only participated in the discussion of the Korean question in the United Nations, but also criticized South Korea and the United States in the United Nations. After more than two decades, the United Nations was fundamentally changed concerning the Korean question. As a result, South Korea, who had until then monopolized the support of the United Nations, was on the defensive in the United Nations.

This situation continued to deteriorate and culminated in 1975 when the United Nations General Assembly adopted the two contradictory resolutions concerning Korea.<sup>257</sup> Subsequently, the international situation was once again changed. Because the rapid economic growth of South Korea overshadowed North Korean diplomatic tactics, the international environment became more favorable toward South Korea.<sup>258</sup>

#### **Section B. Legal Problems Surrounding The Dissolution Of The United Nations Command**

The United Nations Command was created by the United Nations Security Council to repel North Korean aggression against South Korea. The Communists have always demanded United Nations Command's dissolution from its creation. The Communists demand, however, had been ignored until this structural change in the United Nations. In the 1970s North Korea began to pursue aggressive diplomatic attacks against South Korea in the United Nations. The main purpose of these activities was to encourage the dissolution of the United Nations Command and withdrawal of U.S. military forces in South Korea. This purpose was partially achieved in 1975, when the United Nations General Assembly adopted the two contradictory resolutions on the Korean question. The main content of these resolutions concerned the dissolution of the United Nation's Command.

From an international legal point of view, it is important to clarify the legal character of the dissolution of the United Nation's Command, because both South and North Korea are deeply concerned with this problem. Their concerns are groundless, however, from the legal point of view. Their arguments are based upon wrong interpretations of the legal status of the United Nations Command in connection

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256. Lyou Byung-Hwa, *supra* note 1, pp. 96-97.

257. ROK Ministry of Foreign Affairs, *The Question of Korea at the 30th Session of the U.N. General Assembly*, Vol. 1-2, Seoul, 1975.

258. Lyou Byung-Hwa, *supra* note 1, p. 97.

with the Korean Armistice Agreement. It seems that both South Korea and North Korea assume that South Korea is not a legal party to the Korean Armistice Agreement, and that the United Nations Command is essential in maintaining the Korean Armistice Agreement. South Korea, however, is a legal party to the Korean Armistice Agreement. (See Chapter I) The question of whether the United Nations Command is essential in maintaining the Korean Armistice Agreement is considered hereinafter.

1. *The Dissolution of the UNCURK and Its Legal Implication*

a. The Function of the UNCURK

The United Nations Commission for the Unification and Rehabilitation of Korea (UNCURK) was established in the optimistic prospect for the unification of Korea. After the success of the celebrated amphibious landings at Inchon on September 15, 1950, the United Nations' Command continued victorious operations against the retreating Communists. The question then was whether the United Nations Command should push back the Communists just to the north of the 38th Parallel or should it try to achieve the unification of Korea by force. Resolution 83 of the United Nations Security Council on June 27, 1950, recommended that members of the United Nations "furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area." This resolution could be interpreted to authorize an advance into North Korea for the complete restoration of peace in the area. The United Nations, however, decided to adopt another resolution which would be more concrete and clear. Resolution 376 (V) was adopted by the General Assembly on October 7, 1950. This resolution established UNCURK to implement its decision concerning the unification and rehabilitation of Korea on the threshold of total military victory for the United Nations Command in Korea.

This resolution provided detailed processes of the Korean unification such as elections and formation of a unified government. It also provided the functions of UNCURK:<sup>259</sup>

- 1) to assume the function exercised by the United Nations Commission on Korea;
- 2) to represent the United Nations in bringing about the establishment of a unified, independent and democratic government for all Korea;

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259. U.N.G.A. Res. 376(V) (October 7, 1950); ROK Ministry of Foreign Affairs, *Resolutions of the UN Principal Organs Relating to Korea*, Seoul, 1976, pp. 93-96.

3) to exercise such responsibilities in connection with relief and rehabilitation in Korea as may be determined by the General Assembly;

4) To prepare a report to the next regular session of the General Assembly and to any prior special session.

In sum, the function of the UNCURK was to carry out the United Nations programs concerning the unification and rehabilitation of Korea. Since most people expected to see imminent total military victory of the United Nations Command,<sup>260</sup> the United Nations created this Commission to carry out concrete programs of unification.

#### b. The Dissolution of the UNCURK

This optimism was not premature. At the beginning of October 1950, several hundred thousand Chinese Communist forces intervened in Korea by attacking the United Nations forces on all fronts. As a result, the military situation was reversed and the Communists again took North Korea under their control.<sup>261</sup>

By concluding the Korean Armistice Agreement, the United Nations gave up its objective of Korean unification by force. The original purpose and function of the UNCURK were modified. Korean unification was deemed impracticable for the foreseeable future. Thus, the UNCURK could not carry out its expected function but simply helped the rehabilitation of South Korea and observed South Korean political situations and general elections.<sup>262</sup>

The Communist side first proposed dissolving UNCURK in the early 1950s. The Soviet Union proposed a draft-resolution on March 10, 1953, but it was rejected by a vote of fifty to five in the General Assembly.<sup>263</sup> Proposals were repeatedly made to the General Assembly by the Communist side and each time rejected by the great majority of the United Nations members.<sup>264</sup> It is interesting to note, however, that the reason given for the proposed dissolution of UNCURK since 1961 is that the unification of Korea is a domestic prob-

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260. "The 7th Report of the United Nations Command in Korea," U.N. Doc. S/1883 (November 3, 1950).

261. A. S. Whiting, *China Crosses the Yalu*, New York: Macmillan Co., 1960, pp. 116-124; "The 10th Report of the United Nations Command in Korea," U.N. Doc. S/1953.

262. U.N. Doc. A/1493; A/2711; A/2947; A/3172.

263. U.N. Doc. A/C.1/L144 (March 10, 1953).

264. U.N. Doc. A/C.1/L117 (December 1, 1954).

lem of the Korean people.<sup>265</sup>

As explained above, since the 1960s the United Nations has undergone a structural change with the massive entrance of new born nations from decolonization. This change in the United Nations itself deeply affected the Korean question in the United Nations. The dissolution of UNCURK was once more at issue. North Korea chose Algeria as its spokesman and proposed the dissolution of UNCURK. After the issue of the South-North Joint Communiqué on July 4, 1972, which declared that peaceful unification of Korea was to be achieved without external interference, the North Korean voice demanding the dissolution of UNCURK became louder:

In the light of the new elements which exist in the regime, it is now more than ever necessary to reconsider the terms of reference and activities of the United Nations Commission for the Unification and Rehabilitation of Korea and the presence of the United Nations Military Command in Korea.<sup>266</sup>

On June 23, 1973, after South Korean President Park announced in the Special Statement Regarding Foreign Policy for Peace and Unification stating that he would not oppose North Korea's participation in international organizations and discussions of the Korean question before the United Nations, the situation quickly evolved. North Korea immediately sent its permanent mission to the United Nations in New York, and accelerated its diplomatic activity, with the strong support of the Communist bloc and many Third World countries.

After the structural change in the United Nations, South Korea realized that the United Nations would no longer be useful for the Korean question. It agreed with the North Korean side in adopting a consensus statement without vote concerning the dissolution of UNCURK. The General Assembly adopted this consensus statement without vote on November 28, 1973.<sup>267</sup> According to this statement, it was noted with satisfaction that a joint communiqué had been issued by South and North Korea on July 4, 1972, providing the following principles of the Korean unification: 1) the unification should be achieved independently without external interference, 2) by peaceful means; and 3) great national unity should be promoted. Hoping that the South-North dialogue would continue to develop, the statement

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265. U.N. Doc. A/C.1/L303 (December 7, 1961); A/C.1/L404 (October 25, 1967); A/C.1/L455 (December 9, 1968).

266. U.N. Doc. A/8752 (July 17, 1972); A/8752 (September 15, 1972).

267. U.N. Doc. A/C.1/L661; A/9030; A/9341; *Resolutions, supra* note 259, pp. 443-445.

expressed the General Assembly's decision to dissolve immediately the United Nations Commission for the Unification and Rehabilitation of Korea (UNCURK).

c. The Legal Implication of the Dissolution

The legal implication of the dissolution of UNCURK should be considered in terms of its function and purpose. According to Resolution 376(V) of the United Nations General Assembly, the purpose and function of UNCURK were to assume the function exercised by the United Nations Commission on Korea, to represent the United Nations in establishing a unified, independent, democratic government of Korea and to help the rehabilitation of Korea. The purpose and function of the United Nations Commission on Korea were also the Korean unification.<sup>268</sup> Again, the purpose and function of UNCURK are the unification and rehabilitation of Korea. Between these two purposes of UNCURK, the rehabilitation was no longer necessary because the Korean economy had grown strong. The remaining purpose was the Korean unification.

The dissolution of UNCURK was not the result of achievement of its purpose but abandonment of its purpose. After the structural change in the United Nations, the Korean unification through the United Nations seemed almost impossible. The consensus statement that dissolved UNCURK indicated that the Korean unification should be achieved by the Koreans themselves without external interference.<sup>269</sup> In sum, the United Nations retreated from its involvement in the Korean unification by dissolving UNCURK. Thus, the legal implication of the dissolution of UNCURK means that the question of the United Nations was taking heads off from the Korean question. The dissolution of UNCURK is not only a consequence of the consensus statement of November 28, 1973, but also the natural result of the structural change of the United Nations itself.

2. *The Two Contradictory Korean Resolutions of the United Nations General Assembly in November 1975*

a. Background

After the dissolution of UNCURK, the immediate objective of North Korean policy focused on the dissolution of the United Nations Command. To North Korean eyes, this dissolution would be the last

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268. U.N.G.A. Res. 112 (II) (November 14, 1947); U.N.G.A. Res. 195 (III) (December 12, 1948).

269. U.N. Doc. A/9030; A/9341; A/C.1/L661.

symbolic organ connecting South Korean legitimacy with the United Nations. Therefore, it would be North Korean strategy to try to cut off this symbolic connection between the United Nations and South Korea through the dissolution of the United Nations Command. North Korea expected to be able to more effectively demand the withdrawal of the United States troops in Korea once the United Nations Command was dissolved. In other words, the final objective of North Korean policy would be the withdrawal of the United States troops in South Korea.

With this strategy North Korea proposed the dissolution of the United Nations Command and the withdrawal of foreign troops from South Korea at the twenty-ninth session of the United Nations General Assembly in 1974. South Korea, defending its position, tried to maintain the United Nations Command which it thought was essential for the implementation of the armistice agreement. In this backdrop, the General Assembly adopted Resolution 3333 (XXIX), which was a compromise but closer to the South Korean position:

The General Assembly . . . expresses the hope that the Security Council, bearing in mind the need to ensure continued adherence to the Armistice Agreement and the full maintenance of peace and security in the area, will in due course give consideration, in consultation with the parties directly concerned, to those aspects of the Korean question which fall within its responsibilities, including the dissolution of the United Nations Command in conjunction with appropriate arrangements to maintain the Armistice Agreement which is calculated to preserve peace and security in the Korean peninsula, pending negotiations and conciliation between the two Korean Governments leading to a lasting peace between them.<sup>270</sup>

Immediately after the adoption of Resolution 3333, both sides began to prepare for another showdown in the 30th session of the United Nations General Assembly in 1975. Both South Korea and North Korea dispatched several goodwill missions to Third World countries and invited several high ranking officials from these countries lobbying for their support in the United Nations.<sup>271</sup> This tragic rivalry of South and North Korea culminated in the adoption of the two contradictory resolutions at the Thirtieth session of the General Assembly. This un-

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270. U.N.G.A. Res. 3333 (XXIX) (December 17, 1974; *Resolutions, supra* note 259, pp. 459-460.

271. *Foreign Policy, supra* note 253, pp. 76-82.



reasonable event clearly showed the inability of the United Nations to solve the Korean question after its structural change.

b. Resolution 3390A (the South Korean Position)

i. Content

The gist of Resolution 3390A, proposed by South Korea, is based on Resolution 3333 of the General Assembly, 17 December 1974. South Korea agreed to the dissolution of the United Nations Command on condition that appropriate arrangements be made to maintain the Korean Armistice Agreement. In support of this position, the United States sent a letter on June 27, 1975 to the President of the Security Council stating that it was prepared to terminate the United Nations Command on January 1, 1976, provided that there were alternative arrangements for maintaining the Armistice Agreement.<sup>272</sup> The South Korean Foreign Minister also announced a statement on June 27, 1975 affirming South Korean willingness to enter into arrangements for maintaining the Armistice Agreement.<sup>273</sup>

Resolution 3390A contains primarily a continuation of the South-North Korean dialogue, alternative arrangements for the maintenance of the Armistice Agreement, and the dissolution of the United Nations Command.<sup>274</sup> South Korea considered the United Nations Command to be essential to the implementation of the Korean Armistice Agreement. Consequently, South Korea agreed to the dissolution of the United Nations Command only in conjunction with alternative arrangements for maintaining the Armistice Agreement. In order to emphasize its willingness to dissolve the United Nations Command, South Korea suggested that the Command might be dissolved on January 1, 1976, once the alternative arrangements were made.

ii. Legal Interpretation of the South Korean Position

The principal objective of the South Korean position is to maintain peace and security in Korea. The external situation around the Korean peninsula and the structural change of the United Nations itself confused and embarrassed the South Korean Government. The United Nations, which had helped form the South Korean Government and defended it in the face of Communist aggression, now lost its traditional principles and direction with the addition of new members

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272. U.N. Doc. S/11737 (1975).

273. Korea Question, *supra* note 257, pp. 197-200.

274. U.N.G.A. Res. 3390 A (XXX) (November 18, 1975); *Resolutions*, *supra* note 259, pp. 475-477.

not even in existence before the 1960s. In this uncertain situation, South Korea concentrated on maintaining peace and security on the Korean peninsula. The South Korean Government, modifying its traditionally dominant position of legitimacy in the United Nations as compared to the North Korean regime, proposed minimum security measures if the present security mechanism was to be changed. The South Korean Government presumed that the United Nations Command, whose Commander-in-Chief had signed the Korean Armistice Agreement, would be essential at least for the implementation of the Armistice Agreement. This position, however, was based on an incorrect legal interpretation of the Korean Armistice Agreement.

The South Korean interpretation erred in two respects. The first error was the presumption that South Korea was not to be a legal party to the Armistice Agreement. The second error was that the United Nations would be a party to, or at least an essential organ for the implementation of, the Armistice Agreement.

According to the statement of the South Korean Foreign Minister, responsibility for the implementation of Resolution 3333 now resides with the Commander-in-Chief of the United Nations Command. Therefore, before the dissolution of the Command, the Commander-in-Chief should designate officers of South Korea and the United States to take over maintenance of the Armistice Agreement from the Commander-in-Chief. This statement implied that the dissolution of the United Nations Command without appropriate arrangements would invalidate the Armistice Agreement.<sup>275</sup> The United States Government's letter to the President of the Security Council on June 27, 1975 confirmed this position.<sup>276</sup> The South Korean Memorandum on the Korean question at the 30th session of the United Nations General Assembly of October 13, 1975, maintained the same position.<sup>277</sup>

Considering these arguments, the South Korean position clearly presumed that South Korea would not be a legal party to the Armistice Agreement and that the United Nations Command would remain the essential organ for the continued legal effect of the Armistice Agreement. However, South Korea should be a principal legal party to the Korean Armistice Agreement under coalition army rules. If the commander of a coalition army signs an armistice agreement, all members composing the coalition army become parties to the agree-

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275. Korean Question, *supra* note 257, pp. 197-200.

276. U.N. Doc. S/11737 (1975).

277. U.N. Doc. A/C.1/1060 (October 13, 1975).

ment.<sup>278</sup> Furthermore, the United Nations Command functions merely as a subsidiary organ with no international legal personality, and thus cannot act as legal party to an international agreement. Legal effects of actions of this subsidiary organ belong to the organization itself, namely the United Nations. Therefore, if the United Nations Command is dissolved, the problem of extinction of a legal party to the Korean Armistice Agreement never arises; the only problem may be some technical arrangements. In this sense South Korean concerns may be groundless, at least in terms of legal interpretation.

c. Resolution 3390 B

i. Content

The North Korean position concentrates on the unification of Korea, while South Korea occupies itself with peace and security in Korea. North Korea insists on the withdrawal of foreign troops and dissolution of the United Nations Command emphasizing self-determination and the non-intervention of foreign countries. According to Resolution 3390 B, the North Korean position, it is urgently necessary to terminate foreign interference in Korea's internal problems, in order to guarantee a durable peace in Korea and to accelerate independent and peaceful Korean reunification. North Korea proposed:

- 1) to dissolve the United Nations Command and withdraw all foreign troops stationed in South Korea under the flag of the United Nations;
- 2) to call upon the real parties to the Korean Armistice Agreement to replace the Armistice Agreement with a peace agreement;
- 3) to urge South and North Korea to observe the principles of the South-North Joint Communique; and
- 4) to take practical measures to stop arms reinforcement, drastically reducing the armed forces of both sides to an equal level.<sup>279</sup>

ii. Legal Interpretation of the North Korean Position

Possessing several contradictory elements, North Korea's position is not initially clear. First, North Korea proposes to put an end to the Korean Armistice Agreement, yet it speaks of durable peace in Korea. According to the North Korean Memorandum of the Korean question at the thirtieth session of the United Nations General Assem-

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278. See the conclusion in Chapter I of this Volume.

279. U.N.G.A. Res. 3390 B (November 18, 1975); *Resolutions, supra* note 259, pp. 477-479

bly, the Armistice Agreement represents no more than a temporary cease-fire taken by two belligerent parties in an unstable state. Therefore, according to the North Korean arguments, the Korean Armistice Agreement should be replaced by a peace agreement because "the Armistice Agreement cannot perform its original function owing to the constant sabotage of the Armistice Agreement by the United States side."<sup>280</sup> Furthermore, North Korea holds that as the United Nations Command is a signatory to the Korean Armistice Agreement, once the United Nations Command dissolves, the Armistice Agreement must also cease to exist.<sup>281</sup>

North Korea's position that the Korean Armistice Agreement is imperfect, unstable, and should be put to an end is unreasonable. A peace agreement is neither a suspension nor a termination of an armistice agreement, but rather its achievement and development. Moreover, an armistice today serves to terminate war itself even without resolving its cause. If North Korea really wants peaceful relations with South Korea, both sides should conclude a peace agreement that would make the principles of the South-North Joint Communique real legal terms.

Second, it is absurd that North Korea proposes to negotiate a peace agreement with the United States while ignoring South Korea, when North Korea also speaks of the non-intervention of foreign powers and self-determination. According to the North Korean claim, the Korean Armistice Agreement was originally signed between the North Korean Commander and the Communist Chinese Commander, on the one hand, and the Commander of the United Nations Command on the other. The Chinese Communists "[h]ave already withdrawn totally from Korea, and the so-called United Nations forces present in South Korea now are in fact U.S. troops. Therefore, the real parties to the Armistice Agreement . . ." are North Korea and the United States.<sup>282</sup>

It might be partially correct that North Korea recognizes the important position of the United States in the Korean Armistice Agreement. However, it is obviously wrong not to realize the absolutely necessary position of South Korea as host country in the Korean question. According to the international customs of the coalition army, South Korea must be the *de jure* party to the Korean Armistice Agreement as a result of the signature of the Commander-in-Chief of

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280. U.N. Doc. A/C.1/1054 (1975), p. 12.

281. *Ibid.*, p. 16.

282. *Ibid.*, p. 13.

the United Nations Command, under which the South Korean forces and the United Nations forces formed a coalition army.<sup>283</sup>

Third, North Korea incorrectly believes that the Korean Armistice Agreement would cease to exist if the United Nations Command is dissolved. Again, the United Nations Command represents only a subsidiary organ that cannot be an international legal person. The international legal person in this case is the United Nations. Therefore, if the United Nations Command is dissolved, there is no extinction of a party to the Korean Armistice Agreement.

It is superficial and naive to determine the North Korean position only through the arguments expressed in official documents. Unfortunately, the credibility of Communist North Korea is low. For example, during the active South-North Korean dialogues of the early 1970s, North Korea had prepared several infiltration tunnels for a surprise attack against South Korea.<sup>284</sup> Thus, North Korea lost credibility as a good faith negotiator with South Korea.

#### d. Adoption of the Two Contradictory Resolutions

Two contradictory resolutions on the Korean question were adopted on November 18, 1975 by the General Assembly of the United Nations. South Korea proposed Resolution 3390 A, which was adopted by a vote of fifty-nine to fifty-one with twenty-nine abstentions.<sup>285</sup> North Korea proposed Resolution 3390 B, which was adopted by a vote of fifty-four to forty-three with forty-two abstentions. The two resolutions contradict each other in that Resolution 3390 A proposes the dissolution of the United Nations Command in concurrence with appropriate arrangements for maintaining the Armistice Agreement, while Resolution 3390 B proposes unconditional dissolution of the United Nations Command. Resolution 3390 A concerns the maintenance of the Korean Armistice Agreement while Resolution 3390 B seeks the end of the Armistice Agreement. The simultaneous implementation of both resolutions is impossible. The United Nations' irresponsible act not only undermines the authority of the organization, but also clearly demonstrates the ineffectiveness and incapacity of the United Nations regarding the Korean question.

Furthermore, the adoption of the two Korean resolutions leads to

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283. See Chapter I, Section 3.

284. Three infiltration tunnels in the demilitarized zone were discovered in November 1974, March 1975 and October 1978. For further information, see Korean Overseas Information Service, *A Handbook of Korea*, 5th ed., Seoul: 1983, pp. 460-461.

285. U.N. Doc. A/PV 2409 (November 18, 1975), pp. 47-55.

possible polemics concerning their legality. After the adoption of the two contradictory resolutions, the Swedish delegate Rydbeck made a significant statement:

The Swedish delegation deeply regrets that the question of Korea has not been treated in a more positive manner during the present session of the General Assembly. Polemics and confrontation cannot solve the difficult problems involved in the Korean issue, nor can controversial resolutions pressed to the vote and adopted with a number of affirmative votes far below the majority of member states.<sup>286</sup>

This statement did not directly question the legality of the adoption, but simply indicated the adoption was carried on a number of votes far below the majority of member states. However, Article 18 Paragraph 2 of the United Nations Charter provides that decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting, and that these questions include recommendations with respect to the maintenance of international peace and security. The Korean resolutions at the thirtieth session of the General Assembly concerned the maintenance of the Korean Armistice Agreement, dissolution of the United Nations Command, and maintenance of peace and security in the region, probably important questions demanding a two-thirds majority of member states present and voting. Despite this, the legality of this adoption was not questioned. The Korean question has long been treated in this manner. For example, the General Assembly's Resolution 2268 (XXV) of December 7, 1970, concerning the Korean question, was adopted by a vote of sixty-three to thirty-seven, with twenty-five abstentions. Resolution 3333 (XXIX), December 17, 1974, on the Korean question, was adopted by sixty-one votes to forty-two, with thirty-one abstentions. All of these adoptions are possible objects of legal polemics.<sup>287</sup>

### 3. *The Withdrawal of United Nations Forces and the Actual Situation of the United Nations Command*

#### a. The Withdrawal of United Nations Forces

When the Korean Armistice Agreement was concluded, United Nations forces began withdrawing from Korea. Two-thirds of the United Nations forces were withdrawn from Korea within two years

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286. *Ibid.*, p. 62.

287. Lyou Byung-Hwa, *supra* note 1, pp. 130-131.

after the armistice, including more than six divisions of the United States forces.<sup>288</sup> The withdrawal continued and was almost completed in the early 1970s. At the thirtieth session of the United Nations General Assembly, United States Representative D. P. Moynihan explained the present situation of the United Nations Command:

The United Nations Command today comprises those military personnel directly involved in the carrying out by the United Nations Command of its Armistice Agreement responsibilities, and includes less than 300 non-Korean personnel. Most of these are U.S. military personnel assigned as staff personnel to the Command itself, and the remainder are part of the ceremonial honor guards of the Command. American forces serving in Korea in accordance with the U.S.-Republic of Korea Mutual Security Treaty of 1954 are not part of the United Nations Command. . . .<sup>289</sup>

In other words, there are virtually no combat troops except a small number of staff personnel to the Command itself and a ceremonial honor guard. The staff personnel are mostly the United States military personnel.

#### b. The Actual Situation of the United Nations Command

According to the 1950 United Nations Security Council Resolutions 83 and 84, which created the United Nations Command, the mission and function of the Command was to repel the Communist armed attack against South Korea and to restore international peace and security in the region. The original United Nations Command was a military command for combat operations. The present United Nations Command cannot carry out such military operations. Less than three-hundred staff members and ceremonial honor guards by no means constitute combat troops. What is a reasonable legal explanation of the actual situation of the United Nations Command? Frankly, it should be recognized that the original military command for combat operations no longer exists. The nominal existence of the United Nations Command, whose forces comprise less than 300 non-combat personnel, cannot be interpreted as the continuation of the original United Nations Command. Why should this nominal existence of the United Nations Command be sustained? This has resulted from an incorrect legal interpretation of the United Nations Command and the

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288. U.S. Dept. of State, Foreign Relations of the United States (FRUS) 1952-54, vol. XV, part 2 (Korea), Washington: GPO, 1984, pp. 1768, 1943-1956.

289. U.N. Doc. A/C.1/PV 1065 (October 23, 1975).

Korean Armistice Agreement, based on two groundless suppositions. One is that South Korea is not a legal party to the Korean Armistice Agreement. The other supposition is that the United Nations Command is a party to the Korean Armistice Agreement (North Korean position)<sup>290</sup> or that the United Nations Command is an essential organ for the implementation of the armistice (supposed South Korean position).<sup>291</sup> However, South Korea should be a legal party to the Korean Armistice Agreement and the United Nations Command is merely a subsidiary organ of the United Nations and cannot be a legal party to an international agreement.

Bearing this argument in mind, it may be said that the United Nations Command was already *de facto* dissolved by the withdrawal of almost all United Nations forces from Korea. The dissolution of UNCURK in 1973 was a clear expression of the United Nations' intention that it would no longer handle this complicated problem. In fact, the United Nations cannot handle this problem due to its structural change resulting from the presence of numerous new nations. In the political domain, the United Nations would become an international forum for various political opinions.

Although it is an undeniable truth that the United Nations has helped and protected the existence and development of South Korea, it is also true that the United Nations Command was *de facto* dissolved when United Nations forces retreated from Korea. If the Korean War recurred, it is unlikely that the sixteen nations would again send their troops to Korea to defend South Korea despite the great sanction declaration. The sixteen nations issued this declaration at the conclusion of the Korean Armistice Agreement. The probable re-engagement of the United States would be based on the Mutual Defense Treaty between the two countries, not the framework of the United Nations action.

### **Section C. International Legal Mechanisms Of Peace In Korea Without The United Nations Command**

#### *1. The Legal Significance of the Dissolution of the United Nations Command: Three Contending Opinions*

Structural change in the international situation relating to Korea made the United Nations Command in Korea, the long time guarantee for Korean security, not only the object of international polemics, but

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290. U.N. Doc. A/C.1/1054 (September 24, 1975), p. 13.

291. U.N. Doc. S/11861 (October 31, 1975); Korea Question, *supra* note 257, pp. 198-200.



also the *de facto* dissolution of the Command by the withdrawal of United Nations forces from Korea. Notwithstanding the symbolic presence of the staff members and honor guards, it is reasonable to say that the original United Nations Command no longer exists. Some 40,000 of the United States forces now present in Korea are not United Nations forces, but are in fact United States forces serving in Korea under the Mutual Defense Treaty between the United States and South Korea. Therefore, it is necessary to analyze the international legal mechanisms of peace in Korea without the United Nations Command. First, the legal significance of the dissolution of the United Nations Command will be considered.

a. Opinion 1: Extinction of One Party to the Korean Armistice Agreement

This opinion is based on the premise that the United Nations Command would be the only legal party of the United Nations to the Korean Armistice Agreement. In this context, if the United Nations Command is dissolved, extinction of a legal party to the Armistice Agreement would result. Thus, the Armistice Agreement itself would be extinct. The North Korean position is very clear on this point, as expressed in its Memorandum on the Korean question at the thirtieth session of the United Nations General Assembly:

If the United Nations Command, a signatory to the Korean Armistice Agreement, is dissolved, the Armistice Agreement, too, will have no alternative but to cease its existence . . . Moreover, since the South Korean Authorities are not a signer of the Armistice Agreement and have consistently opposed the Armistice itself, they cannot become a signatory to the Armistice Agreement . . .<sup>292</sup>

The South Korean position is not clear. At times its position seems consistent with this opinion. For example, the South Korean Aide-Memoire on the Korean question at the thirtieth session of the United Nations General Assembly appears to be along these lines:

The North Korean position is unrealistic and dangerous, because it does not mention at all how to ensure continued adherence to the Armistice Agreement after the dissolution of the United Nations Command which is a party signatory to the agreement . . .<sup>293</sup>

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292. U.N. Doc. A/C.1/1054 (September 24, 1975), pp. 16-17.

293. Korea Question, *supra* note 257, p. 175.

But the South Korean position does not say that the dissolution of the United Nations Command would result in the extinction of the Armistice Agreement, and in this respect differs from the North Korean position. This opinion is legally incorrect because it holds that the United Nations Command, a subsidiary organ of the United Nations, is a legal party to the Korean Armistice Agreement, and that South Korea is not a legal party to it.

b. Opinion 2: The Disappearance of an Essential Organ for Implementing the Armistice Agreement

This opinion holds not that the dissolution of the United Nations Command would result in the extinction of the Armistice Agreement, but that eventually some similar situation would ensue due to the disappearance of the essential organ for implementing the Armistice Agreement. The positions of South Korea and the United States are similar to this opinion, although they do not clearly address the legal meaning of the dissolution. These positions are somewhat obscure. This opinion is found in the letter of the United States Government addressed to the President of the Security Council, dated June 27, 1975:

The Government of the United States, in consultation with the Government of the Republic of Korea . . . is ready to terminate the United Nations Command and, together with the Republic of Korea, to designate military officers of the United States and the Republic of Korea as successors in command, as provided for in Paragraph Seventeen of the Armistice Agreement of July 27, 1953, who would ensure implementation and enforcement of all provisions of the Armistice Agreement, which are now the responsibility of the Commander-in-Chief of the United Nations Command

. . .<sup>294</sup>

The same opinion is expressed in the statement of the South Korean Government concerning the implementation of the General Assembly Resolution 3333.<sup>295</sup>

Based on the supposition that South Korea might not be a legal party to the Korean Armistice Agreement, this opinion is incorrect. Furthermore, this opinion does not reflect the real practices concerning the implementation of the Armistice. In fact, South Korea and the United States have an exclusive role in implementing the Armistice

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294. U.N. Doc. S/11737 (June 27, 1975).

295. Korea Question, *supra* note 257, pp. 198-200.

Agreement through the Military Armistice Commission. They receive virtually no influence from the United Nations or other nations.

The legal order should reflect the reality, rather than the reality be subject to the legal order. The reality is that the United Nations Command is already *de facto* dissolved and that South Korea and North Korea should be the principal parties to the Korean question, including the implementation of the Armistice Agreement. Moreover, South and North Korea are determined to solve the Korean question independently without the intervention of external powers, as expressed in the South-North Joint Communiqué of July 4, 1972. There would never be any feasible agreement if it excluded either South Korea or North Korea.<sup>296</sup>

c. Opinion 3: The Quasi-Withdrawal of the United Nations as a Party to the Korean Armistice Agreement

The legal significance of the dissolution of the United Nations Command is difficult to ascertain with clarity. It involves two different legal acts at the same time: 1) the withdrawal of the United Nations as a party to the Korean Armistice Agreement and 2) the transfer of its responsibility to the parties directly concerned. As the United Nations Command serves merely as a subsidiary organ of the United Nations, the United Nations Command was never a legal party to the Armistice Agreement. The United Nations itself was the legal party. Therefore, if the United Nations Command is dissolved, there is no extinction of a party to the Armistice Agreement, unless the United Nations itself ceases to exist.

The dissolution of the United Nations Command, however, would provide a clear expression of the intention of the United Nations to cease direct involvement in solving the Korean question. The consensus statement adopted by the United Nations General Assembly on November 28, 1973, which decided the dissolution of UN-CURK, also expressed this intention. This statement encouraged the South-North Joint Communiqué dated July 14, 1972, which expressed the principle of self-reliant unification without external interference.<sup>297</sup> In this case, the act of the United Nations would not represent a denunciation of the Armistice Agreement. A denunciation is a unilateral act denouncing the legal obligation of an international treaty. The dissolution would not mean under any circumstances a denunciation of legal obligations of the United Nations for the Korean Armistice

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296. Lyou Byung-Hwa, *supra* note 1, p. 133.

297. U.N. Doc. A/9341 (November 28, 1973).

Agreement. It means simply that the United Nations intends to transfer its responsibility to directly concerned parties and to withdraw from direct involvement in the Korean question. The directly concerned parties are principally South and North Korea, and to a lesser degree the United States and China.

In conclusion, the dissolution of the United Nations Command means that the United Nations withdraws from a direct role in the Korean question and transfers its responsibility to the directly concerned parties.

The expression "quasi-withdrawal of the United Nations as a party to the Armistice Agreement" is inexact, but it is justified in the absence of a more proper term.<sup>298</sup>

## 2. *Parties to the Korean Armistice Agreement After the Dissolution of the United Nations Command*

### a. The General Problem

The United Nations status as a superficial party to the Korean Armistice Agreement by the signature of the Commander-in-Chief of the United Nations Command gives rise to questions concerning the legal parties to the Korean Armistice Agreement upon dissolution of the Command. These questions concern South Korea and the United States and do not affect the Communist side. The dissolution of the United Nations Command, whose commander signed the Armistice, leaves uncertainty as to the identity of the parties on the United Nations side.

First, South Korea's legal status would be consolidated by the dissolution. South Korea, though it should be a principal party to the Korean Armistice Agreement, has been over-shadowed by the United Nations Command. Some have denied South Korea's legal status as a party to the Armistice Agreement. The dissolution of the Command would remove this shadow from South Korean sovereignty.<sup>299</sup>

Second, the dissolution of the United Nations Command is legally interpreted as quasi-withdrawal of the United Nations as a party to the Korean Armistice Agreement. This presents questions as to the successor of the United Nations as a party to the Armistice Agreement and the relationship between the United Nations and the United States. The next section addresses these questions.

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298. Lyou Byung-Hwa, *supra* note 1, pp. 133-135.

299. *Ibid.*, p. 136.

b. The Relationship Between the United Nations and the United States

The role of the United States in the Korean question has been very important from the beginning. The United States had the most important role in the liberation of Korea from the Japanese, the division of Korea, and the establishment of the South Korean government by initiating the United Nations action and United Nations Command military operations in Korea. The United States also had the principal responsibility for the negotiation and conclusion of the Korean Armistice Agreement, as well as post-war peace-keeping in Korea through the operation of the Military Armistice Commission. After the *de facto* dissolution of the United Nations Command, the United States role did not change. Thus, it is necessary to clarify the legal status of the United States with regard to the Korean Armistice Agreement and the relationship between the United Nations and the United States.

The North Korean position is very clearly expressed in its Memorandum on the Korean question at the thirtieth session of the United Nations General Assembly.<sup>300</sup> According to this Memorandum, the Armistice Agreement was originally signed by the Commander of the North Korean Army and the Commander of Communist China's forces, and also by the United Nations Command. The Chinese have already withdrawn from Korea. "The so-called United Nations Command present in South Korea now are, in fact, United States troops." Therefore, the Memorandum said, the real parties to the Armistice Agreement are North Korea and the United States.

The positions of South Korea and the United States are not clear. Although both South Korea and the United States strongly suggested that the United States would continue to take responsibility for maintaining the Korean Armistice Agreement even after the dissolution of the United Nations Command. For example, the United States Government's letter dated June 27, 1975, to the President of the Security Council expressed this position:

The Government of the United States, in consultation with the Republic of Korea, wishes to bring to the attention of the Security Council that it is ready to terminate the United Nations Command and, together with the Republic of Korea, to designate military officers of the United States and the Republic of Korea as successors in command, as provided for

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300. U.N. Doc. A/C.1/1054 (September 24, 1975); ROK Ministry of Foreign Affairs, *Memoranda Submitted to the UN General Assembly Regarding the Korean Question*, Vol. 2 Seoul: 1977, pp. 1018-1019.

in Paragraph 17 of the Armistice Agreement of July 27, 1953, who would ensure implementation and enforcement of all provisions of the Armistice Agreement, which are now the responsibility of the Commander-in-Chief of the United Nations Command.<sup>301</sup>

Here the expression "designate military officers of the United States and the Republic of Korea as successors in command" would mean that after the dissolution of the United Nations Command, South Korean and American officers would take responsibility for implementation of the Korean Armistice Agreement. The statement by the South Korean Foreign Minister dated July 7, 1975, concerning the implementation of General Assembly Resolution 3333 expressed the same position.<sup>302</sup>

South Korea and the United States planned to take responsibility for the implementation of the Armistice Agreement after the dissolution of the Command. Since South Korea has been the principal party to the Armistice Agreement, this position indicates that the United States would replace the United Nations as a party to the Armistice Agreement after the dissolution of the United Nations Command. This replacement would be somewhat different from a succession of treaty in the strict sense. A succession of treaty in international law takes place as a result of a territorial change or the extinction of an international organization.<sup>303</sup> In this case, however, there is just the extinction of the United Nations Command, a subsidiary organ, and not the United Nations itself. Considering all these elements, it is reasonable to conclude that the United States would replace the United Nations as a party to the Korean Armistice Agreement in conjunction with the *de facto* dissolution of the United Nations Command.<sup>304</sup> Practices such as the operation of the Military Armistice Commission confirm this position.

### 3. *The Implementation of the Korean Armistice Agreement After the Dissolution of the United Nations Command*

#### a. The Validity of the Armistice Agreement

According to the North Korean Memorandum on the Korean

301. U.N. Doc. S/11737 (June 27, 1975).

302. Korea Question, *supra* note 257, pp. 198-200.

303. *Dictionnaire de la Terminologie du Droit International Public*, Paris: Sirey, 1960, p. 587; A.G. Pereira, *La Succession d'Etats en Matiere de Traités*, Paris: Pedone, 1969, p. 4.

304. Lyou Byung-Hwa, *supra* note 1, pp. 137-139.

question at the thirtieth session of the United Nations General Assembly, the dissolution of the United Nations Command would result in the extinction of the Korean Armistice Agreement.

If the United Nations Command, a signatory to the Korean Armistice Agreement, is dissolved, the Armistice Agreement, too, will have no alternative but to cease its existence. Accordingly, it is out of the question from the outset to change only the signatory to the Armistice Agreement while keeping it as it is, though it may be another matter to replace the Armistice Agreement.<sup>305</sup>

The North Korean position is legally incorrect and contradictory. North Korea's incorrect position results from legal ignorance. North Korea believes that the United Nations Command is a party to the Korean Armistice Agreement, but in reality the United Nations Command is merely a subsidiary organ. This subsidiary organ cannot be a party to an international treaty. Only international organizations such as the United Nations and Special Agencies can be parties to an international treaty. Furthermore, the North Korean position is contradictory because it claims that the United States is a real party to the Korean Armistice Agreement and that the dissolution of the United Nations Command would result in the extinction of the Armistice Agreement.

Since South Korea should be a principal party to the Korean Armistice Agreement, there would not be an extinction of the Armistice Agreement if the United Nations withdrew from the Armistice Agreement. The United States would replace the United Nations as a party to the Korean Armistice Agreement when the United Nations Command is dissolved.<sup>306</sup>

In conclusion, the Korean Armistice Agreement would not be extinct under any circumstances with the dissolution of the United Nations Command.

#### b. The Operation of the Military Armistice Commission

Although there is no problem in the legal mechanisms for peacekeeping in the Korean peninsula after the dissolution of the United Nations Command, there may be some technical problems in implementation of the Armistice Agreement. Some technical and administrative measures will be necessary for continued operation of the

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305. U.N. Doc. A/C.1/1054 (September 24, 1975), Korea Question, *supra* note 257, pp. 1007-1026.

306. Lyou Byung-Hwa, *supra* note 1, p. 141.

Military Armistice Commission, which serves as an important organ for the implementation and enforcement of the Armistice Agreement because the United Nations Command Commander-in-Chief is responsible for the operation of the Military Armistice Commission in accordance with Paragraphs 17 and 20 of the Armistice Agreement. As South Korean and American officers are already taking responsibility for the operation of the Military Armistice Commission, the only necessary technical measure is to replace the nominal title of the Commander-in-Chief of the United Nations Command with South Korean and American officers.

The analogic solution to the problem can be found in the history of international politics. Following decolonization, new-born states recognized the binding force of the treaties concluded by the preceding colonial state with the exception of expressive denunciation. For example, according to Article seven of the Treaty between the United States and the Philippines of July 4, 1946, the Philippines are engaged in the legal obligation of treaties concluded by the United States.<sup>307</sup> Another similar case was seen when Ivory Coast, Congo, Central Africa, and Senegal declared that, after independence, they would abide by the terms of the treaties<sup>308</sup> concluded by France in the colonial period. In all these cases the same technical problems of replacing the original responsible organ exist, showing that this problem is not unique to the dissolution of the United Nations Command. Accordingly, the analogy would apply to the Korean Armistice Agreement after the dissolution of the Command. The peace would depend not upon legal interpretation, but rather upon the goodwill of the parties concerned.<sup>309</sup>

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307. Whiteman, *Digest of International Law*, Vol. II, Washington: GPO, p. 985.

308. *Ibid.*, p. 979.

309. Lyou Byung-Hwa, *supra* note 1, p. 142.



### CHAPTER THREE. THE UNIFICATION OF KOREA AND INTERNATIONAL LAW

Although a voluminous number of books and articles concerning Korean unification have been published, most of them concentrate on describing the expressed policies of South and North Korea. They fail to offer either positive suggestions for unification or legal analysis for unification planning. This is understandable, given the possibility that Korean unification might not be easily achieved in the foreseeable future under the present circumstances.

However, Korean unification is a prerequisite to the development of the Korean nation as a democratic and rich country playing its proper role in the history of the world. The Korean nation, with a population of sixty million and a cultural tradition spanning thousands of years, has not taken its proper place in the modern world. Korea has thus suffered the tragic national division imposed by outside powers.

Geographically situated among the major powers of the world, Korea has struggled for survival throughout most of its history. The clear truth emerging from Korea's long historical experience shows that the way of Korean survival and prosperity is not to pursue a balanced policy toward the major powers, but rather to become one of them. Korean unification is the first prerequisite for reaching this goal. In this sense, it is essential for Korea's future to seek out feasible means of unification and to formulate a legal basis for this national task. For this purpose, after a very brief survey of South and North Korean unification policies, various facts directly relating to Korean unification will be studied. The legal situation of a divided Korea will also be analyzed. Finally, in light of this research, some feasible methods for Korean unification will be suggested.

#### Section A. The Unification Policies Of South And North Korea

##### 1. *South Korea*

##### a. President Rhee (1950s)

President Rhee Syngman, the first president of South Korea, initially tried to consolidate the fragile new-born government of South Korea in the face of domestic factional disputes and the tense confrontation with North Korean Communists. For this purpose, President Rhee on the one hand lobbied for international recognition of his government and, on the other hand, exerted all his efforts to persuade the United States government to assist in assuring Korean security. As to the first objective, President Rhee succeeded in achieving clear

recognition from the United Nations under the auspices of the United States. The United Nations General Assembly endorsed the South Korean Government with very strong words on December 12, 1948:

The General Assembly . . . declares that there has been established a lawful government (the Government of the Republic of Korea) having effective control and jurisdiction over that part of Korea where the Temporary Commission was able to observe and consult and in which the great majority of the people of all Korea reside; that this Government is based on elections which were a valid expression of the free will of the electorate of that part of Korea and which were observed by the Temporary Commission; and that this is the only such government in Korea. . . .<sup>310</sup>

With respect to the second objective of South Korea, the South Korean government failed to persuade the United States to provide enough military assistance to assure South Korean security, due to the "Europe first" policy of the United States government.<sup>311</sup>

During the latter part of the Korean War, President Rhee attached much importance to the unification of Korea, stubbornly opposing an armistice without the solution of the Korean division. It is understandable that he could not help but resist an armistice without the solution of the Korean division after such heavy casualties and despite the favorable military situation of the United Nations Command. President Rhee's letter of May 30, 1953 to President Eisenhower expressed this emotional situation:

We are fearfully aware . . . that to accept any armistice arrangement which would allow the Chinese Communists to remain in Korea would mean to the Korean nation, in terms of eventualities, an acceptance of a death sentence without protest . . . I beg you to allow the Korean people to continue the fighting, for this is the universal preference of the Korean people to any divisive armistice or peace. Our first choice, if we are allowed to make it, is still to have our allies by our side to actively help us fight out our common issue. But, if that is no longer possible, we would rather wish to have the right of self-determination to decide the issue our-

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310. UN General Assembly Resolution 195 (III), 12 December 1948; ROK, Ministry of Foreign Affairs, *Resolutions of the UN Principal Organs Relating to Korea (1947-1976)*, Seoul, 1976, pp. 58-59.

311. Kim Hak-Joon, *The Unification Policy of South and North Korea*, Seoul: Seoul National University Press, 1977, p. 72.

selves conclusively one way or the other. Anyway, it is beyond question that we cannot any longer survive a stalemate of division. . . .<sup>312</sup>

President Rhee's stubborn position continued even after the conclusion of an armistice agreement. Although South Korea attended the Geneva Political Conference on the Korean question, it did so reluctantly and under heavy pressure from the United States government. President Rhee never believed that negotiations with the Communist side could lead to positive results.<sup>313</sup> He insisted on unification by force, but in the face of strong U.S. opposition his claim became more and more a bluff without much chance of realization. President Eisenhower's letter of March 20, 1953, to President Rhee confirmed the United States' position:

If you should initiate such military action, my obligation to both United States forces and to other United Nations forces would be to plan how best to prevent their becoming involved and to assure their security. . . .<sup>314</sup>

President Rhee's bluff of unification by force did not benefit the objective of unification. Instead, it created unnecessary tension in United States-Korean relations and isolated Korea from world opinion. Furthermore, his bluff delayed the fortification of South Korean forces through U.S. military assistance.<sup>315</sup>

This is not to say that President Rhee never proposed any policy of peaceful unification. He did propose such policies, but never with the intention that the Communist side would accept his proposal. For example, at the Geneva Conference on the Korean question, his government proposed a fourteen point proposal. The main points were:<sup>316</sup>

- 1) free elections under United Nations supervision, in proportion to the population of the whole of Korea, to be determined by a national census under United Nations supervision;
- 2) complete withdrawal of Chinese forces before elections, and the

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312. US Department of State, *Foreign Relations of the United States (FRUS)*, 1952-1954, volume XV, *Korea*, part 1, Washington: Government Printing Office (GPO), 1984, pp. 1124-1126.

313. The South Korean Government's Statement dated 18 April 1954 concerning its participation in the Geneva Conference, in US Department of State, *Foreign Relations of the United States (FRUS)*, 1952-1954, volume XVI, *The Geneva Conference*, Washington: GPO, 1981, pp. 114-115.

314. *Ibid.*, pp. 44-46.

315. US Department of State, *Foreign Relations of the United States (FRUS)*, 1952-1954, volume XV, *Korea*, part 2, Washington: GPO, pp. 1598-1666.

316. *FRUS, The Geneva Conference*, supra note 313, pp. 278-279; 310-313.

withdrawal of United Nations forces to be completed upon effective control of a unified government; and

3) continuation of the South Korean constitutional system. In sum, President Rhee's proposal was the annexation of North Korea under the South Korean constitutional system through a general election. Considering the legitimacy of the South Korean Government, his proposal might have some legal ground, but it was very clear that North Korea would not accept this proposal and President Rhee himself did not expect acceptance.

#### b. President Park and Beyond

The unification policy of President Park Chung-Hee is much more realistic and steady than that of President Rhee. In summary, President Park's policy was economic development prevailing over North Korea, and then a gradual approach to the peaceful unification by easing tensions between South and North Korea through dialogue and reconciliation based on various exchanges between South and North Korea. This unification policy can be divided into two periods. First, in the 1960s, President Park concentrated on building national strength through a rapid economic development policy under a staunch anti-Communist approach without dialogue with North Korea. His statements and addresses repeatedly expressed this policy trend. "[O]ur basic principle for unification is to foster our strength by expediting economic construction and modernizing our country to the level of advanced nations as rapidly as possible. . . ." <sup>317</sup>

We need a certain period of time before we can elevate our economic might to be a far more superior position than that of the North Korean puppet regime by completing the establishment of a self-sufficient economy and the modernization movement, and before we equip ourselves with an absolutely superior might over the puppet regime . . . [t]he more eager we are for unification, the more we must realize that we are the very persons who have to do this task. . . . <sup>318</sup>

Second, in the 1970s, President Park continued to pursue rapid economic growth and also attempted some gradual contact with the North Korean regime on the base of national strength which he had achieved. He expressed this position in his commemorative address on August 5, 1970, the twenty-fifth anniversary of the national liberation.

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317. *Major Speeches by Korea's Park Chung Hee*, compiled by Shin Bum-Shik, Seoul, 1970, p. 257.

318. *Ibid.*, p. 254.

In this address, he reiterated his past remarks, stating that it might be the latter part of the 1970s before major efforts could be made for unification, believing that by that time South Korean national strength could help the South Koreans to unravel the entanglement of the unification problem. Then, he suggested his unification approach:

Any approach toward the unification by peaceful means is not feasible without easing tensions. Therefore, such an approach should be preceded above all by an unequivocal expression of attitude. In case we can recognize that the North Korean Communists comply with and accept the prerequisites in deeds . . . I would be prepared to suggest epochal and more realistic measures with a view to removing, step by step, various artificial barriers existing between the South and the North, in the interest of laying the groundwork for the unification and on the basis of humanitarian considerations . . . .<sup>319</sup>

This new approach of President Park succeeded in opening initial contacts. In August 1971, the Red Cross of South and North Korea began to negotiate on reunions of families dispersed in South and North Korea.<sup>320</sup> On July 4, 1972, the South-North Joint Communiqué was announced, offering some hope for Korean unification. This Communiqué, the first formal agreement between the governments of South and North Korea since the conclusion of the Armistice Agreement, formulated some basic principles of unification.

Although the South-North Joint Communiqué did not make much progress, President Park continued to pursue his gradual approach. He believed that both sides should endeavor to gradually remove the artificial barriers between the South and the North by solving easier and more practical problems first, and to phase out feelings of mutual distrust and replace them with those of mutual confidence through concrete results.<sup>321</sup>

In conclusion, his basic formula for unification was clear and realistic. First, national strength should be built through rapid economic development. On the basis of prevailing national strength, gradual peaceful unification should be carried out, by easing tensions and rec-

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319. The Institute for East Asian Studies, *Foreign Policy for Peace and Unification*, Seoul, 1975, pp. 148-157.

320. ROK, National Unification Board, *A White Paper on SouthNorth Dialogue in Korea*, Seoul, 1982, pp. 63-84.

321. *The Institute for East Asian Studies, Foreign Policy for Peace and Unification*, *supra* note 319, pp. 161-167.

onciling South and North Korea. For this purpose, he proposed three basic principles:<sup>322</sup> 1) Peace should be finally established on the Korean peninsula through a mutual non-aggression agreement between the South and the North; 2) the South and the North should open doors to each other and restore mutual trust by pursuing rapid progress of South-North dialogue with sincere and open exchanges and cooperation; and 3) based on the above foundations, free general elections should be held throughout Korea under fair election management and supervision and in direct proportion to the indigenous population, thereby achieving the unification of the country.

Although President Park's unification policy was very reasonable and realistic, he did not envision a concrete program for unification in the foreseeable future. In this sense, his policy was to lay a long-term basis for unification, rather than to realize the concrete objective of unification.

After the death of President Park, the South Korea unification policy has continued along the lines he established. For example, President Chun's Declaration of the Formula for National Reconciliation and Democratic Unification on January 22, 1982, expressed a similar position. In this declaration, President Chun said that it would be essential to promote trust between the South and the North and eliminate from national life all impediments to unification to facilitate the drafting of a unified constitution. For this purpose, he proposed: 1) to normalize relations between South and North Korea, and to conclude a provisional agreement on basic relations between South and North Korea; 2) to open their societies to each other through various forms of exchanges and cooperation; and 3) to establish a resident liaison mission in Seoul and Pyongyang and appoint a plenipotentiary envoy with the rank of cabinet minister to head the liaison mission.<sup>323</sup>

The South-North Korean dialogue has made no substantial progress, and the two sides continue to maintain nominal contacts. However, it is noteworthy that, after the South Korean proposal of August 20, 1984, to open trade and economic cooperation with North Korea, South Korea accepted the North Korean offer on September 8 for relief goods to victims of floods in South Korea.<sup>324</sup> This was the first concrete result after long nominal contacts between South and North

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322. *Ibid.*, pp. 175-186.

323. ROK, *National Unification Board, A White Paper on South-North Dialogue in Korea*, supra note 320, pp. 352-356.

324. Korean Overseas Information Service, *Inter-Korean Economic Talks*, Seoul, 1984, pp. 5-6.

Korea. Then the two sides began talks on various economic exchanges between South and North Korea. A recent meeting was held at Panmunjom on May 17, 1985, but still achieved no tangible results.<sup>325</sup>

The two sides also resumed Red Cross talks, suspending twelve years ago, to arrange reunions for many families separated by the national division. On May 27, 1985, an eighty-four member North Korea delegation visited Seoul to hold a meeting with the South Korean delegation. The two sides agreed to exchange a limited number of separated family members around August 15, the fortieth anniversary of the national liberation. They agreed to hold another meeting on July 15 at Panmunjom to work out the procedures for the exchange.<sup>326</sup> At last, the reunion of separated families was possible on September 20, 1986. Each side sent a one hundred fifty-one member delegation to the other's capital, and among them were fifty persons of separated families.<sup>327</sup>

## 2. North Korea

With only a superficial survey of the North Korean proposals, it would be difficult to pinpoint exactly the unification policy of North Korea due to the propagandistic character of its proposals. For example, just before the North Korean invasion of South Korea on June 25, 1950, North Korea carried out an intensive campaign for peaceful unification, proposing a general election in August 1950. The campaign, however, was intended only to camouflage the preparation of an impending armed attack.<sup>328</sup> During the active South-North dialogue in the early 1970s, North Korea constructed several infiltration tunnels in the demilitarized zone.<sup>329</sup> In light of this, examination of North Korean official proposals or public pronouncements would not render an objective analysis, but rather would amount to superficial observations. The real intentions and objectives of North Korean unification policy should be discerned through all available means. In keeping with this, it would be reasonable to summarize the main points of the North Korean proposals and analyze them in terms of possible objectives and actual deeds.

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325. *The Washington Post*, May 17, 1985.

326. *The Washington Post*, May 28 and 31, 1985.

327. *The Dong-A Ilbo* September 20, 1986.

328. ROK, National Unification Board, *A White Paper on South-North Dialogue in Korea*, *supra* note 320, p. 210-211.

329. Korean Overseas Information Service, *A Handbook of Korea*, fifth edition, Seoul, 1983, p. 461.

a. North Korean Proposals for Unification

Over four decades North Korea made numerous proposals for the unification of Korea, but the main points of all these proposals are very similar. This consistency over time in the North Korean position might be partially explained by the fact that while the head of the South Korean government has changed several times, in North Korea Kim Il-Sung has maintained his power for four decades and is now preparing the succession of power for his son.

The key points of the North Korean proposals for unification include withdrawal of United States forces, the guarantee for Communist activities in South Korea, a national conference of all political parties and social organizations in preparation for general elections which would exclude certain anti-Communist leaders, the reduction of armed forces or integration of armed forces of South and North Korea, general elections, and the formation of a unified government. In addition to these points, pending perfect unification, North Korea also proposed the establishment of a federal republic permitting two existing regimes. An eight-point unification formula adopted by North Korea on June 28, 1949, illustrates these key points. The main points consisted of: 1) peaceful unification of the Korean people; 2) general elections throughout South and North Korea on September 15, 1949, the promulgation of a new constitution, and the establishment of the Republic of Chosun; 3) elimination of the oppression of democratic parties and social organizations (Communist activities) in South Korea; 4) a joint conference of democratic political parties and social organizations in preparation for a general election; and 5) exclusion of anti-people reactionary persons (anti-Communist leaders) in South Korea from the joint conference.<sup>330</sup> A North Korean proposal of June 1950 detailed its personanon-grata, including the most influential anti-Communist leaders such as President Rhee Syngman, Kim Sung-Soo, Cho Byung-Ok, and others. After the conclusion of the Armistice Agreement, North Korea made similar proposals at the Geneva Political Conference on the Korean question held April 26 to June 15, 1954, resisting the general elections under the United Nations supervision.<sup>331</sup>

The North Korean proposals of the 1970s reveal the recent policy

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330. ROK, *National Unification Board, A White Paper on South-North Dialogue in Korea*, *supra* note 320, p. 209; Kim Hak-Joon, *supra* note 311, p. 183.

331. US Department of State, *The Korean Problem at the Geneva Conference*, April 26-June 15, 1954, Washington: GPO, 1954, pp. 39-40; FRUS, *The Geneva Conference*, *supra* note 313, pp. 149-150.



of North Korea. On April 12, 1971, the North Korean Foreign Minister Ho Dam proposed an eight-point formula for unification. The main points were: 1) American forces should be withdrawn from South Korea; 2) The armed forces of South and North Korea should be reduced to 100,000 men each or less; 3) The South Korea-U.S. Mutual Defense Treaty and the South Korea-Japan Treaty should be declared null and void; 4) After the withdrawal of American forces from South Korea, a free election should be held throughout South and North Korea to establish a unified government; 5) The political activities of all political parties and social organizations throughout South and North Korea should be guaranteed; 6) Pending complete unification, a confederation system should be formed between South and North Korea to permit two different systems; 7) The South and the North should engage in mutual trade and cooperation, and exchanges in various domains; and 8) A South-North political conference should be held with the participation of all political parties and social organizations for consultation over these problems.<sup>332</sup>

This formula of unification has since been reaffirmed. For example, on June 23, 1973, North Korean President Kim Il-Sung confirmed this proposal in a speech at the mass rally welcoming visiting Czechoslovakian Communist leader Gustav Husak, in which he proposed the so-called five-point unification program. The salient features were: 1) Dissolution of military confrontation and relaxation of tension between the South and the North; 2) Multilateral collaboration and exchange between the South and the North; 3) Convocation of a grand national conference composed of representatives of all walks of life, political parties, and social organizations in the South and the North; 4) Institution of a South-North confederation system under the name of Confederal Republic of Koryo (Korea); and 5) Joint entry of the South and the North into the United Nations as a single member.<sup>333</sup>

#### b. An Analysis of North Korean Proposals

##### i. The Main Points of North Korean Proposals

Although the North Korean regime proposed numerous unification programs, they could all be summed up in the following main points: 1) the withdrawal of American forces; 2) the guarantee of Communist activities in South Korea; 3) the release of all political prisoners including North Korean spy agents; 4) a national conference

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332. ROK, National Unification Board, A White Paper on South-North Dialogue in Korea, *supra* note 320, pp. 212-213.

333. *Ibid.*, 215.

organized under North Korean terms to carry out a general election and the formation of unified government; and 5) pending the formation of unified government, the establishment of a confederal republic.

First, North Korea concentrates on the withdrawal of United States forces. This demand is understandable considering that the North Korean invasion in 1950 almost achieved its objective, and was thwarted only by United States intervention. They seemed to judge that as long as American forces stayed, their objective of unification would be impossible. Consequently, they took the withdrawal of American forces as a prerequisite for unification. For this reason they tried a variety of measures to realize the withdrawal of United States forces, sometimes through the use of provocations such as the ax-murder of United States officers by North Korean soldiers on August 18, 1976, and other times through peace propaganda. Their attempts, however, have yet to succeed.

Second, North Korea has attempted to establish a Communist connection in South Korea. For this purpose it demands the guarantee of Communist activities, permission for a Communist party in South Korea and release of Communist spy agents imprisoned in South Korea, the abolition of the Anti-Communist Law, and repeal of the National Security Law.<sup>334</sup> It seems strange, however, that the North Koreans unilaterally demand such conditions at a serious conference. Such demands indicate clearly that it would be very naive to expect something extraordinary from negotiations with the North Korean Communists.

Third, North Korea requires a national conference of all political parties and social organizations to organize general elections for Korean unification. According to North Korean Representative Ryu Jang-Shik at the third meeting of the Vice-chairmen of the South-North Coordinating Committee on January 30, 1974, the "Grand National Congress" would be composed of an equal number of delegates from sixty to seventy political parties and social organizations in South and North Korea under the following conditions which applied only to South Korea: 1) Include in the South Korean delegation representatives of political parties and social organizations based on the North Korean Communistic view of class, as well as civil representatives; 2) Include in the South Korean delegations of the so-called "Unification and Revolutionary Party," which was fabricated by North Korea and non-existent in South Korea; and 3) Exclude anti-Communist political

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334. *Ibid.*, pp. 200-201.

parties, organizations and individuals.<sup>335</sup> It would be very difficult for rational men to imagine the shameless demand of the North Korean Communists. Study of such an infeasible proposal would prove useless.

Fourth, North Korea proposed the "Confederal Republic of Koryo (Korea) pending the complete unification of Korea. This has been repeatedly proposed since August 14, 1960, when North Korean President Kim Il-Sung made a commemorative address on the national liberation day, stating:

If South Korea is not yet prepared to accept a free all-Korea general election, there should be one provisional measure or another. As such a provisional measure, we propose a confederation system between the two halves of the country. Under the confederation system we propose, the existing political systems of South and North Korea will be allowed to remain as they are for some time . . . and a supreme national committee will be formed with representatives from the governments, mainly to coordinate economic and cultural development in South and North Korea. . . .<sup>336</sup>

Since then this confederation system has been proposed on many occasions. This vague concept of a confederal system may mean some kind of federal system, not a confederal system, because members of a confederal system maintain their international legal persons as independent states in international law.<sup>337</sup> Thus, members of a confederation are admitted in the United Nations individually, not as a confederation. Because the North Korean proposal insists that South and North Korea should be admitted in the United Nations as a single nation, this system cannot be a confederation. Aside from this discrepancy, this proposal contains some positive ideas. If it offers a temporary measure for the consolidation of national unity in trying to restore mutual trust and ease tension between South and North Korea, pending a complete unification, it deserves further study. This measure would be also useful for preventing external interventions.

However, the problem is found in the measure's preconditions and concrete implementation. The Central Committee's report at the Sixth Congress of the North Korean Worker's Party on October 10, 1980, clarified the proposal for a confederation system:

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335. *Ibid.*, pp. 221-222.

336. *Ibid.*, pp. 240-241.

337. *Dictionnaire de la Terminologie du Droit International*, Paris: Sirey, 1960, pp. 145-146.

To achieve independent peaceful unification of the fatherland, the fascist military rule should be done away with and democratization of the society should be realized in the South. The Anti-Communist Law and the National Security Law . . . should be abrogated. At the same time, all political parties and social organizations should be legalized. The unjustly arrested and imprisoned democratic personages . . . should be set free. . . . The American authorities should . . . behave in a way meeting the wishes and views of all the world peoples . . . by withdrawing their troops from South Korea at an early date. . . . Our party suggests that the fatherland be unified through the establishment of a confederal republic. . . . The Democratic Confederal Republic of Koryo (Korea) should be a neutral state which does not affiliate itself with any political or military alliance or bloc.<sup>338</sup>

In conclusion, this vague concept of a confederal system would have the same problems as does the national conference for unification. Both proposed unacceptable preconditions for South Korea.

#### ii. The Objective of North Korean Proposals

In light of the above considerations, it seems clear that the final objective of the North Korean proposals is a communization of the entire Korean nation. More concretely, North Korea concentrates first on the withdrawal of United States troops, then on carrying out the Communist revolution in South Korea, and finally focuses on unification under Communism.

This objective is not merely a conclusion based on research of North Korean unification policies, but also continues to be expressed publicly by the North Korean authorities. For example, Kim Il-Sung enunciated the so-called three revolutionary capabilities at the Ali Arham Social Science Institute on April 15, 1965. According to North Korean President Kim, they must: 1) strengthen their revolutionary base politically, economically, and militarily by successful socialist construction in the Northern half; 2) strengthen the revolutionary capability in South Korea by politically awakening and solidly uniting the South Korea people; and 3) strengthen the solidarity between the Korean people and the international revolutionary force.<sup>339</sup> North Korean President Kim more clearly expressed this

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338. *A White Paper on South-North Dialogue in Korea*, *supra* note 320, pp. 253-255.

339. *Ibid.*, pp. 225-226.

idea at the Fifth Convention of the Worker's Party on November 2, 1971 when he stated:

The South Korean revolution is an integral part of the whole Korean revolution. For the nationwide victory of the Korean revolution, we must accelerate the socialist construction in the northern half of the Republic while further fostering the revolutionary struggle in South Korea. . . . The basic mission is to expel the American imperialists from South Korea . . . and establish an advanced social system in the South. . . . [t]he South Korean revolutionaries . . . must positively carry out the revolution by correctly combining various patterns and methods of struggle such as political and nonpolitical struggle, legal . . . as well as nonlegal struggle, violent and non-violent struggle. . . .<sup>340</sup>

The North Korean "peaceful unification" would be quite different from the common sense notion of that concept. It would not be a peaceful unification achieved through free elections reflecting the free will of the people. Peaceful unification cannot be on North Korean terms, considering that the South Korean population is more than double that of North Korea, and that the standard of living and economic strength of South Korea is far greater than that of North Korea. Essentially, North Korean peaceful unification means at best a Communist revolution. This cannot be achieved by peaceful means, but can only be achieved by force. This intention is seen in brutal incidents such as the Rangoon incident of October 1983, which attempted to kill South Korean President Chun but instead killed seventeen members of the presidential delegation.<sup>341</sup>

## Section B. Various Facts Relating To Korean Unification

### 1. *The Neighboring Countries and Korean Unification*

Several countries neighboring the Korean peninsula are major world powers. Their interests in Korea have deeply affected Korean self-determination through its history. In modern history, Korea has been a victim of the power struggle among these neighboring countries. The Korean division was not a result of Korean action but was imposed by external powers against the will of the Korean people. As Korean politics have been involved in the power struggle of major powers since Korean independence, it is necessary to study the posi-

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340. *Ibid.*, pp. 226-227.

341. *The Dong-A Ilbo*, October 10, 1983; *The Joong-ang Daily News*, October 10, 1983.

tions of the major powers toward Korean unification. This does not mean that Korean unification depends on their policy, but that a practical policy of Korean unification should consider the important interests of its neighbors. If any of these major powers consider that its vital interests might be harmed by a formula of Korean unification, it would strongly oppose such a unification formula and impede the achievement of unification. Therefore, it is clear that any feasible plan for the unification of Korea should consider the vital interests of neighboring countries. In this regard, it is useful to study the position and interests of Korea's neighboring countries with respect to Korean unification.

a. The United States

The United States has been directly involved in the Korean question since the end of World War II. After the Korean War, in which the United States sacrificed a great deal of its human and material resources in repelling the Communist attack against South Korea, both the strategic and economic aspects of American interests in the Korean peninsula increased. The basic position and the interest of the United States on the Korean question continued to develop with some variation depending on the U.S. administration. What are the basic positions and objectives of the United States in the Korean question?

After the conclusion of the Armistice Agreement, the United States considered two alternatives for the future of the Korean peninsula. This policy was formulated during the final stages of armistice negotiations when the conclusion of an armistice agreement was imminent. According to the Report by the National Security Council, concerning United States objectives with respect to Korea in the period following the armistice dated July 7, 1953 the United States government considered two alternative feasible objectives:

- (a) A Korea divided for an indefinite period by the present demarcation line, with the Republic of Korea tied into the United States security system and developed as a military ally.
- (b) A unified, neutralized and substantially unchanged Republic of Korea (such an objective would entail Communist agreement to a unified Korea with the United States political orientation in exchange for United States agreement to remove United States forces and bases from Korea . . . This objective should also involve guarantees for the territorial and political integrity of a unified Korea under the Republic of Korea and its admission to the United Nations and possi-

bly would involve limitation on the level and character of the Republic of Korea defense forces.)<sup>342</sup>

Between these two alternatives, the United States government at that time preferred a unified Korea. The same report explained the reasons for that preference:

An independent and united Korea has been a constant United States political objective. This objective can now feasibly be achieved only through the neutralization of Korea. The relinquishment of its military position in Korea which would result from neutralization would not be critical for the United States. In the event of general war, the desirability of attempting to defend Korea would be problematical. With respect to the danger of local aggression against Korea, it would in any case be only the prospect of retaliation by the United States forces that would deter such aggression. The danger of internal subversion or indirect aggression in Korea could and should be countered by adequate Korean security forces and United States covert activity and economic assistance. On the positive side, the security of Japan would be favored by the withdrawal of Communist military power (including air forces) beyond the Yalu and Tumen Rivers. The savings made possible for the United States by its being relieved of the necessity of supporting United States bases in Korea and large, heavily-armed Korean forces would make possible strengthening of the military position of the free world in other areas. The unification of Korea under the Republic of Korea, even on a neutralized basis, would . . . be regarded as a more constructive result of the war and more to the credit of the United States than the restitution of the status quo ante.<sup>343</sup>

However, after the failure of the Geneva Conference on the Korean question the United States Government chose the alternative of a divided Korea because the Communist side would not give up the Communist regime in North Korea. The Second Progress Report by the Operations Coordinating Board to the National Security Council dated December 29, 1954, on the United States Objectives and Courses of Action with Respect to Korea explained the position of the United States.

First, the Report explained the contents and problems of the first

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342. *FRUS*, 1952-54, Volume XV, *Korea*, part 2, *supra* note 315, pp. 1344-1345.

343. *Ibid.*, p. 1346.

alternative objective. This objective was "a unified and neutral Korea under an independent and representative government." More specifically, this objective was: 1) A unified Korea friendly to the United States, without foreign forces or bases in Korea; 2) United States and Communist assurances of the territorial and political integrity of Korea under the Republic of Korea but foregoing all rights granted to the United States under a U.S. Korean mutual assistance pact; and 3) A level of Korean armed forces sufficient for internal security and capable of defending Korean territory short of an attack by a major power.<sup>344</sup> According to this Report, in the discussion of the Korean question it was evident that the Communists would not agree to any unification that did not permit continuance of the Communist regime. The Communist representatives at the Geneva Conference refused to agree to free elections impartially supervised by the United Nations. Thus, there would be little prospect for fruitful negotiation on the Korean problem in the foreseeable future.

In light of these circumstances, the Report chose the second alternative objective. The second objective was: pending a political settlement and in the absence of a violation of the armistice, the United States should, conditioned upon the satisfactory cooperation of South Korea, 1) continue to observe the armistice and try to avoid renewed fighting; 2) accept the division of Korea on the present demarcation line while seeking a satisfactory solution of the Korean question by the use of other than military pressures; and 3) tie South Korea into the United States security system and develop it as a military ally. This report concluded that the prospect for Korean unification appeared remote and that the primary emphasis to the United States policy was to achieve a position of strength in South Korea.

Two decades have passed without major changes since the adoption of the Report. Only after the Vietnam War were there some changes in the Korean policy of the United States, including withdrawal of U.S. ground troops in Korea. This movement does not imply any significant change in American policy toward Korea based on the two alternative objectives. If there is any change in the United States policy on the Korean question, it is simply a change in the methods due to environmental changes such as the Vietnam War, and Sino-American Rapprochement. Following these environmental changes, the United States might want to reduce its active role in the Korean question. This might appear to be the maintenance of the sta-

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344. *Ibid.*, pp. 1950-1951.



tus quo in the Korean peninsula, putting greater responsibility on the Koreans themselves and encouraging South-North Korean dialogue.

The United States' economic interest in Korea represents another important factor in U.S.-Korean relations. The traditional American interest in Korea may have been strategic and military, but after the wonderful growth of the South Korean economy, South Korea has become one of the major economic partners of the United States, and this interest is ever increasing.

In conclusion, the United States position on the Korean question has been based on two alternative feasible objectives. The first objective is a unified Korea friendly to the United States without any foreign troops or bases in Korea. The second objective offers a Korea divided on the present demarcation line with South Korea tied into the United States security system and developed as a military ally. The first objective is not a neutral unified Korea in the proper sense, but simply a unified Korea friendly to the United States without any foreign troops, including United States troops. Because the prospect of the first objective is remote, the United States government has implemented the second objective, a divided Korea. Of course, it is possible that a unified Korea would be a U.S. military ally serving American interests. But this might not be possible unless the United States risks a global war against one or two major powers. Without the use of force, there may be only two alternatives left to the United States. Between them, the United States has chosen the second objective, which ultimately equates to the maintenance of the status quo in Korea.

#### b. The Soviet Union

As a neighboring country of the Korean peninsula, the Soviet Union historically has been interested in Korea. In the early twentieth century, Russian ambition in Korea was curtailed only by its defeat in the Russo-Japanese War during 1904 to 1905.

In the March 20, 1946 opening statement of the U.S.-Soviet Joint Commission, Soviet delegate Terenti Shtikov frankly expressed the modern Soviet position:

The Soviet Union has a keen interest in Korea being a true democratic and independent country, friendly to the Soviet Union, so that in the future it will not become a base for attack on the Soviet Union.<sup>345</sup>

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345. US Department of State, *Foreign Relations of the United States, 1946, volume VIII*, pp. 652-653.

The Soviet policy to maintain a favorable government in Korea was stubbornly manifested in the U.S.-Soviet Joint Commission as well as in the United Nations and was one of the factors resulting in the Korean War. United States intelligence research estimated that the aggressive imperialism of Stalin attempted to resolve the Korean question on his terms throughout the Korean War. The Intelligence Estimate prepared by the Office of Intelligence Research, U.S. Department of State just after the start of the Korean War (June 25, 1950) evaluated in detail the Soviet role in the Korean War.<sup>346</sup> This Estimate stated that the North Korean government was completely under Kremlin control and there was no possibility that the North Koreans acted without prior instruction from Moscow. According to this Estimate, there had been indications since early June that the Soviet Union was reviewing its Far Eastern policy in a Moscow conference of practically all top Soviet representatives in Far Eastern areas. Thus, the move in Korea would be decided only after the most minute examination of all factors involved in the Far Eastern situation.

The Intelligence Estimate also analyzed the Soviet motives for the Korean War in terms of Soviet global strategy and found: 1) It would offer a test on grounds militarily most favorable to the Soviet Union and detrimental to the resolution of the United States' announced policy of total diplomacy. 2) A severe blow would be dealt to U.S. prestige throughout Asia. 3) Soviet military control of all Korea would be an important step securing the approaches to the Soviet Union. 4) Soviet military domination of all Korea would give Moscow an important weapon for the intimidation of the Japanese in connection with Japan's future alignment with the United States. Eventually the Soviet attempt failed and reduced Soviet influence in Korea. This bitter failure of the Soviet Union prompted modification of its position on the Korean question, and the Soviet Union has since tried to maintain the status quo in Korea rather than to pursue an aggressive expansionism. Furthermore, the consolidation of the American position in Korea makes it more difficult for Soviet expansionism to control all of Korea.

The fundamental change of the international situation relating to Korea in the three decades after the Korean War is important in analyzing the Soviet Union's Korea policy. The most important change in this respect is the Sino-Soviet conflict which culminated in the military clash at the Ussuri River in 1969. Because the Sino-Soviet con-

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346. US Department of State, *Foreign Relations of the United States (FRUS)*, 1950, volume VII, *Korea*, Washington: GPO, 1976, pp. 148-151.

flict has grown to such a degree that the Soviet Union is China's most dangerous enemy and vice versa.<sup>347</sup> In this situation, the Soviet Union would not pursue aggressive expansionism or endorse North Korean adventurism in the Korean peninsula.

From the mid-1950s, Soviet Premier Nikita Khrushchev pursued coexistence with the West resulting in three decades without a major armed conflict between the two blocs. This international trend preferred to maintain the status quo in Korea. This trend does not mean, under any circumstances, that the Soviet interests in Korea have changed or that the Soviet Union would oppose any unification of Korea. It simply means that the Soviet Union would prefer to maintain the status quo in Korea rather than to take the risks of the Korean unification.

Of course, the Soviet Union has strongly supported North Korea in the South-North Korean confrontation. The North Korean regime was formed and developed under the auspices of the Soviet Union. Soviet economic assistance to North Korea from 1946 to 1960 amounted to U.S. \$700 million.<sup>348</sup> Despite this, relations between North Korea and the Soviet Union deteriorated after the Korean War, due particularly to Khrushchev's de-Stalinization campaign and his policy of peaceful coexistence with the United States. This deterioration in relations did not mean that the Soviet Union would not support North Korea. The Soviet Union cannot help but support North Korea in the context of the Sino-Soviet conflict and U.S.-Soviet confrontation. However, the Soviet Union would not want to risk again supporting a North Korean attempt to unify Korea by force. In sum, the Soviet Union supports North Korea in maintaining the status quo in Korea.

### c. China

Until the twentieth century, Korean foreign relations had been limited primarily to those with China. This long tradition explains the varied and traditional Chinese interests in Korea. Chinese intervention in the Korean War also can be interpreted in this context. The November 11, 1950 statement issued by the Chinese foreign minister concerning Chinese intervention in the Korean War confirmed this position:

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347. See George Ginsburg and C.F. Pinkele, *The Sino-Soviet Territorial Dispute 1949-1964*, New York: Praeger, 1978; Harry Gelman, "Beijing Looks Ahead: Outlook for Sino-Soviet Relations," *Problems of Communism XXVIII*, No. 5-6, Sept.-Dec. 1979, pp. 50-66.

348. US Department of the Army, *North Korea: A Country Study*, Washington: GPO, 1981, p. 255.

[T]he question of the independent existence or downfall of Korea has always been closely linked with the security of China. To help Korea and repel United States aggression means to protect our own homes and our own country. It is, therefore, completely natural for the Chinese people to be ready to help Korea and offer resistance to United States aggression. . . .<sup>349</sup>

After the Korean War, Communist China contributed substantial economic assistance to North Korean post-war reconstruction. Although it is very difficult to get exact statistics about North Korean economics, reliable estimates revealed that Chinese economic assistance to North Korea from 1946 to 1960 amounted to U.S. \$600 million.<sup>350</sup> Communist China has always supported North Korea in the South-North Korean confrontation. Relations between North Korea and China have been better than North Korean-Soviet relations. However, continuing changes in the international situation over the three decades after the Korean War modified the Chinese position on the Korean question, although Chinese interests in Korea have never changed. The major relevant changes in the international situation are the Sino-Soviet conflict and the Sino-American rapprochement. These changes fundamentally affected Chinese foreign policy in the sense that the "friend" and the "enemy" of Communist China were completely reversed. This situation complicated the Chinese position in the Korean question. China tried to maintain a close relationship with North Korea while attempting to improve relations with the United States, a country North Korea considered an enemy. It seems inevitable that China would be in an awkward position on the Korean question, considering its desire not to lose North Korea to the Soviet bloc and to improve its relations with the United States. Therefore, it is difficult to evaluate China's long-term position on the Korean question. China undoubtedly will continue to support North Korea in the South-North Korean confrontation. However, supposing that South Korea succeeded in the unification of Korea on its terms, would this situation be advantageous or dangerous to China? This hypothetical situation would be advantageous to China in the context of the Sino-Soviet conflict and economic relationship. The problem is that China will support North Korea in the South-North Korean confrontation to keep North Korea away from the Soviet bloc. Considering these com-

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349. UN Document S/1902, 15 November 1950.

350. *North Korea*, *supra* note 348, p. 255.

plications, it is understandable why China wants to maintain the status quo in Korea.

Relations between South Korea and China have steadily developed in this context. Although no diplomatic relations exist, the two countries have on several occasions negotiated directly with each other. For example, with the hijacking of a Chinese civil airliner on May 5, 1983,<sup>351</sup> the two countries directly negotiated the handling of the problem in Seoul. During the intrusion of a Chinese naval torpedo into South Korean territorial waters in March 1985, the two governments again had direct talks resulting in the Chinese government's apology to the Korean government.<sup>352</sup>

The development of relations between South Korea and China is particularly remarkable in the area of trade. Although trade between the two countries is indirect, usually through middlemen in Hong Kong or Japan, the volume of trade has rapidly increased and amounted to about U.S. \$300 million in 1984, roughly double the 1983 level.<sup>353</sup> China also permitted South Korea to hold a trade exhibition in Macao on December 3-5, 1984. In mid-November of 1984, a chartered Swiss-Air flight brought 146 European tourists directly from Seoul to Peking.<sup>354</sup> An official Chinese delegation participated at the Asian Pacific Tele-Community Conference held in Seoul in November 1984.<sup>355</sup>

In the domain of sports, the two countries have rapidly developing relations. In March 1984, a South Korean sports team participated in the Davis Cup's preliminary games held at Kunming in China and in April of that year Chinese athletes came to Seoul to compete in the Asian Junior Basketball Championship as well as the Second Asian Swimming Championship. In addition, in September 1984 a Chinese delegation attended the Olympic Council of Asia meeting in Seoul, where Chinese Representative He Zhenlian stated that China would take part in the Asian Games and the Olympic Games to be held in Seoul in 1986 and 1988 respectively.<sup>356</sup>

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351. *The Korea Times*, and *The Korea Herald*, May 5 - 11, 1983.

352. *The Washington Post*, March 27, 1985.

353. Charles Smith, Paul Ensor, Carl Goldstein, "Economics Comes First," *Far Eastern Economic Review*, Hongkong, 28 February 1985, p. 98.

354. *Ibid.*, p. 29.

355. Richard Nations, "An Olympian Task," *Far Eastern Economic Review*, Hongkong, 17 January 1985, p. 29.

356. Lee Chae-Jin, "South Korea in 1984," *Asian Survey*, Berkeley: University of California Press, January 1985, p. 85.

## d. Japan

Considering the facts that Japan is an island country and that Korea provides an important access for Japan to the Asian and European continents, it is easy to understand Japan's interest in Korea. Historically, Japanese imperialist forces occupied Korea and Manchuria, provoking bitter anti-Japanese sentiment in the area. This animosity prevented the Japanese from establishing normal relations with the area. Only in 1965 did South Korea and Japan normalize their diplomatic relations.

As soon as Korea-Japanese diplomatic relations were established, general relations between the two countries rapidly developed. Japan's primary concern in the Korean question seems to be Japanese security. A Communist Korean peninsula would pose an imminent threat to Japan, considering that two major Communist powers would completely encircle the Japanese islands. The Japanese government has repeatedly expressed its concern over this security issue. The Nixon-Sato Joint Communique of November 1969 manifested this concern: "The President and the Prime Minister specifically noted the continuing tension over the Korean peninsula. The Prime Minister deeply appreciated the peacekeeping efforts of the United States in that area and stated the security of the Republic of Korea was essential to Japan's own security."<sup>357</sup> Japanese economic interests in Korea are also very important. South Korea is now Japan's second largest export market after the United States.<sup>358</sup>

The varied and close relations between South Korea and Japan have been consolidated by Nakasone's active Korean policy. The two governments recently exchanged visits of heads of government, and Japan offered an apology for Japan's past invasion into Korea.<sup>359</sup>

Japan has supported South Korea in the Korean question and has maintained limited unofficial relations with North Korea. Due to Japan's situation after World War II, Japanese influence in the Korean question is relatively small as compared to other neighboring countries. As the Japanese military is still weak, Japanese relations with Korea are predominantly economic.

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357. Kim Hak-Joon, *The Unification Policy*, *supra* note 311, p. 253.

358. Koh Byung-Chul, *The Foreign Policy Systems on North and South Korea*, Berkeley: University of California Press, 1984, p. 215.

359. Lee Chae-Jin, "South Korea in 1984," *supra* note 356, pp. 8688.

## 2. *The Sino-Soviet Conflict and the Sino-American Rapprochement*

### a. The Sino-Soviet Conflict

After the emergence of Nikita Khrushchev in the Soviet Union, Sino-Soviet relations began to deteriorate. His policy of peaceful coexistence with the United States and the de-Stalinization campaign disturbed the Chinese. Mainland China expected active Soviet assistance in its military operations against Nationalist China in 1958, but the Soviet Union did not want to provoke the United States under the peaceful coexistence policy. The Soviet Union did not help Communist China in its attempt to blockade the Nationalist-held off-shore islands of Quemoy and Matsu in 1958.<sup>360</sup>

Tension from deteriorating Sino-Soviet relations resulted in the eruption of hostilities in the 1960s after centuries of territorial disputes. In the western sector, China yielded 440,000 square kilometers to Russia under the 1860 Treaty of Peking, and also yielded 70,000 square kilometers under the Treaty of St. Petersburg.<sup>361</sup> In the northeastern region, China yielded 59,000 square kilometers to Russia under the 1858 Treaty Aigun, and another 400,000 square kilometers were lost under the 1860 Treaty of Peking.<sup>362</sup> The actual disputed area is 41,000 square kilometers in the region of the western sector and 900 square kilometers in the northeastern area along the Ussuri River.<sup>363</sup> This territory conflict escalates into armed conflicts in the late 1960s. The hostilities were formalized in April 1979, when China decided not to extend the thirty-year-old treaty of friendship, alliance, and mutual assistance of 1950 beyond its expiration date of April 1980.<sup>364</sup> In light of the historical animosity between the Soviet Union and China and the difficult nature of territorial dispute, the Sino-Soviet conflict will not be easily resolved. In this respect, all possible implications of the Sino-Soviet conflict in the Korean question should be considered in planning a long-term unification policy.

First, it seems that North Korea has managed to maintain its independence and maximize its leverage to its benefit in this dispute. North Korea carefully watched the confrontation between the Soviet Union and China in the late 1950s. It was indeed embarrassing for the

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360. US Department of the Army, *China: A Country Study*, Third Edition, Washington: GPO, 1981, p. 406.

361. *Ibid.*, pp. 47-49.

362. *Ibid.*, pp. 47-49.

363. *Ibid.*, pp. 47-49.

364. *Ibid.*, pp. 408-409.

North Koreans, who depended heavily on both Chinese and Soviet economic and military assistance. At first North Korea did not choose a side in the dispute and hoped that the Soviet Union and China would resolve their differences. However, after the Congress of East European Communist Parties in late 1962 attacked the North Korean attitude, North Korea stood on the Chinese side.<sup>365</sup> North Korea's position resulted in a decline of Soviet assistance which affected the North Korean economy.

After the fall of Khrushchev from power in October 1964, North Korea tried to improve its relations with the Soviet Union, especially since supporters of the so-called Cultural Revolution of China attacked North Korean President Kim Il-Sung as a "fat revisionist."<sup>366</sup> Since then, North Korea has pursued a path independent of both the Soviet Union and China.<sup>367</sup> Since 1969, North Korea has maintained a comparatively balanced policy toward the Soviet Union and China. The Soviet Union and China, both afraid of losing North Korea to the other, tried to maintain a close relationship with North Korea. In this context, Kim Il-Sung visited China in April 1975, and the Soviet Union in May 1948, while Chou En-lai visited North Korea in April 1970 and Deng Xiaoping visited in September 1978 and again in April 1982.<sup>368</sup>

Second, the North Korea-China-Soviet Union triangle is very complicated and implies various possible future evolutions. A recent news article on the subject demonstrates the complexity of this triangle:

The military balance in the mid-1980s . . . is moving in the opposite direction (in favor of South Korea) . . . Only Moscow can provide the North with the MIG 23s to match the F15s . . . in the South, and the price Moscow is demanding to up-grade North Korea's defense is access to its military facilities for the Soviet Pacific fleet, . . . anchorage and refueling rights at the ports on North Korea's western coast. . . . Japanese officials believe that the Chinese succeeded in convincing (North Korean) Kim that this was too high a price to pay, before Kim departed for Moscow last May (1984) for his first visit to the Soviet Union in seventeen years. . . . Kim's Moscow trip apparently did not yield a

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365. U.S. Department of the Army, *North Korea*, *supra* note 348, pp. 29-30.

366. *Ibid.*, pp. 21-31.

367. Koh Byung-Chul, *supra* note 358, pp. 204-206.

368. Kihl Young-Whan, "North Korea in 1984," *Asian Survey*, Berkeley: University California Press, January 1985, pp. 7172; Koh Byung-Chul, *supra* note 358, pp. 207-208.



new military accord. . . . Moscow, however, has hardly given up. On November 13 (1984), Kapitsa was dispatched to Pyongyang on a 14-day visit to make up lost ground. Observers view the border treaty initialled to resolve the two countries long standing dispute as a significant concession on Moscow's part . . . Kapitsa's unpublicized mission . . . was to negotiate a military package which would provide Pyongyang with MIG 23s . . . in return for access to North Korean military facilities . . . [t]he outward signs indicate that his mission was less than a success. . . . On December 1 (1984) publicly announced Kim's three day unofficial visit to the Chinese capital from November 26-28 . . .<sup>369</sup> and his talks with Hu Yaobang on the Kapitsa's visit.

Third, considering North Korea's insecure position in the context of the Sino-Soviet conflict, it has been North Korea's good fortune to maintain its balancing policy in the Sino-Soviet conflict and succeed in assuring the support of both China and the Soviet Union. Strangely enough, South Korea has had no positive policy on this issue. If the Sino-Soviet conflict creates insecurity for North Korea, it would be expected that South Korea would pursue some positive policy to take advantage of this conflict to weaken North Korean ties with one or both of its major allies.

#### b. The Sino-American Rapprochement

The Sino-American rapprochement is not an event independent of the Sino-Soviet conflict, but another aspect of the conflict. The process of Sino-American rapprochement explained above will not be repeated here, but its implications for Korean unification shall be considered.

The Sino-American rapprochement quickly changed the cold war in the Korean peninsula. The U.S. and China, the two opposing major powers directly involved in the Korean question, normalized their diplomatic relations and became friends. This sudden turn of events greatly affected the mechanism for peace and unification in the Korean peninsula. A superficial observation suffices to see this change in Korea. Just after the Shanghai Communique made by Nixon and Chou Enlai,<sup>370</sup> the South-North Joint Communique was issued on July 4,

369. *Far Eastern Economic Review*, Hongkong, 17 February 1985, pp. 26-27.

370. US Department of State, *Bulletin*, March 20, 1972, pp. 435438; Hungdah Chiu ed., *Normalizing Relations with PRC*. Occasional Paper, School of Law, University of Maryland, Baltimore, No. 2-1978, pp. 146-154.

1972, constituting the first significant movement toward the unification of Korea since the Korean War. This movement did not, however, indicate any significant agreement on Korean unification in the Nixon-Chou talks or in the South-North Joint Communiqué. It showed only a change in environment concerning the Korean question. This change of environment has several aspects. First, the Sino-American rapprochement ended the confrontation between the United States and China, even in Korea. However, the rapprochement did not make peaceful unification of Korea feasible. Even in the Shanghai Communiqué the two sides failed to reach an agreement on the Korean question:<sup>371</sup>

The United States will maintain its close ties with a support for the Republic of Korea; the United States will support efforts of the Republic of Korea to seek a relaxation of tension and increased communication in the Korean peninsula. . . .

It (China) firmly supports the eight-point program for the peaceful unification of Korea put forward by the government of the Democratic People's Republic of Korea (North Korea) on April 12, 1971, and the stand for the abolition of the United Nations Commission for the Unification and Rehabilitation of Korea.

Although China stated that it would support the North Korean position of unification, it might not have believed that the North Korean unification program was feasible. It merely expressed its support for North Korea, conscious of Chinese-North Korean relations. The statement of the United States was more frank. It did not mention Korean unification but a "relaxation of tension and increased communication in the Korean peninsula."<sup>372</sup> A reasonable interpretation of their intentions was that they accepted the status quo and peace in Korea while they encouraged both sides to carry out negotiations by themselves. By encouraging the South-North Korean dialogue, did they believe that it would result in peaceful unification? It is not clear, but it seems that they hoped more for an easing of tensions than for peaceful unification, although they did not expressly give up the goal. The fact that the United States' statement did not mention Korean unification might indirectly indicate this attitude.

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371. *Ibid.*, pp. 147-148.

372. *Ibid.*, p. 147.

### 3. *The National Strength of South and North Korea*

No matter what unification policy South and North Korea may pursue, it is beyond question that national strength is the most important factor in unification. Both South and North Korea clearly know and have repeatedly expressed this truth. Therefore, national strength is an essential element to be considered in planning any unification policy. It is naive to interpret "peaceful unification" as a unification achieved by agreement through negotiations without any consideration of national strength or other real factors. In light of this, several aspects of the national strength of South and North Korea will be studied.

#### a. Economic Strength

##### i. South Korea

South Korean economic development from a poor, war-destroyed economy to a prosperous, industrial state is often called an economic miracle. President Park Chung-Hee, after taking power in a military coup d'etat in May 1961, concentrated on the economic development of South Korea through a rapid expansion of exports based on several five year economic development plans beginning in 1962.

In the twenty-year period between 1962 and 1981 the GNP at 1975 prices grew from U.S. \$6.3 billion to \$30.4 billion, an increase of 483 percent, and per capita GNP at current prices rose from U.S. \$87 to \$1,607. This growth was fueled by the rapid expansion of exports, which increased from approximately U.S. \$50 million to \$21.3 billion over the same period.<sup>373</sup>

This economic growth continued in the 1980s, and in 1983 the GNP of South Korea was U.S. \$75.3 billion, per capita GNP was U.S. \$1,884 and the dollar volume of commodity exports was U.S. \$24.4 billion. In 1986, the last year of the Fifth Five Year Plan (1982-1986), the GNP is expected to exceed U.S. \$90 billion, with the value of commodity exports at U.S. \$50 billion and per capita GNP of U.S. \$2,200.<sup>374</sup> As South Korean industry developed, the structure of industry also changed. Heavy and chemical industries represent the fastest growing industrial sectors. During the Fifth Five Year Plan period, these industries are projected to grow at an annual rate of 12.2

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373. Korean Overseas Information Service, *A Handbook of Korea*, *supra* note 329, pp. 489-493.

374. *Ibid.*, pp. 490; 504; Lee Chae-Jin, *supra* note 43, p. 82.

percent, while light industry is projected to grow at 9.5 percent per annum.<sup>375</sup>

Having emerged as an important industrial country, South Korea is now concentrating on becoming a new power in high technology industries. Through strategic joint ventures with leading companies in the United States and Japan, domestic research and development, South Korea is rapidly developing high technology industries such as computers, robots, and fiber optics.

South Korea is on the threshold of advancing into export markets for very large scale integrated circuits and is shaping up as a potential strong telecommunications competition . . . Lately, semiconductors have grabbed the spotlight . . . Samsung Semiconductor has introduced South Korea's first 64 K dynamic random-access memory (DRAM) chip to be made without foreign license . . . Meanwhile, Hyundai Electronics has developed 16 K static random-access memory (SRAM) that will be mass produced sometime later in 1984.<sup>376</sup>

#### ii. North Korea

North Korea also performed well in economic development immediately after the Korean War. Compared to South Korea, North Korea possessed extensive natural resources including eight billion tons of coal and four billion tons of iron ore beneath its soil as of 1980, and other non-ferrous metals such as tungsten, lead, copper, and zinc.<sup>377</sup>

After the First Five Year Plan (1957-1961), which gave priority to heavy industry and collectivization of agriculture, North Korea succeeded in establishing an industrial foundation. Actual production surpassed the planned target one year ahead of schedule and was completed in 1960. However, due to the excessively vigorous pursuit of economic development, both workers and machinery were exhausted. The concentration on heavy industry and the unbalanced development plan led to imbalances between different sectors. As a result, North Korea's Kim Il-Sung proclaimed 1960 as the year of adjustment.<sup>378</sup>

The first Seven Year Plan (1961-1967) failed, as the North Ko-

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375. Korean Overseas Information Service, *A Handbook of Korea*, *supra* note 329, pp. 489-493.

376. *Far Eastern Economic Review*, Hongkong, 19 July 1984, p. 64. NIL.

377. U.S. Department of the Army, *North Korea*, *supra* note 348, p. 111.

378. *Ibid.*, p. 113.

rean Government admitted, and it was extended for another three years. According to official explanations, the reason for its failure was the disproportionate amount of funds expended on national defense. But the actual reason for the failure appeared to be the drastic reduction in economic assistance from the Soviet Union and China during the Sino-Soviet conflict. Thereafter, North Korea discontinued the publication of annual economic statistics.<sup>379</sup>

After initial contacts with South Korea through South-North Korean dialogue in the early 1970s, North Korea seemed to be surprised at the rapidly growing economy of South Korea. North Korea immediately began to import machinery from Western Europe and Japan during the period of the Six Year Plan (1971-1976). Excessive imports resulted in an embarrassing international balance of payments problem and a growing foreign debt beyond North Korea's financial ability. In order to overcome these difficulties, the North Korean authority launched several mass campaigns such as the Three Revolutions Team Movement and the Seventy Day Speed Battle but were unsuccessful.<sup>380</sup>

The Second Seven Year Plan (1978-1984) tried to rectify the problems of past economic plans by establishing major targets in various industrial sectors. However, the planned targets were not achieved judging from various indicia. No announcement has been made that the targets of the plan have been attained, as was done in the past. An article in *Nodong Sinmun* (the official North Korean newspaper) appeared on October 9, 1984, titled, "Let Us Vigorously Advance Toward the Attainment of the Goals of the Second Seven Year Plan." A new foreign economic policy was adopted on January 26, 1985, aiming to revitalize the stagnant North Korean economy by importing new technology and capital from abroad.<sup>381</sup> Although several economic plans of North Korea did not succeed as planned, North Korea has nevertheless developed some industrialization through these plans. According to South Korean estimates, North Korean GNP in 1983 amounted to U.S. \$14.5 billion with per capita GNP of U.S. \$765.<sup>382</sup>

North Korea's stagnant economy can be attributed to the centrally-directed economic system of a communist society, excessive mil-

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379. *Ibid.*, p. 113; Koh Byung-Chul, *The Foreign Policy Systems*, *supra* note 358, p. 41.

380. *Asia 1977 Yearbook of Far Eastern Economic Review*, Hongkong, p. 15; U.S. Department of the Army, *North Korea*, *supra* note 348, p. 114.

381. Kihl Young-Whan, "North Korea in 1984" *supra* note 368, pp. 6970; 74-75.

382. Korean Overseas Information Service, *Seeking A Breakthrough*, Seoul, 1984, p. 55.

itary expenditures (23.8 percent of GNP in 1983), inefficient economic planning and management, and the closed society of North Korea.

b. Population, Territory and Military Strength

i. South Korea

South Korea's population is very large when compared to its territory. Its total population as of 1984 was 40,578,000 in a territory of 99,022 square kilometers, for a density of 404 persons per square kilometer. Furthermore, the Korean territory is mountainous, with mountains covering roughly seventy percent of the whole peninsula.<sup>383</sup> However, population growth in South Korea has been remarkably reduced from an annual growth rate of 2.3 percent in the period 1966-1970 to an annual growth rate of 1.6 percent in the period 1976-1980. The growth rate is expected to be further reduced to an annual rate below 1.5 percent through government policy.<sup>384</sup> The total population of South Korea is expected to be around 50 million by the year 2000.

The military strength of a country is difficult to determine accurately because of several factors. To attempt to determine the military strength of a country only in terms of military personnel and the quantity of weapons is deceptive. The most important factor in military strength is economic strength, the fundamental base of potential military power.

After the Korean War, the military forces of South Korea were equipped and trained primarily by the United States. However, fearing a possible recurrence of war in Korea, certainly influenced by the bluff policy of President Rhee, and considering the economic ability of South Korea to support armed forces, the United States government limited the military strength of South Korea to the level of sustained military operations while relying upon the United States supporting forces. The Memorandum from the Secretary of Defense (Wilson) to the Executive Secretary of the National Security Council (Lay) of April 2, 1954, clearly expressed this position. According to this memorandum, the security of South Korea depended on the deterrent effect of the military posture of the United States and on the immediate employment of U.S. forces in support of South Korean forces in the event of Communist aggression in Korea, rather than on the size of South

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383. Korean Overseas Information Service. *A Handbook of Korea*, *supra* note 329, pp. 13-19; Korean Overseas Information Service. *Seeking a Breakthrough*, *supra* note 382, p. 55.

384. *Ibid.*

Korean forces themselves.<sup>385</sup> As "the deterrent effect of the military posture of the United States" the United States considered use of atomic weapons coupled with the announced intention of the United States to resist renewed aggression. This position was confirmed by the Memorandum from the Joint Chiefs of Staff to the Secretary of Defense of March 31, 1954.<sup>386</sup>

In this context, the United States government refused the expansion program of South Korean forces proposed by the South Korean government. The proposed program consisted of thirty-five to forty Army divisions; 6DD, 16DE, 4AM, 2AO, 2AE and 1AF for the Navy; and five fighter wings, two light bomb wings, one reconnaissance wing, and one transport squadron for the Air Force.<sup>387</sup> Instead, the levels of military strength the United States government authorized for South Korea were 655,000 Army personnel (twenty divisions); 15,000 Navy personnel with a maximum of eighty-three ships; 23,500 Marine personnel; and 9,000 Air Force personnel for one fighting wing.<sup>388</sup>

South Korea maintained this level of military forces until 1961. In the early 1960s, however, the South Korean government began to build up a self-reliant defensive capacity. In the early 1970s, when the United States government decided to withdraw its ground forces from Korea, South Korea boosted its defense industry to assure self-reliant defense capabilities. For this purpose, the South Korean government enacted the Law on Military Supplies, and also took various measures to support the defense industry, such as the creation of a support fund, subsidies, tax privileges, defense fund raising, and other steps.<sup>389</sup> In 1975, the Defense Tax System was enacted to assure the funds necessary for the defense industry. This policy of defense industry development succeeded in producing almost every kind of military material including long-range missiles, multi-firing rockets, M-48 A3 and M-48 A5 tanks (the equivalent of U.S. M-60 A1), 500 MD helicopters, destroyers, and F-5F fighter bombers.<sup>390</sup> The number of military personnel has not changed much, but paramilitary manpower and reserve forces have increased to several million.

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385. *FRUS*, 1952-54, part 315, *supra* note 315, p. 1778.

386. *Ibid.*, p. 1780.

387. *Ibid.*, p. 1781.

388. *Ibid.*, p. 1782.

389. *Ibid.*, p. 464.

390. Korean Overseas Information Service, *A Handbook of Korea*, *supra* note 329, p. 464.

## ii. North Korea

There are no official statistics for the North Korean population. The most recent official statistics on its population were those of 1963. Strangely enough, North Korean authorities have kept secret most indicators of its national strength, probably fearing South Korea's greater economic and military potential.<sup>391</sup> However, reliable estimates based on indirect methods such as totaling electoral districts (one district contains 30,000 persons) or official statement indicating the percentage of the population in certain domains suggest that the total North Korean population in mid-1983 was approximately 18.9 million.<sup>392</sup> The annual growth rate of its population varies with the demographer, but on the whole was 2.5 percent or less in the period 1975-1980.<sup>393</sup> Some scholars visiting North Korea in the first half for 1980 were told by North Korean authorities that the annual growth rate of its population was 1.6 percent.<sup>394</sup> Although the North Korean government encourages its people to have as many as four to six children, late marriage due to social conditions such as long periods of military service (five to seven years) slows down a rapid growth in population.<sup>395</sup>

The total area of North Korean territory is 122,370 square kilometers, roughly fifty-five percent of the Korean peninsula (221,120 square kilometers). Although the total area of North Korea slightly exceeds that of South Korea, some eighty percent of North Korea's land area is composed of mountains and uplands, making the actual habitable land of North Korea smaller in area than that of South Korea.<sup>396</sup>

After the Korean War, which devastated 500,000 North Korean troops,<sup>397</sup> North Korea concentrated on rebuilding its armed forces, largely relying on military assistance from the Soviet Union and China. Furthermore, North Korea concluded the Treaty of Friendship, Cooperation and Mutual Assistance with the Soviet Union and China in July 1961. These treaties are, in reality, mutual defense treaties. The treaties provide that if one party is invaded, the other party will render military and other assistance with every available means at

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391. U.S. Department of the Army, *North Korea*, *supra* note 348, p. 58.

392. Korean Overseas Information Service, *Seeking a Breakthrough*, *supra* note 382, p. 52; North Korea, *supra* note 348, p. 58.

393. *Ibid.*, p. 61.

394. *Ibid.*, p. 61.

395. *Ibid.*, p. 61.

396. *Ibid.*, p. 52.

397. *Ibid.*, p. 222.



its command. These treaties are to be automatically renewed periodically, unless one of the parties gives notice one year in advance of its termination. Soviet and Chinese support for North Korea is not limitless. After several aggressive actions were taken by North Korea in the late 1960s, such as infiltration of North Korean commandos into South Korea and the shooting down of American EC 121 reconnaissance aircraft, the Soviet Union declined to supply new advanced weapons and military equipment to North Korea.<sup>398</sup>

In relation to its small population, less than nineteen million in 1983, North Korea maintains a surprisingly large level of armed forces of 700,000 to 800,000 regular troops with five million para-military forces.<sup>399</sup> To maintain such a large number of armed forces, North Korea has extended its compulsory military service term to longer than the official five year term, and women also share military service, making up as much as thirty percent of armed forces. This policy greatly affects the manpower available for economic production.<sup>400</sup>

North Korea's armed forces are well equipped. For ground forces, they are equipped with 2,600 tanks, FROG missiles, and large numbers of artillery guns, rocket launchers, and anti-aircraft weapons. The North Korean Navy is equipped with nineteen submarines, 317 fast-attack craft, and 150 coastal amphibious ships. North Korea has emphasized its Air Force by providing it with 700 aircrafts, containing twenty-eight fighter wings and three bomber wings.<sup>401</sup> According to the Stockholm International Peace Research Institute (SIPRI), North Korea apparently received permission from the Soviet Union to manufacture the MIG-21 in 1975.<sup>402</sup>

With its determined and aggressive policy of unification, North Korea concentrated on its defense industry and succeeded in producing most military weapons and equipment such as AK-47 rifles, mortars, rocket launchers, artillery, anti-aircraft weapons, personal carriers, submarines and probably combat aircraft. It is very expensive for North Korea's population of eighteen million to maintain such large armed forces. Actual annual defense expenditures are estimated

398. *Ibid.*, p. 223.

399. Korean Overseas Information Service, *A Handbook of Korea*, *supra* note 329, p. 469; for details see, *The Military Balance 1982-1983*, International Institute for Strategic Studies, London.

400. Korean Overseas Information Service, *A Handbook of Korea*, *supra* note 329, p. 234.

401. *Ibid.*, pp. 468-472.

402. U.S. Department of the Army, *North Korea*, *supra* note 348, pp. 228-233.

at as much as twenty to twenty-five percent of GNP.<sup>403</sup> Since South Korean economic development is much more rapid and dynamic than that of North Korea, North Korea will continue to be hard-pressed to compete to increase its military strength, and in the long run, it will be in a very difficult situation.

c. A Brief Comparison of the National Strength between South and North Korea

i. Population and Area of Territory

The population of South Korea in 1983 was 39.95 million while North Korean population was estimated at 18.90 million. The annual growth rate of the South Korean population in 1983 was 1.56 percent while the North Korean growth rate was estimated at 2.23 percent. Thus, the South Korean population is more than twice that of North Korea. Furthermore, South Korean labor productivity is estimated to be much higher than that of North Korea because of the lag of North Korean technology behind that of the South. North Korean industrial facilities are obsolete, and its communist economy has systematic defects which hamper more effective economic operation as its economic structure develops to a higher degree.

Superficially, North Korean territory is larger than that of South Korea. The total area of the Korean peninsula is 221,120 square kilometers, of which fifty-five percent or 122,098 square kilometers belongs to North Korea and forty-five percent or 99,022 square kilometers belongs to South Korea. However, North Korean territory is very mountainous and eighty percent is composed of mountains and uplands, leaving only twenty percent for habitation and agriculture. Therefore, the population has been concentrated in the South. In addition, North Korea possesses far more natural resources than does the South.<sup>404</sup>

ii. GNP

The gross national product of South Korea in 1983 was U.S. \$75.3 billion and its per capita GNP was U.S. \$1,884 while North Korean GNP in 1983 was estimated at U.S. \$14.5 billion with a per capita GNP U.S. \$765. Thus, South Korean economic strength in

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403. Ibid., p. 242; Korean Overseas Information Service, *Seeking a Breakthrough*, *supra* note 382, p. 55.

404. U.S. Department of the Army, *North Korea*, *supra* note 348, pp. 50-55; 121-122; Korean Overseas Information Service, *Seeking A Breakthrough*, *supra* note 382, pp. 52-54; Korean Overseas Information Service, *A Handbook of Korea*, *supra* note 329, pp. 13-18.

1983 was five times greater than that of North Korea. This wide gap of economic strength between South and North Korea is expected to increase because the economic growth rate of South Korea (around nine percent) is far larger than that of North Korea (about four percent). If this trend continues, the estimated gap between two sides after ten years is forecast as follows:

$$\frac{\text{South Korean GNP}}{\text{North Korean GNP}} = \frac{5(1 + 0.09)^{10}}{(1 + 0.04)^{10}} \div = 8$$

The South Korean economy after ten years would be eight times larger than that of North Korea, and before the year 2000 South Korean economic strength will grow so much that North Korean economic strength will no longer be comparable to it.

### iii. Trade

The gap in trade volume between South and North Korea is even greater than the gap in GNP. In 1983, South Korean exports amounted to U.S. \$24.4 billion and its imports were valued at U.S. \$26.2 billion, for a total volume of U.S. \$50.6 billion. In the same year, North Korean exports were estimated at U.S. \$1.49 billion and its imports at U.S. \$1.66 billion, for a total volume of North Korean trade of U.S. \$3.15 billion, only seven percent of the South Korean trade volume. If the trade growth rate of both sides are taken into account, the gap in trade volume between the two sides is expected to increase rapidly. North Korean annual export and import growth rates in that 1970s were 13.6 percent and 11.4 percent respectively, while South Korean annual export and import growth rates in the 1970s were thirty-seven percent respectively.<sup>405</sup>

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405. Korean Overseas Information Service, *Seeking a Breakthrough*, *supra* note 382, pp. 89-94.

## iv. A Table of Comparison

*Major Economic Indicators (1983)*<sup>406</sup>

Classification	Unit	South Korea (A)	North Korea (B)	A:B
Population	1,000	39,950	18,900	2.1:1
Pop. Growth Rate	%	1.57	2.23	
Area	square km	99,022	122,098	
GNP	billion \$	75.3	14.5	5.2:1
Per Capita GNP	U.S. \$	1,884	765	2.5:1
Real Growth Rate	%	9.1	4.3	
Exports	billion \$	24.4	1.49	
Imports	billion \$	26.2	1.66	
Total Trade	billion \$	50.6	3.15	100:7

*Major Products (1983)*<sup>407</sup>

Classification	Unit	South Korea	North Korea
Automobiles	1,000	340	15
Ship Building	1,000 tons	4,000	400
Machine Tools	1,000	50	30
TV Sets	1,000	10,500	200
Refrigerators	1,000	1,540	15
Cement	1,000 tons	23,450	8,700
Chemicals	1,000 tons	200	20
Chemical Fertilizers	1,000 tons	1,200	620
Major Synthetic Resins	1,000 tons	1,000	90
Pig Iron	1,000 tons	8,852	4,010
Crude Steel	1,000 tons	13,200	4,030
Rolled Steel	1,000 tons	18,870	3,190

406. Ibid., pp. 55; 91.

407. Ibid., pp. 79-83.

Classification	<i>Military Strength</i> <sup>408</sup>		Remarks
	South Korea	North Korea	
Population	38.9 million	18.6 million	
Regular Troops	601.6 thousand	784.0 thousand	
Army	520 thousand	700 thousand	
Navy	49 thousand	33 thousand	
Air Force	32.6 thousand	51 thousand	
Para-military	3.38 million	5.2 million	
Homeland Reserve Forces	3.98 million	5.2 million	
Tanks	1,000	2,825	South Korean tanks are higher quality
Armored Personnel			
Carriers	850	1,140	
SAM	180	250	
SSM	12	54	
Combat Aircraft	434	700	South Korean aircrafts are higher quality
Bombers		70	
Submarines		19	
Destroyers	18		
Other Naval Vessels	91	515	In total tonnage, South Korea outpaces North Korea

#### 4. *The Special Environment of a Closed North Korean Society*

Through four decades of division, the societies of South and North Korea have become more heterogeneous in relation to one another. Although they had managed to maintain a remarkable national homogeneity for several thousand years of history, the division of forty years has already changed much. North Korea, the most closed society in the world, is not progressing toward national unification but rather is building up a solid barrier for division. Peaceful unification will not be achieved simply by the removal of an artificial demarcation line through a sudden agreement by both sides, but rather through the homogeneous reconciliation of the two opposing societies. Without this reconciliation of two very different societies, unification is not feasible. If some kind of awkward unification was temporarily estab-

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408. Korean Overseas Information Service, *A Handbook of Korea*, *supra* note 329, pp. 469-471.

lished by some improbable event, it would soon lead to another civil war. Therefore, in order to make a viable long-term plan for Korean unification, the closed society of North Korea should be carefully studied, and some positive measures for opening and changing of this society should be taken. In consideration of this, the special environment of North Korean society which has evolved for four decades will be analyzed.

a. Collective and Controlled Society

A Korean-American scholar visited North Korea in 1974 and described it in these terms:

Outwardly, North Korea's moral and social codes were much like those of the Puritans. Simplicity and thrift, faithful obedience to the authority, and diligence characterized the way of life of the people . . . [T]he people were highly industrious, working six days per week, and on the off-duty day they went to donate their free labor to the state. In early spring they began work at 7 a.m. and worked until 5:30 p.m. During the busy season (May through October), they work from 5 a.m. to 7 or 8 p.m. They take one morning and one afternoon break, and a lunch period from noon to 2 p.m. I am not certain whether all workers take an afternoon siesta (between 1 and 3 p.m.), but we were told that officials take the 1 to 3 p.m. siesta and work until 9 or 10 at night. There were two study (of political ideology) periods per day; one before work began, and the other in the evening . . . Young men of ages between 17 and 45 and young women between the ages of 17 and 35 take compulsory military training which lasts one to two hours per day for ten times per month. Farmers and factory workers belong to the Workers and Peasants' Red Militia. Tight internal security is maintained, and check points with barbed wire barricades were everywhere. Even children marched in formation like soldiers on the way to or returning from their schools. . . .<sup>409</sup>

North Korean society may be described as a society of George Orwell. In order to maintain this kind of collective society, various surveillance systems, mass media, and a special education system are necessary. The official apparatus of control and surveillance over the

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409. Andrew C. Nahm, *North Korea: Her Past, Reality, and Impression*, Center for Korean Studies, Western Michigan University, 1978, pp. 100-101.

people and armed forces is the Ministry of Public Security and the Political Security Department. The Ministry of Public Security carries out multiple functions such as regular police work, civil defense, prison management, traffic control, fire prevention, and counter-espionage. The Political Security Department is an autonomous agency whose function is the operation of the secret police and reports directly to Kim Il-Sung.<sup>410</sup>

For effective surveillance over the people, the entire population is classified into fifty-one categories on the basis of political reliability, and redivided into three broader categories: 1) the core elements are the Korean Workers' Party members, descendants of revolutionaries and patriots; 2) the wavering elements are relatives of those who went to South Korea and merchants and others; and 3) elements to be watched are the anti-Party elements, political and economic criminals, and religious believers.<sup>411</sup>

Aside from official organs for security, various kinds of social organizations exist to strengthen social control. For example, in all schools the principal and party cells perform this function. Boys and girls aged nine to fifteen join the Young Pioneer Corps., and youths between fifteen and twenty-six join the Socialist Working Youth League. Women become members of the Korean Democratic Women's League. Manual, clerical, and office workers form a trade association. The Workers and Peasants' Red Guard is composed of reliable persons and carries out the surveillance over reactionary activities.<sup>412</sup>

To maintain total control over social life, even domestic travel is severely restricted. Travellers must receive permission in advance and apply for food rations and coupons. Their itineraries must be approved. Travellers are subject to identification checks on the road and at hotels. They should have several identification documents such as residence cards, ration cards, union or party documents and personal identification cards with information on employment and marital status and military identification.<sup>413</sup>

The public media concentrates on the indoctrination of people. The North Korean regime incessantly disseminates its propaganda through mass media and various other means. Most radio programs consist of decisions and information of the Party. Most evening life is

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410. U.S. Department of the Army, *North Korea*, *supra* note 348, p. 213.

411. *Ibid.*, pp. 76-77.

412. *Ibid.*, p. 214.

413. *Ibid.*, p. 215.

filled with political education. During the lunch breaks, propaganda agents read newspaper and books or carry out indoctrination through loudspeakers.<sup>414</sup>

For the maintenance of this collective society, the North Korean regime gives priority to the educational system. In 1972, universal eleven-year compulsory education was established, consisting of one year of kindergarten, four years of elementary school, and six years of secondary school.<sup>415</sup> North Korea also developed a comprehensive system of pre-school nursery and kindergarten facilities which attempt to raise children in accordance with Communist ideology and at the same time to free parents for outside work. Through the school period, political and ideological education is emphasized. For example, in the university, social science students receive ideological education including the life of Kim which constitutes as much as forty percent of the total curriculum.<sup>416</sup> It is beyond question that in the long run this education system is inefficient for economic development.

Professor Nahm who visited North Korea in 1974 pointed out the problem of North Korean society:

It is true that it has improved the material life of the poor and increased social benefits for them, but they are utterly deprived of basic human freedom and civil rights, having no individual choice to make. Intellectuals have been indoctrinated in such a way that they seem to have no thought of their own, or are not allowed to express their individual opinions. . . . The people have no freedom to choose their profession, the students have no freedom to select schools . . . and the families, with the exception of a small number of privileged ones, have no right to stay together. . . . People are fulfilled not by becoming themselves but by becoming part of the collective whole.<sup>417</sup>

#### b. The Personality Cult of Kim Il-Sung

North Korea's Kim Il-Sung is the symbol of North Korean society and the source of its authority. Obedience to Kim is absolute and unconditional. His words are at once law and supreme command to all North Koreans.<sup>418</sup> Every governmental and administrative func-

414. *Ibid.*, p. 215.

415. *Ibid.*, p. 85.

416. *Ibid.*, p. 89.

417. Andrew Nahm, *North Korea*, *supra* note 409, p. 103.

418. U.S. Department of the Army, *North Korea*, *supra* note 348, p. 164.



tion serves to ensure strict popular compliance with the will and words of Kim Il-Sung. As a result, it is impossible to suggest any opinion which differs from Kim's words. Efficient administration cannot be expected from this totalitarian regime.

Furthermore, Kim Il-Sung is deified to a surprising degree in North Korea. All types of mass media are used to incite frenzied praises of Kim and to ensure this image of Kim in the people's minds. All religions have been replaced by the cult of Kim in North Korea. Citing a few examples suffices to demonstrate this:

When General Kim Il-Sung came here, a new bright star appeared in the Galaxy at mid-night . . . [W]ith his magical power and skills, General Kim Il-Sung attacked the enemy on both sides of the mountains and in the west and in the east simultaneously, and wiped them out.<sup>419</sup>

All kinds of cultural activities are dominated by the cult of Kim. It is religious veneration of Kim that credits him with all accomplishment in North Korea. His birth place is venerated as a holy place where millions of pilgrims come each year.<sup>420</sup> About 37,950 Kim Il-Sung libraries and about 35,000 Kim Il-Sung statutes are scattered throughout North Korea.<sup>421</sup>

For the purpose of Kim's cult, the modern history of North Korea is completely fabricated. To glorify the background of Kim Il-Sung, North Korea creates various legendary stories about his parents, grandparents and great-grandparents. The government fabricated a modern history of Korea to support these created stories. Thus, every member of the Kim Il-Sung clan became an anti-Japanese patriot or anti-imperialist leader. For example, Kim Il-Sung's great-grandfather Kim Ung-Woo was established as a symbol for the anti-American struggle, saying that he had smashed the American ship General Sherman in 1886.<sup>422</sup>

Since Kim Il-Sung's eldest son Kim Jong-Il is designated as heir apparent to Kim Il-Sung, the fanatic idolization of Kim Jong-Il is also being carried out:

Soon after Korea was emancipated from Japanese rule, three stars rose over Mount Sorak in Kangwon Province in South Korea. The stars stood for Great Leader Kim Il-Sung, his wife, and his son, Kim Jong-Il, respectively. . . . Kim Jong-

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419. Andrew Nahm, *North Korea supra* note 409, p. 36.

420. U.S. Department of the Army, *North Korea, supra* note 348, p. 96.

421. Naewoe Press, *Some Facts about North Korea*, Seoul, 1984, p. 35.

422. *Ibid.*, p. 33.

It also produces miracles: he buries the sea with mountains and makes palace-like villas rise out of barren land.<sup>423</sup> In old days, the Great Leader (Kim Il-Sung) had the power to move the ground and today the Jucheleader (Kim Jong-Il) has the power to move time.<sup>424</sup>

This fanatic cult of Kim is two-faced in relation to Korean unification. First, it has a powerful effect in mobilizing the people in a short time and in allowing North Korea's Kim to carry out whatever he wants without any meaningful resistance. Second, in the long run, Kim's cult greatly hampers national development by cutting off all creative opinions in North Korean society. Thus, the economic gap between South and North Korea will continue to grow.

### Section C. The Legal Status Of A Divided Korea And The Sovereign Right For Unification

Although several divided countries resulted from World War II, there are significant differences among them. The cause of division, the political and legal situation, the objective of the divided regimes and balance of power between the two divided parts are quite different. Therefore, it is difficult to develop a global legal theory which can accurately reflect the actual situations of all the divided countries. There is no agreement even in the terminology used to represent these countries. Some scholars use "multi-system nations," contending that use of terms such as "divided states," "divided nations," or "two Koreas" has the misleading connotation that there are two nations or states, while the term "multi-system nations" reflects faithfully the nature of division in that there are two political systems within one state.<sup>425</sup> However, if the terms "divided state" or "divided nation" (singular) is used instead of plural "divided states" or "divided nations," there would be no such connection implying two states or two nations. Thus, terminology is not important. The reality is that there are very significant differences among the divided countries. Accordingly, this study concentrates on the particular situation of Korea rather than on any attempt at a comparative approach.

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423. (Radio Pyongyang, April 1, 1983), Naewoe Press, *Some Facts About North Korea*, supra note 421, p. 26.

424. *Ibid.*, p. 26.

425. Hungdah Chiu, "The International Law of Recognition and Multi-System Nations," *Multi-System Nations and International Law*, Occasional Papers, 1981-8, School of Law, University of Maryland, Baltimore, 1981, p. 45; Yung Wei, "The Unification and Division of Multi-System Nations," *Ibid.*, p. 61.

1. *The Legal Status of a Divided Korea*

a. The Artificiality of the Korean Division and the Military Character of the Demarcation Line

After the atomic bombings destroyed Hiroshima and Nagasaki on August 6 and 8, Stalin entered the war against Japan and Soviet forces rushed on Manchuria and North Korea within three days without any significant resistance. The Americans, embarrassed by this unexpected situation created by a sudden fall of Japanese forces, then tried to prevent the rapid expansion of the Soviet Union in the Korean peninsula. The result was the division of Korea.<sup>426</sup>

On the concrete division of the Korean division, several explanations have been given by responsible persons and eyewitnesses:

Just before the surrender of Japan several one-star generals hurried into an office in the Pentagon with the statement "We've got to divide Korea. Where can we divide it?" A colonel with experience in the Far East protested to his superiors, "You can't do that, Korea is a social and economic unit. There is no place to divide it." The general insisted . . . "We have got to divide Korea and it has to be done by four o'clock this afternoon."<sup>427</sup>

"(John McCloy, Assistant Secretary of War) asked on August 11 Colonel C. H. Bonesteel and me (Dean Rusk) to retire to an adjoining room and come up with a proposal which could harmonize the political desire to have U.S. forces receive the surrender as far north as possible and the obvious limitations on the ability of the U.S. forces to reach the area. We recommend the 38th parallel. . . ."<sup>428</sup>

"About midnight, August 10-11, 1945, Colonel Charles H. Bonesteel and Major Dean Rusk . . . began drafting part of a General Order that would define the zones to be occupied in Korea by American and Russian forces. They were given thirty minutes to complete their draft, which a State-War-Navy Coordinating Committee was waiting for. The State Department wished the dividing line to be as far north

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426. U.S. Department of the Army, *Korea 1950*, Washington: GPO, 1952, P. 4; Harry Truman, *Memoirs I, Year of Decision*, New York: Doubleday & Company, 1956, p. 433.

427. John Gunther, *The Riddle of MacArthur*, New York, New York: Harper & Brothers, 1950, p. 178; Bruce Cumings, *The Origins of the Korean War, 1945-1947*, Princeton: Princeton University Press, 1981, p. 489.

428. U.S. Department of State, *Foreign Relations of the United States, 1945*, volume IV, *The British Commonwealth and the Far East*, Washington: GPO, p. 1039.

as possible, while the military departments, knowing that the Russians could overrun all of Korea before any American troops could land there, were more cautious. Bonesteel and Rusk wanted to follow a provincial boundary line north of Seoul. . . . The only map immediately available was a small-scale wall map of the Far East, and time was pressing. Bonesteel noted that the 38th parallel passed north of Seoul and almost divided Korea into two equal parts. He seized on it as the proposed zonal boundary.<sup>429</sup>

This temporary demarcation line was consolidated as relations between the two occupying powers deteriorated. They developed their influences in their respective zones. The Soviet Union in particular had a different objective in Korea and consolidated its position in North Korea. As a matter of fact, immediately after arrival in North Korea, the Soviet Union organized an administrative mechanism utilizing local political organism. Soviet occupying forces cut off railway and postal service between the two zones.<sup>430</sup>

After failure of the initial attempt of the U.S.-Soviet Joint Commission for Korean unification, the United States brought the problem to the United Nations in the face of Soviet opposition. Although the United Nations decided on a general election for the whole of Korea, Soviet opposition prevented the United Nations Temporary Commission on Korea from entering North Korea. Under these circumstances, the Commission carried out its mission only in South Korea which saw the formation of the South Korean Government on August 15, 1948, while North Korea, in turn, established its government under the auspices of the Soviet Union.<sup>431</sup> This is the well known history of the Korean division, which clearly developed against the will of the Korean people.

There was no legal agreement or political intention arranged for the Korean division. In the German case, after its total defeat, the Allied Powers partitioned German territory. However, the Korean division has no reason behind it. Korean had been a victim of Japanese

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429. J.L. Collins, *War in Peacetime: The History and Lessons of Korea*, Boston: Houghton Mifflin Co., 1969, pp. 25-26; Bruce Cumings, *The Origins of the Korean War*, *supra* note 427, p. 120.

430. D.J. Dallin, *Soviet Russia and the Far East*, Yale University Press 1948, p. 261-; G.M. McCuns and A.L. Greg, *Korea Today*, Harvard University Press, 1950, pp. 146-152; Kim Hak-Joon, *The Unification Policy*, *supra* note 311, pp. 41-46.

431. For the details see U.S. Department of State, *Korea 1945-1948*, Washington: GPO, 1948; Leland M. Goodrich, *Korea: A Study of US Policy in the United Nations*, New York: Council on Foreign Relations, 1956, Kraus Reprint, 1972, pp. 16- 101.

imperialism and the Korean Provisional government in China had fought with the Allied Forces against the Japanese since 1919, no matter how meager it might have been. Therefore, the Korean division was an unjustifiable sacrifice from a legal viewpoint.

After the Korean war, the division was consolidated along the new demarcation line. As for the legal status of the actual demarcation line, the Korean Armistice Agreement very clearly provided it in its Preamble:

Agree to accept and to be bound and governed by the conditions and terms of armistice set forth in the following Articles and Paragraphs, which said conditions and terms are intended to be purely military in character and to pertain solely to the belligerents in Korea.<sup>432</sup>

It is beyond question that the demarcation line between South and North Korea is merely a temporary military demarcation line. It is not a national boundary between two states under international law. There is no international legal instrument which can afford this demarcation line some legal significance more than that of a military demarcation line.

#### b. The Legal Status of South and North Korea

Although the demarcation line between South and North Korea has only a military character, South and North Korea have diplomatic relations with more than one hundred countries and a great number of these countries have relations with both South and North Korea. Accordingly, it is difficult to deny the international legal personality of both sides. What, then, is the legal status of the two parts of Korea?

First, it is easier to determine the legal status of South Korea. After the formation of the South Korean Government, the United Nations General Assembly firmly approved its legal status:

The General Assembly, . . . declares that there has been established a lawful government (the Government of the Republic of Korea) having effective control and jurisdiction over that part of Korea where the Temporary Commission was able to observe and consult and in which the great majority of the Korean people of all Korea reside; that this Government is based on elections which were a valid expression of the free will of the electorate of that part of Korea

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432. See Korean Armistice Agreement of July 27, 1953.

and which were observed by the Temporary Commission; that this is the only such Government in Korea. . . .

(The General Assembly) . . . recommends that Member States and other nations, in establishing their relations with the Government of the Republic of Korea, take into consideration the facts set out (above). . . .<sup>433</sup>

Furthermore, the United Nations organized the United Nations Command and repelled the North Korean attack against South Korea on the ground that a legitimate government was invaded by illegitimate North Korean aggression. Therefore, the international society endorsed the legal status of South Korea from the start.

The United Nations did not, however, recognize the jurisdiction of the South Korean government over North Korean territory. The United Nations Resolution specified only "having effective control and jurisdiction of that part of Korea" (South Korea). The Resolution added that South Korea was that "in which the great majority of the people of all Korea reside . . . [and] that this is the only such government in Korea."<sup>434</sup> Accordingly, the United Nations recognized that the South Korean government represented the great majority of the Korean people, while it denied the legitimacy of the North Korean regime, saying that the South Korean government was the only legitimate government existing in Korea. This position does not negate the North Korean regime under international law. In concluding the Korean Armistice Agreement with North Korea, the United Nations recognized some legal status for North Korea; for example, as a belligerent. Furthermore, North Korea has developed its legal status in international society for more than three decades. It now has diplomatic relations with more than one hundred countries. It is admitted to many special agencies of the United Nations. As a result, North Korea's legal status would be similar to that of a state in international society, although its legal status is weak as compared to that of South Korea. The South Korean government was formed and recognized under the United Nations. It represents more than two-thirds of the Korean people. It is recognized by more countries than North Korea. It has five times the economic strength of North Korea. The greatest difference between South and North Korea is that the South Korean government was formed by the free will of its people and that this democratic system has been maintained (albeit not without problems),

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433. UN General Assembly Resolution 195 (III), 12 December 1948.

434. Ibid.

while the North Korean Government is a Communist totalitarian regime ruled by one dictator who has enjoyed power for four decades.

In conclusion, there are two contradictory aspects of a divided Korea. One is that the demarcation line between the two parts of Korea is merely a temporary military demarcation line. The other is that South and North Korea exercise international legal personalities, although South Korea's legal status is stronger than that of North Korea. This is a legal complexity peculiar to the divided Korea. A reasonable interpretation of this complex problem is possible using two distinctions.

The first distinction is between the two aspects of a divided Korea: the status of "Sollen" and the status of "Sein." Korea's status of Sollen is one unified country, but the Korean status of Sein is *de facto* two international legal persons. Korea should move from Sein to Sollen. Other countries should respect this particular aspect of a divided Korea. They should not hamper the process of Korean unification. The United Nations also recognized this in declaring in the consensus statement in November 1973: "It is noted with satisfaction that a joint communique was issued . . . which provides . . . the reunification of the country should be achieved independently, without reliance upon outside force or its interference. . . ."<sup>435</sup>

The second distinction is between two types of relations of a divided Korea: international relations and South-North Korea relations. This problem will be studied in the next section.

### c. The Legal Interpretation of South-North Korean Relations

The peculiarities of a divided Korea are very clear in the relations between South and North Korea. The international relations of a divided Korea and South-North Korean relations should be distinguished. Although South and North Korea each exercises its international legal personality in international society, the inter-relations between the two parts of Korea should not be regarded as international relations. It should be regarded as the internal relations of a divided Korea, with certain conditions. This important aspect of a divided Korea is expressed indirectly in the South-North Korean Joint Communique of July 4, 1972. First, the Communique uses the expression "two sides" instead of "two governments" or "two states." Second, the expression "as a homogeneous people, a great national unity shall be sought, transcending differences in ideas, ideologies and systems" indicates that South and North Korea should be one nation and

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435. UN Documents A/9341; A/9030, November 1973.

seek out a great national unity. The Communique also emphasizes that unification should be achieved through independent efforts of the Korean people without being subject to external imposition or interference. This position implies that unification should be an internal affair of the Korean people.<sup>436</sup>

The positions of South and North Korea have been recognized several times by the United Nations.<sup>437</sup> In this respect, relations between South and North Korea are different from relations between East and West Germany. Inter-German relations are ruled by the Treaty of December 21, 1972, on the Basis of Intra-German relations. The Constitutional Court of West Germany confirmed that relations between East and West Germany are governed by the rules of international law and by the special rules flowing from the special character of a divided Germany.<sup>438</sup>

Although the relationship between South and North Korea should be an internal problem for the Korean people, there should be certain limitations to intervention in one another's affairs. This would be a natural limitation resulting from the special character of a divided country. This limitation should be interpreted in terms of a reconciliation between "Sollen" and "Sein." For example, one part of Korea should not intervene in any affairs of the other part which are clearly internal problems. More concretely, South Korea cannot intervene in the nomination of cabinet members of North Korea. However, beyond the purely internal affairs of North Korea, South Korea has the right of intervention in North Korea. For example, South Korea can demand that North Korea guarantee basic human rights of the people or that North Korea bar the use of military facilities by the Soviet Union.

The relationship between South and North Korea presents another important factor: South Korea's prevailing status over North Korean status. The United Nations and international society have traditionally recognized South Korea as the sole legitimate government in the Korean peninsula,<sup>439</sup> while North Korea had been denied legiti-

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436. ROK, National Unification Board, *A White Paper on South-North Dialogue in Korea*, supra note 320, pp. 84-86.

437. UN Document A/9341, November 1973.

438. H. Mosler and R. Bernhardt, *Fontes Juris Gentium*, Series A, Section II, Tom. 7: *Decisions of German Courts Relating to Public International Law*, pp. 348-365; recitation from Hungdah Chiu, "The International Law of Recognition and Multi-System Nations" in *Multi-System Nations*, supra note 425, p. 45.

439. UN General Assembly Resolution 195 (III), 12 December 1948; Resolution 293 (IV), 21 October 1949.



macy for a long time. The legitimacy of South Korea should be reflected in South-North Korean relations. Furthermore, South Korea represents more than two thirds of the Korean people. This representation of the majority is an important factor because a unified Korean government must be formed on the basis of the free will of the majority of the Korean people. Therefore, the relative proportions of the South and North Korean populations should be applied in the process of unification. Finally, South Korea maintains a free market economy while North Korea is a collective Communist society which denies basic human rights. Of course, South Korea itself should improve its democratic system. But the collective society of North Korea cannot be compared to South Korean society. Accordingly, North Korean society must be fundamentally changed before the development of true relations with the South. In this sense, South Korean society should provide the basis for a Korean unification.

In conclusion, South-North Korean relations are not international relations, but are internal relations of the whole of Korea. Therefore, South-North Korean relations, including unification, should be carried out by Koreans themselves without any foreign interference. As South Korea's legal status prevails over that of North Korea, South Korea should play a leading role in South-North Korean relations. Although South-North Korean relations are the internal affair of the whole of Korea, the intervention of one side in the other's affair should have certain limitations resulting from the special character of a divided country. Thus, one side of Korea could not intervene in purely internal affairs of the other.

## 2. *The Sovereign Right for Unification by Self-Determination*

For all their differences, every divided country holds that the unification of the country by self-determination is the national goal. For example, the preamble of West German Basic Law, May 8, 1949, confirms this position. Similarly, the constitutions of South and North Korea define their territory as the entire territory of the divided country.<sup>440</sup> It is one of the most important factors in divided countries that they look to unification as the national goal. This is particularly clear for Korea. For this purpose, South and North Korea agreed on the principles of national unification, as in the Joint Communiqué of July 4, 1972:

The two sides have agreed to the following principles for unification of the fatherland: First, unification shall be achieved

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440. Article 2 of the South Korean Constitution.

through independent Korean efforts without being subject to external imposition for interference. Second, unification shall be achieved through peaceful means, and not through the use of force against each other. Third, as a homogeneous people, a great national unity shall first be sought, transcending differences in ideas, ideologies and systems.<sup>441</sup>

As the relationship between South and North Korea is an internal problem of the whole of Korea, Koreans themselves should achieve Korean unification without any external interference. This Korean unification by self-determination is the sovereign right of the Korean nation. This has been recognized several times by the United Nations over several decades:

In as much as the Korean question which is before the General Assembly is primarily a matter for the Korean people itself and concerns its freedom and independence . . . (The General Assembly) . . . calls upon all Members of the United Nations to refrain from interfering in the affairs of the Korean people . . . [and] to refrain completely from any and all acts derogatory to the independence and sovereignty of Korea.<sup>442</sup>

It is noted with satisfaction that a joint communique was issued by the North and South of Korea on 4 July 1972, which provides . . . the unification of the country should be achieved independently, without reliance upon outside force or its interference . . . It is the general hope that the South and the North of Korea will be urged to continue their dialogue . . . in the above spirit so as to expedite the independent peaceful reunification of the country.<sup>443</sup>

The General Assembly, considering that progress be made towards the attainment of the goal for the peaceful unification of Korea on the basis of the freely expressed will of the Korean people. . . .<sup>444</sup>

As a result, it is beyond question that Korean unification by self-determination is the sovereign right of the Korean people, and outside powers must not interfere. What is the extent of this sovereign right? South and North Korea undoubtedly should achieve their unification

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441. ROK, National Unification Board, *A White Paper on South-North Dialogue in Korea*, *supra* note 320, pp. 84-84.

442. UN General Assembly Resolution 112 (II), 14 November 1947.

443. UN Document A/9030; A/9341, November 1973.

444. UN General Assembly Resolution 3333 (XXIX), 17 December 1974.

in peaceful means as expressed in the Joint Communiqué. But from a legal viewpoint, is any use of force in the Korean question illegal?

First, self-defense is traditionally recognized as a legal right. Accordingly, if North Korea attacks South Korea, South Korea may exercise its self-defense. Second, if South-North Korean relations are internal relations of the whole of Korea, under strictly limited conditions, should the right of resistance to the North Korean regime be recognized? St. Thomas Aquinas explains that this right of resistance originated from natural law, which is the natural order realizing the common good (*bonum commune*). According to St. Thomas Aquinas, if a dictator commits so serious an injustice to the people that abiding by the order of the dictator in itself would result in injustice, the right of resistance is justified.<sup>445</sup> Therefore, if the totalitarian North Korean regime never changes its suppressive rule, it would be justified, at least in a legal sense, that South Korea use force in a proper manner against the totalitarian regime.

#### Section D. Possible Means To Achieve Korean Unification

Korean unification is a difficult and complicated problem that multi-faceted efforts for four decades have not been able to resolve. Therefore, there is no clearly assured way of unification. We should try to pursue some feasible means of unification, considering all the elements that we have studied. The lack of a clear path does not indicate that there is no hope for Korean unification. The rapidly growing economy of South Korea is clearly preparing a way for unification. If the growing trend of the South Korean economy continues, the prospects for Korean unification would be much brighter around the year 2000. In this section, we will examine the prerequisites for unification and necessary measures for it.

We do not desire unification at any cost but only unification based on a democratic system which guarantees a free market economy and basic human rights. Therefore, when we say "Korean unification," the communization of Korea is excluded.

##### *1. The Prerequisites for Korean Unification*

###### *a. The Achievement of Economic Maturity*

The most important factor in Korean unification is national strength. Peaceful unification is not a unification achieved simply

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445. St. Thomas Aquinas, *Summa Theologiae*, I<sup>a</sup> II<sup>ae</sup> Qu. 96 Art. 4; II<sup>a</sup> II<sup>ae</sup> Qu. 42 Art. 2.

through negotiations without considering the national strength of the two sides. The Communists will never resign their ambitions unless they are forced to do so. Accordingly, maturity of economic development is an absolute prerequisite for Korean unification. According to actual statistics, South Korean GNP is five times greater than the North Korean GNP.<sup>446</sup> Economic indicators show that this gap is expected to increase as much as ten times by 1994. If South Korean economic strength is fifteen or twenty times greater than that of North Korea, the interests of neighboring countries in South Korea would largely prevail over those in North Korea, and South Korea could pressure neighboring countries to favor it. Moreover, North Korea would not be able to maintain its present position in South-North Korean relations. North Korea would be forced to modify its position. South Korea will prevail over North Korea in the area of military strength as well. Therefore, if present economic trends continue, South Korea will be able to carry out an active policy for Korean unification in the latter part of the 1990s.

However, South Korea should note one important factor. Economic maturity means not only growth of economic volume but also improvement of welfare. It must endeavor to improve the living standards of the poorest people. To this end, it should implement a social security system as soon as possible. It should also extend the term of free compulsory education to high school, as North Korea has already realized the goal of free education. At the same time, South Korea must increase the middle class, which is an important foundation of a democratic society.

#### b. A Strong But Democratic Government

Korean unification is a long-range national task which cannot be quickly achieved. Social stability is an important prerequisite to successfully carry out this long-term policy. Therefore, voluntary national unity should be consolidated under the leadership for a strong government. Unfortunately, it is true that the Korean people are not satisfactorily politically mature. Of course, economic development would quickly improve the political maturity of the people. But until then, social turmoil is a possible danger. In this situation, a charismatic leader is desirable for solid national unity. Unfortunately, for several decades, Korean political power has been held by unpopular leaders who took control by military coup d'état. For strong national unity, this situation must be quickly improved and in the future, South

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446. See "Major Economic Indicators," Chapter Three, Section C.3.(4).

Korea should develop a mature democratic tradition where military forces are absolutely subject to civilian government and military coups d'état are regarded as a national shame, which is possible only in less developed countries. At the same time, students' involvement in political demonstrations, another phenomenon visible in the developing countries, should also disappear.

A strong government should be maintained for a stable society. Considering the military confrontation between South and North Korea, a long-term stable government is absolutely necessary. Some professors of constitutional law speak for a parliamentary system of government, but a presidential system is far more realistic in a tense society like Korea. We often observe the difficult situation of ineffective coalition cabinets in mature parliamentary systems like Italy and Israel. The term of presidency should also be considered. Frequent changes of national leadership are not appropriate for carrying out any long-term policy of unification. This does not mean, under any circumstances, that a one-man dictatorship is preferred. On the contrary, a democratic system must be guaranteed particularly in the context of the confrontation with the totalitarian regime of North Korea. Considering all these elements, a single term of eight years for the presidency or possibly two terms of six years would be most desirable for South Korea.

### c. Persuasion of Neighboring Countries

As we observed, the neighboring countries of Korea would like to see the maintenance of the status quo in the Korean peninsula. This does not imply that they would oppose any Korean unification. If they prefer the status quo in Korea, it is simply because they fear the uncertainty of a unified Korea in the context of their national interests and the risk of involvement in another Korean war. If they are persuaded that they will not be involved in another Korean war and that a unified Korea is better for them than a divided Korea, they will support Korean unification.

In this sense, it would be useful to study the traditional American policy for Korean unification. As explained above, the United States policy for Korean unification has been based on two feasible alternatives:<sup>447</sup> (1) a Korea divided for an indefinite period on the present demarcation line with South Korea tied into the United States security system and developed as a military ally; or (2) a unified, neutralized Korea under a substantially unchanged South Korea.

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447. *FRUS*, 1952-54, part 2, *supra* note 315, p. 1344.

Between these two alternatives the United States Government in the 1950s preferred a unified Korea, "even on a neutralized basis."<sup>448</sup> However, the United States government thought that both South Korea and the Communists would oppose this alternative.<sup>449</sup> Accordingly, the United States followed the alternative of a divided Korea tied into the United States security system as a military ally. Despite this, the first alternative, one that the United States believed to be the only way to Korean unification without a global war, should be carefully studied. In reality, this alternative would not mean a neutral Korea. It would mean a unified Korea friendly to the United States without any foreign forces or bases. Therefore, if South Korea attempted to develop this unification program, the United States would support it.

Other considerations include the positions of the Soviet Union, China, and Japan. In the context of Sino-Soviet conflict, a unified Korea on South Korean terms would not be a threat to China. Prosperous economic cooperation between China and a unified Korea would contribute greatly to Chinese economic development. A unified Korea would clearly give an advantage to Japan. It would not only be assured of an important economic partner, but a unified Korea would be an essential approach to the Asian Continent. It would remove difficult obstacles in Japanese economic relations with China and the Soviet Union. A unified Korea on South Korean terms would contribute greatly to Japanese security. The most important factor is the Soviet Union's interest in a unified Korea on South Korean terms. For the Soviet Union, a unified Korea would produce mixed results. The Soviet Union would certainly gain several advantages from a unified Korea. If the United States withdrew its armed forces from South Korea, the Soviet Union would be relieved of the threat of a possible military confrontation with the United States in this region. It would also be relieved of the financial and military burden of supporting North Korea. In the context of the Sino-Soviet conflict, the Soviet Union would at least be assured of a neutral neighbor if Korea is unified on South Korean terms. Of course, there may be certain disadvantages to the Soviets from such a unified Korea. For example, in the context of the U.S.-Soviet conflict, the Soviet Union may lose one friend in North Korea. On the whole, though, a unified Korea without foreign forces would be more advantageous to the interests of the Soviet Union than the present situation of a divided Korea.

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448. *Ibid.*, p. 1346.

449. *Ibid.*, p. 1950; FRUS, *The Geneva Conference*, *supra* note 313, p. 138.

Korean unification would be very different from the German case in terms of the political situation. West Germany alone is the strongest economic power in Western Europe with the largest population. The West German population is about 62 million, while the East German population is about 17 million.<sup>450</sup> A unified Germany with a population of 80 million would be the dominant power in Europe as compared to France (54 million) and the United Kingdom (56 million).<sup>451</sup> Besides, Germany's neighboring countries suffered greatly from two invasions in the twentieth century. They naturally feel some fear and tension from the possible unification of Germany. Therefore, there may be no country willing to support the unification of Germany. The Soviet Union in particular would strongly oppose the unification of Germany. Since West Germany alone is already the strongest power in Western Europe, West Germany may keep its leading role in the modern world even without unification.

Korean unification would differ in several respects from the German case. A unified Korea would have a population of 60 million and a territory of 221,000 square kilometers. Korea's neighboring countries exceed this size. A unified Korea would never be a threat to its neighboring countries. Several millennia of Korean history have shown that it has never committed any aggression against any other country. Accordingly, if the neighboring countries prefer the status quo in Korea, it is not because a unified Korea is a threat but simply because they do not know whether the eventual result of Korean unification would be advantageous to them and because they do not want to risk involvement in a possible war in unifying Korea. Therefore, if they can be reassured that these two problems would not occur, they would support the unification of Korea, or at least not oppose it.

#### d. A Social Change of North Korea

As we have observed, the present society of North Korea is a society unique in the world. Under the deified Kim Il-Sung, almost the entire population is trained as military personnel and organized as para-military force. The territory of North Korea is fortified as a military base. The society is totally collectivized and mechanized under the Communist Party's control. A new generation after the Korean War has been thoroughly indoctrinated for three decades to Kim's cult, and a large number of them are fanatical followers of Kim's cult.

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450. US Department of State, *Status of the World's Nations*, Washington: GPO, 1983, p. 6.

451. *Ibid.*, pp. 6; 11.

In this situation, unless this society is changed, Korean unification is not feasible. Even if some superficial unification is made, it would lead to another civil war. Therefore, before embarking on a program for unification, some practical measures should be taken to change North Korean society.

e. Favorable Situations for Korean Unification

When the prerequisites for Korean unification are fulfilled, the general environment is then prepared for unification. However, there may be unexpected events which would accelerate the process of Korean unification. There have always been unexpected events which have changed the history of world. The presumption that the situation relating to Korean unification would never change is unrealistic. In order to prove this, it would be sufficient to reflect on the past fifty years of world history. Friends and enemies in international society have constantly changed and the order of powerful nations have also changed. These changes will continue. For example, there is no rule that the Soviet Union could never be changed. The fact that China is slowly changing is good evidence. It is also possible that the East European bloc would be broken. So also there may be a true revolution in North Korea. We do not know the future. What is important is that we should be prepared for such an unexpected event. If we are not prepared for that, it will not be helpful if some favorable events unexpectedly take place. A favorable situation will certainly come at some time.

2. *How Can Korean Unification Be Achieved?*

a. Internal Aspects

i. Predominant National Strength

As explained above, national strength is the most important factor in unification. South Korean economic power must be ten to fifteen times greater than that of North Korea before South Korea can carry out a concrete program of unification. Any kind of unification would be possible only through the dominant national power of South Korea. Therefore, South Korea should continue to concentrate on economic expansion. If current economic trends continue to develop, such a condition will be met in the late 1990s.

ii. National Unity and Support for Unification

Unfortunately, North Korea's people have a more positive attitude toward national unification than the South Korean people. Past



administrations in South Korea could be blamed. Past administrations too often emphasized the possibility of invasion by North Korea, partially for political purposes. It is quite true that North Korea would invade the South if South Korea was in social turmoil and weak. However, it is not a desirable way of persuading the people. This policy has psychologically damaged the people's confidence in unification. If they lose confidence in unification, it may be critical for South Korea in time of crisis. The South Korean government should encourage its people and instill in them some confidence in unification. Every indicator shows that the South Korean position is far better than that of North Korea. Accordingly, it is easy to convince South Korea's people to have a positive attitude toward national unification. If the South Korean people are enthusiastic toward unification, they could easily be united for this national goal. If they are firmly united, national development and social stability would be clearly guaranteed. This is the clear method for unification. Without the people's general confidence in unification, Korean unification is not feasible. This is an important factor that can be achieved at little cost.

Several measures should be taken to consolidate national unity. Considering its competition with the North, complaints of the poor should be addressed. For this purpose, the social security system should be organized. Medical insurance should be nationalized. The term of free compulsory education should be extended to high school. The financial burden of these programs should be managed through various practical means. For example, to extend the free compulsory education term, the private school system and compulsory military service system could be utilized. Affluent people would be encouraged to send their children to private schools while many qualified young men would be given the choice to teach in public schools instead of their compulsory military service. This compulsory education is particularly important in a traditional Confucian society like Korea, where parents attach much importance to the education of their children.

### iii. Consolidation of a Strong But Democratic Government

The necessity of a strong but democratic government has been explained. The intervention of the military in politics and political demonstrations by students should simultaneously disappear. For this purpose a strong charismatic leader is desirable. A strong charismatic leader could consolidate national unity and lead the whole nation toward development and unification. A charismatic leader will not fall

from heaven. If an able and virtuous person can succeed in reassuring national confidence and be worthy of this confidence, he would be the charismatic leader. Accordingly, a national leader should be elected by a direct national election. Any leader imposed upon the people would be hard-pressed to develop such national confidence, at least within a short period. Because of this, the actual Constitution of South Korea, which does not guarantee the direct popular election of the president, should be amended. It has been explained that the presidential system is preferable to the parliamentary system and that a single term of eight years or possibly two terms of six years is desirable for the presidency. At the same time, a very strong governmental mechanism should be installed in this constitutional amendment to carry out efficiently the programs of unification. However, this strong governmental system should be installed within the framework of a democratic government which guarantees basic human rights. A democratic system is clearly a strong point vis-a-vis the North Korean totalitarian system.

#### iv. Reorganization of the National Defense System

A national defense system should be divided into two different objectives, the national defense against external invasion and the national defense in the context of South-North Korean relations. Until now the two systems have been confused. However, if South Korea wants to actively carry out a program of national unification, the two national defense systems should be clearly distinguished and reorganized.

First, the national defense system against external invasion should be organized by alliance with the United States and other friendly nations. The present national defense system would be in this category. Second, the national defense system in the context of South-North Korean relations should be independent of any Allied system. National unification can be achieved only through self-reliance and self-determination. National unification is a Korean national problem and should be internationally publicized. If any one expects that some friendly countries would achieve the unification for the Korean people, it would be an impossible dream. Korean unification is possible only when Korea can effectively prevent the intervention of foreign countries, because if one neighbor intervenes in the Korean question, the other neighbors' interests would be affected.

In view of these defense considerations, a self-reliant defense system and the defense industry should be developed. The South Korea-U.S. alliance should be developed as a national defense system against

external invasion and not in the context of South-North Korean relations. If North Korea attacks South Korea, South Korea alone should be able to destroy the invading forces without the involvement of U.S. forces. If the United States intervenes in Korea, other neighboring countries will necessarily side with North Korea. The Korean peninsula would then be merely a place for combat by the major powers, resulting in a disaster for Korea. The Korean War of the 1950s holds many lessons for Korea. Therefore, it is unrealistic to include U.S. supporting forces when military powers between South and North Korea are compared. South Korean forces alone must prevail against North Korean forces. The goals of genuine self-reliant defense strength and the defense industry must be achieved. This is not to say that the Korea-U.S. alliance would not be helpful. This alliance is absolutely necessary for national defense against external invasion. If Korean unification can be achieved, the intervention of foreign countries must be prevented. Unfortunately, this is the only feasible means of unification that history has taught us. Therefore, the two kinds of defense systems must be distinguished and the South Korean defense system should be reorganized.

v. South Korea's Dominant Role in the Korean Question and the Reduced Role of the United States

A dominant role for South Korea is the natural consequence of the above arguments. If unification is a Korean national problem and can be achieved only by self-reliant efforts, South Korea should take charge of all the responsibilities in the Korean question.

Chapter One clearly proved that South Korea is the principal party to the Korean Armistice Agreement, and Chapter Two explained that the United Nations Command in Korea was *de facto* dissolved. From this, the logical conclusion is that South Korea should take charge of the implementation of the Armistice Agreement. South and North Korea, not the United States, should operate the Military Armistice Commission. At the same time, the commanding authority of South Korean forces should be separated from the United States forces, and both parties should establish a coordinating committee for effective cooperation between the two forces. This procedure is natural for a sovereign state.

b. External Aspects

i. Assurance of Non-Intervention of External Powers

To carry out the program of unification, the assurance of non-

intervention of external powers is absolutely necessary. To obtain this assurance, South Korea must persuade all neighboring countries that a unified Korea would be best for all. The two feasible alternatives of the United States policy in the Korean question have been explained here. Of these two alternatives, a unified Korea in South Korean terms without any foreign forces should be the basic formula for persuading neighboring countries. In particular, South Korea should endeavor to persuade the Soviet Union that a unified Korea would never be used as a base for attack against it. If this is accomplished, the four neighboring countries should conclude an agreement that they would never intervene militarily in Korean national affairs under any circumstances, except when one of them has already militarily intervened. Even North Korea would not oppose it, dreaming the improbable dream — unification on its terms.

ii. Assurance That Neighboring Countries Will  
Not Supply Nuclear Weapons on the  
Korean Peninsula

The four neighboring countries should also agree not to supply any nuclear weapons to the Korean peninsula. This agreement should be easily reached because nuclear weapons in Korea would threaten all countries. Of course, there is no way to prevent North Korea from developing nuclear weapons. As South Korean economic strength would prevail against the North, South Korea would not need to worry about North Korean nuclear ability as long as neighboring countries do not supply nuclear weapons to the North.

iii. Long-term Foreign Policy for Unification: One Korea  
Policy

South Korea has proposed simultaneous admission of South and North Korea to the United Nations while North Korea has opposed it, emphasizing that this would constitute a two-Korea policy.<sup>452</sup> However, North Korea might change this position within ten years in light of the wide gap in national strength between South and North Korea. Accordingly, South Korea should be careful in making a long-term foreign policy of unification. The East German position, which argues for two Germanies, should be a good lesson for South Korea. South Korea should concentrate on keeping the universal recognition that the Korean nation is only one nation. It is true that many coun-

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452. ROK, National Unification Board, *A White Paper on South-North Dialogue in Korea*, *supra* note 320, pp. 223-225.

tries have double diplomatic relations with both sides of Korea. However, as the economic gap between South and North Korea rapidly widens, South Korea should modify its long-term foreign policy and use its economic power as leverage to assure its dominant position in international society. In this context, South Korea should reconsider its current foreign policy which argues for concurrent recognition of both sides of Korea by the Communist bloc and the Western World. One of the most important elements in a unification policy is the international recognition that Korean unification is a Korean domestic problem and that foreign countries should not intervene. This is not a time to fear a North Korean invasion, but a time to try to subject the North Korean regime to South Korea's dominant position. Fortunately, North Korea still stands strongly for a one-Korea policy. South Korea should not lose this opportunity. In the foreseeable future, North Korea will probably change its position and speak for a two-Koreas policy. If the two-Koreas policy is firmly recognized in international society, there is not much hope for unification by self-determination. The German case provides a good example of this type of scenario.

c. The Aspect of South-North Korean Relations

i. Active Measures for Social Change in North Korea

To achieve Korean unification, the current society of North Korea must be changed. Until now South Korea did almost nothing to advance a change. South Korea should quickly take the offensive and carry out active measures to change the North Korean totalitarian collective society. Of course, it would be difficult to penetrate a thoroughly closed society like North Korea. It is also true that the more closed a society, the more vulnerable to external cultures and systems. Thus, South Korea should urgently study this program.

Several effective methods could be pursued to promote change in the North Korean society. First, mass media such as television and radio would be most effective. South Korea should launch a telecommunication satellite into the geo-stationary orbit for a direct broadcasting television system. It would take some time for the North Korean people to be able to receive such direct-broadcast television programs from a satellite, but modern technology would quickly spread. At the same time, South Korea should intensify its radio broadcasts to North Korea and carefully select the programs.

Second, to penetrate North Korean society, South Korea might use pro-North Korea Korean residents in Japan. Since the North Korean society is a very closed society and there are not many connec-

tions between the Korean residents in Japan and North Koreans, this approach would be less effective. However, several hundred thousand pro-North Korea Korean residents in Japan would be available in various ways.

Third, South Korea can send various public relations materials through the demilitarized zone by utilizing balloons and other means. Since the North Korean armed forces are concentrated in this area, this would be very effective.

Fourth, South Korea should intensify its contacts with North Korea through South-North Korean dialogues in hope of progress. Recently, South Korea accepted the North Korean offer of relief materials for South Korean flood victims for the benefit of the dialogue. In the foreseeable future some exchanges between the two sides of Korea in areas such as sports and commerce are feasible.

#### ii. The Desirable Direction for the South-North Korean Dialogue

Although the initial period of South-North Korean dialogue in the early 1970s was very active, its development was stalemated. Recently, the dialogue has shown some cautious movement, and some progress might be expected.

The South-North Korean dialogue is very important for several reasons. It offers an effective means to change North Korean society and at the same time prevent foreign intervention in the Korean question, emphasizing that Korean unification is being carried out by the Koreans themselves. Therefore, South Korea should encourage its progress.

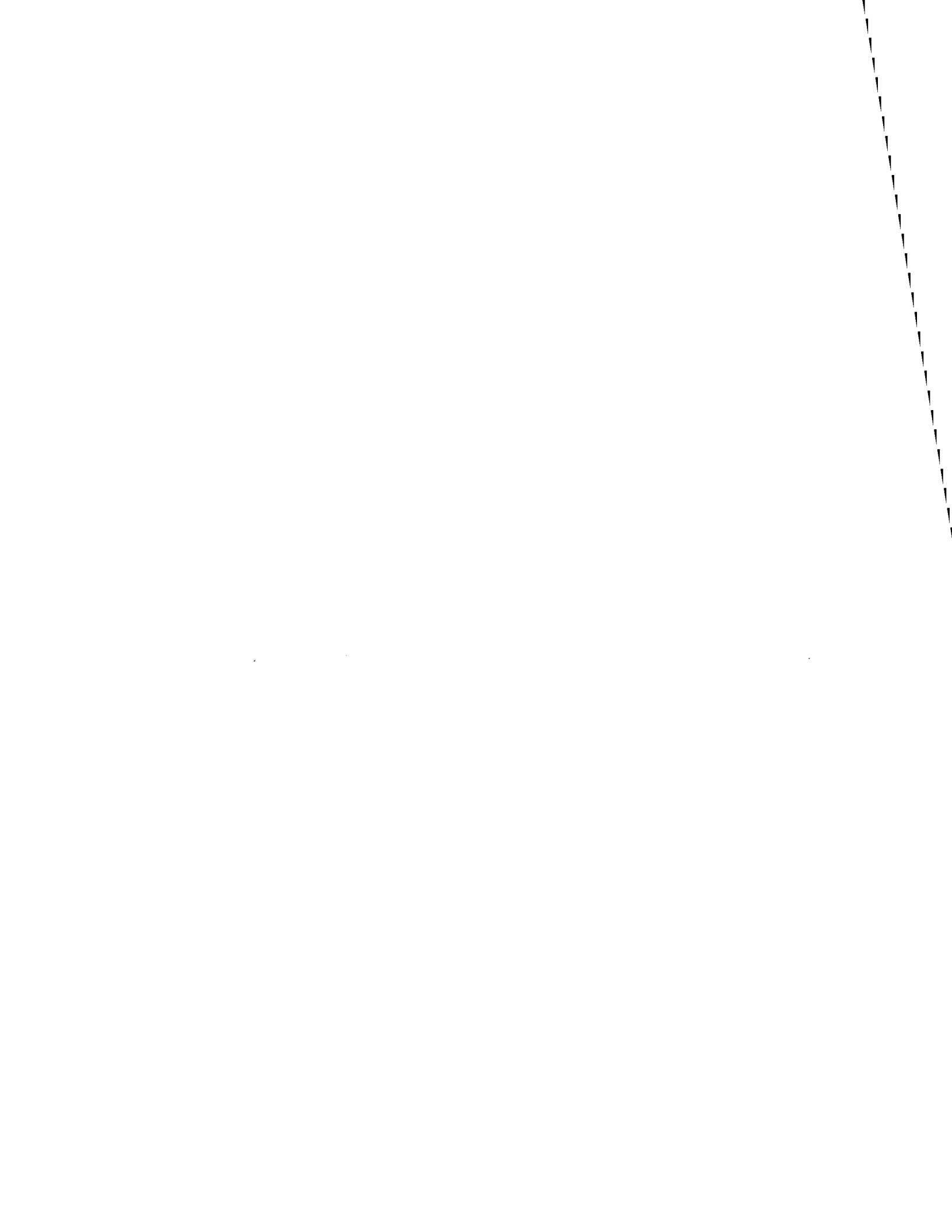
Several important considerations should be taken into account in encouraging the South-North Korean dialogue. First, South Korea should not confuse the objective of the dialogue. To hope for unification through such a dialogue with the North Korean Communists is unrealistic. The only feasible objective of this dialogue is to open and change the closed society of North Korea. If South Korea succeeds in exchanges of sports or commerce with North Korea, it would be one of the best ways to change the closed society of North Korea. The North Korean Communists will never concede anything through dialogue unless it is forced to do so. This objective of the dialogue, to change North Korean society, should be communicated to the South Korean people. If not, the South Korean people would soon tire of fruitless dialogues and lose confidence in unification.

Second, South Korea should change its attitude toward the dialogue and North Korea. It is not understandable that the North Ko-

rean Communists arrogantly demand that South Korea repeal its Anti-Communist Law and release certain prisoners, insulting the South Korean Government, while South Korea is on the defensive and tries to be gentle.<sup>453</sup> This attitude should be drastically changed. South Korea should take a more dominant and confident position. South Korea should demand that the North Korean regime recognize the basic human rights of the Northern brethren, recognize their private ownership and freedom of religion, and return to a free market economy. These demands will obviously not be accepted, but the psychological benefit of this behaviour to North and South Koreans would be great. Attack is the best defense.

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453. *Ibid.*, pp. 220-222.





## APPENDIX I

### KOREAN ARMISTICE AGREEMENT, 1953

AGREEMENT BETWEEN THE COMMANDER-IN-CHIEF, UNITED NATIONS COMMAND, ON THE ONE HAND, AND THE SUPREME COMMANDER OF THE KOREAN PEOPLE'S ARMY AND THE COMMANDER OF THE CHINESE PEOPLE'S VOLUNTEERS, ON THE OTHER HAND, CONCERNING A MILITARY ARMISTICE IN KOREA

#### P R E A M B L E

The undersigned, the Commander-in-Chief, United Nations Command, on the one hand, and the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, on the other hand, in the interest of stopping the Korean conflict, with its great toll of suffering and bloodshed on both sides, and with the objective of establishing an armistice which will insure a complete cessation of hostilities and of all acts of armed force in Korea until a final peaceful settlement is achieved, do individually, collectively, and mutually agree to accept and to be bound and governed by the conditions and terms of armistice set forth in the following Articles and Paragraphs, which said conditions and terms are intended to be purely military in character and to pertain solely to the belligerents in Korea.

## ARTICLE I

MILITARY DEMARCATION LINE AND  
DEMILITARIZED ZONE

1. A Military Demarcation Line shall be fixed and both sides shall withdraw two (2) kilometers from this line so as to establish a Demilitarized Zone between the opposing forces. A Demilitarized Zone shall be established as a buffer zone to prevent the occurrence of incidents which might lead to a resumption of hostilities.

2. The Military Demarcation Line is located as indicated on the attached map (Map 1).<sup>[1]</sup>

3. The Demilitarized Zone is defined by a northern and a southern boundary as indicated on the attached map (Map 1).<sup>[1]</sup>

4. The Military Demarcation Line shall be plainly marked as directed by the Military Armistice Commission hereinafter established. The Commanders of the opposing sides shall have suitable markers erected along the boundary between the Demilitarized Zone and their respective areas. The Military Armistice Commission shall supervise the erection of all markers placed along the Military Demarcation Line and along the boundaries of the Demilitarized Zone.

5. The waters of the Han River Estuary shall be open to civil shipping of both sides wherever one bank is controlled by one side and the other bank is controlled by the other side. The Military Armistice Commission shall prescribe rules for the shipping in that part of the Han River Estuary indicated on the attached map (Map 2).<sup>[1]</sup> Civil shipping of each side shall have unrestricted access to the land under the military control of that side.

6. Neither side shall execute any hostile act within, from, or against the Demilitarized Zone.

7. No person, military or civilian, shall be permitted to cross the Military Demarcation Line unless specifically authorized to do so by the Military Armistice Commission.

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<sup>1</sup> The originals of these maps, large-scale in size, are deposited with the signed original Agreement in the archives of the Department of State where they are available for reference.

8. No person, military or civilian, in the Demilitarized Zone shall be permitted to enter the territory under the military control of either side unless specifically authorized to do so by the Commander into whose territory entry is sought.

9. No person, military or civilian, shall be permitted to enter the Demilitarized Zone except persons concerned with the conduct of civil administration and relief and persons specifically authorized to enter by the Military Armistice Commission.

10. Civil administration and relief in that part of the Demilitarized Zone which is south of the Military Demarcation Line shall be the responsibility of the Commander-in-Chief, United Nations Command; and civil administration and relief in that part of the Demilitarized Zone which is north of the Military Demarcation Line shall be the joint responsibility of the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers. The number of persons, military or civilian, from each side who are permitted to enter the Demilitarized Zone for the conduct of civil administration and relief shall be as determined by the respective Commanders, but in no case shall the total number authorized by either side exceed one thousand (1,000) persons at any one time. The number of civil police and the arms to be carried by them shall be as prescribed by the Military Armistice Commission. Other personnel shall not carry arms unless specifically authorized to do so by the Military Armistice Commission.

11. Nothing contained in this Article shall be construed to prevent the complete freedom of movement to, from, and within the Demilitarized Zone by the Military Armistice Commission, its assistants, its Joint Observer Teams with their assistants, the Neutral Nations Supervisory Commission hereinafter established, its assistants, its Neutral Nations Inspection Teams with their assistants, and of any other persons, materials, and equipment specifically authorized to enter the Demilitarized Zone by the Military Armistice Commission. Convenience of movement shall be permitted through the territory under the military control of

either side over any route necessary to move between points within the Demilitarized Zone where such points are not connected by roads lying completely within the Demilitarized Zone.

## ARTICLE II

### CONCRETE ARRANGEMENTS FOR CEASE-FIRE AND ARMISTICE

#### A. GENERAL

12. The Commanders of the opposing sides shall order and enforce a complete cessation of all hostilities in Korea by all armed forces under their control, including all units and personnel of the ground, naval, and air forces, effective twelve (12) hours after this Armistice Agreement is signed. (See Paragraph 63 hereof for effective date and hour of the remaining provisions of this Armistice Agreement.)

13. In order to insure the stability of the Military Armistice so as to facilitate the attainment of a peaceful settlement through the holding by both sides of a political conference of a higher level, the Commanders of the opposing sides shall:

a. Within seventy-two (72) hours after this Armistice Agreement becomes effective, withdraw all of their military forces, supplies, and equipment from the Demilitarized Zone except as otherwise provided herein. All demolitions, minefields, wire entanglements, and other hazards to the safe movement of personnel of the Military Armistice Commission or its Joint Observer Teams, known to exist within the Demilitarized Zone after the withdrawal of military forces therefrom, together with lanes known to be free of all such hazards, shall be reported to the Military Armistice Commission by the Commander of the side whose forces emplaced such hazards. Subsequently, additional safe lanes shall be cleared; and eventually, within forty-five (45) days after the termination of the seventy-two (72) hour period, all such hazards shall be removed from the Demilitarized Zone as

directed by and under the supervision of the Military Armistice Commission. At the termination of the seventy-two (72) hour period, except for unarmed troops authorized a forty-five (45) day period to complete salvage operations under Military Armistice Commission supervision, such units of a police nature as may be specifically requested by the Military Armistice Commission and agreed to by the Commanders of the opposing sides, and personnel authorized under Paragraphs 10 and 11 hereof, no personnel of either side shall be permitted to enter the Demilitarized Zone.

b. Within ten (10) days after this Armistice Agreement becomes effective, withdraw all of their military forces, supplies, and equipment from the rear and the coastal islands and waters of Korea of the other side. If such military forces are not withdrawn within the stated time limit, and there is no mutually agreed and valid reason for the delay, the other side shall have the right to take any action which it deems necessary for the maintenance of security and order. The term "coastal islands", as used above, refers to those islands which, though occupied by one side at the time when this Armistice Agreement becomes effective, were controlled by the other side on 24 June 1950; provided, however, that all the islands lying to the north and west of the provincial boundary line between HWANGHAE-DO and KYONGGI-DO shall be under the military control of the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, except the island groups of PAENGYONG-DO (37°58'N, 124°40'E), TAECHONG-DO (37°50'N, 124°42'E), SOCHONG-DO (37°46'N, 124°46'E), YONPYONG-DO (37°38'N, 125°40'E), and U-DO (37°36'N, 125°58'E), which shall remain under the military control of the Commander-in-Chief, United Nations Command. All the islands on the west coast of Korea lying south of the above-mentioned boundary line shall remain under the military control of the Commander-in-Chief, United Nations Command. (See Map 3.)<sup>1</sup>

c. Cease the introduction into Korea of reinforcing military personnel; provided, however, that the rotation of units and personnel, the arrival in Korea of personnel on a temporary

<sup>1</sup> See footnote 1, *ante*, p. 237.

duty basis, and the return to Korea of personnel after short periods of leave or temporary duty outside of Korea shall be permitted within the scope prescribed below. "Rotation" is defined as the replacement of units or personnel by other units or personnel who are commencing a tour of duty in Korea. Rotation personnel shall be introduced into and evacuated from Korea only through the ports of entry enumerated in Paragraph 43 hereof. Rotation shall be conducted on a man-for-man basis; provided, however, that no more than thirty-five thousand (35,000) persons in the military service shall be admitted into Korea by either side in any calendar month under the rotation policy. No military personnel of either side shall be introduced into Korea if the introduction of such personnel will cause the aggregate of the military personnel of that side admitted into Korea since the effective date of this Armistice Agreement to exceed the cumulative total of the military personnel of that side who have departed from Korea since that date. Reports concerning arrivals in and departures from Korea of military personnel shall be made daily to the Military Armistice Commission and the Neutral Nations Supervisory Commission; such reports shall include places of arrival and departure and the number of persons arriving at or departing from each such place. The Neutral Nations Supervisory Commission, through its Neutral Nations Inspection Teams, shall conduct supervision and inspection of the rotation of units and personnel authorized above, at the ports of entry enumerated in Paragraph 43 hereof.

d. Cease the introduction into Korea of reinforcing combat aircraft, armored vehicles, weapons, and ammunition; provided, however, that combat aircraft, armored vehicles, weapons, and ammunition which are destroyed, damaged, worn out, or used up during the period of the armistice may be replaced on the basis of piece-for-piece of the same effectiveness and the same type. Such combat aircraft, armored vehicles, weapons, and ammunition shall be introduced into Korea only through the ports of entry enumerated in Paragraph 43 hereof. In order to justify the requirement for combat aircraft, armored vehicles, weapons, and ammunition to be introduced into Korea

for replacement purposes, reports concerning every incoming shipment of these items shall be made to the Military Armistice Commission and the Neutral Nations Supervisory Commission; such reports shall include statements regarding the disposition of the items being replaced. Items to be replaced which are removed from Korea shall be removed only through the ports of entry enumerated in Paragraph 43 hereof. The Neutral Nations Supervisory Commission, through its Neutral Nations Inspection Teams, shall conduct supervision and inspection of the replacement of combat aircraft, armored vehicles, weapons, and ammunition authorized above, at the ports of entry enumerated in Paragraph 43 hereof.

e. Insure that personnel of their respective commands who violate any of the provisions of this Armistice Agreement are adequately punished.

f. In those cases where places of burial are a matter of record and graves are actually found to exist, permit graves registration personnel of the other side to enter, within a definite time limit after this Armistice Agreement becomes effective, the territory of Korea under their military control, for the purpose of proceeding to such graves to recover and evacuate the bodies of the deceased military personnel of that side, including deceased prisoners of war. The specific procedures and the time limit for the performance of the above task shall be determined by the Military Armistice Commission. The Commanders of the opposing sides shall furnish to the other side all available information pertaining to the places of burial of the deceased military personnel of the other side.

g. Afford full protection and all possible assistance and cooperation to the Military Armistice Commission, its Joint Observer Teams, the Neutral Nations Supervisory Commission, and its Neutral Nations Inspection Teams, in the carrying out of their functions and responsibilities hereinafter assigned; and accord to the Neutral Nations Supervisory Commission, and to its Neutral Nations Inspection Teams, full convenience of movement between the headquarters of the Neutral Nations Supervisory Commission and the ports of

entry enumerated in Paragraph 43 hereof over main lines of communication agreed upon by both sides (See Map 4),<sup>1</sup> and between the headquarters of the Neutral Nations Supervisory Commission and the places where violations of this Armistice Agreement have been reported to have occurred. In order to prevent unnecessary delays, the use of alternate routes and means of transportation will be permitted whenever the main lines of communication are closed or impassable.

h. Provide such logistic support, including communications and transportation facilities, as may be required by the Military Armistice Commission and the Neutral Nations Supervisory Commission and their Teams.

i. Each construct, operate, and maintain a suitable airfield in their respective parts of the Demilitarized Zone in the vicinity of the headquarters of the Military Armistice Commission, for such uses as the Commission may determine.

j. Insure that all members and other personnel of the Neutral Nations Supervisory Commission and of the Neutral Nations Repatriation Commission hereinafter established shall enjoy the freedom and facilities necessary for the proper exercise of their functions, including privileges, treatment, and immunities equivalent to those ordinarily enjoyed by accredited diplomatic personnel under international usage.

14. This Armistice Agreement shall apply to all opposing ground forces under the military control of either side, which ground forces shall respect the Demilitarized Zone and the area of Korea under the military control of the opposing side.

15. This Armistice Agreement shall apply to all opposing naval forces, which naval forces shall respect the waters contiguous to the Demilitarized Zone and to the land area of Korea under the military control of the opposing side, and shall not engage in blockade of any kind of Korea.

16. This Armistice Agreement shall apply to all opposing air forces, which air forces shall respect the air space over the Demilitarized Zone and over the area of Korea under the military control of the opposing side, and over the waters contiguous to both.

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<sup>1</sup> See footnote 1, *ante*, p. 237.



17. Responsibility for compliance with and enforcement of the terms and provisions of this Armistice Agreement is that of the signatories hereto and their successors in command. The Commanders of the opposing sides shall establish within their respective commands all measures and procedures necessary to insure complete compliance with all of the provisions hereof by all elements of their commands. They shall actively cooperate with one another and with the Military Armistice Commission and the Neutral Nations Supervisory Commission in requiring observance of both the letter and the spirit of all of the provisions of this Armistice Agreement.

18. The costs of the operations of the Military Armistice Commission and of the Neutral Nations Supervisory Commission and of their Teams shall be shared equally by the two opposing sides.

## B. MILITARY ARMISTICE COMMISSION

### 1. COMPOSITION

19. A Military Armistice Commission is hereby established.

20. The Military Armistice Commission shall be composed of ten (10) senior officers, five (5) of whom shall be appointed by the Commander-in-Chief, United Nations Command, and five (5) of whom shall be appointed jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers. Of the ten members, three (3) from each side shall be of general or flag rank. The two (2) remaining members on each side may be major generals, brigadier generals, colonels, or their equivalents.

21. Members of the Military Armistice Commission shall be permitted to use staff assistants as required.

22. The Military Armistice Commission shall be provided with the necessary administrative personnel to establish a Secretariat charged with assisting the Commission by performing record-keeping, secretarial, interpreting, and such other functions as the Commission may assign to it. Each side

shall appoint to the Secretariat a Secretary and an Assistant Secretary and such clerical and specialized personnel as required by the Secretariat. Records shall be kept in English, Korean, and Chinese, all of which shall be equally authentic.

23. a. The Military Armistice Commission shall be initially provided with and assisted by ten (10) Joint Observer Teams, which number may be reduced by agreement of the senior members of both sides on the Military Armistice Commission.

b. Each Joint Observer Team shall be composed of not less than four (4) nor more than six (6) officers of field grade, half of whom shall be appointed by the Commander-in-Chief, United Nations Command, and half of whom shall be appointed jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers. Additional personnel such as drivers, clerks, and interpreters shall be furnished by each side as required for the functioning of the Joint Observer Teams.

## 2. FUNCTIONS AND AUTHORITY

24. The general mission of the Military Armistice Commission shall be to supervise the implementation of this Armistice Agreement and to settle through negotiations any violations of this Armistice Agreement.

25. The Military Armistice Commission shall:

a. Locate its headquarters in the vicinity of PANMUNJOM (37°57'29"N, 126°40'00"E). The Military Armistice Commission may re-locate its headquarters at another point within the Demilitarized Zone by agreement of the senior members of both sides on the Commission.

b. Operate as a joint organization without a chairman.

c. Adopt such rules of procedure as it may, from time to time, deem necessary.

d. Supervise the carrying out of the provisions of this Armistice Agreement pertaining to the Demilitarized Zone and to the Han River Estuary.

- e. Direct the operations of the Joint Observer Teams.
- f. Settle through negotiations any violations of this Armistice Agreement.
- g. Transmit immediately to the Commanders of the opposing sides all reports of investigations of violations of this Armistice Agreement and all other reports and records of proceedings received from the Neutral Nations Supervisory Commission.
- h. Give general supervision and direction to the activities of the Committee for Repatriation of Prisoners of War and the Committee for Assisting the Return of Displaced Civilians, hereinafter established.
- i. Act as an intermediary in transmitting communications between the Commanders of the opposing sides; provided, however, that the foregoing shall not be construed to preclude the Commanders of both sides from communicating with each other by any other means which they may desire to employ.
- j. Provide credentials and distinctive insignia for its staff and its Joint Observer Teams, and a distinctive marking for all vehicles, aircraft, and vessels, used in the performance of its mission.

26. The mission of the Joint Observer Teams shall be to assist the Military Armistice Commission in supervising the carrying out of the provisions of this Armistice Agreement pertaining to the Demilitarized Zone and to the Han River Estuary.

27. The Military Armistice Commission, or the senior member of either side thereof, is authorized to dispatch Joint Observer Teams to investigate violations of this Armistice Agreement reported to have occurred in the Demilitarized Zone or in the Han River Estuary; provided, however, that not more than one half of the Joint Observer Teams which have not been dispatched by the Military Armistice Commission may be dispatched at any one time by the senior member of either side on the Commission.

28. The Military Armistice Commission, or the senior member of either side thereof, is authorized to request the Neutral Nations Supervisory Commission to conduct special observations and inspections at places outside the Demilitarized Zone where violations of this Armistice Agreement have been reported to have occurred.

29. When the Military Armistice Commission determines that a violation of this Armistice Agreement has occurred, it shall immediately report such violation to the Commanders of the opposing sides.

30. When the Military Armistice Commission determines that a violation of this Armistice Agreement has been corrected to its satisfaction, it shall so report to the Commanders of the opposing sides.

### 3. GENERAL

31. The Military Armistice Commission shall meet daily. Recesses of not to exceed seven (7) days may be agreed upon by the senior members of both sides; provided, that such recesses may be terminated on twenty-four (24) hour notice by the senior member of either side.

32. Copies of the record of the proceedings of all meetings of the Military Armistice Commission shall be forwarded to the Commanders of the opposing sides as soon as possible after each meeting.

33. The Joint Observer Teams shall make periodic reports to the Military Armistice Commission as required by the Commission and, in addition, shall make such special reports as may be deemed necessary by them, or as may be required by the Commission.

34. The Military Armistice Commission shall maintain duplicate files of the reports and records of proceedings required by this Armistice Agreement. The Commission is authorized to maintain duplicate files of such other reports, records, etc., as

may be necessary in the conduct of its business. Upon eventual dissolution of the Commission, one set of the above files shall be turned over to each side.

35. The Military Armistice Commission may make recommendations to the Commanders of the opposing sides with respect to amendments or additions to this Armistice Agreement. Such recommended changes should generally be those designed to insure a more effective armistice.

### C. NEUTRAL NATIONS SUPERVISORY COMMISSION

#### 1. COMPOSITION

36. A Neutral Nations Supervisory Commission is hereby established.

37. The Neutral Nations Supervisory Commission shall be composed of four (4) senior officers, two (2) of whom shall be appointed by neutral nations nominated by the Commander-in-Chief, United Nations Command, namely, SWEDEN and SWITZERLAND, and two (2) of whom shall be appointed by neutral nations nominated jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, namely, POLAND and CZECHOSLOVAKIA. The term "neutral nations" as herein used is defined as those nations whose combatant forces have not participated in the hostilities in Korea. Members appointed to the Commission may be from the armed forces of the appointing nations. Each member shall designate an alternate member to attend those meetings which for any reason the principal member is unable to attend. Such alternate members shall be of the same nationality as their principals. The Neutral Nations Supervisory Commission may take action whenever the number of members present from the neutral nations nominated by one side is equal to the number of members present from the neutral nations nominated by the other side.

38. Members of the Neutral Nations Supervisory Commission shall be permitted to use staff assistants furnished by the neutral nations as required. These staff assistants may be appointed as alternate members of the Commission.

39. The neutral nations shall be requested to furnish the Neutral Nations Supervisory Commission with the necessary administrative personnel to establish a Secretariat charged with assisting the Commission by performing necessary record-keeping, secretarial, interpreting, and such other functions as the Commission may assign to it.

40. a. The Neutral Nations Supervisory Commission shall be initially provided with, and assisted by, twenty (20) Neutral Nations Inspection Teams, which number may be reduced by agreement of the senior members of both sides on the Military Armistice Commission. The Neutral Nations Inspection Teams shall be responsible to, shall report to, and shall be subject to the direction of, the Neutral Nations Supervisory Commission only.

b. Each Neutral Nations Inspection Team shall be composed of not less than four (4) officers, preferably of field grade, half of whom shall be from the neutral nations nominated by the Commander-in-Chief, United Nations Command, and half of whom shall be from the neutral nations nominated jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers. Members appointed to the Neutral Nations Inspection Teams may be from the armed forces of the appointing nations. In order to facilitate the functioning of the Teams, sub-teams composed of not less than two (2) members, one of whom shall be from a neutral nation nominated by the Commander-in-Chief, United Nations Command, and one of whom shall be from a neutral nation nominated jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, may be formed as circumstances require. Additional personnel such as drivers, clerks, interpreters, and communications personnel, and such equipment as may be required by the Teams to perform their missions, shall be furnished by the Commander of each side, as required, in the Demilitarized Zone and in the territory under his military control. The Neutral Nations Supervisory Commission may provide itself and the Neutral Nations Inspection Teams with such of the above personnel and

equipment of its own as it may desire; provided, however, that such personnel shall be personnel of the same neutral nations of which the Neutral Nations Supervisory Commission is composed.

## 2. FUNCTIONS AND AUTHORITY

41. The mission of the Neutral Nations Supervisory Commission shall be to carry out the functions of supervision, observation, inspection, and investigation, as stipulated in Sub-paragraphs 13c and 13d and Paragraph 28 hereof, and to report the results of such supervision, observation, inspection, and investigation to the Military Armistice Commission.

42. The Neutral Nations Supervisory Commission shall:

a. Locate its headquarters in proximity to the headquarters of the Military Armistice Commission.

b. Adopt such rules of procedure as it may, from time to time, deem necessary.

c. Conduct, through its members and its Neutral Nations Inspection Teams, the supervision and inspection provided for in Sub-paragraphs 13c and 13d of this Armistice Agreement at the ports of entry enumerated in Paragraph 43 hereof, and the special observations and inspections provided for in Paragraph 28 hereof at those places where violations of this Armistice Agreement have been reported to have occurred. The inspection of combat aircraft, armored vehicles, weapons, and ammunition by the Neutral Nations Inspection Teams shall be such as to enable them to properly insure that reinforcing combat aircraft, armored vehicles, weapons, and ammunition are not being introduced into Korea; but this shall not be construed as authorizing inspections or examinations of any secret designs or characteristics of any combat aircraft, armored vehicle, weapon, or ammunition.

d. Direct and supervise the operations of the Neutral Nations Inspection Teams.

e. Station five (5) Neutral Nations Inspection Teams at the ports of entry enumerated in Paragraph 43

hereof located in the territory under the military control of the Commander-in-Chief, United Nations Command; and five (5) Neutral Nations Inspection Teams at the ports of entry enumerated in Paragraph 43 hereof located in the territory under the military control of the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers; and establish initially ten (10) mobile Neutral Nations Inspection Teams in reserve, stationed in the general vicinity of the headquarters of the Neutral Nations Supervisory Commission, which number may be reduced by agreement of the senior members of both sides on the Military Armistice Commission. Not more than half of the mobile Neutral Nations Inspection Teams shall be dispatched at any one time in accordance with requests of the senior member of either side on the Military Armistice Commission.

f. Subject to the provisions of the preceding Sub-paragraph, conduct without delay investigations of reported violations of this Armistice Agreement, including such investigations of reported violations of this Armistice Agreement as may be requested by the Military Armistice Commission or by the senior member of either side on the Commission.

g. Provide credentials and distinctive insignia for its staff and its Neutral Nations Inspection Teams, and a distinctive marking for all vehicles, aircraft, and vessels, used in the performance of its mission.

43. Neutral Nations Inspection Teams shall be stationed at the following ports of entry:

Territory under the military control of the United Nations Command		Territory under the military control of the Korean People's Army and the Chinese People's Volunteers	
INCHON	(37°28'N, 126°38'E)	SINUJU	(40°06'N, 124°24'E)
TAEGU	(35°52'N, 128°36'E)	CHONGJIN	(41°46'N, 129°49'E)
PUSAN	(35°06'N, 129°02'E)	HUNGNAM	(39°50'N, 127°37'E)
KANGNUNG	(37°45'N, 128°54'E)	MANPO	(41°09'N, 126°18'E)
KUNSAN	(35°59'N, 126°43'E)	SINANJU	(39°36'N, 125°36'E)

These Neutral Nations Inspection Teams shall be accorded full convenience of movement within the areas and over the routes of communication set forth on the attached map (Map 5).<sup>1]</sup>

<sup>1</sup> See footnote 1, *ante*, p. 237.



3. GENERAL

44. The Neutral Nations Supervisory Commission shall meet daily. Recesses of not to exceed seven (7) days may be agreed upon by the members of the Neutral Nations Supervisory Commission; provided, that such recesses may be terminated on twenty-four (24) hour notice by any member.

45. Copies of the record of the proceedings of all meetings of the Neutral Nations Supervisory Commission shall be forwarded to the Military Armistice Commission as soon as possible after each meeting. Records shall be kept in English, Korean, and Chinese.

46. The Neutral Nations Inspection Teams shall make periodic reports concerning the results of their supervision, observations, inspections, and investigations to the Neutral Nations Supervisory Commission as required by the Commission and, in addition, shall make such special reports as may be deemed necessary by them, or as may be required by the Commission. Reports shall be submitted by a Team as a whole, but may also be submitted by one or more individual members thereof; provided, that the reports submitted by one or more individual members thereof shall be considered as informational only.

47. Copies of the reports made by the Neutral Nations Inspection Teams shall be forwarded to the Military Armistice Commission by the Neutral Nations Supervisory Commission without delay and in the language in which received. They shall not be delayed by the process of translation or evaluation. The Neutral Nations Supervisory Commission shall evaluate such reports at the earliest practicable time and shall forward their findings to the Military Armistice Commission as a matter of priority. The Military Armistice Commission shall not take final action with regard to any such report until the evaluation thereof has been received from the Neutral Nations Supervisory Commission. Members of the Neutral Nations Supervisory Commission and of its Teams shall be subject to appearance before the Military Armistice Commission, at the request of the senior member of either side on the Military Armistice Commission, for clarification of any report submitted.

48. The Neutral Nations Supervisory Commission shall maintain duplicate files of the reports and records of proceedings required by this Armistice Agreement. The Commission is authorized to maintain duplicate files of such other reports, records, etc., as may be necessary in the conduct of its business. Upon eventual dissolution of the Commission, one set of the above files shall be turned over to each side.

49. The Neutral Nations Supervisory Commission may make recommendations to the Military Armistice Commission with respect to amendments or additions to this Armistice Agreement. Such recommended changes should generally be those designed to insure a more effective armistice.

50. The Neutral Nations Supervisory Commission, or any member thereof, shall be authorized to communicate with any member of the Military Armistice Commission.

### ARTICLE III

#### ARRANGEMENTS RELATING TO PRISONERS OF WAR

51. The release and repatriation of all prisoners of war held in the custody of each side at the time this Armistice Agreement becomes effective shall be effected in conformity with the following provisions agreed upon by both sides prior to the signing of this Armistice Agreement.

a. Within sixty (60) days after this Armistice Agreement becomes effective, each side shall, without offering any hindrance, directly repatriate and hand over in groups all those prisoners of war in its custody who insist on repatriation to the side to which they belonged at the time of capture. Repatriation shall be accomplished in accordance with the related provisions of this Article. In order to expedite the repatriation process of such personnel, each side shall, prior to the signing of the Armistice Agreement, exchange the total numbers, by nationalities, of personnel to be directly repatriated. Each group of prisoners of war delivered to the other side shall be accompanied by rosters, prepared by nationality, to include name, rank (if any) and internment or military serial number.

b. Each side shall release all those remaining prisoners of war, who are not directly repatriated, from its military control and from its custody and hand them over to the Neutral Nations Repatriation Commission for disposition in accordance with the provisions in the Annex hereto: "Terms of Reference for Neutral Nations Repatriation Commission."

c. So that there may be no misunderstanding owing to the equal use of three languages, the act of delivery of a prisoner of war by one side to the other side shall, for the purposes of this Armistice Agreement, be called "repatriation" in English, " 송환 " (SONG HWAN) in Korean, and " 遣返 " (CH'EN FAN) in Chinese, notwithstanding the nationality or place of residence of such prisoner of war.

52. Each side insures that it will not employ in acts of war in the Korean conflict any prisoner of war released and repatriated incident to the coming into effect of this Armistice Agreement.

53. All the sick and injured prisoners of war who insist upon repatriation shall be repatriated with priority. Insofar as possible, there shall be captured medical personnel repatriated concurrently with the sick and injured prisoners of war, so as to provide medical care and attendance en route.

54. The repatriation of all of the prisoners of war required by Sub-paragraph 51a hereof shall be completed within a time limit of sixty (60) days after this Armistice Agreement becomes effective. Within this time limit each side undertakes to complete the repatriation of the above-mentioned prisoners of war in its custody at the earliest practicable time.

55. PANMUNJOM is designated as the place where prisoners of war will be delivered and received by both sides. Additional place(s) of delivery and reception of prisoners of war in the Demilitarized Zone may be designated, if necessary, by the Committee for Repatriation of Prisoners of War.

56. a. A Committee for Repatriation of Prisoners of War is hereby established. It shall be composed of six (6) officers of field grade, three (3) of whom shall be appointed by the

Commander-in-Chief, United Nations Command, and three (3) of whom shall be appointed jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers. This Committee shall, under the general supervision and direction of the Military Armistice Commission, be responsible for coordinating the specific plans of both sides for the repatriation of prisoners of war and for supervising the execution by both sides of all of the provisions of this Armistice Agreement relating to the repatriation of prisoners of war. It shall be the duty of this Committee to coordinate the timing of the arrival of prisoners of war at the place(s) of delivery and reception of prisoners of war from the prisoner of war camps of both sides; to make, when necessary, such special arrangements as may be required with regard to the transportation and welfare of sick and injured prisoners of war; to coordinate the work of the joint Red Cross teams, established in Paragraph 57 hereof, in assisting in the repatriation of prisoners of war; to supervise the implementation of the arrangements for the actual repatriation of prisoners of war stipulated in Paragraphs 53 and 54 hereof; to select, when necessary, additional place(s) of delivery and reception of prisoners of war; to arrange for security at the place(s) of delivery and reception of prisoners of war; and to carry out such other related functions as are required for the repatriation of prisoners of war.

b. When unable to reach agreement on any matter relating to its responsibilities, the Committee for Repatriation of Prisoners of War shall immediately refer such matter to the Military Armistice Commission for decision. The Committee for Repatriation of Prisoners of War shall maintain its headquarters in proximity to the headquarters of the Military Armistice Commission.

c. The Committee for Repatriation of Prisoners of War shall be dissolved by the Military Armistice Commission upon completion of the program of repatriation of prisoners of war.

57. a. Immediately after this Armistice Agreement becomes effective, joint Red Cross teams composed of representatives of the national Red Cross Societies of the countries contributing forces to the United Nations Command on the one hand, and representatives of the Red Cross Society of the Democratic People's Republic of Korea and representatives

of the Red Cross Society of the People's Republic of China on the other hand, shall be established. The joint Red Cross teams shall assist in the execution by both sides of those provisions of this Armistice Agreement relating to the repatriation of all the prisoners of war specified in Sub-paragraph 51a hereof, who insist upon repatriation, by the performance of such humanitarian services as are necessary and desirable for the welfare of the prisoners of war. To accomplish this task, the joint Red Cross teams shall provide assistance in the delivering and receiving of prisoners of war by both sides at the place(s) of delivery and reception of prisoners of war, and shall visit the prisoner of war camps of both sides to comfort the prisoners of war and to bring in and distribute gift articles for the comfort and welfare of the prisoners of war. The joint Red Cross teams may provide services to prisoners of war while en route from prisoner of war camps to the place(s) of delivery and reception of prisoners of war.

b. The joint Red Cross teams shall be organized as set forth below:

(1) One team shall be composed of twenty (20) members, namely, ten (10) representatives from the national Red Cross Societies of each side, to assist in the delivering and receiving of prisoners of war by both sides at the place(s) of delivery and reception of prisoners of war. The chairmanship of this team shall alternate daily between representatives from the Red Cross Societies of the two sides. The work and services of this team shall be coordinated by the Committee for Repatriation of Prisoners of War.

(2) One team shall be composed of sixty (60) members, namely, thirty (30) representatives from the national Red Cross Societies of each side, to visit the prisoner of war camps under the administration of the Korean People's Army and the Chinese People's Volunteers. This team may provide services to prisoners of war while en route from the prisoner of war camps to the place(s) of delivery and reception of prisoners of war. A representative of the Red Cross Society of the Democratic People's Republic of Korea or of the Red Cross Society of the People's Republic of China shall serve as chairman of this team.

(3) One team shall be composed of sixty (60) members, namely, thirty (30) representatives from the national Red Cross Societies of each side, to visit the prisoner of war camps under the administration of the United Nations Command. This team may provide services to prisoners of war while en route from the prisoner of war camps to the place(s) of delivery and reception of prisoners of war. A representative of a Red Cross Society of a nation contributing forces to the United Nations Command shall serve as chairman of this team.

(4) In order to facilitate the functioning of each joint Red Cross team, sub-teams composed of not less than two (2) members from the team, with an equal number of representatives from each side, may be formed as circumstances require.

(5) Additional personnel such as drivers, clerks, and interpreters, and such equipment as may be required by the joint Red Cross teams to perform their missions, shall be furnished by the Commander of each side to the team operating in the territory under his military control.

(6) Whenever jointly agreed upon by the representatives of both sides on any joint Red Cross team, the size of such team may be increased or decreased, subject to confirmation by the Committee for Repatriation of Prisoners of War.

c. The Commander of each side shall cooperate fully with the joint Red Cross teams in the performance of their functions, and undertakes to insure the security of the personnel of the joint Red Cross team in the area under his military control. The Commander of each side shall provide such logistic, administrative, and communications facilities as may be required by the team operating in the territory under his military control.

d. The joint Red Cross teams shall be dissolved upon completion of the program of repatriation of all the prisoners of war specified in Sub-paragraph 51a hereof, who insist upon repatriation.

58. a. The Commander of each side shall furnish to the Commander of the other side as soon as practicable, but not later than ten (10) days after this Armistice Agreement becomes

effective, the following information concerning prisoners of war:

(1) Complete data pertaining to the prisoners of war who escaped since the effective date of the data last exchanged.

(2) Insofar as practicable, information regarding name, nationality, rank, and other identification data, date and cause of death, and place of burial, of those prisoners of war who died while in his custody.

b. If any prisoners of war escape or die after the effective date of the supplementary information specified above, the detaining side shall furnish to the other side, through the Committee for Repatriation of Prisoners of War, the data pertaining thereto in accordance with the provisions of Sub-paragraph 58a hereof. Such data shall be furnished at ten-day intervals until the completion of the program of delivery and reception of prisoners of war.

c. Any escaped prisoner of war who returns to the custody of the detaining side after the completion of the program of delivery and reception of prisoners of war shall be delivered to the Military Armistice Commission for disposition.

59. a. All civilians who, at the time this Armistice Agreement becomes effective, are in territory under the military control of the Commander-in-Chief, United Nations Command, and who, on 24 June 1950, resided north of the Military Demarcation Line established in this Armistice Agreement shall, if they desire to return home, be permitted and assisted by the Commander-in-Chief, United Nations Command, to return to the area north of the Military Demarcation Line; and all civilians who, at the time this Armistice Agreement becomes effective, are in territory under the military control of the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, and who, on 24 June 1950, resided south of the Military Demarcation Line established in this Armistice Agreement shall, if they desire to return home, be permitted and assisted by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers to return to the area south

of the Military Demarcation Line. The Commander of each side shall be responsible for publicizing widely throughout territory under his military control the contents of the provisions of this Sub-paragraph, and for calling upon the appropriate civil authorities to give necessary guidance and assistance to all such civilians who desire to return home.

b. All civilians of foreign nationality who, at the time this Armistice Agreement becomes effective, are in territory under the military control of the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers shall, if they desire to proceed to territory under the military control of the Commander-in-Chief, United Nations Command, be permitted and assisted to do so; all civilians of foreign nationality who, at the time this Armistice Agreement becomes effective, are in territory under the military control of the Commander-in-Chief, United Nations Command, shall, if they desire to proceed to territory under the military control of the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, be permitted and assisted to do so. The Commander of each side shall be responsible for publicizing widely throughout the territory under his military control the contents of the provisions of this Sub-paragraph, and for calling upon the appropriate civil authorities to give necessary guidance and assistance to all such civilians of foreign nationality who desire to proceed to territory under the military control of the Commander of the other side.

c. Measures to assist in the return of civilians provided for in Sub-paragraph 59a hereof and the movement of civilians provided for in Sub-paragraph 59b hereof shall be commenced by both sides as soon as possible after this Armistice Agreement becomes effective.

d. (1) A Committee for Assisting the Return of Displaced Civilians is hereby established. It shall be composed of four (4) officers of field grade, two (2) of whom shall be appointed by the Commander-in-Chief, United Nations Command, and two (2) of whom shall be appointed jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers. This



Committee shall, under the general supervision and direction of the Military Armistice Commission, be responsible for coordinating the specific plans of both sides for assistance to the return of the above-mentioned civilians, and for supervising the execution by both sides of all of the provisions of this Armistice Agreement relating to the return of the above-mentioned civilians. It shall be the duty of this Committee to make necessary arrangements, including those of transportation, for expediting and coordinating the movement of the above-mentioned civilians; to select the crossing point(s) through which the above-mentioned civilians will cross the Military Demarcation Line; to arrange for security at the crossing point(s); and to carry out such other functions as are required to accomplish the return of the above-mentioned civilians.

(2) When unable to reach agreement on any matter relating to its responsibilities, the Committee for Assisting the Return of Displaced Civilians shall immediately refer such matter to the Military Armistice Commission for decision. The Committee for Assisting the Return of Displaced Civilians shall maintain its headquarters in proximity to the headquarters of the Military Armistice Commission.

(3) The Committee for Assisting the Return of Displaced Civilians shall be dissolved by the Military Armistice Commission upon fulfillment of its mission.

#### ARTICLE IV

##### RECOMMENDATION TO THE GOVERNMENTS CONCERNED ON BOTH SIDES

60. In order to insure the peaceful settlement of the Korean question, the military Commanders of both sides hereby recommend to the governments of the countries concerned on both sides that, within three (3) months after the Armistice Agreement is signed and becomes effective, a political conference of a higher level of both sides be held by representatives appointed respectively to settle through negotiation the questions of the withdrawal of all foreign forces from Korea, the peaceful settlement of the Korean question, etc.

## ARTICLE V

## MISCELLANEOUS

61. Amendments and additions to this Armistice Agreement must be mutually agreed to by the Commanders of the opposing sides.

62. The Articles and Paragraphs of this Armistice Agreement shall remain in effect until expressly superseded either by mutually acceptable amendments and additions or by provision in an appropriate agreement for a peaceful settlement at a political level between both sides.

63. All of the provisions of this Armistice Agreement, other than Paragraph 12, shall become effective at 2200 hours on 27 JULY 1953.

Done at Panmunjom, Korea, at 1000 hours on the 27<sup>th</sup> day of JULY, 1953, in English, Korean, and Chinese, all texts being equally authentic.

7월 27일 김일성 회리훈 Mark W. Clark

KIM IL SUNG  
Marshal, Democratic  
People's Republic  
of Korea  
Supreme Commander,  
Korean People's Army

PENG TEH-HUAI  
Commander,  
Chinese People's  
Volunteers

MARK W. CLARK  
General, United States  
Army  
Commander-in-Chief,  
United Nations  
Command

PRESENT

남일  
NAM IL  
General, Korean People's Army  
Senior Delegate,  
Delegation of the Korean People's  
Army and the Chinese People's  
Volunteers

W. K. Harrison  
WILLIAM K. HARRISON, JR.  
Lieutenant General, United States  
Army  
Senior Delegate,  
United Nations Command Delegation

## APPENDIX II

### JULY 4, 1972, SOUTH—NORTH JOINT COMMUNIQUE

Recently there were talks held both in Pyongyang and Seoul to discuss problems of improving the south-north relations and unifying the divided fatherland.

Director Hu Rak Lee of the Central Intelligence Agency of Seoul visited Pyongyang from 2 to 5 May 1972 to hold talks with Director Young Joo Kim of the Organization and Guidance Department of Pyongyang. Second Vice Premier Sung Chul Park, acting on behalf of Director Young Joo Kim, also visited Seoul from 29 May to 1 June 1972 to hold further talks with Director Hu Rak Lee.

With the common desire to achieve peaceful unification of the Fatherland as early as possible, the two sides in these talks had frank and openhearted exchanges of views, and made great progress in promoting mutual understanding.

In the course of the talks, the two sides, in an effort to remove the misunderstandings and mistrust and mitigate increased tensions that have arisen between the south and north as a result of long separation, and further to expedite unification of the fatherland, have reached full agreement on the following points:

1) The two sides have agreed to the following principles for unification of the fatherland:

First, unification shall be achieved through independent Korean

efforts without being subject to external imposition or interference.

Second, unification shall be achieved through peaceful means, and not through the use of force against each other.

Third, as a homogeneous people, a great national unity shall first be sought, transcending differences in ideas, ideologies, and systems.

2) In order to ease tensions and foster an atmosphere of mutual trust between the south and north, the two sides have agreed not to slander or defame each other, not to undertake armed provocations whether on a large or small scale, and to take positive measures to prevent inadvertent military incidents.

3) The two sides, in order to restore severed national ties, promote mutual understanding and to expedite independent peaceful unification, have agreed to carry out various exchanges in many fields.

4) The two sides have agreed to cooperate positively with each other to seek early success of the south-north Red Cross talks, which are under way with the fervent expectations of the entire people.

5) The two sides, in order to prevent the outbreak of unexpected military incidents and to deal directly, promptly and accurately with problems arising between the south and north, have agreed to install a direct telephone line between Seoul and Pyongyang.

6) The two sides, in order to implement the aforementioned agreed items, solve various problems existing between the south and north, and to settle the unification problem on the basis of the agreed principles for unification of the Fatherland, have agreed to establish and operate a South-North Coordinating Committee co-chaired by director Hu Rak Lee and director Young Joo Kim.

7) The two sides, firmly convinced that the aforementioned agreed items correspond with the common aspirations of the entire people, who are anxious to see an early unification of the fatherland, hereby solemnly pledge before the entire Korean people that they will faithfully carry out these agreed items.

4 July, 1972,

UPHOLDING THE DESIRES OF THEIR RESPECTIVE  
SUPERIORS

HU RAK LEE      YOUNG JOO KIM

**APPENDIX III****SPECIAL STATEMENT REGARDING FOREIGN POLICY  
FOR PEACE AND UNIFICATION BY PRESIDENT PARK  
CHUNG HEE, JUNE 23, 1973**

Dear Fifty-million Fellow Countrymen!

Today, I wish to announce the guide lines of our foreign policy for peace and unification to improve substantially conditions for the attainment of our long-cherished national aspiration to the unification of our fatherland. I make this announcement, taking into account our experiences in the south-north dialogue and the recent developments in international situation.

At the conclusion of World War II, Korea was liberated, but our land was divided and our people were separated against their will.

The 38th parallel, originally known as a military demarcation line for disarming Japanese forces, turned later into an Iron Curtain. As a result, the south and north were cut off from each other in political, economic, social, cultural and all other fields.

In the meantime, negotiations were conducted at the meetings of the US-USSR Joint Commission to remove the barrier of the 38th parallel and to establish a unified democratic govern-

ment. Yet, these negotiations ended in failure due to basic differences in the positions of the two parties. The Korean question was, then, submitted to the United Nations.

At the Second Session of the United Nations General Assembly convened in 1947, a resolution was adopted calling for free general elections throughout the whole of Korea. The United Nations Temporary Commission on Korea (UNTCOK) was then dispatched to Korea to facilitate this objective.

However, the general elections were held only in the southern part of Korea because of the negative attitude on the part of north Korea. Thus, the government of the Republic of Korea was established on 15 August 1948 and was subsequently recognized by the United Nations as the only lawful government in Korea.

On 25 June 1950, the north Korean Communist forces launched an unprovoked aggression against the Republic of Korea. During the Korean War thus caused, an innumerable number of our brethren lost their lives and the whole country was subjected to destruction by warfare. An armistice was put into effect after three years of war, but the country still remained divided and the prospect of unification of the country became even dimmer.

In my Commemorative Address delivered on the occasion of the 25th anniversary of national liberation on 15 August 1970, I called for a relaxation of tension between the south and north with a view to alleviating the sufferings of our compatriots

arising from the division of the country and also to building the foundations for a peaceful unification of the fatherland. On 12 August of the following year, our side proposed the south-north Red Cross talks, and, on 4 July last year, the South-North Joint Communique was issued.

The south-north dialogue was thus started. Yet, the results of these dialogues lasting for almost two years since their beginning have been far from our expectations.

In our talks with the north, we have taken the position that both sides should endeavor to gradually remove the artificial barriers between the south and north by solving easier and more practical problems first and to phase out feelings of mutual distrust and replace them with those of mutual confidence through concrete results. We further pointed out that such an approach would best serve to make the talks productive and would also serve as a short-cut to the eventual unification of the country by peaceful means.

The north Korean side, in disregard of the existence of deep-rooted feelings of distrust between the south and north, insisted that military and political problems, which might endanger the security of the Republic of Korea, must first be dealt with, as a package, in the talks. While the very problem of reunification was being discussed at the talks, the north Korean side was continuously engaged in such external activities as would practically perpetuate the division of the country.

In view of the current status of the south-north relationship, it



is anticipated that not only many difficulties lie in the way of the dialogue, but a considerable length of time will also be required before the results of the dialogue originally expected can be attained.

Moreover, if the present state of affairs were to be left as it is, the existing feelings of distrust might be deepened and even the tension between the south and north might be aggravated.

Now, as for the recent developments in the international situation, it may be said that the era of Cold War after World War II came to an end. We have embarked upon a new era of peaceful coexistence, based on the status quo, through the balance of power among the major powers.

Judging also from a series of events witnessed in this part of the world, it seems unlikely that the unification of our fatherland can be attained within a short period of time.

These international trends give rise to a most serious problem in the history of our nation. The problem is how to pursue the national unification—the supreme aspiration and objective of the whole Korean people—in the face of the stark realities of international situation.

My dear Fifty-million Fellow Countrymen!

We must tackle these realities in an active and positive way. We must formulate wise and firm policies for attaining the goal of national unification in the face of internal and external realities.

Then, we must assiduously implement such policies.

We should have peace rooted firmly in this land and should achieve, without fail, the ultimate goal of peaceful unification by our own self-reliant efforts.

With these considerations in mind, I now declare the following policies:

1) The peaceful unification of the fatherland is the supreme task of the Korean people. We will continue to exert every effort to accomplish this task.

2) Peace must be maintained in the Korean peninsula by all means. The south and north should neither interfere with each other's internal affairs nor commit aggression against each other.

3) We will continue to make efforts with sincerity and patience to secure concrete results from the south-north dialogue based on the spirit of the South-North Joint Communiqué dated July 4, 1972.

4) We shall not oppose north Korea's participation with us in international organizations, if it is conducive to the easing of tensions and the furtherance of international cooperation.

5) We shall not object to our admittance into the United Nations together with north Korea, if the majority of the member-states of the United Nations so wish, provided that it does not cause hindrance to our national unification.

Even before our admittance into the United Nations as a member, we shall not be opposed to north Korea also being invited

at the time of the U.N. General Assembly's deliberation of "the Korean question" in which the representative of the Republic of Korea is invited to participate.

6) The Republic of Korea will open its doors to all the nations of the world on the basis of the principles of reciprocity and equality. At the same time, we urge those countries whose ideologies and social institutions are different from ours to open their doors likewise to us.

7) Peace and good-neighborliness are the firm bases of the foreign policy of the Republic of Korea. It is reaffirmed that we will continue to further strengthen the ties of friendship existing between our friendly nations and our country.

I wish to make it clear that matters concerning north Korea in the policies enumerated above are interim measures during the transition period pending the achievement of our national unification and that the taking of these measures does not signify our recognition of north Korea as a state.

My dear Compatriots in the South and North!

Upon an objective and realistic appraisal of the internal and external situations surrounding our fatherland, I have a firm conviction that these policies are the only short-cut to the achievement of peaceful unification by our own self-reliant efforts amidst international currents of relaxation of tension without impairing the dignity and pride of our nation.

There can be no despair or frustration for a wise and courageous people.

Let us march together, with hope, courage and wisdom, toward the attainment of peace in the Korean peninsula, prosperity of the nation and unification of our fatherland.



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