International legal Review on the Withdrawal of UN Forces and USFK in terms of Termination of ARMISTICE Regime of the KOREAN Peninsula

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Abstract

NORTH KOREA has claimed about dissolution of UN forces and withdrawal of USFK to induce early withdrawal of USFK by proposing a peace agreement with the United States. If a peace agreement is concluded to establish the peace regime on the Korean Peninsula, will the purpose of UN forces be disappeared and it be dissolved? There is a low possibility that UN forces will be dissolved in the armistice agreement regime, but if dissolved, how does it affect the parties of the armistice agreement? In addition, North Korea possibly demand the dissolution of US forces as well as the withdrawal of USFK if peace agreement is concluded. So we have to prepare for what logic we should respond to this.

[Keywords] UN Forces, USFK, Military Enforcement Action of the Security Council, Armistice Resime, Peace Agreement

1. Dissolution Issue of UN Forces command

1.1. Review on dissolution claims

NORTH KOREA actively advocated the dissolution of UN forces by urging the US to sign a peace agreement since they claimed about the withdrawal of foreign troops in the Geneva political conference in 1954 after armistice agreement. Recently on January 14, 2013, they called for the dissolution of UN through the memorandum of the Ministry of Foreign Affairs and NORTH KOREA Ambassador Sin Seok-ho said that UN must be dissolved and armistice agreement should be converted to peace agreement in the press conference on June 21 of the same year[1].

Main duties of UN force which was joined by the UN mandate during the early Korean War was to enforce and supervise the armistice agreement through activities of military armistice commission after armistice agreement and to continue to secure the right to use Japan’s UN rearm base while carrying out re-entering war and control duties of member states in preparation for emergencies. During the war, the largest number of war troops were about 700,000 and Korean troops were 300,000 among them. Currently, most of them are withdrawn and there are only about 300 soldiers. They are mainly the US militaries which are advisors of the UN and the rest are liaison officers who serve guard of honor and military officer.

First, if US forces are dissolved in the armistice agreement regime prior to the peace agreement, will the armistice agreement be terminated, or is it not related to the continuation or implementation of the armistice agreement? Since the UN forces are responsible for the compliance and enforcement of the treaty on the armistice
agreement, the dissolution of UN forces is a matter directly related to the implementation of the armistice agreement. Because binding force of the agreement shall be substituted only by mutual agreement under the clause 61 and 62 of the armistice agreement, the armistice agreement shall not be invalidated or terminated by the dissolution of UN forces. UN forces are an institution for compliance and enforcement of the agreement. So the dissolution of the UN forces and the continuation of the armistice agreement are separate matters.

Second, UN forces will not necessarily be dissolved even if peace agreement is concluded. UN forces can be continued by converting its function, which was to restrict southward invasion, to conduct peacekeeper activities to prevent disputes on the Korean Peninsula[2]. Given that the role of UN in contributing to the Korean War and future role of UN in building a peace regime, he UN forces restricted the war along with USFK(US Armed Forces in Korea) by the US-ROK alliance. And it seems clear that they will provide justification for building a peace regime on the Korean Peninsula. In particular, in the midst of a shirt in wartime operational control, the abolition of CFC (combined forces command) will likely expand the role and function of UN force command if Korea returns the wartime operational control[3]. Even if REPUBLIC OF KOREA is to head north, the mission and role of UN forces will be necessary according to the Resolution 376 of the General Assembly on October 7, 1950 as described above.

Third, we opened the possibility that SOUTH and NORTH KOREA and US are making efforts to declare the termination of the war before the peace agreement to end the armistice regime of the Korea Peninsula, which is unusual thing for over 65 years. If the declaration of the termination of war is made, there would be a symbolic effect. But it is only a political declaration, so the state of war in the Korean Peninsula is still not legally terminated by the armistice agreement. If the declaration of termination of war is made in the future, it became legally a ceasefire state(state of the war) and politically a peace state of termination of war. Therefore, as long as the conclusion of peace agreement is not guaranteed immediately, there may be a confusing order on the Korean Peninsula, where laws and facts are inconsistent. Since the declaration of termination of war before a peace agreement shall not be legally binding, it can't affect on the discussion of UN forces and USFK withdrawal.

1.2. Considerations for dissolution

If UN force command is dissolved, we need to consider who is subject to dissolution and how it will be dissolved. We also think about the changes in defense system of the Korean Peninsula since the commander of USFK also had served as UN force commander(three caps).

It is possible and clear to think that US Security Council Resolution is necessary for the dissolution of the US forces, which was established by the Security Council Resolution at the early stage of the Korean War. But if we think that the UN force is not a subsidiary body of the UN, UN can be abolished through agreement between KOREA and US without the resolution of Security Council based on the facts that UN forces is not operated with the UN's budget unlike the UN's peacekeeping activities, that it has not been listed as a subsidiary body of the UN in the UN yearbook since 1950, and that UN Security Council and other UN agencies do not recognize it as UN subsidiary body[2].

UN forces participated in the Korea War was established and operated by the US during periods when military enforcement action of Chapter 7 of UN Charter was not enforced as prescribed. So the budget of the UN was not used, and each participating nation and KOREA and the US could pay the cost. On November 3, 1950, 'Uniting for Peace', which is No. 377 of UN General Assembly resolution, emphasized the responsibility of the General Assembly to respond to the functioning of the Security Council. Based on this, UN forces was established with the military enforcement action by the resolution of the Security Council to realize the collective security assurance. And it has the right to use UN forces
and reports activities of UN forces to the Security Council. Give that the above facts, it is quite difficult to deny the institutional nature of the UN on the grounds of the above facts. In the end, it seems that at least the UN's intervention in the dissolution or abolition of UN force command is necessary such as decision of Security Council and approval of UN after consultation between KOREA and US.

On the other hand, JAPAN decided to provide facilities and services for the UN forces which support KOREA through JAPAN-US. Security Treaty and exchange of note between Atchison and Yoshida in 1951. Accordingly, they provide six major bases in JAPAN[3]. This obligation is due to expire within 90 days of UN withdrawal from KOREA. So the dissolution of UN forces will lead to serious disruptions to the US military reinforcements in case of emergency. If the UN is dissolved, the US and JAPAN will have to new agreement on the use of base. Even if it is not a matter SOUTH KOREA directly involved, but we should ask US to take measures based on the ROK-US alliance.

2. Withdrawal Issue of USFK

NORTH KOREA has claimed about dissolution of UN forces and withdrawal of USFK to induce early withdrawal of USFK by proposing a peace agreement with the UNITED STATES. This is because the commander of USFK serves as the commander of the UN force. It the peace treaty if concluded, NORTH KOREA is likely to stick on this issues. Currently, US forces do not have substantial forces, and it is fact that USFK commander also serves as commander of UN force command and USFK is actually taking over that role. Without the USFK, there will be no guarantee of security on the Korean Peninsula because the function of UN forces which will restrict the war and supervise armistice agreement can’t be supported.

USFK was stationed by ROK-US alliance, that is the ROK-US Mutual Defense Treaty[4], which was concluded on October 1, 1953 and entered into force on November 18, 1954. UN was stationed by the UN Security Council Resolution No. 84 on July 7, 1950. Therefore, two forces are legally separate entity. Even if the UN force is dissolved, USFK will not necessarily withdrawn. There is a case in which US forces withdrawn from the VIETNAM by specifying withdrawal of foreign troops in the VIETNAM Peace Agreement in January 1973. But US force didn’t withdraw from JAPAN by 1951 San Francisco Peace Treaty, and 1960 US-JAPAN Mutual Cooperation and Security Treaty explicitly allows the presence of US forces. In addition the peace treaty was not concluded with Allies in GERMANY, but US forces have been stationed in GERMANY as part of the NATO army.

Claims of NORTH KOREA for withdrawal of USFK violates the principle of respect for the sovereignty of the UN Charter or the non-intervention of domestic matters. It also violates the mutual trust under the Article 2 and Article 3 of Inter-Korean Basic Agreement which are "The South and North shall not interfere with the other’s internal affairs." and "The South and North shall not slander or smear other party". This should be clearly recognized by NORTH KOREA.

3. Conclusion

The US also thinks that the USFK serves a role as a balancer to ensure peace and stability in Northeast Asia[5]. The USFK will serve a certain role as the main body of UN forces as well as KOREA-US combined power in building peace regime of the Korean Peninsula. There is also a possibility that its position can be changed as a peace management armies of the Korean Peninsula by the reduction of US army and allied forces. The armistice regime and declaration of termination of war on the Korean Peninsula can’t affect the status of UN forces and USFK. It is clear that the conclusion of the peace agreement is a legal factor affecting the status of UN and USFK (armistice agreement was abolished by the
peace agreement). But the role of the UN forces for security and peace in the international community and on the Korean Peninsula should be stressed.

4. References

4.1. Books


4.2. Journal articles


4.3. Additional references


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1. Currently, UN member states are 18 countries including Denmark, Italy, Norway and Korea, which have provided medical support except Luxembourg and Ethiopia among 17 countries entered in Korean War. The US forces which serves the advisor of UN and secretary of military armistice commission, advisory group of military armistice commission(liaison officers of member state which serves military officer's duty) and guard of honor mainly made up of Thai and Filipino troops are remained.

2. He commander of USFK also serves as commander of UN Command and ROK-US combined Forces Command which was established in November 1978. The wartime operational control of ROK force is exercised by the CFC, but the operational control over military activities related to the armistice agreement is exercised by the UN Command. Therefore, even if the CFC is abolished, the commander of USFK under the ROK-US alliance still serves as the commander of UN force, so the USFK will try to strengthen the re-entry and control duties of the member countries in preparation of emergencies.