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Corresponding author
E-mail: noicjj@hanmail.net

Peer reviewer
E-mail: editor@j-institute.jp

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The KOREAN Question and the United Nations, International LAW

Noh Dong-young

Gangdong University, Chungbuk, Republic of Korea

Abstract

Purpose; Conducting pre, postwar issues carried after liberation from Japan, establishing democratic government in South because of binary division in the country, stationing UN forces in South followed by Korean War and their armistice, helping South to join the United Nations at the time and providing solutions for human rights and nuclear weapons in North Korea are the reasons why the role of the United Nations in uniting Korean peninsula is important. Above mentioned are so-called 'Korean Question' that the United Nations have inseparably been discussing. The role of the United Nations in Korean history unceasingly affects and valid to this day and the same is required to construct peace and unification in Korean peninsula. I am worried that the Korean War, which should be still remembered clearly, is forgotten over time. We often discuss North Korea academically or even in our daily lives because we see them to be reunified with South Korea. The 2018 inter-Korean summit, which the whole nation has watched, would have been a great opportunity for young people as well as the whole nation on the Korean peninsula to form a consensus on unification other than any opinion of the expert. However, we must remember the dark history of the Korean War first to understand the unification. The memory of history will gather our people to desperately want the unification.

[Keywords] Korean Question, United Nations, Collective Security System, Armistice, Peace Agreement

1. The Korean Question and the United Nations

Conducting pre, postwar issues carried after liberation from Japan, establishing democratic government in South because of binary division in the country, stationing UN forces in South followed by Korean War and their armistice, helping South to join the United Nations at the time and providing solutions for human rights and nuclear weapons in North Korea are the reasons why the role of the United Nations in uniting Korean peninsula is important. Above mentioned are so-called 'Korean Question' that the United Nations have inseparably been discussing. The role of the United Nations in Korean history unceasingly affects and valid to this day and the

same is required to construct peace and unification in Korean peninsula.

To establish One Korea, issues in Korean Peninsula and their unification is inseparable from the United Nations. The United Nations maintained its original duty of keeping world peace by practicing Korean Question and showed their attribution to develop the International Law. The UN forces participated in Korean War remained in South Korea help to materialize collective security system which is the fundamental of the United Nations. To achieve unification successfully, searching help from superpowers from other nation is significant. During this procedure, Korea must ensure that the unification of Korean peninsula is not threat to the marginal states, it is the for the sake of regional benefits and

world peace by diplomacy. The UN forces remained within South Korea is to maintain the armistice agreement, to tolerate peaceful unification process and for the unforeseeable crisis in the future. In particular, the UN forces play a pivotal role in the Korea Question. The United Nations Command(UNC) in Korea first arrived at the Korean peninsula during the Korean War and it is still operating in Korea with its roles to deter wars in Korea. It is expected that the UNC will play a critical role in securing peace in Korea after the unification.

Also, Efforts to prepare for 'contingency' in North Korea and lead such changes to unification are especially important but it should be carefully reviewed the current Armistice Agreement's effect during the crisis situations of North Korea and the replacement by a new peace agreement. Since the Korean Question is not only domestic but also international matters, it should be noted that we need to expect UN's participation in the crisis situations of North Korea while preparing for fully secured territorial supremacy and right of self-determination of ours.

Conventionally establishing unification under the United Nations requires much effort from the marginal states and international society. The UN Security Council system is expected to induce abstention from China without explicit objection or vote absence. In case Korea is not a member of the United Nations Security Council, based on the Charter of the United Nations article 31, Korea may not have a suffrage but as a stakeholder who can join the council to appeal their stances. Article 99 of the Charter of the United Nations states that such stakeholders can insist the UN secretary general to practice the power and this types of efforts are much needed. Under the premise of Korea showing such efforts and strive to achieve unification, the role of the United Nations who works for world peace is crucial by the name of International Law when representing international society. Korea must stand strong to utilize the role of the United Nations that sends solid advocate message to other countries.

2. The Current Legal Evaluation of Security on the Korean Peninsula

As the historian Edward H. Carr said, history is a conversation between the past and the present. Even the Korean War has become the history, the national security situation on the Korean peninsula is always a continuation of tension although South Korea and North Korea are adhering to the armistice agreement. That is why we must strive to overcome the unclear present between war and peace. The two Koreas were one, even during Japanese colonial era, but it was after the liberation that we virtually divided into two countries based on the 38th line. With the establishment of Republic of Korea on August 15, 1948, and Democratic People's Republic of Korea on September 9 of the same year, the division of the Korean peninsula, which was not on our will, has been fixed. It has been 65 years since the armistice agreement was signed on July 27, 1953, after the Korean War on June 25, 1950, and the full-scale hostilities between South Korea and North Korea were suspended. The inter-Korean summit on April 27 this year seems that there had never been a war between the two Koreas.

The official name of Korean Armistice Agreement on July 27, 1953, which is the result of the Korean War that caused tremendous post-war problem and divided Korean peninsula into two countries, 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 agreement in Korean used the term "truce" which refers the suspension of 'partial' hostilities, while the agreement in English used the term "armistice" which refers the suspension of 'all' hostilities. So, it is possible to use both terms. As a signer of the agreement, Mark W. Clark, the United Nations Commander and US Army chief, came out for South Korea, and Il-Sung Kim Dehuai Peng came out on the other side. North Korea then insisted that South Korea not be a party to the

agreement by handing over operational command authority to a foreign country and would discuss the peace regime directly with the United States. It was the result of misunderstanding the nationality of the signer and the parties to the agreement and failing understanding that President Lee had transferred the command of the ROK military to the UN during the Korean War. With the 2018 inter-Korean and North-U.S. summit, it is necessary to understand the legally significant point about the change from the state of the armistice to the peace regime.

First, we announce 'Panmunjeom Declaration for Peace, Prosperity and Unification of the Korean Peninsula' promising to announce the war termination by this year. Even if it seems to be in the peaceful state, the Korean peninsula is legally in a state of war because the armistice agreement regulates the security of the Korean peninsula. The will to announce the declaration of the war termination is a political, symbolic, and declarative statement to end the war and make the Korean peninsula peaceful. However, the armistice agreement on the premise of a state of war, will not be abolished just by the declaration of the end of the war. Meanwhile, the 3 party talks(South Korea, North Korea, US) or the 4 party talks(South Korea, North Korea, US, China) were proposed to discuss the peace treaty. This means that North Korea accepted South Korea as a party to the armistice agreement and peace treaty to discuss the peace regime together. If a peace treaty is concluded as a result of the discussion of the peace regime, the armistice agreement will be abolished, and the peace treaty will substitute it as a new regime to regulate the unification of the Korean peninsula. The peace treaty is necessary to bring peace on which is the premise of unification in the Korean peninsula.

Second, the implementation of the peace treaty will bring substantial peace and enable concrete preparations for unification, such as inter-Korean basic agreement on unification. The Panmunjom Declaration showed the rough version of the peace treaty by suggesting measures for the development of inter-Korean relations, mitigating military tensions

by military reduction, war termination, and denuclearization.

Third, joint agreement of North-U.S. summit on June 12 reaffirmed the Panmunjom Declaration and established a trust relationship, which is expected to lead to a new relationship between North America. North Korea's denuclearization will enable the United States to secure North Korea's security and establish diplomatic relations with them. Establishment of diplomatic relations is an issue of recognizing North Korea as a nation under international law. Of course, recognizing North Korea as a nation is a separate issue from the ROK's constitutional provisions of territory and inter-Korean relations.

3. Remembering the Korean War

A country that requires enormous international support lacking the identifiable power or authority, such as Somalia and Cambodia, is called failed states in international politics term. In the point of international laws, failed states are in the state of no rule of law, so that the country violates human rights and not protect people properly. While North Korea is also classified as a failed country in the international society, the fact that the leader of North Korea, one of the poorest countries in the world, met the leader of the United States, one of the strongest countries in the world, for the first time on June 12 give a glimpse of the will of North Korea to be 'an internationally accepted country' from failed states.

North Korea's being in the tunnel of isolation in the international society may be the result of the unprecedented dictatorship that is hard to find in the world now, but it also caused by the name of war crime nation that they had waged the Korean War, even after the establishment of UN(24th of October 1945), a universal organization to secure peace by prohibiting war in the international society. This led to the participation of the UN Army, the first compulsory military measure in the history of UN Charter, resulting in denial of approval as a nation form international

society. Also, what ‘the only legitimate government in Korea’ under subparagraph 195 of the decision of UN General Assembly in 12th of December 1948 mean is that North Korea government cannot be approved as a nation, not because it was an anti-government organization who occupied the northern region of Korean peninsula illegally, but because it was the government which had established without democratic election that had not been held by UN.

There is the thing that should not be misunderstood about the fact that the president Lee had op-posed to the armistice agreement and had wanted to unify North Korea into South Korea. It would be wrong to understand the situation that South Korea wanted to keep the war, while North Korea tried to ceasefire. In fact, President Lee did not oppose to the armistice agreement itself but oppose to the armistice agreement ‘without unification’. That is because he expected that the communist army could have waged war again at any time, if the war had ended without unification even after the enormous sacrifice due to the invasion of the Communist army. Before signing the armistice agreement, the United States was promised to establish an alliance with South Korea to substantially support the armistice agreement, and Mutual Defense Treaty between the Republic of Korea and the United States of America was concluded on 1st of October 1953.

I am worried that the Korean War, which should be still remembered clearly, is forgotten over time. We often discuss North Korea academically or even in our daily lives because we see them to be reunified with South Korea. The 2018 inter-Korean summit, which the whole nation has watched, would have been a great opportunity for young people as well as the whole nation on the Korean peninsula to form a consensus on unification other than any opinion of the expert. However, we must remember the dark history of the Korean War first to understand the unification. I was fortunate enough to hear from Japanese colonial era to Korean War and Vietnam War which is a painful history of the Korean peninsula from my parents and relatives. I believe that the memory of history will

gather our people to desperately want the unification, so that it can make Korea a strong and happy country.

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Author

Noh Dong-young / Gangdong University Professor
 B.A. Chungbuk National University
 M.A. Chungbuk National University
 Ph.D. Chungbuk National University

Research field

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Major career

- 2010~2015. Ministry of Defense, Military Intelligence Officer.
- 2015~present. Chungbuk District Bar Association, Attorney.