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A Peace Treaty, the Korean Armistice, and the Mutual Defense Treaty: Synchronization, Deconfliction, and a Path to Unification

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While the Korean Civil War has not technically ended, most scholars, political leaders, and most importantly the Korean people desire peace on the Korean Peninsula. The question is, what is the path to peace? Who will be the parties to a peace treaty? How will a peace treaty serve the two Koreas and the interests of the other “governments of the countries concerned on both sides”?¹ What will become of the ROK-U.S. Mutual Defense Treaty and the ROK-U.S. strategic relationship—the ROK/U.S. alliance? Most importantly, will a peace treaty ensure peace on the Korean Peninsula?

This paper argues that a peace treaty must be signed by the two recognized belligerents, North and South Korea. However, even if a peace treaty is signed, the future of the strategic relationship and of the ROK-U.S. alliance will be determined by the security assessments and mutual interests of the ROK and U.S. governments. The end of the armistice and establishment of any kind of peace regime does not

1. The Korean War Armistice Agreement, Panmunjom, Korea, July 27, 1953, https://www.usfk.mil/Portals/105/Documents/SOFA/G_Armistice_Agreement.pdf.

automatically lead to the end of the Mutual Defense Treaty, because it is not dependent on hostilities or threats from the North.

More importantly, this paper argues if a peace treaty is signed it is unlikely to ensure peace on the Korean peninsula at all, due to the existence and the strategic objectives of the Kim family regime. The only long-term solution to the “Korea question” (paragraph 60 of the Armistice Agreement, which calls for a political solution to the unnatural division of the Korean peninsula) is unification.

The divided Korean Peninsula is one of the most complex and potentially dangerous regions of the world. A lot has changed since the devastation of the 1950–1953 Korean War. South Korea has evolved into a mature middle power as a liberal democratic republic, with an economy 40 times greater than that of the North. North Korea, on the other hand, has developed nuclear weapons, has the fourth-largest military in the world, and has its forces postured for offensive operations. Though both are members of the United Nations, the North is a rogue state that does not adhere to international norms. And crucially, both the North and South Korean constitutions claim sovereignty over the entire Korean peninsula and claim all the Korean people as their own citizens.

Background

North Korea attacked the Republic of Korea on June 25, 1950. UNSCR 82 recognized its unlawful attack on the South and called on member nations to render assistance to the ROK.² This was reaffirmed by UNSCR 83.³ In effect, this defines the conflict as a Korean civil war, with the two belligerents being North and South Korea and the North labeled as the aggressor. It was UNSCR 84 which established a unified military command led by the United States (the United Nations Command, or UNC) to render assistance to the South “to repel the armed attack and to restore international peace and security in the area.”⁴ These resolutions establish that the North and South are belligerents and that the UNC’s mission was to repel the unlawful attack from the North and to reestablish peace and security. These resolutions have never been rescinded or superseded.

It is important to recognize that neither the United States nor the People’s Republic of China (PRC) declared war against either side. The United States called the Korean War a “police action” and fought under the authority of the UN.⁵ The PRC sent the Chinese People’s Volunteer (CPV) Army to fight on the side of the North.⁶

A Peace Treaty

While there are many calls for various peace regimes, end of war declarations, and ultimately a peace treaty, at the most basic level a peace treaty should only be signed by the two belligerents, North and South Korea. The United States and the PRC could consider signing an agreement as guarantors of security to their allies, but they should not sign a peace treaty, because they did not declare war; the United States

2. United Nations Security Council, Resolution 82, Complaint of aggression upon the Republic of Korea, S/1501 (June 25, 1950), <http://unscr.com/en/resolutions/82>.

3. United Nations Security Council Resolution 83, Complaint of aggression upon the Republic of Korea, S/1511 (June 27, 1950), <http://unscr.com/en/resolutions/83>.

4. United Nations Security Council Resolution 84, Complaint of aggression upon the Republic of Korea, S/1588 (July 7, 1950), <http://unscr.com/en/resolutions/84>.

5. “US Enters the Korean Conflict,” National Archives, <https://www.archives.gov/education/lessons/korean-conflict>.

6. Bangning Zhou, “Explaining China’s Intervention in the Korean War in 1950,” *Interstate Journal of International Affairs* 2014/2015 no. 1, 2015, <http://www.inquiriesjournal.com/articles/1069/explaining-chinas-intervention-in-the-korean-war-in-1950>.

fought under UN authority, while the PRC did not officially enter the conflict and only sent “volunteers.” There should not be a peace treaty to end the war between the North and the United States simply because the United States did not declare war.

Remarking that a peace treaty should be signed by the two belligerents may seem like a simple analysis. However, it is complicated by the constitutions of the North and South. Each constitution claims sovereignty over the entire Korean Peninsula and all the Korean people; in effect, neither constitution recognizes the existence of the other, and both seek to unify the peninsula under their respective forms of government. For each to sign a peace treaty, their constitutions would need to be amended to recognize that there are two Koreas and to rescind their demand for unification. This would likely cause tremendous political problems in each country.⁷

If each country could make the necessary amendments, and assuming they could negotiate a direct peace treaty to end the Korean War, there will remain questions about the Armistice, as well as about the ROK-U.S. alliance.

The Armistice

The Armistice was signed in 1953 by the military commanders on each side. It was an agreement to suspend hostilities and it accomplished four main tasks: it established a demilitarized zone (DMZ); it called on each side not to attack the other across the DMZ; it established a mechanism for coordination and supervision of the armistice, to prevent a resumption of hostilities; and it established a process to exchange prisoners. However, the most important part in the Armistice is paragraph 60, which called on all sides to come together (within 90 days) to determine a political solution to the “Korea question”—the unnatural division of the peninsula.⁸ Talks took place in Geneva in 1954, but failed to bring an end to the Korean War, establish a lasting peace, or resolve the “Korea question.”⁹ Sixty-six years later, the Armistice remains in place as the framework for managing the DMZ and preventing the resumption of hostilities.

If the North and South could negotiate a peace treaty, the Armistice would no longer be necessary. A peace treaty might be one way to approach the political solution called for in paragraph 60. However, it would not resolve the “Korea question,” leading instead to a number of further questions. Would the UN Security Council pass a resolution to rescind the Armistice? Would it vote to rescind UNSCRs 82–85, which would remove the authorization of the UN Command? These are questions that require analysis by international legal and UN experts, but we can assume that the Armistice will be withdrawn in some process after a peace treaty is signed by the belligerents. However, there remain some challenges to peace and security. If North Korea continues to keep its military forward deployed and offensively postured along the DMZ, what kind of process will replace the Armistice to provide a mechanism to ensure peace?

The Comprehensive Military Agreement

One course of action might be to build on the September 19, 2018 Pyongyang Declaration and its Comprehensive Military Agreement (CMA).¹⁰ The CMA is a tension-reduction and confidence-building measure

7. Constitution of the Republic of Korea, October 29, 1987, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=1&lang=ENG; Revision of the North Korean Socialist Constitution, July 11, 2019, <https://www.yna.co.kr/view/AKR20190711134500504>.

8. The Korean War Armistice Agreement.

9. Mark Tokola, “The 1954 Geneva Conference on Korea: From Armistice to Stalemate,” *The Asan Forum*, February 14, 2019, <http://www.theasanforum.org/9324-2/>.

10. Agreement on the Implementation of the Historic Panmunjom Declaration in the Military Domain, September 19, 2018, <https://www.ncnk.org/resources/publications/agreement-implementation-historic-panmunjom-declaration-military-domain.pdf>. Note this is also known as the Comprehensive Military Agreement.

that so far has reduced tensions in the DMZ and prevented any hostile action between North and South along the DMZ and adjacent waters. As part of a peace treaty negotiation process, the North and South could use the CMA as a starting point for putting into place an Armistice-like process to ensure that there is no resumption of hostilities. The CMA established an “Inter-Korean Joint Military Committee,” which could be used to expand the CMA and develop a comprehensive mechanism and process to maintain the peace treaty.

ROK-U.S. Mutual Defense Treaty of 1953

Assuming the North and South could conclude a peace treaty and establish a new mechanism and process to maintain the peace, the status of U.S. forces on the Korean peninsula will inevitably be called into question. While the UN Command will likely be dissolved by the UN Security Council when a peace treaty is signed, U.S. forces are present on the peninsula outside the authority of the UN. In October 1953, the ROK and the United States signed the Mutual Defense Treaty (MDT), which provides the bilateral legal justification for the presence of U.S. troops.¹¹ Furthermore, the MDT does not name the North or DPRK as a mutual threat. Instead, the treaty’s purpose is the mutual defense of both nations against threats in the Asia-Pacific region. Therefore, the end of the Armistice and of the UNC does not require the automatic withdrawal of U.S. troops. The future status of U.S. troops will be decided only by mutual agreement of the ROK and U.S. governments.

The above is the best-case scenario that leads to a peace treaty, an end to the Armistice, and the dissolution of the UN Command. It assumes that the North and South will negotiate in good faith, that they desire coexistence and a lasting peace, that they will relinquish their claims on the entire Korean Peninsula, and that they will seek to establish a peaceful unification process. However, skeptics rightly question whether this is a realistic scenario given the nature of the Kim family regime and its policies, strategies, and objectives. Can a nuclear-armed nation with half its population under tremendous strain peacefully coexist with a modern nation-state that has an advanced military, an economy 40 times larger, and a population that lives in a way its northern counterparts can only dream about?

North Korean Strategy

Despite North Korea being arguably the hardest intelligence target in the world, it is necessary to try to understand the Kim family regime and its intent. Observers of the peninsula have long assessed that the vital national interest of the North is the survival of the Kim family regime. Kim Jong-un’s personal survival, along with that of the elite, is the “prime directive” for all party, military, and government actions. The strategic aim is assessed to be the unification of the peninsula on the North’s terms to ensure regime survival. To be successful, it must split the ROK-U.S. alliance and force the removal U.S. forces from the peninsula. In short, the North must divide and conquer—divide the ROK-U.S. alliance to conquer the ROK.

The regime’s strategy can be summed up as the use of subversion, coercion and extortion (i.e., blackmail diplomacy), and force to unify the entire peninsula and absorb the South into a “Guerrilla Dynasty and Gulag State.” The North has been conducting an aggressive and comprehensive subversion campaign against the South for seven decades, working to undermine the legitimacy of its liberal democratic republic. It has used coercion and extortion against the ROK, the United States, regional powers, and the international community to try to establish conditions favorable to regime survival. Most importantly, it has pursued conventional, asymmetric, and nuclear and missile capabilities to support coercion and extortion—and

11. Mutual Defense Treaty Between the United States and the Republic of Korea, October 1, 1953, https://avalon.law.yale.edu/20th_century/kor001.asp.

ultimately the use of force—to achieve its objective.¹² During a peace negotiation process, intelligence analysts and Korea watchers must assess the regime to determine if it has abandoned this strategy. So far there are no signs that it has given it up. In fact, the 2019 revision to its constitution uses the word “revolution” twelve times in the preamble alone, and calls for completing the revolution to rid the peninsula of foreign influence and unify it under northern domination.¹³

South Korean negotiators must keep this in mind as they develop a peace treaty and mechanism for maintaining the peace. The ROK government must consider the Mutual Defense Treaty and the continued presence of U.S. forces as a hedge against the North’s strategy. U.S. forces have long contributed to deterrence, and they will continue to do so as long as the North Korean strategy seeks to use its military to dominate the peninsula.

If North Korea remains a military threat to the South and seeks to unify the peninsula by military means, what course of action should the South and the ROK-U.S. alliance pursue to protect, sustain, and advance their interests in the region? The answer is, it must either compete or collaborate with the North to solve the “Korea question.” As in any security situation, the adversary has a vote. The North may not choose to collaborate.

Paths to Unification

There are four paths to solving the “Korea question,” that is, to the unification of the peninsula.¹⁴ The ROK-U.S. alliance must support the South in pursuit of all four paths. The first path is the peaceful one—which is the most desirable and the most complex. However, all of the planning for peaceful unification can be applied to the other paths, should peaceful unification not be attainable. Peace is the most complex because it requires not only agreement with the regime but the complete integration of all elements of government and sectors of society, to include the militaries, the economies, and the political processes. Pursuit of peaceful unification provides the ROK the chance to operate from the moral high ground.

The most dangerous path to unification is war. This is to be avoided due to the tragic consequences of a huge amount of bloodshed and material loss that will occur. While the alliance will work to deter war, deterrence could fail, and conflict may break out. During post-conflict much of the work and planning for peaceful unification must be adapted to support a unification process.

The third path to unification is regime collapse. This is a dangerous path, because the conditions that lead to regime collapse could also lead Kim Jong-un to make the decision to execute his campaign plan to unify the peninsula under his rule to ensure regime survival. If he does not attack after ROK-U.S. alliance forces stabilize the North, the ROK government can adapt its peaceful unification plans during post-collapse operations.

The fourth and outlier path is internal regime replacement. This is the most unknown path—but one that should be cultivated with the intent to support an emerging leader who will seek peaceful unification.

12. David Maxwell, “Assessment of North Korean Strategy in Preparation for High Level Diplomacy in September 2018,” *Divergent Options*, September 7, 2018, <https://www.fdd.org/analysis/2018/09/07/assessment-of-north-korean-strategy-in-preparation-for-high-level-diplomacy-in-september-2018/>.

13. Revision of the North Korean Socialist Constitution.

14. David Maxwell, “Should The United States Support Korean Unification And If So, How?” *International Journal of Korean Studies* XVIII, no. 1 (Spring/Summer 2014), http://icks.org/n/data/ijks/1482467285_add_file_7.pdf.

The Challenges on the Korean Peninsula

The challenge on the peninsula is threefold. The first is to establish a negotiation process that is executed in good faith, in order to achieve a peace agreement with a mechanism to manage peaceful co-existence between North and South by reducing the threat from the North to a manageable level. This requires a commitment from the Kim family regime.

The second challenge is dealing with the Kim regime itself, which has not given up its strategy based on subversion, coercion and extortion, and the use of force to unify the peninsula under northern domination. As the South negotiates in good faith, it must be fully aware that the regime is continuing to pursue this strategy to ensure its survival.

The third challenge is achieving an acceptable and durable political arrangement that will protect the ROK and sustain and advance the interests of the South and the ROK-U.S. alliance. Such a political arrangement is best described as a secure, stable, economically vibrant, non-nuclear peninsula, unified under a liberal constitutional form of government determined by the Korean people. While the ROK pursues a peace treaty with the North, it must work toward this objective as the only counter to the Kim family regime's long-term strategy.

In conclusion, the Korean peninsula remains complex and dangerous. Seeking a peace treaty with a mechanism and process that prevents a resumption of hostilities is a worthy interim goal. However, it is insufficient for the long-term protection of the nearly 80 million Korean people on the peninsula on both sides of the DMZ. The only way a lasting peace and a prosperous peninsula can be established is through a solution to the "Korea question" and bringing an end to the unnatural division of the two Koreas. In short, the future lies in a United Republic of Korea (UROC).

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