

Path to Peace

The Case for a Peace
Agreement to End
the Korean War



Korea Peace Now! Women Mobilizing to End the War | February 2021

Path to Peace: The Case for a Peace Agreement to End the Korean War

February 2021

Korea Peace Now! Women Mobilizing to End the War, a global campaign to end the Korean War, produced the present report to assess how a peace-first approach can resolve the security crisis on the Korean Peninsula.

This report is a collective work that benefited from months of consensus-building and input.

Korea Peace Now! would like to acknowledge in particular Henri Féron, Senior Fellow at the Center for International Policy, as project lead.

This report is the collective work of the following people:

Ray Acheson, Director of Reaching Critical Will, Women's International League for Peace and Freedom (WILPF)

Christine Ahn, Executive Director, Women Cross DMZ (Chapter V, "Why Women Should Be Involved in the Peace Process")

Kozue Akibayashi, Professor at Doshisha University, former International President of Women's International League for Peace and Freedom (WILPF) (Chapter V, "Why Women Should Be Involved in the Peace Process")

Elizabeth Beavers, Advocacy Advisor, Women Cross DMZ (Chapter III, "The Implications of a Peace Agreement for Human Rights")

Maria Butler, Director of Global Programmes, Women's International League for Peace and Freedom (WILPF)

Youngmi Cho, Executive Director of Korean Women's Movement for Peace (Chapter V, "Why Women Should Be Involved in the Peace Process")

Henri Féron, Senior Fellow, Center for International Policy

Catherine Killough, Advocacy and Leadership Coordinator, Women Cross DMZ

Gwyn Kirk, Ph.D. (Chapter V, "Why Women Should Be Involved in the Peace Process")

YouKyoung Ko, Consultant, Women's International League for Peace and Freedom (WILPF)

Hyun Lee, US National Organizer, Women Cross DMZ

Marie O'Reilly, Gender, Peace and Security Consultant (Chapter V, "Why Women Should Be Involved in the Peace Process")

Kathleen Richards, Communications Director, Women Cross DMZ

Korea Peace Now! would also like to thank Kevin Gray, Ph.D., Professor of International Relations at the University of Sussex; Suzy Kim, Ph.D., Professor of Korean History at Rutgers University; and Paul Liem, Korea Policy Institute, who contributed their feedback and review.

External contributions were made by Lt. Col. Daniel Davis, Senior Fellow and Military Expert at Defense Priorities; Jessica Lee, Senior Research Fellow on East Asia at Quincy Institute; Adam Mount, Senior Fellow and Director of the Defense Posture Project at the Federation of American Scientists; and Hazel Smith, Professorial Research Associate at SOAS, University of London. These external contributions are strictly independent from the Korea Peace Now! campaign and represent the personal views of the contributors. Their affiliations are for identifying purposes only and do not represent the views of those institutions unless specified.

Edited by Kathleen Richards

Copyedited by Anne Louise Mahoney

Designed by Brian Breneman

Korea Peace Now! Women Mobilizing to End the War is a global coalition of women's peace organizations – Korean Women's Movement for Peace, Women's International League for Peace and Freedom, and Women Cross DMZ – calling for an end to the Korean War with a peace agreement and women's inclusion in the peace processes.

Executive Summary

Despite years of negotiations, the United States, North Korea, and South Korea remain locked in a dangerous standoff. This stalemate perpetuates the worsening security crisis on the Korean Peninsula, which poses an existential threat to millions of people.

This crisis is a direct result of the unresolved Korean War, which was halted only by a fragile armistice and is the root cause of tensions and hostilities on the Korean Peninsula. The unresolved state of the Korean War fuels increasing militarization and carries major political and economic costs.

Attempts to force North Korea's unilateral denuclearization through pressure have continuously failed. To assess how a peace-first approach can help resolve the security crisis on the Korean Peninsula, the Korea Peace Now! campaign has produced the present report to examine the political and legal ramifications of a peace agreement. The authors examine the implications that a peace agreement would have on top US priorities, including the nuclear dispute, the human rights situation, and the US–South Korean alliance. Additionally, the report highlights the legal and practical reasons for including women in a peace process to end the Korean War.

Key Findings

The first step in resolving the armed standoff should be to agree to forgo use of force in its resolution. This mutually beneficial ground rule would sap the tensions driving the main security risks, the uncontrolled militarization, and the human costs of war.

A peace agreement including the United States and the two Koreas would bindingly end the state of war, recognizing that wartime rights to use force have ended once and for all. Other commonly proposed instruments, such as end-of-war declarations, nonaggression agreements, or normalization agreements, do not necessarily end a state of war.

A peace agreement would reduce the risk of nuclear war and facilitate talks on disarmament or arms control. A peace agreement that ends the wartime status quo and enables the normalization of US–North Korean relations may create the conditions for more effective engagement on denuclearization by curbing the security risks fueling North Korea's pursuit of nuclear weapons. A peace agreement would not legally imply recognition of North Korea as a “nuclear weapons state.”

The unresolved Korean War has had a negative human rights impact on all parties. Governments have diverted resources toward militarism and away from people's welfare and have imposed restrictions on civil liberties in the name of security. Pressure has failed to improve human rights. While a peace agreement to resolve the Korean War is not a panacea, it would improve people's lives, sap the militarism that undergirds abuses, and create the conditions to engage more effectively on human rights.

A peace agreement would also improve the national security of South Korea and the United States and create space to recalibrate their relationship in ways that better fit contemporary circumstances and interests. A peace agreement would not legally imply the end of the alliance or a withdrawal of US troops, unless otherwise specified. It would imply dissolution of the Armistice and the “UN Command.”

Women have a particular stake in resolving the Korean War due to the gendered impacts of war and militarism. Despite a rich history of organizing through grassroots action on the Peninsula and internationally, only very few have been invited to formal peacemaking initiatives. Several sources of international law, including the Women, Peace, and Security framework, mandate women's inclusion. Research shows that such inclusion contributes to more durable peace.

The report recommends that the United States, South Korea, and North Korea immediately conclude a fair and binding peace agreement that acts as a final settlement of the war and serves as a foundation for a peace regime.



Table of Contents

Introduction	7
I. Why the Armistice Should Be Replaced with a Peace Agreement	9
What Is a Peace Agreement?	11
Parties to a Peace Agreement	12
II. The Implications of a Peace Agreement for Denuclearization	15
Background: The Nuclear Dimension of the Korean War	15
Application: Peace as Nuclear De-escalation	18
III. The Implications of a Peace Agreement for Human Rights	21
IV. The Implications of a Peace Agreement for US–ROK Relations ...	25
V. Why Women Should Be Involved in the Peace Process	31
VI. Recommendations	37
Annex I: Ratification of a Peace Agreement	39
US Ratification	39
South Korean Ratification	40
North Korean Ratification	40
External Contributions	41

Introduction

Despite several meetings between the leaders of the United States and North Korea (Democratic People's Republic of Korea/DPRK) in recent years, the two countries have failed to make meaningful progress in negotiations on peace and denuclearization. This stalemate perpetuates the worsening security crisis on the Korean Peninsula, which has remained a vexing problem for current and past US administrations and poses an existential threat to millions of people on the Korean Peninsula, in Northeast Asia and the United States, and around the world.

For the last 30 years, the United States has tried to force North Korea to unilaterally denuclearize. While there have been some agreements, these eventually collapsed, and over time both sides increasingly hardened their position. The more the United States engaged in a coercive diplomacy leveraging military shows of force, economic sanctions, and diplomatic isolation, the more North Korea pursued economic self-reliance and nuclear weapons development. Despite being one of the most isolated, pressured, and sanctioned countries in the world, North Korea now has more nuclear weapons than ever, and its intercontinental ballistic missiles may have the capability to strike anywhere on the US mainland.¹

The United States and North Korea came dangerously close to military action in 2017,² when US President Donald Trump threatened to “totally destroy North Korea”³ and Pyongyang responded that its “rocket” would inevitably “visit” the US mainland.⁴ Tensions receded in 2018 after the conclusion of confidence-building agreements between North Korea and South Korea (Republic of Korea/ROK) and between the United States and North Korea. In the Panmunjom Declaration of April 2018, the two Koreas called for a peace agreement in talks with the United States and potentially China.⁵ A couple of months later, in June 2018, Washington and Pyongyang adopted the Singapore



Declaration, in which they committed to establish “new U.S.-DPRK relations” based on “peace and prosperity.”⁶ Those declarations also included a commitment to work toward the “denuclearization of the Korean Peninsula.”

However, Trump maintained maximum pressure and demanded at the Hanoi Summit of February 2019 that North Korea fully dismantle its nuclear weapons program, including chemical and biological weapons and ballistic missiles, which North Korea rejected.⁷ US intelligence had warned for years that North Korea was unlikely to denuclearize, as it saw its nuclear weapons as a “ticket to survival.”⁸ In January 2020, Kim Jong Un gave up on talks, making it clear he didn't see sanctions

In April 2018, South Korean President Moon Jae-in and North Korean leader Kim Jong Un met at Panmunjom and called for a peace agreement. Credit: VOP

relief as sufficient and declaring that his country “will steadily develop indispensable and prerequisite strategic weapons for national security until the US rolls back its hostile policy and a lasting and durable peace mechanism is in place.”⁹ Without a resolution, the risk of a renewed open conflict on the Korean Peninsula remains high.

This crisis is a direct result of the unresolved Korean War, which was halted only by a fragile armistice 67 years ago and is the root cause of tensions and hostilities on the Korean Peninsula. While the consequences of this long-delayed peace unfold, most clearly in the nuclear crises that inflame US–North Korean relations, the ongoing state of war exacerbates human suffering through the continued division, displacement, and deprivation of people in the region. Formally ending the Korean War with a peace agreement would improve the security of all sides and help create better conditions for denuclearization. A peace agreement would also positively impact human rights and inter-Korean relations, as well as allow the reunion of tens of thousands of families that have remained separated for three generations and whose time is running out.

For all of these reasons, Korea Peace Now! Women Mobilizing to End the War, a global coalition of women’s peace groups, is calling for an official end to the Korean War with the signing of a peace agreement and women’s inclusion in the peace process. The inclusion of women and civil society groups in peace processes, in particular, has been shown to improve outcomes¹⁰ and is mandated by international law and national law in the United States, South Korea, and dozens of other countries.¹¹ However, thus far, very few women have been involved in official talks on the resolution of the security crisis in Korea. Furthermore, our goals include the tangible demilitarization of the Korean Peninsula and redefining security away from militarism and war and toward a feminist understanding that centers human needs and ecological sustainability.

Few reports have focused specifically on a peace agreement as the main mechanism to resolve the security crisis on the Korean Peninsula.¹² Most reports attempt to resolve the nuclear dispute without first ending the war that fuels it. Those that address a peace agreement at all often raise concerns about its possible impact on denuclearization, human rights issues, or the future of the US–ROK alliance.¹³ In the United States, there are still calls to focus on what would effectively be a North Korean surrender: forcing the unilateral disarmament of the country through pressure.¹⁴ Decades of failure in the pursuit of this goal have led to growing recognition of its limits and risks, including the threat of renewed conflict, nuclear proliferation, and the ongoing human costs of war.¹⁵ Alternatively, diplomacy-oriented proposals focus on phased trust-building and threat-reduction processes to address the insecurities at the root of the crisis.¹⁶ The current deadlock and reversal of gains following the 2018 diplomatic break-

through highlights how vulnerable these multi-stage processes remain.

This report argues for a new approach that prioritizes a final settlement of the Korean War at the beginning of any threat-reduction process.¹⁷ Unlike most US policy proposals that condition peace on North Korea’s denuclearization first, or in a parallel process, this report calls for the immediate conclusion of a peace agreement that ends once and for all any outstanding wartime claims of the right to use force.

The chapters that follow seek to address any uncertainties regarding a peace-first approach. Chapter I outlines the unsustainability of the status quo approach and details the consequences of the unended Korean War in terms of its insecurity, growing militarism, and human costs. It also makes the case for a peace agreement, provides a technical overview of the various other instruments for peace, and explores the possible parties to a peace agreement. Chapters II to IV examine the implications that a peace agreement would have on top US priorities, namely the nuclear dispute, the human rights situation, and the US–ROK alliance. Chapter V relays women’s historic efforts for peace in Korea and argues for the inclusion of women in a peace process to end the Korean War. The report concludes with recommendations of principles for a peace agreement.

Additionally, this report includes external contributions from independent authors whose expertise on human rights, nuclear weapons, the US–ROK alliance, and the costs of war furthers the discussion of how a peace agreement can resolve the security crisis on the Korean Peninsula. While there is a strong consensus among the authors that the current approach to North Korea policy is unsustainable and impractical, their emphasis on how best to achieve a peaceful resolution may differ. Their contributions nevertheless demonstrate a growing recognition of the need for peace in US–North Korea policy going forward. Each author’s views do not represent the position of Korea Peace Now! and this report does not necessarily represent each author’s comprehensive position.

Because of the urgent need to advance the ongoing debate on US policy toward North Korea, we focused this report specifically on a peace agreement because we believe it is the most viable and effective framework for resolving the security crisis. We do not claim to settle the entire conflict but aim to build upon the already strong body of research regarding the different possible models for peace on the Korean Peninsula. We recognize that a peace agreement is just the first step on the long road to our ultimate vision of a lasting peace, which would entail reversing the militarization resulting from seven decades of hostile relations and replacing the Cold War structure with a regional peace and cooperation framework. It is our hope that this report contributes to the tireless efforts of all those who boldly refuse to accept the status quo and envision a future free from war, suffering, and nuclear weapons.

Why the Armistice Should Be Replaced with a Peace Agreement

The unresolved state of the Korean War poses daunting security risks, fuels increasing militarization, and carries major political and economic costs for people living on the Korean Peninsula and in the United States. This chapter lays out the high stakes of the ongoing war and why the Armistice agreement must be replaced with a binding peace agreement. It explains what a peace agreement is compared to other types of agreements and why it is the best way to resolve the security crisis on the Korean Peninsula. And it lays out the concrete steps toward a peace agreement, why the United States and the two Koreas are the most critical parties to a peace agreement, and how to make the peace agreement binding.

BACKGROUND: THE KOREAN WAR

The unresolved Korean War serves as the historical backdrop to the escalating cycle of tensions in reaction to North Korea's weapons program. Korea's independence from Japan's colonial rule (1910–1945) at the end of World War II led to the division of the Peninsula by the United States and the Soviet Union into separate southern and northern occupational zones, respectively. What began as a period of liberation for Koreans became an international conflict between Cold War blocs resulting in the outbreak of the Korean War in 1950, with the intervention of the United States on the side of South Korea, and China on the side of North Korea. The fighting resulted in more than 4 million casualties, and millions of families have been torn apart by the continued division of the Korean Peninsula.¹⁸ The United States, South Korea, and North Korea technically remain in a state of war, as fighting ended in a stalemate, with an armistice rather than a peace agreement.¹⁹ (See the “Parties to a Peace Agreement” section.)

Nearly seven decades later, North and South Korea remain separated by the most heavily militarized border in the world, with the armed forces of both sides ready and primed to engage in combat at a moment's

notice. The core tensions at play today are not so much between the two Koreas as they are between the North and the South's ally, the United States, which stations around 28,500 soldiers in South Korea. Although the two Koreas have at various times called for peaceful reunification and concluded numerous reconciliation agreements,²⁰ the escalating nuclear crisis between North Korea and the United States has become the greatest obstacle to peace.²¹

IMPROVING SECURITY AND HALTING MILITARISM

The irony of the unresolved Korean War is that the Armistice is frequently credited with keeping the peace. A US-ROK Joint Communiqué in October 2018 stated that the “United Nations Command, as the keeper of the Armistice, has helped successfully maintain peace and security on the Korean Peninsula over the past 65 years.”²² By the same logic, opponents of a peace agreement have framed peace as an invitation for war, a North Korean ploy to get the United States and South Korea to lower their guard.²³ These claims obfuscate the actual balance of power on the Peninsula today and gloss over the mutual benefits that a peace agreement



US bombers destroy supply warehouses and dock facilities in Wonsan, North Korea, in 1951. The Korean War devastated the Korean Peninsula, resulting in more than 4 million casualties.
Credit: USAF

would foster, including much-needed military de-escalation and trust-building.

In the absence of diplomatic relations, the Korean War maintains a low-trust, low-communication environment with few safeguards against escalation. This has needlessly raised the risk of an intentional or accidental clash,²⁴ which would be particularly difficult to contain. Nowhere else on earth are opposing militaries so primed and trained to engage in large-scale offensives or counter-offensives on momentary notice.

Koreans would be first in the line of fire and suffer the gravest human losses if combat resumed. In the period of 1950 to 1953, there were over 3 million Korean casualties – an estimated 2 million of which were civilians – and every major city in the North was reduced to rubble.²⁵ That represented a staggering 10 percent of Korea’s population at the time.²⁶ If war broke out today, it is estimated that as many as 300,000 people could die in the first days of conventional fighting, and that number could swell to millions in the event of a nuclear war.²⁷

At the heart of the security crisis and increasing militarization of the Korean Peninsula is the ongoing state of war. Today, most of South Korea’s defense budget – the tenth highest in the world – remains tailored to the eventuality of combat with the North and now grows at a rate of about 7 percent per year.²⁸ North Korea’s increasing militarization is evident in its rapid nuclear development, which it claims is necessary to protect itself from the United States. North Korea is estimated to possess 30 to 40 nuclear warheads,²⁹ and its intercontinental ballistic

missiles may have the capability to strike anywhere in the United States. These developments have in turn prompted South Korea to develop a “Kill Chain” preemptive strike doctrine and a “Korean Massive Punishment and Retaliation” counterstrike doctrine, including “decapitation strikes” on the North Korean leadership.³⁰

The United States, the biggest military spender in the world,³¹ extends its nuclear umbrella to the Peninsula and maintains about 28,500 troops in South Korea. It also participates in several large-scale joint military exercises with the South, some of which involve nuclear-capable bombers and aircraft.³² These exercises have been a particular source of tension with North Korea, which considers them offensive rehearsals for invasion, despite Washington’s claims to the contrary.³³

The militarization of the Korean Peninsula has ripple effects throughout the region. In the context of rising US–China tensions, China has been developing a panoply of military capabilities, sometimes referred to as A2/AD (anti-access/area denial), designed to neutralize US forces in the vicinity of the Chinese mainland, including capabilities with the range to affect US operations around the Korean Peninsula and Japan.³⁴

The two Koreas, the United States, and China have capitalized on their military development through the exportation of arms beyond the region. According to the Stockholm International Peace Research Institute, the United States was the largest arms exporter in the world in the 2015–2019 period (36% of global total), China the fifth (5.5%), and South Korea the tenth (2.1%).³⁵ Arms

trade from North Korea has come under intense international scrutiny as it is conducted covertly and with even less transparency or regulatory supervision than the other countries.³⁶ With nearly all trade banned under UN and US sanctions, North Korea has attempted to recoup its losses through smuggling and illicit activities.³⁷

The militarization will continue to run unchecked unless and until the belligerents muster the political will to end the war with a peace agreement and work to reverse the militarization in a peace regime that establishes cooperative security, for instance through arms control, military confidence-building, and phased disarmament.

ENDING THE HUMAN COSTS OF WAR

Beyond the risk of nuclear confrontation, however, the human costs of the unresolved Korean War are ongoing and immediate. The continued division of the Korean people prevents the reunion of long-separated families. The encroaching militarization of the region has dispossessed local communities and threatens to cause irreparable harm to the environment. Sanctions, too, continue to have a detrimental impact on civilians' livelihoods, crippling North Korea's healthcare system and causing delays in the delivery of life-saving humanitarian aid.³⁸

The economic consequences of the war have been particularly crushing in the North. Practically razed to the ground by US carpet-bombing in 1950–1953, it has rebuilt itself aiming for a model of economic self-reliance.³⁹ The collapse of the Soviet Union in 1991 further isolated the North, contributing to a catastrophic economic crisis and famine. While North Korea managed over time to adjust and somewhat stabilize its economy, it is today boxed in by the US-led “maximum pressure” campaign, which has resulted in a quasi-total embargo.⁴⁰ Nearly all trade, investment, and financial transactions involving North Korea are banned under penalty of exclusion from the dollar-based globalized economy.

The perpetual state of war and fear of destabilization have given rise to national security apparatuses and a culture that have curtailed individual freedoms in both North and South Korea. North Korea's political system is rigid and hierarchical to the point of resembling a military chain of command. There is little to no space to voice dissent or organize independently from the state. (See Chapter III, “The Implications of a Peace Agreement for Human Rights.”) North Koreans who try to leave the country without authorization are also heavily punished, as deserters would be in a military context. In South Korea, society underwent violent political repression from the country's founding and during the military dictatorship era. While democratization in 1987 greatly expanded personal freedoms, the war continues to distort political life. Allegations of North Korean sympathy are used to suppress a wide variety of views, as exemplified by excessive interpretations of the dictatorship-era National Security Act, electoral interference by the National Intelligence Service in 2012, and the dissolution of the

third-largest party in South Korea in 2014.⁴¹

An agreement between the warring parties would set the foundation for a durable peace that can succeed where pressure has failed for decades. The endless war has so deteriorated mutual trust that both sides to the standoff remain too suspicious of the other to lower their weapons. Under these circumstances, negotiations on complex issues – from denuclearization to human rights – are tense, inflexible, and fruitless, if they happen at all. A comprehensive peace agreement, however, can provide a foundation for the negotiation of such critical issues of interest to the parties and relieve the continued human costs of war.

What Is a Peace Agreement?

This report uses the term “peace agreement” to mean an international legal instrument that solemnly, bindingly, and permanently ends the state of war.⁴² This is different from an armistice, which merely imposes a ceasefire but does not end the state of war.⁴³ It is also different from a peace regime, which refers to the possibility of future security arrangements ensuring that peace remains lasting and stable.⁴⁴

If war broke out today, it is estimated that as many as 300,000 people could die in the first days of conventional fighting, and that number could swell to millions in the event of a nuclear war.

In recent years, all sides have agreed to the end goal of a “lasting and stable peace regime.”⁴⁵ Many instruments have been proposed to advance this goal, from end-of-war declarations to nonaggression pacts to normalization agreements. Of all options, a binding and final peace agreement has the most chance for success.

A peace agreement would signify that the parties recognize once and for all, with no ambiguity, that any wartime rights to use force have ended.⁴⁶ It would also be the clearest available expression of the parties' sincerity in building toward a fair, lasting, and stable peace regime. The two Koreas have together called for talks with the United States, and optionally China, to replace the Armistice with a peace agreement.⁴⁷ Further delay in this long-overdue step will continue to undermine trust and fuel military tensions.

Under international law, states are meant to remain by default in a state of peace and refrain from using force to solve conflicts. A state of war is meant to be a rare exception in limited circumstances.⁴⁸ During those limited circumstances, the rules governing the use of deadly force are more permissive than they are during peacetime.⁴⁹

But the Korean War is an oddity in that the parties have yet to finally settle it, even though large-scale active combat ended 67 years ago.⁵⁰ As such, a peace agreement alone will not be sufficient to resolve the decades of tensions or all the areas of dispute, which is a process that requires political will. But a peace agreement would constitute a binding recognition that wartime rights to use force have ended. This would not only demonstrate a sincere will and commitment to a peaceful resolution, but also create more will and political momentum for the conclusion of a lasting and stable peace regime.

For an agreement to be binding under international law, the key element is the parties' intent that it have binding force.⁵¹ For that agreement to qualify as a peace agreement, the parties must pledge to abide by peacetime rules governing the use of force or otherwise recognize once and for all that wartime rights to use force have ended.⁵² The agreement must also articulate finality by assuring one another that they consider the state of war to be over and that future relations will be nonhostile.⁵³

Finally, the agreement must be fair from the perspective of all parties. Insisting that one side lower their guns first is not an offer of peace, but a demand of surrender. Unless all sides feel that they were given their due and that the agreement serves their interests, there will either be no agreement or it will only be a matter of time until conflict arises again.⁵⁴

The chart below outlines the comparative strengths and weaknesses of other mechanisms that fall short of a binding peace agreement.

Unless the parties clearly intend a normalization agreement to be a binding and final settlement of the war, it may not be sufficient to resolve the conflict in Korea, particularly if other hostile postures continue. But it could be an important political step that builds momentum for a final and binding end of the war and a foundation for a peace regime.

Parties to a Peace Agreement

There is a long list of actors who engaged in the Korean War, including the two Koreas, the United States, the other UN Members that intervened with combat forces, and China through the "Chinese People's Volunteer Army." A peace agreement, however, need not include all belligerents. In the Korean context, the ability of a peace agreement to meaningfully improve security

End-of-War Declaration

Also referred to as a "peace declaration," an end-of-war declaration is generally framed in the Korean context as a nonbinding political declaration that is not a peace agreement. In the Panmunjom Declaration, the two Koreas called for three distinct items: an end-of-war declaration, a peace agreement, and a peace regime.⁵⁵ More recently, South Korean President Moon Jae-in renewed his call for an end-of-war declaration at the UN General Assembly on September 23, 2020.⁵⁶

An end-of-war declaration is not a legal term of art. It is only binding under international law if the parties intend it to be binding.⁵⁷

It also only legally terminates the state of war if the parties indicate that this is what they intend.⁵⁸ Since an end-of-war declaration does not necessarily legally end a state of war, there are limits to such an agreement's ability to provide the parties with sufficient security assurances to build trust and realize a lasting and stable peace regime.⁵⁹

But an end-of-war declaration, even if nonbinding, can still serve as important evidence that the parties consider the war ended, especially if paired with other steps like the establishment of diplomatic relations.⁶⁰ Aside from any legal implications, an end-of-war declaration would carry great political momentum toward a binding and durable peace agreement.⁶¹

Nonaggression Agreement

A nonaggression agreement is generally understood as an agreement in which the parties renounce hostile acts against each other. Agreements purely focused on nonaggression have become rare today, given the advent of the United Nations Charter and the development of the law of armed conflict. The Charter already requires all members to refrain from use of force and to settle disputes peacefully.⁶² It is nevertheless not uncommon to include nonaggression clauses in bilateral agreements.⁶³

The two Koreas have already pledged nonaggression, beyond the Armistice requirement of a "complete cessation of all hostilities

by all armed forces under [the parties'] control."⁶⁴ The Inter-Korean Basic Agreement of 1991, for instance, requires both sides not to "use force" or conduct "armed aggression" against each other.⁶⁵

There is less clarity between the United States and North Korea. The United States did state in the Six Party Joint Statement of September 19, 2005, that it had "no intention to attack or invade the DPRK with nuclear or conventional weapons," but that could nevertheless be interpreted more as a statement of intent at the time than a commitment to nonaggression.⁶⁶ The United States committed in the Singapore Declaration of 2018 to provide "security guarantees" to the DPRK.⁶⁷ After the collapse of the Hanoi summit of 2019, North Korean Foreign Minister Ri

depends first and foremost on the participation of the United States and the two Koreas. This section focuses on the model of a single multilateral peace agreement for ease of reference, but the same conclusions are applicable to a peace concluded through a series of bilateral peace agreements.⁷⁶

The participation of other members of the United Nations Command (“UNC”) intervention force or of China is not legally necessary and would only have a limited practical impact, as most relations in these cases have already been normalized or pose a comparatively lower security risk. The two Koreas and the United States may nevertheless decide to include other parties if they believe it is helpful to reach a sustainable peace agreement.⁷⁷

PARTICIPATION OF THE UNITED STATES

It is key that the United States participate in the peace process.⁷⁸ The United States remains one of the parties most susceptible to be engaged in use of force in Korea, given its massive military presence, its regular participation in joint military exercises with the South, and the fact that it would have operational control over South Korean armed forces if combat resumed. It is especially important for peace and security that the United States unambiguously recognize that wartime rights to use force have ended and acknowledge that the Korean War–

era UN Security Council resolutions cannot be cited as authorization to use force today.⁷⁹

Calls for US participation in a peace agreement have often been dodged by controversies over whether the United States is in a state of war with North Korea in the first place. President Harry Truman famously described the intervention in Korea as a mere “police action,” arguing that intervention was justified under the UN Participation Act and did not require a separate declaration of war by Congress.⁸⁰ Some commentators have argued more generally that armed intervention on the basis of a Security Council authorization does not trigger a state of war, insofar as the intervening States would be agents of the UN. The United States has entertained that interpretation in various ways, by leading operations through an organ it called “United Nations Command” (UNC) under the UN flag. It pointed to UNSC Resolution 84, which had recommended that UN Members deciding to assist South Korea make their forces “available to a unified command under the United States of America” and had authorized use of the UN flag.

Neither of these arguments disproves that the United States is at war with North Korea. Under international law, a state of war may arise explicitly through a declaration of war or de facto through engagement in armed conflict,⁸¹ and thus the absence of a US declaration of war against North Korea is irrelevant.⁸² The central flaw

Yong-ho stated that “security guarantees” are “more important” to North Korea than sanctions relief.⁶⁸

Since a nonaggression agreement does not necessarily terminate the state of war – again, this occurs only when the parties intend their agreement to be a binding, final settlement – there are limits to the certainty and security it can ensure between the parties. There have been armed clashes between the two Koreas even after the Basic Agreement.⁶⁹

However, like an end-of-war declaration, a nonaggression agreement can still help the parties signal to one another an intent to refrain from hostilities and serve as an important political step for the parties on the path to a final peace settlement. The Inter-Korean Military Agreement of 2018, for instance,

renewed the inter-Korean nonaggression pledge and allowed for unprecedented military confidence-building measures.⁷⁰ Unfortunately, the cooperation birthed by the Agreement gradually broke down, as security talks between the United States and the North continued to stall.

Normalization Agreement

A normalization agreement is generally understood as an agreement to establish or restore formal diplomatic relations and may also include a reduction of obstacles to trade. Almost all UN Members that fought North Korea in the 1950s have by now established formal diplomatic relations with Pyongyang, though any economic interaction that followed is now blocked by

Security Council or unilateral sanctions.

The United States and North Korea made detailed promises to normalize relations, but these never fully came to fruition. In the Agreed Framework of 1994, the two countries agreed to “move towards full normalization of political and economic relations,” which was to include the reduction of “barriers to trade and investment,” the opening of liaison offices, and an eventual upgrade of relations to the Ambassadorial level. In the Singapore Declaration of June 12, 2018, the United States and North Korea also committed to “establish new U.S.-DPRK relations in accordance with the desire of the peoples of the two countries for peace and prosperity.”⁷¹

States have the discretionary right to establish, maintain,

or end diplomatic ties with one another, and are thus free to set whatever political conditions they wish for normalization.⁷² Whether those conditions will be accepted by the other state is another question. Conditions relating to sovereign matters of the other state can be particularly sensitive.⁷³ In the end, diplomatic ties can be sustained only if both sides are convinced that those ties are in their interests.

Peace and normalization do not necessarily go hand in hand. For example, relations were not normalized between the United States and Vietnam for decades after peace was concluded.⁷⁴ But normalization can serve as a strong signal between the parties that they intend to build peaceful relations and may demonstrate that they tacitly recognize a state of peace.⁷⁵



From top: U.S. armed forces test a Minuteman III intercontinental ballistic missile on May 3, 2017, at Vandenberg Air Force Base, California. Credit: U.S. Air Force photo/2nd Lt. William Collette; North Korean armed forces test a Hwasong-14 intercontinental ballistic missile on July 20, 2017 in Chagang province, North Korea. Credit: KCNA

in the argument that the United States was a UN agent rather than a belligerent is that the UN had, in practice, no control over the UNC or its affiliated troops. The United States made all combat decisions and reported them to the UN only after the fact.⁸³ The UNC went beyond the Security Council mandate of repelling the North Korean attack of June 1950 by crossing the border northward in the name of restoring peace and security, invading the North, and triggering a Chinese counter-intervention. Adding in the devastating human impact, it is clear that under any definition, the Korean War was a war.

The practical purpose of a peace agreement is to demonstrate that all parties are serious about taking the risk of renewed hostilities off the table and laying the foundation for a peace regime. The Security Council resolutions from 1950 were not intended as a blank check to maintain an endless war in the name of peace. US participation is not a question of legal obstacles but of political will.⁸⁴

PARTICIPATION OF THE TWO KOREAS

The two Koreas are essential participants to the peace process, but the unique circumstances of their relationship to one another require special attention, particularly as they do not consider their relationship as one “between States” but as “a special interim relationship stemming from the process towards reunification.”⁸⁵ Several commentators

have interpreted this to mean that “the principal obstacle to a peace agreement has been the refusal of both Koreas to recognize the legitimacy of the other.”⁸⁶ However, this is a misconception not based in reality.

It is possible for belligerents who do not fully recognize each other to conclude peace agreements,⁸⁷ and the two Koreas have amply reached the required level of mutual recognition. After all, they have concluded numerous inter-Korean agreements and have established mechanisms to recognize them as binding (see Annex I). The two Koreas have also together explicitly called for a peace agreement.⁸⁸ In any case, they are recognized as fully sovereign separate states by the rest of the world, most clearly evidenced by their respective accession to the UN Charter in 1991.⁸⁹

OTHER POTENTIAL PARTICIPANTS

A peace agreement can end the state of war as between the United States and North Korea, and as between the two Koreas, without requiring the participation of other combatant members of the UNC intervention force or of China. Including the latter could improve the sustainability of a peace agreement but will have to be weighed against the potentially added complexity of increasing the number of negotiation parties.

Some of the other combatant members of the UNC intervention force may still qualify as belligerents to the Korean War. They each entered a state of war with North Korea when they engaged in armed conflict with it in 1950.⁹⁰ That said, they have long normalized diplomatic relations with North Korea, except for France.⁹¹ These normalizations are two decades old or more and indicate that their role in the ongoing security crisis and state of war is minimal to nonexistent and thus are not essential parties to a peace agreement.⁹²

Determining whether China is a continued belligerent and necessary party to the agreement is complicated by its claim during the Korean War that it was only sending “volunteers” and by the fact that it normalized relations with the United States and South Korea decades ago. Insofar as the Chinese People’s Volunteers ultimately answered to Beijing and also structured their relations with the UNC based on the law of war, there is a strong case for arguing that China was a belligerent at least pre-normalization.

In any case, the Panmunjom Declaration explicitly cites China as a possible participant to peace talks.⁹³ Indeed, there is precedent for countries with normalized relations to be party to the final settlement of a war, as exemplified by the Final Settlement of 1990 between the World War II allies and the (then-)two Germanies, and by Russia’s and Japan’s continued pursuit of a final settlement regarding World War II.⁹⁴ China’s proximity to the Korean Peninsula, its military power, and its continuing alliance with North Korea are important factors to consider in its relevance to a peace agreement that is key to regional peace and security.

The Implications of a Peace Agreement for Denuclearization

The prospect of a peace agreement with North Korea raises critical questions about its implications for international efforts to denuclearize the country, which is estimated to possess enough fissile material to build between 30 and 60 nuclear weapons.⁹⁵ This chapter addresses some of the most common questions regarding the legal, political, and practical considerations of a peace agreement in relation to the nuclear conflict in three parts: First, it provides a brief contextual history of the present-day nuclear standoff and its development throughout the Korean War; second, it addresses the legal distinctiveness of the issue of peace from the dispute on nuclear weapons to demonstrate how a peace agreement would not legally imply recognition of North Korea as a “nuclear weapons state”; and, finally, it concludes that ending the war with a peace agreement may create the conditions for more effective engagement on denuclearization by curbing the security risks fueling Pyongyang’s pursuit of nuclear weapons.

Background: The Nuclear Dimension of the Korean War

The specter of nuclear war has loomed over the Korean Peninsula since the outbreak of the Korean War. From as early as July 1950, high-ranking US officials, including Central Intelligence Agency Director Roscoe Hillenkoetter and General Douglas MacArthur, have pondered and recommended the use of atomic weapons in Korea.⁹⁶ After China’s intervention on behalf of North Korea in November 1950, President Truman publicly confirmed that “there has always been active consideration” of their use.⁹⁷ Nuclear weapons figured seriously in US military planning throughout the Korean War, as evidenced by Truman’s deployment of nuclear-configured aircraft to the region and the authority granted to the UNC Commander-in-Chief to use nuclear weapons “in retaliation for a major air attack originating from beyond the Korean peninsula.”⁹⁸

Despite the signing of the Armistice in 1953, the US nuclear presence in the region escalated as the Cold War

advanced. In a repudiation of Paragraph 13(d) of the Armistice, the United States introduced tactical nuclear weapons to South Korea in January 1958.⁹⁹ For the next three decades, the United States deployed hundreds more nuclear weapons to the South, maintaining as many as 950 nuclear warheads at one point.¹⁰⁰

NORTH KOREA’S NUCLEAR DEVELOPMENT

North Korea’s nuclear development began in the late 1950s through its pursuit of nuclear energy with the assistance of the Soviet Union.¹⁰¹ This was common among developing states at the time, including South Korea, which received civil nuclear energy assistance through the US “Atoms for Peace” campaign. By the end of the Cold War, both Koreas had developed their own civilian nuclear programs, and both eventually joined the Nuclear Non-proliferation Treaty (NPT). Created in 1968, the NPT is a multilateral treaty that

prohibits non-nuclear armed states from acquiring nuclear weapons. In exchange, nuclear-armed states pledge not to attack non-nuclear armed states, to provide civilian nuclear assistance, and to ultimately achieve global nuclear disarmament.

Before joining the NPT in 1975, South Korea had pursued a clandestine nuclear weapons program under President Park Chung-hee.¹⁰² While the United States successfully prevented Park's efforts to nuclearize, the US nuclear umbrella continues to extend over South Korea as part of the US-ROK alliance.

North Korea began to pursue sensitive nuclear technologies during the 1980s with the construction of an experimental 5-megawatt reactor, which, in addition to generating electrical power, would have been capable of producing weapons-grade plutonium. In 1985, North Korea joined the NPT as part of a condition to secure Soviet assistance on the construction of a light-water reactor, ostensibly to meet the country's energy demands and "to realize international cooperation in the nuclear power industry sector, remove nuclear threats toward us, and make the Korean peninsula a non-nuclear zone."¹⁰³

Concluding a peace agreement would not undermine the legal positions of the parties in the nuclear dispute, and peace may be politically more conducive to international peace and security than delaying or denying it in an unlikely bid to disarm one side.

However, in what may have reflected the changing regional security dynamics following the collapse of the Soviet Union in 1991, North Korea delayed concluding a key safeguards agreement as part of its commitment to the NPT. In North Korea's account, the delay was in protest of US violations of its international obligations as a nuclear-armed state and the continuation of the Team Spirit joint US-ROK military exercise. In response, the United States declared that it "will not pose a nuclear threat on North Korea."¹⁰⁴ South Korea followed with a commitment not to produce nuclear weapons and temporarily suspended the Team Spirit exercise.¹⁰⁵ On January 20, 1992, the two Koreas adopted the South-North Joint Declaration on the Denuclearization of the Korean Peninsula.¹⁰⁶ Shortly after, North Korea held dialogue with the United States and finally implemented its safeguard agreement with the International Atomic Energy Agency (IAEA).¹⁰⁷

These commitments were short-lived amid growing international concerns that North Korea may have been developing an illicit nuclear weapons program. In March 1993, North Korea announced its intention to withdraw from the NPT over objections to the US-led push for IAEA special inspections of suspected military facilities and the resumption of the Team Spirit joint military exercise, which North Korea regarded as attempts to spy on, disarm, and infringe upon the sovereignty of the state.¹⁰⁸

In a major breakthrough spurred by a meeting between former US President Jimmy Carter and North Korean leader Kim Il Sung, a series of bilateral talks culminated with the US-North Korea Agreed Framework on October 21, 1994. North Korea agreed to dismantle its graphite-moderated reactors in exchange for proliferation-resistant light-water reactors and alternative energy assistance from the United States. Importantly, the deal aspired to go beyond a nonproliferation agreement as both sides also pledged to normalize political and economic relations, albeit conditioned on North Korea's compliance with the IAEA.¹⁰⁹ The Agreed Framework lasted for nearly a decade, during which time North Korea stopped producing plutonium and allowed inspections of key facilities, preventing the development of as many as 100 nuclear weapons, in the analysis of several experts.¹¹⁰

However, the Agreed Framework did not survive the political changeover to a new US administration under President George W. Bush, whose approach toward North Korea reflected a hardline shift from the Clinton administration's strategy of engagement. President Bush, who condemned North Korea as part of an "axis of evil" in his 2002 State of the Union address,¹¹¹ suspended negotiations for the next two years.¹¹² Leaked versions of the classified Nuclear Posture Review in 2002 revealed that the Bush administration had listed North Korea as one of seven countries that could be targets of a US nuclear strike.¹¹³ It further came to light that senior officials, including Vice President Dick Cheney and Undersecretary of State for Arms Control and International Security John Bolton advocated for a policy of regime change.¹¹⁴ Under mounting distrust, North Korea ultimately withdrew from the NPT in 2003, precipitating the first of many nuclear crises between the two countries.

North Korea's resolve to acquire what it presents as "a nuclear deterrent capable of containing the US nuclear threat and guaranteeing [the country's] long-term security" is symptomatic of the asymmetry of power that has long defined US-North Korea relations in the context of the ongoing Korean War. North Korea's early criticisms of the NPT also reflected a core tension among non-nuclear armed states that have challenged the treaty's enshrinement of a global nuclear regime in its privileging of so-called nuclear powers on the arbitrary basis of having tested nuclear weapons before 1970.¹¹⁵ While the NPT serves as an important arms control mecha-



nism to prevent the global spread of nuclear weapons, it has also been used to assert the legitimacy of the nuclear monopoly of a small number of states that have formalized the use of nuclear weapons in their national security doctrines and continue to modernize their arsenals.

The world today remains locked in a strategic imbalance, as nuclear-armed states that are party to the NPT have yet to disarm, certain non-nuclear armed states place their security under the nuclear umbrella of nuclear-armed states, and certain nuclear-armed states never joined the NPT at all. While almost all non-nuclear armed states have remained party to the NPT, many have sought to correct its double standard with a new instrument, the Treaty on the Prohibition of Nuclear Weapons (TPNW). This treaty bans outright and without exception the possession of nuclear weapons and the practice of relying on nuclear umbrellas.

From the Clinton administration onward, the United States has unevenly pursued the denuclearization of North Korea through a series of diplomatic and pressure-based strategies. The UN Security Council, under US leadership and with veto-wielding members that happen to be the NPT's nuclear-weapon states, has taken a sanctions-based approach to discourage, obstruct, and punish specific countries from acquiring nuclear weapons: today North Korea and Iran, while other known nuclear-armed states outside of the NPT – Israel, India, and Pakistan – have not been subject to those sanctions. Sanctions against North Korea were

originally designed to be “smart sanctions,” blocking only military or luxury goods transfers, but evolved over time into quasi-comprehensive sanctions with significant, “unintended” humanitarian consequences on the population.¹¹⁶

The efforts of both US Democratic and Republican administrations have, over the course of three decades, not only failed to achieve their intended outcome but also prolonged the irresolution of the Korean War. US policy has overwhelmingly conditioned dialogue with North Korea, as well as the process of peacemaking, on the prospect of North Korean disarmament. Washington's conventionally preferred sequencing, which may be summarized as “denuclearization first, peace later,” narrows the political space for an end to the conflict – the Korean War – at the root of the crisis.

The reverse sequencing of “peace first, denuclearization later” offers a viable pathway to meet the security interests of all parties. The following section addresses the legal and practical applications of such an approach.

Application: Peace as Nuclear De-escalation

The issue of the Korean War prefigures the now deadlocked dispute between North Korea and the UN Security Council regarding the legality of the nuclear weapons program. Contrary to the concerns of many commentators, concluding a peace agreement would not undermine the

South and North Korean army officers certify to each other the destruction of guard posts in the Demilitarized Zone in Cheokwon, Gangwon province, implementing a confidence-building measure of the Inter-Korean Military Agreement of September 19, 2018. December 12, 2018. Credit: ROK National Defense Ministry / 국방부



Former US President Jimmy Carter meets with North Korean leader Kim Il Sung to de-escalate tensions, paving the way for the Clinton administration to conclude the Agreed Framework four months later. June 17, 1994. Credit: Korean Central News Agency/Korea News Service via AP, File

legal positions of the parties in the nuclear dispute, and peace may be politically more conducive to international peace and security than delaying or denying it in an unlikely bid to disarm one side.

THE SEPARATE LEGAL REGIMES GOVERNING PEACE AND DENUCLEARIZATION

Many commentators fear that a peace agreement would amount to a tacit recognition of North Korea as a nuclear weapons state, but this is based on a misunderstanding of a term of art from the NPT. The NPT does designate certain parties as “nuclear weapons states,” but these are subject to a legally binding obligation to eliminate their nuclear weapons through the Treaty’s article VI requirement to negotiate in good faith “effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament.”¹¹⁷ The NPT nevertheless defines “nuclear-weapons state” for its purposes as “one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967.” North Korea conducted its first nuclear weapons test in 2006 and accordingly cannot claim the privileges of a “nuclear-weapons state” under the NPT. This rule cannot be changed by a peace agreement. A reform of

this provision would instead require consent from all NPT parties.

Moreover, arguments for the illegality of the North Korean nuclear weapons program do not depend on the existence of a state of war. One strand of reasoning argues that North Korea either did not lawfully withdraw from the NPT or continues to be bound by a customary version of the NPT. This would mean that its nuclear program is in continuous violation of rules for non-nuclear weapons states. Whether or not this reasoning stands, the applicability of the NPT is not in any way subject to the existence of a state of war or peace.

Another strand of reasoning holds that the North Korean nuclear weapons program violates Security Council resolutions: hence the UN Charter rules that require UN Members to respect Council decisions.¹¹⁸ This argument may at first sight appear sensitive to the conclusion of a peace agreement as the Council bases the relevant resolutions on the designation of the North Korean nuclear weapons program as a “threat to international peace and security.” This may lead to questions as to whether the program still constitutes such a threat after the conclusion of a peace agreement. That said, the UN Charter leaves it to the discretion of the Security Council to determine whether there is a threat to the peace. There are numerous examples of the Council finding such a threat

even in peacetime, as in the case of the resolutions sanctioning the Iranian nuclear program. In this sense, the resolutions sanctioning the North Korean program do not depend on the existence of a state of war.

THE POLITICAL RELATIONSHIP BETWEEN PEACE AND DENUCLEARIZATION

While peace and the nuclear dispute are legally distinct, they are politically linked. North Korea has repeatedly stated that it developed nuclear weapons to ensure its security amid the unresolved state of war.¹¹⁹ Meanwhile, the United States has consistently refused North Korean peace offers on the grounds that they did not involve denuclearization.¹²⁰ The relationship of peace and the nuclear dispute is in obvious tension, but they may be reconciled by a peace agreement that ends the state of war and enables the basic conditions for a reduction of military tensions.

Arguments to the contrary typically claim that concluding peace without prior denuclearization would not fully resorb insecurity as it would maintain an imbalance between a nuclear-armed North and a non-nuclear armed South that relies on the US nuclear umbrella. Some analysts posit that South Korea, and possibly Japan, would seek to nuclearize out of concern for US commitments to the security of its ally. In the most extreme scenario of North Korean nuclear blackmail, the argument follows that the United States may not risk a nuclear strike on American cities to protect South Korea. These concerns are, however, a present reality and reflect the contradictions inherent in nuclear deterrence theory. As evidenced in the case of Korea, the notion that nuclear weapons provide security is highly contested.¹²¹

In the wider context of global nonproliferation, it is commonly argued that concluding peace would undercut efforts to convince North Korea to denuclearize. A common refrain is that it would constitute a “reward for bad behavior,” undermining the nonproliferation regime and the authority of the Security Council. At the same time, it is evident that denuclearization efforts have continuously failed for more than a quarter century to stop the development of the North Korean nuclear program. The impact of sanctions on the civilian population may also have a counterproductive, “rally-round-the-flag” effect, as Pyongyang’s domestic messaging emphasizes US responsibility for the economic situation.¹²² This has resulted in an unresolved and increasingly dangerous crisis, an outcome that itself undermines the credibility of the nonproliferation regime and the Security Council in ensuring international peace and security.

INCLUSION OF NUCLEAR ELEMENTS IN A PEACE AGREEMENT

As was demonstrated previously, a peace agreement would not prejudice the position of the parties regard-



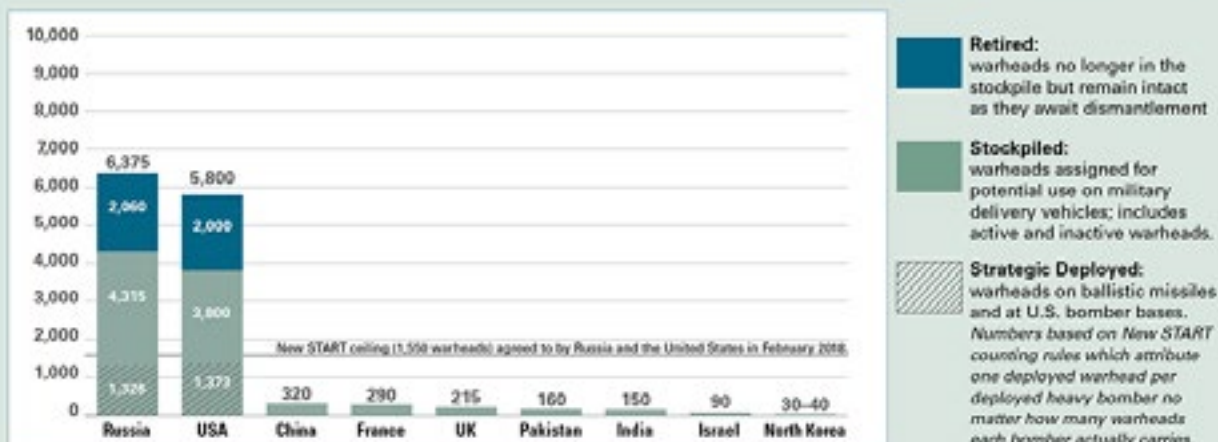
From top: North Korean Leader Kim Jong Il shakes hands with U.S. Secretary of State Madeleine Albright at the Pae Kba Harwon Guest House in Pyongyang Monday, October 23, 2000. Albright, the highest level U.S. official to visit North Korea in 50 years, met with the North Korean leader in an effort to ease tensions between the two nations. Credit: AP Photo/David Guttenfelder/POOL; President Bill Clinton meets with Special Envoy Vice Marshal Cho Myong-nok, First Vice Chairman of the National Defense Commission of North Korea, in the Oval Office, October 10, 2000. Credit: David Scull/The White House

ing the dispute on the North Korean nuclear program. A peace agreement could also improve international peace and security by including disarmament provisions, in addition to raising the bar for the use of force and establishing the basic conditions for diplomatic relations.¹²³

However, it bears emphasizing that the nuclear crisis is also predicated on the US nuclear posture in the region. At a minimum, addressing the nuclear crisis would necessitate security commitments on the part of the United States or reorienting US policy on North Korea to an arms control approach.¹²⁴ This is particularly salient in light of measures by the Trump administration to modernize US nuclear forces, which is a continua-

2020 Estimated Global Nuclear Warhead Inventories

The world's nuclear-armed states possess a combined total of nearly 13,500 nuclear warheads; more than 90% belong to Russia and the United States. Approximately 9,500 warheads are in military service, with the rest awaiting dismantlement.



Source: Hans M. Kristensen, Shannon N. Kile, Stockholm International Peace Research Institute, and the U.S. Department of State. Updated: August 2020

Arms Control
Association

tion of a \$1 trillion modernization program initiated by President Barack Obama.¹²⁵ If a peace agreement were to include an arms control agreement or commitments to denuclearize, it should address mutual security concerns and enact reciprocal actions to those ends. Negotiations should also be mindful of the legally and ethically problematic impact of the current level of sanctions on the civilian North Korean population, which appears difficult to reconcile even with the humanitarian principles protecting noncombatants in wartime.

Practically speaking, the United States, which has the second-largest nuclear arsenal in the world, is in a difficult position to compel North Korea to denuclearize. North Korea has pointed to the concept of the “denuclearization of the Korean Peninsula,” meaning that it would be ready to disarm if the United States also abandons the means of conducting nuclear strikes on the Peninsula. Since the US nuclear arsenal has a global reach, it is considered a veiled way of saying that North Korea will give up its nuclear weapons when the United States does the same. Current US nuclear doctrine makes such a prospect untenable and underscores the challenges that proponents of arms control and global nuclear disarmament face well beyond the context of Korea.

In order to achieve consensus at least on the basic benefits of a peace agreement, particularly the reduction of the risk of nuclear war, it would hence be advisable to forgo nuclear demands for now or only to include some that can be compensated with other positive incentives. One option that may be compatible with the national security calculus of all sides is to agree on an arms control mechanism to verifiably freeze the development of the North Korean nuclear program with corresponding measures. This can be achieved either in provisions included in the peace agreement or in a parallel or subsequent arms control agreement.

It must be noted that the option of an arms control agreement compensated by partial sanctions relief will be constrained by domestic US legal provisions that set conditions on relief of US unilateral sanctions. The sanctions imposed under the North Korea Sanctions and Policy Enhancement Act of 2016, for instance, can only be lifted under conditions that North Korea appears to consider an infringement upon its sovereignty, such as significant progress toward the complete dismantlement of its weapons of mass destruction programs and wide-ranging changes to its political system. These requirements do not bind Presidential authority to reform Security Council sanctions, however.

The arms control option should not obscure the fact that both the United States and North Korea have made commitments for nuclear disarmament.¹²⁶ Nuclear weapons, given their immense destructive power, threaten to have catastrophic humanitarian consequences and pose grave implications for human survival. The fairest and most desirable course of action, not just for the parties to the Korean War, but for humanity as a whole, is for all nuclear-armed states to join the Treaty on the Prohibition of Nuclear Weapons.¹²⁷

Ultimately, a peace agreement that is concluded separate from a nuclear agreement would not imperil the prospects of North Korea’s or the United States’ future disarmament. Pressure-based denuclearization efforts have been pursued at the cost of a growing risk of catastrophic nuclear war, and withholding a resolution to the Korean War has prolonged and exacerbated the security crisis. A peace agreement that ends the wartime status quo and enables the normalization of US–North Korean relations may improve, if not establish, the conditions for negotiating denuclearization.

The Implications of a Peace Agreement for Human Rights

This chapter examines some of the core concerns among human rights advocates regarding a potential peace agreement with North Korea. This includes such commonly raised questions as whether a peace agreement would “legitimize” North Korea and its human rights record or whether such an agreement should be conditioned on internal human rights reforms.¹²⁸

This chapter demonstrates that generally, and in the case of the Korean War specifically, peace and human rights are not in conflict with one another. On the contrary, they are mutually reinforcing. While a peace agreement to resolve the Korean War is not a panacea, it would improve people’s lives, sap the militarism that undergirds abuses, and create the conditions to engage more effectively on human rights. In fact, the UN Special Rapporteur on the situation of human rights in the DPRK, Tomás Ojea Quintana, acknowledged this linkage: “A declaration on peace and development in the Korean Peninsula, and a swift resolution of the armistice status, would create the atmosphere and space needed for further discussions on denuclearization, less isolation, more access, and respect for human rights.”¹²⁹

PEACE AND HUMAN RIGHTS GO HAND IN HAND

Aspirations of peace are built into the very fabric of the international human rights framework. The Universal Declaration of Human Rights states that the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”¹³⁰ The UN Charter sets forward a vision “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.”¹³¹ The very foundations of the interna-

tional human rights system were rooted in the devastating experience of World War II.¹³²

Upon this foundation, the diverse nations of the world have built a shared infrastructure for identifying the rights of every human, agreeing to protect those rights within their territories, and endeavoring to hold one another accountable. Of course, differing perspectives within this framework remain.¹³³ While certain states tend to emphasize the “first generation” rights represented in the International Covenant on Civil and Political Rights, such as freedoms of speech and political participation, other states tend to focus more on “second generation” rights ensured by the International Covenant on Economic, Social, and Cultural Rights, such as healthcare and housing.¹³⁴

Post-decolonization, the Global South has led the way in urging recognition of a “third generation” of human rights that go beyond the traditional framework in which governments owe duties to the individuals within their own territory.¹³⁵ This grouping of rights instead views rights as collective “people’s rights” in which many states owe duties to many peoples as a means of enabling them to enjoy their first- and second-generation rights.¹³⁶ Many have advocated for the recognition of a right to peace within this category. Consequently, in 1984, the UN General Assembly (UNGA) adopted a resolution declaring that life without war is “the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human

A mother, living in the south of Korea, meets her son, living in the north, at a group reunion for separated families on August 20, 2018, at the Kumgang-san Hotel in North Korea.
Credit: 남북정상회담준비위원회 / 2018 Inter-Korean Summit Preparation Committee



freedoms proclaimed by the United Nations.¹³⁷ The legal status of this and other “people’s rights” remain disputed in the international community.¹³⁸ In 2016, UNGA recognized an individual dimension to the right to peace, stating that “everyone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized.”¹³⁹

Human rights and peace are closely intertwined.¹⁴⁰ At least one study indicates that women-led civil society organizations are more likely to make this connection and advocate for both peace and human rights jointly in a holistic strategy.¹⁴¹ In the context of North Korea, these interconnections warrant greater examination.

MILITARISM AND ENDLESS WAR DIRECTLY THREATEN HUMAN RIGHTS

The unresolved Korean War has had a negative human rights impact on all parties, including governments’ diversion of resources toward militarism and away from people’s welfare, and civil liberties restrictions in the name of security.

The North Korean government ranks first in the world in military spending as a percentage of its GDP,¹⁴² even as chronic hunger and poverty have devastated the country, and exerts an unparalleled amount of state control in the name of security.¹⁴³ Although North Korea has ratified six major international human rights treaties,¹⁴⁴ engages with international human rights bodies,¹⁴⁵ and includes extensive human rights provisions in its Constitution,¹⁴⁶ the country’s continued human rights abuses are widely documented and subject to intense international scrutiny.¹⁴⁷ Areas of particular international concern include the freedoms of thought, expression, religion, residence, and

movement, the rights to food and to life, as well as questions of discrimination, arbitrary detention, torture, executions, prison camps, and enforced disappearances.¹⁴⁸

In response, North Korea has denounced what it calls a US-led “smear campaign” and “fabrications.”¹⁴⁹ It pointed to what it considers the “hostile policy” of the United States as a root cause of its human rights challenges.¹⁵⁰ In its second Universal Periodic Review, for example, North Korea identified US-led “sanctions, pressures, and military threat” as “the most serious challenges and obstacles to its independent and peaceful development as well as the enjoyment of human rights by Korean people.”¹⁵¹ North Korea has also insisted that “the safeguard of national sovereignty is the precondition and indispensable necessity for the protection and promotion of human rights” and cited, for instance, restrictions on freedom of association and freedom of religion as necessary to safeguard this sovereignty against foreign subversion efforts.¹⁵² While North Korea’s stated justifications for its behaviors may remain unconvincing to human rights advocates,¹⁵³ they are critical to examine in order to better inform future policy.

The human rights consequences of the continued state of war are also evident within South Korea. Of particular concern is the country’s National Security Act, a relic of the Korean War that criminalizes positive statements about North Korea and has been used by the South Korean government to curtail freedoms of expression and dissent.¹⁵⁴

The United States has entered into, and continues to engage in, other conflicts in the decades since active hostilities ceased on the Korean Peninsula. Thus, remnants of the “Forgotten War” are less visible in American life. But the human rights impact of continuous US warfare is undeniable, and the Korean War helped usher in the era

of expanded US militarism that continues today. According to University of Chicago historian Bruce Cumings, the Korean War “was the occasion for transforming the United States into a very different country than it had ever been before: one with hundreds of permanent military bases abroad, a large standing army and a permanent national security state at home.”¹⁵⁵ In just three years, the Korean War tripled US military spending and inaugurated the US military-industrial complex.¹⁵⁶ The results are a mammoth military-first economy¹⁵⁷ alongside a gutted social safety net that is ill-equipped to provide basic support to American people.¹⁵⁸ As the endless war paradigm of the Korean War has been applied in post-9/11 contexts, the United States has repeatedly drawn international condemnation for its human rights abuses conducted in the name of national security.¹⁵⁹

A peace agreement would help remove reasons of national security and military necessity that the warring parties frequently invoke to justify curtailing liberties, overspending on militarism at the expense of their people, and otherwise failing to respect or protect human rights. A peace agreement would also help protect lives. A formal end to the war will eliminate the ability of any parties to claim the permissive wartime use of force standards under the law of armed conflict. Instead, the more restrictive peacetime protections would indisputably apply.¹⁶⁰ The risk of intentional or accidental escalation of the perpetual state of war into resumed active hostilities that could turn nuclear would be an unconscionable human rights disaster.

PEACE CAN SUCCEED WHERE PRESSURE HAS FAILED

The modern international order is premised on respect for principles of sovereignty and nonintervention. There is a wide spectrum of ways that governments attempt to influence one another’s behaviors, stretching from the clearly lawful (retorsions such as setting conditions on diplomatic relations) to the plainly unlawful (armed attacks that defy the law of armed conflict). In the murky area between those two ends of the spectrum, states are meant to be guided by the principle of nonintervention in one another’s internal affairs, one of the oldest and most fundamental principles of international law.¹⁶¹

This is evident in the international human rights infrastructure, as binding human rights standards meant to govern internal affairs are developed only with states’ consent through treaties or custom.¹⁶² Even as governments work to hold one another accountable in upholding these standards, human rights are ultimately duties owed by a government to its own people.¹⁶³

The process is more complex in practice. The idea of strict national sovereignty above all has been eroded, often in the name of human rights. Increasingly, many within the international community have urged recognition of a “responsibility to protect,” meaning that states have an obligation to protect not just the rights of their own people but also citizens of other countries, if their

own governments cannot or will not protect their populations against egregious violations of their human rights. Such interventions, many argue, may include the use of force.¹⁶⁴ The lawfulness of “responsibility to protect” as a justification for interventions remains hotly disputed, as does its viability as a policy choice.¹⁶⁵

In the case at hand, the United States has long led an international pressure campaign with participation from many other nations and international bodies in the name of improving North Korean human rights. In addition to maintaining the Korean War in perpetuity, the pressure campaign has included crippling sanctions¹⁶⁶ and diplomatic isolation.¹⁶⁷ Some advocate for the UN Security Council to authorize further intervention under the auspices of a “responsibility to protect,”¹⁶⁸ with others promoting forcible regime change.¹⁶⁹

But after decades of war, sanctions, and isolation, North Korea has adapted and become even more resilient against pressure.¹⁷⁰ The country has become autarkic enough to resist external forces and clearly has the will to bear the consequences. North Korean ideology emphasizes national sovereignty and self-reliance above all else, an approach designed to withstand what it considers “hostile policy.”¹⁷¹ Continuing or expanding aggressive pressure tactics will likely only validate that mindset.¹⁷²

Additionally, the ongoing Korean War and resulting diplomatic isolation severely limit the impacted parties’ ability to verify information, communicate directly, provide social and economic opportunities, and promote stated values with one another. North Korea’s particularly extreme isolation has meant that human rights documentation by other countries frequently relies on testimony from defectors that is unable to be corroborated.¹⁷³ The status quo also narrows opportunities for the parties to build credibility and trust between their governments and peoples that could bolster momentum and leverage toward greater human rights protections. Meaningful human rights improvements do not happen overnight and require years of follow-up work that a peace agreement and increased engagement would facilitate.¹⁷⁴

The US-led international pressure campaign against North Korea has been at best ineffective and at worst counterproductive. There is little evidence that extreme pressure can succeed in improving human rights in North Korea or elsewhere. The United States’ decades of isolation of Cuba, for example, has produced no tangible human rights results. Conversely, minor temporary openings in relations between the two countries not only provided more opportunities for the governments to directly engage one another on human rights, but also widened opportunities for Cubans to travel, obtain economic support, stay in touch with their families abroad, and participate in people-to-people exchanges that expose Americans and Cubans alike to diverse perspectives.¹⁷⁵ A similar lesson can be learned from US engagement with China. The US decision to normalize relations with China over the period of 1972 to 1979 proved far more liberating and empowering for the lives of Chinese people than the hos-

tility it maintained for the 30 years prior.

More recently, in the case of Afghanistan, many who advocate for a continued US military presence in the country frequently cite human rights concerns as rationale. But peacebuilders on the ground in Afghanistan have long insisted, and experts are increasingly accepting, that pressure from external actors cannot secure rights guarantees and that the continued state of war only exacerbates the suffering. Only a negotiated political settlement of peace with the meaningful participation of those impacted, particularly women, can facilitate sustainable human rights gains.¹⁷⁶

While the international human rights system is predicated on duties and enforcement mechanisms between states to ensure that rights are protected domestically, it is a system that depends on dialogue, cooperation, and diplomacy.¹⁷⁷ From a principled and practical perspective, it is ill-advised for any country to expect to dictate or ensure specific human rights outcomes in another country through coercion or force.¹⁷⁸ Neither should governments or civil society seek to facilitate regime change in any country under the auspices of improving its human rights situation – not only because such endeavors defy the international legal order, but also because as a policy matter they have proven disastrous.

Being in a state of peace with another country is not a gift to or stamp of approval upon the other country, but a mutually agreeable arrangement that is meant to be the norm and helps take the risk of catastrophic conflict off the table. Some fear that North Korea gains credibility on the international stage when it receives attention or concessions from the United States, and that continued isolation alone will persuade North Korea to change its practices.¹⁷⁹ But the United States is in a state of peace and frequently enters into partnerships and alliances with many countries with poor human rights records, such as Saudi Arabia.¹⁸⁰ Few would argue that the United States should be in the business of invading and going to war with every government that fails in its human rights obligations, lest it become at risk of constant invasion itself.

As unsatisfying as it may be for all with the noble goal of creating a world in which human rights for all people are fully realized, the most practicable steps that governments can take toward these ends is to critically assess their own foreign policy and commit to actions that are most likely to help and not harm the conditions for improved human rights protections at home and abroad.

A PEACE AGREEMENT CAN BE A FOUNDATION UPON WHICH TO BUILD GREATER HUMAN RIGHTS ENGAGEMENT

A remaining issue in the interplay between peace and human rights on the Korean Peninsula is the matter of sequencing. Some in civil society encourage the parties to center human rights discussions in any peace discussions, in order not to capitulate, stay silent, or give up leverage

that could be used to seek human rights concessions.¹⁸¹

Others fear that inclusion of human rights provisions may impede peace talks and indefinitely prolong the conflict.¹⁸² It is a frequent, and complex, point of debate in many contexts, particularly in the resolution phase of international conflicts.¹⁸³

The United States can hardly be accused of remaining silent on the issue of human rights in North Korea thus far. The US State Department has repeatedly made statements to the effect of requiring human rights reform in North Korea before there can be normalization of diplomatic ties.¹⁸⁴ Congress has also posited that North Korea must enact human rights improvements as a condition for relief from sanctions.¹⁸⁵ As previously discussed, these efforts have been met with little to no success, particularly considering that the United States has been pressuring the North on human rights practically since the country's founding.

The continued state of the Korean War adds an extra layer of complication, as conditioning peace on internal human rights reforms within North Korea could be interpreted as an implied threat by the United States and allied forces to secure a change in North Korea's internal workings by military means.¹⁸⁶ A comparative analysis of other peace agreements shows that those that include human rights provisions are typically ones in which one side was clearly beaten and hence saw its bargaining power in tatters. Or they are agreements resolving internal, noninternational armed conflicts.¹⁸⁷ The Korean context is quite different, as the use of force was originally approved by the Security Council with the narrow purpose of repelling the North Korean attack of June 1950,¹⁸⁸ and active hostilities to that end have long concluded.

The hard reality is that the conflict is likely to remain intractable so long as either party makes unilateral demands of the other before there can be an end to the war. North Korea is unlikely to agree to a peace agreement formally ending the Korean War if the United States or South Korea demand specific human rights reform in North Korea first. As previously discussed, a state of peace would be much more likely to create the conditions for better human rights engagement and heal the wounds of war that continue to cause suffering.

It must be reiterated that a peace agreement is not a panacea. It is impossible to guarantee that a peace agreement and more normalized engagement would definitively improve the human rights situation of those who have been impacted by the war. But a state of peace has consistently proven to be far more conducive to promoting human rights and improving people's lives than adversarial pressure, which tends to exacerbate the economic and social impacts on people living under war. The United States has an opportunity to advance a peace agreement that would significantly lower the risk of catastrophic conflict on the Korean Peninsula, reduce barriers to North Korea's economic development,¹⁸⁹ and even facilitate the possibility of post-war reconciliation and accountability¹⁹⁰ – conditions that would affirmatively improve people's lives in ways that the human rights framework is meant to achieve.

The Implications of a Peace Agreement for US–ROK Relations

In 1953, the United States and South Korea concluded a military alliance in the name of deterring “Communist aggression,” in a context of war with North Korea and China and of the Cold War with the Soviet Union.¹⁹¹ Today, the Soviet Union is no more. Washington and Seoul have both normalized relations with Beijing, and the US–ROK relationship has expanded far beyond military cooperation, in both economic and human terms. But as military allies, both still spend billions of dollars each year on joint preparedness for war, ready to “fight tonight” in case tensions with North Korea escalate into open conflict.

Ending the Korean War raises questions about the future of the US–ROK alliance. It is a deep and complex security relationship, informed by at times polarizing history. Polls showing widespread support for the alliance coexist with recurrent public protests in South Korea on various aspects of US troop presence.¹⁹² This chapter examines the political and legal implications of a peace agreement on US–South Korean relations with respect to the alliance, US troop presence, operational control (OPCON) over South Korean armed forces, as well as the Armistice and the United Nations Command (UNC). Ultimately, it finds that a peace agreement would not imply the end of the alliance or the withdrawal of US troops, unless otherwise specified, but would help to recalibrate the relationship in ways that better fit contemporary circumstances and interests.

THE WARTIME ORIGINS OF THE ALLIANCE

The US–ROK alliance is often said to be “forged in blood” insofar as it grew out of the Korean War.¹⁹³ In 1953, after three years of fighting and millions of dead, the United States decided to move ahead with the conclusion of the Armistice. South Korean President Syngman Rhee opposed the planned agreement, insisting that an end result short of unification by force or of a

Chinese withdrawal would maintain an existential threat to South Korean national security.¹⁹⁴ He asked for a military alliance¹⁹⁵ and President Eisenhower accepted to negotiate one.¹⁹⁶

The Armistice itself emphasized being a temporary arrangement with the end goal of a prompt and peaceful settlement.¹⁹⁷ Two months later, in this context of suspended war, the United States and South Korea agreed on a Mutual Defense Treaty. It provided for defensive obligations tailored to the context of conflict on the Korean Peninsula. Each party committed to act to meet the common danger in accordance with its constitutional processes in case of an armed attack on either party, but only in the Pacific area, on territories under their respective administrative control.¹⁹⁸

The alliance was a tentative arrangement. It was concluded for an indefinite period, “pending the development of a more comprehensive and effective system of regional security in the Pacific area,” and revocable by either side with a year’s notice.¹⁹⁹

Beyond the goal of deterring “Communist aggression,” the US wanted to make clear to Rhee that he would be alone if he were the one that resumed hostilities.²⁰⁰ In a joint statement immediately after the signing of the Mutual Defense Treaty, the United States and South Korea emphasized the goal of “peaceful unification of historic Korea as a free and independent nation.”²⁰¹





Major General Blackbear M. Bryan, U.S. Army (2nd from left), Senior Member of the Military Armistice Commission, United Nations' Command, exchanges credentials with Major General Lee Sang Cho, North Korean Army (3rd from right), Senior Communist delegate, at the Conference Building at Panmunjom, Korea, 28 July 1953. This was the day after the Korean War Armistice went into effect. Credit: Photograph from the Army Signal Corps Collection in the U.S. National Archives.

The Armistice and the alliance endured in largely the same form for nearly seven decades despite North Korean peace offers, the collapse of the Soviet Union, and the normalization with China.²⁰² These originally tentative arrangements have, in a word, become “systems,” sustained by enough vested interests to become resilient to shocks and internal contradictions.²⁰³

A SYSTEM OF GROWING CONTRADICTIONS

Systems may be resilient to contradictions, but they are not immune to them. The success of the Armistice in stopping active combat long gave credence to the claim that it stood for peace and security. More than six decades on, this originally tentative arrangement appears like a crumbling legal fiction, laying bare intense military tensions and spiraling militarization.²⁰⁴ Both Koreas agree today that “bringing an end to the current unnatural state of armistice ... is a historic mission that must not be delayed further.”²⁰⁵

Similarly, the alliance is also plagued by many contradictions: the extent to which both allies see each other as a potential liability, practices that have raised tensions with the forces they are supposed to deter, and arrangements that appear increasingly anachronistic.²⁰⁶

The extent to which each side perceives the other as a potential liability matters insofar as an alliance, like any agreement, is only sustainable as long as both sides feel better off with it than without it. One of South Korea's concerns is that Washington's failing effort to achieve denuclearization through pressure has clashed with Seoul's efforts to improve security through reconciliation with the North. Washington has invoked alliance leverage to press Seoul to wait for progress on denuclearization before advancing inter-Korean cooperation projects.²⁰⁷ In a 2019 Chicago Council poll, a majority (55 percent) of South Koreans said their country and the United States worked in different directions on regional security.²⁰⁸

South Korea has also increasingly worried about the possibility that the United States could conduct military strikes on the North, as this would leave the South first in the line of retaliatory fire.²⁰⁹ Seoul intervened to oppose strikes during the “fire and fury” escalation of 2017, which in many ways echoed a similar dynamic from the escalation of 1994.²¹⁰ Conversely, some commentators have also raised the question of the extent to which the United States would remain committed to defend the South, given the rising stakes of military escalation in Korea.²¹¹

Meanwhile, in the United States, there has been growing public debate on whether maintaining a global military footprint serves US national interests, especially in the midst of multiple crises that cannot be addressed militarily – such as pandemics, climate change, and systemic racism.²¹² President Trump interpreted this debate in a way that sparked an ongoing dispute with Seoul. He demanded a quintupling of the South Korean contribution to the costs of US troop presence, accusing the country of freeriding on security.²¹³ South Koreans opposed these demands across the political spectrum, with many accusing them of being extortionist.²¹⁴

Another contradiction is that the alliance, although claimed to deter “Communist aggression,” has practices that actually raise tensions with North Korea and China, perpetuating Cold War divisions and fueling a vicious circle of mutual insecurity and militarization – including North Korea’s development of nuclear weapons.

US–ROK joint military exercises are a well-known source of tension with the North. They have at times included training for preemptive strikes, “decapitation” strikes targeted against the leadership, and incursions in the North.²¹⁵ Another target of North Korean protest is US efforts to “revitalize” original UN Sending State participation in the UNC, an institution premised on war with the North.²¹⁶ The sending states and South Korea remained skeptical of the revitalization project.²¹⁷

Like North Korea, China has reacted with ire to the introduction of certain types of US military hardware on the Korean Peninsula. In particular, Beijing protested the installation of a US THAAD (Terminal High Altitude Area Defense) missile defense battery in the South. Economic pressure on Seoul soon followed.²¹⁸ This has left South Korea walking a tightrope between its military ally and its main trade partner.²¹⁹ Beijing also lent increased diplomatic assistance and aid to North Korea amid rising Sino–American tensions, blunting US pressure on the North.²²⁰ In 2020, Chinese official discourse significantly played up commemoration of the Korean War as a “victory” against the United States, mirroring contrary claims by Washington and raising tensions with Seoul.²²¹

A third contradiction is the anachronism of certain alliance arrangements, such as the mass stationing of US troops and the delegation of OPCON over South Korean forces. These arrangements reflect the priorities of a time when the South was a poor and unstable fledgling state, worlds apart from the imposing military and economic power it has become today.

The original purpose of maintaining tens of thousands of US troops in Korea was to deter an invasion from the North by having US forces serve as a “trip-wire,” guaranteeing US intervention in case of conflict.²²² Today, this arrangement appears ill adapted to the primary risk: an intentional or accidental nuclear escalation, rather than a 1950-style invasion by North Korean forces.²²³

South Korea has, from the start of the war, also heavily relegated OPCON over its armed forces to a US commander to ensure increased military effectiveness through greater coordination.²²⁴ OPCON, roughly speaking, stands for the authority to determine how particular armed forces should achieve an objective set by their ultimate command authority.²²⁵ The perpetuation of South Korean OPCON delegations has nevertheless been described as “the most remarkable concession of sovereignty in the entire world” by former US Forces Korea commander Richard Stilwell.²²⁶ While there have been some adjustments over the years, it is still the case today that, if combat were to resume, South Korean forces would be controlled by a bilateral but US-led organ, the US–ROK Combined Forces Command.²²⁷ Efforts to change this status quo have been delayed for years.²²⁸

Some or all of these contradictions have factored into South Korean popular protests directed against various aspects of US military presence in the country. Mass protests erupted in 2002 when two Korean girls were run over by a US military vehicle and a US military court acquitted them of negligent homicide, raising controversy about US extraterritorial jurisdiction for troops in the line of duty in Korea.²²⁹ Environmental pollution caused by oil leaks and toxic chemicals from US military bases has also long been an issue of concern.²³⁰ So, too, have military developments that are perceived as driven by a US policy to contain China, such as the construction of a new naval base on Jeju island.²³¹

More recently, in 2015, public outrage followed the revelation that the United States had imported anthrax samples into South Korea for a biosurveillance program.²³² In 2016, news that the US THAAD missile defense system would be installed in Seongju led to sustained protest by local residents, to the point where even now it has to be supplied by helicopter.²³³ There have been repeated accusations that the United States and the UNC interfered in inter-Korean reconciliation, which they have denied.²³⁴

A peace agreement would improve the national security of all sides, reducing perceptions of each ally as a security liability, negative impacts on relations with North Korea and China, and the perceived need for the mass presence of US troops and for OPCON delegation. A peace agreement could also reduce the perceived need to compromise before a security threat, potentially intensifying scrutiny about costs such as the maintenance of US troops or the cleanup of environmental damage caused by the US military. How these trends would play out depends on the sort of peace agreement and subsequent peace regime that the United States and South Korea would seek. This requires identifying what a peace agreement legally entails for US–ROK relations.

The following chart outlines the legal implications of a peace agreement for the alliance, US troop presence, OPCON, the Armistice, and the UNC:

Alliance

A peace agreement per se does not change relations between allied co-belligerents and hence does not legally imply an end to the alliance, unless otherwise specified. The US–ROK Mutual Defense Treaty provides that the alliance “shall remain in force indefinitely” until either side decides to revoke it with a year’s notice, stating no conditions for revocation.²³⁵

Certain commentators have raised the question of whether the parties should include explicit clauses regarding the revision or abolition of the US–ROK alliance and the China–DPRK alliance in a peace agreement.²³⁶ The parties are free to include a commitment thereto if they so choose. They are also free to refuse, as alliances are ultimately a bilateral matter legally protected from interference by third parties.²³⁷

US troop presence

The presence of US troops in South Korea is governed by the US–ROK Mutual Defense Treaty and the US–ROK Status of Forces Agreement, and neither are expressly predicated on the war.²³⁸ Some commentators have claimed that North Korea conditions peace on a withdrawal of US forces from South Korea, but this is disputed.²³⁹

US troop presence in South Korea is, like the alliance itself, a bilateral matter legally protected from interference by third parties.²⁴⁰ South Korea, by virtue of its territorial sovereignty, has a right to independently decide whether it wants to end consent to the presence of US forces.²⁴¹ The United States may maintain troops on South Korean soil only with South Korean consent, but otherwise has the sovereign right to independently decide to withdraw its troops.²⁴² Both sides would be bound by certain procedural requirements in implementing such decisions.²⁴³

OPCON

A peace agreement, by improving the security environment, could accelerate change in OPCON arrangements over South Korean forces. Currently, the South Korean Joint Chiefs of Staff assume OPCON over South Korean armed forces in “peacetime,” and the bilateral but US-led Combined Forces Command does so in “wartime.” “Peacetime” and “wartime” are here descriptive shorthand that refers to active combat rather than whether there is a legal state of peace or war.²⁴⁴ A peace agreement would nevertheless be relevant to these arrangements, insofar as the United States and South Korea regularly stress the need to consider changes in the security situation.²⁴⁵ South Korea retains ultimate command authority over its armed forces and has the sovereign right to decide independently whether to maintain delegation.²⁴⁶ Likewise, the United States has the sovereign right to decide whether to continue accepting this responsibility.

Armistice

A peace agreement would imply the dissolution of the Armistice or bar any claims that it is still in force, as there is no *raison d’être* for a ceasefire under a state of peace.²⁴⁷ The Panmunjom Declaration, among numerous other statements, explicitly states that a peace agreement should “replace” the Armistice.²⁴⁸ A peace agreement should provide for a recognition of the demarcation line agreed upon in the Armistice, to the extent that it has also been recognized by the two Koreas in the Basic Agreement of 1991.²⁴⁹

United Nations Command

A peace agreement must provide for the long overdue dissolution of the UNC.²⁵⁰ While there has been dispute on the prospect of an end to the UNC,²⁵¹ it should be clear that its persistence today relies on an extreme interpretation of UN Security Council resolutions 82 to 84 that is inconsistent with peaceful coexistence.²⁵² The US-led UNC forces fought North Korean forces back to the 38th parallel by September 1950, fulfilling the mandate to “repel” the North Korean June offensive. They then invaded the North by crossing the 38th parallel, relying on an interpretation of the mandate to “restore international peace and security” that painted North Korea’s very existence as a threat to it.²⁵³

Insofar as a peace agreement would be a final settlement of the Korean War, it must be based on a recognition that the resolutions of 1950 cannot be a legitimate basis for use of force today. This leaves no place for the UNC or any other interpretations of “peace and security” grounded in regime change. The persistence of the UNC is in any case irreconcilable with the acceptance of North Korea as a UN Member State in 1991²⁵⁴ and with the notion of “assistance” to South Korea when Seoul is itself calling for a peace agreement. UNC actions stifling inter-Korean exchanges appear especially out of place.²⁵⁵ The parameters of inter-Korean reconciliation should be determined by Koreans themselves.²⁵⁶ The security component at the border can be handled, for instance, under the responsibility of the Inter-Korean Joint Military Committee.²⁵⁷

While the dissolution of the UNC would be a key marker of intent to settle the war, its legal implications for US security arrangements in the region are negligible.²⁵⁸ The UNC has for decades been a shell organ without standing troops.²⁵⁹ The United States itself informed the Security Council that it would terminate the UNC on January 1, 1976.²⁶⁰ It never followed through, but it took steps to manage the consequences of dissolution, such as the transfer of OPCON over South Korean forces from the UNC to the CFC in 1978.²⁶¹

The alliance, although claimed to deter “Communist aggression,” has practices that actually raise tensions with North Korea and China, perpetuating Cold War divisions and fueling a vicious circle of mutual insecurity and militarization.

The tentative arrangement of the US–ROK alliance, born of wartime circumstances, has crystallized into a resilient system. The gradual disappearance of its original premises nevertheless highlights growing contradictions. A peace agreement could reduce scrutiny of some contradictions or intensify it on others, depending on how cooperatively the United States and South Korea manage the requisite implications of a peace agreement, such as the dissolution of the Armistice and the UNC and how the two countries recalibrate their relationship in the pursuit of a peace regime.

The first step in resolving an armed standoff is for all sides to agree as solemnly as possible not to harm or threaten each other. As such, the first priority of a peace agreement should be to end the state of war and bindingly recognize that wartime rights to use force have ended. This reduces tensions and creates the space necessary to discuss sustainable solutions to the causes of conflict. A peace agreement is the start of a process that culminates in a lasting and stable peace regime. What this means for the future of the security relationship between the United States and South Korea should ultimately be determined by the people and should aim to create a peaceful, stable, and sustainable world.

Press conference against THAAD deployment at Soseong-ri, April 26, 2017. Credit: 소성리종합상황실/No THAAD Situation Office at Soseong-ri



Why Women Should Be Involved in the Peace Process

This chapter explains why women should be meaningfully involved in the Korea peace process, outlining the gendered costs of war, women's efforts for peace on the Korean Peninsula to date, and research into women's participation in peace processes in other nations that shows their positive impact.

THE COSTS OF WAR FOR KOREAN WOMEN

As has been the case for women in conflicts in other countries, Korean women have been physically, emotionally, and socially harmed by the Korean War and its ongoing effects.

During the war, as people were forced to flee their homes and villages, women were responsible for the difficult task of finding food and shelter for their families. They were also subject to violence, including systemic sexual violence that continued from the Japanese colonial occupation of Korea (1910–1945).

Before the war, from 1931 until the end of World War II, the Japanese Imperial Army sexually enslaved Korean women in so-called comfort stations throughout the Asia-Pacific region. While Chinese, Filipino, and other women were part of this extensive system of sexual slavery servicing Japanese troops, Korean women and girls – as colonial subjects under Japanese occupation of Korea – made up the majority of the estimated 50,000 to 200,000 “comfort women.”²⁶²

Although state-regulated prostitution was outlawed in South Korea in 1948, during the Korean War the South Korean government set up a similar comfort station system for the South Korean armed forces and, separately with the US Army, for the Allied forces (90 percent of whom were US troops).²⁶³ Entrenched patriarchal notions of women's sexuality in Korea made it nearly impossible for these women to reincorporate into society; many were labeled outcasts and rejected by their families and communities.²⁶⁴

After the war and with the mass stationing of US troops in South Korea, the system of military prostitution established during Japanese rule continued. Since the Korean War, over 1 million Korean women have worked in “camptowns” alongside US military bases to service US troops. “The war, with its accompanying poverty, social and political chaos, separation of families, and millions of young orphans and widows, ‘mass produced’ prostitutes, creating a large supply of girls and women without homes and livelihoods,”²⁶⁵ wrote Katharine H.S. Moon, a political scientist and expert on US military prostitution in South Korea. The South Korean government actively encouraged the women in camptowns to engage in prostitution to allow US troops to “relax” and “enjoy sexual services” with them.²⁶⁶ The government operated and managed the camptowns – implementing a “comfort women” registration system and conducting so-called patriot education with the US military – to strengthen military alliances and acquire US dollars by “promoting and boosting morale” among US troops.²⁶⁷ Thus, camptowns became a critical part of the South Korean economy, which struggled in the aftermath of the war. “Our government was one big pimp for the U.S. military,” recounted Ae-ran Kim, a South Korean survivor of camptown prostitution. “They urged us to sell as much as possible to the GIs, praising us as ‘dollar-earning patriots.’”²⁶⁸ Yet the women were stigmatized, “destined to invisibility and silence.”²⁶⁹

The unresolved state of the war has also had insidious effects on women. Both North and South Korea have become highly militarized societies, with universal male conscription. Research suggests that greater militarization is significantly correlated with higher gender

inequality and lower levels of women's participation in the workforce.²⁷⁰ In South Korea, women's participation in the workforce has grown over the years²⁷¹ but remains low among similarly developed countries.²⁷² Among such countries, South Korea consistently ranks last on indicators of equality for women in the workplace, with women earning 35 percent less per year than men.²⁷³ In North Korea, women's participation in the workforce is highly segregated, with women overrepresented in low-paying fields such as light industry and education. As a result, many women instead choose to work in the unofficial labor market.²⁷⁴

Militarized societies also have higher rates of violence against women²⁷⁵ and reinforce gender subordination.²⁷⁶ While rates of intimate partner violence in South Korea have declined in recent years, they remain higher compared to many other countries.²⁷⁷ In 2019, women accounted for 98 percent of intimate partner crime victims.²⁷⁸ South Korea also has one of the highest rates of female homicide victims in the world.²⁷⁹ In North Korea, women are reportedly subject to widespread sexual violence by government officials, police, soldiers, and others, with little recourse.^{280 281}

Research shows that the full, effective, and meaningful participation of women and civil society groups will contribute to a more durable peace.

Societies that invest heavily in the military divert resources away from healthcare, childcare, welfare programs, and job training – things that disproportionately impact women of both Koreas, who bear the double burden of being primary caregivers of children and aging parents, as well as working outside the home.

In North Korea, widespread sanctions impact women economically, socially, and physically. Sanctions hurt women's economic security by targeting industries, such as textiles, that have high ratios of female workers. As observed in other countries such as Iraq,²⁸² Haiti,²⁸³ and Myanmar,²⁸⁴ sanctions destabilize society, producing greater social disorder and leading to increased gendered discrimination. Sanctioned states are less likely to enforce women's rights.

Sanctions against North Korea also cause delays in the delivery of life-saving humanitarian aid and impede the production of food.²⁸⁵ According to the UN Commission on Inquiry on human rights in the DPRK, North Korea's "dire economic and food situation" is increasingly pushing women into spaces and activities where they are more vulnerable to assault and exploitation.²⁸⁶

More than 70 percent of North Korean migrants are women, and they are particularly vulnerable to sexual and labor exploitation.²⁸⁷ According to a 2018 Human Rights Watch report, North Korean women migrants and women traders experience unwanted sexual advances and violence by police or government officials.²⁸⁸ In August 2020, two South Korean military officers were indicted for sexually assaulting and raping a North Korean woman migrant who was in their custody.²⁸⁹

In South Korea, North Korean women lack marketable skills to survive in a hyper-capitalistic society, and most struggle to acculturate, much less compete, in South Korea's highly globalized society where overseas study and the acquisition of foreign languages have become commonplace. They also face prejudice due to long-standing stereotypes of North Koreans as either cold-blooded communists or starving refugees.²⁹⁰

Although more research is needed on the impact of the unresolved Korean War on women, it is clear that women's equality, status, and safety have been undermined by the ongoing conflict.

LEGAL FRAMEWORKS: WOMEN'S STAKE AND REPRESENTATION IN PEACE PROCESSES

Due to the gendered impacts of war and militarism, women have a particular stake in resolving the Korean War but have been excluded from formal peacemaking initiatives – a typical pattern internationally. Very few women participated in the inter-Korean summits held between 2000 and 2018, whether as official delegates, advisors, or those representing sports, business, art, or religion. From 1971 to 2018, a total of 667 inter-Korean talks were held at the government level, but no official talks have taken place that address women's issues.

1 / International Law Mandates Women's Participation

North Korea, South Korea, and the United States have contributed to and are subject to an extensive established body of international law that supports women's inclusion in efforts to resolve conflict and promote peace.

A key treaty is the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which requires that states parties ensure women's equal participation with men in public and political life (Article 7) and in representing their governments at the international level (Article 8). In 2013, these provisions were strengthened to include conflict situations and peacemaking in CEDAW's General Recommendation 30. To fulfill these obligations, states may need to take special measures to overcome obstacles to women's participation.

North Korea acceded to CEDAW in 2001 and has submitted four periodic reports for consideration by the CEDAW Committee.²⁹¹ South Korea ratified the treaty in 1984, and the government has submitted eight coun-



try reports for consideration by the CEDAW Committee. The United States has not ratified CEDAW but has signed the convention, which demonstrates that it is legally prohibited from acting in contravention of its object and purpose. Moreover, as a permanent member of the UN Security Council, the United States has helped to create a comprehensive multilateral framework known as the Women, Peace and Security (WPS) Agenda.

Starting with Resolution 1325 in the year 2000, the UN Security Council has issued ten resolutions articulating the close connection between women's rights, gender equality, and peace and security. These resolutions draw on states' existing binding commitments under the UN Charter and other international laws dealing with peace, security, and human rights.²⁹² Taken together, CEDAW's General Recommendation 30 and these Security Council resolutions on WPS constitute a framework of international law that upholds women's rights to substantive and equal participation in peace negotiations, mediation, and social reconciliation initiatives.²⁹³

As members of the United Nations, North Korea, South Korea, the United States, and any other states involved in facilitating peace on the Korean Peninsula must uphold these international legal obligations and norms. A similar obligation extends to multilateral organizations and nongovernmental organizations seeking a Korean peace agreement.

2 / Domestic Laws and Policies Support Women's Participation

To implement these international laws and policy frameworks domestically, 86 countries have adopted National Action Plans on women, peace, and security.²⁹⁴ In 2017, the United States passed the Women, Peace and Security (WPS) Act, which makes women's meaningful participation in peacemaking a US foreign policy priority.

The 2019 US Women, Peace and Security Strategy for implementing the Act focuses on women's participation in peace and security processes. It emphasizes the need to train US diplomatic, military, and development personnel in women's inclusion and to support and consult with local women in conflict situations. The Act and the Strategy provide for elected officials to hold the Administration accountable in implementing US law in all its foreign relations, including participation in peace processes.

Although North Korea has not adopted a WPS National Action Plan, in its CEDAW reporting it has made clear that it seeks to champion gender equality. A peace process with substantive participation of women would support this goal. It would also help the government achieve its legal obligations to promote gender equality and women's participation in public life, as articulated in the country's 2010 Law on the Protection and Promotion of the Rights of Women, and its 1946 Gender Equality Law.

Women from the two Koreas met at Panmunjom in 1992 to discuss the role of women in creating peace in East Asia. Credit: ©The Kyunghyang Shinmun, Korea Democracy Foundation

In 2010, women's and peace organizations in South Korea began to press for the establishment of a 1325 National Action Conference. In 2012, the National Assembly passed a resolution for the systematic and strategic implementation of the 1325 National Action Plan. Women Making Peace, the Korean Women's Association United, and 45 other women's organizations formed an NGO Working Group on Women, Peace, and Security. Through a consultative body composed of representatives from government agencies, civil society, and academia, as well as open discussions and activities to revise laws by government ministries, the South Korean government established the UNSCR 1325 National Action Plan in 2014. In 2017, a revision of the Framework Act on Gender Equality stipulated the mandatory establishment of the National Action Plan and evaluation of implementation. South Korea is currently working on a third National Action Plan from 2021 to 2023.

3 / Research on the Effects of Women's Participation in Peace Processes

When women influence peace processes, the resulting peace is more likely to last.²⁹⁵ In addition, a study of peace accords in 51 countries between 2000 and 2016 found that women's inclusion in negotiations increased the likelihood that the final agreement would include gender provisions by 37 percent.²⁹⁶ Gender equality is an end in itself, but it is also a greater predictor of peace than a nation's wealth, religion, or level of democracy.²⁹⁷

Connecting civic groups to official peace talks also has a positive impact. Peace agreements were 64 percent less likely to fail when civil society representatives participated.²⁹⁸ Although women are typically underrepresented among the warring parties who dominate peace negotiations, they are often at the forefront of civic peace movements. Research into documented informal peace processes shows that women's organizations were involved in 71 percent of cases between 1991 and 2017.²⁹⁹ In these unofficial dialogues (Track II diplomacy), women's groups advocated for peace consistently. Further, they helped to legitimate the formal peace process among the public, engaged in smaller-scale conflict resolution initiatives, and advocated for gender equality provisions.³⁰⁰

Interactions between women's groups and those with access to formal negotiations can have a positive effect. In Colombia, for example, women's organizations successfully pushed for greater representation of women in the formal peace process to end the country's conflict. Female negotiators advocated for a gender sub-commission, a formal channel for women's groups to access the negotiations. The 2016 peace agreement contained 100 strong gender provisions.³⁰¹

In the Philippines, women with access to formal negotiations between the government and the Moro Islamic Liberation Front created multiple channels for women's groups to contribute in formal roles and in national consultation processes. As a result, women secured significant commitments to their political participation and

protection from violence in the 2014 Comprehensive Agreement on Bangsamoro.³⁰²

Also, in Kenya, women's groups helped ensure that the African Union appointed a woman, Graça Machel, as one of its three mediators. She supported the civil society Women's Consultation Group in advocating for gender equality provisions in the National Dialogue and Reconciliation Accord 2008.³⁰³

WOMEN'S EFFORTS FOR PEACE IN KOREA

For decades, women on the Peninsula and internationally have mobilized to end the Korean War through grassroots action.

1 / Inter-Korean Women's Efforts

There have been three contexts for inter-Korean women's efforts for peace:

Seminar on Peace in Asia and Women's Roles:

After more than 40 years of forced division, a historic meeting between North and South Korean women took place in Tokyo, Japan, in May 1991, entitled "Peace in Asia and Women's Roles." It continued from 1991 to 1993, marking the first time civilians visited North and South Korea through Panmunjom since the division. A second conference was held in Seoul where 15 North Korean women leaders set foot on South Korean soil for the first time. A year later, 30 South Korean women leaders took part in a third conference in Pyongyang. A fourth meeting was held in Tokyo. The participants discussed the issues of Japanese military sexual slavery, unification, patriarchy, Korean survivors from atomic bombings, and peacebuilding. They decided to meet regularly on the issue of Japanese military sexual slavery. A fifth meeting, slated for Seoul, had to be canceled due to the strained relationship between the two Korean governments. However, North Korean women who had organized and participated in the previous conferences founded the Korean Women's Association in Solidarity with Asian Women.³⁰⁴ Japanese women reorganized their meetings into a council in solidarity with Korean women. The South Korean women who led the conferences formed Women Making Peace in 1997 and provided leadership for the women's peace movement.

Inter-Korean Women's Exchanges for Victims of Japanese Military Sexual Slavery:

Justice for former "comfort women" is an important shared concern for both Koreans. In 1988, the Korean Council for the Women Drafted for Military Sexual Slavery by Japan was established in South Korea, and North Korea launched its own organization, Jongtaewie³⁰⁵ (Korean-Japanese Military Sexual Slavery and Forced Training Victims Countermeasure Committee) in 1992. The two Koreas have participated in eight forums to discuss Japan's post-



war settlement regarding this issue. The 1995 Beijing Declaration and Platform for Action addressed it, and in 1996, the UN Human Rights Commission confirmed military sexual slavery as a criminal violation of international law and a legal responsibility of the Japanese government, including compensation to victims. In 2000, the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery, a people's tribunal that included women from several affected nations, convicted the Japanese Emperor for this crime against humanity. Further inter-Korean meetings followed, although this issue remains unresolved, as the Japanese government has refused to accept responsibility for it.

The Committee on Women under the June 15 Inter-Korean Joint Declaration: In 2000, at the historic first inter-Korean Summit, the two Koreas agreed to a new initiative, the June 15 Joint Declaration, to begin the process of reconciliation and reunification. Several inter-Korean civil society committees were established to support its implementation, including farmers, workers, academics, and women's groups. Various North-South women's reunification events took place from 2002 to 2005, including a gathering at Mount Kumgang in the North where 350 South Korean women met 350 North Korean women and 20 women from the Korean diaspora. At this meeting, attendees launched a joint women's committee to implement the June 15 Declaration. Since then, the North-South Women's Committee has contributed to the peace process as an inclusive commission by holding regular meetings with a common goal of implementing

the Inter-Korean Joint Declaration. Five women from North Korea and eight women from South Korea met to continue its work in 2019.

2 / International Women's Solidarity

There have been three situations where international groups of women have used their independent status to support Korean women's peace efforts:

International Fact-finding Delegation to North Korea: During the Korean War, the Korean Democratic Women's Union in North Korea invited the Women's International Democratic Federation (WIDF) to witness and report on the impacts of the war. In May 1951, 21 women from 17 countries documented the devastation and called for an immediate end to the war. Submitted to the United Nations, the WIDF report accused the United States-led UN forces of war crimes, for which the organization was stripped of its NGO consultative status at the UN. Nonetheless, the group continued to call throughout the Cold War for the withdrawal of all foreign troops from Korea for a permanent peace settlement to replace the Armistice.

Northeast Asian Women's Peace Conference: Following the progress made during the "sunshine years" (2000–2008), a conservative South Korean government stymied inter-Korean women's efforts. To create new momentum, South Korean women's groups organized the Northeast Asian Women's Peace Conference, with

In 2015, an international delegation of 30 women — including feminist icon Gloria Steinem and Nobel Peace laureates Leymah Gbowee and Mairead Maguire — crossed from North to South Korea calling for the end of the Korean War with a peace agreement. They held symposiums in Pyongyang and Seoul, and walked with some 10,000 women on the streets of Pyongyang, Kaesong, and Paju. Credit: Stephen Wunrow



With her brother on her back, a war-weary Korean girl trudges by a stalled M-26 tank at Haengju, Korea, June 1951. Credit: U.S. Navy/Maj. R. V. Spencer, UAF

participants from South Korea, Japan, the United States, Russia, and China that paralleled the official government six-party talks from 2008 to 2012. The Northeast Asian Women's Peace Conference, held in Seoul and Washington, aimed at resolving the North Korean and Northeast Asia nuclear issue. It was organized by congresswomen, scholars, and civil society organizations to develop models of women's participation in 1.5-track negotiations (diplomacy involving official and nonofficial participants) in the peacebuilding process on the Korean Peninsula. It also contributed to improving the global leadership of the Korean women's peace movement and provided an opportunity for women from five Northeast Asian countries to engage in international solidarity activities toward the denuclearization of the Korean Peninsula and the establishment of a peace regime in Northeast Asia. Unfortunately, North Korean women did not participate in this conference due to tensions in North-South relations following the death of a South Korean tourist at Kumgang in 2008.

Women Cross DMZ: In 2015, also under a conservative South Korean government, an international delegation of 30 women worked with women's and peace committees in North Korea and South Korea to call for the end of the Korean War with a peace agreement. Over 250 Korean women discussed the impacts of the unresolved war on women's lives at symposiums in Pyongyang and Seoul, and some 10,000 women walked on the streets of Pyongyang, Kaesong, and Paju with the international group of women. The group that organized this action, Women Cross DMZ, has continued to build a transnational feminist movement, including the launch of the 2019 campaign Korea Peace Now! Women Mobilizing to End the War jointly with the Korean Women's Movement for Peace, Nobel Women's Initiative, and

Women's International League for Peace and Freedom. In 2019, the campaign commissioned a multidisciplinary panel of experts to produce the first comprehensive report on "The Human Costs and Gendered Impact of Sanctions on North Korea."³⁰⁶ Women Cross DMZ activities have included peace walks and symposiums along the southern border of the DMZ in 2016, 2017, and 2018; meetings with North and South Korean women in Indonesia in 2016; a gathering of Northeast Asia women in Beijing in 2018; and substantial input on a US Congressional resolution (H.Res. 152) calling for an end to the Korean War with a peace agreement, which has 52 co-sponsors as of the publication of this report.

KEY RECOMMENDATIONS FOR WOMEN'S INCLUSION IN A KOREA PEACE PROCESS

The Korea Peace Now! campaign urges all parties involved in the peace process to ensure the full, effective, and meaningful participation of women and civil society groups. Research shows this will contribute to a more durable peace. International law and national laws and policies also mandate women's participation in peace processes.

To this end, we recommend that governments ensure that at least 30 percent of official negotiating teams are composed of women, which should be considered a floor rather than a ceiling. Governments should also appoint Women, Peace and Security Ambassadors to anchor and coordinate women's participation. A consultative forum should be established to enable civil society groups to contribute in meaningful ways by engaging in consistent two-way communication with negotiating parties and mediators – including through advanced sharing of agendas and documents. Finally, we urge all parties to help reduce barriers to women's meaningful participation in the peace process. Flexible funding could cover support for childcare, travel, accommodations, and security, among other needs, and training and mobilization initiatives could help amplify women's voices.

Given the paucity of women involved in official talks, we believe these small but significant steps can contribute to a durable peace regime that will pave the way for demilitarization of the Korean Peninsula and redefining security away from militarism and war toward a feminist understanding that centers human needs. Over 65 years have passed since the signing of the Armistice in 1953. Women are eager and able to participate in a Korea peace process that will bring greater stability, healing, and peace to the Korean Peninsula, the Northeast Asia region, and the wider world.

Recommendations

The failure to officially end the Korean War continues to fuel deep insecurity, intense militarization, and unconscionable human costs. Pressure has failed for decades to resolve this worsening crisis. Based on this report's findings, we recommend that the United States, South Korea, and North Korea promptly decrease military tensions by concluding a fair and binding peace agreement. A peace agreement would mark unambiguous recognition, by all sides, that wartime rights to use force have ended. It is a long overdue and mutually beneficial step that is critical to the effective resolution of the wider crisis, including nuclear and human rights issues. As the most solemn instrument available to renounce use of force, a peace agreement would demonstrate the sincerity of the parties in seeking a peaceful resolution. It would create unparalleled new momentum toward the creation of a lasting and stable peace regime in the region.

For a peace agreement to succeed, we recommend that its negotiation and conclusion be based on the following principles.

1 // Peace now: The prospective parties should conclude a peace agreement without delay or preconditions to rein in as soon as possible the growing insecurity and human costs of war. There are no legal preconditions for belligerents to conclude a peace agreement. The prospective parties should not set political preconditions.

2 // Binding peace: The prospective parties should conclude a peace agreement that is binding in international law to achieve a legal and permanent conclusion to the state of war. They may first declare an end to the war in a nonbinding instrument, if necessary, to build political momentum toward the ratification of a binding agreement.

3 // Peace as final settlement of the war: The prospective parties should recognize that a peace agreement represents a final settlement of the war. They should recognize that wartime rights to use force have ended, and that UN Security Council resolutions 82 to 84 cannot today be relied upon as a legitimate basis for use of force. The parties should recognize that a peace agreement implies the end of the Armistice and the United Nations Command. The parties should recognize the borders declared in the Armistice.

4 // Peace as foundation for a peace regime: The prospective parties should conclude peace regardless of whether they achieve consensus on aspects of the security crisis beyond the use of force. They should recognize that peace is a trust-building foundation that would facilitate consensus on these other aspects. They should commit to further pursue the resolution of the crisis through the eventual realization of a lasting and stable peace regime and through the normalization of diplomatic relations.

5 // Peace as duty: The prospective parties should recognize that a peace agreement does not represent a concession from either side: peace is mutually beneficial.



Thousands of prayer ribbons wishing for peace and reunification are tied at the fence of the Demilitarized Zone at Imjingak, South Korea.

cial and a duty in itself. The parties should refrain from instrumentalizing the prospect of a peace agreement as a bargaining chip for subjects beyond the use of force. These subjects should be negotiated on the basis of reciprocity and fairness. Any deviation from these principles changes the nature of negotiations and reduces the likelihood of peace.

In order to maximize the sustainability of a peace agreement, we recommend that the negotiation and realization of a subsequent peace regime be based on the following principles:

1 // Cooperative and shared security: A peace regime should be based on the pursuit of cooperative and shared security, as opposed to the confrontational and zero-sum logic of deterrence that has prevailed during the war. A peace regime should recognize that all sides are safer when they realize fair arms reduction and implement military confidence-building measures than when they compete in an arms race amid a low-trust environment.

2 // Ending the Cold War divide: A peace regime should aim to end the division of the region into Cold War blocs. A peace regime should be based on mutual recognition of each side's right to exist, their sovereign equality, and their basic freedom to choose their own political, social, economic, and cultural system. A peace regime should recognize the right of Koreans to determine the fate of their own nation without foreign interference.

3 // Nuclear-weapons free world: A peace regime should hold all sides accountable to their responsibility in realizing a nuclear-weapons free world. A peace regime should recognize that nuclear weapons, given their immense destructive power, threaten to have catastrophic humanitarian consequences and pose grave implications for human survival.

4 // Right to peace: A peace regime should be based on the full realization of the right to peace and on the recognition that life without war is the primary international prerequisite for the full implementation of the rights and fundamental human freedoms proclaimed by the United Nations. A peace regime should be based on the protection of the inherent dignity and worth of all human beings, regardless of gender, political orientation, nationality, or other distinguishing features.

5 // Women's participation: A peace regime should be based on the inclusion of women in the peace process, pursuant to the requirements of the Convention on the Elimination of all Forms of Discrimination Against Women, as well as the Women, Peace, and Security Framework laid out in United Nations Security Council resolution 1325. A peace regime should establish procedures for the full, effective, and meaningful participation of women and civil society groups advocating for peace and redefine security away from militarism and war and toward a feminist understanding that centers human needs and ecological sustainability.

Ratification of a Peace Agreement

This report covered the key elements for a binding, final settlement of the Korean War under international law. This annex supplements that analysis by outlining the key parties' relevant domestic legal procedures for concluding a binding peace agreement with one another.

US Ratification

Under US law, the President ratifies international agreements – though, depending on the nature of the agreement, he may have to seek advice and consent of the Senate, or in other cases the approval of Congress.³⁰⁷ US law is unsettled on which category peace agreements fall under.³⁰⁸

The Constitution does not explicitly define who has the power to conclude or declare peace. It divides war powers by making the President the Commander-in-Chief of the armed forces and by giving Congress the power to declare wars and raise and support armies.³⁰⁹ The record nevertheless shows that the Founders decided to remain silent on the power to end war and declare peace, with representatives arguing that the power to declare peace should not be limited exclusively to Congress.³¹⁰

The Constitution gives the President the “power, by and with the advice and consent of the Senate, to make treaties, provided two-third of the Senators present concur.”³¹¹ Under US law, “treaties” are different and narrower than in international law.³¹² It is well-established practice that the President may also conclude and ratify so-called sole executive agreements without going through a supermajority in the Senate, and in fact do so with great frequency.³¹³ In other instances, Congress authorizes the President to conclude a certain agreement. Both types of executive agreements are still “treaties” in the eyes of international law, in the sense that they are agreements between states that are binding under international law.³¹⁴

Precedents suggest that peace agreements may be concluded either with advice and consent of the Senate or simply as sole executive agreements. The Treaty of Versailles ending World War I, for instance, was submitted to the Senate and famously rejected, delaying peace with Germany.³¹⁵ The San Francisco Peace Agreement ending World War II between the United States and Japan was also submitted to advice and consent of the Senate.³¹⁶ A relatively more recent peace agreement, the Paris Peace Accords ending US participation in the Vietnam War, was concluded as a sole executive agreement.³¹⁷ Overall, the general trend in US practice since World War II has been toward the ratification of even major international agreements as executive agreements.

Put simply, there is no reason under international law and likely not even under domestic law that should preclude the President of the United States from ratifying a peace agreement as sole executive agreement.

Of course, from a political perspective, however, the path that would most thoroughly, durably, and credibly resolve the Korean War would be for the United States to secure consent of two-thirds of the Senate, or at least a subsequent Congressional stamp of approval as a Congressional-executive agreement. Ending the Vietnam War through a sole executive agreement left American society divided on the issue, and the United States did not normalize relations with Vietnam until two decades after peace.³¹⁸ Ultimately, peace will come down to political will, and the more that can be demonstrated, the better.

South Korean Ratification

The South Korean Constitution is comparatively clearer on powers relating to ratification and peace. The President has the power to “conclude and ratify treaties” and specifically to “declare war and conclude peace.”³¹⁹ Meanwhile, the National Assembly has “the right to consent to the conclusion and ratification” of a host of different types of treaties, including “peace treaties.”³²⁰ The President can therefore conclude a peace agreement and ratify it upon approval by the National Assembly. To what extent the “special interim relationship stemming from the process towards reunification” affects the rules on agreements with North Korea, however, requires clarification. A peace agreement with the North may not require approval by the National Assembly to be binding.

When the two Koreas concluded the Inter-Korean Basic Agreement of 1991, a landmark nonaggression agreement that laid down the foundations of inter-Korean relationships, disputes erupted in South Korea about its binding force.³²¹ South Korean President Roh Tae-woo did not submit the agreement to the National Assembly for consent, but the agreement contained a clause providing that it would come into force upon exchange of instruments of ratification, and the two parties did so on February 19, 1992. The South Korean Constitutional Court nevertheless found that it was a mere “gentlemen’s agreement,” based on the Agreement’s own provision that it was not an agreement between states.³²² The South Korean Supreme Court found similarly that the Agreement could not be considered as a treaty between states or an equivalent, at least for the purpose of determining whether its provisions applied with the same force as domestic law in the South Korean legal system.³²³

Partly in reaction to the controversy on the Basic Agreement, and partly because inter-Korean economic projects required legal certainty and protection, in 2003 South Korean President Roh Moo-hyun took the necessary steps to ensure that four inter-Korean agreements concluded by his predecessor in 2000 would get recognized as having legal force.³²⁴ These agreements – on investment protection, clearing settlement, double taxation, and dispute resolution – were ratified after approval by the South Korean National Assembly on June 30, 2003, and by the Presidium of North Korea’s Supreme People’s Assembly on July 24, 2003.³²⁵

By 2005, South Korea was adopting the Development of Inter-Korean Relations Act, which clarified the legal regime for the ratification of inter-Korean agreements. Under the Act, the President has the power to conclude and ratify inter-Korean agreements, after deliberation by the State Council – the cabinet of ministers.³²⁶ The Act also gives the National Assembly the right to “consent to the conclusion and ratification of South-North Korean agreements which place heavy financial burdens on the State or nationals, or South-North Korean agreements concerning legislative matters.”³²⁷ The stated scope of inter-Korean agreements that have to be submitted to the

National Assembly for consent is much narrower than the scope described in the Constitution for treaties. In particular, there is no mention of “peace treaties” in the scope of the Act.

The question of the ratification of security-related agreements with the North came to the fore in 2018, when President Moon ratified the Inter-Korean Military Agreement.³²⁸ He did so on the basis of a State Council approval, rather than a National Assembly approval. The South Korean Ministry of Government Legislation had previously validated that approach insofar as it did not involve heavy financial burdens or legislative matters.³²⁹ This suggests that a bilateral peace agreement with the North could also be ratified after State Council approval, as long as it fits those same conditions. That said, if peace is concluded in a single multilateral agreement rather than a joint series of bilateral ones, there may be disputes as to whether State Council approval is sufficient, given the involvement of parties outside the scope of the Development of Inter-Korean Relations Act.

North Korean Ratification

Under the North Korean Constitution, the Chairman of the State Affairs Commission – the Supreme Leader – has the authority to “ratify or rescind major treaties concluded with other countries.”³³⁰ The Presidium of the Supreme People’s Assembly has the authority to “approve or nullify treaties concluded with other countries.”³³¹ The Constitution does not specify which agreements should go through this procedure. North Korea is a party to a wide variety of bilateral and multilateral treaties.³³² There is no known instance of a dispute between the Assembly and the highest executive authority on the power to ratify.

CONCLUSION

It is important to note not just the international legal contours of a potential peace agreement to end the Korean War, but also the domestic procedural implications for each party. This is because, as previously discussed, the key element in making a peace agreement binding under international law is that the parties must demonstrate that they are consenting to be bound by the agreement.³³³ A failure of any of the parties to comply with their domestic legal requirements could undermine a case that the new agreement is binding.³³⁴ Further, it could weaken the signal they are sending to the other parties that they are serious about conclusively ending the war and building a peace regime.

External Contributions

The following external contributions are by authors independent from the Korea Peace Now! campaign. Their expertise on human rights, nuclear weapons, the US-ROK alliance, and the costs of war furthers the discussion of how a peace agreement can resolve the security crisis on the Korean Peninsula. The contributions represent the personal views of the authors. Their affiliations are for identifying purposes only and do not represent the views of those institutions unless specified.

To Avoid War with North Korea, A Change in Approach Is Needed

By Lt. Col. Daniel L. Davis, USA, ret

Kim Jong Un does not want to go to war with the United States. He has no intention of ever using his arsenal in an offensive strike against either the US or any of its allies. What he does desire, above all, is to preserve his regime and continue to rule in Pyongyang unchallenged.

To accomplish these objectives, Kim seeks to formally end the Korean War, achieve closer political and economic ties with South Korea, and see his domestic economy expand. All of this gives us enormous opportunity to ensure the security of the Peninsula and reduce the risk of war.

Alternatively, the United States could refuse to bring its policies into alignment with historic and cultural realities at play on the Peninsula and in the region and instead cling to the status quo that has reigned more or less unchanged across administrations since the early 1990s. If we do that – if we choose to maintain an ap-

proach that has manifestly failed to accomplish stated objectives – the perpetual cost to us will continue to pile up and the risk of war will remain an ever-present reality.

Given the geopolitical realities at play in 1950, there was some merit in Washington showing concern over what might happen to US interests in the Asia-Pacific region if a communist-backed regime in Pyongyang were to militarily conquer South Korea and drive the US out. The 1950–53 Korean War was fought to prevent that outcome. It effectively succeeded.

In the first few decades after the war, it also made sense for the US to retain a military presence in South Korea to prevent a repeat of the North's invasion. As South Korea became increasingly wealthy, as its people became more educated, and as its armed forces became more modern, however, the justification for American military presence began to dwindle.

The “hermit kingdom” nature of North Korea's regime ironically also helped tip the military balance in favor of Seoul, as its isolation stunted any hope that Pyongyang would be able to produce as solid an economy as its neighbors to the south. When

the Soviet Union disintegrated in 1992, however, North Korea was locked into a permanent military and economic position of inferiority to the South from which it could never recover.

I first served in South Korea as a member of the U.S. Army in the late 1990s, serving as a US coordinator to the Second Korean Army headquartered in Taegu. Working directly with South Korean soldiers, I saw first-hand that they had improved tremendously from the rag-tag outfit that could barely conduct even basic military operations in the 1950s. They were well trained, motivated, and had vastly superior military technology to their northern counterparts. The two decades since have only seen the disparity between the two Koreas grow even greater in the South's direction.

There has long been a belief among many in the United States that South Korea was weak militarily and that without American combat troops defending the Demilitarized Zone (DMZ) that separates the two Koreas, Pyongyang forces would be able to overwhelm the South and conquer it. Since at least the mid-2000s, that has not been true.

While North Korea does have a massive land army and an impressive artillery and missile force, it does not have the infrastructure or sufficiently modern military technology to have even a chance at conquering the South. To attempt it would be suicidal – and hence its dictator, Kim Jong Un, would not make such an attempt.

In fact, Kim is quite rational (if also brutal), and his desire to live is exactly what will restrain him from ever launching an unprovoked attack, as his grandfather did in 1950. But Kim's desire to live – and his recognition of his relative weakness in relation to South Korea and the US – is what drove his father, Kim Jong Il, to develop a deliverable nuclear weapon.

Kim Il Sung, the first dictator in North Korea, accelerated his drive to get a nuclear weapon following the collapse of the Soviet Union when he realized that without the backing of the Russian military, he was at the mercy of both China and the United States. Kim Il Sung died in 1994; his son continued the drive, finally testing a warhead in 2006.

When Kim Jong Un took over in 2011, following the death of his father, he accelerated the nuclear program yet again, and by late 2017 had allegedly succeeded in developing an intercontinental ballistic missile capable of carrying nuclear weapons to the continental United States. He did not do this to set the stage for an unprovoked attack, as many in the West are so eager to claim, but to more forcefully deter Washington from trying to attempt regime change against him. Kim wanted to deter, not attack, the US.

When the policy of the Trump Administration – at the earnest insistence of former National Security Advisor John Bolton – was to demand full denuclearization before any sanctions could be relieved against the Kim regime, we locked ourselves into a situation in which tensions will remain high and the risk of accidental war (or miscalculation leading to war) remains high. That's not a good policy, as it has virtually no chance of succeeding. We need, therefore, to make changes in our approach and try something that has a chance to accomplish valid US and South Korean security objectives.

A good first step would be to pursue long-term denuclearization of the Peninsula and seek short-term security

gains as initial steps. That would mean opening the door to incremental, step-by-step approaches that make reciprocal action on both sides. Second, we should support South Korea's President Moon Jae-in in his efforts to establish and expand ties with North Korea, work on joint economic development between the two countries, and negotiate an end-of-war declaration with his neighbor to the North. Anything that reduces the tensions between the two countries and lessens the chance of war is something we should pursue.

The balance of power between the US–Republic of Korea alliance and North Korea is so strong toward the US side that there is no genuine military or economic competition. Kim likely does have a small stockpile of nuclear weapons and does have potent conventional forces, but it is not a fraction of the power Washington and Seoul can bring to bear in the event of war, and Kim knows this better than anyone.

Thus, Kim is already successfully deterred and there would be no reason for America to launch a war to attack him. Our security is already guaranteed by our standard nuclear and conventional forces. The best course of action would be to minimize friction and lower the tensions between North and South Korea to preserve the security of all.

Regardless of how much we all wish it weren't so, the fact is that Pyongyang has nuclear weapons. No amount of coercion or threats of preemptive war will compel North Korea to give up its one powerful deterrent card. Trying to force that outcome is to guarantee failure and keep alive the risk of accidentally stumbling into war.

The best way to ensure US security is to facilitate reconciliation between South and North Korea, reduce tensions so no party feels threatened, and over time work toward disarmament. Countries that are making economic progress and improving the lives of their people are the least likely to ever start a war.

Daniel L. Davis is a Senior Fellow for Defense Priorities and a former lieutenant colonel in the U.S. Army who retired in 2015 after 21 years, including four combat deployments. The views in this article are those of the author only and do not represent the opinions of any organization. Follow him @DanielLDavis1.

Building a Durable Peace with North Korea

By Adam Mount

US policy debates on North Korea sometimes suggest that there are two irreconcilable options: pursue a peace process that accommodates the regime as a nuclear power or pursue a pressure policy to disarm it. In fact, this dichotomy is misleading. North Korea has acquired nuclear weapons, is rapidly expanding its capabilities, and has demonstrated the capability and resolve necessary to resist economic coercion. North Korean officials have repeatedly stated their intention to retain and expand their arsenal and have declined to engage in consistent and detailed negotiations on a nuclear agreement. The United States cannot disarm Pyongyang cannot be disarmed by applying pressure to force it into a single, cathartic agreement.³³⁵ Instead, the road to disarmament and a stable Northeast Asia requires a protracted effort to shape North Korea's transformation and to build a relationship capable of sustaining a durable peace.

If the United States did commit to a peace agreement at the June 2018 summit in Singapore, it may in practice be a necessary prerequisite to either a partial agreement to shape the North Korean arsenal or to other diplomatic agreements that can shape North Korea's internal evolution—both of which would be in the US interest. Conclusion of a peace agreement would not undermine the legal or political justification for a US–Republic of Korea deterrence posture. Though it may put political pressure on certain elements of the alliance, these costs are manageable given sufficient effort on the part of the South Korean government.

On the other hand, while a peace agreement might reflect and amplify diplomatic momentum with North Korea, it is unlikely that such an agreement would be sufficient to build momentum where none now exists.³³⁶ Any agreement to constrain the North Korean nuclear arsenal should be concluded, implemented, and verified on the basis of steps and incentives delineated in the agreement itself rather than made contingent on promises for peace or development that Pyongyang is likely to doubt.

That having been said, there are significant benefits to the United States and its allies to adopting a more holistic approach

to negotiations that resembles the Moon administration's concept of a peace regime and might include a peace agreement.

The exclusive focus on nuclear disarmament has not only failed to achieve its stated objectives, it has also contributed to several trends that harm the interests of the United States and its allies over the long term.³³⁷ In the vain hope of applying pressure that could coerce Pyongyang to rapidly disarm, the United States has constructed a porous sanctions regime that has inhibited the work of humanitarian organizations, prevented the emergence of trading companies not solely dependent on the regime, and incentivized the regime to build a highly sophisticated clandestine global procurement network.³³⁸ The United States and its allies have virtually no influence over the internal evolution of North Korean society, including human rights, marketization, agricultural production, gender equality, and the proliferation of consumer technologies. In each of these areas, trends that could have nudged North Korea toward greater personal freedom and welfare have instead been exploited by the regime to expand its system of internal control. Military displays intended to alarm and pressure the regime have incentivized the expansion and diversification of that arsenal and may soon contribute to the adoption of destabilizing command and control procedures or the acquisition of nonstrategic nuclear capabilities.³³⁹ Either by diverting attention and resources away from these challenges or by actively exacerbating negative trends, the exclusive US focus on disarmament has harmed US interests in these areas.

Like the artful rhetorical device of “denuclearization,” North Korea’s insistence that the United States drop its “hostile policy” is an elastic and imprecise demand that can be used as a scapegoat to avoid negotiations in perpetuity. Washington and Seoul cannot meet the demand by offering to sign symbolic agreements, issuing declaratory policy, or unilaterally adjusting allied force posture on the Peninsula.

Nuclear disarmament is now impossible without a broader effort to construct a more equitable North Korea that has a greater stake in regional stability through engagement with it. Through controlled but collaborative economic projects, reciprocal conventional and nuclear arms control, and concerted humanitarian efforts, it may be possible over decades to build a relationship

with North Korea that could result in a decision to eliminate its nuclear arsenal.³⁴⁰ However, because disarmament is now a long-term objective that requires a broader effort to transform our relationship with North Korea, it cannot be accomplished with any singular agreement in isolation from the rest of North Korea policy, whether a coercive disarmament agreement or a peace declaration. An agreement to end the Korean War is likely a necessary part of this broader process and should be adopted in the manner that can most effectively contribute to a more peaceful and stable relationship.

Reticence toward transforming our relationship with North Korea relies on political incentives or the mistaken belief that time is on our side. Time is not on our side: each month that passes, we run a risk of war, the North Korean arsenal expands, and the regime solidifies its control of the market economy and information technology. A more constructive effort to transform our relationship with North Korea would not constitute acceptance of that country as a nuclear power any more than a series of presidential summits has—and in any case it is misguided to allow cosmetic concerns about “acceptance” to stand in the way of effective steps to reverse North Korea’s possession of nuclear weapons.³⁴¹ The convenient political fiction that North Korea can be disarmed by a presidential administration or a sanctions package might sound inspiring, but it is actively detrimental to US and allied interests.

A nuclear-free peninsula requires a sustained effort to build the conditions for disarmament: a more equitable North Korea and a relationship that can support a durable peace.

Adam Mount is a senior fellow and director of the Defense Posture Project at the Federation of American Scientists. He holds a Ph.D. in government from Georgetown University.

North Korea: Human Rights and a Peace Treaty

By Hazel Smith

The choice today is not between a perfect versus an imperfect policy; it is between all the options that are realistically available. In these circumstances, a peace treaty has a great deal of merit.

The pursuit of a peace treaty between the United States and the Democratic People’s Republic of Korea (DPRK) provides a concrete negotiating goal in the face of the real-world alternatives of regime change or continuing diplomatic paralysis. It would be foolish to minimize the difficulties of achieving an agreement, but the consequences, if successful, would go far beyond the realm of state security. The foreign investment that would likely follow a peace treaty would provide jobs and lift millions of North Koreans out of poverty. Another result would be to reduce the power and reach of the state into personal and social life and, in so doing, expand and legitimize the nonstate private and civic sphere of decision-making and activity. In turn, this would provide more permissive conditions for North Koreans to challenge state abuses and to generate and implement alternative political projects for themselves.

A large number of human rights organizations have reported human rights abuses in North Korea, documenting deficiencies in political rights, such as the right to dissent; civil rights, such as due process; and social rights, such as the rights to health and food. Criticisms of the political system gain traction because of the opacity of the North Korean state, which means it is difficult to assess the scope, scale, and representative nature of specific claims. Yet the very lack of transparency and accountability of the North Korean government to its own people, let alone to outsiders, gives grounds in itself for a critique of the political system. The lack of transparency leads to worst-case-scenario speculation. There are grounds for skepticism of the most lurid accounts and a need for critique of the factual accuracy of some of the generalized claims about government food and health policies, but there is no question that individual rights are subordinated to the interests of the state and that brutal measures are routinely used to suppress dissent.

Important questions for international human rights campaigners are these: What can foreigners do? What should they do? And what are the realistic options open to external actors?

For many external interlocutors, the primary aim of any deal with North Korea should be to bring about political change toward a rights-based polity, as opposed to the current political structure, in which the North Korean state possesses institutionally uncontested authority over its citizens.

Some see this objective as being possible only if the regime is overthrown; they reject any negotiation with the DPRK as appeasement. One problem with this approach is that there is not much evidence that regime change activities using force are successful. There are exceptions; Vietnam's invasion of Cambodia to unseat the Pol Pot regime and the UK's intervention in Sierra Leone in the 1990s were, arguably, both ethical and effective. Yet these really are the exceptions that prove the rule. Afghanistan, Libya, Iraq, and Yemen provide a more common outcome, in which external intervention designed to achieve regime change goals has ended with ongoing conflict and disastrous human consequences in terms of the numbers of innocents killed, raped, maimed, made orphans, and displaced.

In my own view, a regime-change scenario in North Korea would be unlikely to bring about the changes desired by international campaigners because the military intervention that would be required would cause widespread devastation, including possibly millions of casualties. While the Kim family may well be overthrown in such a scenario, the formation of a military government – perhaps with the appurtenance of a democratic structure as in Myanmar – would be as likely a result as absorption into a democratic South Korea, the usually unstated goal of advocates for political change.

The alternative policy of doing nothing – arguably, the current approach – has consequences that are devastating for North Korea's population of 25 million. With an average yearly income of less than \$2,000, North Koreans are some of the poorest people in the world, according to authorities ranging from the Central Intelligence Agency to the World Bank. Without some form of diplomatic initiative, the DPRK will not likely abandon what it considers its "nuclear deterrent." UN sanctions on the civilian economy, including the ban on necessary imports for the agricultural sector, have already caused massive losses in food production. Levels of poverty as expressed in child mortality, maternal mortality, decreasing life expectancy, disease prevalence, and malnutrition will inevitably increase.

A peace treaty is a legally binding agreement between two (or more) sovereign states. Sovereignty is constituted by a legal recognition of state supremacy over territory and population at home and equality with all other sovereign states. Sovereign equality

does not, of course, imply that states are equal in power but because sovereignty provides the foundational principle of international law, unless the DPRK were vanquished in war and its sovereignty forcibly extinguished, a peace treaty could not include prescriptive caveats about domestic affairs, including human rights safeguards, unless the DPRK agreed to their incorporation. Nevertheless, the consequences of a peace treaty could be transformational for North Koreans because it would likely provide the necessary conditions for the introduction of a rights-based legal system to the DPRK.

In the wake of a treaty, foreign investment restrictions would likely be eased or abandoned. Given the government's active pursuit of foreign investment, and the potential for foreign investors in the mining, mineral, communications, and tourism sectors, there are reasons to anticipate that foreign investors would have interest in investing in the DPRK. South Korea, China, and Russia have already declared likely support for public infrastructure projects like rail, roads, and bridges. Multilateral organizations such as the World Bank and the Asian Development Bank would also be free to negotiate investment projects in North Korea.

For the North Korean government to attract the volume of investment for which it hopes, it would need to provide a legally acceptable operating environment for foreign investors in which contracts would be secure from arbitrary interference from the state. At a minimum, this would require the legal institutionalization of a new system of property rights, a functioning and transparent regulatory structure, and guarantees that an independent rule of law would prevail in disputes. Without these reforms, major foreign investors will stay away.

Legal changes would be transformational for North Koreans in that for the first time, citizens would have civil, economic, property, and social rights vis-à-vis the state. Such changes may also mean the formal abolition of the North Korean equivalent of the Chinese danwei system, in which the Party – via workplace authorities, – must give permission for many aspects of private life, including marriage, travel, and educational choices, and is the source of housing, food, and employment allocation. As in China since the 2000s, such change could bring significant improvements in personal freedoms, even though they would not likely,

again as in China, entail the introduction of liberal democratic political structures.

The DPRK government is aware that legal and institutional reforms would be a quid pro quo of substantial foreign investment. Over the years, its officials have had many discussions with the Chinese government, NGOs like the Singapore-based Choson Exchange that engage in training of DPRK economic officials, and officials from international organizations and foreign governments.

The institutionalization of a system where business and individuals have rights against the state would allow recognition of new norms and practices, such as self-help and the pursuit of the interests of the family (compared to putting the state first). These are already embedded in the behavior and goals of North Koreans, particularly the younger generations that did not grow up in the Cold War days when the state really did control all economic interactions, and much else as well. These new norms have become prevalent in North Korean society via the marketization that has sustained the economy over the last 20 years, yet the state so far still refuses to recognize these psychological and social changes that have transformed the expectations and aspirations of all North Koreans. Given an inflow of foreign investment, millions of North Koreans at home will encounter foreigners through tourism and development projects. It will be very difficult for the North Korean state to maintain the political fantasy that North Korean society has not already changed in very fundamental ways.

Policy planning in respect to North Korea has been paralyzed by a reluctance to accept that we start from where we are rather than where we would like to be, combined with frustration that optimal outcomes cannot realistically be achieved by the instruments available. A peace treaty is more achievable than regime-change options, precisely because of the narrowness of its scope and the concrete nature of its aim. It is too ambitious to argue that, of itself, a peace treaty between the United States and the DPRK would bring about all the various objectives sought by human rights campaigners. Nevertheless, the peace treaty proposal provides a concrete response to the questions of what can and should be done to improve the economic and civil rights of North Koreans.

Hazel Smith Ph.D. FRSA is Professorial Research Associate, School of Oriental and African Studies

(SOAS), University of London; Professor emerita of International Security, Cranfield University, UK; Fellow, Member, Global Future Council on Korea, World Economic Forum. Her publications include *North Korea: Markets and Military Rule* (Cambridge University Press) and *Hungry for Peace: International Security, Humanitarian Assistance, and Social Change in North Korea* (United States Institute of Peace).

A New U.S. Strategy for the Korean Peninsula

By Jessica J. Lee

US–South Korea relations have had many ups and downs since the two countries signed the Treaty of Peace, Amity, Commerce and Navigation in 1882. Bilateral relations have come under intense strain in recent years due to President Donald Trump’s transactional approach toward cost sharing for US defense of South Korea. As President Joe Biden takes office, a strategic rethink on US–South Korea relations must be a top priority. America needs a new strategy toward the Korean Peninsula, one that reflects the American people’s desire for a less militarized foreign policy and the long-term need for the Korean people to lead on Korean issues.

Ending the Korean War and Updating the US–South Korea Alliance

Joe Biden has pledged to revitalize American alliances as part of his strategy to “lead the world.”³⁴² In the case of the Korean Peninsula, President Biden will inherit a complex set of interconnected challenges, from jumpstarting talks with nuclear-armed North Korea to improving US–Republic of Korea relations.

It is in America’s long-term interests to create the conditions necessary for allies to eventually provide for their own defense rather than rely on the U.S. Armed Forces indefinitely. This was true even before the COVID pandemic, but it is especially true now as Americans reckon with inequities stemming from chronic underinvestment in domestic infrastructure while Pentagon spending has grown. Poll after poll shows that Americans want a more modest foreign policy, one that prioritizes diplomacy over military dominance and open-ended conflicts.³⁴³ A restrained foreign policy centered on cooperation to combat transnational

threats and a denial-oriented defense strategy that enhances allies’ ability to defend themselves are needed to maintain a stable Korean Peninsula.³⁴⁴

As part of a broader strategy to reduce the threat of a conflict with North Korea and strengthen South Korea’s position in the region, President Biden should declare the Korean War over and announce his intention to sign a peace treaty, to be ratified by the US Senate, formally ending the war. The status quo, which relies on the 1953 Armistice Agreement to maintain peace on the Peninsula, was never meant to be permanent. Now that it is in its 70th year, Washington must finally help to end the Korean War and restore the sovereignty of South Korea, a prosperous and democratic country that is capable of defending itself.

To get there, Washington, Seoul, and Tokyo should discuss in specific terms what ending the Korean War means for mutual defense and long-term security interests in East Asia. Such consultation should take place before moving from an end-of-war declaration to a peace treaty.

In the long run, a more stable Korean Peninsula has the potential to bring Japan and South Korea closer together. As Narushige Michishita of the National Graduate Institute for Policy Studies has argued, peace on the Korean Peninsula could present new opportunities for Japan and South Korea to advance a peaceful East Asia that serve both countries’ interests.³⁴⁵ Japan’s Prime Minister Yoshihide Suga’s pragmatic outlook bodes well for strategic cooperation in this area: “Japan and South Korea are extremely important neighbors to each other. In dealing with North Korea and other issues, I believe Japan–South Korea and Japan–U.S. cooperation are crucial.”³⁴⁶

To be sure, progress in ending the war will depend on North Korea’s cooperation. Any effort to build pressure for a precipitous withdrawal of US troops from South Korea will make progress with a political agreement very difficult.

From the US perspective, ending the Korean War and moving toward a less security-dependent South Korea has several benefits. First, it would reduce tensions on the Korean Peninsula, which is good for Americans, for Koreans, and for regional stability. Declaring the Korean War over is a cost-free way to signal US seriousness in resolving the North Korea issue through peaceful means and could induce North

Koreans to take positive steps to de-escalate tensions on the Peninsula.

Second, it offers a chance to make more progress on curbing North Korea’s nuclear weapons program. As Dr. Chung-in Moon, Special Advisor to the South Korean President, noted in a May 27, 2020, webinar co-hosted by the Quincy Institute–East Asia Foundation, establishing a “linkage between gradual reduction of US troops and denuclearization” could serve as “a bargaining card” for faster denuclearization.³⁴⁷

Finally, a militarized US policy on the Korean Peninsula could heighten the already tense relationship between the United States and China. In general, Washington must resist conflating its China strategy with its Korea strategy. Middle powers in Asia such as South Korea and New Zealand, for whom China is their largest trading partner, do not wish to take sides in a Sino–US competition. Forcing US–South Korea issues within the framework of containing China is illogical, given the US need for China’s cooperation on ending the Korean War and maintaining stability on the Korean Peninsula.

Conclusion

The COVID-19 pandemic is a wake-up call to those who think that primacy must remain the goal of US foreign policy toward East Asia. It must not. The COVID pandemic is a salient reminder of the increasing need for global cooperation on a host of issues affecting people’s lives. As Congressman Ami Bera noted, this includes a careful examination of US–South Korea relations: “The next 75 years may be different than the past. World War II was the last time when the entire planet was affected by something. South Korea is not a developing nation. It’s a top nation in the world and a partner. So what will our alliance look like in the future?”³⁴⁸

American strategists need to embrace change rather than fall into the comforts of old ways of thinking. The United States played a vital role in stopping South Korea from becoming part of the North 70 years ago. It is time for the United States to make room for the Korean people to shape their own future.

Jessica J. Lee is a Senior Research Fellow on East Asia at the Quincy Institute for Responsible Statecraft.

Endnotes

CHAPTER I

- 1 Still, North Korea's nuclear arsenal represents just a tiny fraction – less than 1 percent – of the United States' nuclear stockpile. "Nuclear Weapons: Who Has What," Arms Control Association, last modified August 2020, <https://www.armscontrol.org/factsheets/Nuclearweaponswhohaswhat>; Hans Christensen and Robert S. Norris, "North Korean Nuclear Capabilities, 2018," *Bulletin of the Atomic Scientists* 74, no. 1 (January 2, 2018).
- 2 James Hohmann, "U.S. Came 'Much Closer' to War with North Korea in 2017 than the Public Knew, Trump Told Woodward," *Washington Post*, September 16, 2020.
- 3 Donald Trump, "Remarks by President Trump to the 72nd Session of the United Nations General Assembly," September 19, 2017.
- 4 Statement by Ambassador Ri Yong-Ho at the 72nd session of the UN General Assembly, September 23, 2017, <https://gadebate.un.org/en/72/democratic-peoples-republic-korea>.
- 5 Inter-Korean Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula, April 27, 2018, para. 3.3. ("The two sides agreed to ... actively promote the holding of trilateral meetings involving the two sides and the United States, or quadrilateral meetings involving the two sides, the United States and China with a view to replacing the Armistice Agreement with a peace agreement.")
- 6 Joint Statement of President Donald J. Trump of the United States of America and Chairman Kim Jong Un of the Democratic People's Republic of Korea at the Singapore Summit, June 12, 2018.
- 7 Lesley Wroughton and David Brunnstrom, "Exclusive: With a Piece of Paper, Trump Called on Kim to Hand over Nuclear Weapons," *Reuters*, March 29, 2019. White House, Remarks by President Trump in press conference, Hanoi, Vietnam, February 28, 2019.
- 8 David Brunnstrom, "Getting North Korea to Give up Nuclear Bomb Probably 'Lost Cause': U.S. Spy Chief," *Reuters*, October 25, 2016; "North Korea Unlikely to Give up Nuclear Weapons: U.S. Spy Chief Coats," *Reuters*, January 29, 2019.
- 9 "Report of the Fifth Plenary Meeting of the 7th Central Committee of the WPK," KCNA, January 1, 2020.
- 10 "Women's Participation in Peace Processes," Council on Foreign Relations, accessed November 22, 2020, <https://www.cfr.org/womens-participation-in-peace-processes>.
- 11 "WPS Implementation," Women's International League for Peace and Freedom, accessed November 22, 2020, <https://www.peacewomen.org/member-states>.
- 12 For reports analyzing the implications of a peace agreement outside the context of a policy proposal, see, e.g., Emma Chantlett-Avery et al., *A Peace Treaty with North Korea?*, Congressional Research Service, April 19, 2018; Kyung-ok Do, *The Peace Agreement on the Korean Peninsula: Legal Issues and Challenges*, Korea Institute for National Unification, August 2020.
- 13 See, e.g., Duyeon Kim, *Negotiating Toward a Denuclearization-Peace Roadmap on the Korean Peninsula*, Center for a New American Security, June 27, 2019.
- 14 Bradley Bowman and David Maxwell, *Maximum Pressure 2.0: A Plan for North Korea*, Foundation for Defense of Democracies, 2019 (calling for increased pressure to achieve what the implementation of "maximum pressure" did not); Jung H. Pak, *Becoming Kim Jong Un: A Former CIA Officer's Insights into North Korea's Enigmatic Young Dictator* (New York: Ballantine Books, 2020) (a personalist analysis of the conflict, arguing that the central question is to "alter [North Korean leader Kim Jong Un's] calculus in a way that compels him to believe that nuclear weapons are a greater threat to his rule and dynastic preservation than an asset").
- 15 Adam Mount et al., *Report of the International Study Group on North Korea Policy*, Federation of American Scientists, 2019 (making the case that "an exclusive pursuit of disarmament will come at the cost of efforts to manage other critical interests, including the risks of conventional war, ballistic missile proliferation, contagion of infectious disease, and the continued suffering and repression of the North Korean people"); Henri Féron et al., *The Human Costs and Gendered Impact of Sanctions on North Korea*, Korea Peace Now!, October 2019, <https://koreapeace-now.org/wp-content/uploads/2019/10/human-costs-and-gendered-impact-of-sanctions-on-north-korea.pdf> (a Korea Peace Now!-commissioned report synthesizing the publicly available information and reports on humanitarian and human rights consequences of sanctions for the North Korean people); Van Jackson, *On the Brink: Trump, Kim, and the Threat of Nuclear War* (Cambridge University Press, 2019) (arguing that "maximum pressure" brought the world much closer to nuclear war than generally recognized); Ankit Panda, *Kim Jong Un and the Bomb: Survival and Deterrence in North Korea* (Oxford University Press, 2020) ("North Korea's success with its own nuclearization has forced the world into an unsavory – if gradual – process of recognizing that coexistence will in all likelihood be the only plausible path going forward."); Toby Dalton, "On North Korea, the Day After," *Carnegie Endowment for International Peace*, September 9, 2020 ("North Korea's nuclear weapons are a fait accompli Neither unilateral disarmament nor military confrontation is a viable U.S. policy approach, and maximum economic pressure will not change Kim's calculus").
- 16 A selection of the vast literature on the topic might include Morton Halperin et al., "Ending the North Korean Nuclear Threat by a Comprehensive Security Settlement in Northeast Asia," *NAPSNet Policy Forum*, June 26, 2017; Sung-Yoon Chung et al., *Peace Regime of the Korean Peninsula and North Korean Policy*, Korea Institute for National Unification,

- 2018; James Goodby et al., *A Framework for Peace and Security in Korea and Northeast Asia*, Atlantic Council, 2007.
- 17 A similar emphasis on peace first was advanced in a policy proposal from a Sejong Institute–RECNA workshop including 26 experts: Peter Hayes et al., *From Peace on the Korean Peninsula to a Northeast Asia Nuclear Weapons Free Zone*, Sejong Institute and Nagasaki University Research Center for Nuclear Weapons Abolition, September 18, 2019, <http://nautilus.org/wp-content/uploads/2019/09/Policy-Proposal-Peace-Korea-NEA-NW-FZ-Sejong-RECNA-Sep18-2019.pdf> (“One of the most important initial steps is to declare and conclude a final Korean War peace settlement. Conclusion of such an agreement would pave the way for a raft of measures to reduce, defuse, and eventually eliminate high-risk forms of military deployment and confrontation, particularly in and close to the DMZ.”).
- 18 See Bruce Cumings, *The Korean War: A History* (Modern Library, 2010), 35 (“Various encyclopedias state that the countries involved in the three-year conflict suffered a total of more than 4 million casualties, of which at least 2 million were civilians—a higher percentage than in World War II or Vietnam. A total of 36,940 Americans lost their lives in the Korean theater; of these, 33,665 were killed in action, while 3,275 died there of nonhostile causes. Some 92,134 Americans were wounded in action, and decades later, 8,176 were still reported as missing. South Korea sustained 1,312,836 casualties, including 415,004 dead. Casualties among other UN allies totaled 16,532, including 3,094 dead. Estimated North Korean casualties numbered 2 million, including about one million civilians and 520,000 soldiers. An estimated 900,000 Chinese soldiers lost their lives in combat.”)
- 19 Korean War Armistice Agreement, July 27, 1953.
- 20 Inter-Korean Joint Communiqué of July 4, 1972; Inter-Korean Joint Declaration, June 15, 2000; Inter-Korean Joint Declaration, October 4, 2007; Inter-Korean Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula, April 27, 2018; Inter-Korean Pyongyang Joint Declaration, September 19, 2018; Inter-Korean Agreement on the Implementation of the Historic Panmunjom Declaration in the Military Domain, September 19, 2018. On economic agreements, see also Seong-ho Jhe, “Four Major Agreements on Inter-Korean Economic Cooperation and Legal Measures for their Implementation,” *Journal of Korean Law* 5, no. 1 (2005), 126–144.
- 21 The United States, while recognizing that ending the Korean War would be in the national interest, has conditioned this step on the prior denuclearization of North Korea. Meanwhile, North Korea has insisted that it will continue developing its armament until peace is made. White House Office of the Press Secretary, “President Bush Meets with South Korean President Roh,” September 7, 2007 (Bush: “it’s up to Kim Jong-il as to whether or not we’re able to sign a peace treaty to end the Korean War. He’s got to get rid of his weapons in a verifiable fashion.”); “U.S. Rejected North Korea Peace Talks Offer Before Last Nuclear Test,” Reuters, February 21, 2016; WomenCrossDMZ, “Peace Agreement with North Korea Is in ‘US Interest,’ Says US Under Secretary of Defense for Policy,” January 28, 2020; “Report of the Fifth Plenary Meeting of the 7th Central Committee of the WPK,” KCNA, January 1, 2020.
- 22 U.S.–ROK Joint Communiqué of the 50th Security Consultative Meeting, Oct. 31, 2018, para. 4.
- 23 See, e.g., Sung-Yoon Lee, “Dear America: Don’t Fall for Pyongyang’s Predictable, Poisonous Ploy,” *The Hill*, January 4, 2018.
- 24 Political scientist Van Jackson lists these three possibilities in his analysis of the 2017 “fire and fury” escalation, in which he argues we were much closer to combat than commonly appreciated. First, he notes that a number of constituencies within the US foreign policy community were making a case for not just preventive strikes against North Korea, but preventive war. Second, he highlights how both sides have become accustomed to talking and acting as if they could enhance deterrence through deliberate friction and presents the much-discussed consideration of conducting a limited, “bloody nose” strike against North Korea as an extension of this logic and “a recipe for inadvertent war.” Third, Jackson identifies a series of 12 events or signals that could have been misinterpreted as combat preparations and led to a “false-positive war,” such as North Korea’s placement of two ICBMs on mobile missile launchers, reports that the United States was planning a noncombatant evacuation operation, or the massive deployment of troops in the Valiant Shield and Vigilant Ace military exercises. Van Jackson, *On the Brink: Trump, Kim, and the Threat of Nuclear War* (Cambridge University Press, 2019), 193–209.
- 25 Cumings, *The Korean War*, 35.
- 26 Central Intelligence Agency, *Intelligence Memorandum: Population and Manpower of Korea 1954*, CIA/RR IM-396, September 13, 1954 (“The most recent firm estimate of the population of Korea is for 1949, when the total population of 29.3 million included 9.1 million north of the 38th parallel, and 20.2 million, south.”).
- 27 Kathleen J. McInnis et al., *The North Korean Nuclear Challenge: Military Options and Issues for Congress*, Congressional Research Service, November 6, 2017, 18–21.
- 28 “Defense Budget Trend,” ROK Ministry of National Defense database (in Korean), accessed November 22, 2020, https://mnd.go.kr/mbshome/mbs/mnd/subview.jsp?id=mnd_010401020000.
- 29 Still, North Korea’s nuclear arsenal represents a small fraction – less than 1 percent – of the United States’ nuclear stockpile. “Nuclear Weapons: Who Has What at a Glance,” Arms Control Association, accessed November 11, 2020, <https://www.armscontrol.org/factsheets/Nuclearweaponswhohaswhat>.
- 30 “Missiles of South Korea,” Centre for Strategic & International Studies, accessed Nov. 4, 2020, https://missilethreat.csis.org/country_tax/south-korea/; Choe Sang-hun, “South Korea Plans ‘Decapitation Unit’ to Try to Scare North’s Leaders,” *New York Times*, September 12, 2017.
- 31 The United States accounts for 38 percent of global military spending. Nan Tian et al., *Trends in World Military Expenditure, 2019*, Stockholm International Peace Research Institute, April 2020.
- 32 Choe Sang-hun, “In Show of Alliance, American Forces Fly B-52 Bomber over South Korea,” *New York Times*, January 10, 2016; Kevin Baron, “What Is Foal Eagle?” *Foreign Policy*, April 4, 2013; William McKinney, “Ending US-ROK Military Exercises: An Idea Whose Time Has Come,” 38 *North*, June 13, 2018.
- 33 See, e.g., “North Korea Warns of Retaliation Against U.S.-South Korea Military Drills,” Reuters, November 13, 2019.
- 34 Ahn Sung Kyoo, Choi Kang, and Eun Yul Kweon, “Implications of China’s Ballistic Missiles for Korean National Security,” *Asan Institute for Policy Studies*, November 10, 2015.
- 35 Pieter D. Wezeman et al., *Trends in International Arms Transfers, 2019*, Stockholm International Peace Research Institute, March 2020.
- 36 See, e.g., Bruce E. Bechtol Jr., *North Korean Military Proliferation in the Middle East and Africa* (Kentucky University Press, 2018).
- 37 Reports by the UN Panel of Experts responsible for monitoring sanctions implementation systematically note North Korea’s sophisticated sanctions evasion methods. See, e.g., Report of the Panel of Experts established pursuant to resolution 1874, S/2020/151, March 2, 2020. See also Bruce E. Bechtol Jr., “North Korean Illicit Activities and Sanctions: A National Security Dilemma,” *Cornell International Law Journal* 51, no. 1 (Winter 2018), 57–99.
- 38 Féron et al., *The Human Costs and Gendered Impact of Sanctions on North Korea*.
- 39 The ideal of economic self-reliance has remained central to North Korea’s state ideology of Juche at least since a 1965 speech on the subject by state founder Kim Il Sung. While North Korea obtained significant aid from socialist bloc countries during its post-war reconstruction and while it never really attained complete economic independence, it has still arguably evolved over the decades into one of the most self-contained industrialized economies in the world. Kim Il Sung, “On Socialist Construction in the Democratic People’s Republic of Korea and the South Korean Revolution,” April 14, 1965; Kim Jong Il, *On the Juche Idea* (Pyongyang: Foreign Languages Publishing House, 1982); Charles K. Armstrong, “The Destruction and Reconstruction of

- North Korea, 1950–1960,” *The Asia-Pacific Journal: Japan Focus* 7 (March 16, 2009); Charles K. Armstrong, *The North Korean Revolution 1945–1950* (Cornell University Press, 2003), 245.
- 40 Féron et al., *The Human Costs and Gendered Impact of Sanctions on North Korea*, 4–5, 14–18. For UNSC sanction sources, see UNSC Resolution 1718, S/RES/1718, October 14, 2006; UNSC Resolution 1874, S/RES/1874, June 12, 2009; UNSC Resolution 2087, S/RES/2087, January 22, 2013; UNSC Resolution 2094, S/RES/2094, March 7, 2013; UNSC Resolution 2270, S/RES/2270, March 2, 2016; UNSC Resolution 2321, S/RES/2321, November 30, 2016; UNSC Resolution 2371, S/RES/2371, August 5, 2017; UNSC Resolution 2375, S/RES/2375, September 11, 2017; UNSC Resolution 2397, S/RES/2397, December 22, 2017. For US sanctions, see Congressional Research Service, *North Korea: Legislative Basis for U.S. Economic Sanctions*, R41438, updated March 9, 2020.
- 41 Amnesty International, *The National Security Law: Curtailing Freedom of Expression and Association in the Name of Security in the Republic of Korea*, 2012; UN Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of the Republic of Korea*, CCPR/C/KOR/CO/4, para. 48–51, December 3, 2015 (“The Committee ... reminds the State party that the Covenant does not permit restrictions on the expression of ideas merely because they coincide with those held by an enemy entity or may be considered to create empathy for that entity. The State party should abrogate art. 7 of the National Security Act”); Sukjong Hong, “Court Dissolution of Left-Wing Party in South Korea Raises Alarm,” *Al Jazeera*, January 15, 2015; Sang-hun Choe, “Former South Korean Spy Chief Sentenced for Trying to Sway Election,” *New York Times*, August 30, 2017.
- 42 According to the seminal treatises on war and peace of the jurist Lassa Oppenheim, “the chief and general effect of a peace treaty is restoration of the condition of peace between the former belligerents.” Oppenheim, *International Law*, para. 272. See also U.S. Department of Defense, *Law of War Manual*, June 2015 (updated December 2016), 94 (“hostilities may be terminated by ... an agreement to end hostilities, normally in the form of a treaty of peace”). The Vienna Convention on the Law of Treaties defines a “treaty” as “an international agreement concluded between States in written form and governed by international law.” (art. 2(1)a).
- 43 Oppenheim, *International Law*, para. 231 (“[Armistices] are in no wise to be compared with peace, and ought not to be called temporary peace, because the condition of war remains between the belligerents themselves, and between the belligerents and neutrals on all points beyond the mere cessation of hostilities.”); U.S. Department of Defense, *Law of War Manual*, 864 (“An armistice is not a partial or a temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties to the conflict. War as a legal state of hostilities between parties may continue, despite the conclusion of an armistice agreement” [citations omitted]).
- 44 How to best achieve a peace regime is outside the scope of this report. See the Introduction for a bibliography of models and see Recommendations for proposed guiding principles.
- 45 Joint Statement of the Fourth Round of the Six-Party Talks, September 19, 2005, para. 4; Inter-Korean Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula, April 27, 2018, para. 3; Singapore Declaration, June 12, 2018, para. 2.
- 46 There are different interpretations of the legal significance of the long-standing cessation of large-scale active combat in Korea. Some scholars have argued that this cessation ushered in a tacit state of peace over the years. Others argue that the state of war persists, given the continuing heavy militarization and military tensions on the Korean Peninsula and calls by the two Koreas and UN organs to replace the Armistice with a peace agreement. Insofar as a state of war may arise based solely on intention as opposed to actual use of force, for instance in the case of a declaration of war, the absence of active combat is not per se conclusive evidence that a state of war has ended. All sides have, even relatively recently, threatened use of force in ways that appear difficult to reconcile with peacetime rules. The uncertainties this raises have themselves fueled the intense military tensions on the Korean Peninsula. Patrick Norton, “Ending the Korean Armistice Agreement: The Legal Issues,” NAPSNet Policy Forum, March 1997 (estimating that “most authorities have concluded that ... the Korean War ... still continues as a legal matter.”); Korean War Armistice Agreement, July 27, 1953, Preamble and art. 60; UN General Assembly Resolution 3390A, para. 2, 3390B, para. 2, November 18, 1975; Inter-Korean Basic Agreement of 1991, art. 5; UN Security Council President Statement S/PRST/1996/42, October 15, 1996; Inter-Korean Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula, April 27, 2018, para. 3. See also U.S. Department of Defense, *Law of War Manual*, 94 (“Hostilities end when opposing parties decide to end hostilities and actually do so, i.e., when neither the intent-based nor act-based tests for when hostilities exist are met.”); see also McInnis et al., *The North Korean Nuclear Challenge*, 17 (“while the United Nations has stated that the armistice agreement still serves as the basis and starting point for permanent peace on the Korean Peninsula, it may be difficult to argue that it still serves as the controlling source of international law and authority with regard to all uses of military force.”).
- 47 Inter-Korean Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula, April 27, 2018, para. 3.3 (“The two sides agreed to ... actively promote the holding of trilateral meetings involving the two sides and the United States, or quadrilateral meetings involving the two sides, the United States and China with a view to replacing the Armistice Agreement with a peace agreement.”).
- 48 The UN Charter, in an effort to outlaw aggressive war and ensure that states resolve disputes peacefully, requires all members to “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the purposes of the United Nations.” (art. 2(4)). The principle of nonuse of force in international relations has been further developed under customary international law, notably prohibiting wars of aggression, and the use or threat of force in violation of existing frontiers or of the right of peoples to self-determination or independence, among others. The only widely recognized exceptions to these strict rules are cases of self-defense or legitimate Security Council authorizations, although these exceptions themselves remain subject to certain limitations. See also UN General Assembly Resolution 2625 (XXV), October 24, 1970; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, paras. 174–175, 188–195; UN General Assembly Resolution 42/22, November 18, 1987.
- 49 See, generally, Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I: Rules, International Committee of the Red Cross (Cambridge University Press, 2005); see also U.S. Department of Defense, *Law of War Manual*, 9–10, 14–15.
- 50 There have been skirmishes over the years, particularly surrounding a disputed maritime boundary. See, e.g., Sang-hun Choe, “Korean Navies Skirmish in Disputed Water,” *New York Times*, November 10, 2009.
- 51 An agreement may be binding under international law regardless of its title, meaning even an instrument entitled “Declaration to End the Korean War” can potentially be binding. One example is the USSR–Japan “Joint Declaration” of October 19, 1956, which despite its title bindingly normalized relations between the two countries because they signaled their consent to be bound. The Vienna Convention on the Law of Treaties defines a treaty as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation” (art. 1(a)). See Annex I for a review of how a peace agreement would work within each party’s domestic legal system.
- 52 Oppenheim, *International Law*, para. 272 (“As soon as the [peace] treaty is ratified, all rights and duties which exist in time of peace between the members of the family of nations are ipso facto and in case revived between the former belligerents ... all acts legitimate in warfare cease to be legitimate.”) See also U.S. Department of Defense, *Law of War Manual*, 94–96.
- 53 Oppenheim, *International Law*, para. 272 (“Attention must be drawn to the fact that the condition of peace created by a peace treaty is legally final in so far as the order of things set up and stipulated

- by the treaty of peace is the settled basis of future relations between the parties They may indeed make war against each other in future on other grounds, but they are legally bound not to go to war over such matters as have been settled by a previous treaty of peace.”).
- 54 This has been a key dispute in UNSC resolutions that require North Korea to unilaterally give up its nuclear weapons. Unsurprisingly, North Korea sees in these resolutions the United States being a judge in its own cause. The first step in resolving the conflict should be an agreement directly involving the United States and the two Koreas. Chapter II addresses the potential implications of such an agreement on denuclearization. Statement by Ambassador Ri Yong-Ho at the 72nd session of the UN General Assembly, September 23, 2017.
- 55 Inter-Korean Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula, April 27, 2018, para. 3.3. (“The two sides agreed to declare the end of war this year that marks the 65th anniversary of the Armistice Agreement and actively promote the holding of trilateral meetings involving the two sides and the United States, or quadrilateral meetings involving the two sides, the United States and China with a view to replacing the Armistice Agreement with a peace agreement and establishing a permanent and solid peace regime.”)
- 56 Chi-dong Lee, “Moon Proposes Declaring End to Korean War, Requests UN’s Support,” *Yonhap News Agency*, September 23, 2020.
- 57 Determining the intent of the parties requires weighing all relevant evidence. If one of the parties explicitly characterizes the end-of-war declaration during negotiations as a “nonbinding” or “political” declaration, this would clearly weigh against a conclusion that the declaration binds that party. Note, for instance, that the United States considered even the Agreed Framework nonbinding. Note also the criteria on the basis of which the U.S. Government Accountability Office ultimately found the Agreed Framework of 1994 to be nonbinding: language, tone, form, subsequent actions of the parties, and inclusion or omission of provisions that would “normally” be included in a binding agreement, “such as provisions on the process for amending the agreement and for resolving disputes.” *Aegean Sea Continental Shelf*, Judgment, I.C.J. Reports 1978, para. 96 (“[the Court] knows of no rule of international law which might preclude a joint communique from constituting an international agreement to submit a dispute to arbitration or settlement (cf. Arts. 2, 3, and 11 of the Vienna Convention on the Law of Treaties)”; see also Third US Restatement of Foreign Relations Law, Washington 1987, Vol. I, 149, as cited by Malcolm Shaw, *International Law*, 7th ed. (Cambridge University Press, 2014), 656 (“There are no specific requirements of form in international law for the existence of a treaty, although it is essential that the parties intend to create legal relations as between themselves by means of their agreement.”); U.S. General Accountability Office, *Nuclear Proliferation: Implications of the U.S./North Korean Agreement on Nuclear Issues*, GAO/RCED/NSIAD-97-8, October 1996, 7–10.
- 58 An end-of-war declaration intended to be binding and to legally terminate the state of war would arguably qualify as fulfilling the constitutive elements of a peace agreement. The distinction made in the Panmunjom agreement of 2018 between end-of-war declaration and peace agreement may nevertheless weigh against such a finding. What will be determining to qualify an end-of-war declaration as a peace agreement is whether it was intended to constitute a final settlement of the war. See Oppenheim, *International Law*, para. 272.
- 59 It should be noted that an end-of-war declaration could be made unilaterally by one side, such as when Congress unilaterally declared the end of World War I with Germany through the Knox-Porter resolution of 1921. However, a unilateral declaration cannot per se end the legal state of war as it does not evidence the intent of the other side. Andrew Glass, “Knox-Porter Resolution Advances, June 30, 1921,” *Politico*, June 30, 2018.
- 60 An end-of-war declaration that fails to qualify as a binding peace agreement can still be legally relevant as evidence for an implicit peace. Peace may in certain cases be restored implicitly through a cessation of hostilities. Oppenheim, *International Law*, para. 262 (“Although such termination of war through simple cessation of hostilities is for many reasons inconvenient, and is, therefore, as a rule avoided, it may nevertheless in the future as in the past occasionally occur.”).
- 61 This highlights why a clearly binding peace agreement is the best path forward: the more certainty between the parties regarding the extent to which either side reserves the right to use force, the better. North Korean commentary has welcomed the concept of an end-of-war declaration, questioned its tangible security value, and denounced its instrumentalization as a “bargaining chip” for denuclearization. DPRK Ministry of Foreign Affairs, “DPRK Foreign Ministry Roving Ambassador Issues Statement,” November 14, 2019 (“If the U.S., failing to put forth a basic solution for lifting the anti-DPRK hostile policy harmful to our rights to existence and development, thinks that it can lead us to negotiations with war-end declaration, which may reduce to a dead document any moment with change of situation, and with other matters of secondary importance like the establishment of a liaison office, there is no possibility of the settlement of the issues.”). Compare with earlier commentary, ThaeK Bom Jo, “War-end Declaration on Korean Peninsula is Demand of Times,” *Rodong Sinmun*, August 10, 2018 (“If the military confrontation between the DPRK and the U.S. comes to close with the publication of the war-end declaration, an atmosphere favorable for confidence-building will be provided”); “War End Is Not Just Gift: KCNA Commentary,” KCNA, October 2, 2018 (“The issue of the war-end declaration should have been resolved half a century ago ... it can never be a bargaining chip for getting the DPRK denuclearized ... if the U.S. doesn’t want the end of war, the DPRK will also not particularly hope for it”).
- 62 UN Charter, arts. 2(3) and 2(4).
- 63 See, e.g., the Israel–United Arab Emirates Treaty of Peace, Diplomatic Relations and Full Normalization of September 15, 2020, art. 4 (“[Both parties] undertake to take the necessary steps to prevent any terrorist or hostile activities against each other on or from their respective territories”).
- 64 Korean War Armistice Agreement, art. II, para. 12.
- 65 Inter-Korean Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation, December 13, 1991, art. 9.
- 66 Joint Statement of the Fourth Round of the Six-Party Talks, September 19, 2005, art. 1.
- 67 U.S.-DPRK Joint Statement, June 12, 2018, Preamble.
- 68 “DPRK FM Ri Yong Ho Disputes Trump Reason for Summit Collapse,” *CGTN*, February 28, 2019.
- 69 See, e.g., Terence Roehrig, “Korean Dispute over the Northern Limit Line: Security, Economics, or International Law?” *University of Maryland Contemporary Asian Studies Series* 2008, no. 3 (2008), 1; Sang-hun Choe, “Korean Navies Skirmish in Disputed Water.”
- 70 Inter-Korean Agreement on the Implementation of the Historic Panmunjom Declaration in the Military Domain, September 19, 2018.
- 71 U.S.-DPRK Joint Statement, June 12, 2018, art. 1.
- 72 Vienna Convention on Diplomatic Relations, April 18, 1961, arts. 2 (“The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.”) and 4(1) (“The receiving State is not obliged to give reasons to the sending State for a refusal of agreement.”).
- 73 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986.
- 74 Agreement on Ending the War and Restoring Peace in Viet-Nam, January 27, 1973; Bill Clinton, Remarks Announcing the Normalization of Diplomatic Relations with Vietnam, July 11, 1995.
- 75 The normalization of relations between China and, respectively, the United States and South Korea, is often assumed to have ended any state of war that might have existed by virtue of combat with the Chinese People’s Volunteers during the Korean War (see next section, “Parties to a Peace Agreement”). There have, however, been cases in which normalization agreements did not per se constitute a final settlement to a war. One example is the establishment of Ambassadorial-level relations between the Allies and the two Germanys during

the Cold War, even though all these parties did not conclude a final settlement of World War II until 1991. Another example is the USSR–Japan Joint Declaration of 1956, which, although it declared the end of the state of war and the normalization of relations, explicitly stated that a future agreement should serve as final settlement of the war. Such a departure from the principle that a state of war must end with a final settlement nevertheless introduces uncertainty and insecurity into the nature of the relationship between the parties pending conclusion of the final settlement. Russia and Japan are still today seeking a peace agreement to end World War II as between themselves, notably to settle their territorial dispute regarding the Kuriles/Northern Territories. See, e.g., “Russia Presents Peace Treaty Concept to Japan, No Response Yet,” TASS, July 10, 2020.

76 Whether peace is concluded in a single multilateral agreement or multiple bilateral ones may affect the ratification procedure in South Korea (see Annex I).

77 The other parties could be belligerents or nonbelligerents. While a peace agreement is typically concluded only between belligerents, it may include clauses that concern nonbelligerents, which would speak for their inclusion. In that case, the clauses ending the state of war would simply be redundant for nonbelligerents.

78 For a review of implications of a peace agreement for the United States, from the perspective of the Congressional Research Service, see Chanlett-Avery et al., *A Peace Treaty with North Korea?*

79 The ambiguity that persists today on US use of force in Korea is reflected, for instance, in a 2017 Congressional Research Service report on military options against North Korea. The report suggests on the one hand that “it can be argued that [UN Security Council resolutions 82 to 84] would no longer authorize any use of military force against North Korea unless North Korean forces again crossed into South Korea.” On the other hand, the report explicitly raises the question – without answering it – of whether the President requires prior Congressional authorization before initiating hostilities on the Korean Peninsula. McInnis et al., *The North Korean Nuclear Challenge*, 17–33.

80 See Louis Fisher, “The Korean War: On What Legal Basis Did Truman Act?” *The American Journal of International Law* 89 (1995), 21, 32–34 (arguing that Truman’s unilateral use of armed force in Korea violated the U.S. Constitution and the UN Participation Act of 1945).

81 Oppenheim, *International Law*, para. 93 (“According to the former practice of the States a condition of war could de facto arise either through a declaration of war; or through a proclamation and manifesto of a State that it considered itself at war with another State; or through the committal by one State of certain hostile acts of force against another State.”). This rule exists in part to avoid ambiguities arising from States defining “war” differently under their domestic law.

82 Jean Pictet, ed., *Commentary on Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (International Committee of the Red Cross, 1952), 32 (“One may argue almost endlessly about the legal definition of ‘war’. A State can always pretend, when it commits a hostile act against another State, that it is not making war, but merely engaging in a police action, or acting in legitimate self-defence. The expression ‘armed conflict’ makes such arguments less easy. Any difference arising between two States and leading to the intervention of armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war.”).

83 As Patrick Norton has noted, “based in large part on this lack of operational U.N. control over any aspect of the hostilities, most observers, including the leading US government expert on the law of war at the time, have concluded that the forces under the UNC, ‘although endowed with the name and flag of the United Nations troops, cannot in strict law be said to comprise United Nations troops, ... [and] the acts of the Unified Command and the United Nations Command are not the acts of the United Nations itself.” Norton, “Ending the Korean Armistice Agreement: The Legal Issues.”

84 For past US stance on a peace agreement, see White House Office of the Press Secretary, “President Bush Meets with South Korean President Roh,” September 7, 2007 (Bush: “it’s up to Kim Jong-il as to whether or not we’re able to sign a peace treaty to end the Korean War. He’s got to get rid of his weapons in a verifiable fashion.”); “U.S. Rejected North Korea Peace Talks Offer Before Last Nuclear Test,” Reuters, February 21, 2016; Women-CrossDMZ, “Peace Agreement with North Korea Is in ‘US Interest,’ Says US Under Secretary of Defense for Policy,” January 28, 2020; “Report of the Fifth Plenary Meeting of the 7th Central Committee of the WPK,” KCNA, January 1, 2020.

85 Inter-Korean Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation, December 13, 1991, Preamble.

86 See, e.g., James Dobbins, “Declaring an End to the Korean War,” *USA Today*, February 27, 2019.

87 A situation in which two governments compete over sovereignty of the same territory and people is, strictly speaking, a civil war. And “a civil war,” in the words of Oppenheim, “need not from the beginning, nor become at all, war in the technical sense of the term.” That said, even a civil war situation that lacks full mutual recognition does not bar the conclusion of a peace agreement. As Oppenheim lays out, there can be a formal state of war within a civil war if there is recognition for both contending parties of a certain level of international legal personality, whether as belligerent power to which the law of war applies or as a recognized State to which international law fully applies. He thus conceives that an insurrection may be seen as a formal war by States that recognize some degree

of international legal personality to the insurgency, even if it is seen as civil war by the loyalist government. Inter-Korean Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation, December 13, 1991, Preamble; Oppenheim, *International Law*, paras. 59 and 76.

88 Both the Basic Agreement of 1991 and the Panmunjom Declaration of 2018 refer to the two Koreas as being in a “state of armistice” and the necessity of transforming it into a “state of peace” or to “end” it through the conclusion of a “peace agreement.” Inter-Korean Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation, December 13, 1991, art. 5; Inter-Korean Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula, April 27, 2018, para. 3.3.

89 UNSC Resolution 702, August 8, 1991.

90 As addressed above, North Korea was not a member of the UN in 1950, meaning the relationship between the North and the UN Sending States could only be governed by the classical law of war, and each side indeed relied on this law to structure interactions with each other.

91 North Korea has diplomatic relations with Australia (normalization in 1974), Thailand (1975), Ethiopia (1975), Colombia (1988), South Africa (1998), the Philippines (2000), the United Kingdom (2000), New Zealand (2001), Greece (2001), Belgium (2001), the Netherlands (2001), Turkey (2001), Luxembourg (2001), and Canada (2001). See North Korea in the World database, last accessed November 16, 2020, <https://www.northkoreaintheworld.org/diplomatic/countries-have-established-diplomatic-relations-dprk>.

92 Some ambiguity persists for other combatant members of the UNC intervention force that still participate ad hoc in UNC military exercises, which is relevant insofar as a peace agreement would imply the dissolution of the UNC (addressed in Chapter IV).

93 Inter-Korean Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula, April 27, 2018, para. 3.3.

94 Treaty on the Final Settlement with Respect to Germany, September 12, 1990; USSR–Japan Joint Declaration, October 19, 1956.

CHAPTER II

95 Hans M. Kristensen and Robert S. Norris, “North Korean Nuclear Capabilities, 2018,” *Bulletin of the Atomic Scientists* 74, no. 1 (January 2018), 41–51.

96 Roger Dingman, “Atomic Diplomacy during the Korean War,” *International Security* 13, no. 3 (1988), 50–91.

97 Harry S. Truman, “The President’s News Conference, Nov. 30, 1950,” in *Public Papers of the Presidents of the United States: Harry S. Truman, 1945–1953* (Washington: Government Printing Office, 1966), <https://www.trumanlibrary.gov/library/public-papers/295/presidents-news-conference>.

- 98 Dingman, "Atomic Diplomacy during the Korean War," 76.
- 99 See Steven Lee, "The Korean Armistice and the End of Peace: The US-UN Coalition and the Dynamics of War-Making in Korea, 1953-1976," *Journal of Korean Studies* 18, no. 2 (Fall 2013), 183, 185-195.
- 100 Hans M. Kristensen and Robert S. Norris, "A History of US Nuclear Weapons in South Korea," *Bulletin of the Atomic Scientists* 73, no. 6 (October 2017), 349-357. The United States declared having removed all South Korean-based nuclear weapons in 1991 as part of the Presidential Nuclear Initiatives under President George H. W. Bush to reduce the deployment of US tactical nuclear weapons globally.
- 101 Balazs Szalontai, "The International Context of the North Korean Nuclear Program, 1953-1988," in *North Korea's Efforts to Acquire Nuclear Technology and Nuclear Weapons: Evidence from Russian and Hungarian Archives*, Woodrow Wilson International Center for Scholars, Cold War International History Project Working Paper #53, August 2006, 2-23.
- 102 William Burr, ed. *The United States and South Korea's Nuclear Weapons Program, 1974-1976* (The National Security Archive, 2017).
- 103 "'Detailed Report' Explains NPT Withdrawal," KCNA, January 22, 2003, <https://fas.org/nuke/guide/dprk/nuke/dprk012203.html>.
- 104 Ibid.
- 105 James Kim, "'Team Spirit' Joint U.S.-South Korea Exercise Called Off," UPI, January 7, 1992.
- 106 U.S. State Department, "Joint Declaration of the Denuclearization of the Korean Peninsula," January 20, 1992.
- 107 Agreement between the Government of the Democratic People's Republic of Korea and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons, INFCIRC/403, January 30, 1992.
- 108 "'Detailed Report' Explains NPT Withdrawal," KCNA.
- 109 Agreed Framework Between the United States of America and the Democratic People's Republic of Korea, October 21, 1994.
- 110 See "Nuclear Confrontation with North Korea: Lessons of the 1994 Crisis for Today," Nautilus Institute Special Report from a roundtable at the Center for Strategic and International Studies, March 20, 2003, <http://oldsite.nautilus.org/DPRKBriefingBook/agreedFramework/1994Crisis.html>; Siegfried S. Hecker, "Lessons Learned from the North Korean Nuclear Crises," *Daedalus* 2 (Winter 2010), 44-56, <https://www.amacad.org/publication/lessons-learned-north-korean-nuclear-crises>.
- 111 "President Delivers State of the Union Address," January 29, 2002.
- 112 David Sanger, "Bush Tells Seoul Talks with North Won't Resume Now," *New York Times*, March 8, 2001.
- 113 William M. Arkin, "Secret Plan Outlines the Unthinkable," *Los Angeles Times*, March 10, 2002.
- 114 David Sanger, "Aftereffects: Nuclear Standoff; Administration Divided over North Korea," *New York Times*, April 21, 2003; John Bolton, *Surrender Is Not an Option* (Simon and Schuster, 2008), 99-129.
- 115 Hugh Gusterson, "Nuclear Weapons and the Other in the Western Imagination," *Cultural Anthropology* 14, no. 1 (February 1999), 111-143.
- 116 Féron et al., *The Human Costs and Gendered Impact of Sanctions on North Korea*, 4-5.
- 117 The International Court of Justice, in its advisory opinion on the Legality of the Threat or Use of Nuclear Weapons, found that fulfilling this commitment to general and complete disarmament remains "an objective of vital importance." Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, paras. 98-103. See also Nuclear Non-Proliferation Treaty, July 1, 1968, arts. I (prohibition for nuclear-weapon State parties to transfer nuclear weapons), II (prohibition for non-nuclear-weapon State parties to maintain or develop nuclear weapons), and VI (requirement to pursue nuclear disarmament); John Burroughs, "The Legality of Threat or Use of Nuclear Weapons: A Guide to the Historic Opinion of the International Court of Justice," *International Association of Lawyers Against Nuclear Arms*, 1997, <http://www.lcnp.org/wcourt/adlegalintro.htm>.
- 118 North Korea disputes the legality of the Security Council resolutions that ban and apply sanctions to its nuclear weapons program. It considers that the resolutions violate its right to self-defense and unjustifiably single it out among other existing nuclear powers. See Statement by Ambassador Ri Yong-Ho at the 72nd session of the UN General Assembly, September 23, 2017.
- 119 See, e.g., "Law on Consolidating Position of Nuclear Weapon State Adopted," KCNA, April 1, 2013 ("The nuclear weapons of the DPRK are just means for defence as it was compelled to have access to them to cope with the ever-escalating hostile policy of the U.S. and nuclear threat."); Statement by Ambassador Ri Yong-Ho at the 72nd session of the UN General Assembly, September 23, 2017 ("Our national nuclear force is, to all intents and purposes, a war deterrent for putting an end to nuclear threat of the U.S. and for preventing its military invasion.").
- 120 See, e.g., White House Office of the Press Secretary, "President Bush Meets with South Korean President Roh," September 7, 2007 (Bush: "it's up to Kim Jong-il as to whether or not we're able to sign a peace treaty to end the Korean War. He's got to get rid of his weapons in a verifiable fashion."); Reuters, "U.S. Rejected North Korea Peace Talks Offer Before Last Nuclear Test," February 21, 2016 (State Department spokesman John Kirby: "To be clear, it was the North Koreans who proposed discussing a peace treaty. We carefully considered their proposal, and made clear that denuclearization had to be part of any such discussion. The North rejected our response.").
- 121 See Ward Wilson, "The Myth of Nuclear Deterrence," *The Nonproliferation Review* 15, no. 3 (October 2008), 421-439; Scott Sagan and Kenneth Waltz, *The Spread of Nuclear Weapons: A Debate* (W. W. Norton, 1995); Ray Acheson, "The Nuclear Ban and the Patriarchy: A Feminist Analysis of Opposition to Prohibiting Nuclear Weapons," *Critical Studies on Security* 7, no. 1 (April 2018), 78-82.
- 122 "North Koreans Rally against US Sanctions," CNN, August 10, 2017, <https://edition.cnn.com/2017/08/10/asia/gallery/north-korea-parade-donald-trump>.
- 123 An important factor in determining whether to include disarmament provisions is that a peace agreement can only come to fruition and be sustainable if all sides are convinced that it serves their interests better than the wartime status quo. The baseline promise of a peace agreement is to improve each side's national security by reducing the risk of armed conflict. Trying to disarm one side directly affects that side's national security calculus. It could quickly lead to a breakdown of consensus if the relevant side feels safer in an armed state of war than in a disarmed state of peace.
- 124 See Van Jackson, *Risk Realism: The Arms Control Endgame for North Korea Policy*, Center for a New American Security, September 2019; Siegfried Hecker, Robert Carlin, and Elliot Serbin, "A Technically-Informed Roadmap for North Korea's Denuclearization," Working Paper, May 28, 2018, https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/hecker_carlin_serbin_denuc_rlc.pdf.
- 125 David Vergun, "DOD Official Outlines U.S. Nuclear Deterrence Strategy," DOD News, September 2, 2020; Kingston Reif, "U.S. Nuclear Modernization Programs," Arms Control Association, last modified August 2018, <https://www.armscontrol.org/factsheets/USNuclearModernization>.
- 126 Nuclear Non-Proliferation Treaty, July 1, 1968, art. VI; U.S.-DPRK Singapore Declaration, June 12, 2018, art. 3.
- 127 Treaty on the Prohibition of Nuclear Weapons, July 7, 2017.

CHAPTER III

- 128 See, e.g., Stacie E. Goddard and Daniel Nexon, "Kim Jong Un Gets to Sit at the Cool Table Now," *Foreign Policy*, June 21, 2018; David Nakamura, "Once Forceful on North Korean Human Rights Abuses, Trump Is Most-

- ly Mum during Summit with Kim,” Washington Post, June 12, 2018.
- 129 “Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea,” February 25, 2020.
- 130 Universal Declaration of Human Rights, Preamble.
- 131 United Nations Charter, Art. 1(2).
- 132 Charity Butcher and Maia Carter Hallward, “Bridging the Gap between Human Rights and Peace: An Analysis of NGOs and the Human Rights Council,” *International Studies Perspectives* 18, no. 1 (February 2017), 82.
- 133 In the lead-up to the adoption of the Universal Declaration of Human Rights, UNESCO attempted to identify a universally accepted philosophical foundation for human rights. The results were mixed. As one of the participants put it, “we agree about the rights but on condition that no one asks us why.” There were unreconciled – and potentially irreconcilable – differences between various traditions of thought in the definition of what makes us human and hence on which aspects of human nature were most important to protect. The relevant committee proposed a practical list of rights that drew wide agreement and that was largely informed by Western historical experience. It could not, however, answer which of these rights deserved greater priority, given the divergent scales of values of the various thought traditions. Jacques Maritain, Introduction, in UNESCO Committee on the Theoretical Bases of Human Rights, *Human Rights: Comments and Interpretations*, UNESCO/PHS/3 (rev.), July 25, 1948; see also John Rawls, *A Theory of Justice*, rev. ed. (Harvard University Press, 1999), 340, and Political Liberalism (Columbia University Press, 1993), 134–149 (conceptualizing practical agreements on principles of justice as based on an “overlapping consensus” between different schools of thought).
- 134 Burns H. Weston, “Human Rights,” *Human Rights Quarterly* 6 (1984), 264–266.
- 135 Rosa Freedman, “‘Third Generation’ Rights: Is There Room for Hybrid Constructs within International Human Rights Law?” *Cambridge Journal of International and Comparative Law* 2, no. 4 (2014), 943.
- 136 The African Union’s Charter on Human and People’s Rights is the foremost example.
- 137 UN General Assembly Resolution 39/11, “Declaration on the Right of Peoples to Peace,” November 12, 1984. This right to peace was reaffirmed in UN General Assembly Resolution 58/192, December 22, 2003; UN General Assembly Resolution 60/163, December 16, 2005; UN General Assembly Resolution 65/222, December 21, 2010; UN General Assembly Resolution 67/173, December 20, 2012.
- 138 The resolution on the people’s right to peace was adopted with 92 states in favor, none opposing, and 34 abstaining. Some abstaining states had argued during the debate that the right had no legal basis. Christian Guillermet Fernandez et al., *The Right to Peace: Past, Present and Future* (UN University for Peace, 2017), 63.
- 139 UN General Assembly Resolution 71/189, “Declaration on the Right to Peace,” U.N. General Assembly, December 19, 2016, art. 1. The resolution was adopted with 131 states in favor, 34 opposed, and 19 abstaining. See also Guillermet Fernandez et al., *The Right to Peace*, 191–194 (arguing that this declaration elaborated the right to peace as a human rights notion, beyond its traditional state-to-state framing).
- 140 See, e.g., Philip Alston, “The Human Right to Peace,” *Bulletin of Peace Proposals* 11, no. 4 (1980), 319–329.
- 141 Butcher and Hallward, “Bridging the Gap between Human Rights and Peace,” 87.
- 142 “World Military Expenditures and Arms Transfers 2019,” U.S. State Department database, accessed November 23, 2020, <https://www.state.gov/world-military-expenditures-and-arms-transfers-2019/>.
- 143 “2020 Global Hunger Index by Severity,” *Global Hunger Index*, accessed November 23, 2020, <https://www.globalhungerindex.org/results.html>; for more on how the international sanctions regime has exacerbated poverty in North Korea, see Féron et al., *The Human Costs and Gendered Impact of Sanctions on North Korea*.
- 144 “Status of Ratification Interactive Dashboard,” U.N. Office of the High Commissioner of Human Rights, accessed November 23, 2020, <https://indicators.ohchr.org/>.
- 145 “North Korea Country Report,” *World Report 2020*, Human Rights Watch, 2020 (“On May 9, 2019 the North Korean government underwent a Universal Periodic Review (UPR), the HRC’s peer-review process that considers each UN member state’s human rights record every four-and-a-half years. Out of 262 recommendations made by 87 states, North Korea accepted 132 recommendations, mostly concerning joining other international instruments, treaty bodies, developing more laws, the rights of children, women, people with disabilities, food, health, education, justice, movement, religion, expression, water, and sanitation.”).
- 146 DPRK Socialist Constitution, Chapter V.
- 147 See, e.g., Report of the Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea, A/HRC/25/63, February 7, 2014; Report of the UN Secretary General regarding the situation of human rights in the Democratic People’s Republic of Korea, A/74/268, August 2, 2019.
- 148 UN Human Rights Council Resolution 22/13, Situation of Human Rights in the Democratic People’s Republic of Korea, para. 5, April 9, 2013.
- 149 See, e.g., Letter from the Permanent Representative of the DPRK to the UN addressed to the UN Secretary-General, September 15, 2014, 88, 108–112.
- 150 See, e.g., Letter from the Permanent Representative of the DPRK to the UN addressed to the UN Secretary-General, September 15, 2014, 97–112.
- 151 Democratic People’s Republic of Korea, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21,” January 30, 2014.
- 152 Letter from the Permanent Representative of the DPRK to the UN addressed to the UN Secretary-General, September 15, 2014, notably 11, 59, 61, 63. There have been particular tensions surrounding Christian missionaries in North Korea. Matthew Cole, “The Pentagon’s Missionary Spies: U.S. Military Used Christian NGO as Front for North Korea Espionage,” *The Intercept*, October 26, 2015, <https://theintercept.com/2015/10/26/pentagon-missionary-spies-christian-ngo-front-for-north-korea-espionage>.
- 153 Sandra Fahy, for instance, argued that the 119-page North Korean report sent to the Secretary General on September 15, 2014, was “not a real report of any kind but instead a ... repetitive evasion of the matter at hand.” Sandra Fahy, *Dying for Rights: Putting North Korea’s Human Rights Abuses on the Record* (Columbia University Press, 2019).
- 154 Human Rights Watch, “South Korea: Cold War Relic Law Criminalizes Criticism,” May 28, 2015; Amnesty International, “South Korea: National Security Law Continues to Restrict Freedom of Expression,” January 20, 2015.
- 155 Cumings, *The Korean War*, 207.
- 156 According to the Stockholm Peace Research Institute, US military spending rose from \$156 billion in 1950, in constant 2018 USD, to \$483 billion in 1953. Stockholm International Peace Research Institute, *Military Expenditure Database*, accessed Oct. 25, 2020, <https://www.sipri.org/databases/milex>; Cumings, *The Korean War*, 211.
- 157 Nan Tian et al., “Trends in World Military Expenditure, 2019,” *Stockholm International Peace Research Institute*, April 2020, 3, https://www.sipri.org/sites/default/files/2020-04/fs_2020-04_milex_0.pdf (“The USA spent almost as much on its military in 2019 as the next 10 highest spenders combined ...”).
- 158 See, e.g., Philip Alston, “Extreme Poverty in America: Read the UN Special Monitor’s Report,” *Guardian*, December 15, 2017. Note that the United States has signed but not ratified the International Covenant on Economic, Social, and Cultural Rights, and as such is prohibited from violating its object and purpose.
- 159 See, e.g., Human Rights Committee, “Concluding Observations on the Fourth

- Periodic Report of the United States of America,” CCPR/C/USA/CO/4, April 23, 2014; Matthew Weaver, “US Human Rights Record Chastised in New Report,” *Guardian*, March 27, 2014.
- 160 Under international law, intentional lethal force may be used outside of armed conflict only when strictly necessary to prevent an imminent threat to life. Within the context of an armed conflict, parties may target members of an enemy’s armed forces, military objectives, or civilians directly participating in hostilities.
- 161 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Jurisdiction of the Court and Admissibility of the Application, Judgment, I.C.J. Reports 1984, para. 73s (“Principles such as those of the non-use of force, non-intervention, respect for the independence and territorial integrity of States, and the freedom of navigation, continue to be binding as part of customary international law”); *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, para. 263 (in which the Court dismisses the argument that military intervention could be justified by alleging that the target state was moving toward the establishment of a totalitarian communist dictatorship: “adherence by a State to any particular doctrine does not constitute a violation of customary international law; to hold otherwise would make nonsense of the fundamental principle of State sovereignty, on which the whole of international law rests, and the freedom of choice of the political, social, economic and cultural system of a State”).
- 162 Third Restatement Foreign Relations Law, Ch. 1, para. 102 (1987).
- 163 Jack Donnelly, *International Human Rights* (Routledge, 1993), 29 (“Nonintervention is the duty correlative to the right of sovereignty. Other states are obliged not to interfere with the internal actions of a sovereign state Because human rights principally regulate the ways states treat their own citizens within their own territory, international human rights policies would seem to involve unjustifiable intervention. A principal function of international law, however, is to overcome the initial presumption of sovereignty and nonintervention. A treaty is a contractual agreement by states to accept certain obligations to other states, that is, specified restrictions on their sovereignty:”). The extent to which States consent to open themselves to complaints by other States in the context of human rights treaties may nevertheless be closely regulated by the treaties themselves. See, e.g., *International Covenant on Civil and Political Rights*, December 16, 1966, art. 41.
- 164 DLA Piper and U.S. Committee for Human Rights in North Korea, *Failure to Protect: A Call for the Security Council to Act in North Korea*, October 30, 2006, Appendix II (“The World Summit Outcome Document, adopted unanimously by the heads of states and governments attending the opening of the 60th General Assembly, endorsed the responsibility to protect doctrine Resolution 1674 contains the first Security Council endorsement of the responsibility to protect doctrine.”); Also see “Responsibility to protect,” U.N. Office on Genocide Prevention and the Responsibility to Protect, accessed November 23, 2020, <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>.
- 165 See, e.g., Marcelo Kohen, “The Principle of Non-Intervention 25 Years after the Nicaragua Judgment,” *Leiden Journal of International Law* 25, no. 1 (March 2012), 163 (“There is nothing in the concept of R2P allowing for a reversal of the principle of non-intervention or otherwise allowing states to intervene without SC authorization”); Silva D. Kantareva, “The Responsibility to Protect: Issues of Legal Formulation and Practical Application,” *Interdisciplinary Journal of Human Rights Law* 6, no. 1 (2012), 5 (“The crux of the controversy is, of course, the infringement on state sovereignty above and beyond the preexisting legally recognized basis for it—self-defense and traditional Chapter VII enforcement by the UN Security Council—triggered by threats to international peace and security.”). See also Adom Getachew, “Holding Ourselves Responsible,” *Boston Review*, September 11, 2019.
- 166 See, e.g., Olivia Enos, “Why Human Rights Must Be Raised at a Second Summit with North Korea,” *The Heritage Foundation*, February 11, 2019 (“[North Korean Sanctions and Policy Enhancement Act] sanctions are among the toughest in Treasury’s sanctions arsenal. NSKPEA sparked the broader use of executive authorities during the Obama administration that led to the designation of Kim Jong-un, 10 other North Koreans, and five North Korean entities on human rights grounds under executive orders (E.O.) 13687 and 13722. It marked the first time that the US explicitly issued sanctions on human rights grounds. Additional sanctions followed.”). See also Congressional Research Service, *North Korea: Legislative Basis for Economic Sanctions*, March 9, 2020; Féron et al., *The Human Costs and Gendered Impact of Sanctions on North Korea*; Hazel Smith, “The Ethics of United Nations Sanctions on North Korea: Effectiveness, Necessity and Proportionality,” *Critical Asian Studies* 52, no. 2 (2020), 182–203, DOI: 10.1080/14672715.2020.1757479.
- 167 Daniel Wertz, “DPRK Diplomatic Relations,” National Committee on North Korea, August 2016; Matthew Pennington, “U.S. Wants World to Isolate North Korea, So What’s That Mean?” *Associated Press*, December 10, 2017.
- 168 See, e.g., DLA Piper and U.S. Committee for Human Rights in North Korea, *Failure to Protect*.
- 169 See, e.g., Jeff Jacoby, “Only Regime Change Can End North Korea’s Nuclear Threat,” *Boston Globe*, April 29, 2020.
- 170 John Park and Jim Walsh, “Stopping North Korea, Inc.: Sanctions Effectiveness and Unintended Consequences,” MIT Security Studies Program, August 2016, <https://www.belfercenter.org/sites/default/files/legacy/files/Stopping%20North%20Korea%20Inc%20Park%20and%20Walsh%20.pdf>.
- 171 Patricia Goedde, “Legal Mobilization for Human Rights Protection in North Korea: Furthering Discourse or Discord?” *Human Rights Quarterly* 32, no. 3 (August 2010), 569 (“This state ideology can be understood as a socialist-revolutionary, nationalist, and survivalist response to the Korean War, and explains North Korea’s defensive posture against what it perceives to be the continuing threats of American militarism, capitalism, and Western imperialism overall.”).
- 172 As an example, Pyongyang dismissed a UN Commission of Investigation (COI) report on the country’s human rights situation as part of a US-led plot for regime change: Letter from the Permanent Representative of the DPRK to the UN addressed to the UN Secretary-General, September 15, 2014, 88, 108–112.
- 173 See, e.g., Jiyoung Song, “Why Do North Korean Defector Testimonies So Often Fall Apart?” *Guardian*, October 13, 2015 (“While there is no doubt the North Korean regime has committed serious human rights abuses, there are questions to be asked about how heavily outsiders should rely on defectors’ testimonies as credible evidence.”). See also Goedde, “Legal Mobilization for Human Rights Protection,” 535 (“More progressive South Korean NGOs point out that South Korea’s own National Security Act would prevent any pro-North Korean information from reaching the public, so the natural consequence would be that the worst political and administrative aspects of the North Korean government are publicized over more objective reports ... it remains a challenge to verify the scope of abuse nationwide.”).
- 174 Doug Bandow, “Trump Should Offer Diplomatic Ties to North Korea – but Insist on Talking about Human Rights,” *Cato Institute*, January 20, 2020.
- 175 Geoff Thale, “How U.S. Policy Could Improve Human Rights and Political Debate in Cuba,” *Washington Office on Latin America*, July 14, 2016, <https://www.wola.org/analysis/u-s-policy-improve-human-rights-political-debate-cuba/>.
- 176 See, e.g., Elizabeth Beavers et al., *Peace in Afghanistan: Ending the War Responsibly*, Friends Committee on National Legislation, May 2020, <https://www.fcni.org/issues/us-wars-militarism/ending-afghanistan-war-responsibly>.
- 177 For an example of existing enforcement mechanisms in human rights treaties, see, e.g., *International Covenant on Civil and Political Rights*, December 16, 1966, art. 41.
- 178 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, para. 268 (“while the United States might form its own appraisal of the situation as to respect for human

rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect.”). See also paras. 205 (on the definition of unlawful coercion violating the principle of noninterference) and 263 (finding that a state’s choice of a political doctrine does not per se violate customary international law).

- 179 See, e.g., Goddard and Nexon, “Kim Jong Un Gets to Sit at the Cool Table Now”; see also Nakamura, “Once Forceful on North Korean Human Rights Abuses, Trump Is Mostly Mum During Summit with Kim.”
- 180 “U.S. Relations with Saudi Arabia,” U.S. State Department, November 26, 2019, <https://www.state.gov/u-s-relations-with-saudi-arabia/>; “Saudi Arabia 2019,” Amnesty International; David Brennan, “America Is Giving Saudi Arabia Cover for the Worst Human Rights Abuses in Decades, Watchdog Warns,” *Newsweek*, January 21, 2020.
- 181 See, e.g., “Letter to President Moon Jae-In RE: ROK’s stance on human rights in North Korea,” December 16, 2019; Amnesty International, “Korea Peace Talks: A Missed Opportunity for Human Rights,” April 27, 2018; “Laying the Human Rights Foundation for Peace,” U.N. Office of the High Commissioner on Human Rights, Discussion paper, September 2020.
- 182 See, e.g., Butcher and Hallward, “Bridging the Gap between Human Rights and Peace”; see also Christine Ahn and Suzy Kim, “OPINION: Improve North Korean Human Rights by Ending War,” *InterPress Service News Agency*, December 2, 2014.
- 183 Butcher and Hallward, “Bridging the Gap between Human Rights and Peace.”
- 184 See, e.g., “2019 Report on International Religious Freedom: Democratic People’s Republic of Korea,” U.S. State Department Office of Religious Freedom.
- 185 See, e.g., North Korea Sanctions Enforcement and Policy Enhancement Act, Sec. 402; Goedde, “Legal Mobilization for Human Rights Protection in North Korea,” 540 (“In response to the initial bill of the US North Korean Human Rights Act of 2004, Sarangbang issued a statement on behalf of progressive civic groups, claiming that the bill risked the peaceful normalization of relations between the two Koreas, thereby obstructing, rather than promoting, the path toward addressing humanitarian concerns in the North.”).
- 186 Customary international law is clear, as reflected in the International Court of Justice’s landmark *Nicaragua v. USA* opinion, that a state’s ideology or political system is not a lawful ground for the threat or use of force. *Military and Paramilitary Activities in and against Nicaragua v. Nicaragua v. United States of America*, Merits, Judgment, I.C.J. Reports 1986, para. 205 (“the principle [of nonintervention] forbids all States or groups of States to intervene directly or indirectly in internal or external affairs of other States. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted,

by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force.”).

- 187 The Paris Peace Accords that ended the Vietnam War, for instance, emphasized the right to self-determination, only mentioning specific human rights in a clause calling South Vietnam and the Viet Cong to respect the democratic liberties of the people. Provisions on internal human rights reforms are more common in peace deals ending internal armed conflicts, in which there are no sovereign barriers in play and the priority of the parties is instead to find a *modus vivendi* within the same state. Agreement on Ending the War and Restoring Peace in Vietnam, January 27, 1973, art. 11. See also Agreement between the United Kingdom, the Republic of Ireland, April 10, 1998 (“Good Friday Agreement”), arts. 2 and 4; Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace between the Government of Colombia and the Revolutionary Armed Forces of Colombia – People’s Army, November 24, 2016.
- 188 U.N. Security Council Resolution 83, June 27, 1950.
- 189 Féron et al., *The Human Costs and Gendered Impact of Sanctions on North Korea*, 14–19. Reliance on sanctions also had an economic impact on the United States government and on private actors in the United States and the rest of the world, if only because of the resources that sanctions monitoring and compliance require; U.S. Government Accountability Office, Report to the House Committee on Foreign Affairs, *Economic Sanctions: Treasury and State Have Received Increased Resources for Sanctions Implementation but Face Hiring Challenges*, March 2020; Chad O’Carroll, “An Insider’s View: How Banks Try to Avoid North Korea Sanctions Risks,” *NK News*, July 11, 2019; Andrew W. Lehren and Dan de Luce, “Secret Documents Show How North Korea Lauanders Money Through U.S. Banks,” *NBC News*, September 20, 2020.
- 190 South Korea, for instance, has attempted to conduct a transitional justice process for victims of past violations by its own government, notably for the era of military dictatorship, but the continuing state of war limited its ability to pursue justice for violations committed against its citizens by other governments. Kim Dong-Choon, “The Truth and Reconciliation Commission of Korea: Uncovering the Hidden Korean War,” *Asia-Pacific Journal: Japan Focus* 8, Iss. 9, no. 5 (March 1, 2010); Mark Selden and Kim Dong-Choon, “South Korea’s Embattled Truth and Reconciliation Commission,” *Asia-Pacific Journal: Japan Focus* 8, Iss. 9, no. 4 (March 1, 2010); Paul Hanley, “Transitional Justice in South Korea: One Country’s Restless Search for Truth and

Reconciliation,” *U. of Pennsylvania East Asian Law Review* 9 (2014), 138–166.

CHAPTER IV

- 191 On the purpose of the alliance from a US perspective, see Testimony of Secretary of State John Foster Dulles to the Senate Foreign Affairs Committee, January 13, 1954.
- 192 Karl Friedhoff, “While Positive toward US Alliance, South Koreans Want to Counter Trump’s Demands on Host-Nation Support,” *Chicago Council on Global Affairs*, December 16, 2019; Karl Friedhoff, “Americans Remain Committed to South Korea,” *Chicago Council on Global Affairs*, September 9, 2019.
- 193 U.S.-ROK Joint Statement in Commemoration of the 70th Anniversary of the Outbreak of the Korean War, June 24, 2020. See also William Stueck and Boram Yi, “An Alliance Forged in Blood: The American Occupation of Korea, the Korean War, and the US-South Korean Alliance,” *The Journal of Strategic Studies* 33, no. 2 (2010), 177–209.
- 194 Letter from President Syngman Rhee to President Dwight Eisenhower, May 30, 1953.
- 195 *Ibid.*
- 196 Letter from President Dwight Eisenhower to President Syngman Rhee, June 6, 1953. In a subsequent letter, Rhee made clear he still opposed the planned Armistice for failing to secure Chinese withdrawal. The Armistice was concluded without his signature. Letter from Syngman Rhee to President Dwight Eisenhower, June 19, 1953.
- 197 Korean War Armistice Agreement, July 27, 1953, Preamble and Art. IV, para. 60.
- 198 U.S.-ROK Mutual Defense Treaty, October 1, 1953, art. III.
- 199 *Ibid.*, Preamble and art. VI.
- 200 Testimony of Secretary of State John Foster Dulles to the Senate Foreign Affairs Committee, January 13, 1954.
- 201 Joint Statement by Secretary of State John Foster Dulles and President Syngman Rhee, October 8, 1953.
- 202 Getting a complete picture of North Korean peace offers is challenging, given the often opaque and “behind-closed-doors” nature of diplomacy, but a number of these offers have been publicized. Records of the North Korean and Chinese position at the Geneva Conference are particularly revealing. The main sticking points with the US and South Korean position appear to have been less on the principle of peace itself than on the sequencing of troop withdrawal and on whether Korean unification should be UN-supervised or decided by Koreans themselves. The United States ended the conference over a deadlock on the latter question. During the Cold War, Pyongyang’s declared policy was to seek first a peace agreement with Washington, ex-

- cluding the participation of what it then considered the spoiling role of Seoul, and to later have a process of peaceful reunification with the South into a neutral and federal republic. North Korea also made repeated peace offers after the Cold War, with for instance the Obama administration rejecting them insofar as they did not address denuclearization. Pyongyang made clear with Seoul in the Panmunjom Declaration of 2018 that it today agrees with the goal of a peace agreement that includes the South. Mark Tokola, *The 1954 Geneva Conference on Korea: From Armistice to Stalemate*, The Asan Forum, February 14, 2019; Letter from the Supreme People's Assembly of the DPRK to the U.S. Senate, March 25, 1974; "Report to the Political Bureau on the Korean Worker's Party's 6th Congress and on the Celebrations of the 35th Anniversary of the Foundation of the KWP," October 16, 1980, Wilson Center History and Public Policy Program Digital Archive; "North Korea Proposed Creating Neutral State in 1987: Declassified Dossier," Yonhap News Agency, March 30, 2018; "North Korea Rejects More Nuclear Talks, Demands Peace Treaty with U.S.," Reuters, October 17, 2015; "U.S. Rejected North Korea Peace Talks Offer Before Last Nuclear Test: State Department," Reuters, February 21, 2016; Inter-Korean Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula, April 27, 2018, para. 3.3; Kim Yong Guk, "Building a Peace Regime on the Korean Peninsula: An Urgent Demand of the Times," DPRK Ministry of Foreign Affairs, September 4, 2018.
- 203 See also South Korean intellectual Paik Nak-chung's conceptualization of the division as a "system." Nak-chung Paik, *The Division System in Crisis: Essays on Contemporary Korea* (University of California Press, 2011).
- 204 First to collapse, in 1958, was the prohibition of military reinforcements and the accompanying neutral supervision mechanism. In 1994, North Korea started boycotting formal Armistice meetings, leaving the UNC and South Korea to hold them unilaterally before an empty chair. In the years that followed, North Korea repeatedly repudiated the Armistice. Steven Lee, "The Korean Armistice and the End of Peace: The US-UN Coalition and the Dynamics of War-Making in Korea, 1953-76," *The Journal of Korean Studies* 18, no. 2 (Fall 2013), 183-224; Yonhap News Agency, "Chronology of Major North Korean Statements on the Armistice," May 28, 2009; Letter from the Permanent Representative of the DPRK to the UN Security Council President, March 15, 2013; McInnis et al., *The North Korean Nuclear Challenge*, 17 ("while the United Nations has stated that the armistice agreement still serves as the basis and starting point for permanent peace on the Korean Peninsula, it may be difficult to argue that it still serves as the controlling source of international law and authority with regard to all uses of military force.").
- 205 Inter-Korean Panmunjom Declaration on Peace, Prosperity and
- Reunification of the Korean Peninsula, April 27, 2018, para. 3.
- 206 For a picture of how existing tensions are discussed among high-level US and ROK officials, see Clint Work, "Alternative Futures for the US-ROK Alliance: Will Things Fall Apart?" 38 North, May 7, 2020.
- 207 Kim Gamel, "Rare Public Discord between U.S., S. Korea Raises Concern about Rift," *Stars and Stripes*, October 14, 2018; Henri Féron, "Moon Jae-in: Stuck Between a Rock and a Hard Place on North Korea," *NK News*, June 15, 2019.
- 208 Friedhoff, "While Positive toward US Alliance, South Koreans Want to Counter Trump's Demands on Host-Nation Support."
- 209 During the "fire and fury" escalation of 2017, certain US politicians argued for a preventive war on the North with the logic that it was better for the deaths to happen in Korea than in the United States. Erik Ortiz and Arata Yamamoto, "Sen. Lindsey Graham: Trump Says War with North Korea an Option," *NBC News*, August 1, 2017; Mehdi Hasan, "Why Does Sen. Lindsey Graham Think Killing Millions of Korean Would be 'Worth It?'" *The Intercept*, March 6, 2018.
- 210 Choe Sang-hun, "South Korea's Leader Bluntly Warns US Against Striking North," *New York Times*, August 15, 2017; Choe Sang-hun, "Kim Young-sam, South Korean President Who Opposed Military, Dies at 87," *New York Times*, November 22, 2015 ("In his memoir, Mr. Kim said he persuaded President Bill Clinton to cancel the United States' plan to bomb North Korea's nuclear facilities in 1994 for fear of war.").
- 211 In 2019, 78 percent of South Koreans said they are either very or somewhat confident the United States would defend South Korea in case of attack. Meanwhile, 58 percent of Americans said they supported the use of US troops to defend South Korea against the North – a majority but a decrease of 6 percent compared to 2018. Mark Bowden, "How to Deal with North Korea," *The Atlantic*, July/August 2017 ("Would the U.S. Sacrifice Los Angeles to Save Seoul?"); Friedhoff, "While Positive toward US Alliance, South Koreans Want to Counter Trump's Demands on Host-Nation Support"; Friedhoff, "Americans Remain Committed to South Korea."
- 212 William Hartung, *Sustainable Defense: More Security, Less Spending*, Sustainable Defense Task Force, Center for International Policy, June 2019; Laila Ujayli, *Reimagining U.S. Security Spending for the 21st Century & Beyond*, Win Without War, September 2019; Lorah Steichen and Lindsay Koshgarian, *No Warming, No War: How Militarism Fuels the Climate Crisis – and Vice Versa*, National Priorities Project, Institute for Policy Studies, April 2020.
- 213 Victor Cha and Andy Lim, "Database: Donald Trump's Skepticism of U.S. Troops in Korea Since 1990," CSIS: Beyond Parallel, February 25, 2019, accessed November 23, 2020, <https://beyondparallel.csis.org/database-donald-trumps-skepticism-u-s-troops-korea-since-1990>; Michael R. Gordon and Gordon Lubold, "Trump Administration Weighs Troop Cut in South Korea," *Wall Street Journal*, July 17, 2020.
- 214 Kim Gamel, "US and South Korea Cut Short Defense Cost-Sharing Talks," *Stars and Stripes*, November 19, 2019; Sangmi Cha, "South Korean Protesters Destroy Portraits of US Ambassador," *Reuters*, December 13, 2019.
- 215 North Korea has at times responded to reports of such content with preemptive strike threats of its own. Eric Talmadge, "Are the US and South Korea Really Planning to Assassinate Kim Jong-Un?" *The Independent*, March 8, 2016; Brian Padden, "North Korea Threatens Pre-emptive Nuclear Strike," *Voice of America*, March 7, 2016.
- 216 Bryan Harris and Kang Buseong, "S Korea Peace Drive Complicated by 'Revitalisation' of UN Command," *Financial Times*, October 2, 2018. Edith M Lederer, "N Korea demands dissolution of the UN Command in S Korea," *Associated Press*, June 21, 2013.
- 217 According to US Colonel Shawn P. Creamer, no sending state is known to have offered a standing commitment of troops to the UNC for the case of a resumption of hostilities. US efforts for revitalization highlighted two key sending state concerns: that the UNC was controlled by the US rather than the UN, and that this would mean sending states would simply be troop providers. South Korea's response to revitalization has also been "lukewarm," based on concerns about sovereignty and perceptions of the UNC's ineffectiveness. Shawn P. Creamer, "The United Nations Command and Sending States," *International Journal of Korean Studies* XXI, no. 2 (2017), 22.
- 218 Ankit Panda, "China Brings More Economic Retaliation for THAAD Against South Korea," *The Diplomat*, December 12, 2016; *Global Times*, "THAAD Provides a Reason for China to Elevate Nuclear Prowess," March 8, 2017.
- 219 Large majorities of South Koreans say that relations with both the United States (94%) and China (85%) are important to their security. Friedhoff, "While Positive Toward US Alliance, South Koreans Want to Counter Trump's Demands on Host-Nation Support."
- 220 Jane Perlez, "Xi Jinping Arrives in North Korea, with Many Eyes on Trump," *New York Times*, June 20, 2019; Joonho Kim, "As Beijing Prepares Huge Food-Aid Operation, Trains for North Korea Stop Shipping Commercial Freight," *Radio Free Asia*, January 2, 2020.
- 221 Christian Shepherd and Xinning Liu, "Beijing Deploys Role in Korean War in Fight Against the US," *Financial Times*, October 19, 2020; Barack Obama, "Remarks by the President at 60th Anniver-

- sary of the Korean War Armistice,” White House Office of the Press Secretary, July 27, 2013 (“we can say with confidence that war was no tie. Korea was a victory”).
- 222 Van Jackson, *On the Brink: Trump, Kim, and the Threat of Nuclear War* (Cambridge University Press, 2019), 202.
- 223 *Ibid.*, 202–204. See also Clint Work, “How to Constructively and Safely Reduce and Realign US Forces on the Korean Peninsula,” 38 *North*, August 25, 2020; Doug Bandow, “South Korea Doesn’t Need U.S. Military Babysitting,” *Foreign Policy*, October 2, 2020.
- 224 Letter from South Korean President Syngman Rhee to General MacArthur, July 15, 1950 (signed July 14); Hwee Rhak Park, “The Transfer of Wartime Operational Control in Korea: History, Risks and Tasks from a Military Perspective,” *The Korean Journal of International Studies* 8, no. 2 (December 2010), 327–351.
- 225 The U.S. Department of Defense Dictionary of Military and Associated Terms defines OPCON (as of June 2020) as “the authority to perform those functions of command over subordinate forces involving organizing and employing commands and forces, assigning tasks, designating objectives, and giving authoritative direction necessary to accomplish the mission.”
- 226 Richard Stillwell, “Challenge and Response in Northeast Asia of the 1980’s: The Military Balance,” in *Strategy and Security in Northeast Asia*, R. Foster, ed. (Crane Russak, 1979), 99, as quoted in Doug Bandow and Ted Galen Carpenter, *The U.S.-South Korean Alliance: Time for a Change* (Transaction Publishers, 1992), 123.
- 227 “Chronology of Wartime Operational Control in South Korea,” *Yonhap News Agency*, October 24, 2014; Johannes Nordin, “Taking Back Control: South Korea and the Politics of OPCON Transfer,” *Institute for Security and Development Policy*, January 2020.
- 228 Who drives the delay of “OPCON transfer” and for what purpose is a politically sensitive question that resists easy answers. Both South Korea and the United States are divided on the issue. In South Korea, liberal governments have pushed for acceleration in the name of sovereignty, while conservative governments have announced delays in the name of security. Certain studies have also suggested a certain organizational bias of the South Korean military for the status quo. Meanwhile, Washington has remained discreet, mindful of the political sensitivity of the issue in South Korea. It has at times welcomed Seoul taking more responsibility for its defense, at others emphasized the security risks of a premature transfer – at times with technical decisions that amounted in practice to delays. Yoon Soyeon, “South Korea’s Wartime Operational Control Transfer Debate: From an Organizational Perspective,” *Journal of International and Area Studies* 22, no. 2 (December 2015), 89–108; Daniel Pinkston, “U.S.-ROK Alliance Management: Opcon Transition and ISR,” *International Crisis Group*, June 18, 2014; Doug Bandow, “South Korea: Forever Dependent on America,” *The National Interest*, July 28, 2014; Korea JoongAng Daily, “U.S. Making Operation Control Transfer More Difficult,” August 24, 2020; Work, “Alternative Futures for the US-ROK Alliance.”
- 229 “US Official Met by Korean Anger,” *BBC News*, December 10, 2002.
- 230 Ashley Rowland et al., “U.S. Bases Blamed for Oil-Tainted Groundwater in S. Korea,” *Stars and Stripes*, June 8, 2011; Gregory Elich, “The U.S. Military’s Toxic Legacy in Korea,” *Korea Policy Institute*, September 12, 2016.
- 231 “S Korea Activists Protest at Jeju Naval Base,” *BBC News*, September 3, 2011; Crystal Tai, “Jeju Jittery as US Warship Visit Reminds Islanders of Dark Chapter in South Korea’s History,” *South China Morning Post*, October 13, 2018. See also Gloria Steinem, “The Arms Race Intrudes on Paradise,” *New York Times*, August 6, 2011.
- 232 Elizabeth Shim, “Investigation Finds U.S. Military Shipped Anthrax to South Korea 15 Times,” *United Press International*, December 17, 2015.
- 233 Jon Letman, “Postcard from Seongju’s Anti-THAAD Protest,” *The Diplomat*, June 29, 2017; Christine Kim, “Their Life Disrupted, South Korean Grannies Vow to Fight THAAD Till the End,” *Reuters*, June 15, 2017; Yi Whan-woo, “THAAD Missiles Replaced under Surprise Operation,” *Korea Times*, May 29, 2020.
- 234 Kim Gamel, “UN Command Blocks Field Survey of Inter-Korean Railway,” *Stars and Stripes*, August 30, 2018; Gamel, “Rare Public Discord Between US, S. Korea Raises Concern About Rift”; “The UNC’s Control over the DMZ Needs to Be Reevaluated,” *Hankyoreh*, Editorial, October 6, 2020.
- 235 US-ROK Mutual Defense Treaty, October 1, 1953, art. VI.
- 236 Kyung-ok Do and Jun-hyeong Ahn, *The Peace Agreement on the Korean Peninsula: Legal Issues and Challenges*, Korea Institute for National Unification, 56–58.
- 237 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, paras. 205, 265.
- 238 U.S.-ROK Mutual Defense Treaty, October 1, 1953, art. IV (“The Republic of Korea grants, and the United States of America accepts, the right to dispose United States land, air and sea forces in and about the territory of the Republic of Korea as determined by mutual agreement.”); *Agreement Under Article IV of the Mutual Defense Treaty (Status of Forces Agreement)*, July 9, 1966, as amended.
- 239 James Dobbins, “Declaring an End to the Korean War,” *The RAND Blog*, February 28, 2019; Don Kirk, “A North Korean Shift on Opposing U.S. Troops?” *New York Times*, August 10, 2000; Mark Landler and Choe Sang-hun, “North Korea Drops Troop Demand, But U.S. Reacts Warily,” *New York Times*, April 19, 2018; Selig S. Harrison, *Korean Endgame: A Strategy for Reunification and U.S. Disengagement* (Princeton University Press, 2002), 168–173 (citing flexibility on US troops expressed by First Deputy Foreign Minister Kang Sok Ju, North Korean General Ri Chan Bok, Foreign Minister Kim Yong Nam, Foreign Ministry Policy Planning Director Kim Byong Hong, and later Foreign Minister Paek Nam Sun and Supreme Leader Kim Jong Il).
- 240 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, paras. 205, 265.
- 241 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, para. 51.
- 242 The President as Commander-in-Chief of the armed forces has the authority to decide to reduce or withdraw troops, but Congress has adopted provisions that could restrict the availability of funds for withdrawal from Korea. The White House has questioned the constitutionality of such restrictions. Larry Niksch, *Special Report: Potential Sources of Opposition to a U.S. Troop Withdrawal from South Korea*, National Committee on North Korea, April 2019; Ashley Deeks, “Can Congress Constitutionally Restrict the President’s Troop Withdrawals?” *Lawfare*, February 6, 2019.
- 243 U.S.-ROK Mutual Defense Treaty, October 1, 1953, art. VI; *Agreement Under Article IV of the Mutual Defense Treaty*, July 9, 1966, as amended, arts. 2.2, 19, 28.
- 244 Sukjoon Yoon, “6 Myths About OP-CON Transfer and the US-South Korea Alliance,” *The Diplomat*, September 25, 2019 (“Peacetime OP-CON is essentially descriptive compromise that was adopted in 1994 to characterize the complicated chain of command between the ROK and USFK”).
- 245 Under the current “conditions-based OP-CON transition plan,” wartime OP-CON would move to a bilateral but Korean-led “Future Combined Forces Command.” *Joint Communique of the 46th ROK-U.S. Security Consultative Meeting*, October 23, 2014, para. 11; *Joint Communique of the 50th ROK-U.S. Security Consultative Meeting*, October 31, 2018, paras. 8, 9.
- 246 ROK Constitution, art. 74(1) (“The President shall be the Commander-in-Chief of the Armed Forces”).
- 247 The parties to the Armistice conformed to this classical understanding of the notion of armistice by specifying in the preamble that the instrument’s objective was to “insure a complete cessation of hostilities and of all acts of armed force in Korea until a final peaceful settlement is achieved.” Para. 62 provides that the Armistice will remain in effect until

- “expressly superseded” in “an appropriate agreement for a peaceful settlement at a political level between both sides.” Although armistices may end implicitly, the inclusion in a peace agreement of an explicit clause recognizing the dissolution of the Armistice would provide greater legal certainty and maximize the beneficial impact of a peace agreement on security. See also Oppenheim, *International Law*, para. 231 (“[Armistices] are in no wise to be compared with peace, and ought not to be called temporary peace, because the condition of war remains between the belligerents themselves, and between the belligerents and neutrals on all points beyond the mere cessation of hostilities.”).
- 248 See also UN General Assembly Resolution 3390A, para. 2, 3390B, para. 2, Nov. 18, 1975; Inter-Korean Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation, December 13, 1991, art. 5; UN Security Council President Statement S/PRST/1996/42, October 15, 1996.
- 249 Inter-Korean Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation, December 13, 1991, art. 11.
- 250 UN Secretary General Boutros Boutros-Ghali stated in a letter to the DPRK on June 24, 1994, that the United States alone has the authority to “decide on the continued existence or the dissolution of the United Nations Command,” that “the Security Council did not establish the unified command as a subsidiary organ under its control, but merely recommended the creation of such a command, specifying that it be under the authority of the United States,” and that “the dissolution of the unified command does not fall within the responsibility of any United Nations organ but is a matter within the competence of the Government of the United States.” Selig S. Harrison, *Korean Endgame: A Strategy for Reunification and U.S. Disengagement* (Princeton University Press, 2002), 163.
- 251 Kyung-ok Do and Ahn Jun-hyeong, *The Peace Agreement on the Korean Peninsula: Legal Issues and Challenges*, Korea Institute for National Unification, 37–51.
- 252 Adopted by a truncated Security Council in response to the North Korean offensive of June 1950, these three resolutions recommended furnishing “assistance” to South Korea with forces under the “unified command” of the United States to (1) “repel the armed attack” and (2) “restore international peace and security.” UN Security Council Resolution 82, June 25, 1950; UN Security Council Resolution 83, June 27, 1950; UN Security Council Resolution 84, July 7, 1950.
- 253 UN General Assembly Resolution 376 is sometimes invoked as additional justification for the invasion of the North. The resolution recommended that “all appropriate steps be taken to ensure conditions of stability throughout Korea.” Interpreting “stability” as justifying invasion of the North is just as problematic as interpreting “peace and security” in that way. UN General Assembly Resolution 376 (V) of October 7, 1950.
- 254 UN Security Council Resolution 702, August 8, 1991.
- 255 Bo-eun Kim, “US-controlled UNC Puts Brakes on Inter-Korean Railway Inspections,” *The Korea Times*, August 30, 2018; Gamel, “UN Command Blocks Field Survey of Inter-Korean Railway”; Park Kyung-man, “UN Restricts Establishment of Office of Gyeonggi Vice Governor for Peace at Dora Observatory in DMZ,” *Hankyoreh*, November 11, 2020.
- 256 While concerns have been raised on whether certain aspects of inter-Korean relations could conflict with sanctions against North Korea, several US/UNC actions have been perceived in South Korea as interference in projects that do not per se violate sanctions, such as railway inspections or tourism into the North. Ji-won Noh, “UN Command Only Has Authority to Block Military-Related Visits to DMZ,” *S. Korean Defense Ministry Says*, *Hankyoreh*, October 5, 2020; Hyonhee Shin, “South Korea’s Push for Tourism in North Poses Tricky Balancing Act,” *Reuters*, January 24, 2020.
- 257 The Inter-Korean Joint Military Committee is an organ created by the Inter-Korean Agreement on the Implementation of the Historic Panmunjom Declaration in the Military Domain, September 19, 2018.
- 258 UNC dissolution would end the Agreement regarding the Status of the United Nations Forces in Japan (UN GOJ SOFA), which gives UN Sending States that are party to it access to UNC-Rear bases in Japan. This represents today only a circumstantial use that was not imagined at the time the agreement was concluded, such as when, in April 2018, Australian and Canadian patrol aircraft used the Kadena base to monitor North Korean smuggling at sea. Even if the UN GOJ SOFA were dissolved, the United States would still have base access under the US-Japan SOFA framework. See also Yasuaki Chijiwa, “The ‘Termination’ of the Korean War, the ‘Dissolution’ of the United Nations Forces and their Influence on Japan,” *National Institute for Defense Studies Commentary* no. 80, July 3, 2018, 4.
- 259 Other sending states withdrew most or all of their forces in the 1950s, and there were only 300 personnel left by 1975. Eleanor C. McDowell, *Digest of United States Practice in International Law 1975* (Department of State, Office of the Legal Adviser, 1976), 824 (citing Press Release USUN 151(75), November 18, 1975).
- 260 *Ibid.*, 820 (citing Letter from the U.S. Permanent Representative to the United Nations addressed to the UN Security Council, S/11737, June 27, 1975), <https://babel.hathitrust.org/cgi/pt?id=mdp.39015051412578&view=lup&seq=850>.
- 261 Exchange of Notes for the Establishment of the U.S.-ROK Combined Forces Command, October 17, 1978. See also U.S. National Security Decision Memorandum 251, March 29, 1974 (setting out planned measures regarding the termination of the U.N. Command in Korea).

CHAPTER V

- 262 Yoshimi Yoshiaki, *Comfort Women: Sexual Slavery in the Japanese Military During World War II* (Columbia University Press, 2002), 93.
- 263 Gwi-Ok Kim, “The Effect of Japanese Colonialism on the Comfort Women System of the Korean Military,” *Society and History*, 103 (2014), 85–116 (in Korean); Jeong-Mi Park, “A Study on Prostitution Policies during the Korean War: Focusing on ‘Comfort Stations’ and ‘Comfort Women,’” *Journal of Korean Women’s Studies* 27, no. 2 (2011), 35–72 (in Korean).
- 264 Yoshiki, *Comfort Women*; Katharine H. S. Moon, *Sex Among Allies: Military Prostitution in U.S.–Korea Relations* (Columbia University Press, 1997), 19.
- 265 Moon, *Sex Among Allies*, 31.
- 266 Jeong-Mi Park, “A Historical Sociology of the Korean Government’s Policies on Military Prostitution in U.S. Camp towns, 1953–1995,” *Korean Journal of Sociology* 49, no. 2 (2011), 1–33 (in Korean).
- 267 *Ibid.*
- 268 Choe Sang-Hun, “Ex-Prostitutes Say South Korea and U.S. Enabled Sex Trade Near Bases,” *New York Times*, January 7, 2009.
- 269 Moon, *Sex Among Allies*, 2.
- 270 Adem Elveren and Valentine M. Moghadam, “The Impact of Militarization on Gender Inequality and Female Labor Force Participation,” *Working Papers 1307*, Economic Research Forum, revised August 21, 2019.
- 271 International Labour Organization, ILOSTAT database. Data retrieved on June 21, 2020.
- 272 “Glass-ceiling Index,” 2020, *The Economist*, <https://www.economist.com/graphic-detail/2020/03/04/iceland-leads-the-way-to-womens-equality-in-the-workplace>.
- 273 *Ibid.*
- 274 “Daily Lives of North Korean Women and Gender Politics,” Korea Institute for National Unification, 2020.
- 275 Simona Sharoni, “Militarism and Gender Based Violence,” in *The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies*, eds. Nancy A. Naples, Renee C. Hoogland, Maithree Wickramasinghe, and Wai Ching Angela Wong (Wiley-Blackwell, 2016).
- 276 Åsa Ekvall, “Masculinities and Militarism, Academics and Activists,” *Gender and Militarism: Analyzing the Links to Strategize for Peace*, http://www2.kobe-u.ac.jp/~alexroni/IPD%202015%20readings/IPD%202015_9/Gender%20and%20Militarism%20May-Pack-2014-web.pdf.

- 277 Jae Yop Kim, Sehun Oh, and Seok In Nam, "Prevalence and Trends in Domestic Violence in South Korea: Findings from National Surveys," *Journal of Interpersonal Violence*, 31, no. 8 (May 2016), 1554–76.
- 278 Olivia Schieber, "South Korea Needs to Contend with Sexual Violence," *Foreign Policy*, August 10, 2020.
- 279 Yenni Kwok, "The Three Places with the Highest Rate of Female Homicides on Earth Are All in Northeast Asia," *TIME*, February 13, 2017.
- 280 "You Cry at Night but Don't Know Why": Sexual Violence Against Women in North Korea," *Human Rights Watch*, November 1, 2018.
- 281 Mega Mohan, "Rape and No Periods in North Korea's Army," *BBC*, November 21, 2017.
- 282 Yasmin Husein Al-Jawaheri, *Women in Iraq: The Gender Impact of International Sanctions* (London: I. B. Tauris), 136, 139.
- 283 Julia Devin and Jaleh Dashti-Gibson, "Sanctions in the Former Yugoslavia: Convoluted Goals and Complicated Consequences," in *Political Gain and Civilian Pain: Humanitarian Impact of Economic Sanctions*, eds. Thomas G. Weiss, David Cortright, George A. Lopez, and Larry Minear (Rowman and Littlefield, 1997).
- 284 Donald M. Seekins, "Burma and US Sanctions: Punishing an Authoritarian Regime," *Asian Survey*, 45, no. 3, 437–452.
- 285 Féron et al., *The Human Costs and Gendered Impact of Sanctions on North Korea*.
- 286 "Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea," *United Nations Human Rights Council*, February 7, 2014.
- 287 Erin Engstran, Caitlin Flynn, and Meg Harris, "Gender and Migration from North Korea," *Journal of Public & International Affairs*, <https://jpia.princeton.edu/news/gender-and-migration-north-korea>.
- 288 "You Cry at Night but Don't Know Why?" *Human Rights Watch*.
- 289 Hyung Eun Kim, "South Korea Intelligence Officers Accused of Raping Defector from North," *BBC*, December 5, 2019.
- 290 Jeea Yang, "Struggles of Resettlement: North Koreans in South Korea," *Psychology International*, September 2018, <https://www.apa.org/international/pi/2018/09/north-koreans-resettlement>.
- 291 The second to fourth periodic reports were combined in one report, which DPRK submitted to the committee in 2016.
- 292 Appiagyei-Atua Kwadwo, "United Nations Security Council Resolution 1325 on Women, Peace, and Security – Is It Binding?" *Human Rights Brief* 18, no. 3 (2011), 2–6; Natasha Lewis et al., "Making the Normative Case: Implementing Security Council Resolution 1325 as Part of a Legal Framework on Women, Peace and Security," *LSE Pro Bono Matters*, 2015.
- 293 Lewis et al., "Making the Normative Case"; Aisling Swaine and Catherine O'Rourke, "Guidebook on CEDAW General Recommendation No. 30 and the UN Security Council Resolutions on Women, Peace, and Security," *UN Women*, 2015.
- 294 WILPF, "National Action Plans for the Implementation of UNSCR 1325 on Women, Peace and Security," 2020, <https://www.peace-women.org/member-states>.
- 295 Jana Krause, Werner Krause, and Piia Braenfors, "Women's Participation in Peace Negotiations and the Durability of Peace," *International Interactions* (August 2018); Marie O'Reilly, Andrea O Súilleabháin, and Thania Paffenholz, *Reimagining Peacemaking: Women's Roles in Peace Processes* (International Peace Institute, 2015); Thania Paffenholz et al., *Making Women Count – Not Just Counting Women: Assessing Women's Inclusion and Influence on Peace Negotiations* (Inclusive Peace and Transition Initiative and UN Women, 2016); Laurel Stone, "Women Transforming Conflict: A Quantitative Analysis of Female Peacemaking," *SSRN Electronic Journal* (2014), SSRN 2485242.
- 296 Jillian Emma Grant Abballe, Fotini Papagiotti, Dorie Reisman, Nicole Smith, and Agnieszka Fal-Dutra Santos, "Gender-sensitive Provisions in Peace Agreements and Women's Political and Economic Inclusion Post-conflict," *Global Network of Women Peacebuilders and NYU School of Professional Studies*, 2020.
- 297 Valerie Hudson, Bonnie Ballif-Spanvill, Mary Caprioli, and Chad F. Emmett, *Sex and World Peace* (Columbia University Press, 2012), 205.
- 298 Desiree Nilsson, "Anchoring the Peace: Civil Society Actors in Peace Accords and Durable Peace," *International Interactions* (2012), 243–266.
- 299 Anjali Kaushlesh Dayal and Agathe Christien, "Women's Participation in Informal Peace Processes," *Global Governance: A Review of Multilateralism and International Organizations* 26, no. 1 (2020).
- 300 Miriam J. Anderson, *Windows of Opportunity: How Women Seize Peace Negotiations for Political Change* (Oxford University Press, 2016); Kaushlesh Dayal and Christien, "Women's Participation in Informal Peace Processes."
- 301 Jacqui True and Yolanda Riveros-Morales, "Towards Inclusive Peace: Analysing Gender-sensitive Peace Agreements 2000–2016," *International Political Science Review* 40, no. 1 (2019), 23–40.
- 302 O'Reilly, Ó Súilleabháin, and Paffenholz, "Reimagining Peacemaking."
- 303 True and Riveros-Morales, "Towards Inclusive Peace."
- 304 Full name in Korean was "아시아 여성과 연대하는 조선여성협회".
- 305 Full name in Korean was "조선일본군성노예 및 강제연행 피해자문제대책위원회".
- 306 Féron et al., *The Human Costs and Gendered Impact of Sanctions on North Korea*.
- 307 Congressional Research Service, *Treaties and Other International Agreements: The Role of the United States Senate*, January 2001, 5, 147.

ANNEX I

308 *Ibid.*, 25–26.

309 U.S. Constitution, art 1, sec. 8, and art. 2, sec. 2.

310 Regarding a proposal to explicitly grant Congress the power to declare both war and peace, Oliver Ellsworth stated that "(t)here is a material difference between the cases of making war and making peace. It should be easier to get out of war, than into it." George Mason added that "(h)e was for clogging, rather than facilitating war; but for facilitating peace." The proposal to add "and peace" to the Declare War clause was subsequently unanimously rejected. This was an explicit deviation from the Articles of Confederation, under which Congress possessed both the war and peace powers. James Madison, *Journal of the Federal Convention*, ed. E. H. Scott (Scott, Foresman, 1898), 548–549.

311 U.S. Constitution, art. 2, sec. 2.

312 Congressional Research Service, *Treaties and Other International Agreements: The Role of the United States Senate*, January 2001, 4–5, 17–18, 22.

313 *Ibid.*, 4–5, 17–18.

314 *Ibid.*, 43.

315 The Senate rejected the Treaty of Versailles twice: on November 19, 1919, and on March 19, 1920. Congress adopted on July 2, 1921, the Knox-Porter resolution declaring the end of the state of war with Germany. A peace agreement separate from the Treaty of Versailles was signed between the United States and Germany on August 25, 1921, and President Harding proclaimed peace on November 14, 1921, declaring the war to have terminated on July 2, 1921.

316 The Senate gave its advice and consent through a resolution on March 20, 1952, and the treaty was ratified by President Truman on April 15, 1952. See *United States Proclamation of Peace with Japan*, April 28, 1952.

317 *Agreement on Ending the War and Restoring Peace in Viet-Nam*, January 27, 1973; Stephen P. Mulligan, *International Law and Agreements: Their Effect*

upon U.S. Law, Congressional Research Service, updated September 9, 2018, 8.

- 318 Bill Clinton, Remarks Announcing the Normalization of Diplomatic Relations with Vietnam, July 11, 1995.
- 319 ROK Constitution, art. 73.
- 320 ROK Constitution, art. 60.
- 321 Inter-Korean Agreement on Reconciliation, Non-Aggression and Exchanges and Cooperation, December 13, 1991.
- 322 See, e.g., ROK Constitutional Court, 98 Hun-Ba 63, July 20, 2000. See also Hyo-Won Lee, “The Current State and Required Modifications of the Inter-Korean Exchange and Cooperation Act,” *Journal of Korean Law* 11 (December 2011), 55, 58.
- 323 ROK Supreme Court, 98 Du 14525, July 23, 1999. See also Hyo-Won Lee, “The Current State and Required Modifications of the Inter-Korean Exchange and Cooperation Act,” 55, 58.
- 324 Seong-ho Jhe, “Four Major Agreements on Inter-Korean Economic Cooperation and Legal Measures for Their Implementation,” *Journal of Korean Studies* 5, no. 1 (2005), 126, 130.
- 325 *Ibid.*, 129.
- 326 ROK Development of Inter-Korean Relations Act, arts. 21(1) and 21(2).
- 327 *Ibid.*, art. 21(3).
- 328 Inter-Korean Agreement on the Implementation of the Historic Panmunjom Declaration in the Military Domain, September 19, 2018.
- 329 KBS World, “Pyongyang Declaration to Be Ratified without Assembly Consent,” October 22, 2018.
- 330 DPRK Socialist Constitution, art. 103(4).
- 331 *Ibid.*, art. 116(14).
- 332 For a list of treaties North Korea is a part of, see, e.g., the “North Korea in the World Database,” last accessed November 16, 2020, <https://www.northkoreaintheworld.org/multi-lateral/international-treaties>.
- 333 Vienna Convention on the Law of Treaties, May 23, 1969, art. 11 (listing different possibilities of expressing consent to be bound).
- 334 Under the Vienna Convention on the Law of Treaties, most of which is considered today as representing customary international law, consent may be invalidated if and only if the violation was “manifest and concerned a rule of its internal law of fundamental importance.” Vienna Convention on the Law of Treaties, May 23, 1969, art. 46(1).

EXTERNAL CONTRIBUTIONS

- 335 Mira Rapp-Hooper, “America Is Not Going to Denuclearize North Korea,”

The Atlantic, November 29, 2017, <https://www.theatlantic.com/international/archive/2017/11/north-korea-icbm-kim-trump-nuclear/547040>; Adam Mount and Ankit Panda, “North Korea Is Not Denuclearizing,” *The Atlantic*, April 21, 2018, <https://www.theatlantic.com/international/archive/2018/04/north-korea-kim-jong-un-trump-nuclear-summit-weapons-missiles/558620>; Vipin Narang and Ankit Panda, “North Korea Is a Nuclear Power. Get Used to It,” *The New York Times*, June 14, 2018, Opinion, <https://www.nytimes.com/2018/06/12/opinion/trump-kim-summit-denuclearization-north-korea.html>.

- 336 Furthermore, any momentum achieved as part of a nuclear agreement or a peace regime would not be irreversible. With or without further progress that demonstrates additional value to both Pyongyang and Washington, North Korea might very well defect from an agreement and resume advancements in its nuclear arsenal. This principle, which is widely shared by US analysts, stands in contrast to remarks made by President Moon and certain other ROK officials. Park Han-na, “Dismantling Yongbyon Is Irreversible Advance in NK’s Denuclearization: Moon,” *The Korea Herald*, June 26, 2019, <http://www.koreaherald.com/view.php?ud=20190626000764>.
- 337 This is the primary assessment of Adam Mount and Andrea Berger, “Report of the FAS International Study Group on North Korea Policy” (Federation of American Scientists, 2019), <https://fas.org/wp-content/uploads/media/FAS-DPRK-SG.pdf>.
- 338 UN Office for the Coordination of Humanitarian Affairs, “2018 DPR Korea Needs and Priorities,” March 2018, http://kp.one.un.org/content/dam/unct/dprk/docs/unct_kp_NP2018.pdf#page=10; Hyonhee Shin, “As Food Crisis Threatens, Humanitarian Aid for North Korea Grinds to a Halt,” *Reuters*, August 20, 2018, <https://www.reuters.com/article/us-northkorea-usa-aid-in-sight/as-food-crisis-threatens-humanitarian-aid-for-north-korea-grinds-to-a-halt-idUSKCNIL529H>; John Park and Jim Walsh, “Stopping North Korea, Inc.: Sanctions Effectiveness and Unintended Consequences” (MIT Security Studies Program, August 2016), <https://www.belfercenter.org/sites/default/files/legacy/files/Stopping%20North%20Korea%20Inc%20Park%20and%20Walsh%20.pdf>.
- 339 For the argument that stability should be a guiding objective of allied deterrence posture, see Adam Mount and Mira Rapp-Hooper, “Nuclear Stability on the Korean Peninsula,” *Survival* 62, no. 1 (2020), 39–46.
- 340 For proposals on conventional arms control, see Van Jackson, “Risk Realism: The Arms Control Endgame for North Korea Policy” (Center for a New American Security, September 24, 2019), <https://www.cnas.org/publications/reports/risk-realism>; John K. Warden and Ankit Panda, “Goals for Any Arms Control Proposal with North Korea,” *Bulletin of the Atomic Scientists*,

February 13, 2019, <https://thebulletin.org/2019/02/goals-for-any-arms-control-proposal-with-north-korea>.

- 341 Jeffrey Lewis, “North Korea Is Keeping Its Nukes. That Seems to Be Fine with Trump Now,” *Washington Post*, July 8, 2019, <https://www.washingtonpost.com/outlook/2019/07/08/north-korea-is-keeping-its-nukes-that-seems-be-fine-with-trump-now>.
- 342 Joe Biden, “Why America Must Lead Again,” *Foreign Affairs*, March/April 2020.
- 343 Mark Hannah and Caroline Gray, “Diplomacy & Restraint: The Worldview of American Voters,” *Eurasia Group Foundation*, September 2020, <https://egfound.org/stories/independent-america/diplomacy-and-restraint#fullreport>.
- 344 Michael D. Swaine, Jessica J. Lee, Rachel Esplin Odell, “Toward an Inclusive and Balanced Regional Order: A New US Strategy in East Asia,” *Quincy Institute for Responsible Statecraft*, January 11, 2021, <https://quincyinst.org/2021/01/11/toward-an-inclusive-balanced-regional-order-a-new-u-s-strategy-in-east-asia/>
- 345 Narushige Michishita, “Alliances after Peace in Korea,” *Survival* 41, no. 3 (August 2006).
- 346 Mari Yamaguchi, “Japan PM Tells South Korea It’s Time to Fix Strained Ties,” *Associated Press*, September 24, 2020.
- 347 “South Korea’s Legislative Election Results and Implications for U.S.–South Korea Relations,” webinar co-hosted by the Quincy Institute and East Asia Foundation, May 27, 2020, <https://quincyinst.org/2020/05/27/next-week-south-koreas-legislative-election-results-and-their-impact-on-u-s-south-korea-relations>.
- 348 *Ibid.*

