



Kim Response to Norton, "Ending The Korean Armistice"



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Kim Response to Norton, "Ending The Korean Armistice"

Northeast Asia Peace and Security Network

Discussion of Ending the Korean Armistice Agreement: The Legal Issues
#2(b) -- March, 1997

On March 3, NAPSNet featured a paper by Patrick M. Norton, ["Ending The Korean Armistice Agreement: The Legal Issues."](#) A set of questions based on the work was appended following the conclusion. The following response, drawing on these questions, was submitted by Kim Myong Chol, an ethnic Korean born and living permanently in Japan. Mr. Kim's studies include graduate work in US foreign policy at Tokyo University. Mr. Kim worked as a reporter and editor at "The People's Korea" and has written extensively on DPRK perspectives on Korean and international relations. To join this discussion, contact the NAPSNet Coordinator at: napsnet-reply@nautilus.org .

Kim Myong Chol responds to these questions:

1. [Is the Korean conflict most properly characterized as an international or a civil war? Norton finds fault in both the former position \(the premise of UN involvement\) and the latter position \(held by the DPRK and PRC\). What bearing does this problem have on strategies for pursuing peace on the Korean peninsula today?](#)

- Norton argues that the four-party peace talks proposal represents an accurate grouping of the major parties to the conflict "in practice." Given the formal UN role as a party to the war and the Armistice, ought there be a role for the UN in any negotiations toward a peace treaty? In particular, what role might the UN Command allies such as the UK or Australia play in the UN debates which may occur over a proposal to end the Armistice?
- Norton notes that the UN abrogated its own charter to involve itself in Korea, that it had no actual control over combat forces during open hostilities, that the UN had no role in the Geneva conference following the Armistice, and that today the DPRK is now a UN member. Do these considerations obviate any UN role in such negotiations?
- Norton notes that during hostilities ROK forces were effectively under US control, and that the ROK (unlike the DPRK) was not a formal party to the Armistice. Yet he also argues that the DPRK's insistence that negotiations for a peace treaty include the US but not the ROK are "polemical and without legal foundation," given the ROK's role since the Armistice. Does the DPRK position have a credible legal basis?
- Is a formal peace treaty required to bring peace to the Korean peninsula? Norton notes that a peace treaty customarily follows an armistice, and that many interested parties have expressed such a need. However, he also notes that an armistice may evolve over time into a de facto peace treaty (although this has not happened among the major belligerents in Korea). Might more of a political focus (i.e. toward a "detente" rather than a treaty) ultimately prove more constructive than continued abortive efforts to convene formal negotiations?
- How do decisions regarding bringing a formal peace to the Korean peninsula bear on the objective of Korean unification?
- The Soviet military fought in the undeclared war, although Moscow denied US allegations at the time. Does this provide the legal or realpolitik basis for Russian participation in negotiations to end the Armistice, given the argument that the ROK obtains such a right by virtue of its military participation in the fighting on the Peninsula?

NAPSNet invites your responses either to Mr. Kim's comments or to Mr. Norton's original paper. Please send your responses to the NAPSNet Coordinator at: napsnet-reply@nautilus.org

1. Is the Korean conflict most properly characterized as an international or a civil war? Norton finds fault in both the former position (the premise of UN involvement) and the latter position (held by the DPRK and PRC). What bearing does this problem have on strategies for pursuing peace on the Korean peninsula today?

Kim Myong Chol:

The DPRK's stand is that the Korean War began initially as a civil war between North and South Korea but quickly escalated into a major international war involving the USA and China besides

North and South Korea, when the United States fully intervened in the war, usurping the UN authority. South Korea's Syngman Rhee surrendered his operational control over the South Korean forces to Gen. MacArthur under the Taejon agreement. Since then the South Korean armed forces have been placed triply under the operational control of the US general in South Korea, first in the capacity of the US commander in that region, second in the capacity of the UN commander, and thirdly in the capacity of the commander of the American-South Korean combined forces.

The best illustration of the Korean War as an international conflict lies in two facts: firstly, the Korean Armistice Agreement was signed by the DPRK on one hand and the US on the other, regardless of whether South Korea became one of its signatories, and, secondly, the US keeps the South Korean forces under its operational control. This is why the North Korean and American senior members of the Korean Armistice Commission had been meeting before a South Korean general was illegally named to be senior member in March 1991. This is why all the issues relating to the Korean armistice have been negotiated and resolved by the DPRK and US negotiators without involving the Chinese, UN and South Korean negotiators: the 1968 Pueblo Incident, the 1976 Poplar Tree Incident, the 1993-94 nuclear standoff, the 1994 chopper incident, and the 1996 submarine incident. In other words, the DPRK and the USA are the key competent parties to the Korean conflict.

If the Korean conflict had remained a civil war between North and South Korea, the South Korean regime of Syngman Rhee would not have transferred its operational control over its armed forces to the American general. Syngman Rhee would rather have established operational control not only over the South Korean forces but also over all the American forces. Without South Korean participation, the US would not have signed the armistice agreement. The consequent perception on the part of the DPRK is that South Korea is a client state and second-class ally of the United States.

What underlies the DPRK policy is a definite picture of the United States as the key and major party responsible for the division of Korea and the Korean war. This theory goes that removal or neutralization of the American factor is crucial for the climate for North-South talks for reconciliation and reunification. This is why the DPRK thinks that the matter of terminating the state of war with the United States comes on the front burner, while the question of North-South dialogue is on the back burner. This view has been vindicated in the past two series of talks with Seoul --1972 and 1991. The DPRK expected the South Koreans to reassert their independence of the Americans. Those talks produced two historic documents. The 1972 North-South joint statement promised to achieve the great cause of independent and peaceful reunification with the combined efforts of the two parts of Korea. The 1991 non-aggression document called for ending the state of war between North and South Korea and envisaged an eventual reunification through reconciliation and exchange.

The North-South agreements went far beyond what the Americans anticipated. The Americans pressured the South Koreans to change their minds by refusing to take specific steps to implement the agreements. After all, neither of the agreements was put into practice or brought Pyongyang and Seoul closer to reunification. The South Koreans were unable to bid farewell to their second-class ally status of the United States. The North Koreans drew the valuable conclusion that only by engaging the Americans and coaxing them into ending the state of war and improving relations with the DPRK would they be able to create the constructive climate for North-South talks and reunification. What Pyongyang drives at is not the outright withdrawal of American forces but a fundamental qualitative change in the nature of the American role in Korea from the obstructor of North-South reconciliation to at least the neutral or sympathetic observer.

It should be noted that Pyongyang does not insist in full implementation of all the provisions of the Korean armistice agreement, which would require American military disengagement from South

Korea and negotiated reunification of the divided Korean Peninsula. Nor does Pyongyang insist on branding either side as an aggressor, which would involve establishing a military tribunal and levying huge reparations. What the DPRK prefers is ending the state of belligerency between the Korean People's Army and the American forces and establishing full diplomatic relations.

2. Norton argues that the four-party peace talks proposal represents an accurate grouping of the major parties to the conflict "in practice." Given the formal UN role as a party to the war and the Armistice, ought there be a role for the UN in any negotiations toward a peace treaty? In particular, what role might the UN Command allies such as the UK or Australia play in the UN debates which may occur over a proposal to end the Armistice?

Kim Myong Chol:

The Norton argument is fatally flawed in two respects. China respects the DPRK stand concerning Korea. Firstly, China withdrew its volunteer forces from the DPRK and its senior member from the Korean Armistice Commission at the request of Pyongyang. China has always respected the DPRK's policy stand and never attempted to dictate the conduct of the DPRK vis-a-vis the USA and South Korea. Secondly, despite its position as an independent and sovereign state, South Korea is a client state, a second-class ally of the United States. There are three compelling pieces of evidence. The first is the Americans' operational control over the South Korean armed forces, the second is the American signing of the Korean armistice agreement in spite of the South Korean objection, and the third is the direct DPRK-US talks in New York that discussed and resolved the September 1996 submarine affair without the presence of any South Korean official, though the submarine was found grounded off South Korea, not off New York or California.

The DPRK thinks that the UN should take steps to ban the further use of the UN flag in South Korea but does not expect the world body to do so because it is not prepared yet. Therefore, the DPRK does not think that there is any role for the UN. However, when the DPRK and the USA have agreed to knock together a peace treaty, the UN will likely be invited to observe the signing ceremony. Regarding the UK and other US allies that took part in the Korean War, they will likely be invited to attend the ceremony to dismantle the UN command when Pyongyang and Washington have agreed to end their years of belligerency.

3. Norton notes that the UN abrogated its own charter to involve itself in Korea, that it had no actual control over combat forces during open hostilities, that the UN had no

role in the Geneva conference following the Armistice, and that today the DPRK is now a UN member. Do these considerations obviate any UN role in such negotiations?

Kim Myong Chol:

Theoretically, the UN should think it is capable of controlling the United States concerning Korea. It is legally the case. However, it is practically not the case. Pyongyang does not harbor any slightest illusion about the UN role in Korea in particular regarding the peace negotiations. Though the UN command exists under the UN flag, no UN money has been earmarked for whatever purposes of the UN command. Nor has the UN secretariat been in control of the UN command. None of the Korean contingency plans have been drafted and presented to the UN for approval. A hard fact of life is that the UN played no part in the negotiations and signing of the Korean cease-fire accord and in the series of DPRK-US talks including the submarine affair.

4. Norton notes that during hostilities ROK forces were effectively under US control, and that the ROK (unlike the DPRK) was not a formal party to the Armistice. Yet he also argues that the DPRK's insistence that negotiations for a peace treaty include the US but not the ROK are "polemical and without legal foundation," given the ROK's role since the Armistice. Does the DPRK position have a credible legal basis?

Kim Myong Chol:

The DPRK thinks that the argument for South Korean inclusion in negotiations for a peace treaty on Korea is polemical and without legal foundation. There is no denying that the South Korean regime of Syngman Rhee opposed the Korean armistice and refused to sign the armistice agreement. When the Americans offered a three-way conference comprising the USA, North Korea and South Korea, the DPRK finally agreed, but then the Americans revoked their proposal. The DPRK did not take issue with the silent presence of a South Korean officer in the Korean Military Armistice Commission talks. Pyongyang signed the 1991 non-aggression pact with Seoul -- which has never taken effect. Seoul never proposed to include the Americans in the North-South talks as in the talks leading to the publication of the 1972 North-South joint statement.

As a matter of fact, the non-aggression pact or peace treaty between Pyongyang and Seoul does not

address the paramount security concern of the DPRK. This supreme security interest of the DPRK can be best served by a peace treaty with Washington to terminate the state of war. Since it concluded the non-aggression pact with Pyongyang, South Korea should have every good reason to consent to the USA negotiating a peace treaty with North Korea and reasserting its independence and sovereignty by reestablishing its operational control over the South Korean forces and revising the unequal status of forces agreement with the USA. However, as things stand, the DPRK does not think that South Korea is in any position to reassert its independence by demanding the return of operational control over its armed forces. Pyongyang thinks that a DPRK-USA normalization and peace treaty will set the stage for Seoul to reclaim its full independence vis-a-vis Washington.

5. Is a formal peace treaty required to bring peace to the Korean peninsula? Norton notes that a peace treaty customarily follows an armistice, and that many interested parties have expressed such a need. However, he also notes that an armistice may evolve over time into a de facto peace treaty (although this has not happened among the major belligerents in Korea). Might more of a political focus (i.e. toward a "detente" rather than a treaty) ultimately prove more constructive than continued abortive efforts to convene formal negotiations?

Kim Myong Chol:

A DPRK-USA peace treaty is vitally needed for the relaxation of tensions in Korea, the most heavily militarized area in the world, which makes Korea the most dangerous flashpoint. In the absence of a peace treaty or any peace arrangement, there is no dismantling the fortifications along the 38th Parallel. Suppose Pyongyang has established full diplomatic relations with Washington without a peace treaty, Pyongyang will have to keep its huge military forces on alert, targeted at American forces in South Korea and in its adjacent region. Long-range artillery pieces will have to remain along the frontline. The DPRK will have to relentlessly press ahead with the development and deployment of long-range strategic missiles. In other words, the Korean Peninsula will remain highly volatile, ready to explode at any slightest provocation. Any talk of arms control will remain just a talk.

At the time of the Pueblo and Poplar Tree incidents, the North Korean and American military maintained a direct general-level channel of communication through the Korean Military Armistice Commission, which played a key role in defusing the tensions. With the Korean Military Armistice Commission paralyzed, the two sides were deprived of this route of communication. When an American chopper was shot down in December 1995, the American military had no direct access to the DPRK military. An American Congressman brokered the settlement of the incident. During the submarine affair, the American military had little room to play except for colonel-level contacts at Panmunjom. The North Korean and American diplomats met in New York for 11 rounds of talks,

which succeeded in ending the submarine incident.

Unless a peace treaty is negotiated, there is no removing the chances that any un-toward incident or miscalculation or misunderstanding along the Military Demarcation Line will develop into a full-blown crisis threatening the peace and stability of the region increase. So far, the armistice agreement has had most of its provisions outrageously violated, but neither of the DPRK or the USA wants to resume hostilities. Both are gingerly sticking to the cessation of hostilities. In that sense, the armistice agreement, albeit extremely fragile, is still in force, with no institution available to police it. To be frank, the North Koreans theorize that improved relations and eventual full diplomatic relations between the former two enemies as envisaged in the October 1994 framework agreement will inevitably lead the two countries to negotiate a peace treaty.

6. How do decisions regarding bringing a formal peace to the Korean peninsula bear on the objective of Korean unification?

Kim Myong Chol:

The most significant but least discussed aspect about those decisions leading to a formal peace on the Korean Peninsula is that they will represent the elimination or neutralization of the fundamental factor that has been responsible for the division of Korea and has stood in the way of North-South talks, reconciliation, and reunification. In other words, the alien factor that has prevented national reunification will be removed or made harmless at long last, for the first time after the 1945 liberation of Korea from Japan. The South Korean people will be given a golden opportunity to have a soul-searching look at themselves, their relations with the United States and Japan. For the first time will the South Koreans will be allowed to live for themselves, work for reunion of the two parts of Korea.

The successive South Korean regimes will receive grueling scrutiny. Gone for ever will be the *raison d'être* for the South Korean regime, for the repression of democracy, the anti-communist National Security Law, the all-powerful weapon to justify the repression of democracy and movement for reunification with North Korea. What happened in Eastern Europe after the disintegration of the socialist camp is bound to be reproduced in Seoul and in other parts of South Korea.

7. The Soviet military fought in the undeclared war, although Moscow denied US allegations at the time. Does this provide the legal or realpolitik basis for Russian participation in negotiations to end the Armistice, given the argument that the ROK obtains such a right by virtue of its military participation in the fighting on the Peninsula?

Kim Myong Chol:

The answer is obviously NO. The Russians will never be allowed to participate in negotiations to end the armistice.

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