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002. cable	re Acting FM on the SOFA "Custody Upon Arrest" Issue (3 pages)	12/13/2000	P1/b(1)
003. cable	re NoGun-Ri (2 pages)	12/13/2000	P1/b(1)
004. cable	NoGun-Ri: Building on the SMU (3 pages)	12/12/2000	P1/b(1)
005. cable	NoGun-Ri: ROK Concerns over US Investigation Results (10 pages)	12/13/2000	P1/b(1)
006. email	Johannes Binnendijk re NoGun-Ri incident (2 pages)	10/06/2000	P1/b(1)
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NoGun-Ri [South Korea] [2]

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RESTRICTION CODES

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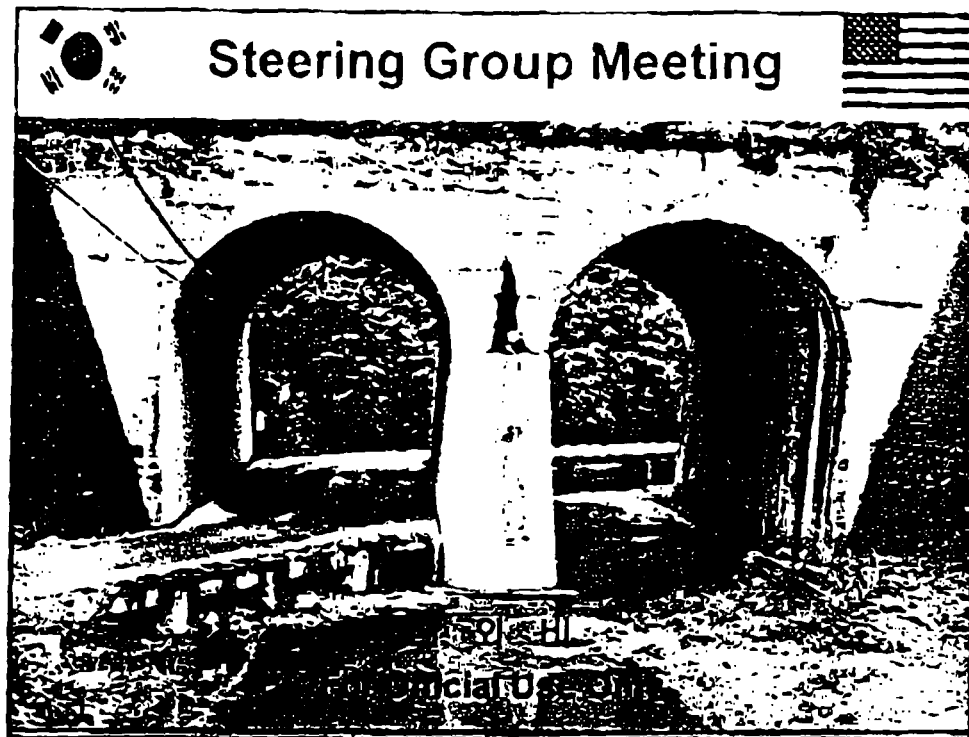
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1. 조사경과

가. 노근리 사건은 1999년 9월 29일 AP 통신 보도 이후 한·미 양국 대통령의 지시에 의해 조사가 시작되었으며, 이러한 보도내용은 노근리 지역에서 발생한 한국 피난민에 대한 철로상의 공중공격과 쌍굴사격 등 한국 주민들이 과거에 소청을 제기했던 사건에 관하여 조사를 실시하도록 관심을 촉구하였다.

1. Review Process

a. The No Gun Ri Incident Review was initiated at the direction of the presidents of the Republic of Korea and the United States following the release of the Associated Press report concerning the matter on September 29, 1999. This story brought to the forefront the earlier efforts of Korean citizens to gain an inquiry into their claims surrounding certain events that occurred in the vicinity of No Gun Ri, including the firing upon Korean refugees at the double railroad overpass and an air strike on the railroad track.





나. 한·미 양국 조사반의 노력은 최상의 한·미 상호협력 수준을 보여주고 있다. 이러한 민감하면서도 중요한 조사과정 전반에 걸쳐 양측 조사반은 상호협력과 신뢰관계를 확립하였고 이를 공고하게 유지해 왔다. 한·미 조사반은 사건 주변상황과 관련사실을 조사하는 사명을 지속적으로 수행했으며, 양팀은 관련사실, 증언, 문서 등을 충분히 공유해 왔다.

b. The efforts of the Korean and US No Gun Ri Review Teams exemplify the highest levels of ROK-US bilateral cooperation. Throughout the duration of this important and sensitive endeavor, both Teams established and steadfastly sustained an environment of mutual cooperation and trust. The Korean and American Officials associated with this effort consistently demonstrated their commitment to examine the facts and circumstances surrounding the events. Both teams have candidly shared facts, statements and documents.



다. 50년의 세월이 경과함에 따라 모든 사실을 밝힐 수 있는 가능성이 줄어들었으며, 전상후유증, 연령, 대중매체 등 여러 가지 요소들은 한·미 증언자들의 기억에 영향을 미치고 있다.

c. The passage of 50 years reduces the possibility that all of the facts will ever be known and a large number of factors, including but not limited to trauma, age, and media influence the recollection of Korean and US witnesses.



라. 그럼에도 불구하고 이와같은 조사과정은 한·미 동맹관계를 향상시키고 대한민국의 자유를 위해 너무나 많은 것을 희생했던 수많은 양국 국민들의 명예를 고양시키는데 도움을 줄 것이다. 인간인 피해는 전쟁의 원치 않는 결과 중에서 가장 비극적인 것이다. 한국의 국민들과 양국의 군인들은 1950년 여름에 북한의 침략으로 야기된 어려운 시련을 겪어야만 했다. 사실 규명에 충실했던 이번 조사는 과거를 청산하고 미래에 대한 희망을 가져오게 될 것이다.

d. Nevertheless, this process will add to a strengthened ROK-US alliance and honor the many of both nations who sacrificed so much for the freedom of the Republic of Korea. Civilian casualties are, without exception, the most tragic of the unintended consequences of conflict. South Korean citizens and soldiers of both nations bore heavy burdens in the summer months of 1950 as a result of North Korean aggression. This review process, characterized by diligent fact-finding, will provide closure for the past and bring hope for the future.



2. 한·미 합동 조사내용

가. 사건 배경 및 전투상황

(1) 개전초 한국에 투입되었던 미군들은 나이가 어렸고, 훈련과 장비가 부족한 상태였으며, 전투경험이 없는 인원들로 편성되었다. 당시 노근리 주변지역에서 작전을 전개하고 있었던 부대들은 전투경험이 부족한 지휘자들의 지휘·통제하에 있었다. 그들은 북한군의 무기체계나 전술 그리고 북한군의 진격속도에 효과적으로 대응할 만한 사전 준비가 부족하였다.

2. ROK-US Mutual Understandings

a. Background of the Incident and Combat Situation.

(1) In the early period of the conflict, many of the US soldiers deployed to Korea were young, under-trained, under-equipped and new to combat. Units operating in the vicinity of No Gun Ri were under the command and control of leaders with limited proven experience in combat. They were unprepared for the weapons and tactics of the North Korea forces that they would face and the speed of the North Korean advance.



(2) 미군은 북한군이 피난민 대열의 민간인 그룹으로 가장하여 미군전선을 통과한 후에 미군진지 후방에서 공격하는 북한군들의 침투 가능성에 대하여 두려워하였다.

(2) US soldiers were legitimately fearful of the possible infiltration of North Korean soldiers who routinely entered American lines in groups disguised as civilians in refugee columns and then attacked American positions from the rear.



(3) 영동에서 미군이 철수하고 북한군이 진입한 후, 미 제 1 기병사단은 낙동강전선으로 후퇴하는 동안 영동 동쪽지역에서 북한군의 간헐적인 정찰임무와 간접사격 등으로 북한군과 지속적인 접촉을 유지해왔다.

(3) Following the withdrawal of US forces, and entry of the North Korean army into Yongdong, the North Koreans continued to maintain contact with the US ground forces east of Yongdong by means of intermittent patrols and indirect fire as the 1st Cavalry Division continued its rearward movement to Nakdong River.



(4) 1950년 7월 마지막 주에 영동 동쪽 4번 국도 상에 북한군의 전차가 출현하고 있었다. 미군들은 그들이 보유한 일부 대전차 무기가 북한군의 전차에 아무런 효과가 없다고 우려하고 있었다.

(4) North Korean tanks were on what is now Highway 4 east of Yongdong during the last week of July 1950. US soldiers believed that some of the US anti-tank weaponry available to them was ineffective against the North Korean armor.



(5) 미 제 7기병연대 2대대는 영동에 도착한 직후, 1950년 7월 25/26일 야간에 외해원 상태에서 노근리 주변지역으로 무질서한 후퇴를 하였다. 이러한 후퇴는 적 출현으로 인하여 적군의 돌파가 임박했다는 잘못된 판단, 적 전차의 출현 가능성, 그리고 북한군의 침투전술이 있을 것이라는 인식 등 여러 가지 요소 때문에 발생하였다. 무질서하고 혼란한 상태에 있던 부대들은 26일 낮동안 노근리 부근에서 재집결하였고, 7월 27일 오전까지 노근리 부근에서 부대통합 및 재집결을 완료하여 위치를 보고 하였다.

(5) The 2nd Battalion, 7th Cavalry Regiment, shortly after arriving in the Yongdong area, conducted a disorganized and undisciplined retreat toward the vicinity of No Gun Ri during the night of July 25/26 1950. The retreat occurred as a result of several factors including : a mistaken belief of an imminent enemy breakthrough due to the emergence of the enemy, the possibility of encountering North Korean tanks, and the awareness of North Korean infiltration tactics. The organization, disoriented and in disarray, reorganized in the vicinity of No Gun Ri throughout the day on the 26th. The unit completed its consolidation and reorganization in the vicinity of No Gun Ri by the early morning of the 27th of July, when it reported its position.



나. 피난민 통제

(1) 개전초, 한국 정부의 피난민 통제정책은 미흡하였고, 그로 인해 피난민 이동을 통제하는데 많은 혼란과 어려움을 초래하였다.

b. Refugee Control

(1) At the outset of the war, the lack of ROK government refugee control measures resulted in significant confusion and difficulties in controlling refugee movement.



(2) 1950년 7월 20일 대전전투 이후 피난민 이동 통제 문제는 한국군과 미군의 주요 작전 고려요소가 되었다. 1950년 7월 하순경에 한국정부와 미8군은 긴밀한 협조를 통해 피난민과 한국군 및 미군을 보호하고, 도로로 이동하는 피난민들이 군 작전에 미치는 영향을 최소화하기 위해서 피난민 통제지침을 하달하기 시작하였다.

(2) By July 20, 1950, after the Taejon Battle, refugee control was a major concern of the US and ROK forces. In late July 1950, the ROK government and Eighth US Army, in close coordination, began to disseminate refugee control policies to protect the US and South Korean forces as well as refugees and reduce the impact of road-bound refugees on military operations.



다. 임계리·주곡리 주민들의 집결 및 이동

(1) 예외의 경우가 있긴 하지만, 한국 민간인들은 피난민의 이동을 제한하는 한·미 피난민 통제정책이 1950년 7월 하순경에 수립되었다. 일부 미 참전장병은 미군이 어떤 지정에서는 민간인들을 위험한 지역이나 미 지상군 진지로부터 벗어나게 한다는 이유로 인해 이들을 마을에서부터 호송하였다고 증언하였다.

c. Assembly and Movement of Villagers at Im Ke Ri and Joo Gok Ri

(1) With certain exceptions, US and ROK policy restricting movement of refugees was established in late July 1950. However, some US veterans testified that, at some point, they escorted Koreans from their villages, in an effort to get them out of harm's way or to clear them away from US ground positions.



(2) 일부 한측 증언자들은 1950년 7월 25일 야간에 미군이 산속의 안전한 마을 임계리에 있던 수 미상의 피난민들을 주곡리를 경유하여 4번 도로를 따라 노근리방향으로 인솔하였다고 주장하고 있다. 미 참전장병들은 마을에서 주민들을 호송했던 것은 기억하지만 지역과 날짜에 대해서는 기억하지 못하고 있다.

(2) Some Korean witnesses asserted in their testimony that US soldiers escorted an unspecified number of refugees from Im Ke Ri, a safe village in the mountains on or about the night of 25 July, toward the No Gun Ri area, via Joo Gok Ri along what is now Highway 4. US veterans do remember escorting refugees from villages, but they cannot recall the names of places or dates.



(3) 일부 한측 증언자들은 7월 25일 주곡리로부터 1.5 Km 떨어진 하가리 근처 개활지에서 미군의 명령에 의해 노숙할 때 피난민이 사살 당하는 것을 목격했다고 증언하였다. 다양한 한측증언자들은 당시 피난민 대열에서 낙오되거나, 집단을 이탈 또는 대열로 부터 뒤로쳐졌던 1~4명 정도가 사살되었다고 증언하고 있다. 그러나 이에 연루된 미군이나 이 행위가 당시 시행되고 있던 피난민 통제대책을 위반한 것에 대한 대응조치였는지는 확인할 수 없었다.

(3) Some Korean witnesses stated that they saw refugees killed on July 25th when refugees were directed by US forces to stay in an open area near Ha Ga Ri, 1.5km from the village of Joo Gok Ri. Various Korean witnesses state that one to four persons were shot when they either strayed from the group, tried to leave the group or did not move fast enough. The review could not confirm what soldiers were involved, nor whether this action was a reaction to a violation of refugee control measures in effect at the time.



(4) 일부 한측 피해자 및 미 참전장병들의 증언에 따르면, 한국 피난민과 미군은 모두 동쪽으로 후퇴하는 과정에서 서로 접촉하게 되었다. 영동에서 황간으로 이동하는 동안 피난민들은 도로에서 철로쪽으로 이동하였다. 일부 미 참전장병과 한측 증언자들은 미군이 피난민들을 철로쪽으로 인솔하여 개령라 침투 여부와 무기 및 기타 금지품목 소지 여부를 확인하기 위해 검색을 하였다고 기억하고 있다. 그러나 다른 미 참전장병과 한측 증언자들은 검색이 실시된 사실을 기억하지 못하고 있다.

(4) Some US and Korean witness statements say that Korean refugees came in contact with US forces in the vicinity of No Gun Ri as they both moved east. As they moved from Yongdong toward Hwanggan, the refugees passed from the road to the railroad tracks. Some US veterans and Korean witnesses recalled that US forces directed refugees to the railroad tracks, conducted searches for infiltrators, weapons and other contraband. Other veterans and Korean witnesses had no recollection of searches being conducted.



라. 공중 공격

(1) 다수의 한국 증언자들은 1950년 7월 26일 정오경 미군의 항공기가 피난민들에게 기총소사 또는 폭격을 하였다고 증언하고 있다. 1950년 7월 말에 공중공격을 목격한 일부 미측증언자들은 노근리지역에 배치된 시기에 미군 항공기가 공중공격을 한 것을 목격하였다고 증언하고 있지만, 그 공격이 언제였는지 그리고 무엇을 공격했는지는 기억을 못하고 있다. 일부 미 참전자들은 1950년 7월중 피난민들과 함께있는 전차에 항공기가 공중공격을 하는것을 목격했다. 미 참전자 한명은 날짜는 기억하지 못하지만 피난민들이 비포장도로와 철길에서 공중공격을 받는 것을 목격하였다고 증언하였다.

d. Air Strikes

(1) According to their statements in the testimony, many Korean witnesses indicate that they were strafed or bombed by US airplanes around noon on July 26, 1950. Some U.S. veterans stated that they saw U.S. planes strafing targets in late July 1950 and some of these veterans saw them when deployed in the No Gun Ri area, but they could not recall when or identify what the targets were. Some veterans saw planes strafe tanks with refugees on or near them in July 1950. One veteran stated that on an unknown date he saw refugees on a dirt road and an old railroad being strafed.



(가) 조사기간 중 검토한 공식적인 미 공군 기록이나 미 조종사들의 증언을 통해서 7월 26일 노근리 주변지역에 출격하여 임무를 수행한 결과를 확인할 수 없었다. 미 제5공군 항공작전 일일요약보고서에 따르면 영동지역의 임무가 그 날 있었던 것으로 기록되어 있지만, 이에 3개의 임무에 대한 임무결과보고서는 찾을 수가 없다.

(a) Official US Air Force records and pilot interviews found during research do not reflect any mission flown on the 26th July in the vicinity of No Gun Ri. The 5th Air Force Summary of Air Operations indicated that some missions were flown over the Yongdong area on that day, but mission reports for three of these missions could not be found.



(나) 추가적으로, 1950년 8월 6일자 항공사진을 분석한 결과, 기총소사가 언제 발생했는지 정확한 날짜를 확정할 수는 없으나, 한측 피해자들이 증언하고 있는 지역에서 철로상의 기총소사 흔적을 발견할 수 있다.

(b) Additionally, analysis of the August 6, 1950 reconnaissance photograph shows an area of probable strafing on the railroad tracks in the area indicated by the Korean witnesses. There is no way of determining the exact date of the probable strafing.



(다) 1950년 7월 27일 아침 일찍 노근리 주변의 미 제7기병연대 제1대대 지역에서 실제로 공중공격이 발생하였다.

(라) 따라서, 이 조사는 노근리 주변지역에서 1950년 7월 26일 항공공격 발생 가능성을 배제할 수 없다.

(c) Early in the morning on July 27, 1950, an air strike did, in fact, take place in the 1st Battalion, 7th Cavalry Regiment area in the vicinity of No Gun Ri.

(d) The Review could, therefore, not exclude the possibility of an air strike occurring on July 26th in the vicinity of No Gun Ri.



(2) 미 공군 기록에 따르면, 당시 미 공군 제트항공기는 폭탄을 장착하지 않았으나 프로펠러 항공기는 폭탄을 장착하였다. 일부 한족 증언자들은 항공기가 피난민들을 직접 공격하였다고 증언하는 반면, 다른 증언자들은 단지 폭발음과 기관총 사격 및 파편과 화염, 열기를 포함한 포탄의 효과만을 기억한다고 증언하고 있다. 공식 기록에 의하면 1950년 7월 27일부터 29일까지 노근리지역에서 미군과 북한군 상호간에 야포 및 박격포사격이 있었다. 8명의 미 참전자들은 야포, 박격포 또는 전차포 사격이 노근리 부근에서 있었다고 기억하고 있다.

(2) Air Force records show that US Air Force jet aircraft flying at the time did not carry bombs whereas propeller-driven aircraft did. While some Korean witnesses stated that the aircraft directly attacked refugees, others have stated that they only recall explosions and machine gun fire and other munitions effects, including shrapnel, flames and heat. Official records indicate that US and North Korean Army forces did exchange artillery and mortar fire in the vicinity of No Gun Ri between July 27 and July 29 1950. Eight U.S. veterans remember either artillery, mortar or tank fire in the vicinity of No Gun Ri.



(3) 일부 한족 증언자들은 미 지상군이 당시 보유하고 있던 무전기를 사용하여 피난민에 대한 공중공격을 요청하였다고 증언하고 있다. 양국 조사단은 1950년 7월 26일 당시 통상의 미 보병병사들은 휴대용 무전기만 보유함으로써 미 공군 전술항공 통제권과 직접 교신하여 공중공격을 요청하는 것은 불가능했다는 사실에 동의하였다. 육군이 공중공격을 요청할 수 있었지만 이러한 요청은 일정한 경로를 통해 합동작전통제소로 전달되어야만 했다. 이러한 요청은 처리시간 상 즉각적인 대응이 불가능했었다.

(3) Some Korean witnesses stated that US soldiers called in air strikes on the refugees by use of a radio available to US ground forces at the time. Both Review Teams agree that, on July 26, 1950, the ordinary US ground soldier was equipped only with a portable radio and was incapable of talking directly to an Airborne Tactical Air Controller and requesting an air strike. Army units could submit a request for an air strike but had to pass it through channels to the Joint Operations Center. The processing time for such a request could not have resulted in a prompt response.



(4) 1950년 7월 25일자 5공군 전방 지휘소 Turner C. Rogers 대령의 메모에는 다음과 같은 내용이 기록되어 있었다. "북한군에 의해 조직되거나 북한군에 의해 통제되고 있는 많은 민간인들이 우리의 진지로 침투한다는 내용이 보고되었음. 육군은 미군 진지로 접근하고 있는 모든 민간 피난민들을 항공기로 기종소사 할 것을 요청하였음. 현재까지 공군은 육군의 이러한 요청에 응해왔음."

그러나 이 공군 조종사 출신의 증언자들은 그러한 지침을 기억하지 못하고 있다.

(4) In a memo dated 25 July 1950, Colonel Turner C. Rogers of 5th Air Force Headquarter stated that: "It is reported that large groups of civilians, either composed of or controlled by North Korean soldiers, are infiltrating U.S. positions. The Army has requested that we strafe all civilian refugee parties that are noted approaching our positions. To date, we have complied with the Army request in this respect."

None of the pilots interviewed, however, remembers such a policy.



마. 지상사격 및 사격명령 여부

(1) 미 지상군은 이 기간동안 노근리 주변에서 피난민을 향해 사격을 하였다.

e. Ground Fire and Issuance of Orders

(1) US ground forces fired toward refugees in the vicinity of No Gun Ri during this period.



(가) 1950년 7월 26일과 29일 사이의 어떤 시기에 일부 미군은 쌍굴내부를 포함하여 여러지역에 있는 피난민을 향해 사격을 하였다. 미군들은 피난민의 이동을 통제하기 위해 또는 피난민이 있던 곳으로부터 소화기 공격을 받았다고 생각하였기 때문에 사격을 했다. 그 결과 수미상의 피난민이 죽거나 부상을 입게 되었다.

(a) At some time between July 26th and 29th, 1950, some US soldiers fired toward the refugees who were at various locations including inside the double overpass. They did so either to control the refugees' movements or because they believed that they had received small arms fire from those locations. As a result, an unknown number of refugees were killed or injured.



(나) 2000년 7월 한쪽 현장기술조사반은 쌍굴 및 수로벽체에서 다수의 미제 탄자 및 탄흔을 발견하였고, 아울러 쌍굴주변에서 미제 및 소련제 탄피, 탄자, 파편등 유기물을 발견하였다.

(b) In July 2000, a ROK forensic team found various U.S. bullets and the bullet marks on the walls of the double railroad overpass tunnel and the culvert. Moreover, the team found both U.S. and Soviet bullets, empty cartridges, and other fragments in the vicinity of the double overpass.



(다) 일부 한측증언자들은 피난민이 임계리·주곡리 마을 주민 위주로 구성되었으며, 일부 사람들이 임계리 외부지역으로부터 이 마을로 왔다고 증언하고 있다. 일부 한측증언자들은 당시 도로를 따라 노근리로 이동하던 대열의 대부분의 사람들을 알고 있었다

(c) Some Korean witnesses state that most refugees were from Im Ke Ri and Joo Gok Ri and some other people came from outside Im Ke Ri to the village. Some Korean witnesses state that they knew most of them in the group that went down the road to No Gun Ri.



(라) 일부 한측증언자들은 미군들이 치료를 해주거나 병원으로 후송해 주었다고 증언했다. 한측조사단은 17명이 치료를 받은 것으로 확인했다. 미 참전자 한명은 그가 한 아이를 등에 업고 쌍굴로 들어갔을 때 민간인 복장을 한 사람들이 치료를 받고 있는 것을 목격했다고 증언했다.

(d) Some Korean witnesses stated that U.S. soldiers either gave them first aid or evacuated them to a hospital. The ROK Review Team indicates that 17 people received medical aid. One U.S. veteran saw medical aid being given to individuals in civilian clothing under the double railroad overpass when he carried a child back down under the bridge.



(2) 피난민을 사격한 참전장병중 미 육군에 의해 증언한 모든 참전자들은 사격명령을 받지 않았다고 언급하였지만, 일부 증언자들은 명령이 반드시 하달되었을 것이라고 믿는다고 증언하였다. 전반적인 자료조사 및 증언 청취 결과는 명령하달여부 증거를 확인할 수 없으나, 피난민에게 사격을 하지 않은 일부 다른 참전장병들은 피난민들에게 소화기, 기관총, 박격포 및 야포 사격이 가해지는 것을 목격하였기 때문에 피난민들에 대한 사격명령이 반드시 있었을 것이라고 추정하고 있다.

(2) All the veterans interviewed by the U.S. Army who fired at refugees stated that they did not receive any order to fire. Some other veterans, however, stated that they believed that such an order must have been given. While a comprehensive search of records and these veterans' interviews did not disclose any evidence of the issuance of such an order, some other veterans, who themselves did not fire at refugees, assumed that there must have been an order to fire on refugees because they observed small arms, machine guns, mortar and artillery fire at refugees.



(3) 1950년 7월 24일 미 제8기병연대의 전문일지에는 피난민의 전선통과를 저지하기 위한 사격 지침에 대한 연대 연락장교의 전문이 포함되어 있다. 다른 연대에 하달된 사격지침은 발견할 수 없었으며, 사격명령에 관한 증언의 불일치로 인하여 사격명령하달여부는 확인할 수 없었다.

(3) The message log of the 8th Cavalry Regiment contains an entry of message from an regimental liaison officer on 24 July 1950 about guidelines on shooting refugees to prevent them passing through US front lines. But, whether an order to fire was made could not be determined because records of other regiments do not show such guidelines and thus discrepancy among interview accounts exists.



(1) 50년이라는 시간의 경과와 전쟁의 결과로 인해 한국 증언자들과 미 참전장병들이 진술하는 노근리주변지역에서 발생한 사건으로 인해 죽거나, 부상 또는 실종된 인원은 상당한 차이가 있다. 한국사람들은 확인되지는 않았지만 사망, 부상 또는 실종된 인원을 248명이라고 영동군청에 신고한 반면 미측증언자들은 이 보다는 적은 인원수를 진술하고 있다.

(1) Because of the passage of 50 years and the effects of the conflict, the statements of Korean witnesses and U.S. veterans about the number of refugees killed, injured or missing as the result of the events in the vicinity of No Gun Ri vary widely. The Koreans have reported to the Office of Yong Dong County an unverified number of 248 Korean civilians killed, injured or missing while the testimony of U.S. veterans supports lower numbers.



3. 조사 결론 한-미 조사단은 피해자들의 오랜기간의 아픔을 기억하면서 다음과 같은 사항을 상호 이해하였다:

결박한 한국전쟁 초기의 수세적인 전투상황에서 강압에 의해 결수중이던 미군은 1950년 7월 마지막주 노근리 주변에서 수 미상의 피난민을 살상하거나 부상을 입혔다. 이 조사에 대한 양국의 성실하고 양심적인 상호간의 노력은 긴요하며 정기간 지속되고 있는 한-미 동맹관계유지에 크게 공헌하고 있다. 한-미 양측 조사단은 피해자의 오랜 기간의 아픔과 이 참전장병의 희생을 충분히 고려하여 획득 가능한 사실 관련자료 및 증언을 바탕으로 60년 간의 전쟁기간 중 발생한 전상을 사실대로 규명함으로써, 앞으로 한-미 동맹정신을 바탕으로 보다 공고한 공조관계 유지는 물론 인권을 중시하는 민주주의 가치 실현에 기여하는 양국 공동 협조의 본보기가 될 것으로 믿는다

3. Conclusion of the Review Bearing in mind the enduring suffering of the victims, the Korean and American Review Teams mutually understand that :

In the desperate opening weeks of defensive combat in the Korean War, U.S. soldiers killed or injured an unconfirmed number of Korean refugees in the last week of July 1950 during a withdrawal under pressure in the vicinity of No Gun Ri. The diligent and conscientious bilateral efforts of both countries in this review represent a significant contribution to the maintenance of the vital and long-standing ROK-US alliance. Bearing in mind the long-lasting sorrow of victims as well as the sacrifice of US soldiers during the Korean war, the ROK and US teams firmly believe that this investigation on an incident that occurred during the Korean war will not only help maintain a more stable ROK-US alliance but also is an example of two nations working together to realize the value of democracy and recognize the importance of human rights.

NOGUN-RI
Interagency Working Group
December 13, 2000

Agenda

- Summary/status of Statement of Mutual Understanding
- Issues relating to final package:
 - Nature of Presidential Statement
 - Compensation
 - Memorial (to whom, who pays)
 - Scholarship (progress with Korea Society, USG role)
 - Achieving finality
 - Legal considerations
- Issues relating to Rollout:
 - Date (before New Year?)
 - Public affairs strategy
 - Congressional strategy
 - Veteran's strategy
 - Press strategy/ AP response
 - Use of US advisors to OSD
- Game plan for meeting with ROK outside experts later this week
- Coordinating with ROK
 - LTG Kim's visit on Dec 20
 - Coordinating with Embassy
 - Status of ROK investigation/report

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Beardworth

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	re NoGun-Ri: ROKG Working-Level on the Endgame (7 pages)	12/12/2000	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Richard Beardsworth/David Peterman (Defense Policy and Arms Control)
OA/Box Number: 3955

FOLDER TITLE:

NoGun-Ri [South Korea] [2]

2009-0528-F
kc1372

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. cable	re Acting FM on the SOFA "Custody Upon Arrest" Issue (3 pages)	12/13/2000	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Richard Beardsworth/David Peterman (Defense Policy and Arms Control)
OA/Box Number: 3955

FOLDER TITLE:

NoGun-Ri [South Korea] [2]

2009-0528-F

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003. cable	re NoGun-Ri (2 pages)	12/13/2000	P1/b(1)

COLLECTION:

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National Security Council
Richard Beardsworth/David Peterman (Defense Policy and Arms Control)
OA/Box Number: 3955

FOLDER TITLE:

NoGun-Ri [South Korea] [2]

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kc1372

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. cable	NoGun-Ri: Building on the SMU (3 pages)	12/12/2000	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Richard Beardsworth/David Peterman (Defense Policy and Arms Control)
OA/Box Number: 3955

FOLDER TITLE:

NoGun-Ri [South Korea] [2]

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THE WHITE HOUSE

Office of the Press Secretary
(Okinawa, Japan)

For Immediate Release

July 21, 2000

REMARKS BY THE PRESIDENT
TO THE PEOPLE OF OKINAWA

Cornerstone of Peace Park
Okinawa, Japan

10:45 A.M. (L)

THE PRESIDENT: First let me thank the Governor, and the other distinguished officials from Okinawa; the family members of those whose names are on this memorial; the distinguished veterans; ladies and gentlemen. I think I should begin by saying that in as much as we are here to talk about the future as well as the past, I think we should give another round of applause to Machika. She did a fine job and was a great credit to the students of this island. (Applause.)

I am very honored to be the first American President to visit Okinawa in 40 years. This week our partners from the G-8 will come here to speak many words about the future. I wanted to come first to this place, that speaks so powerfully in silence about the past, to remember those who lost their lives here; to honor what must have been their last wish, that no future generation ever be forced to share their experience or repeat their sacrifice.

The battle of Okinawa itself lasted more than 80 days. More than 100,000 Japanese soldiers died -- or almost 100,000. More than 10,000 American soldiers. But the heaviest tragedy by far fell on the people of Okinawa, themselves. One-third of the civilian population lost; 90 percent of those who survived left homeless. Every life lost was a life like yours and mine, a life with family and friends, with love and hopes and dreams; a life that in a better world would have run its full course. I thank, especially, the family members of the Okinawans who died for meeting me here at the memorial today.

The Battle of Okinawa was warfare at its most tragic. But this monument built in its memory is humanity at its most inspired; for, here, no grief goes unrecognized. And while most monuments remember only those who have fallen from one side, this memorial recognizes those from all sides and those who took no side. Therefore, it is more than a war memorial; it is a monument to the tragedy of all war, reminding us of our common responsibility to prevent such destruction from ever happening again.

Over the past 50 years, our two nations have come together in this spirit, to meet that responsibility. The strength of our alliance is one of the great stories of the 20th century. Asia is largely at peace today because our alliance has given people throughout the region confidence that peace will be defended and preserved. That is what alliances are for, and that is why ours must endure.

Of course, Okinawa has played an especially vital role in the endurance of our alliance. I know the people of Okinawa did not ask to play this role -- hosting more than 50 percent of America's forces in

Japan on less than one percent of Japan's land mass. I heard what the Governor said, and we had the opportunity to discuss this as we walked through the memorial. I have tried hard to understand the concerns of the people here.

Five years ago, we began a process of consolidating our bases here. Together, we agreed on 27 specific steps, over half of which are already completed. Today, Governor, I want to reaffirm to you and the people of Okinawa, we will keep all our commitments, and we will continue to do what we can to reduce our footprint on this island. We take seriously our responsibility to be good neighbors, and it is unacceptable to the United States when we do not meet that responsibility.

In the meantime, there is more that we can do together to bring the benefits of peace and prosperity to this part of Japan. I want the world to see Okinawa not just as a battle in the past, but as Bankoku Shinryo, a bridge between nations; appropriately, the very name of the conference center in which we are meeting this week.

Five centuries ago, during the golden age of the Sho Dynasty, the land served as a crossroads for all trade that flowed through Asia. In the Information Age of the 21st century, Okinawa again can be a crossroads and a gateway between Japan and the rest of the world. In the past year, three American Fortune 500 companies have followed more than 20 Japanese information technology companies in opening operations here.

So here I say, because we have our friends from the media here, to people in the United States, in Europe and all over the world, who will see this magnificent place on television tonight: Okinawa is a good place; come here and help the people build the future.

I am especially pleased to be here in the same year that Ryukyu University celebrates its 50th anniversary; proud that the United States played a leading role in its creation; equally proud that so many young Okinawans studied in the United States through the Garioa and Fulbright programs. In that great tradition, it is my honor to announce today that the United States and Japan will create a new scholarship program to send young Okinawan graduate students to the prestigious East-West Center in Hawaii. And we dedicate this program to the memory of my good friend, your late Prime Minister, Keizo Obuchi. May it add to the friendship and understanding between our nations that he worked so hard to advance.

This week, Prime Minister Mori is bringing the partners of the G-8 to Okinawa to find ways to close the gap between the wealthiest and poorest nations of the world; and within nations, between the wealthiest and poorest areas. The message of hope and reconciliation embodied in this beautiful memorial, and the remarkable friendship forged by the United States and Japan, give us hope that we can build bridges over all the troubled waters of the new century that still keep too many people from the joys and possibilities that should be everyone's birthright.

In 1879, Sho Tai, the last King of the Ryukyus, left Shuri Castle for the last time. One of his final acts as king was to read a poem that summed up his hope for the future. Today, his words speak to us across the generations: "Ikusa-yun sumachi, Miruku-un yagate." "The time for wars is ending, the time for peace is not far away. Do not despair. Life itself is a treasure." May Sho Tai's words guide our friendship and our work in the months and years to come.

Governor, I thank you for your remarks and your leadership here. In the end, the words of Sho Tai, if we can make them real in our time, is the very highest tribute we can pay to all those people whose names are on this magnificent memorial.

Thank you very much. (Applause.)

END 10:52 A.M. (L)

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. cable	NoGun-Ri: ROK Concerns over US Investigation Results (10 pages)	12/13/2000	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Richard Beardsworth/David Peterman (Defense Policy and Arms Control)
OA/Box Number: 3955

FOLDER TITLE:

NoGun-Ri [South Korea] [2]

2009-0528-F
kc1372

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

10/13/00

NO GUN RI Agenda

1. Status of IG report and ROK report.
2. Status of US-ROK efforts to draft "core statement" of common conclusions. *Team going in 2 weeks*
3. Role and composition of Advisory Group.
4. Efforts to minimize bilateral impact.
5. Press issues, outreach efforts; rollout strategy to include timing.

OK

Dod working
State not

need interagency process - (rollout strategy)
(Congress)
Vets
State

DoD

PA

May - can't prejudge report
Defense has lead

Hans - contingency for leaks

OK before ~~Cohen~~ Cohen sees - std answer
what's process what does Cohen report to whom when

NO GUN RI rollout strategy due Sandy in one week
what we say before Cohen gets report
what process after Cohen gets report

small group (conference call)
before Pentagon does anything - need strategy
DK - Jack talk to Stanley

Korean report - both came out at same time

How can team go to ROK + talk about
core principles if report not yet received

Rudy
Stanley

Timeline

press trip
Allbright trip
etc

Issues

leak contingency
Process
Apology

Flood msg

NATIONAL SECURITY COUNCIL

Lurch

Dave Lurch Maritime Security

John Daley

366-6538

Ben Barnett

55707

Roger Kaplan

696-9470

Korea
at State

John Mudge

647-7718

Pat Weber

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006. email	Johannes Binnendijk re NoGun-Ri incident (2 pages)	10/06/2000	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Richard Beardsworth/David Peterman (Defense Policy and Arms Control)
OA/Box Number: 3955

FOLDER TITLE:

NoGun-Ri [South Korea] [2]

2009-0528-F

kc1372

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1. Status of IG report and ROK report.
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NOGUN-RI
Interagency Working Group
December 13, 2000

Agenda

- Summary/status of Statement of Mutual Understanding
- Issues relating to final package:
 - Nature of Presidential Statement
 - Compensation
 - Memorial (to whom, who pays)
 - Scholarship (progress with Korea Society, USG role)
 - Achieving finality
 - Legal considerations
- Issues relating to Rollout:
 - Date (before New Year?)
 - Public affairs strategy
 - Congressional strategy
 - Veteran's strategy
 - Press strategy/ AP response
 - Use of US advisors to OSD
- Game plan for meeting with ROK outside experts later this week
- Coordinating with ROK
 - LTG Kim's visit on Dec 20
 - Coordinating with Embassy
 - Status of ROK investigation/report

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Thursday, December 7, 2000
2400

SOFA Status Report No. 4

As of Thursday night (Seoul time), we are still deadlocked over the Track I issue.

There were three activities today. The delegation was hosted at lunch by the ROKs, AMB Steve Bosworth had lunch with National Security Advisor Kim Ha-Joong, and there was a one-on-one dinner between the two heads of delegation. All three events provided us the opportunity to re-emphasize our position and show U.S. resolve. At the delegation lunch, there was no indication of ROK movement. Song Min-soon suggested that we conduct a final plenary session and prepare a joint press statement "to explain our differences." I did not agree to a final plenary session (yet), and I said we should emphasize the progress we've made if it becomes necessary to hold a press conference.

AMB Bosworth pressed the U.S. position with the National Security Advisor, who undoubtedly will report the discussion to President Kim Dae-Jung. Kim Ha-Joong promised to call AMB Bosworth after checking within his government; that call may not come until Friday morning before Kim departs with KDJ for Oslo, Norway.

The dinner did not produce any breakthrough. Part of the time was spent discussing how to end this round and where/when we might meet again.

At this point, I do not expect we will receive a positive ROK response.

Assuming the ROKs reject our position, we have three options:

- (1) walk;
- (2) accept "a heinous crime of murder or rape;" or
- (3) offer to explore during this round alternative formulations to delineate amongst degrees of murder and rape. This last option is highly unlikely to

succeed; in informal discussions, the ROKs have shown no interest in pursuing any alternative formulations.

The Koreans have much to gain by accepting the package currently on the table. We have agreed to "custody upon indictment," providing custody on indictment by changing the main SOFA text, "custody upon arrest," environmental language in the SOFA and a separate environmental statement of principles, the principle of joint inspections, preferential hiring of Korean nationals, a 45-day cooling off period for labor disputes, and a commitment to work hard to tighten up Korean access to NAFO facilities.

I, and members of the delegation, recommend that we conclude this round without agreement. We still have approximately a two-week window of opportunity to reach a meeting of the minds. We could employ highest level contacts in an attempt to persuade the Koreans to accept our position. I suggested to Song that we could meet, possibly in Hawaii, if there were something further to discuss, after which we could travel to Seoul to initial. Alternatively, given how truly close we are, final negotiations could be conducted through the embassy in Seoul.

Everyone on the U.S. delegation understands the importance of resolving the SOFA issue. It would be good to have "a victory" before issuance of the Nogun-ri report, and activities on the peninsula require evidence of a strong US-ROK alliance. I believe, however, the best course of action for the time being is to hold our cards.

Given the lateness of the hour, this note does not have the ambassador's input. Before taking any action to close this round, I will ask for Steve Bosworth's full assessment and I will talk to Washington one more time.

Fred Smith

CURRENT LANGUAGE

6 Dec 2000/0730

US/ROK SOFA NEGOTIATIONS

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Custody on Indictment

Amend Article XXII Paragraph 5 (c)

The custody of an accused member of the United States armed forces or civilian component, or of a dependent, over whom the Republic of Korea is to exercise jurisdiction shall remain with the military authorities of the United States until he is indicted by the Republic of Korea.

2. Add Agreed Minute re Article XXII, Paragraph 5(c)

1. In the event the Republic of Korea authorities have arrested an accused who is a member of the United States armed forces or the civilian component, or a dependent, with respect to a case over which the Republic of Korea has the primary right to exercise jurisdiction, the Korean authorities will, on request, hand him over to the custody of the United States military authorities, provided that he shall, on request, be made available to the Republic of Korea authorities, for the purposes of investigation and trial.

[2. In cases where the Republic of Korea authorities have arrested an accused who is a member of the United States armed forces or the civilian component, or a dependent at the scene of the crime, in immediate flight therefrom or prior to the accused's return to U.S. control and there is adequate cause to believe that he has committed a **[heinous crime of murder or rape]** *[crime of heinous murder or heinous rape]*, and there is necessity to retain him for the reason that he may destroy evidence; he may escape; or he may cause harm to the life, person or property of a victim or a potential witness, the United States military authorities agree not to request transfer of custody unless there is legitimate cause to believe that a failure to request custody would result in prejudice to an accused's right to a fair trial.]

NOTE: THE ABOVE CLAUSE IS EXPLORATORY ONLY AND HAS NOT BEEN AGREED TO AS A CONCEPT BY THE UNITED STATES.

ROK Positions on Custody on Arrest

- According to the U.S. position, ROK authorities would be authorized to take custody of a criminal suspect only if the case involved the **crime of “heinous” murder or “heinous” rape**. We believe that ROK authorities should be permitted to retain custody of a criminal suspect who has allegedly committed the **heinous crime of murder or rape**.
- The U.S. language would create confusion as to what constituted a heinous and non-heinous murder or rape. This distinction would be difficult to explain to the general public. It would create public criticism and cast into doubt the validity of our two countries’ negotiations.
- Under ROK law, murder and rape are very narrowly defined when compared to U.S. law. In ROK criminal law, murder does not refer to accidental killing, including assault resulting in death. Murder under ROK law is largely equivalent to first degree murder in the United States. Likewise, ROK law confines the definition of rape to acts accompanied by violence and irresistible intimidation. Moreover, custody is allowed only under strict conditions such as when it is necessary to retain a criminal to prevent escape or the destruction of evidence.
- If we confine the crimes in question to **only heinous murder and heinous rape**, it would not be consistent with our stated intention to revise the US-Korea SOFA so that it becomes comparable to other SOFAs.
 - For example, the US-Japan SOFA enables Japanese authorities to retain custody of suspects on arrest in cases of any crime, not just heinous crime of murder or rape.
 - Furthermore, they are allowed to request a transfer of custody from the U.S. in the case of a **heinous crime of murder or rape**, even before the indictment.
 - We should also note that unlike the US-Korea SOFA, the US-Japan SOFA has a provision authorizing Japanese prosecutors to appeal against unreasonable sentences.

Talking Points for Call by Ambassador on SOFA Impasse

6 Dec 00

Issue: Whether to make high level call to break impasse on SOFA negotiations.

Background: We have made great progress in the SOFA talks. Although there are a hand-full of small issues still to be resolved, there is one issue on which we have reached an impasse that will prevent the completion of the negotiations. That issue is "custody on arrest." We are only authorized to agree to a very limited category of cases in which the ROK would have custody on arrest (heinous murder or heinous rape). We are only authorized to deploy this as a last effort to ensure an overall agreement. We have deployed it, but the ROK is insisting that it needs custody on arrest in virtually all cases of murder and rape. This issue has not been in the Korean press, so public expectations have not been raised. A call from you to the appropriate high-level ROK officials to encourage pressure on and movement by the Justice and MOFAT would be most helpful.

Talking Points:

- Much has been accomplished by the ROK and US in the SOFA talks. There are very few outstanding items to be resolved.
- In the area of criminal custody, the US has agreed in principle to all of the ROK objectives:
 - custody on indictment,
 - modification of the actual SOFA text,
 - the US dropped its proposal to redefine "cases of particular importance" (i.e. major cases on which the ROK would take jurisdiction), and
 - the parties have worked out mutually agreeable dispute resolution procedures.
- The parties have also agreed to add environmental language to the SOFA and to significant changes in labor relations provisions, both of which were major ROK objectives.
- But, all these significant achievements are in jeopardy because of our inability to reach agreement on one point: custody on arrest.
- This is an extremely difficult issue for the US.
- With great difficulty, we have offered custody on arrest in cases of "heinous murder or heinous rape."

- This language is intended to encompass the most egregious cases of murder and rape.
- "Heinous murder" and "heinous rape" are not legal terms. They would permit the US and ROK to deal on a case-by-case basis, with the worst cases -- those murders and rapes that are most likely to upset the public and damage our bi-lateral relations.
- If the US and ROK disagreed on whether a particular case were "heinous," we would work it out through discussions. But, in the meantime, the ROK would retain custody.
- The US cannot accept the ROK position that it wants custody on arrest for virtually all murders and rapes.
- It would be a shame to see these negotiations fail over this single issue. They are perilously close to doing so.
- The time is ripe to conclude these negotiations. We mustn't lose this opportunity.
- I urge you to encourage your people to make sincere efforts to resolve this final issue.

Δ = heinous crime of murder + rape
vs: heinous murder + heinous rape

Murder and Rape Under ROK Law

I. Murder

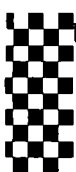
The concept of "murder" under ROK law includes any unlawful killing in which the perpetrator has formed an intent to kill. Thus, the concept is broader than that contemplated under U.S. law by the term first-degree murder. It includes those offenses under U.S. law commonly referred to as first-degree murder, second-degree murder, and voluntary manslaughter. Under U.S. law, first-degree murder is premeditated murder. Second-degree murder includes an intent to kill without premeditation. Voluntary manslaughter includes an intent to kill, but is mitigated by "heat of passion" or "adequate provocation."

In exploratory talks, the ROK delegation expressly refused to limit their proposal to the U.S. definition of first degree or premeditated murder. They refused any limiting definitions that would exclude the U.S. concepts of second-degree murder or voluntary manslaughter. Further, the delineations of murder by reference to any of these three categories of murder are not consistent with the U.S. concept of "heinous." A killing can be in any of the three categories and be considered "heinous" or not. The determination to release an accused person to U.S. custody will be made at apprehension, not on charging. It is common in the ROK system, as in most systems, that the initial belief and allegation following the discovery of a dead body is more severe than the offense, if any, that is eventually charged and proved. Therefore, it is entirely possible that if this provision comes into play, a person protected under the SOFA could initially be arrested and held for murder, but eventually be charged with some lesser offense, for example, assault resulting in death.

II. Rape

The concept of defining all rapes as heinous is troubling. ROK law defines rape as sexual intercourse with a female through violence or intimidation. The ROK interprets this to require that the intimidation be "irresistible intimidation." The basic problem with accepting the ROK position is that for the provision we are discussing, the concept of "irresistible intimidation" would be applied upon arrest. A mere allegation of intimidation would be sufficient, and there would likely be no objective criteria to evaluate the level of intimidation other than the initial allegation of the alleged victim. ROK law on rape has several objective aggravating factors: rape with injury or death, murder after rape, rape by multiple perpetrators, and rape utilizing a weapon during the course of a robbery. The ROK delegation has rebuffed any exploratory discussions attempting to limit the definition of rape by referring to aggravating factors. Experience in Korea shows that most initial allegations of the rape of ROK citizens by SOFA personnel tend to involve some aspect of a dispute with a prostitute or bar girl and usually are not ultimately prosecuted as rape cases. Yet, under the current ROK position, the initial allegations of these offenses would allow custody upon arrest of U.S. personnel.

December 8, 2000



CURRENT LANGUAGE

6 Dec 2000/0730

US/ROK SOFA NEGOTIATIONS

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[2. In cases where the Republic of Korea authorities have arrested an accused who is a member of the United States armed forces or the civilian component, or a dependent at the scene of the crime, in immediate flight therefrom or prior to the accused's return to U.S. control and there is adequate cause to believe that he has committed a [heinous crime of murder or rape/ *crime of heinous murder or heinous rape*], and there is necessity to retain him for the reason that he may destroy evidence; he may escape; or he may cause harm to the life, person or property of a victim or a potential witness, the United States military authorities agree not to request transfer of custody unless there is legitimate cause to believe that a failure to request custody would result in prejudice to an accused's right to a fair trial.]

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URGENT
R. Beardsworth
J. Schaffer

Dec 8, 1630 (local)

POSSIBLE SOLUTION TO SOFA IMPASSE

In exploratory talks with Ban Ki Moon, ROK Vice Minister of Foreign Affairs and Trade (currently Acting Foreign Minister), the Ambassador explored possible language for a separate US-ROK understanding that would interpret the phrase "heinous crime of murder or rape," if the US were to accept the use of that phrase in the Agreed Minute to Article XXII, paragraph 5(c). The interpreting language would read:

The phrase "heinous crime of murder or rape" means the most egregious cases of murder or rape. This phrase in the Agreed Minute re Article XXII, paragraph 5(c) will permit the US and ROK to deal on a case-by-case basis with the most egregious cases of murder and rape that arise under that provision. This is the same interpretation of this phrase as the United States has used elsewhere in the SOFA context.

There are a number of ways in which this understanding between the two governments could be captured. In particular, the Ambassador and Ban Ki Moon discussed the possibility of inserting this language in an Agreed View * of the US-ROK SOFA Joint Committee (an agreed interpretation of a binding SOFA obligation). Acting Foreign Minister Ban seemed interested in pursuing this option.

The negotiating team, including the USFK lawyers, believes that incorporating the above interpretation into an Agreed View would enable the US to accept the use of the phrase "heinous crime of murder or rape" in the Agreed Minute. This would give the ROK the wording it seeks and give the US the interpretation it requires. This approach has the added benefit of being the same as, and reinforcing the US-Japan interpretation of the phrase "heinous crimes of murder or rape."

We are awaiting ROK official reaction to this idea. If we receive a positive ROK response, we will need to negotiate very quickly, early Saturday morning Seoul time.

Action Requested: Request Washington approval to negotiate a solution within the bounds of the option outlined above by noon Friday, Washington time.

* An Agreed View is a joint interpretation, made by authorized representatives of each government, of the obligations and the application of those obligations under the US-ROK SOFA. They do not create new binding obligations on the part of either government, but are authoritative interpretations of the obligations that already exist in the SOFA and subordinate documents.

Randy,
Who Jan
we call to
get pages
1-6.



다. 임계리·주곡리 주민들의 집결 및 이동

(1) 예외의 경우가 있긴 하지만, 한국 민간인들은 피난민의 이동을 제한하는 한·미 피난민 통제정책이 1950년 7월 하순경에 수립되었다. 일부 미 참전장병은 미군이 어떤 지정에서는 민간인들을 위험한 지역이나 미 지상군 진지로부터 벗어나게 한다는 이유로 인해 이들을 마을에서부터 호송하였다고 증언하였다.

c. Assembly and Movement of Villagers at Im Ke Ri and Joo Gok Ri

(1) With certain exceptions, US and ROK policy restricting movement of refugees was established in late July 1950. However, some US veterans testified that, at some point, they escorted Koreans from their villages, in an effort to get them out of harm's way or to clear them away from US ground positions.



(2) 일부 한측 증언자들은 1950년 7월 25일 야간에 미군이 산속의 안전한 마을 임계리에 있던 수 이상의 피난민들을 주곡리를 경유하여 4번 도로를 따라 노근리방향으로 인솔하였다고 주장하고 있다. 미 참전장병들은 마을에서 주민들을 호송했던 것은 기억하지만 지명과 날짜에 대해서는 기억하지 못하고 있다.

(2) Some Korean witnesses asserted in their testimony that US soldiers escorted an unspecified number of refugees from Im Ke Ri, a safe village in the mountains on or about the night of 25 July, toward the No Gun Ri area, via Joo Gok Ri along what is now Highway 4. US veterans do remember escorting refugees from villages, but they cannot recall the names of places or dates.



(3) 일부 한측 증언자들은 7월 25일 주곡리로부터 1.5 Km 떨어진 하가리 근처 개활지에서 미군의 명령에 의해 노숙할 때 피난민이 사살 당하는 것을 목격했다고 증언하였다. 다양한 한측증언자들은 당시 피난민 대열에서 낙오되거나, 집단을 이탈 또는 대열로 부터 뒤로쳐졌던 1 - 4명 정도가 사살되었다고 증언하고 있다. 그러나 이에 연루된 미군이나 이 행위가 당시 시행되고 있던 피난민 통제대책을 위반한 것에 대한 대응조치였는지는 확인할 수 없었다.

(3) Some Korean witnesses stated that they saw refugees killed on July 25th when refugees were directed by US forces to stay in an open area near Ha Ga Ri, 1.5km from the village of Joo Gok Ri. Various Korean witnesses state that one to four persons were shot when they either strayed from the group, tried to leave the group or did not move fast enough. The review could not confirm what soldiers were involved, nor whether this action was a reaction to a violation of refugee control measures in effect at the time.



(4) 일부 한측 피해자 및 미 참전장병들의 증언에 따르면, 한국 피난민과 미군은 모두 동쪽으로 후퇴하는 과정에서 서로 접촉하게 되었다. 영동에서 황간으로 이동하는 동안 피난민들은 도로에서 철로쪽으로 이동하였다. 일부 미 참전장병과 한측 증언자들은 미군이 피난민들을 철로쪽으로 인솔하여 게릴라 침투 여부와 무기 및 기타 금지품목 소지 여부를 확인하기 위해 검색을 하였다고 기억하고 있다. 그러나 다른 미 참전장병과 한측 증언자들은 검색이 실시된 사실을 기억하지 못하고 있다.

(4) Some US and Korean witness statements say that Korean refugees came in contact with US forces in the vicinity of No Gun Ri as they both moved east. As they moved from Yongdong toward Hwanggan, the refugees passed from the road to the railroad tracks. Some US veterans and Korean witnesses recalled that US forces directed refugees to the railroad tracks, conducted searches for infiltrators, weapons and other contraband. Other veterans and Korean witnesses had no recollection of searches being conducted.



라. 공중 공격

(1) 다수의 한국 증언자들은 1950년 7월 26일 경오경 미군의 항공기가 피난민들에게 기총소사 또는 폭격을 하였다고 증언하고 있다. 1950년 7월 말에 공중공격을 목격한 일부 미측증언자들은 노근리지역에 배치된 시기에 미군 항공기가 공중공격을 한 것을 목격하였다고 증언하고 있지만, 그 공격이 언제였는지 그리고 무엇을 공격했는지는 기억을 못하고 있다. 일부 미 참전자들은 1950년 7월중 피난민들과 함께있는 전차에 항공기가 공중공격을 하는것을 목격했다. 이 참전자 한명은 눈파는 기억하지 못하지만 피난민들이 비포장도로와 철길에서 공중공격을 받는 것을 목격하였다고 증언하였다.

d. Air Strikes

(1) According to their statements in the testimony, many Korean witnesses indicate that they were strafed or bombed by US airplanes around noon on July 26, 1950. Some U.S. veterans stated that they saw U.S. planes strafing targets in late July 1950 and some of these veterans saw them when deployed in the No Gun Ri area, but they could not recall when or identify what the targets were. Some veterans saw planes strafe tanks with refugees on or near them in July 1950. One veteran stated that on an unknown date he saw refugees on a dirt road and an old railroad being strafed.



(가) 조사기간 중 검토한 공식적인 미 공군 기록이나 미 조종사들의 증언을 통해서는 7월 26일 노근리 주변지역에 출격하여 임무를 수행한 결과를 확인할 수 없었다. 미 제5공군 항공작전 일일요약보고서에 따르면 영동지역의 임무가 그 날 있었던 것으로 기록되어 있지만, 이에 3개의 임무에 대한 임무결과보고서는 찾을 수가 없다.

(a) Official US Air Force records and pilot interviews found during research do not reflect any mission flown on the 26th July in the vicinity of No Gun Ri. The 5th Air Force Summary of Air Operations indicated that some missions were flown over the Yongdong area on that day, but mission reports for three of these missions could not be found.



(나) 추가적으로, 1950년 8월 6일자 항공사진을 분석한 결과, 기총소사가 언제 발생했는지 정확한 날짜를 확정할 수는 없으나, 한쪽 피해자들이 증언하고 있는 지역에서 월로상의 기총소사 흔적을 발견할 수 있다.

(b) Additionally, analysis of the August 6, 1950 reconnaissance photograph shows an area of probable strafing on the railroad tracks in the area indicated by the Korean witnesses. There is no way of determining the exact date of the probable strafing.



(다) 1950년 7월 27일 아침 일찍 노근리 주변의 미 제7기병연대 제1대대 지역에서 실제로 공중공격이 발생하였다.

(라) 따라서, 이 조사는 노근리 주변지역에서 1950년 7월 26일 항공공격 발생 가능성을 배제할 수 없다.

(c) Early in the morning on July 27, 1950, an air strike did, in fact, take place in the 1st Battalion, 7th Cavalry Regiment area in the vicinity of No Gun Ri.

(d) The Review could, therefore, not exclude the possibility of an air strike occurring on July 26th in the vicinity of No Gun Ri.



(2) 미 공군 기록에 따르면, 당시 미 공군 제트항공기는 폭탄을 장착하지 않았으나 프로펠러 항공기는 폭탄을 장착하였다. 일부 한족 증언자들은 항공기가 피난민들을 직접 공격하였다고 증언하는 반면, 다른 증언자들은 단지 폭발음과 기관총 사격 및 파편과 화염, 열기를 포함한 포탄의 효과만을 기억한다고 증언하고 있다. 공식 기록에 의하면 1950년 7월 27일부터 29일까지 노근리지역에서 미군과 북한군 상호간에 야포 및 박격포사격이 있었다. 8명의 미 참전자들은 야포, 박격포 또는 전차포 사격이 노근리 부근에서 있었다고 기억하고 있다.

(2) Air Force records show that US Air Force jet aircraft flying at the time did not carry bombs whereas propeller-driven aircraft did. While some Korean witnesses stated that the aircraft directly attacked refugees, others have stated that they only recall explosions and machine gun fire and other munitions effects, including shrapnel, flames and heat. Official records indicate that US and North Korean Army forces did exchange artillery and mortar fire in the vicinity of No Gun Ri between July 27 and July 29 1950. Eight U.S veterans remember either artillery, mortar or tank fire in the vicinity of No Gun Ri.



(3) 일부 한족 증언자들은 미 지상군이 당시 보유하고 있던 무전기를 사용하여 피난민에 대한 공중공격을 요청하였다고 증언하고 있다. 양국 조사반은 1950년 7월 26일 당시 중상의 미 보병병사들은 휴대용 무전기만 보유함으로써 미 공군 전술항공 통제권과 직접 교신하여 공중공격을 요청하는 것은 불가능했다는 사실에 동의하였다. 육군이 공중공격을 요청할 수 있었지만 이러한 요청은 일정한 경로를 통해 합동작전통제소로 전달되어야만 했다. 이러한 요청은 처리시간 상 즉각적인 대응이 불가능했었다.

(3) Some Korean witnesses stated that US soldiers called in air strikes on the refugees by use of a radio available to US ground forces at the time. Both Review Teams agree that, on July 26, 1950, the ordinary US ground soldier was equipped only with a portable radio and was incapable of talking directly to an Airborne Tactical Air Controller and requesting an air strike. Army units could submit a request for an air strike but had to pass it through channels to the Joint Operations Center. The processing time for such a request could not have resulted in a prompt response.



(4) 1950년 7월 25일자 5공군 전방 지휘소 Turner C. Rogers 대령의 메모에는 다음과 같은 내용이 기록되어 있었다. "북한군에 의해 조직되거나 북한군에 의해 통제되고 있는 많은 민간인들이 우리의 진지로 침투한다는 내용이 보고되었음. 육군은 미군 진지로 접근하고 있는 모든 민간 피난민들을 항공기로 기습소사 할 것을 요청하였음. 현재까지 공군은 육군의 이러한 요청에 응해왔음."

그러나 미 공군 조종사 출신의 증언자들은 그러한 지침을 기억하지 못하고 있다.

(4) In a memo dated 25 July 1950, Colonel Turner C. Rogers of 5th Air Force Headquarter stated that: "It is reported that large groups of civilians, either composed of or controlled by North Korean soldiers, are infiltrating U.S. positions. The Army has requested that we strafe all civilian refugee parties that are noted approaching our positions. To date, we have complied with the Army request in this respect."

None of the pilots interviewed, however, remembers such a policy.



마. 지상사격 및 사격명령 여부

(1) 미 지상군은 이 기간동안 노근리 주변에서 피난민을 향해 사격을 하였다.

e. Ground Fire and Issuance of Orders

(1) US ground forces fired toward refugees in the vicinity of No Gun Ri during this period.



(가) 1950년 7월 26일과 29일 사이의 어떤 시기에 일부 미군은 쌍굴내 부를 포함하여 여러지역에 있는 피난민을 향해 사격을 하였다. 미군들은 피난민의 이동을 통제하기 위해 또는 피난민이 있던 곳으로부터 소 화기 공격을 받았다고 생각하였기 때문에 사격을 했다. 그 결과 수미상의 피난민이 죽거나 부상을 입게 되었다.

(a) At some time between July 26th and 29th, 1950, some US soldiers fired toward the refugees who were at various locations including inside the double overpass. They did so either to control the refugees' movements or because they believed that they had received small arms fire from those locations. As a result, an unknown number of refugees were killed or injured.



(나) 2000년 7월 한측 현장기술조사반은 쌍굴 및 수로벽체에서 다수의 미제 탄자 및 탄흔을 발견하였고, 아울러 쌍굴주변에서 미제 및 소련제 탄피, 탄자, 파편등 유기물을 발견하였다.

(b) In July 2000, a ROK forensic team found various U.S. bullets and the bullet marks on the walls of the double railroad overpass tunnel and the culvert. Moreover, the team found both U.S. and Soviet bullets, empty cartridges, and other fragments in the vicinity of the double overpass.



(다) 일부 한측증언자들은 피난민이 임계리·주곡리 마을 주민 위주로 구성되었으며, 일부 사람들이 임계리 외부지역으로부터 이 마을로 왔다고 증언하고 있다. 일부 한측증언자들은 당시 도로를 따라 노근리로 이동하던 대열의 대부분의 사람들을 알고 있었다

(c) Some Korean witnesses state that most refugees were from Im Ke Ri and Joo Gok Ri and some other people came from outside Im Ke Ri to the village. Some Korean witnesses state that they knew most of them in the group that went down the road to No Gun Ri.



(라) 일부 한측증언자들은 미군들이 치료를 해주거나 병원으로 후송해 주었다고 증언했다. 한측조사단은 17명이 치료를 받은 것으로 확인했다. 미 참전자 한명은 그가 한 아이를 등에 업고 쌍굴로 들어갔을 때 민간인 복장을 한 사람들이 치료를 받고 있는 것을 목격했다고 증언했다.

(d) Some Korean witnesses stated that U.S. soldiers either gave them first aid or evacuated them to a hospital. The ROK Review Team indicates that 17 people received medical aid. One U.S. veteran saw medical aid being given to individuals in civilian clothing under the double railroad overpass when he carried a child back down under the bridge.



(2) 피난민을 사격한 참전장병중 미 육군에 의해 증언한 모든 참전자들은 사격명령을 받지 않았다고 언급하였지만, 일부 증언자들은 명령이 반드시 하달되었을 것이라고 믿는다고 증언하였다. 전반적인 자료조사 및 증언 청취 결과는 명령하달여부 증거를 확인할 수 없으나, 피난민에게 사격을 하지 않은 일부 다른 참전장병들은 피난민들에게 소화기, 기관총, 박격포 및 야포 사격이 가해지는 것을 목격하였기 때문에 피난민들에 대한 사격명령이 반드시 있었을 것이라고 추정하고 있다.

(2) All the veterans interviewed by the U.S. Army who fired at refugees stated that they did not receive any order to fire. Some other veterans, however, stated that they believed that such an order must have been given. While a comprehensive search of records and these veterans' interviews did not disclose any evidence of the issuance of such an order, some other veterans, who themselves did not fire at refugees, assumed that there must have been an order to fire on refugees because they observed small arms, machine guns, mortar and artillery fire at refugees.



(3) 1950년 7월 24일 미 제8기병연대의 전문일지에는 피난민의 전선통과를 저지하기 위한 사격 지침에 대한 연대 연락장교의 전문이 포함되어 있다. 다른 연대에 하달된 사격지침은 발견할 수 없었으며, 사격명령에 관한 증언의 불일치로 인하여 사격명령하달여부는 확인할 수 없었다.

(3) The message log of the 8th Cavalry Regiment contains an entry of message from an regimental liaison officer on 24 July 1950 about guidelines on shooting refugees to prevent them passing through US front lines. But, whether an order to fire was made could not be determined because records of other regiments do not show such guidelines and thus discrepancy among interview accounts exists.



(1) 50년이라는 시간의 경과와 전쟁의 결과로 인해 한국 증언자들과 미 참전정병들이 진술하는 노근리주변지역에서 발생한 사건으로 인해 죽거나, 부상 또는 실종된 인원은 상당한 차이가 있다. 한국사람들은 확인되지 않았지만 사망, 부상 또는 실종된 인원을 248명이라고 영동군청에 신고한 반면 미측증언자들은 이 보다는 적은 인원수를 진술하고 있다.

(1) Because of the passage of 50 years and the effects of the conflict, the statements of Korean witnesses and U.S veterans about the number of refugees killed, injured or missing as the result of the events in the vicinity of No Gun Ri vary widely. The Koreans have reported to the Office of Yong Dong County an unverified number of 248 Korean civilians killed, injured or missing while the testimony of U.S. veterans supports lower numbers.



3. 조사 결론 한·미 조사단은 피해자들의 오랜기간의 아픔을 기억하면서 다음과 같은 사항을 상호 이해하였다:

절박한 한국전쟁 초기의 수세적인 전투상황하에서 강압에 의해 철수중이던 미군은 1950년 7월 마지막 주 노근리 주변에서 수 이상의 피난민을 살상하거나 부상을 입혔다. 이 조사에 대한 양국의 성실하고 양심적인 상호간의 노력은 간요하며 장기간 지속되고 있는 한·미 동맹관계유지에 크게 공헌하고 있다. 한·미 양측 조사단은 피해자의 오랜 기간의 아픔과 미 참전정병의 희생울 충분히 고려하여 획득 가능한 사실 관련자료 및 증언을 바탕으로 60년 간의 전쟁기간 중 발생한 진상을 사실대로 규명함으로써, 앞으로 한·미 동맹정신을 바탕으로 보다 공고한 공조체제 유지는 물론 인권을 중시하는 민주주의 가치 실현에 기여하는 양국 공동 활동의 본뜻이기를 것으로 믿는다

3. Conclusion of the Review Bearing in mind the enduring suffering of the victims, the Korean and American Review Teams mutually understand that :

In the desperate opening weeks of defensive combat in the Korean War, U.S. soldiers killed or injured an unconfirmed number of Korean refugees in the last week of July 1950 during a withdrawal under pressure in the vicinity of No Gun Ri. The diligent and conscientious bilateral efforts of both countries in this review represent a significant contribution to the maintenance of the vital and long-standing ROK-US alliance. Bearing in mind the long-lasting sorrow of victims as well as the sacrifice of US soldiers during the Korean war, the ROK and US teams firmly believe that this investigation on an incident that occurred during the Korean war will not only help maintain a more stable ROK-US alliance but also is an example of two nations working together to realize the value of democracy and recognize the importance of human rights.

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. email	Johannes Binnendijk re Update on NoGun-Ri (3 pages)	12/14/2000	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Richard Beardsworth/David Peterman (Defense Policy and Arms Control)
OA/Box Number: 3955

FOLDER TITLE:

NoGun-Ri [South Korea] [2]

2009-0528-F

kc1372

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



POLICY

THE UNDER SECRETARY OF DEFENSE
2100 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2100



APR 1 1996

The Honorable Peter Tarnoff
Under Secretary of State for Political Affairs
Department of State
Washington, D.C. 20520

Peter
Dear Mr. Tarnoff:

In response to John Kornblum's letter of 2 February, I am pleased to advise you that the Department of Defense concurs in your proposed memorandum to approve the 1993 agreements modifying the German Supplementary Agreement of 1959, subject to inclusion of the attached additional paragraphs in that memorandum. In addition, we would appreciate further clarification regarding the matters in a proposed understanding, which was provided by the Joint Staff (Tab A).

Sincerely yours,

Walter B. Slocombe



Application of German Law (Article 53.1)

“The agreement does not delineate how the application of German law will interact with our rights to fulfill our defense responsibilities. The FRG has already invoked German law application by requiring diplomatic clearances for all flights by U.S. military aircraft and advance approval for those carrying hazardous cargo. However, because the new provisions do not purport to amend the “respect for law” undertaking in NATO SOFA, Article II, the U.S. will argue in specific cases that the “respect for law” obligations continue to apply as before (i.e., conflicts between German and U.S. law will be negotiated).”

Environmental Cleanup (Protocol of Signature re Article 63, 8 bis.)

“The U.S. has no legal authority to implement this provision if construed to impose commitments beyond current practice. German officials have assured us informally that implementation of the environmental provision was intended to be cost neutral. Accordingly, except as an offset to the residual value of U.S. improvements to accommodations vacated by the United States, the U.S. will construe Article 63, paragraph 8 bis as not introducing new obligations to, or as modifying the commitments of the Parties under, NATO SOFA Article II or VIII, or SA Article 41.”

Death Sentence

“As a legal matter, State and Defense agree that the language in Article 18A(2) authorizes U.S. forces to hold the trial phase of death penalty cases in Germany up to, but not including, the actual imposition of a death sentence. German failure to satisfy this obligation reflecting a capital case in Germany would constitute a material breach of Article 18A(2).”

ENCLOSURE

PROPOSED TEXT

**UNDERSTANDINGS OF THE UNITED STATES OF AMERICA
DEPOSITED WITH ITS SIGNATURE OF APPROVAL OF THE
AMENDMENTS TO THE AGREEMENT OF 3 AUGUST 1959, AS
AMENDED BY THE AGREEMENTS OF 21 OCTOBER 1971, 18
MAY 1981, AND 18 MARCH 1993, TO SUPPLEMENT THE
AGREEMENT BETWEEN THE PARTIES TO THE NORTH
ATLANTIC TREATY REGARDING THE STATUS OF THEIR
FORCES STATIONED IN THE FEDERAL REPUBLIC OF
GERMANY**

It is the understanding of the United States of America that:

First, this Amendment is not intended to modify or alter the provisions of the North Atlantic Treaty Organization Status of Forces Agreement (NATO SOFA), but rather to elaborate further upon them.

Second, this Amendment is intended to be cost neutral, and in particular in the areas of environmental restoration and labor codetermination, will not further increase the fiscal obligations of the United States in any manner.

Third, this Amendment is not intended to be applied in such a manner as to restrict further the military operations of the United States or otherwise adversely affect the ability of the United States to provide support to its personnel and dependents.

Fourth, this Amendment, Article 18.A, is intended to restrict only the handing down of a capital sentence; capital courts-martial proceedings may otherwise take place within the Federal Republic of Germany.

Fifth, although not addressed in this Amendment, the Government of the United States reserves its position on the non-payment of real estate taxes under Article 63.4.D.ii, Germany Supplementary Agreement.

Enclosure

(ii) For co-operation in the field of safety measures in respect of rifle ranges, ammunition depots and fuel depots, joint commissions may be established. Details shall be laid down in administrative agreements.

ARTICLE 29

Following Article 53 of the Supplementary Agreement, the following Article 53A shall be added:

1. Where German law applies in connection with the use of accommodation covered by Article 53 of this Agreement, and requires that a special permit, licence or other form of official permission be obtained, the German authorities shall, in co-operation with the authorities of a force and following consultation with them, submit the necessary applications and undertake the relevant administrative and legal procedures for the force.
2. The provisions of paragraph 1 of this Article shall also apply when the decision is contested by a third party, when measures or facilities are notifiable, and in cases where the proceedings are instituted ex officio, in particular to safeguard public safety and order, or at the instigation of a third party. In these instances German Federal authorities acting for the force shall defend the interests of the force. If a permission applied for under paragraph 1 of this Article is denied or is subsequently modified or rendered invalid in conformity with German law, the authorities of the force and the German authorities shall consult to develop alternative means of meeting the needs of the force consistent with the requirements of German law.
3. The authorities of the force shall act in strict conformity with the terms and requirements of a legally effective decision taken in accordance with paragraphs 1 and 2 of this Article. They shall co-operate closely with German authorities to ensure that this obligation is fulfilled. Such a decision shall not be subject to enforcement.

ARTICLE 30

Article 54 of the Supplementary Agreement shall be amended as follows:

Paragraph 1 shall be replaced as follows:

Except as otherwise provided in this paragraph, the German regulations and procedures for the prevention and control of infectious diseases of humans, animals and plants as well as for the prevention and control of plant pests shall apply to a force and a civilian component. A force may apply its own regulations and procedures in the fields referred to in the preceding sentence within accommodation made available for its use as well as to its members, members of its civilian component and dependents provided that neither public health (Oeffentliche Gesundheit) nor the cultivation of plants is endangered thereby.

ARTICLE 31

Following Article 54 of the Supplementary Agreement the following Article 54A shall be added:

1. The sending States recognize and acknowledge the importance of environmental protection in the context of all the activities of their forces within the Federal Republic.
2. Without prejudice to the respect for and application of German law pursuant to the present Agreement, the authorities of a force and of a civilian component shall examine as early as possible the environmental compatibility of all projects. In this context they shall identify, analyse and evaluate potential effects of environmentally significant projects on persons, animals, plants, soil, water, air, climate and landscape, including interactions among them, as well as on cultural and other property. The objective of the examination shall be to avoid environmental burdens and, where detrimental effects are unavoidable, to offset them by taking appropriate restorative or balancing measures. In this connection, the authorities of a force and a civilian component may call upon the assistance of German civil and military authorities.

ARTICLE 32

Before Article 55 of the Supplementary Agreement the following Article 54B shall be added:

The authorities of a force and a civilian component shall ensure that only fuels, lubricants and additives that are consistent with German environmental regulations are used in the operation of aircraft, vessels and motor vehicles, insofar as such use is compatible with the technical requirements of such aircraft, vessels and motor vehicles. They shall further ensure that, with respect to passenger and utility motor vehicles, especially in the case of new vehicles, the German rules and regulations for the limitation of noise and exhaust gas emissions shall be observed to the extent this is not excessively burdensome. The competent German authorities and the authorities of the force and of the civilian component shall consult and co-operate closely in the application and supervision of these provisions.

ARTICLE 33

Article 56 of the Supplementary Agreement shall be amended as follows:

1. Paragraph 1, sub-paragraph (a) shall be replaced as follows:

German labour law, including industrial safety (Arbeitsschutz) law, as applicable to civilian employees working with the German Armed Forces, with the exception of decrees regulating working conditions (Dienstordnungen), shop agreements (Dienstvereinbarungen) and tariff regulations, shall apply to employment of civilian labour with a force or a civilian component except as otherwise provided in this Article and the Section of the Protocol of Signature referring to this Article.

2. Paragraph 1 sub-paragraph (c) shall be deleted.

3. Paragraph 1 sub-paragraph (e) shall be deleted.

4. Paragraph 2 sub-paragraph (a) shall be replaced as follows:

The second sentence of paragraph 1 of Section 9 of the Dismissal Protection Law shall apply provided that the