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**"DPRK Perspectives on Ending the Korean Armistice"
#4 -- May 7, 1997**

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DPRK PERSPECTIVES ON ENDING THE KOREAN ARMISTICE

Essays by Kim Myong Chol and Pak Chol Gu

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I. Introduction

The following two essays provide representative views, from the perspective of the Democratic People's Republic of Korea (DPRK), on the possibilities and prospects of replacing the Korean Armistice Agreement with a permanent peace treaty. The authors address issues at the center of recent debates over the terms for beginning this process, and argue forcefully for their positions.

The first essay, "DPRK Perspective on a Post-Armistice Regional Order," is 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.

The second essay, "Replacement of the Korean Armistice Agreement: Prerequisite to a Lasting Peace in the Korean Peninsula," is by Pak Chol Gu, a researcher for the Korean Anti-Nuclear Peace Committee, based in Pyongyang in the DPRK.

Both essays contend directly with a number of the points made in Patrick M. Norton's essay, "Ending the Korean Armistice Agreement: The Legal Issues," distributed previously as Policy Forum Online #2. In particular, Kim Myong Chol's essay extends some of the arguments he made in his discussion of Mr. Norton's paper, distributed as part of the forum. ([Click here for the abstract of Forum #2.](#))

The views expressed and claims made in the following essays are those of the authors. NAPSNet presents these essays as received, except for minor grammatical editing. Following the essays, in the section "[NAPSNet Invites Your Responses](#)," is information on how you can respond to these essays and participate in the online forum.

II. Essay by Kim Myong Chol

DPRK PERSPECTIVE ON A POST-ARMISTICE REGIONAL ORDER

by Kim Myong Chol

1. Introduction

During the nuclear standoff with the United States, the DPRK's legendary founding father, the late President Kim Il Sung remarked: "An American attempt to fight a duel with us goes nowhere. An American defeat would prove a humiliating loss of face before the world audience. Improved relations with us would enhance the American position in Asia." [1]

The settlement of the Korean question has remained long elusive since a ceasefire accord was signed on July 27, 1953. However, North Korea's supreme leader, Marshal Kim Jong Il concludes that this is no longer the case. He is confident that he is now within striking distance of the reunification of Korea. Things have come to such a head that a negotiated Korean settlement is in sight, raising the issue of a post-armistice order.

It has become all too evident to all the parties concerned that the Korean Armistice Agreement has outgrown its original mission, making it imperative to replace it with a peace treaty. The Democratic People's Republic of Korea has long called for talks between the direct parties to the armistice agreement to negotiate a peace agreement. The United States also recognized the need for a peace

treaty, which has yet to be defined clearly.[2] A landmark North and South Korean Agreement on Non-Aggression, Reconciliation and Exchange was signed in December, 1991.

The continuing presence of the Korean Armistice Agreement constitutes its most fundamental flaw in that it was originally designed to be temporary in nature as it envisages withdrawal of all foreign forces from Korea, a political conference of a higher level, and a peaceful settlement of the Korean question.[3] Negotiating a peace agreement has become all the more necessary because the United States pledged to provide less weapons-prone two light-water nuclear reactors to the DPRK, not to make any nuclear threat or attack against the Korean country and upgrade bilateral relations to full diplomatic relations.

2. Military Solution Is Not A Viable Option

The Korean War and subsequent events have brought home to policy planners in Washington that a military solution has been no longer a viable option, bringing the United States to be responsive to the peace overtures from Pyongyang. The nuclear standoff with North Korea has provided the latest and most compelling evidence.

That is in part because the Korean Peninsula is the world's most heavily armed place, ready to explode at any provocation, and in part because a North Korean retaliation would leave the Americans with a Pyrrhic and senseless victory.[1] South Korea and Japan would find themselves reduced to ruins but some major metropolitan areas of the United States would turn into a living inferno. In other words, the Americans would most likely find resumed hostilities in Korea another wrong war with the wrong enemy in the wrong place at the wrong time.

The Korean experience has been, is, and will be, a nightmare to the American policy planners: the Korean War, the January 1968 Pueblo incident, the April 15, 1969, the August 17, 1976 Poplar Tree Incident, the 1986-94 nuclear standoff, and the December 1994 Chopper Affair. Each time the Americans backed down.

The 1950-53 Korean War, which ended in the first wrong war with the wrong enemy in the wrong place at the wrong time.[2] The Americans, which had beat Nazi Germany and militarist Japan, had initially expected a push-over in punishing the North Koreans. North Korea and China were a joke not only to Germany and Japan but also to the Americans in terms of industry and war machine.

By the second year of what had been supposed to be a walk-over, the American public grew so hostile to the war effort in Korea that 'many people burst into profanity at the mere mention of Truman's name.'[3] Continuing war efforts in Korea meant more American casualties, higher taxation and runaway inflation. Half of the American casualties during the Korean War were sustained in the first year of the conflict. Public dissatisfaction with the Korean War was responsible for sending Gen. Eisenhower to the White House as he pledged to end the unpopular war.[4]

In his letter to Syngman Rhee, Eisenhower defended the American position: "It is my profound conviction that under these circumstances acceptance of the armistice is required of the United Nations and the Republic of Korea. We would not be justified in prolonging the war with all the misery that it involves in the hope of achieving, by force, the unification of Korea."[5]

However, the Syngman Rhee regime in South Korea persisted in its stand: 'For anything less than reunification to come out of these great sacrifices of Koreans and their powerful allies would be

unthinkable.'[6] Syngman Rhee remained adamantly opposed to the ceasefire negotiations and stayed out of the Korean Armistice Agreement.

Syngman Rhee declared: "...to accept such an armistice is to accept a death warrant." [16] Overriding his objections, the Republic Administration of Gen. Eisenhower signed the armistice agreement, which the sixteen nations allies fully supported, stating: "The consequences of such a breach of the armistice would be so grave that, in all probability, it would not be possible to confine hostilities within the frontiers of Korea." [7]

After the ceasefire, the Americans found themselves repeatedly coming close to launching a major military strike on North Korea. However, each time the United States backed down, quietly withdrawing its task forces, including B52s and a naval flotilla. No explanation was given, however. The answer was the keen realization in Washington that the consequence of resumed hostilities would be too costly to be justified.

The January 21, 1968 capture of an armed spy ship USS Pueblo brought the American Administration of President Johnson to a near war situation with North Korea. A flight of B52s and a naval task force spearheaded by nuclear carrier USS Enterprise were ordered deployed into Korea. President Kim Il Sung ordered all the Korean People's Army forces and militia forces into DEFCON 5, putting the whole people and the whole country on a war footing. [19] Supreme Commander Kim Il Sung vowed "eye for eye, retaliation for retaliation, total war for total war." [8]

The Johnson Administration favored a reprisal air strike on selected military targets in North Korea but abandoned it and decided to withdraw all the American forces deployed to Korea for a possible punitive action against North Korea. Since the American gunboat diplomacy did not work, the Americans were left no other alternative but to sit idle and wait for one year and sign a letter of apology before the Pueblo crew members were released from captivity.

On April 15, 1969, an American spy plane EC121 with 31 men aboard was shot down by a North Korean Mig-21 interceptor while infiltrating deep in the territorial air of the DPRK. The Defense Secretary Laird and State Secretary Rogers questioned the wisdom of the proposed operations, citing an assessment of a possible American loss. [9] In the end the Americans refused to take any military action, though its pilot was killed. American responses to Libya, Iraq, and Bosnia were totally different. American warplanes were allowed to drop bombs and fire missiles in those countries at almost every opportunity.

Seven and a half years later, on August 18, 1976, American soldiers felled a poplar tree at Panmunjom on the ground it obstructed their view. In the ensuing melee with protesting North Korean soldiers, two American officers were killed and several wounded. The Republican Administration of Gerald Ford dispatched B52s and a 7th Fleet task force to Korea to force the North Koreans to cower. Again, Marshal Kim Il Sung ordered all the KPA units on a war posture, ready to strike back.

While nuclear-armed American forces were confronted with the North Korean forces, the North Koreans expressed a regret over the incident and suggested that the two sides take steps prevent the recurrence of a similar incident, proposing to demarcate the joint security area of Panmunjom into the northern and southern zones, prohibiting guards from one side from entering the other side. Unheeding the South Korean objection, the Americans promptly accepted it and the demarcation accord was signed on September 7, 1976, virtually removing the joint security area, though the name remained. [10]

Ten years had to pass before the nuclear crisis began to develop during two successive Republican administrations, but no action was taken by Washington to discourage the North Koreans from their reported clandestine nuclear weapons program. Instead Washington held at least 16 rounds of diplomatic contacts with Pyongyang during the 1988 to 1991.[11]

During the years that intervened, two major wars were fought. The Vietnam War, which turned out to be a second debacle for the Americans, ended in tearing down the economic and social fabrics of the United States and caused President Nixon to terminate the gold standard for good, setting the stage for the decline of the dollar. Constantly nightmared by Korea and Vietnam, the United States allowed the much-publicized high-tech Gulf War to end in a military and political stalemate. The United States depended on Saudi Arabia, Kuwait, and Japan for most of its war chest, but the U.S.-led allied forces stopped short of marching on Baghdad and toppling the regime of Hussein but settled for an ambiguously-worded ceasefire agreement. All the crack forces of Iraq remained intact, albeit temporarily shorn of its ABC warfare capability.

This accounts for the failure of the Bush Administration to take drastic action against Pyongyang over its alleged nuclear weapons development effort. Instead, President Bush gave the green light to a series of diplomatic contacts with North Korea and went the length of announcing that his Government withdrew tactical nuclear weapons from South Korea as part of his global withdrawal program.[12] The US went the length of considering giving the North Koreans access to American military bases in South Korea [13] in response to the North Korean demand.

These developments led to Pyongyang's talks with IAEA and produced the December 1991 North-South Korean Agreement on Non-Aggression, Reconciliation and Exchange and the January 1992 Declaration on the Denuclearization of the Korean Peninsula. Bush OK'd upgrading the American-North Korean contacts to a higher level, leading to the January visit of North Korean ruling party official Kim Yong Sun to Washington for talks with Undersecretary of State Arnold Kantor.

In other words, the Gulf War served as another reminder of the futility of fighting a total war in Asia and in particular of the disastrous consequences of fighting the well-trained, well-equipped, well-motivated North Koreans. Wise enough to avoid the repeat of the Gulf War, Bush preferred to coax North Korea rather than to pursue the gunboat diplomacy.

Bush, however, was defeated by Clinton in the 1992 presidential election. In his first year at the White House, Clinton tried to pursue a different Korea policy than that of the Bush Administration and first tried to blackmail North Korea, which in turn responded by announcing its withdrawal from the non-proliferation treaty and vowing to fight an all-out war with the United States.[14] Aware of Bush's policy behavior and advice from the Pentagon, whose top leadership was a carryover from the Bush Administration, Clinton decided to follow the predecessor's example. Like Bush, Clinton did not order B-52s and a 7th Fleet carrier task force deployed to Korea.[15]

The Republican American perception of North Korea was once again vindicated in a review of the American military contingency plans in Korea, better known as USFK-OpPlan 502716, a scenario for a second Korean War which was officially presented to the Democratic President, Bill Clinton on December 10, 1993. The so-called US Forces Korea OpPlan 5027 is one of the standing contingency plans under the U.S. Pacific Command in Honolulu as the first two digits of the code number suggest. It was reportedly revamped on the basis of the American experience in the 1991 Gulf War.

Pentagon officials, U.S. generals in Honolulu and Seoul agreed that ultimately the U.S. would win the second Korean War but at astronomical costs to human lives, military and civilian.

Below are highlights of OpPlan 5027:

- Seoul and its adjacent areas, home to 40% of the South Korean population, would be immediately in a sea of fire under a lethal barrage from some 8,400 long-range artillery pieces and 2,400 rocket launchers deployed along the front line.
- Not less than 545,000 American troops would be committed to the Korean front.
- The war would be a very high-intensity conflict lasting 82 to 112 days, or up to four months
- The war would produce tens of thousands of American casualties and far more among the South Koreans.
- Radioactive pollution could escape into air as Japan and Hawaii lie on the east of the Korean Peninsula and on practically the same latitude with it.
- The South Korean economy and world trade would suffer disastrous consequences.

These estimates were apocalyptic enough for the Clinton Administration.

OpPlan 5027 is a historical watershed document in that it prompted a cautious, conciliatory policy behavior by the United States to the DPRK[15] and set the stage for the October 21, 1994 nuclear agreement. The latter specifically commits the United States not to attack North Korea and to establish ambassador-level diplomatic relations with Pyongyang. The American pledge not to threaten or launch a nuclear attack on the north needs to be in a legally binding form, namely, a treaty form which requires ratification by American Congress and the Supreme People's Assembly.

This can be achieved by negotiating a peace treaty to replace the dangerously outdated Korean Armistice Agreement.

3. A Peace Treaty Is Inevitable

Since a military solution is no longer a viable option, despite their oft-reiterated objection to direct negotiations between the DPRK and the United States on a peace treaty, Marshal Kim Jong Il is confident the Americans will end up negotiating one with the North Koreans. It is only a matter of time, at least a matter of years. Currently, the Americans are dragging their feet, citing the South Korean protests, which will prove lost labor after all. The US's supreme national security interests are certain to prevail. South Korea is a second-class ally of the United States.

There are two major reasons to support the view that it is only a matter of time until the Americans will be talking with North Korea about replacing the armistice agreement with a peace treaty: (1) the October 21, 1994 nuclear agreement (2) the collapse of institutional systems to monitor and oversee the armistice, that is, the absence of direct communications between the Korean People's Army and US forces in South Korea.

A peace treaty would produce short-term and long-range fallout in two areas: First, it would give the North and South Koreans an attractive incentive to reduce conventional arms on the Korean Peninsula and minimize its potential as the world's most volatile flashpoint. Second, it would dramatically help foster dialogue and peace between North and South Korea.

Firstly, the two agreements envisage turnkey delivery to the DPRK of two light-water nuclear reactors by the target year of 2003 [1] and establishment of full diplomatic relations between the two former arch-enemies by that date. This will also mean a peace treaty between the two countries. Successful completion of the light water nuclear reactor project will produce normalized relations between Pyongyang and Washington, leaving behind them a half century of belligerency.

A key question here, however, is whether the Americans can meet the deadline of 2003. The answer is, Obviously No. Usually it takes at least ten years to build, install and test a nuclear reactor before it is ready for operations. It is an open secret that it will be a mission impossible to complete the reactor project on schedule. It may take twice the planned time to construct the LWRs.

The American failure to deliver the turnkey nuclear plants will tremendously strengthen the hand of the North Koreans, the toughest negotiators the Americans have ever faced. The Americans and the South Koreans will have no option but to work against time, but yet they will not be unable to complete the turnkey project on schedule as KEDO Secretary General Bosworth said.[2]

The American default will be most likely considered as a premeditated deception by the North Korean government, which will angrily react by jettisoning the whole agreement and resuming what the Americans suspect is the nuclear weapons program on a crash basis. Supply of heavy oil will prove far from sufficient to placate the disgruntled North Koreans.[3] The rapidly aggravating crisis will not be defused by any offer by the United States short of what they covet most, that is, earlier full diplomatic recognition of the DPRK, ending the state of war or a peace treaty. The North Koreans will never settle for less.

Besides, as things stand, the Americans will have to proceed with providing the LWR project in a highly tense situation where heavily armed combat troops are within striking distance of each other along the 38th Parallel. A small incident or miscalculation can quickly expand beyond control to abort the ongoing LWR project. This danger has been dramatized by the September 18 submarine incident, which almost torpedoed the light water nuclear reactor project. The resulting American delay in the scheduled commencement of work on the construction of reactors provoked the DPRK Foreign Ministry's threat to cancel their obligations under the nuclear agreements.[4]

Further progress in the light-water reactor project will inevitably involve the transportation into North Korea by air, sea and land of thousands -- perhaps tens of thousands -- of US and South Korean engineers and other personnel, heavy-duty and large-scale equipment, and construction materials. Large cargo ships, container ships, large cargo planes, and heavy-duty trailer vehicles will have to be used.

Such gigantic-scale transportation operations would be hampered by the DMZ. Once the reactor project shifts from designing a plant to its on-site construction, it is not so much the North Koreans as the Americans and the South Koreans that will find the Military Demarcation Line a barrier to their work on the construction of a nuclear reactor.

They will increasingly favor overland transportation and direct air flights across the Military Demarcation Line, which is controlled by the Korean People's Army and the American forces in South Korea. This requires political and military talks between Pyongyang and Washington, because the area along the Military Demarcation Line is the most heavily fortified area, a scene of constant war games. Repeated aerial, maritime and overland shuttle services across the DMZ would make history as they would mean a virtual opening of the DMZ. The visible American military presence would look increasingly awkward and irrelevant as hundreds of, thousands of KEDO officials and engineers pass by combat ready American forces on land, on the sea, and in the air.

Pyongyang is a two-hour drive from Seoul. A jet plane can shuttle between the two cities in less than an hour. At present, a direct air flight to Pyongyang takes two hours from Japan. An air trip to the North Korean capital can be reached by way of Beijing: four to five hours from Seoul or Tokyo to Beijing and two hours from Beijing to Pyongyang. Normally, a traveler from Seoul, Tokyo and the U.S. mainland have to stay overnight in Beijing to pick up a direct flight to the North Korean capital. A sea trip from Japan or South Korea is a 24-hour voyage.

While the Americans will have to race against time to design, manufacture, install, and test LWRs in an all-out bid to implement the October 21, 1994 framework agreement and the Kuala Lumpur agreement, the DPRK has only to keep the nuclear program frozen and closely monitor their work, watching out for any sign of deviation from the agreements. All the North Koreans will have to do is to roar out warnings or threats to abandon the agreements and nothing else.

Secondly, the American military in South Korea will soon be exasperated by the lack of direct communication with the North Korean military in a highly delicate situation. The American military will be left with no other alternative than to seek direct talks with the North Korean forces and consent to an interim agreement on forming a North Korean-US general-level military commission.

The Korean Armistice Commission almost was disbanded in March 1991 when a South Korean general was named to be senior member. Then the nuclear standoff arose with little room for the American military to play any role. On December 17, 1994, an American military chopper was shot down when it violated the northern territory. Again there was nothing the American military could do. It was settled through diplomatic negotiations between Pyongyang and Washington. Finally in May 1995 the American military agreed to hold military talks with the North Korean forces at Panmunjom. A series of working-level meetings were held and some progress made, but the talks were scuttled in September by the Americans.[5]

An American irritation was such that Kurt Campbell, U.S. deputy assistant secretary of defense, on January 2, 1996 sent a letter to South Korean assistant defense minister Maj. Gen. Park Yong Ok, expressing the US concern about the absence of a reliable dialogue channel with the North Korean military.[6] He asked Park to drop the erstwhile opposition to a general-level meeting between the North Korean and US militaries. Park reportedly objected to the American overtures.

Given the explosive situation, how long can the United States go on without a working communication channel with the North Koreans? In the event of renewed hostilities, "no one doubts that many people, including US troops stationed along the border, would die from North Korean missiles in a matter of hours." [7] The outgoing US commander in Japan, Gen. Richard Myers, remarked that an astronomical number of people would die in a second Korean War. Gen. Gary Luck made a similar comment.

A miscalculation or an untoward incident, unless properly defused through a reliable channel of communication between the North Korean and the American military, would mean the alarming prospect of instant death for millions of people and tens of thousands of GIs. No operating nuclear power plant was in place in Korea when the Americans fought the three-year war. It was also the case in the Vietnam war. No nuclear power plant was in Europe or Japan during WWII. Ten nuclear power stations are operating in South Korea, while there are fifty operating nuclear power plants in Japan [8], half being on its East Sea (Japan Sea) coast within easy range of North Korean long-range ballistic missiles.

During the Korean War, the North Koreans had no capability to launch retaliatory massive air-raids on South Korea or any other parts of the Asia and Pacific region which house American military bases. Now, the North Koreans are capable of showering hundreds of ballistic missiles on the whole of South Korea. Their missiles can reach the whole of Japan and other parts of the Asia-Pacific rim. In a worst-case scenario, a second Korean War would produce tens of Chernobyl-like meltdowns and leave millions of lives lost and tens of thousands wounded with deadly radioactive fallout raining on all parts of the Asia Pacific region. The world's booming economies would end up in ruins.

A conclusion of a peace treaty would generate two remarkable immediate and lasting spin-offs. A steep cut would be made in the conventional armaments in the two parts of Korea, while Pyongyang and Seoul would find themselves in extensive and serious talks, which would eventually lead to a two-system confederal reunification of the Land of Morning Calm.

Firstly, it would not form any realistic agenda to call for significant cuts in the conventional capability of the DPRK without taking into account its security concerns. The most serious security threat to the DPRK comes not from South Korea, but from the United States, the largest and most powerful military power that has ever appeared in world history. The North Koreans fought a three-year war with the United States and has yet to end more than 40 years of state of war with her. With the Russians no longer a military ally and China remaining a lukewarm friend, the North Koreans are confronted with the nuclear forces of the United States allied with Japan and South Korea.

The North Korean security concern would never be alleviated unless North Korea clinches a peace treaty with the United States. The 1991 non-aggression agreement between North and South Korea would not address the security threat Pyongyang perceives in the American military presence in South Korea and its ceaseless military games around Korea. It is a matter of common knowledge that the South Korean armed forces are under operational control of the United States since the 1950 Taejon Agreement. No military talks with South Korea would go anywhere, unless the Americans end their state of war with North Korea.

The North Koreans have built up a huge war machine, geared up for a nuclear shoot-out with the nuclear-armed forces of the United States. The ending of the state of belligerency with the United States would enable the DPRK to sharply reduce their armed forces and disengage most of its forward-deployed troops from the 38th Parallel. Otherwise, the North Koreans would keep building up its war machine even with their pants down.

In short, if Pyongyang and Washington should negotiate and agree on a peace treaty, it would go a long way toward demilitarizing the Korean Peninsula, stabilizing peace and security in Northeast Asia, and reinstating Korea as a reunified state into the world community. North and South Korea would find it very attractive to make mutual troop reductions and withdraw their front-line forces from the

38th Parallel. They would be free to release most of its resources into economic expansion and welfare programs.

Secondly, there is no better, more realistic way to induce South Korea to establish a full-fledged democracy, engage in reunification-oriented North-South talks, and agree to reduce their conventional arm forces. As past history demonstrates beyond question, how many beautiful agreements the North and South Koreans may hammer out, it does little to reduce tensions between two capitals and restore North-South Korean trust.

The June 1972 North-South Joint Communiqué led to the imposition of draconian rule dubbed Yushin (restoration) regime in October 1972. [9] The December 1991 North and South Korean Agreement on Non-Aggression, Reconciliation And Exchange produced the North-South Joint Military Commission, which was never convened for its working sessions. The denuclearization of the Korean Peninsula, agreed on by North and South Korea in January 1992, was never implemented.

Two reasons may account for this. (1) The successive South Korean rulers have been afraid that full and thorough implementation of the agreements would remove their *raison d'être* -- the threat from the north invoked as an all-purpose justification for the rape of democracy in South Korea -- which would force the abolition or extensive rewriting of the National Security Law and make senseless the American military presence. (2) The South Koreans, a second-class ally of the United States, are in no position to be serious about North-South contact and exchange, which could challenge the presence of American troops in South Korea.

What deserves a special mention is that despite Kim Young Sam's initial agreement to meet with the late President Kim Il Sung through the good offices of former American President Jimmy Carter, the dissident-turned conservative leader showed outright hostility toward the regime of Kim Jong Il from the beginning. His lack of decency and decorum was such that he went the length of putting the South Korean forces on a special alert and branding the late North Korean leader as "a war criminal, " while clamping a sanguinary crackdown on any expression of condolences for the person he promised to talk with. [10] Thus he not only missed the golden opportunity to take the initiative in North-South dialogue but also defiled the time-honored Korean tradition of expressing respect to his opponent at the time of his death. His action constituted a slap on the face of the American leader. Clearly, the South Koreans proved more of a problem than the North Koreans. [11]

As a matter of fact, the past North-South contacts were in response to developments outside Korea or prodding from America. The 1972 North-South Joint Statement was prompted by the then American President Richard Nixon's visit to Beijing and recognition of its legitimacy as the sole government representative of the whole of China. The 1991 non-aggression pact was a byproduct of the then American President George Bush's announcement on the withdrawal of nuclear weapons from South Korea. The proposed North-South Korean summit, which never materialized, was arranged by former American President Jimmy Carter. Those developments proved insufficient to keep the North-South contacts on a right track.

A peace treaty between Pyongyang and Washington would put the long-overdue end to a near-half century of state of war between the two and would bring a much needed fundamental change to the nature and role of American troops. Since their presence would be no longer targeted at North Korea, the American forces stationed in South Korea, whose presence constitutes a brazen violation of the current Korean Armistice Agreement, would be vested with a sort of mantle of legitimacy. Their new role would be to serve as a peace-keeping force with Pyongyang's blessing or at least tacit agreement.

Then, the Americans would no longer feel their military presence in South Korea jeopardized by progress in North-South talks. A case in point is that with all their expressions of endorsement, the Americans were unhappy with the 1991 non-aggression pact.[12]

A North Korean-American peace treaty would reduce the National Security Law and the Agency for National Security Planning to history book status and create a favorable climate in South Korea for expanded contact with the North and the South. A similar effect would be brought about by the successful conclusion of the light water nuclear reactor project. South Korean people would no longer be afraid of being followed, picked up for investigations, and jailed for crossing into North Korea, meeting with North Koreans, exchanging correspondence with them, and getting access to North Korean literature, radio and TV broadcasts.

A sweeping democratic change would ensue in South Korea, as a more democratic and unification-oriented government would be elected by the South Korean people, finally ending nearly five decades of successive rulers toppled, disgraced and jailed. The current leader, Kim Young Sam is most afraid he would likely share the same disgrace with their predecessors Chon Dun Hwan and Roh Tae Woo were.[13]

Significantly, a substantial headway would be made in North-South talks. The North-South non-aggression treaty would be implemented for the first time.

History should be our guide in seeing whether the Americans will agree to talk on peace with North Korea. Past precedents overwhelmingly indicate that the United States will consent to negotiate a peace treaty with the DPRK.

- (1) The then Republican Administration of General Eisenhower signed the 1953 Korean Armistice Agreement, undeterred by Syngman Rhee's determined opposition.
- (2) The Ford Administration, accepting the oral North Korean expression of regret over the Poplar Tree incident, agreed to demarcate the joint security area at Panmunjom, despite Park Chung Hee's protests.
- (3) With all his much-publicized Gulf War victory, President Bush refused to take any political and military sanctions on the budding nuclear crisis and instead instructed his Administration to expand diplomatic contact with North Korea.
- (4) Regarding the nuclear issue, at first the Americans insisted that the North Koreans should talk with the IAEA -- but then the Americans found themselves signing the October 1994 agreement and the Kuala Lumpur agreement with the North Koreans.
- (5) The North Koreans and the Americans held the first round of missile talks in Berlin recently without Chinese or South Korean or Japanese participation.
- (6) The Americans provided \$6.2 million worth of food assistance to North Korea, much to Kim Young Sam's dissatisfaction.
- (7) Five-day talks in New York recently ended successfully with the Americans offering \$2 million in compensation for the North Korean efforts to recover remains of American MIAs.

(8) The Clinton Administration did not go with the South Korean demand for resumption of the Team Spirit series of large-scale war games over the submarine case.

(9) North Korean and American colonels met at Panmunjom for secretaries meetings to discuss the submarine case, since the Korean Military Armistice Commission has been incapacitated by the appointment of a South Korean general as senior member.

(10) American military aircraft repeatedly shuttle between Pyongyang and Washington, carrying American officials, including Democratic Congressman Bill Richardson on his November 25-27 visit.[15]

(11) Now American and North Korean official and unofficial delegations ply between the two capitals.

(12) The submarine affair did not deter the DPRK and the U.S. from agreeing to opening liaison offices in their respective capitals.[16] The Americans dropped their demand that American diplomats and their diplomatic pouches be allowed to ply through Panmunjom, the obstacle that stood in the way of establishing diplomatic missions.

4. A Post-Armistice Order

The most likely scenario is a three-stage approach to the issue of a peace treaty. Two principles will guide the North Koreans in this scenario. One is not to oust the American forces from South Korea but to make them neutral in or sympathetic or supportive of the eventual reintegration of the divided country. The other is not to make a reunified Korea a destabilizing factor in East Asia, including Japan.

The first stage is to establish liaison offices in Pyongyang and Washington. The second stage is to upgrade the current colonel-level contacts at Panmunjom to a general-level communication between the Korean People's Army and the U.S. forces. The third stage is to negotiate and sign a peace agreement ending the state of war between the DPRK and the U.S. for good.

The first stage is a matter of months, not years. With diplomats stationed in their capitals, the North Koreans and the Americans will feel the pressure to devise a formula to maintain the current unstable ceasefire in particular in the face of the virtual lack of a high-level military communication between the two countries. The North Koreans and the Americans will share a grave concern over a possible unexpected incident. This will set the stage for the second stage. The Japanese Government will hurriedly try to follow suit, giving up the previous policy of setting preconditions in resuming talks with North Korea.

The foremost element in the second stage is to work out an interim peace agreement [1] in the place of the virtually paralyzed armistice agreement, pending a peace agreement. As a DPRK Foreign Ministry spokesman put it, different from the armistice agreement, the interim accord addresses the issues of policing the Military Demarcation Line and the Demilitarized Zone, ways and means of defusing any armed clashes and untoward incidents, formation, duties and powers of a bilateral military commission as a joint crisis management body, and amendment of the accord. What makes the interim agreement sexy to the Americans is that its foremost concern is to maintain security and order and nothing else: in short, the proposed interim agreement is an abridged version of the armistice agreement, not banning introduction of equipment from overseas and urging the withdrawal of foreign

troops from Korea.

The bilateral crisis management committee is to be headed by two generals, one from the Korean People's Army and the other from the United States and will supplant the Korean Military Armistice Commission to oversee the execution of the interim agreement. This new body will serve as a direct channel of communication between the Korean People's Army and the U.S. forces. Its job is to fill a vacuum generated by the virtual breakdown of the Korean Military Armistice Commission.

The proposed provisional agreement can be negotiated at the present colonel-level contacts at Panmunjom, or in Pyongyang or in Washington, or in any appropriate venue mutually agreed upon.

The inauguration of the DPRK-US Joint Military Commission will produce a favorable climate for implementation of the December 1991 North-South Korean Non-aggression Agreement and activation of the North-South Military Commission. Once the North-South non-aggression pact goes into force, long-standing hostility and distrust will be gone and relations of reconciliation and mutual trust will be formed between North and South Korea. The National Security Law and the Agency for National Security Planning will have no place in South Korea. Formation of a one confederal state with two systems and two local governments will become a realistic agenda item.

The third stage will come with the end of North-South military hostility: the need to terminate the state of war between North Korea and America. When the North-South Military Commission discusses troop reductions and disengagement measures, North Korea will find them unacceptable as long as the American forces stay on in South Korea, ready to pounce upon Pyongyang. Continuing animosity between the DPRK and the US will jeopardize the ongoing North-South Korean relations.

This requires the U.S. to enter into negotiations with North Korea on ending the state of war: a peace treaty. By this time a significant headway will have been made in the project to provide two light water nuclear reactors to the DPRK. The North Koreans and the Americans will have built working relationships of mutual trust and confidence, while the North and the South Koreans will have come closer to a confederal system. In short, nobody will object to the Americans talking peace with North Korea. Things will have fallen into place.

The DPRK-US peace treaty proposed by Pyongyang will focus on ending the state of belligerency and safeguards against renewal of hostilities. It will not call for setting a military tribunal to punish the war criminals, nor will it urge payment of reparations or withdrawal of foreign forces from Korea. The American military forces in South Korea, whose presence has constituted a fundamental contravention of the Korean Armistice Agreement, will be accorded a mantle of legitimacy and be neutralized as a peace-keeping force if so agreed upon. They will be encouraged to leave South Korea in a phased and honorable fashion.

The peace treaty will enable the North and South Korean sides to undertake drastic force reductions to 100,000 men each according to their non-aggression pact and as specified by their military commission. The DMZ and the Military Demarcation will turn into a mere demarcation line, which North and South Korean people will be allowed to freely cross at any time. The DPRK will have full ambassadorial relations with the United States. Japan will again follow the example of the US.

North and South Korea will have a series of high-level talks, including summits, to work out the details of a two-system, two-government confederation with a central government and a confederal army. Its foreign policy will embrace neutrality and nonalignment.[2] The confederal army will have a

force strength of approximately 200,000 [3] just needed to defend the sovereignty and independence of the Korean Peninsula. They will neither develop nor acquire nor introduce any nuclear weapons in accordance with the North-South non-aggression agreement and the declaration on the denuclearization of the Korean Peninsula.

Once the North Koreans have signed a peace treaty with the Americans, they will look the other way while the American troops are kept on South Korean soil [4], because they are no longer targeted at North Korea. Pyongyang favors a phased withdrawal of American troops from South Korea. For a certain period of time even after the confederation is achieved, Pyongyang will not object to the South Korean Autonomous Government keeping the American forces as a peace-keeping contingent on its soil and retaining the mutual defense treaty with the United States. How long the US forces will remain in South Korea will be a matter to be discussed between the South Koreans and the Americans, provided the Status of Forces Agreement is radically revised to grant the South Koreans the same degree of legal jurisdiction over American soldiers as the Germans have.

This will bring the long-overdue end to the unfortunate chapter of Korean history -- the end of the Second World War and the Cold War in that part of Asia -- and the beginning of extensive disarmament in the Far East. The picture will be different from the Southeast Asian situation, where economic prosperity has been financing the spiraling arms race.

Korea will no longer be considered a pretext for Japan to invoke to justify expanding its armed forces as it does now. Japan will be deprived of any further pretext to go nuclear. A successful KEDO project will produce North Korea without any nuclear weapons capability. A peace treaty will bring the long overdue end to the state of war between the North Koreans and the Americans, reinforcing the non-aggression pact between Pyongyang and Seoul. A confederal Korea will be a nuclear-free zone.

To be more specific, a peace treaty between the DPRK and the USA will come almost simultaneously with full ambassadorial relations with the two countries certainly before 2003 and most probably during the second term of Clinton, with Kim Young Sam out of sight. A successor to Kim Young Sam will have no other choice but to follow the American initiative. If not, the countries concerned would be fighting a nuclear war, endangering the survival of Spaceship Earth. Western countries will immediately follow suit, sending foreign capital flowing into North Korea and in particular in the Northern Triangle.

China, Russia, and Japan will most certainly welcome the emergence of a non-aligned, non-nuclear, and neutral reunified Korea, which will serve as a new powerhouse behind regional economic growth and a sort of an effective buffer zone in the Far East where their vital interests converge. This means the complete end to the Second World War and the Cold War in Korea.

The DPRK-US peace treaty and normalized relationships will force a major change to the American-Japanese security system and the American security structure in the Asian-Pacific rim. With a phased American military disengagement from South Korea, the American force deployment in North East Asia will be halved from the current 100,000 men as most of the premises for the US Security Strategy for the East Asia-Pacific Region [6] will be gone. Given the Japanese, Chinese and Russian factors in East Asia and the Pacific rim, the DPRK will implicitly welcome the continuing but reduced American military presence in the region. In order to silence possible bursts of popular opposition to the American military bases and win over local residents, Tokyo and Seoul will be advised to significantly revise their Status of Force Agreements with the US to the same level as the Germans.

Some critics may argue that the proposed four-way conference is the only course of action for Pyongyang to take. They are obviously misguided. First of all, the American commitment to it is lukewarm for four reasons. The April 17, 1996 joint statement issued by President Clinton and Premier Hashimoto, on the day following the that of the four-way talks proposal, has no reference to the proposal. Second, no high-powered emissary has ever been sent either to Pyongyang or Beijing. Third, Washington and Seoul revoked the proposal.[7] Fourth, the proposal is uncharacteristically un-American, ambiguous with little substance. To be blunt, it is quite unlikely that the April 16, 1996 proposal will be favorably received by Pyongyang.

As a matter of fact, an American congressman visited the DPRK in the wake of the submarine case, while a North Korean Foreign Ministry official flew into Washington for a series of talks. More significantly, the American and North Korean negotiators managed to remove the last remaining obstacle to the establishment of liaison offices in the two capitals.

Some critics, including the outgoing CIA director, John Deutch, may be prompted to predict the collapse of the DPRK in a few years.[8] They may be on the payroll of the intelligence community or the military or the defense industry, whose raison d'etre will be diminished by improved relations between Pyongyang and Washington. Otherwise, they may have little idea of what the DPRK is like, its leadership, its people, their history and culture.

At no time have any American or South Korean intelligence reports on the DPRK proved correct. For example, there were more serious allegations from dozens of low-level defectors. In 1993, alleged travelers from Pyongyang were quoted as reporting on widespread insurrection in the DPRK due to lack of food, water, and electricity [9], indicating that the North Koreans might be fighting a civil war. As it turned out, nothing happened. Hundreds of thousands of people fled from Cuba to the United States, which did not result in the collapse of the socialist system in Cuba. The Castro regime in Havana is now firmly in charge. At present, Latin American countries, West European countries and Canada are heavily investing in the island country.[10]

Marshal Kim Jong Il, his government and people will remain a source of continuing information debacles for American and South Korean intelligence Cold Warriors. For them silence is gold. Marshal Kim Jong Il is poised to get what he wants: peace, diplomatic relations with both Washington and Pyongyang, economic prosperity and reunification.

Major credit for all these developments will go to Marshal Kim Jong Il as architect of Korean peace with the US, restoration of democracy in South Korea, and the reunification of the divided country. A Nobel peace prize will be shared by Marshal Kim Jong Il and President Clinton, if the latter is determined to earn one.

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III. Essay by Pak Chol Gu

REPLACEMENT OF THE KOREAN ARMISTICE AGREEMENT: PREREQUISITE TO A LASTING PEACE IN THE KOREAN PENINSULA

by Pak Chol Gu

1. Introduction

Forty-four years have passed since the end of the Korean war, but there continues to be in this part of the world an unstable state of armistice instead of a durable peace. Armistice means, true to the letter, a temporary cease-fire, not peace.

The Korean Armistice Agreement (KAA) signed on 27 July 1953 was intended to be a tentative arrangement put in place to stop active hostilities between the belligerent parties, and to be replaced eventually with a peace agreement. In this respect, it was quite timely and right for the 30th UN General Assembly Session to adopt the Resolution 3390 (XXX) B on dissolution of the "UN Forces Command" and replacement of the KAA with a peace agreement; it opened up a bright prospect for a lasting peace in the Korean peninsula and an eventual solution to the Korean question.

This notwithstanding, the KAA, which defines the Democratic People's Republic of Korea (DPRK) and the United States of America (USA) as warring parties, remains in force to date even though the Cold War ended on the international arena and nearly half a century has elapsed since the Korean war. This is quite abnormal in all respects.

A close look at the Korean armistice system makes one feel the urgent need to replace the outdated KAA, a source of instability, with a peace agreement at an early date and arrange for a new peace mechanism in the peninsula.

2. Present state of the Korean armistice system

The KAA stipulates the necessary measures to prevent the recurrence of hostilities and armed conflict in the Korean peninsula until the Korean question is solved in a peaceful way. To abide by all paragraphs of the KAA is a precondition for guaranteeing peace and security there and bringing a peaceful solution to the Korean question. But the DPRK and the USA, real parties concerned with the KAA, followed different paths in its implementation.

The DPRK has invariably made sincere efforts to remain faithful to the KAA in any circumstance and turn the cease-fire into a durable peace. But no sooner had the United States signed the KAA than it

tried to abrogate it and, in the long run, took unilateral measures to do so.

The United States refused to implement the paragraphs of the KAA concerning the peaceful settlement of the Korean question. Paragraph 60, Article 4 of the KAA stipulates that, "within three months after the Armistice Agreement is signed and becomes effective, a political conference of a higher level of both sides be held by representatives appointed respectively to settle through negotiation the questions of the withdrawal of all foreign forces from Korea, the peaceful settlement of the Korean question, etc."

But the day after conclusion of the KAA, 28 July 1953, then US State Secretary Dulles said: "We shall withdraw from the political conference after the lapse of 90 days." A preliminary meeting for the political conference was held on the initiative of the DPRK in October 1953, when the United States put up an artificial obstacle to its progress and unilaterally left it as Dulles had said before. Later on, this brought to rupture a conference on the Korean question held in Geneva in April 1954. As a result, Paragraph 60 of the KAA remained unimplemented, closing down the way to the peaceful settlement of the Korean question at the political conference and placing Korea in the cease-fire state for 44 years.

To scrap the Paragraph 13 d, Article 2 of the KAA, which constitutes its nucleus, was the focus of the United States' abrogating efforts. The section, which calls on each side to "cease the introduction into Korea of reinforcing combat aircraft, armored vehicles, weapons and ammunition," and getting its observance to be monitored by the Neutral Nations Supervisory Commission (NNSC) and the Neutral Nations Inspection Teams (NNITs), is a key paragraph in preventing war and ensuring peace and security in the Korean peninsula.

The United States gave priority to nullifying this paragraph and illegally shipped huge quantities of combat material to South Korea in violation of it. It submitted to the NNSC a false report which recorded a smaller quantity of combat and operational equipment than was actually introduced to the south, and even stopped it halfway. To avoid the monitoring by NNIT, it disassembled big military equipment and brought it to South Korea as components or spare parts.

According to a report submitted to the NNSC by NNITs based in Pusan and Kunsan, the United States introduced to South Korea 38 "B-26" planes on 20 July 1955 and 106 mortars on 31 July 1953 by disassembling them and marking them as supplies to military shops. Other illegal introductions spotted by NNITs in the period from August 1953 to 15 April 1954 included, for example, 177 planes, 465 guns of different calibres, 6,400 rockets, 145 mortars and 1,365 machine-guns.

Upset by the continuous disclosure of illegal delivery of operational equipment, the United States notified the 70th meeting of the Military Armistice Commission (MAC) held on 31 May 1956, of its unilateral decision to prohibit the work of NNITs in South Korea and forced them to withdraw from there in June that year. As a result, NNITs which had been organized according to the KAA ceased to exist any longer.

At the 75th MAC meeting convened on 21 June 1957 the United States announced its unilateral abrogation of paragraph 13 d of the KAA and made public that it would no longer submit a report on replacement of old military equipment with new. The reason for this abrogation was explained afterwards by Remnichi who had served as the Chief of Staff of the US Army during the Korean War. At a hearing of the US House Appropriation Committee on 27 February 1960, he said, "through years-long efforts, we were successful in nullifying the Paragraph 13 d of the Armistice Agreement

and introducing latest-type equipment there (into South Korea)."

At the 75th MAC meeting and others, the DPRK blamed the United States for such unfair acts, insisting that none of the paragraphs of the KAA could be unilaterally scrapped. It urged the United States to withdraw its decision and continue to present reports on replacement of military equipment.

At eight rounds of meetings, including the 316th meeting on 25 June 1957, the NNSC admitted that the United States' annulment of the paragraph 13 d was a grave violation of the KAA. But the United States persisted in its unfair position. On the contrary, it officially notified Syngman Rhee of delivery of ultra-modern weapons to South Korea and converted the South into a big nuclear base by shipping to it, in an undisguised way, large quantities of atomic and guided weapons and other latest weapons.

Out of the desire to fully implement the KAA, the DPRK provided the MAC and NNSC with all reports concerning the replacement of operational equipment until the regular activities of the armistice system were completely paralyzed by the United States' appointment of a South Korean army general as a "senior member" of the UN forces' side to the MAC.

Now that the main paragraph aimed at preventing the recurrence of war was nullified, the KAA and the armistice system failed to exercise any influence in this regard. Many events that took place afterwards in the Korean peninsula were actually resolved not in the framework of the cease-fire system but through direct DPRK-US negotiation. Typical examples were the incidents of the "Pueblo" in 1968 and the US army helicopter in 1994 which brought the situation in Korea to the brink of war.

Since the Paragraph 13 d of the KAA was abrogated by the United States, the NNSC, formed to supervise the introduction of operational equipment, had, in actuality, nothing to do.

The United States' unilateral annulment of the KAA paragraphs is immediately an abrogation of the Paragraph 61, which provides that the KAA can be amended or supplemented only on the basis of a mutual agreement; it means an end to the legal basis of maintaining the KAA.

Of the 63 paragraphs in the 5 Articles of the KAA, Article 2 (Paragraphs 12, 14-17 re. specific measures of cease-fire and armistice) and Article 3 (Paragraphs 51-59 re. POWs) were already carried out, and the Paragraph 13 on introduction of operational equipment, Paragraphs 19-35 on composition and function of MAC and Paragraphs 36-50 on composition and authority of NNSC were made null and void by the United States. What remains unscrapped are nine paragraphs in Article 1 (Military Demarcation Line and Demilitarized Zone). These paragraphs are also reduced to the ones recorded only in the agreement, and in actuality they play no effective role. As a result, the KAA has become a mere scrap of paper, useless in preserving peace on the Korean peninsula.

The United States destroyed the function and role of the armistice supervisory tool by appointing on 25 March 1991 a South Korean army general, a man without qualifications or competence, as a senior member of the UN forces' side to the MAC. As to South Korea, it was not a member of the United Nations during the Korean war nor a concerned party of the KAA. The South Korean authorities opposed the cease-fire until the last moment and the South Korean military did not sign on the armistice agreement. Moreover, the South Korean authorities have no real power in maintaining the armistice as South Korea has virtually transferred their supreme prerogative of military command to the United States according to the Taejon Agreement of July 1950, and has not taken it back properly.

As a result of destruction of the KAA and the armistice supervisory tool, there is no military

mechanism guaranteeing the cease-fire in the Korean peninsula. The United States, belligerent party to the DPRK, stages almost every day large-scale war exercises against the latter by mobilizing modern forces and arms it brought to the South, and it creates an acute touch-and-go situation in this part of the world. Under these circumstances, it is easy to predict what a grave result will be caused by a small misunderstanding on either side.

3. US forces and the "UN forces"

The US forces in South Korea often behave as "UN forces," giving confusion to the world's public opinion. The "UN Forces Command" in South Korea was not organized by a resolution of the United Nations but is a product of the Cold War. The United States made an abuse of the United Nations' name in order to justify the Korean war.

At the time when the Korean war broke out on 25 June 1950, most permanent members of the UN Security Council (UNSC) were allies of the United States and a veto vacuum was prevailing at that time due to the Soviet Union's boycott of UNSC work because of the representation of the "Republic of China." The United States made best use of it to conceal its true colors as the provoker and to justify its acts of aggression. Under a detailed plan, it manipulated the UNSC to brand the DPRK as the "aggressor" on June 25 1950 and to adopt an unreasonable resolution on mobilizing multinational forces in the Korean war on 7 July that same year.

This runs counter to the fundamental principles of the UN Charter and its elementary procedures. Paragraph 3, Article 27 of the UN Charter provides that all resolutions of UNSC should be adopted by the unanimity of votes of all its permanent member states, and Article 32 stipulates that the UNSC is obliged to invite all parties concerned in a conflict to its meetings dealing with the conflict, whether a state is a member of the United Nations or not. However, the resolutions relating to the Korean war were illegally adopted at the UNSC in the absence of the Soviet Union, one of its permanent members. Moreover, the representative of the DPRK, the party concerned, was deliberately excluded while the representative of South Korea was invited to the UNSC meeting.

Despite this historical fact, the United States and South Korea hold that Resolution 84 (1950) of the UNSC, adopted on 7 July 1950, provides a legal basis for dispatch of the "UN forces" and organization of the "UN Forces Command." But, in fact, there are not such provisions in it. It only recommended that all members providing military forces make such forces available to a "unified command under the USA."

In this regard, UN Secretary General Boutros Boutros Ghali noted in his letter to the Foreign Minister of the DPRK, dated 24 June 1994: "I do not believe, though, that any principal organ of the United Nations, including the Secretary General, can be the proper instance to decide on the continued existence or the dissolution of the United Nations Command. However, allow me to recall that the Security Council, in operative paragraph 3 of resolution 84 (1950) of 7 July 1950, limited itself to recommending that all members providing military forces and other assistance to the Republic of Korea 'make such forces and other assistance available to a unified command under the United States of America.' It follows, accordingly, that the Security Council did not establish the unified command as a subsidiary organ under its control, but merely recommended the creation of such a command, specifying that it be under the authority of the United States. Therefore the dissolution of the unified command does not fall within the responsibility of any United Nations organ but is a matter within the competence of the Government of the United States."

This shows that, though the KAA referred to the DPRK-China and the UN forces as the legal parties to it, its real parties concerned are none other than the DPRK and the USA. It is these parties themselves that have so far managed the armistice system.

The successive "UN Forces" commanders were appointed by the US Government and they were all American generals. Traditionally a US-South Korea combined forces commander who has the operational command over the US forces and South Korean army as whole, also assumes the post of the "UN Forces" commander.

The "UN Forces Command," organized without any UN resolution, has undergone a process of dissolution; governments of 15 countries that had dispatched their forces to it withdrew them without any notice to the United Nations: France on 23 October 1953, Canada in April 1956, Luxembourg on 30 December 1954, the Philippines and South Africa in October and November 1953, Belgium in 1956, Greece on 13 July 1955, Colombia in October 1954, the Netherlands in March 1956, Ethiopia in December 1954, Australia in July 1953, the United Kingdom in July 1957, New Zealand in October 1953, Turkey in July 1956 and Thailand in July 1955. In particular, Ethiopia, the Netherlands, Belgium, Greece, South Africa and others do not remain in contact with the "UN Forces Command." Left alone there, the United States could not but admit that there were less than 300 staff officers and guards of honor in the command.

Ever since the founding of the United Nations, such a command has existed only in South Korea. It is a demand of the times to dissolve the "UN Forces Command" that has become such a phantom body.

Reflecting such a demand, the 30th Session of the UN General Assembly held on 18 November 1975 adopted Resolution 3390 (XXX)B on dissolving the "UN Forces Command" as a measure to achieve a durable peace in the Korean peninsula. The US side's Resolution 3390 (XXX) A also made a reference saying that it would enter into negotiation for making a new arrangement to replace the armistice agreement and dissolve the "UN Forces Command" if there was an alternative.

In April 1994 the DPRK proposed to establish a new peace mechanism and in October 1994 the DPRK-US agreed framework was adopted and became effective. Therefore, such an alternative can be said to have been made.

4. The DPRK efforts for a lasting peace and security in the Korean peninsula.

A very dangerous security vacuum has been created in the Korean peninsula due to the United States' destruction of the armistice supervisory tool. The DPRK put forward various realistic proposals for making up for such a vacuum by all means and has made patient efforts to put it into effect.

With a view to maintaining the NNSC and restoring its function, the DPRK proposed, at the First Session of the 8th Supreme People's Assembly held on 30 December 1986 and in its proposal for phased arms reduction made public on 23 July 1987, to enhance the function of NNSC by involving it in verification of phased arms reduction in the Korean peninsula and stationing of neutral nations' supervisory forces in the DMZ. The DPRK also strove for over five years to hold negotiations in this regard with the United States and other parties concerned, but the US side refused.

In January 1984 the DPRK government advanced a proposal to conclude a peace agreement between the itself and the USA and adopt a non-aggression declaration between the North and South; on 19

February 1992 the "North-South Agreement on Reconciliation, Non-aggression, Co-operation and Exchange" was adopted and put in force and a North-South joint military commission was formed accordingly. Now that the North and South committed themselves to non-aggression, what remains to be done is to make an arrangement for a perfect, comprehensive and lasting peace in the Korean peninsula.

Under these circumstances, the DPRK government proposed to the United States on 29 April 1994 to replace the old armistice system with a new peace mechanism. Based on this proposal, the DPRK withdrew its members to the MAC in order to make up for the vacuum and set up the Panmunjom Mission of the Korean People's Army (KPA).

In accordance with the agreement between the two countries, the Chinese Government withdrew the delegation of the Chinese People's Voluntary Army from Panmunjom in December 1994, and the delegation of the NNSC based on the DPRK-China side also left the country.

The United States was obliged to agree to the DPRK-US military talks in Panmunjom in May 1995, and some progress was made at the general-level talks before they were brought to rupture in September that year.

Taking into consideration the United States' Korean policy and the present state of DPRK-US relations, the DPRK Government put forward on 22 February 1996 an expanded proposal designed to provide, at least, a mechanism aimed at preventing armed conflict and war in the Korean peninsula. This proposal makes the following three problems its key points: the conclusion of the DPRK-US tentative agreement, the organization and operation of a DPRK-US joint military body replacing the MAC, and the holding of negotiations at a concerned level to discuss these issues. The tentative agreement may include the management of the MDL and the DMZ, the method for settling armed conflicts or accidents, the formation, duties and authority of a joint military body, the amendment and supplement of the agreement, and other issues concerning the maintenance of security. It shall replace the KAA until a complete peace agreement is concluded.

This proposal fully reflects the interests of both the parties to the KAA and other parties concerned. Since the North and South adopted a non-aggression declaration and formed a joint military body, this specific proposal, once applied, will contribute to easing tensions and ensure peace in the Korean peninsula, and create a precondition for its confederal reunification.

5. Conclusion

A thaw is visible these days in abnormal relations between the DPRK and the USA. They signed the 11 June 1993 Joint Statement and the 21 October 1994 agreement committing themselves to making joint endeavors for denuclearization, peace and security in the Korean peninsula. Heavy oil is delivered to the DPRK and protocols regarding the building of light water reactors were concluded, in conformity with the DPRK-US agreed framework.

In the light of the developments of the present international situation, which show signs of detente and reconciliation, it is an urgent requirement of the times to end a half a century-long armistice and make a new peace mechanism in the region. The DPRK made specific proposals to the United States in this respect. Now the ball is in the United States' court. How it responds to those proposals will be decisive in accelerating the process of peace, détente and peaceful reunification in Korea.

IV. NAPSNet Invites Your Responses

The Northeast Asia Peace and Security Network invites your responses to these essays. Below are some questions that some readers may find useful in putting the issues raised by the essays into a critical light. Please send responses to: napsnet@nautilus.org (preferably using "response to forum #4" as the subject). Responses will be considered for redistribution to the network only if they include the author's name, affiliation, and explicit consent.

* Kim Myong Chol argues that the US is unlikely to complete the light water reactors on schedule while the DPRK is obliged simply to wait. Do such claims serve to play into the hands of US opponents of the Agreed Framework?

* Why does Kim consider the proposed four-party peace talks format untenable?

* Why does Kim believe that that a US-DPRK treaty is the best way to promote "full-fledged democracy" in the ROK?

* Considering the intensely ideological nature of the Korean conflict, how realistic is Kim's suggestion of "one confederal state with two systems and two local governments"? Given the ROK's opposition to the DPRK position, how realistic is the hope for a negotiated, peaceful Korean reunification?

* Although Kim views US forces in Korea, rather than ROK forces, as the primary threat to DPRK security, he also advocates retention of a US military presence to support Korean reunification. Is this scenario practical from the DPRK point of view? Does it offer a potential compromise position that the ROK could, in some form, accept?

* Pak Chol Gu argues that unilateral US actions have undermined the legal standing of the Korean Armistice Agreement. How does this analysis differ from Patrick Norton's? Does Pak's position provide a workable basis to negotiate replacing the Armistice?

* How does Pak's interpretation of the status of the "UN Forces Command" differ from Norton's?

* How valid is Pak's argument that the US-DPRK Agreed Framework has now displaced the Armistice Agreement as the operative basis for negotiating a permanent Korean peace settlement?

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Northeast Asia Peace and Security Network**Policy Forum Online**

"A Russian Perspective on Korean Peace and Security"**#8 -- July 30, 1997**

The NAPSNet Policy Forum Online is intended to provide expert analysis of contemporary peace and security issues in Northeast Asia, and an opportunity to participate in discussion of the analysis. The Forum is open to all participants of the Northeast Asia Peace and Security Network (NAPSNet). As always, NAPSNet invites your responses to this report. Please see "NAPSNet Invites Your Responses," below, and send your responses to the NAPSNet Coordinator at: napsnet@nautilus.org.

A RUSSIAN PERSPECTIVE ON KOREAN PEACE AND SECURITY

Essay by Evgueni Bajanov

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A RUSSIAN PERSPECTIVE ON KOREAN PEACE AND SECURITY

I. Introduction

The following essay, "Russian Perspective On A Post-Armistice Order In Korea," was written by Evgueni Bajanov, Director of the Institute of Contemporary International Problems (ICIP) in the Russian Diplomatic Academy in Moscow, Russian Federation. Prof. Bajanov's essay offers a provocative look at Korean affairs from the point of view of the Russian Federation, tracing Russia's historic and contemporary interests in the region, examining the evolution of its relations with the principal countries in the Northeast Asia region, and assessing the role that Russia seeks to play in

promoting peace and security on the Korean peninsula. In particular, Prof. Bajanov explains the critical position that Russia has taken toward the US-ROK proposed "four-party" peace talks, and describes the alternative process advocated by Russia which, he argues, would be more effective in solving the problems underlying present tensions and in laying the groundwork for eventual Korean unification. (Readers should note that this essay was written prior to Thursday's statements by Russian Foreign Minister Yevgeniy Primakov, following talks with ROK Foreign Minister Yoo Chong-ha, expressing Russia's qualified support for the four-party formula; see "Russia Supports Four-Party Talks" in the US section of the July 24 NAPSNet Daily Report.)

Prof. Bajanov's essay continues discussion of the prospects for peace on the Korean peninsula begun in previous NAPSNet Policy Forums. In particular, Prof. Bajanov's articulation of the "Russian proposal" to achieve Korean peace and security, envisioning a normalization of relations among the principal involved states followed by a convening of an international conference with broader participation, bears a distinct resemblance to the proposal discussed by Robert Bedeski in the preceding Policy Forum.

The views expressed and arguments made in the following essay are those of the author. NAPSNet presents the essay as received, except for minor editing. Following the essay, the section "NAPSNet Invites Your Responses" provides information on how you can respond and participate in the online forum.

II . Essay by Evgueni Bajanov

RUSSIAN PERSPECTIVE ON A POST-ARMISTICE ORDER IN KOREA

by Evgueni Bajanov

My paper is devoted to the analysis of motives, aims, and contents of Russia's policies in Korea; the role Moscow can and wants to play in the ending of the Armistice; and the Russian vision of the post-Armistice regional security arrangements.

The paper is structured into four sections. The first provides a brief historical interpretation of Russia's policies towards Korea. Then I discuss current adjustments in the Kremlin's international strategy and their impact on Moscow's behavior of the Korean peninsula. Section three shows Russia's reaction to the idea of four-power talks. Finally, I explain Moscow's own proposals on the settlement of the Korean problem.

This research is based on a wide range of governmental, scholarly, and journalistic sources (Russian, North Korean and others); however, the sources are identified only when absolutely necessary.

1. The Legacy of the Past

The Korean Peninsula got in the focus of Russia's attention after Tsar Alexander II established in 1860 his rule over Maritime province adjacent to the "Hermit Kingdom." Ever since Russia for various reasons and in different forms participated in the struggle of big powers (Japan, the USA, China) for control in this East Asian nation. Once in a while Russia would slacken its activities on the Korean peninsula only to return there later with a renewed vigor.

At the end of World War II, Stalin's strategy in Korea included three goals: assurance of the USSR's

national security; expansion of the sphere of communism's influence; and satisfaction of Russia's traditional great-power ambitions. The Soviet Union, although weakened by the bloody and destructive war against fascist Germany, spared no effort to build and strengthen a loyal regime in the North. (1) Until the end of 1949, Stalin did not plan to extend his control to the South of Korea. Instead he was afraid of an attack from the ROK and tried hard to suppress aggressive moods of North Korean leaders. (2) However Stalin's approach changed in 1950: in April of that year the Soviet dictator officially blessed an invasion of the South. (3) The change was prompted by the victory of the communists in China, the Soviet acquisition of the atom bomb, general aggravation of Soviet relations with the West and a perceived weakening of Washington's will to get involved militarily in Asia.

When Stalin realized that the war in Korea could not be won, his main preoccupation became to avoid a direct large-scale conflict of the USSR with the USA and at the same time to keep Americans tied up in the Korean war as long as possible. According to the Soviet leader, the longer Washington was involved there, the better it was for the overall international situation, for the interests of "socialism." (4) After Stalin's death, the new Soviet leadership hurried to terminate the bloody conflict on the Korean Peninsula and adopted the policy of a status-quo, a non-violent competition between the North and the South. (5) A huge material and military aid was poured into the DPRK. (6) However, by the beginning of the 1960s, ideological and political contradictions developed between Moscow and Pyongyang. Khrushchev was concerned that the leftist fever that infected Beijing and Pyongyang at the time would set the Far East afire in war. (7) The next Soviet leader, L. Brezhnev, and his administration tried to bring the DPRK back from its "tilt" towards the PRC. North Korea was perceived by the Kremlin as a strategic ally, a Far Eastern outpost in the overall confrontation of the USSR with the USA. Disliking Kim Il Sung's "juche" and "cult of personality," Moscow nevertheless continued to help its ally and to ignore the ROK. (8)

The coming to power of Mikhail Gorbachev in 1985 did not initially change anything in the triangular Moscow-Pyongyang-Seoul relationship. As a matter of fact, the new Soviet leader sincerely did everything to reinforce friendship and cooperation among all "socialist" states, including those (like the DPRK) which had maintained a distance from the Kremlin. Moscow-Pyongyang relations did become warmer and closer in 1985-1986. Such positive tendency did not last long though. Starting in 1987, differences in foreign policy objectives and internal ideological and political developments grew and brought about misunderstandings, frictions, and cooling-off in mutual relations. A drastic reduction in the USSR aid and critical articles in the Soviet press exacerbated the problems. But all these troubles cannot be compared with the infuriation of Pyongyang with the rapprochement of Moscow with Seoul. Normalization of Soviet-South Korean relations was qualified by the DPRK as a "disgusting, vomiting and unseemly" act of betrayal.

The advent of the new, anti-Communist regime in Moscow further complicated matters, as leaders of the democratic movement felt nothing but contempt for communists both inside and outside of Russia; and the DPRK, with its pure Stalinist-type dictatorship, seemed the worst possible case. Such views were shared by most of the Russian media, which mercilessly attacked Kim Il Sung and his "kingdom." A strong belief existed in the Russian capital that all remaining communist regimes in the world were doomed and would soon go down the drain, following the examples of the USSR and Eastern Europe. (10) The argument was advanced in the government that Russia should distance itself from a decaying international pariah so as not to be compromised in the eyes of the world and the future democratic leaders of Korea.

Even less desire existed in the Kremlin to bolster the DPRK economically. Not only did Moscow not want to prolong the Kim Il Sung system but economic cooperation with North Korea was simply not

profitable, and crisis-stricken Russia curtailed all the aid that had been provided in the past for ideological and political reasons. Politically, the Kremlin now clearly disapproved of Pyongyang's intransigence in inter-Korean relations and its confrontational foreign policy. Russian democrats did not want to supply the DPRK with weapons and they did not want to be linked to North Korea's security by guarantees or anything else.

Pyongyang reacted to changes in the former Soviet Union with disgust and fear. As a result, Russian-North Korean relations got off to a bad start in 1992; while continuing to develop ties with the ROK, Moscow ignored political contacts with the DPRK. The Russian Foreign Minister declared in the spring that Moscow would stop all military cooperation with the North and put pressure on it to drop its nuclear plans. Yeltsin described the 1961 Soviet-North Korean security treaty as existing only on paper, and Information Minister Poltoranin, while in Tokyo, advised the Japanese not to pay war reparations to the DPRK to prevent prolongation of this repressive, obsolete regime. (11)

2. Factors of Change

The problems, created in Russian-North Korean relations in the late 1980s-early 1990s, still exist. However, a number of important factors have been moving the Kremlin lately to a more positive posture vis-à-vis the DPRK. First of all, it is the internal evolution of the Russian society. Great difficulties with reforms have seriously weakened the democratic, pro-Western camp of Russia. It quite soon lost confidence and unity. Many former democrats have switched to conservative nationalist ranks, or have simply left the political scene. A large number of them have plunged into corruption, privilege-hunting, doubtful business dealings.

As a natural consequence of such developments, the public has grown bitterly disappointed and angry with liberal democrats and their slogans. More than half of the voters twice in 1998 and 1995 supported communists and ultra-nationalists in parliamentary elections. Under internal pressures, President Yeltsin had to move to a more conservative stand in foreign policy. A transformed government, including Foreign Ministry, have absorbed people with a traditional outlook on foreign affairs. If some of the original democrats kept their positions they also had to change colors: voluntarily or because of the necessity. The conservative forces are helped by current developments in the near vicinity of Russia as well as in the world at large: harassment of ethnic Russians in the former Soviet republics, dissatisfaction in Russia with Western aid and the general behavior of the West vis-à-vis Moscow, challenges to Moscow from some Third World neighbors to the South, and growing instability and violence in the world. It is clear that Russian foreign policy has already become less romantic and more down-to-earth, less ideological (anticommunist) and more pragmatic, less internationalist and more nationalist, less pro-Western and more Eurasian, oriented to the East and South. Internal pressures and changing circumstances will be driving the Kremlin back to a more traditional diplomatic line oriented towards security and great-power ambitions.

Security concerns are already coming to the forefront of Russian policy in Asia. Russia's interests are increasingly challenged militarily on the Afghan-Tajik border, and arms races in the region worry Moscow. Awareness grows in the Kremlin of a potential danger of renewed hostilities on the Korean Peninsula, and Moscow wants to resume a more active role in mediating differences between Seoul and Pyongyang. Especially, it has been realized in Russia that the North Korean regime will not necessarily collapse in the immediate future and that its collapse may actually create even greater security risks. Such an approach requires an improvement of relations with the DPRK and a more balanced policy on the peninsula.

Great power ambitions also move Moscow towards North Korea. Russia increasingly tries to regain influence and prestige throughout the region and to show its flag wherever possible. It hopes to forge closer ties with new partners while returning, when possible, to former allies recklessly abandoned earlier. Restoration of links with North Korea is justified on the grounds that Moscow created Kim Il Sung's regime and spent much time and money nourishing it and that, while leaders come and go, people's memories and friendship endure. These feelings are reinforced by the envy towards American activities in the DPRK. It seems to the Russians that the USA is winning Moscow's ally on the American side. It is evident in the attempts of the North to sign a peace treaty exclusively with the USA, in the forthcoming cooperation between the DPRK and the United States in the nuclear field and other moves.

It is argued in Moscow that "the United States are undertaking a broad offensive irrespective of Russian interests aiming at expanding their influence over the Northern part of the Korean Peninsula in order to become the sole master of Korea's destiny. (12) It is also stressed that an active Moscow does not coincide with American national interests. (13)

At the same time, I'd like to note that Washington still keeps basically unchanged security links with the ROK and continues to dominate over its ally in the South. Simultaneously, Russia's prestige and influence in the ROK have diminished lately precisely because of the weakening of Moscow's position in the North. Back in the 1980s, South Korea decided to develop the Soviet connection exactly because Moscow seemed to be able to influence positively the North Korean leadership. However, as soon as the Kremlin and the Blue House formalized mutual relations, Seoul began to pressure Russia against continuation of military and other aid to the DPRK. When Russia did downgrade its cooperation with the North, the South, instead of being satisfied, lost respect for the Kremlin - since it now lacked leverages vis-à-vis the North. So Moscow, taking such reaction of the ROK into consideration, feels that improvement of relations with the DPRK, among other things, will help to restore Russian credibility and prestige in the South.

I think that only by exerting influence over both Korean states can Moscow "stay in the game" and secure its position vis-à-vis a future reunified Korea. A deterioration of relations with the DPRK has "limited Russia's possibilities to positively influence developments in the immediate neighborhood of its border. (14)

China is in its turn cited nowadays in Russia as perfect example of how to manage relations with the DPRK. Indeed, the PRC has been able to develop excellent rapport and close economic cooperation with the South without undermining own positions in the North.

Economic considerations are a third driving motive for Russia's activities in the Asia-Pacific region. South Korea continues to figure prominently among prospective partners, and Moscow will keep it high on the agenda. However, there is a certain disappointment - due to low investment activities of the ROK companies in Russia and problems with loans and credits.

As for North Korea, it certainly does not have an equal economic appeal in the eyes of the Russians. Still, Moscow has recognized that the only way to get North Korean debts back is to smooth tensions with the DPRK. It is deemed profitable to continue employing North Korean wood-cutters and other workers in the Russian Far East, to buy DPRK valuable raw materials in exchange for finished goods. Russia may also someday participate in the modernization of the numerous Soviet-built enterprises in the DPRK. Deliveries of nuclear reactors to the North and involvement in the development of the free

economic zones in the border areas are mentioned among economic aims of Russia vis-à-vis North Korea. Another argument is that only together with the DPRK it would be possible to realize some of the large-scale Russian-South Korean projects, like a gas pipeline from Yakutia to the ROK.

The ideological factor, that is, spreading the democratic gospel, no longer figures prominently in Russia's policies in Asia and the Pacific. North Korea is no longer abhorred by the ruling elite of Russia as it was a couple of years earlier. As for various groups of the opposition, the DPRK has become their new "darling." The Russian communist party established permanent contacts with the North Korean ruling circles, regularly sending to the North high-level delegations. In joint statements and other documents, the two sides swear to unite "in the struggle for socialism and against reaction." Russian communists use every opportunity to praise *juche* ideology, "great achievements" of the DPRK in the socialist construction and in pursuing an "independent, proud" foreign policy. (15)

The strongest nationalist party, the Liberal-Democratic party, headed by V. Zhirinovsky, is even more eloquent in praising Pyongyang. V. Zhirinovsky says: "The world is now in the grip of unrest and disorder, but Korea is advancing in close unity based on self-reliance and its own political philosophy, thus becoming a country envied even by Russia, which was once strongest power, and an oasis for the world. (16)

On June 4, 1996, during Russia's State Duma hearings on the Korean problem chairman of the Duma's Committee on Geopolitics, Mr. Mitrofanov (Zhirinovsky's "shadow" foreign minister) roundly denounced the Kremlin's policies in Korea. Mr. Mitrofanov claimed that Moscow had betrayed the DPRK, joined the international anti-Korean chorus, and, as a result, North Koreans who had "loved" Russia and Russians "had had no choice but to consider us as at least an unfriendly country. (17) Mr. Mitrofanov insisted that North Korea was a "strategic ally, who was betrayed for the sake of futile and senseless economic contacts with the ROK. (18) The Liberal-Democratic party harshly criticized South Korea's policies towards Russia as "insulting." From their point of view Russia "had to warn and threaten South Korea with strong actions to make it more respectful. (19) The Liberal-Democrats demand resumption of military cooperation with the DPRK and in fact supported North Korean nuclear programs. A nuclear-armed North Korea is viewed by these people as a contributing factor to the defense of Russia against Washington and its allies. (20)

3. Russia's Reaction to the Idea of Four-Power Talks on Korea

Officials responsible for Kremlin's relations with Asian countries repeatedly criticized the idea of four-power talks on Korea. Russian Ambassador to the DPRK V. Denisov, for instance pointed out: "As can be observed, this plan does not take into account the Russian side. We can hardly agree with this. Because it is a fact that Russia played in the past and continues to play an important positive role in normalization of the situation in Korea and around it. Attempts to remove us from the settlement of a problem, which is directly connected with our interests, cannot be understood by us. (21) Deputy Foreign Minister A. Panov noted: "It remains unclear what kind of problems the four-power meeting will discuss. (22)

I can add to this my personal view that Moscow's opposition to the four-power talks will not soften. Russia has been closely connected with the events in Korea during the whole WW II and post-war period, it is a neighbor of Korea and has there strong security, political and economic interests.

Applying pressure on Seoul to reconsider its four-power talks proposal the Russian side elaborates a number of arguments. It is stressed that there is no other country besides Russia with which South

Korean national interests coincide to such a degree. Russia, as diplomats and politicians insist, is virtually the only power honestly desiring unification of Korea. The Kremlin needs a strong Korea to balance off Japan and China, while Tokyo and Beijing for various reasons are not anxious to see Korean nation unified. Americans may also lose if the split in Korea is overcome - their troops most probably will be asked to leave the peninsula. Russians stress as well that with the stabilization of their economy South Korea will find in Russia the biggest market for investments, exports of consumer goods and imports of raw materials.

I believe in the need to apply three basic principles for a successful solution of the Korean problem. The first one is recognition of the fact that six states are equally involved in the settlement on the Korean peninsula: the ROK, the DPRK, China, the USA, Russia, and Japan. The Korean problem combines internal and external aspects which are interconnected. Consequently, no matter how justified are demands of the two Korean states to other parties not to interfere into the affairs of the peninsula, the four powers-China, the USA, Russia, Japan will still be connected with the process. Any attempt to push any of the six participants away from the scene or to exclude them from the settlement completely will only slow down and disrupt the process itself.

The second principle presupposes that each member of the "six" approves normalization of relations among all other five states. Seoul does not like that Washington and Pyongyang are building up a bilateral dialogue while North Korea attempts to ignore South Korea. I consider Seoul's reaction unjustified and near-sighted. The cross-recognition idea on the Korean peninsula was developed by Americans and supported by the ROK and Japan. However after at first the USSR and then China established diplomatic relations with the South, Washington and Tokyo did not make similar steps towards the North. Moreover, numerous preliminary conditions have been advanced which Pyongyang must meet before the recognition may take place.

Now the DPRK is in a much weaker position internationally as well as economically, militarily, and socially. Under such circumstances the North will never agree on a meaningful dialogue and rapprochement with the South. At first it has to obtain stronger international position, to get more guarantees and support from the big powers involved in the Korean settlement. Even if Pyongyang aims at isolating Seoul by promoting a bilateral dialogue with the USA, the ROK should not be overly concerned. Americans are not about to abandon the South for the friendship with the communist North. Besides, the DPRK in the process of opening up to the United States and Japan, and will start changing. As a result, it will become ready to a constructive relationship with the ROK. Russia should also welcome rapprochement between Washington and Pyongyang, and China must not object to the normalization of North Korean-Japanese relations. Seoul should react more reasonably to a potential improvement in Moscow-Pyongyang relations.

The third principle is non-interference of the "six" in the internal affairs of each other. I acknowledge that lately both Seoul and Washington have been underlining their resolve not to undermine the communist regime in the North. Nevertheless, Pyongyang has reasons not to trust those statements. It is not surprising since just a few years ago, when communist governments in Eastern Europe were falling, the South Korean elite openly strove for the demolition of the opponent's regime in the North. As for Americans, they seriously contemplated in 1992-1993 a "preventive strike" against the DPRK's nuclear installations. To be sure, the fears of North Korean leaders could not be dispersed so quickly, especially under conditions of a progressing weakness of the DPRK in all spheres.

4. Russian Proposal

Only if three above-mentioned principles are applied and consistently observed by the six sides, the real prospects for détente on the Korean peninsula may open up. On the basis of this reasoning the Kremlin advances the proposal to hold a multinational conference with the purpose of creating a mechanism for the overall settlement of the problems of the Korean peninsula.

Russia believes that besides the "six," it is advisable to invite to the conference all remaining permanent members of the UN Security Council (France and Britain) as well as the Secretary General of the United Nations and General Director of the IAEA. Observers from other interested parties (like ASEAN) can also attend the conference. Here is the essence of the Russian proposal.

The Conference schedule. The Conference starts at the level of Foreign Ministers. They will approve the agenda and schedule of the conference and will also set up working groups according to the agenda.

Working Group on the Improvement of DPRK-ROK Relations. The subject of the discussions can become all those proposals, which have been so far advanced by the two sides. The main purpose is to work out a set of measures on the creation of stable, multi-faceted dialogue and contacts between the North and the South. As an initial step the North and the South can reach an understanding on the realization of provisions of the agreement on reconciliation, non-aggression, cooperation and exchanges.

These measures may include: establishment of a direct telephone line between military commanders and exchange of information, development of economic cooperation, restoration of transport communications, opening of free movement and contacts of people, of telephone and post office links, reunion of divided families.

The agreement on creation of a Permanent Commission on military issues and a Commission cooperation and exchanges should be realized as well. Besides, it is advisable to reach an agreement on regular summits, negotiations between heads of governments and ministers, on propaganda policies.

The group could start discussion of unification principles, taking as a basis principles, fixed in the Joint Statement of the North and South of July 4, 1972. In accordance with the Joint Statement the reunification must be achieved, first of all, by Koreans, without outside interference, second, by peaceful means, third, on the basis of "national consolidation."

On the basis of the Joint Statement the two sides could start activities of the Coordination Committee. The Committee will strive for creation of conditions for peaceful unification of the country, large-scale exchanges among political parties, social organizations and individuals, cooperation in the fields of economy and culture. The Committee would consist of five subcommittees: political, military, diplomatic, economic and cultural. The Committee would be entrusted with the examination of proposals of the North and the South aimed at the unification of the country.

As it is known, the DPRK has advanced the idea of creation of the North-South confederation in the form of the Democratic Confederate Republic Koryo. The idea allows preservation of the two existing social political systems. At the same time a unified national government will be formed with equal participation of the DPRK and ROK representatives. Under the leadership of the unified national government the North and the South will practice self-government.

A Permanent Confederative Committee, established in the framework of the Supreme National Confederative assembly with the equal representation of the two sides will act as a unified government. The unified government could tackle foreign affairs and defense issues coordinating activities of the two regional governments (the North and the South), and assure wholesome economic, social and cultural development of the country, cooperation between the North and the South.

The regional governments in the limits agreeable with national interests, will conduct independent from each other policy trying at the same time to overcome mutual differences.

ROK proposals are also known. In 1989, Seoul advanced the concept of "a Korean Commonwealth." It included creation of the Council of the two Korean states, formation of the Council of Ministers with two Prime Ministers and ten Ministers from each side. This body was supposed to concentrate on solution of the reunification problem of 10 million members of divided families and the problem of lessening of a military-political confrontation. A Council consisting of 100 parliamentarians from each side was proposed to work out a Constitution of a unified Korea.

Proposals of the two sides significantly differ in the forms and stages of the unification process. However it seems to be possible to find an acceptable compromise concept on the basis of those proposals. When the North and the South reach agreements, other conference participants will approve those agreements and agree to become their guarantors.

Working Group on Replacement of the Armistice with a Peace Structure. This group may include not only countries which signed the Armistice but also countries-members of the Commission of neutral states performing control functions over implementation of the Armistice agreement. Naturally, representatives of the United Nations, states, participating in the conference, will equally participate in the group activities.

It is obvious that termination of the Armistice agreement will require cancellation of appropriate UN resolutions. Among others the group will have to solve the question of utilization by the American troops in the ROK of the flag and symbols of the United Nations.

As a temporary measure before creation of a new peace structure on the Korean peninsula, the group can examine a possibility of replacing American troops in the neutral zone with troops of neutral states troops. I may remind that back in 1987, Pyongyang proposed to set up special military units of the states performing control functions over implementation of the Armistice agreement-Poland, Czechoslovakia, Sweden, Switzerland-to observe the situation in the demilitarized zone.

On this basis, decisions could be taken on gradual demolition of military structures in the demilitarized zone, withdrawal of troops of the two sides from the zone for a considerable distance

Working Group on Confidence-Building Measures on the Korean Peninsula. This group could concentrate efforts on working out confidence-building measures in the military field as well as radical cuts of armed forces and armaments.

Among such measures I can mention:

- invitation of observers to military maneuvers

- banning of maneuvers with the number of participants above a certain level
- exchange of data on the military forces of the two sides
- creation of joint groups for exchange of views on the military situation on the peninsula

I believe it is also necessary to discuss simultaneously American military presence in Korea. As it is well-known, the United States repeatedly planned to reduce their military presence in the ROK. Thus, the Nixon doctrine called for a gradual withdrawal of a portion of American armed forces from the South. One American division was withdrawn. However, the total withdrawal of the army units planned for 1975 did not materialize. After defeat in Vietnam Washington resumed its strategy of a permanent military presence in the ROK.

The Carter administration had a five-year withdrawal plan for American armed forces in Korea. With the completion of the plan only 18,000 military personnel (mainly Air Force Units) would have been left on the peninsula. And yet this plan was not realized-due to the resistance of the ROK, American military, and right-wing political circles.

The Bush administration for its part promised to implement a 8-stage reduction of American troops in the South. During the first stage (three years), the reduction was supposed to be 7,000; in the second stage (from three to five years) -depending on the progress in a dialogue the DPRK-ROK - further reduction; during the third stage (from five to ten years) -reduction to the minimal deterrence level.

So, the issue of reduction of American military presence is not new and stages of its possible reduction have been already examined by the American side.

Working Group on the Non-Nuclear Status of the Korean Peninsula and Creation of a Zone Free from All Types of Mass Destruction Weapons. The North Korean nuclear problems, though temporarily "closed," are not however fully settled. IAEA continues to perform its functions of control over the North Korean nuclear program. Besides, the idea of securing the non-nuclear status of the Korean peninsula remains on the agenda. This is a rather old idea. The Soviet Union many years ago proposed to create a nuclear-free zone on the Korean Peninsula.

The USSR suggested the following obligations for the nuclear powers:

- Restraining from own actions and from inciting other states to violate the non-nuclear status of the zone.
- Restraining from utilization or threats of utilization of nuclear weapons against participants of the treaty on the non-nuclear zone.
- Restraining from assistance in the development, production or acquisition of nuclear weapons as well as in training of troops in the nuclear field of the treaty participants.
- Restraining from transfer in a direct or an indirect form of nuclear arms or other nuclear explosion devices to the treaty participants.
- Restraining from deploying or keeping means of delivery of nuclear weapons on the territory of the

non-nuclear zone.

- Follow the ban on the transit of nuclear weapons through the territory of a non-nuclear zone with the understanding that it will not undermine freedom of navigation in the high seas, the right of peaceful passage through territorial waters and the regime of straits used for international navigation.

The Russian side believes that all these obligations can be examined at an international conference and will really help to settle once and forever the issue of nuclear weapons on the Korean peninsula.

The main purpose of this working group is to bring to implementation the Joint Declaration of the North and the South on denuclearization of the Korean peninsula, including repudiation of testing, production, possession, introduction, keeping and deployment of the nuclear weapons as well as realization of the Agreed Framework between the DPRK and the USA.

In order to achieve these purposes the following measures should be worked out:

- promotion of the Joint Declaration between the North and the South on denuclearization of the Korean peninsula
- promotion of the Agreed Framework between the DPRK and the USA
- securing guarantees by nuclear powers of a non-nuclear status of the Korean peninsula
- assisting the Organization on the energy development on the Korean peninsula
- assisting utilization of spent fuel and deliveries of diesel fuel.

In the framework of this group the United States and the DPRK may confirm their adherence to the Geneva accords of October 1994. The United States may confirm absence of American nuclear weapons in South Korea and take an obligation not to introduce these weapons into the ROK. The USA, the ROK and the DPRK may express readiness to conduct international inspections of military facilities on the territory of both parts of Korea with the purpose of confirming absence of nuclear weapons.

The group could equally examine questions, connected with the ban on production, deployment and acquisition by the North and South of chemical and biological weapons, long-range missiles.

The DPRK and the ROK will ratify the Convention on chemical weapons, will join the international regime of control over exports of missiles and missile technology.

Working Group on Normalization of Relations between All State Participants of the Conference: DPRK-US, DPRK-Japan. The group examines issues connected with solution of problems obstructing a full normalization of relations.

Since all the groups work under one "roof" of an international conference it seems feasible to conduct joint meetings of a number of groups to discuss corresponding problems and to find multi-faceted compromises

Recommendations of working groups are sent to the conference sessions at the ministerial level for

approval.

5. Notes

(1) For details, see Natalia Bazhanova. *Between Dead Dogmas and Preotloal Requirements*. Seoul: The Korea Economic Daily, 1992, pp.19-169 (Korean language).

(2) Natalia Bazhanova. "Samaya Zagadochnya voyna XX stoletia. ("The most mysterious war of the XX century"). *New Times*; Moscow, 1996, N 6, p.30.

(3) See Evgueni Bajanov. "Assessing the Politics of the Korean War, 1949-1951." *Cold War International History Project Bulletin*, Woodrow Wilson International Center for Scholars, Washington, DC, Winter 1995-1996, issues 8-7, pp.54,87.

(4) See Natalia Bajanova. "Assessing the conclusion and outcome of the Korean War." Paper at the conference "The Korean War," Washington D.C., July 24-25, 1995, p.?

(5) Ibid, pp.3-10.

(6) See Natalia Bajanova. *Vneshneconomioheskie svyazi KNDR (DPRK's Foreign Economic Relations)*, Moscow: Vostochnaya Literatura, 1993, pp.8-99.

(7) Nikita Khrushchev. *Memuary (Memories)*. Moscow: Mezhdunar'odnye otnoshenia, 1991, pp.842-345.

(8) E'rgueni Bajanov. "Soviet Policy towards South Korea under Gorbachev." *Il Yung Chung* (edit). Korea and Russia. Seoul: The Sejong Institute, 1992, p.63.

(9) For details on the deterioration of Soviet-North Korean relations under Gorbachev see Natalia Bajanova. "North Korea and Seoul-Moscow Relations." *Il Yung Chung* (edit). Korea and Russia, Op. cit., pp.328-346. See also E.Bajanov and N.Bajanova, "Soviet Views on North Korea." *Asian Survey*, Vol. XXXI, N 12, December 1991, pp. 1123-1138.

(10) For details see Yevgueni Bazhanov. *Russia's Changing Foreign Policy*. Cologne, Germany: BIOS, 1996, N 30, pp.12-15.

(11) See Evgueni Bazhanov and Natasha Bazhanova. "The Evolution of Russian-Korean Relations." *Asian Survey*, Vol.XXXIY, N 9, September 1994, pp.792-793.

(12) Evgueni Bajanov (edit). *Rossiisko-Severokoreiskie otnoshenia (Russian-North Korean Relations)*. Moscow: ICIP, 1996, p.20.

(13) Ibid., p.21.

(14) Ibid., p.23.

(15) Ibid., pp.25-26.

(16) KNCA, Pyongyang, Oct.4, 1994, quoted from: SAS FE/2 D/4, October 5, 1994.

(17) The DPRK Report. May-June 96, Moscow: ICIP, p.3.

(18) Ibid.

(19) Ibid.

(20) R.Ivanov, "Koreiisky factor" (The Korean Factor). Patri August 10, 1996, p.3.

(21) E.Bajanov (edit). Problemi Obespeohenia Bezopasnosti severo-vostochnoi Azii (Problems of Security in the North-Asia). Moscow: ICIP, 1996, pp.23.

(22) Ibid., p. 16.

III. NAPSNet Invites Your Responses

The Northeast Asia Peace and Security Network invites your responses to this essay. Below are a few questions that some readers may find useful in putting the issues raised by the essay into a critical light. Please send responses to: napsnet@nautilus.org. Responses will be considered for redistribution to the network only if they include the author's name, affiliation, and explicit consent.

* Prof. Bajanov discusses Russia's long history of involvement in Korean affairs. Does this history justify the greater role in current events that Russia seeks and Prof. Bajanov supports?

* Prof. Bajanov notes that recent efforts by Russia to revive its historically close relations with the DPRK are motivated in part by "envy towards American activities in the DPRK." Does Russia have a legitimate basis to fear growing US hegemony over the Korean peninsula, or is there a contradiction between such "envy" and Russia's continuing efforts to build political, economic and even military ties with the ROK?

* Prof. Bajanov argues that Russia actually will help improve its relations with the ROK by restoring close ties to the DPRK, thereby regaining leverage over the DPRK that the ROK values. Is this a wise policy prescription?

* In the wake of the DPRK's agreement to attend a "preliminary" four-party peace talks meeting, Russian Foreign Minister Yevgeniy Primakov on July 24 indicated that Russia now supports the four-party formula, while still maintaining that a role for Russia in negotiations is vital to the achievement of peace on the Korean peninsula. [See "[Russia Supports Four-Party Talks](#)" in the US section of the July 24 NAPSNet Daily Report.] Does Primakov's position represent a tactical retrenchment from or a genuine abrogation of Prof. Bajanov's observation that "Moscow's opposition to the four-power talks will not soften"?

* Prof. Bajanov observes that the ROK's interests coincide with Russia's more than with any other great power's because Russia "is virtually the only power honestly desiring unification of Korea." Is this assessment correct? If so, does it imply that the ROK should be advocating a greater Russian role in current negotiations than it is?

* As noted in the introduction, Prof. Bajanov's articulation of the "Russian proposal" to achieve Korean peace and security, envisioning a normalization of relations among the principal involved

states followed by a convening of an international conference with broader participation, bears a distinct resemblance to the proposal discussed by Robert Bedeski in the preceding Policy Forum. Does the convergence of these analyses suggest that the four-power formula alone is too limited in scope to resolve fully the issues generating conflict on the Korean peninsula?

Produced by The Nautilus Institute for Security and Sustainable Development
Northeast Asia Peace and Security Project (NAPSNet@nautilus.org)
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[Debating the DPRK-Taiwan Nuclear Waste Deal](#)



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This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

TAB B

Divider Title: _____

WAR AND NATIONAL DEFENSE

riel shall, or in case of self-defense. In any case, force shall be used only to the extent necessary.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done in the City of Washington this twenty-third day of October in the year of our Lord, nineteen hundred and sixty-two, and of the Independence of the United States of America the one hundred and eighty-seventh.

[SEAL]

JOHN FITZGERALD KENNEDY

DECLARATION NO. 3507

2, 27 F.R. 11525, 77 Stat. 961

AUTHORITY GRANTED AND ORDERS
JED IN PROC. NO. 3504

ident of IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 21st day of November, in the year of our Lord nineteen hundred and sixty-two and of the Independence of the United States of America the one hundred and eighty-seventh.

[SEAL]

JOHN F. KENNEDY

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States 93-475, § 3, Oct. 26, 1974, 88 Stat. 1439.

TRADING WITH THE ENEMY ACT OF 1917

Act Oct. 6, 1917, c. 106, 40 Stat. 411

Sec.

1. Designation of Act.
2. Definitions.
3. Acts prohibited.
4. Licenses to enemy or ally of enemy insurance or reinsurance companies; change of name; doing business in United States.
5. Suspension of provisions relating to ally of enemy; regulation of transactions in foreign exchange of gold or silver, property transfers, vested interests, enforcement and penalties.
6. Alien Property Custodian; general powers and duties.
- 6a. Incurment of expenses by Office of Alien Property Custodian.
- 6b. Payment of expenses by Attorney General.
7. Lists of enemy or ally of enemy officers, directors or stockholders of corporations in United States; acts constituting trade with enemy prior to passage of Act; conveyance of property to custodian; voluntary payment to custodian by holder; acts under order, rule, or regulation.
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9. Claims to property transferred to custodian; notice of claim; filing; return of property; suits to recover; sale of claimed property in time of war or during national emergency.
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26. Allocation of "unallocated interest fund."

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 - (g) Priority of claims.
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38. Shipment of relief supplies; definitions.
39. Retention of properties or interests of Germany and Japan and their nationals; proceeds covered into Treasury; ex gratia payment to Switzerland.
40. Intercustodial conflicts involving enemy property; authority of President to conclude; delegation of authority.
41. Divestment of estates, trusts, insurance policies, annuities, remainders, pensions, workmen's compensation and veterans' benefits; exceptions; notice of divestment.
42. Claims for proceeds from sale of certain certificates: jurisdiction, limitations; divestment of copyrights: "copyrights" defined, rights of licensees and assignees, reproduction rights of United States.

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(b) Effective date of divestment; rights of licensees; transfer of
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(c) Prevesting contracts; exceptions; payment of royalties to Attor-
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(d) Publication of ownership list in Federal Register; effective date of
divestment; succession to ownership of equivalent trademarks.

44. Motion picture prints, transfer of title.

(a) Prints in custody of Library of Congress; exception.

(b) Prints in custody of Attorney General; exception; right of selec-
tion by Library of Congress; disposal of unselected prints by
Attorney General.

(c) Retention, reproduction, and disposal of prints by Library of
Congress.

HISTORICAL AND STATUTORY NOTES

Termination of World War and Emer- gency

The Trading with the enemy Act was
expressly excepted from the operation
and effect of Joint Res. Mar. 3, 1921, c.
136, 41 Stat. 1359, declaring that certain

Acts of Congress, joint resolutions, and
proclamations should be construed as
though the World War had ended and
the then present or existing emergency
expired.

CROSS REFERENCES

Bulgarian, Hungarian and Rumanian property

Covered into Treasury, see 22 USCA § 1631a.

Eligibility for return, see 22 USCA § 1631o.

Claims not considered by Attorney General, see 50 App. USCA § 1982.

Federal tort claims, exception for claims under this Act, see 28 USCA § 2680.
Philippines—

Force and effect of Act, see 22 USCA § 1382.

Indemnification of United States for claims, see 22 USCA § 1384.

Taxation, regulations under this Act pertaining to, see 26 USCA § 911.

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50 App. § 1

WAR AND NATIONAL DEFENSE

§ 1. Designation of Act

This Act [sections 1 to 6, 7 to 39 and 41 to 44 of this Appendix] shall be known as the "Trading with the enemy¹ Act."

(Oct. 6, 1917, c. 106, § 1, 40 Stat. 411.)

¹ So in original. Probably should be capitalized.

CROSS REFERENCES

Federal tort claims, exception for claims under this Act, see 28 USCA § 2680.

LIBRARY REFERENCES

American Digest System

Effect of war on preexisting rights, liabilities, and remedies, see War and National Emergency §§ 10(1) and 10(2).

Enemies' property and property rights in general, see War and National Emergency § 12.

Trade and commerce with enemy in general, see War and National Emergency § 15.

Encyclopedias

Effect of war on preexisting contracts, rights, and remedies, see C.J.S. War and National Defense §§ 14 and 18.

Enemies' property and property rights under statutes, see C.J.S. War and National Defense §§ 26(3) to 26(8).

Trade and commerce with enemy in general, see C.J.S. War and National Defense § 17.

WESTLAW ELECTRONIC RESEARCH

War and National Emergency cases: 402k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

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- Construction
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 - Due process 2
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- Seizure of property, constitutionality 3
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1. Constitutionality—Generally

Section 1 et seq. of this Appendix as originally enacted, and as amended by Act March 28, 1918, Act Nov. 4, 1918, Act

July 11, 1919, and Act June 5, 1920, is strictly a war measure, and finds its sanction in U.S.C.A.Const. Art. 1, § 8, cl. 11, empowering Congress to declare war and make rules concerning captures on land and water. *Stoehr v. Wallace*, N.Y. 1921, 41 S.Ct. 293, 255 U.S. 239, 65 L.Ed. 604. See, also, *Commercial Trust Co. v. Miller*, C.C.A.N.J.1922, 281 F. 804, affirmed 43 S.Ct. 486, 262 U.S. 51, 67 L.Ed. 258.

The government of the United States has power to permit limited commercial intercourse with an enemy at time of war, and to impose such conditions thereon as it sees fit. *Hamilton v. Dillin*, Tenn.1875, 88 U.S. 73, 21 Wall. 73, 22 L.Ed. 528.

Congress has the authority in the exercise of its war powers under the Constitution to enact such legislation as § 1 et seq. of this Appendix. In re *Miller*, C.C. A.N.Y.1922, 281 F. 764, appeal dismissed 43 S.Ct. 519, 262 U.S. 760, 67 L.Ed. 1220.

WAR AND NATIONAL DEFENSE

9. Nature of provisions

Section 1 et seq. of this Appendix is a war measure which creates swift executive and summary procedures, particularly for seizure of property of enemies by legal force as an effective alternative to seizure by military force. *McGrath v. Manufacturers Trust Co.*, N.Y.1949, 70 S.Ct. 4, 338 U.S. 241, 94 L.Ed. 31. See, also, *Brownell v. Kermath Mfg. Co.*, D.C. Mich.1954, 120 F.Supp. 331, affirmed 222 F.2d 577, certiorari denied 76 S.Ct. 84, 350 U.S. 843, 100 L.Ed. 754.

Notwithstanding this section, § 1 et seq. of this Appendix as amended by Act March 28, 1918, § 1, contemplated confiscation of property owned by enemy, and not mere custodianship, especially in view of §§ 6 and 7(e) of this Appendix. *Munich Reinsurance Co. v. First Reinsurance Co. of Hartford*, C.C.A. Conn.1925, 6 F.2d 742, appeal dismissed 47 S.Ct. 458, 273 U.S. 666, 71 L.Ed. 830.

10. Cessation of hostilities, effect

Section 1 et seq. of this Appendix was not terminated by the cessation of hostilities, by Joint Resolution July 2, 1921, declaring state of war between Germany and United States at an end, or by President's proclamation of peace. *Munich Reinsurance Co. v. First Reinsurance Co. of Hartford*, C.C.A. Conn.1925, 6 F.2d 742, appeal dismissed 47 S.Ct. 458, 273 U.S. 666, 71 L.Ed. 830.

No constitutional right of appellant is infringed by the enforcement of § 1 et seq. of this Appendix according to its terms, at any time prior to the ratification of a treaty of peace, notwithstanding the actual cessation of hostilities. *In re Bosse's Estate*, 1921, 200 P. 412, 185 Cal. 666.

11. Activities proscribed

Section 1 et seq. of this Appendix had no application to personal injury action arising out of automobile accident brought by two citizens of the German Reich, temporarily residing in commonwealth of Pennsylvania, in absence of proclamation by President of United States under terms and authority of said sections. *Bernheimer v. Vurpillot*, D.C. Pa.1942, 42 F.Supp. 830.

Section 1 et seq. of this Appendix was not intended to be operative as to or to include noncommercial intercourse. *Kaufman v. Eisenberg*, 1942, 32 N.Y.S.2d 450, 177 Misc. 939.

TRADING WITH ENEMY ACT

50 App. § 2

12. Jurisdiction of courts

Section 1 et seq. of this Appendix contemplates that federal courts may determine whether receiver of foreign association had any title or interest in association's claim against American society, though association's property was in hands of state court by virtue of receivership at time of promulgation of freezing order. *Propper v. Clark*, N.Y.1949, 69 S.Ct. 1333, 337 U.S. 472, 93 L.Ed. 1480, rehearing denied 70 S.Ct. 33, 338 U.S. 841, 94 L.Ed. 514, rehearing denied 72 S.Ct. 289, 342 U.S. 907, 96 L.Ed. 679.

Where all parties to action brought in Federal district court were nonresident aliens, jurisdiction would have to be founded, if at all, either upon specific

provisions of § 1 et seq. of this App., which was alleged to be applicable to the action, or upon provisions of § 1331 of Title 28 giving Federal district court jurisdiction of civil actions in which matter in controversy arises under federal Constitution, laws, or treaties. *Kuerschner & Rauchwarenfabrik, A.G. v. Swiss Bank Corp.*, D.C.N.Y.1954, 126 F.Supp. 669.

Section 1 et seq. of this Appendix took from a commonwealth no right to escheat lands of alien, but required suit therefor to be brought in federal court. *Commonwealth v. Von Zedtwitz*, 1926, 285 S.W. 224, 215 Ky. 413, certiorari denied 47 S.Ct. 243, 273 U.S. 735, 71 L.Ed. 866.

§ 2. Definitions

The word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act [sections 1 to 6, 7 to 39 and 41 to 44 of this Appendix]—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

The words "ally of enemy," as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or

50 App. § 2

WAR AND NATIONAL DEFENSE

resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

The words "United States," as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.

The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act [sections 1 to 6, 7 to 39 and 41 to 44 of this Appendix].

The words "bank or banks," as used herein, shall be deemed to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

The words "to trade," as used herein, shall be deemed to mean—

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.

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TRADING WITH ENEMY ACT

50 App. § 2

(c) Enter into, carry on, complete, or perform any contract,
agreement, or obligation.

(d) Buy or sell, loan or extend credit, trade in, deal with,
exchange, transmit, transfer, assign, or otherwise dispose of, or
receive any form of property.

(e) To have any form of business or commercial communica-
tion or intercourse with.

(Oct. 6, 1917, c. 106, § 2, 40 Stat. 411.)

HISTORICAL AND STATUTORY NOTES

World War I Proclamations Enumerat- ing Enemies

The following Presidential Proclama-
tions issued during World War I de-
clared the partnerships and persons enu-
merated therein to be "enemies":

Proc. Feb. 5, 1918, 40 Stat. 1745.
Proc. May 31, 1918, 40 Stat. 1786.
Proc. Aug. 10, 1918, 40 Stat. 1833.
Proc. Aug. 14, 1918, 40 Stat. 1837.
Proc. Nov. 29, 1918, 40 Stat. 1899.

CROSS REFERENCES

Alien enemies within United States, see 50 App. USCA § 21.
Beginning of war, see USCA Const. Art. 1, § 8, cl. 11.
Commercial intercourse with the enemy, generally, see 50 App. USCA § 7.
Federal tort claims, exception for claims under this Act, see 22 USCA § 2680.
"Member of former ruling family" defined, see 50 App. USCA § 31.
"Unallocated interest fund" defined, see 50 App. USCA § 28.

LIBRARY REFERENCES

American Digest System

Enemies' property and property rights in general, see War and National Emer-
gency § 12.

Trade and commerce with enemy in general, see War and National Emergency
§ 15.

Encyclopedias

Enemies' property and property rights; persons and property within statutes, see
C.J.S. War and National Defense § 26(4).

Trade and commerce with enemy in general, see C.J.S. War and National
Emergency § 17.

WESTLAW ELECTRONIC RESEARCH

War and National Emergency cases: 402k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

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- II. ENEMY—GENERALLY 31-70
- III. RESIDENCE IN ENEMY COUNTRY 71-78

For Detailed Alphabetical Note Index, see the Various Subdivisions.

I. GENERALLY

Subdivision Index

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WAR AND NATIONAL DEFENSE

77, certiorari denied 86 S.Ct. 1461, 384 U.S. 941, 16 L.Ed.2d 539.

In suit to recover stock vested by alien property custodian pursuant to § 1 et seq. of this Appendix, evidence sustained finding that plaintiff had not been "resident within" enemy country at time assets were seized and that plaintiff was therefore not ineligible to recover them. *Kaku Nagano v. Brownell*, C.A.Ill.1954, 212 F.2d 262.

Where wife of permanent United States resident had returned to Japan because of family necessity of giving her children Japanese education and of arranging marriages, according to Japanese tradition, for daughters who could not obtain entry to America under laws of United States, but she had never abandoned her intention to return to her home in United States and to live there permanently with her husband, said wife did not abandon her permanent residence in United States and was not a "resident within" enemy territory within definition of "enemy" contained in this section, so as to preclude her from maintaining action to establish her right, title and interest in shares of corporate stock which were vested in Alien Property Custodian, notwithstanding fact that because of war and other considerations she had remained in Japan for approximately 29 years. *Kaku Nagano v. McGrath*, C.A.Ill.1951, 187 F.2d 759, affirmed 72 S.Ct. 363, 342 U.S. 916, 96 L.Ed. 685.

A naturalized citizen of Italian birth who temporarily returned to Italy in attempt to regain his lost mental health and who was unable to return because of the war, was not "resident" of Italy, an "enemy," "foreign national" or a "national of a designated enemy country" within § 1 et seq. of this Appendix so as to permit seizure of the property by the Alien Property Custodian. *Josephberg v. Markham*, C.C.A.N.Y.1945, 152 F.2d 644.

A Japanese national who entered the United States in 1906, continuously maintaining residence in California until 1942 when he was interned in war relocation camp, solely because he was of Japanese descent and who applied for repatriation to Japan because of mental fear and intimidation, who was repatriated in 1946 and remained in Japan until he returned to United States in 1952, was not a "resident within" Japan for

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purposes of provisions of this section defining an enemy as one resident within a nation with which United States was at war and such individual had right to recover life insurance policy vested in Custodian of Alien Property. *Sumiye Umeki Yamauchi v. Rogers*, D.C.D.C. 1960, 181 F.Supp. 934.

In action under § 1 et seq. of this Appendix by alien, who was born in Japan, but who immigrated to Hawaii, against the Attorney General as successor to the Alien Property Custodian to recover property which had been seized by the Attorney General under § 7 of this Appendix, evidence established that alien was not a resident of Japan or territory of any nation with which the United States was at war during period from December 7, 1941, to May 1954, and was not an "enemy" or an "ally of enemy" within meaning of this section and was therefore entitled to return of

seized property. *Kimiko Arita v. Rogers*, D.C.Hawaii 1959, 173 F.Supp. 17.

An alien residing in the United States at time he was adjudged incompetent, and whose domicile was not changed by court order authorizing him to visit Italy, the place of his birth, did not lose his "residence" or "domicile" in the United States in so leaving the country, and was not an "alien enemy" within meaning of § 1 et seq. of this Appendix so as to entitle Alien Enemy Property Custodian to seize his property in possession of committee. *Matter of Viscomi's Estate*, 1944, 53 N.Y.S.2d 416, 183 Misc. 374.

Opera singer, a subject of Germany, living in the United States before and since the war, was a lawful resident of this country, and not a resident of Germany, within the meaning of this section. *Arndt-Ober v. Metropolitan Opera Co.*, 1918, 169 N.Y.S. 944, 182 App.Div. 513.

§ 3. Acts prohibited

It shall be unlawful—

(a) For any person in the United States, except with the license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this Act [sections 1 to 6, 7 to 39 and 41 to 44 of this Appendix], to trade, or attempt to trade, either directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

(b) For any person, except with the license of the President, to transport or attempt to transport into or from the United States, or for any owner, master, or other person in charge of a vessel of American registry to transport or attempt to transport from any place to any other place, any subject or citizen of an enemy or ally of enemy nation, with knowledge or reasonable cause to believe that the person transported or attempted to be transported is such subject or citizen.

(c) For any person (other than a person in the service of the United States Government or of the Government of any nation, except that of an enemy or ally of enemy nation, and other than such persons or classes of persons as may be exempted hereunder

by the President or by such person as he may direct), to send, or take out of, or bring into, or attempt to send, or take out of, or bring into the United States, any letter or other writing or tangible form of communication, except in the regular course of the mail, and it shall be unlawful for any person to send, take, or transmit, or attempt to send, take, or transmit out of the United States, any letter or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy: *Provided, however,* That any person may send, take, or transmit out of the United States anything herein forbidden if he shall first submit the same to the President, or to such officer as the President may direct, and shall obtain the license or consent of the President, under such rules and regulations, and with such exemptions, as shall be prescribed by the President.

(d) Whenever, during the present war, the President shall deem that the public safety demands it, he may cause to be censored under such rules and regulations as he may from time to time establish, communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country he may from time to time specify, or which may be carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country. Any person who willfully evades or attempts to evade the submission of any such communication to such censorship or willfully uses or attempts to use any code or other device for the purpose of concealing from such censorship the intended meaning of such communication shall be punished as provided in section sixteen of this Act [section 16 of this Appendix].

(Oct. 6, 1917, c. 106, § 3, 40 Stat. 412.)

HISTORICAL AND STATUTORY NOTES

Delegation of Functions

Delegation of President's powers under subsec. (a) of this section to the Secretary of the Treasury and the Alien Property Custodian; and transfer of Alien Property Custodian's powers to the Attorney General, see Ex.Ord. No. 9788, set out under section 6 of this Appendix.

All powers conferred upon the President by subsec. (a) of this section were

delegated to the Secretary of the Treasury by Memorandum of the President dated Feb. 12, 1942, 7 Fed.Reg. 1409.

World War II Alien Property Custodian
Reestablishment and termination of Office of Alien Property Custodian during World War II, see notes under section 6 of this Appendix.

CROSS REFERENCES

Carriage of matter out of mail on vessels, see 18 USCA § 1695.

Enemy or ally of enemy officers, directors or stockholders of U.S. corporations, see 50 App. USCA § 7.

Federal tort claims, exception for claims under this Act, see 28 USCA § 2680.

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of United States entered into on April 21, 1949, was, when approved by Supreme Commander for the Allied Forces, approved by an agent of the President of the United States as Commander-in-Chief in time of war and did not require a license and would be enforced by District Court. *Japanese Government v. Commercial Cas. Ins. Co.*, D.C.N.Y.1951, 101 F.Supp. 243.

8. Offenses within section

This section defines two separate offenses: First, bringing in or sending out of the United States a letter in any other way than in the regular course of mail; and, second, sending out of the United States in any way a communication intended for an enemy or ally of enemy. *Welsh v. U.S.*, C.C.A.N.Y.1920, 267 F. 819, mandamus denied 41 S.Ct. 6, 254 U.S. 607, 65 L.Ed. 435, certiorari denied 41 S.Ct. 9, 254 U.S. 637, 65 L.Ed. 451.

9. Search and seizure

Where defendant was arrested in commission of a felony by bringing a letter into the United States in violation of this section, it was lawful to seize such letter from his person as an instrument of crime. *Welsh v. U.S.*, C.C.A.N.Y.1920, 267 F. 819, mandamus denied 41 S.Ct. 6, 254 U.S. 607, 65 L.Ed. 435, certiorari denied 41 S.Ct. 9, 254 U.S. 637, 65 L.Ed. 451.

10. Transfers in contemplation of war

Genuine transfers of property in contemplation of war to avoid its normal consequences are valid if finally consummated before the nation is at war and without thought of subsequent modification. *Standard Oil Co., N.J. v. Markham*, D.C.N.Y.1945, 64 F.Supp. 656, modified on other grounds 163 F.2d 917, certiorari denied 68 S.Ct. 901, 902, 333 U.S. 873, 92 L.Ed. 1149.

11. Voting proxies

Voting for corporation directors on French stockholders' proxies executed in France, transmitted, and received by resident holders before United States entered war, was not violation of § 1 et seq. of this Appendix as permitting control over management of property or business enterprise in United States by persons chosen by individuals who subsequently became nonresident enemies within § 1 et seq. of this Appendix. *Aldridge v. Franco-Wyoming Securities*

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Corporation, 1943, 31 A.2d 246, 27 Del.Ch. 80.

Section 1 et seq. of this Appendix did not specifically determine whether voting proxies executed by shareholders of a Delaware corporation, citizens and residents of occupied France, and mailed

from unoccupied France to the United States before outbreak of hostilities between United States and Germany were invalidated upon outbreak of hostilities. *Aldridge v. Franco-Wyoming Securities Corporation*, 1942, 26 A.2d 544, 26 Del.Ch. 213.

§ 4. Licenses to enemy or ally of enemy insurance or reinsurance companies; change of name; doing business in United States

(a) Every enemy or ally of enemy insurance or reinsurance company, and every enemy or ally of enemy, doing business within the United States through an agency or branch office, or otherwise, may, within thirty days after the passage of this Act [Oct. 6, 1917], apply to the President for a license to continue to do business; and, within thirty days after such application, the President may enter an order either granting or refusing to grant such license. The license, if granted, may be temporary or otherwise, and for such period of time, and may contain such provisions and conditions regulating the business, agencies, managers and trustees and the control and disposition of the funds of the company, or of such enemy or ally of enemy, as the President shall deem necessary for the safety of the United States; and any license granted hereunder may be revoked or regranted or renewed in such manner and at such times as the President shall determine: *Provided, however*, That reasonable notice of his intent to refuse to grant a license or to revoke a license granted to any reinsurance company shall be given by him to all insurance companies incorporated within the United States and known to the President to be doing business with such reinsurance company: *Provided further*, That no insurance company, organized within the United States, shall be obligated to continue any existing contract, entered into prior to the beginning of the war, with any enemy or ally of enemy insurance or reinsurance company, but any such company may abrogate and cancel any such contract by serving thirty days' notice in writing upon the President of its election to abrogate such contract.

For a period of thirty days after the passage of this Act [Oct. 6, 1917], and further pending the entry of such order by the President, after application made by any enemy or ally of enemy insurance or reinsurance company, within such thirty days as above provided, the provisions of the President's proclamation of April sixth, nineteen hundred and seventeen, relative to agencies in the United States of certain insurance companies, as modified by the provisions of the President's proclamation of July thirteenth, nineteen

hundred and seventeen, relative to marine and war-risk insurance, shall remain in full force and effect so far as it applies to such German insurance companies, and the conditions of said proclamation of April sixth, nineteen hundred and seventeen, as modified by said proclamation of July thirteenth, nineteen hundred and seventeen, shall also during said period of thirty days after the passage of this Act [Oct. 6, 1917], and pending the order of the President as herein provided, apply to any enemy or ally of enemy insurance or reinsurance company, anything in this Act [sections 1 to 6, 7 to 39, and 41 to 44 of this Appendix] to the contrary notwithstanding. It shall be unlawful for any enemy or ally of enemy insurance or reinsurance company, to whom license is granted, to transmit out of the United States any funds belonging to or held for the benefit of such company or to use any such funds as the basis for the establishment directly or indirectly of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

For a period of thirty days after the passage of this Act [Oct. 6, 1917], and further pending the entry of such order by the President, after application made within such thirty days by any enemy or ally of enemy, other than an insurance or reinsurance company as above provided, it shall be lawful for such enemy or ally of enemy to continue to do business in this country and for any person to trade with, to, from, for, on account of, on behalf of or for the benefit of such enemy or ally of enemy, anything in this Act [said sections] to the contrary notwithstanding: *Provided, however,* That the provisions of sections three and sixteen hereof [sections 3 and 16 of this Appendix] shall apply to any act or attempted act of transmission or transfer of money or other property out of the United States and to the use or attempted use of such money or property as the basis for the establishment of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

If no license is applied for within thirty days after the passage of this Act [Oct. 6, 1917], or if a license shall be refused to any enemy or ally of enemy, whether insurance or reinsurance company, or other person, making application, or if any license granted shall be revoked by the President, the provisions of sections three and sixteen hereof [sections 3 and 16 of this Appendix] shall forthwith apply to all trade or to any attempt to trade with, to, from, for, by, on account of, or on behalf of, or for the benefit of such company or other person: *Provided, however,* That after such refusal or revocation, anything in this Act [said sections] to the contrary notwithstanding, it shall be lawful for a policyholder or for an insurance company, not an enemy or ally of enemy, holding insur-

D NATIONAL DEFENSE

and war-risk insurance, or as it applies to such provisions of said proclamation, as modified by seven hundred and seventy days after the passage of order of the President as to any of enemy insurance or [sections 1 to 6, 7 to 39, vary notwithstanding. It of enemy insurance or granted, to transmit out to or held for the benefit of as the basis for the credit within or outside of, or on behalf of, or on

passage of this Act [Oct. 6, in order by the President, says by any enemy or ally reinsurance company as enemy or ally of enemy y and for any person to on behalf of or for the anything in this Act [said *Provided, however, That* n hereof [sections 3 and act or attempted act of her property out of the d use of such money or t of any credit within or enefit of, or on behalf of, my.

days after the passage of be refused to any enemy reinsurance company, or y license granted shall be s of sections three and appendix] shall forthwith le with, to, from, for, by, benefit of such company at after such refusal or ections] to the contrary t policyholder or for an of enemy, holding insur-

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ance or having effected reinsurance in or with such enemy or ally of enemy insurance or reinsurance company, to receive payment of, and for such enemy or ally of enemy insurance or reinsurance company to pay any premium, return premium, claim, money, security, or other property due or which may become due on or in respect to such insurance or reinsurance in force at the date of such refusal or revocation of license; and nothing in this Act [said sections] shall vitiate or nullify then existing policies or contracts of insurance or reinsurance, or the conditions thereof; and any such policyholder or insurance company, not an enemy or ally of enemy, having any claim to or upon money or other property of the enemy or ally of enemy insurance or reinsurance company in the custody or control of the alien property custodian, hereinafter provided for, or of the Treasurer of the United States, may make application for the payment thereof and may institute suit as provided in section nine hereof [section 9 of this Appendix].

(b) During the present war, no enemy, or ally of enemy, and no partnership of which he is a member or was a member at the beginning of the war, shall for any purpose assume or use any name other than that by which such enemy or partnership was ordinarily known at the beginning of the war, except under license from the President.

Whenever, during the present war, in the opinion of the President the public safety or public interest requires, the President may prohibit any or all foreign insurance companies from doing business in the United States, or the President may license such company or companies to do business upon such terms as he may deem proper.

(Oct. 6, 1917, c. 106, § 4, 40 Stat. 413.)

HISTORICAL AND STATUTORY NOTES

References in Text

Proclamation of April 6, 1917, 40 Stat. 1654, and Proclamation of July 13, 1917, 40 Stat. 1684, referred to in subsec. (a), are set out as notes under this section.

Transfer of Functions

Functions of the Alien Property Custodian and the Office of Alien Property

Custodian, except those relating to property or interest in the Philippines, are now vested in the Attorney General. See notes under section 6 of this Appendix.

PROCLAMATIONS

PROCLAMATION OF APRIL 6, 1917

40 STAT. 1654

WHEREAS, certain insurance companies, incorporated under the laws of the

German Empire, have been admitted to transact the business of insurance in var-

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Note 4

A license which was issued by the Secretary of the Treasury pursuant to Executive Order No. 8389, set out as a note under § 95a of Title 12, and which authorized attorney in fact of resident of Lithuania to effect all "transactions" under power of attorney incident to representing the resident of Lithuania in estate proceedings, did not authorize attorney in fact to bring proceeding to compel administrator to render and settle his account under § 7 of this Appendix which permits suits in the case of persons licensed to do business under § 1 et seq. of this Appendix. In re Willer's Estate, 1942, 37 N.Y.S.2d 906, 179 Misc. 169.

§ 5. Suspension of provisions relating to ally of enemy; regulation of transactions in foreign exchange of gold or silver, property transfers, vested interests, enforcement and penalties

(a) The President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this Act [sections 1 to 6, 7 to 39 and 41 to 44 of this Appendix] so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof [section 4(a) of this Appendix], and to perform any act made unlawful without such license in section three hereof [section 3 of this Appendix], and to file and prosecute applications under subsection (b) of section ten hereof [section 10(b) of this Appendix]; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act [said sections]; and the President may exercise any power or authority conferred by this Act [said sections] through such officer or officers as he shall direct.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof [section 3 of this Appendix] he shall have authority to order the

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A license authorizes an alien enemy insurance company, in liquidation, to maintain actions designed to bring in assets growing out of its business within United States prior to the issuance of such license. Nord Deutsche Ins. Co. of Hamburg, Germany v. John L. Dudley, Jr., Co., 1918, 172 N.Y.S. 154, 104 Misc. 365.

5. Time limitation for communications

Communication with the enemy relating to routine matters of insurance business was lawful under subsec. (a) of this section for a period of thirty days after passage of § 1 et seq. of this Appendix. U.S. v. Meinel, D.C.N.Y. 1919, 256 F. 396.

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WAR AND NATIONAL DEFENSE

A license authorizes an alien enemy insurance company, in liquidation, to maintain actions designed to bring in assets growing out of its business within United States prior to the issuance of such license. *Nord Deutsche Ins. Co. of Hamburg, Germany v. John L. Dudley, Jr., Co.*, 1918, 172 N.Y.S. 154, 104 Misc. 365.

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relating to ally of enemy; regulation of foreign exchange of gold or silver, interests, enforcement and pen-

and it compatible with the safety of successful prosecution of the war, provisions of this Act [sections 1 and 2] so far as they apply to an order or renew such suspension from may grant licenses, special or and for such period of time and conditions as he shall prescribe, to do business as provided in of [section 4(a) of this Appendix], lawful without such license in this Appendix], and to file and section (b) of section ten hereof and he may revoke or renew such shall be of opinion that such grant compatible with the safety of the full prosecution of the war; and actions, not inconsistent with law, carry out the provisions of this section may exercise any power or [sections] through such officer

able cause to believe that any violation of section three hereof shall have authority to order the

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postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

(b)(1) During the time of war, the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the

United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof. *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

(4) The authority granted to the President in this subsection does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise controlled for export under section 5 of the Export Administration Act of 1979 [section 2404 of this Appendix] or with respect to which no acts are prohibited by chapter 37 of Title 18, United States Code [18 U.S.C.A. § 791 et seq.].

(Oct. 6, 1917, c. 106, § 5, 40 Stat. 415; Sept. 24, 1918, c. 176, § 5, 40 Stat. 966; Mar. 9, 1933, c. 1, § 2, 48 Stat. 1; May 7, 1940, c. 185, § 1, 54 Stat. 179; Dec. 18, 1941, c. 593, Title III, § 301, 55 Stat. 839; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Dec. 28, 1977, Pub.L. 95-223, Title I, §§ 101(a), 102, 103(b), 91 Stat. 1625, 1626; Aug. 23, 1988, Pub.L. 100-418, Title II, § 2502(a)(1), 102 Stat. 1371.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1941 Act. House Committee Report, see 1941 U.S.Code Cong.Service, p. 1029.

1977 Act. Senate Report No. 95-466, see 1977 U.S.Code Cong. and Adm.News, p. 4540.

1988 Act. House Conference Report No. 100-576, see 1988 U.S.Code Cong. and Adm.News, p. 1547.

Codifications

Words " , including the Philippine Islands, and the several courts of first in-

stance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas" following "to the jurisdiction thereof:" in subsec. (b)(3) were omitted upon the authority of 1946 Proc. No. 2695, which granted the Philippine Islands independence, and which was issued pursuant to section 1394 of Title 22,

UNITED STATES CODE ANNOTATED

TITLE 50 APPENDIX

WAR AND NATIONAL DEFENSE

Act

Sec.

Decorations, etc., for Merchant Marine [Repealed]	751
Temporary Appointments, Promotions, etc., of Navy, Marine Corps, and Coast Guard Officers [Omitted or Repealed]	806
Temporary Appointments of Army Nurse Corps Members, etc., as Officers of Army of the United States [Omitted]	1591
Admiral in the Coast Guard [Repealed]	1721
Emergency Ship Repair Program [Repealed]	2391

TRADING WITH THE ENEMY ACT OF 1917

Act Oct. 6, 1917, c. 106, 40 Stat. 411

§ 4. Licenses to enemy or ally of enemy insurance or reinsurance companies; change of name; doing business in United States

LIBRARY REFERENCES

Encyclopedias
Regulation of foreign insurers, generally, see C.J.S. Insurance §§ 74 to 84.

§ 5. Suspension of provisions relating to ally of enemy; regulation of transactions in foreign exchange of gold or silver, property transfers, vested interests, enforcement and penalties

[See main volume for text of (a)]

(b)(1) During the time of war, the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

[See main volume for text of (A) and (B); (2), and (3)]

(4) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 5 of the Export Administration Act of 1979 [section 2404 of this Appendix], or under section 6 of that Act [section 2405 of this Appendix] to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18, United States Code [18 U.S.C. § 791 et seq.]

(As amended Pub.L. 103-236, Title V, § 525(b)(1), Apr. 30, 1994, 108 Stat. 474.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports	Amendments
1994 Acts. Senate Report No. 103-107 and House Conference Report No. 103-482, see 1994 U.S. Code Cong. and Adm. News, p. 302.	1994 Amendments. Subsec. (b)(4). Pub.L. 103-236, § 525(b)(1), inserted provision that the authority of the President under this section be

Cite this Book by Title Number
Section Thru: 50 App. U.S.C.A.

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TAB C

Divider Title: _____

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Appendix 6

Security Council Resolutions 82, 83 and 84 (June–July 1950) authorising UN intervention in Korean civil war

82 (1950). Resolution of 25 June 1950
[S/150]

The Security Council,

Recalling the finding of the General Assembly in its resolution 293 (IV) of 21 October 1949 that the Government of the Republic of Korea is a lawfully established government having effective control and jurisdiction over that part of Korea where the United Nations Temporary Commission on Korea was able to observe and consult and in which the great majority of the people of Korea reside; that this Government is based on elections which were a valid expression of the free will of the electorate of that part of Korea and which were observed by the Temporary Commission; and that this is the only such Government in Korea,

Mindful of the concern expressed by the General Assembly in its resolutions 195 (III) of 12 December 1948 and 293 (IV) of 21 October 1949 about the consequences which might follow unless Member States refrained from acts derogatory to the results sought to be achieved by the United Nations in bringing about the complete independence and unity of Korea; and the concern expressed that the situation described by the United Nations Commission in Korea in its report menaces the safety and well-being of the Republic of Korea and of the people of Korea and might lead to open military conflict there,

Noting with grave concern the armed attack on the Republic of Korea by forces from North Korea,

Determines that this action constitutes a breach of the peace; and

I

*Calls for the immediate cessation of hostilities;
Calls upon the authorities in North Korea to withdraw forthwith their
armed forces to the 38th parallel;*

II

Requests the United Nations Commission on Korea:

- (a) To communicate its fully considered recommendations on the situation with the least possible delay;
- (b) To observe the withdrawal of North Korean forces to the 38th parallel;
- (c) To keep the Security Council informed on the execution of this resolution;

III

Calls upon all Member States to render every assistance to the United Nations in the execution of this resolution and to refrain from giving assistance to the North Korean authorities.

*Adopted at the 473rd meeting
by 9 votes to none, with 1
abstention (Yugoslavia).*

83 (1950). Resolution of 27 June 1950
[S/1511]

The Security Council

Having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace,

Having called for an immediate cessation of hostilities,

Having called upon the authorities in North Korea to withdraw forthwith their armed forces to the 38th parallel,

Having noted from the report of the United Nations Commission on Korea that the authorities in North Korea have neither ceased hostilities nor withdrawn their armed forces to the 38th parallel, and that urgent military measures are required to restore international peace and security,

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*Adopted at the 473rd meeting
by 9 votes to none, with 1
abstention (Yugoslavia).*

of 27 June 1950

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national peace and security,

Security Council Resolutions 82, 83 and 84

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Having noted the appeal from the Republic of Korea to the United Nations for immediate and effective steps to secure peace and security,

Recommends that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area.

*Adopted at the 474th meeting
by 7 votes to 1 (Yugoslavia).*

84 (1950). Resolution of 7 July 1950

[S/1588]

The Security Council,

Having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace,

Having recommended that Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area,

1. *Welcomes* the prompt and vigorous support which Governments and peoples of the United Nations have given to its resolution 82 (1950) and 83 (1950) of 25 and 27 June 1950 to assist the Republic of Korea in defending itself against armed attack and thus to restore international peace and security in the area;

2. *Notes* that Members of the United Nations have transmitted to the United Nations offers of assistance for the Republic of Korea;

3. *Recommends* that all Members providing military forces and other assistance pursuant to the aforesaid Security Council resolutions make such forces and other assistance available to a unified command under the United States of America;

4. *Requests* the United States to designate the commander of such forces;

5. *Authorizes* the unified command at its discretion to use the United Nations flag in the course of operations against North Korean forces concurrently with the flags of the various nations participating;

6. *Requests* the United States to provide the Security Council with reports as appropriate on the course of action taken under the unified command.

*Adopted at the 476th meeting
by 7 votes to none, with 3
abstentions (Egypt, India,
Yugoslavia).*

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TAB D

Divider Title: _____

2370

U. S. Treaties and Other International Agreements [5 UST]

MUTUAL DEFENSE TREATY
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE REPUBLIC OF KOREA

美 合 衆 國
及
大 韓 民 國
間
相 互 防 衛 條 約

The Parties to this Treaty,

Reaffirming their desire to live in peace with all peoples and all governments, and desiring to strengthen the fabric of peace in the Pacific area,

Desiring to declare publicly and formally their common determination to defend themselves against external armed attack so that no potential aggressor could be under the illusion that either of them stands alone in the Pacific area,

Desiring further to strengthen their efforts for collective defense for the preservation of peace and security pending the development of a more comprehensive and effective system of regional security in the Pacific area,

Have agreed as follows:

ARTICLE I

The Parties undertake to settle any international disputes in which they may be involved by peaceful means in such a manner that international peace

本條約의當事國은모든國民과모든政府와平和的으로生活하고저하는希望을再確認하며또한太平洋地域에있어서의平和機構를鞏固시킬것을希望하고當事國中어느一國이太平洋地域에있어서孤立하여있다는幻覺을어떠한潜在的侵略者도가지지않도록外部로부터의武力攻撃에對하여自身의防衛하고저하는共通의決意을公々然히또한正式으로宣言할것을希望하고또한太平洋地域에있어서어긋包括的이고效果的인地域의安全保障組織이發達될때까지平和와安全을維持하고集團의防衛를爲한努力을鞏固시킬것을希望하여다음과같이同意한다.

第一條

當事國之關聯된지도모르는어떠한國際的紛爭이라도國際的平和와安全과正義을危殆를끼하지않는方法으로平和的으로

and security and justice are not endangered and to refrain in their international relations from the threat or use of force in any manner inconsistent with the Purposes of the United Nations, or obligations assumed by any Party toward the United Nations.

ARTICLE II

The Parties will consult together whenever, in the opinion of either of them, the political independence or security of either of the Parties is threatened by external armed attack. Separately and jointly, by self help and mutual aid, the Parties will maintain and develop appropriate means to deter armed attack and will take suitable measures in consultation and agreement to implement this Treaty and to further its purposes.

ARTICLE III

Each Party recognizes that an armed attack in the Pacific area on either of the Parties in territories now under their respective administrative

役에 의하여解決하고 또한國際關係에서 어떤國際聯合의目的이냐當事國이國際聯合에對하여負擔한義務에背馳되지 않는方法으로武力의威脅이나武力의行使를容許하는約束한다.

第 二 條

當事國中 어느 한 국가의政治的獨立 또는安全이外部로부터武力攻擊에 의하여威脅을 받고 있다 고 어느當事國이든지認定할 때에는 언제든지當事國으로서協議한다. 當事國은單獨의나 또는共同으로나自助와相互援助에 의하여武力攻擊을阻止하기爲한適切한手段을持續하여強化시킬것이며本條約을實行하고 그目的을推進한適切한措置는協議와合意下에取할것이다.

第 三 條

各當事國은他當事國의行政支配下에 있는領土가各當事國이他當事國의行政支配下에合法的으로되어改め고認定하든今後의

5 UST] *Korea—Mutual Defense Treaty—Oct. 1, 1953*

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control, or hereafter recognized by one of the Parties as lawfully brought under the administrative control of the other, would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes.

ARTICLE IV

The Republic of Korea grants, and the United States of America accepts, the right to dispose United States land, air and sea forces in and about the territory of the Republic of Korea as determined by mutual agreement.

ARTICLE V

This Treaty shall be ratified by the United States of America and the Republic of Korea in accordance with their respective constitutional processes and will come into force when instruments of ratification thereof have been exchanged by them at Washington.

領土이있어서他當事國에對한
太平洋地域에있어서의武力攻
撃은自國의平和와安全은危
殆를끼치는것이라고認定하고
共通한危險에對處하기爲하
여各者의憲法상의手續에따라
行動할것을宣告한다.

第四條

相互의合意에依하여美合衆國
의陸軍,海軍과空軍은大韓民國
의領土内外그附近에配備하權
利을大韓民國은이것을許與하고
美合衆國은이것을受諾한다.

第五條

本條約은美合衆國과大韓民國
에依하여各者의憲法상의手續에
따라批准되어야하며그批准
書가兩國에依하여외信은이
서交換되었을때에効力은發生
한다.

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U. S. Treaties and Other International Agreements [5 UST]

ARTICLE VI

第六條

This Treaty shall remain in force indefinitely. Either Party may terminate it one year after notice has been given to the other Party.

本條約之無期限ニ有効ナル。
 이二當事國이二其他當事國이
 通告한後一年後에本條約之
 終止시킬수있다.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Treaty.

以上의證據로써下記全權委員
 之本條約에署名한다.

DONE in duplicate at Washington, in the English and Korean languages, this first day of October 1953.

本條約은一九五三年十月一日에
 '서울'에서英文及韓國文으로
 두版本로作成되다.

FOR THE UNITED STATES OF AMERICA:

美合衆國代表者



FOR THE REPUBLIC OF KOREA:

大韓民國代表者


¹JOHN FOSTER DULLES²Y. T. PYUN

WHEREAS the Senate of the United States of America by their resolution of January 26, 1954, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the said Treaty with the following understanding:

"It is the understanding of the United States that neither party is obligated, under Article III of the above Treaty, to come to the aid of the other except in case of an external armed attack against such party; nor shall anything in the present Treaty be construed as requiring the United States to give assistance to Korea except in the event of an armed attack against territory which has been recognized by the United States as lawfully brought under the administrative control of the Republic of Korea."

WHEREAS the text of the aforesaid understanding was communicated by the Government of the United States of America to the Government of the Republic of Korea by a note dated January 28, 1954 ^[1] and was acknowledged by the Government of the Republic of Korea by a note dated February 1, 1954; ^[1]

WHEREAS the said Treaty was duly ratified by the President of the United States of America on February 5, 1954, in pursuance of the aforesaid advice and consent of the Senate and subject to the aforesaid understanding, and was duly ratified also on the part of the Republic of Korea on January 29, 1954;

WHEREAS the respective instruments of ratification of the said Treaty were exchanged at Washington on November 17, 1954, and a protocol of exchange, in the English and Korean languages, was signed at that place and on that date by the respective Plenipotentiaries of the United States of America and the Republic of Korea, the said protocol of exchange recording the aforesaid understanding;

AND WHEREAS it is provided in Article V of the said Treaty that the Treaty will come into force when instruments of ratification thereof have been exchanged at Washington;

Now, THEREFORE, be it known that I, Dwight D. Eisenhower, President of the United States of America, do hereby proclaim and make public the said Mutual Defense Treaty between the United States of America and the Republic of Korea to the end that the same and every article and clause thereof, subject to the understanding hereinbefore recited, shall be observed and fulfilled with good faith, on and after November 17, 1954, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

¹ Not printed.