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<Index>

1. Stress Management of KOREAN MILITARY Leaders

/ **Lim Yeo-jin, Park Gyun-yeol, Bang Won-seok**

2. Study of Concordance between Constitution and Activating Right of SELF-DEFENSE in KOREA

/ **Noh Dong-young**

3. MILITARY use of UAV and International Law

/ **Cho Hong-je**

4. The United Nation's Response Strategy for North KOREA's DENUCLEARIZATION

/ **Jo Sung-gu**

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Stress Management of KOREAN MILITARY Leaders

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Abstract

This study aims to explore some points as follows; first, we examine the emotional management for stress management through the literature review, second, through this, we propose an effective emotional management method for our military leaders themselves. Therefore, in order to exert the leadership well, we emphasized that all naval servicemen should conduct emotional management effectively for stress management in their own self-leadership dimension. In order to do so, we examined the theoretical approach to emotion and the four theories of emotion: from the first theory of evolutionary psychologists, to the fourth theory, the cultural theory of emotions, and the cultural value of emotions.

We pointed out that emotional regulation in our relationship is the beginning of dialogue. In the theoretical background, we also looked at the core emotions that we learn and experience when we were young. In next chapter, the first one is an emotional control method, and the second one is the practice of restoring self-esteem in the injured part. The third is that it takes practice to look for happiness, and finally, it provides a way to practice self-coaching by oneself.

Through this exploratory study, we hope to help our Navy servicemen effectively manage their emotions in order to overcome the stress of military life. Based on the results of this study, further empirical research and case analysis will be presented to help us to manage the stresses of our military leaders and demonstrate good and effective leadership.

[Keywords] *Military Affairs, Emotions, Leadership, Korean Military*

1. Current Situation of Korean Military Leaders

Suicide rates are defined as the deaths deliberately initiated and performed by a person in the full knowledge or expectation of its fatal outcome. Comparability of data between countries is affected by a number of reporting criteria, including how a person's intention of killing themselves is ascertained, who is responsible for completing the death certificate, whether a forensic investigation is carried out, and the provisions for confidentiality of the cause of death. Caution

is required therefore in interpreting variations across countries[1].

It is well known that the suicide rate in Korea is the second top just after Lithuania among OECD countries. About 15,000 people in the Republic of Korea are said to be putting their lives to death every year. Compared to OECD countries by 2016, the average suicide rate among OECD member countries is 12.1 per 100,000. Korea's average suicide rate is more than twice that of 25.8 people suicide per day[2].

In the medical community, Koreans are not

being more depressed, but because they are reluctant to be treated because of prejudice about 'psychiatric treatment'. This is the reason why the suicide rate among the OECD member countries is '1st place' and the treatment of depression is 'the last place'. If depression is left untreated, 15 to 25% of patients will attempt suicide, and 2 to 3% will actually end suicide.

The Korean military is no exception. Every year suicide accident is never ceased. Our Navy has the most combat experience compared to the Army and Air Force. Emotional Exhaustion due to combat stress is a frequently occurring symptom through contact with people. It is caused by excessive psychological demands or burdens[3]. Because the issue of diversity management such as life values is not managed well, emotional exhaustion is appearing to naval soldiers. However, suicide casualties of soldiers are now decreasing, but suicide casualties of officers are increasing.

Especially, the suicide rate of low-rank officers such as first and second lieutenant officers are seriously increasing. It is easy to think that people who pray for suicide are often weak because of their will. However, considering that suicidal ideation is caused not only by the will but also because of the 'brain dysfunction' caused by stress, it is considered that the emotional management that we have to deal with when we are stressed is one of the most important elements. If the suicide accident happens to naval soldiers because they do not manage their emotions properly, it means that it is the loss of combat power in our army. So it is very important to emphasize the importance of emotional control.

In our military, leadership training is conducted in the leadership centers of each army. The content of leadership education includes the ability to reflect on oneself. However, the leadership training program is designed to nurture the leader as a practitioner based on the knowledge transferred. All the education in our military forces is the core essence of training to be a strong warrior who wins if we fight in a battle where we do not know when it will happen. It is

not easy to foster a strong warrior, a practicing leader.

In particular, the soldiers enlisted in our military have been educated in an environment where diversity is respected and often tend to pursue freedom. Therefore, the reality that does not take into consideration individual tendency and temperament in educating these strong warriors after enlistment in the military can interfere with human growth and development. In addition, to carrying out such leadership education, the leaders of the military and followers should manage their own stresses. When we are stressed, we feel various feelings such as anger, hate, sadness, and it becomes difficult to make a reasonable judgment. This will enable us to effectively implement leadership in relationships with others.

The beginning of this study was from the fact that the actual researcher was worried that we learned the contents most directly heard during 13 years of leadership education. Military leaders who met in the classroom were doing a lot of effort to exert their leadership. However, there were many cases in which the emotional management was not done well because of the stress of the leader and the members, the problem of gender, the conflict between the classes, and various experiences.

The researchers recognized that there are many instances of depression or cynicism in the military life. As a result, the researcher became interested in what an effective method of managing emotion for stress management would be.

So this study aims to explore following as: First, we examine the emotional management for stress management through the literature review. Second, through this, we propose an effective emotional management method for Korean military leaders.

2. The Method of Effective Emotion Management

2.1. Taming emotions with habits

People's brains look around where they will feel their familiar feelings again and give meaning and magnification in search of things that fit into their emotions. When it comes to proper timings of emotional habits, it takes more care, recognizes them as important events and makes them remember for a long time, but tries to underestimate and ignore things that cause unfamiliar feelings.

From this point of view, if we were asked, "how did you feel about your day", most of persons will start thinking about what happened today, whether it was good or bad. If bad memories in the brain are dominant, today is a really bad day, and if good memories remain, today is a good day. And when I asked why I felt like that, I recall the memorable situation and say, "Ah! because of such a thing, I was sick for a whole day today! Or you're just really good!"[4].

On the contrary, if we are habituated to feelings of anxiety, we pay more attention to the cause of anxiety, and when something bad happens, we feel much worried and anxious about it. On the other hand, if there is a habit in the feeling of happiness, it means that when the pleasant thing happens, the brain receives a larger interest and enlarges the feeling. In the end, people who become anxious about habits are left with worries when they look back on the day. So people rationalize their bad feeling that they can't help themselves because of these things. In other side, people who appreciates gestures comes to the face of gratitude. In the same way, depending on the habit of emotions, some people interpreted positively, while others interpreted negatively and become anxious, and some would be angry.

If emotional management is not properly habituated here, we should think about what we lose in near future time. The first loss is health. The second is a person. If people can't handle their feelings wisely, they will be far away.

There is a water bottle law of emotion. The

water flows in the bottle. Finally, the water is added to the thin neck. At this moment, when a drop of water falls into the water bottle, the water in it floods instantly. Those who have forcibly pressed their emotions explode emotions even on the trivial. This causes the surrounding people to be embarrassed and far away. The third is the goal. A person who controls her/his emotions does not shake and moves toward the goal step by step.

However, those who do not control their emotions affect not only individual goals but also team goals. If a senior is angry without trying, the atmosphere of the company will be cold and the subordinates will not be able to approach it, and the team's performance will be significantly lowered. And Dr. Paul Ackerman, a professor of psychiatry at the University of California, has also mentioned his research result showing that facial expressions appear when faced with emotion, while facial expressions occur on the other[5].

The simplest and most powerful way to manage depressed emotions is to turn the painful look into a smiling face. It is funny to laugh for delighting, but laughing, and delighting. This is the reason that there is a fatal flaw that our brain can't distinguish between real smile and such as fake smile. Fermentation and corruption are the process by which microorganisms decompose organic matter using their own enzymes, and fermentation and corruption reactions proceed through similar processes. However, the difference is that when decomposition results are produced, substances that are useful for our lives are called fermentation, and when they are made with odorous or harmful substances, they are called corruption. So we say that we have gotten used to the fermentation, and we are corrupt. It is important to recognize that managing and controlling emotions depends on what kind of habit I take, just as it is decided whether it is going to ripe or decay according to the process of decomposition with any microorganism.

2.2. Restoring self-esteem

Self-esteem is like the immune system in our minds. When the body's immune system weakens, we are easily vulnerable to minor external stimuli, and once vulnerable we are more likely to suffer from other diseases. When self-esteem is unstable and low, the same thing happens to our minds. When self-esteem shakes, people lose our strength to advance into the world, and we are overwhelmed by stress more and more long. Just as our body's immune system needs to be cured if it breaks down, when it is shaken by instability and low self-esteem, we need to heal ourselves or ask someone to help us with our healing.

Just as you exercise to maintain your body's immune system and maintain a healthy lifestyle, so is your mind. We need to think about what is needed to activate and strengthen the healthy immune system in our minds. The importance of self-esteem will not help if you do not realize it. The problem of our minds often appears because I cherish and love me a lot. I will praise and cherish me, and I will cherish and treasure others.

Self-esteem is a concept that involves subjective judgment and evaluation of self-worth as a human being. In addition, self-esteem has been treated as a synchronous component of human behavior and has been treated as an important factor in individual's adaptation and development of healthy personality as well as understanding of individual's behavior. In other words, those who are emotionally mature, psychologically healthy, and generally well adapted tend to have self-esteem or a positive self-concept.

The characteristics of adults with high self-esteem have been reported to be high ambitions, high self-esteem, no fear of others' evaluation, and efforts to overcome their limitations without acknowledging their limitations. Conversely, low self-esteem was found to be the strongest influencing factor in violent behavior. Also, the effect of self-esteem on job performance and job satisfaction was verified by integrated analysis. As a result, a person with a high level of self-esteem

is perceived as an opportunity of her/his proficiency and as an opportunity of advantage by challenging the job even if a difficult job is given. On the contrary, a person with low self-esteem is not worthy of opportunity. In addition, the relationship between job satisfaction and self-esteem shows that a higher level of job satisfaction leads to a higher level of self-esteem.

Harry T. Reis, a psychologist, also said defining closeness is "what we experience when we are understood, recognized, and appreciated in our relationships." From the moment of birth, humans have relationships with others, laughing because of relationships, and crying because of relationships. Many of the problems that work and encounter are usually a matter of relationships, not work. Some people say that work is hard and not right, but the people who are with them continue to like it. All of our moments are centered on relationships. Therefore, one should not overlook the fact that a good relationship with others means that life is abundant, full of happiness, and that we respect and love ourselves[6].

2.3. Practicing happiness searching

When was the time to laugh happily while I was in military service? I can't help but think about it for a while. And then we think of the people around us. And I may recall a faint memories of being happy and happy when I am doing something good or excellent, compared to others, or when I have done a good job or got a good performance.

But now, rather than talking to a good person, tasting a drink with a co-worker, getting advice from a mentor of life, sharing with a stranger to the minds of a strange world for service travel, It is a small routine such as laughing, but when I share my mind with people, I feel happy. It is virtually impossible to define what is the true happiness because the standards of happiness are so wide that people are all different. But if there is a dream of everyone who lives in this world, it will be to find true happiness. People have their

own standards and spend their whole lives faithfully searching their lives for the rest of their lives, and some people are already enjoying their happiness. However, there are many people who live in a society where many people live, and unfortunately they do not realize their true happiness and live according to the happiness of others. Then, is it possible to live happily in the world as taking which way? It is virtually impossible to define what is the true happiness because the standards of happiness are so wide that people are all different.

However if there is a dream of everyone who lives in this world, it will be to find true happiness. People have their own standards and spend their whole lives faithfully searching their lives for the rest of their lives, and some people are already enjoying their happiness. However, there are many people who live in a society where many people live, and unfortunately they do not realize their true happiness and live according to the happiness of others. Then, in what stage is it possible to live happily in the world?

Someone suddenly asks me “are you happy?” It is so easy, but it is also a very difficult question. How many people can coolly answer of “Yes, I am happy now!” this unexpected question? In fact, happiness is what anyone wants. But it seems that not many people know the way to true happiness. The ancient Roman poet Horatius said it was *Carpe Diem*, which means ‘enjoy the present’ or ‘pluck the day [as it is ripe]’[7]. The process of finding happiness for every person is different. It is not something that can be judged as right or wrong. It may not always be what you think. But now, as a given soldier, you should enjoy life. Even if the ship is swept away by the wind, as we can get to the destination someday in the right direction, we will feel happiness at every moment given when we live in the purpose of controlling ourselves appropriately.

Leading American psychologists Myers and Diener have published a study that shows that the level of happiness and personal traits can provide a deeper understanding of the causation

of happiness. Myers and Diener have gathered a lot of research results and found that only for the happy people there are four characteristics: First, happy people have a high level of self-esteem and usually think that “they are at a higher level of ethics and knowledge and less prejudice than ordinary people. I also think that interpersonal relationships are more amicable and physically healthier than normal people”. Second, happy people have a strong idea that they can make their own lives through themselves. People who have little room to control their lives, such as those who are in poverty or living under authoritarian regimes, are often more depressed or unhealthy. Third, a happy person has a more optimistic tendency. Fourth, a happy person is more outgoing. These findings are not necessarily absolute standards of happiness[8].

In fact, the answer may be very simple. Because what is happy life? It is because I live only the life I really want. If you want to live slowly, you live slowly. If you want to leave, you want to leave. If you are worthy of promotion rather than being promoted, it is a happy life to live by trying for it.

However, the harder the moment, the more we have to concentrate on ourselves. As a husband or wife, as a father or mother, as a co-worker, I have to check that my style is correct and that I am welcoming this moment positively. There are also research findings that all the wounds of the world feel the ability to cope with revealing of themselves’ wound.

The future is not what we can do. We must recognize that what we can change is only the present self. Therefore, if I adjust myself well, my military life I am doing now will be able to confidently say, “Sometimes it is hard, but I am happy.” Then, we will be able to fill our life with happiness from our family life and military life.

2.4. Self-coaching for oneself

The International Coach Federation(ICF) defines coaching as “partnering with customers in a creative process that inspires and inspires

them to maximize their personal and professional possibilities.” Coaching philosophy is based on diverse human cultures[9]. Considering the comprehensive opinion, there are three philosophies when introducing the coaching philosophy that Korea Coach Association currently offers. First, human beings have infinite potential. Second, you have the answer in front of me. Third, we are partnership. It is self-coaching to connect these coaching philosophies with our own leaders rather than our customers.

Korean military leaders have taken got self-coach themselves by the following methods: First, all leaders have to see their own mind and patterns. Second, all leaders always should be awakened to keep the destination and direction. Third, all leaders always should be ready to change themselves weak points and rebuild their character or personality. Fourth, continuously all leaders have to improve their mind and critical thinking using chunk questions. Fifth, all leaders have to ask to themselves what they really want to do and to become. Sixth, all leaders have to change their mind in the position of other persons. Lastly, all leaders have to practice these courses of action.

3. Suggestion and Conclusion

All military members are at the same time all leaders and followers. In particular in Korean Navy, the leadership education has emphasized core virtues to commanders and cadres who need to direct their subordinates and lead the battle to victory in a limited space of traps.

In order to advance this leadership well, we emphasized that all naval servicemen should conduct emotional management effectively for stress management in their own self-leadership dimension. In order to do so, we covered some theoretical approaches to deal with emotional management. Emotions also affect our judgment, memory, and attitudes toward real situations. And emotions play a key role in communi-

ating with others, including psychological content, and the key elements of emotional intelligence.

This research showed the close relationship between communication and emotions and found that the greatest factor that hinders interpersonal relationships is when the emotions are not controlled properly. In some ways, we pointed out that emotional regulation in our relationship is the beginning of dialogue. In the theoretical background, we also looked at the core emotions that we learn and experience during our young period. There are some points that we must not skip. The first one is an emotional control method, and the second one is the practice of restoring self-esteem in the injured part. The third is that it takes practice to look for happiness, and finally, it provides a way to practice self-coaching by oneself.

The key elements of the effective emotion management method suggested are based on the humans’ typical psychological characteristics. Through this exploratory study, we can devote a little help Korean Navy servicemen to manage their emotions effectively and to overcome the stress during the military life.

4. References

4.1. Journal articles

- [3] Maslach C & Jackson SE. The Measurement of Experienced Burnout. *Journal of Organizational Behavior*, 2(2), 99-113 (1981).
- [6] Reis HT. Steps toward the Ripening of Relationship Science. *Personal Relationships*, 14, 1-23 (2007).
- [8] Myers DG & Diener E. Who is happy?, *Psychological Science*, 6(1), 10-19 (1995).
- [9] Lee SH. The Research for Developing a Treasure Talk coaching Model. *Journal of Korean Coaching Research*, 7(1), 5-35 (2014).

4.2. Books

- [7] Flaccus QH. Carmina Liber I. Carmen XI

(2018).

4.3. Additional references

- [1] <https://data.oecd.org/> (2018).
- [2] <https://data.oecd.org/> (2018).
- [4] <http://www.imbc.com/> (2018).
- [5] <https://www.youtube.com/> (2018).
- [7] <https://en.wikipedia.org/> (2018).

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- The Source of Competitive Advantage: Internal Marketing, *Journal of Information*, 20(4) (2017).
- ROK's Deterrence Strategy against North Korea's Nuclear & Missile Threat-, *Unification Strategy*, 18(1) (2018).

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Study of Concordance between Constitution and Activating Right of SELF-DEFENSE in KOREA

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Abstract

Within the flow of achieve peace in Korean Peninsula, considering current ceasefire system, it is important to know where the use of force is laid in the international law, as well as in Korean Constitutional Law. The interpretation within the Korean Constitutional Law is either to be standardized or to be accorded with. Therefore, when it comes to North Korea, it is wise for South Korea to provide for a rainy day in the point of contact between the International Law and the Korean Constitutional Law. If, the use of force is allowed according to the International law, for the purpose of conservation of Korean national land, and for the purpose of world peace and staying safe, supposing, "any member of the united nations which is not a member of the security council may participate, without vote, in the discussion of any question brought before the security council whenever the latter considers that the interests of that member are specially affected.", under the UN Charter, article 31, "The secretary-general may bring to the attention of the security council any matter which in his opinion may threaten the maintenance of international peace and security." to use of force within the international law, actively invoking the 99th article to our stance is required. And because the armed force is operated within the international law, it is important to interpret the Korean Constitutional Law systematically to avoid any conflicts and yet harmonious. Constitutional limitations are needed to verify the constitutionality of the national interests and the suffering of the people by comparing and punishing the national interests and the public interest through the exercise of the armed force.

[Keywords] *Korean Question, Use of Force, Military Enforcement Action of the Security Council, Issue of Marching North and the Scope of the Right of Self-Defense, Norm-Harmonious Interpretation of the Constitution*

1. Use of Force under International Law

Due to the Treaty regarding the renunciation of war, also called as Kellogg-Briand Treaty, and UN Charter, use of Force is generally prohibited. The right of self-defense would have been an unfamiliar concept back in the Imperialist Era where indiscriminate warfare was prevalent, and International Law failed to control the war. However, in these days where the use of force is generally prohibited under the constitutional mili-

tary enforcement, self-defense rights are emerging as an important concept in International Law.

Article 2-4 of the UN Charter states that the threat of military force or the exercise of the military force is prohibited in any circumstance that is incompatible with the purposes of the United Nations. Exceptions on permitted force exercises are followed by Chapter 7 of the UN Security Council Charter which specifies the threats and destruction of peace and aggression; Article 51

states self-defense Article 42 states military enforcement. In Article 21 of the final draft of the International Criminal Justice Act, UN International Law Committee determined the illegality of the self-defense in 2001.

Let's look at Article 51 of UN Charter; first, self-defense right is only understood when an armed attack occurs to UN member country. This is considered as situational control. Attack of armed force must primarily be judged by each country. Even in times that the attack can be expected, in the literal description, each case cannot be met the requirements; in this case, recognizing the self-defense right is only preventiveⁱ. Also, since UN Charter is recognized as International Law as well, it also applies to non-UN member countries. Since the UN delegation of a country generally reports the self-defense act in official documents, or very rarely in verbal, reporting in official document satisfies Article 51 in a consistency and transparencyⁱⁱ. Fourth, even though it is not literally noted, by saying "...only measures which are proportional to the armed attack and necessary to respond to it...", ICJ ruled that the exercise of self-defense should be the only way to proportionally take action against the attackⁱⁱⁱ. The key notion of self-defense in the International Law is necessity and proportionality.

On the other hand, according to the Chapter 7 of UN Charter, legitimate use of force in Korea War related to the UN troops stationed in South Korea today and it is the first collective security system of United Nation's history. The 82nd of UN Security Council resolution on June 25, 1950, it criticized the North's armed attack of South's legitimate government and demanded the authorities of North Korea to immediately withdraw its troops from South^{iv}. Also, on June 27th, 1950, the 83rd resolution, UN has asked all the member countries to support the South Korean government in every way to repulse invader and find peace in the Korean peninsula^v. On the 84th resolution on July 7th, 1950, it includes; member country have to send their troops to the integrated headquarters in the United States, the US

will appoint the commander, the combatant nation can use their flag as well as UN's, and the US will report the conduct of operations to UN Security Council^{vi}. There are two different views towards above historical events; first is to consider as collective self-defense and second, as military enforcement. Because UN intervened throughout Korean War, it is reasonable to consider troops as the UN forces, to follow the resolution and Chapter 7, to exercise military force under the control of the US according to the 84th resolution^{vii}.

The 82nd and 83rd resolution recognizing the North's attack as peace breaker and asked member country to help and support conform to Article 39 and 40 of UN charter. The 84th resolution is to follow Article 7-2 and Article 29 of UN Charter that as a subsidiary organ, help to form an integrated headquarters managed by the US and battle as a deputy of UN. According to Article 2-6, the exercise of the armed force of UN can be applied even towards non-member countries and based on Article 39 and 40, it defines world peace and its threat, action to maintain peace. Also, Article 42 states enforcement measures toward maintaining or recovery of peace. Article 51 prescribes that the UN Security Council does not violate the right of collective self-defense until the Security Council takes the necessary measures to maintain international peace and security, and clearly distinguishes between the necessary measures and the right to collective self-defense. Back then, it was impossible to carry out the full military enforcement action under Article 42 that even though Chapter 7 was incomplete, it was fulfilled for the first time.

2. Issue of Marching North by the Right of Self-Defense

In Article 51, even though activating self-defense is allowed when the attack occurs, whether to fight back towards entire North Korea or not is stated in the resolution 387th on October 7th, 1950. In detail, the resolution states, The General Assembly, "Recommends that (a)All

appropriate steps be taken to ensure conditions of stability throughout Korea ; (b)All constituent acts be taken, including the holding of elections, under the auspices of the United Nations, for the establishment of a unified, independent and democratic government in the sovereign State of Korea ; (d)United Nations forces should not remain in any part of Korea otherwise than so far as necessary for achieving the objectives specified in sub-paragraphs (a) and (b) above....^{viii}.

When UN Commission for the Unification and Rehabilitation of Korea broke in 1973, some have said the resolution lost its effect to back the evidence of UN troops intervention and yet, their goal to establish a united, independent and democratic government was not completed and is still continued today. Which means, it did not lose its effect and furthermore, it allows the use of armed force for self-defense. However, from the teleological point of view, it is possible to exercise self-defense towards entire North without the resolution of UN Security Council considering Korea's division process, stationed UN troops, ceasefire distinctiveness, the relationship between two Koreas. Also, there is no action of null and void towards resolution 376(v) and there is no difference before and after of North and South Korea registering to UN.

Resolution 377th(Unity resolution for peace) on November 3rd, 1950 was to announce to member countries when UN Security Council fail to perform its mission, it does not mean maintaining peace is broken but to keep it regardless^{ix}. The UN Charter Article 10, 11, 12 explains the responsibility and jurisdiction of the UN General Assembly; when UN Security Council cannot complete its mission, General Assembly can advise maintaining the world peace and its security. When there is a crisis on the Korean peninsula where it needs help from UN Security Council, if China vetoes, it is impossible to act on military enforcement from Chapter 7. In this case, the United Nations can recommend Member States to enforce measures based on the UN Charter and the resolution to maintain international peace and security through the stability of the

Korean peninsula. This is in response to the functional paralysis of the Security Council, which is primarily responsible for international peace and security, and for the purposes of the UN Charter.

Therefore, 1)because UN's mission during the Korean War is still valid, resolution for reconfirming UN's mission until security in Korea is assured is needed, 2)if resolution fails, reconfirming resolution 376 and 377 will get rid of controversy over the effectiveness and gain legality to evoke public opinion towards unification of Korean peninsula. Especially regarding #1, emphasize Article 31("Any member, other than the member of the Security Council, may participate without a vote in any discussion of any matter referred to the Security Council at any time, if the Security Council considers that it specifically affects its interests"), it is very necessary to make efforts to reflect our position as much as possible in consideration of the regulations.

In addition, in the case of marching North, intervention by the right of collective self-defense by China can be possible. North Korea and China have a military automatic intervention clause that provides military aid when one side is attacked through the Treaty of Friendship Cooperation and Mutual Assistance in 1961. The alliance between North Korea and China has weakened as a result of diplomatic relations between South Korea and China, and the interests that China has brought to North Korea due to North Korea's nuclear issue have changed radically and strategically. Yet, such optimism can be misleading as long as the treaty is not amended or abolished by the North Korea accord and China has vital and significant interests in North Korea. If South Korea exercise self-defense toward North Korea, if South Korea alone or intervenes with the United States, it is likely that China will exercise the right to collective self-defense under the above treaty. The exercise of collective self-defense does not necessarily have to be concluded with an alliance treaty, but can also be done at the request of North Korea. The boundaries between the separation of intervention by the ex-

exercise of collective self-defense rights and the intervention by request are blurry, but the legality of intervention is easier if there is an alliance treaty. South Korea have to strongly suggest to abide by the Article 2-4, any use of armed force is prohibited unless it in accordance with Article 2-4 of UN Charter, non-intervention of domestic issue(Article 2-7) and resolution 2131[Declaration on the Prohibition of Interference on the Domestic Problems of the State and Protection of Independence and Sovereignty]^x. Also, if South Korean intervention in the North Korean region is by UN resolution or by North Korea's request, it would not be considered that the exercise of collective self-defense rights in China is sculptured by the UN Charter or self-consent.

3. Exercise of the Right of Self-Defense and Norm-Harmonious Interpretation of the Constitution

3.1. Article 3 of Constitution(Territory Clause)

The territorial clause "The territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands" shall be regarded as the nucleus of the Constitution that has existed since the Constitution. Although there are some opinions that the territorial clause should be revised in accordance with the reality of Article 4 of the peaceful unification clause and the constitutional reality, the territorial clause is intended to overcome the division not belonging to our doctors and to aim for unified Korea, It is the limit of the amendment of the Constitution because it is the constitutional spirit. It is the expression of the sovereignty of the Republic of Korea to the international community that the Constitution of the Supreme Corporate Law of the domestic law states that it cannot give up the territory of the North Korean region. The denial of the North Korean nationality based on the territorial clauses and accordingly the North Korean citizenship as the nationality of the Republic of Korea will assure the international legitimacy of

the exercise of the right to self-defense and the clear role of the international community in the military intervention of the Security Council will be a very important factor that must be accepted. The territorial clause is the strongest and most rational basis against many of the arguments that could be challenged if the exercise of force on the Korean Peninsula is allowed, but the Articles 4 and 5(International Peace) of the Constitution to ensure the uniformity and normative power of the Constitution It is necessary to examine carefully the constitutional regulations that can be grounds for the application such as the attention.

3.2. Article 4 of constitution(peaceful unification clause) and article 5 of con- striction(denying aggressive war)

Since the use of force is prohibited under the International Law, unless the unification is followed by international law, forceful unification is not allowed. It means that self-defenses and intervention of UN Security Council is not an aggressive war and does not violate the world peace treaty but only to follow UN's goal to maintain world peace. Article 4 of the Constitution says " The Republic of Korea shall seek unification and shall formulate and carry out a policy of peaceful unification based on the basic free and democratic order". It is necessary to examine whether the method of unification based on the free democratic basic order is the standard of peaceful unification. The fulfillment of the liberal democratic basic order is based on the principle of exclusion of all violence and arbitrary rule, self-rule of the people by the majority doctors, rule of law based on the principle of freedom and equality, respect for basic human rights, separation of powers, parliamentary system, economic order based on private property and market economy, and independence of jurisdiction^{xi}. "Whether or not the exercise of force in Korea is in conformity with the free democratic basic order is, among other things, the elimination of all violent and arbitrary rulings, Separation of powers will be particularly problematic. International law is not violent or arbitrary, and

there is a fear that the rule of law will be threatened due to the necessity of rapid crisis measures in the crisis situation on the Korean peninsula. Since the due date measures are premised on the principle of separation of powers, the constitutional control can be realized as it is in the exercise of force under international law.

In particular, it should be presumed that the case of North Korea being defended by the right to self-defense can be regarded as the scope of the exercise of the right to self-defense or as an aggression war prohibited in Article 5-1 of the Constitution. It is very difficult to find a description of this area in the discussions of constitutional scholars. It is the constitutional amendment that the North Korean aggression should be started first and the defense war to defend the existence of the Republic of Korea against it. It is an out-of-limit act allowed by the Constitution, and there is an opinion that it should be avoided, terminated and terminated in all possible ways at the stage of the war of war^{xii}.

However, the peaceful unification clause is the practical constitutional one that seeks to discipline the exercise of specific legislative or public power within a reasonable range based on the interpretation of the purpose of the constitution and the constitutional system of the territorial clause and the purpose of the constitution. Constitutional Court once said, "It is the responsibility of the President and the National Assembly to decide whether the war in Iraq is an aggressive war against international norms or not. It would not be desirable for our Constitutional Court to judge"^{xiii}. On the other hand, resolution 3314 on December 14, 1974 regarding definition of aggression^{xiv}, "invasion by one state of another, such as occurred when Iraq invaded Kuwait in August 1990" or "use of a state's military forces, who are deployed in a host state with its consent, in a manner that contravenes such consent" does not mean it fits the resolution. The necessity and proportionality required for the exercise of self-defense power cannot only repel the first

armed attack, but also eliminate the future security threats, taking into account the purpose and characteristics pursued by the self-governing powers, the duration and scope of the exercise of self-defense rights can be determined in consideration of the situation necessary for ensuring safety against armed attacks and threats^{xv}. Also, article 61 of ceasefire agreement states "Each provision of the Armistice Agreement shall remain in force until such time as either party is expressly superseded by the provisions of the appropriate agreement for amendment and supplementation or peaceful settlement at the political level of both parties."; however, according to Hague Convention and land warfare article 40, "Each provision of the Armistice Agreement shall remain in force until such time as either party is expressly superseded by the provisions of the appropriate agreement for amendment and supplementation or peaceful settlement at the political level of both parties.", in the case of the armed attack against North Korea's armistice agreement, abrogating the armistice agreement (the idea of North Korea based on the ceasefire is meaningless) and exercising its right to self-defense is not a violation of the armistice agreement but exercises the rights of the Second Hague Convention.

In conclusion, North Korea by its right to self-defense is not a war of aggression, which declares the territory of the Republic of Korea as a Korean peninsula, the strict and consistent domestic measures such as laws and unification provisions, and the international peacekeeping clause, The UN forces established by UN Security Council Resolution 84, and UN General Assembly resolution 376, that the UN forces could be stationed throughout the Korean Peninsula to achieve their mission, and that the UN Charter, Article 2, Or political independence "of the Constitution, it will not be a matter of either the Constitution or the international law, considering the fact that the Constitution is compatible with the Constitution.

4. Analysis of Standardized Interpretation of the Constitution and Use of Force upon International Law

Unbelievable scenes from the Inter-Korea Summit talks on April 27th seems like deadly war between the two Korea belongs to a different age. On top of that, the first meeting on June 12th between the president of world's most powerful country – the United States and the poorest nation's North Korean summit shows that North Korea wants to become an ordinary country in the international community. Within the flow of achieve peace in Korean Peninsula, considering current ceasefire system, it is important to know where the use of force is laid in international law, as well as in Korean Constitutional Law. The interpretation within the Korean Constitutional Law is either to be standardized or to be accorded with. Therefore, when it comes to North Korea, it is wise for South Korea to provide for a rainy day in the point of contact between the International Law and the Korean Constitutional Law. If, the use of force is allowed according to the International law, for the purpose of conservation of Korean national land, and for the purpose of world peace and staying safe, supposing, "any member of the united nations which is not a member of the security council may participate, without vote, in the discussion of any question brought before the security council whenever the latter considers that the interests of that member are specially affected.", under the UN Charter, article 31, "The secretary-general may bring to the attention of the security council any matter which in his opinion may threaten the maintenance of international peace and security." to use the armed force within international law, actively invoking the 99th clause to our stance is required. And because the armed force is operated within international law, it is important to interpret the Korean Constitutional Law systematically to avoid any conflicts and yet harmonious. Constitutional limitations are needed to verify the constitutionality of the national interests and the suffering of

the people by comparing and punishing the national interests and the public interest through the exercise of the armed force.

5. References

5.1. Journal articles

- [2] Green JA. Article 51 Reporting for Self-defense Actions, *Virginia Journal of International Law*, 55(3), 571-572 (2015).

5.2. Books

- [7] Georg S. A Manual of International Law. Stevens (1967).
[12] Kim SD. Constitutional Study. Bupmoonsa (2015).
[15] Sean D. Murphy, Principles of International Law. Second Edition, West (2012).

5.3. Additional references

- [1] Malcolm N. Shaw, International Law, 7th ed, Cambridge University (2014).

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- UN's Contribution to the Korean Question and Its Participation in Crisis Situations of North Korea, *Defense Policy Studies*, 113 (2016).
- Position and Roles of the United Nations Command in the Korean Question, *Defense Studies*, 60(4) (2017).
- The North Korean Nuclear Problem and Disarmament of Outer Space, *Korean Journal of Air and Space Law and Policy*, 32(2) (2017).
- The Korean Question and the Role of the UN in International Law, *Korean Journal of International Law*, 62(2) (2017).
- Brief Ideas on the Legislative-policy for the Law Education of North Korean Defectors, *Law and Politics Studies*, 18(3) (2018).

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ⁱ Malcolm N. Shaw, *International Law*, 7th ed, Cambridge Univ. Press, 2014, p.826. ; Department of Defense(Office of General Counsel), *Law of War Manual*, 2015, p.47.

ⁱⁱ James A. Green, *Article 51 Reporting for Self-Defense Actions*, *Virginia Journal of International Law*, Vol. 55:3, 2015, pp. 571-572.

ⁱⁱⁱ *Case concerning Military and Paramilitary Activities in and against Nicaragua*, para.200, *Nicaragua v. United States*, ICJ, 1986.

^{iv} UN Security Council S/Res/82(1950), “Complaint of aggression upon the Republic of Korea”

^v UN Security Council S/Res/83(1950), “Complaint of aggression upon the Republic of Korea”

^{vi} UN Security Council S/Res/84(1950), “Complaint of aggression upon the Republic of Korea”

^{vii} Georg Schwarzenberger, *A Manual of International Law*, London : Stevens, 1967, p.297 ; Rosalyn Higgins, *United Nations Peacekeeping : documents and commentary 1946-1967*, v.2, London : Oxford Univ. Press, 1969-1981, p.178. ; Sean D. Murphy, *Principles of International Law*, Second Edition, West, 2012, p.507. Simon Chesterman . Ian Johnstone . David M. Malone, *Law and Practice of the*

United Nations(Documents and Commentary), Second Edition, Oxford Univ. Press, 2016, p.21.

^{viii} UN General Assembly A/Res/376(V), “The problem of the independence of Korea”

^{ix} UN General Assembly A/Res/377(V), “Uniting for peace”

^x UN General Assembly A/Res/2131(X X), “Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty”

^{xi} Constitutional Court 1990. 4. 2, 89헌가113

^{xii} Kim Seung-dae, *Constitutional Study*, Bupmoonsa, 2015, P.97.

^{xiii} Constitutional Court 2004. 4. 29, 2003헌마814

^{xiv} UN General Assembly A/Res/3314(1974), “Definition of Aggression”

^{xv} Sean D. Murphy, *Principles of International Law*, Second Edition, West. 2012, pp. 504-506.

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MILITARY use of UAV and International Law

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Abstract

While unmanned aerial vehicles are widely used for private and commercial use, they are more useful for military use. Recently, many countries, including the United States and China, have carried out many military operations using unmanned aerial vehicles. UAVs were used mainly for exploratory patrols in the Vietnam War, but they have become more used in the recent war on terror. The demand for unmanned aircraft has increased since the September 11, 2011 attacks on terrorists in Afghanistan and Pakistan. The U.S. Air Force immediately used unmanned aerial vehicles in its 'portrait' operation, hitting about 115 targets in Afghanistan during its first year of operation. The CIA in the U.S. is also using unmanned aerial vehicles to strike al-Qaida in the Middle East. The operational use of armed drones can be largely divided into two groups: direct support of military operations and the task of killing the murderer. The first military use of unmanned aerial vehicles in the early 'arctic free operation' was used as an offensive weapon and as a reconnaissance tool. And it has been proven to be particularly useful for identifying targets, identifying locations and removing them. By 2007, the military had become useful in the enemy's operation area of the war in Iraq, and demand has skyrocketed since. On the other hand, the CIA's unmanned aerial vehicle program has been used as a useful weapon for killing murderers in tribal areas of Pakistan. High-tech capabilities allow drones to better distinguish between combatants and noncombatants. Historically, combatants have been relatively easy to distinguish because they wear uniformed uniforms. But today's war on terrorism creates new problems because terrorists are not wearing traditional clothes. This makes it more difficult to distinguish between civilians and terrorists. Article 48 of the additional protocol states that: The parties involved in the fighting should always distinguish between civilian and warrior and civilian targets and conduct direct operations only on military targets. The U.S. needs to collect more accurate information have increased demand for unmanned aerial vehicles for unmanned aerial vehicles. The drone, which was first adopted as a real-time information collector in case of conflict with al-Qaeda, is a better choice than ground forces.

The principle of discrimination prohibits direct attacks on civilians. According to Article 48 of the additional protocol of the Geneva Convention, "To ensure the respect and protection of civilians and private goods, the parties always distinguish between civilians and combatants, civilian goods and military targets, and their operations should therefore be carried out only on military targets." To conduct an attack under this principle, you must distinguish between those who are directly involved in the act of hostility and those who are not. There can be at least three interpretations of the distinction between these fighters and civilians. First, how do you distinguish a soldier from a civilian during the war? Article 4 of the Third Geneva Convention is based on article 50 of the additional protocol which deals with those who deserve protection and their rights as prisoners of war and establishes the definition of civilians.

[Keywords] UAV, Drone, Military Use, Discrimination Rule, Combatants and Noncombatants

1. Introduction

While unmanned aerial vehicles are widely used for private and commercial use, they are more useful for military use. Recently, many countries, including the United States and China, have carried out many military operations using unmanned aerial vehicles.

UAVs were used mainly for exploratory patrols in the Vietnam War, but they have become more used in the recent war on terror. The demand for unmanned aircraft has increased since the September 11, 2001 attacks on terrorists in Afghanistan and Pakistan. The U.S. Air Force immediately used unmanned aerial vehicles in its 'portrait' operation, hitting about 115 targets in Afghanistan during its first year of operation.

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In Iraq's urban warfare, unmanned aerial vehicles possessed continuous reconnaissance capabilities to monitor combatants, and provided intelligence to ground forces to remove enemy troops or capture combat agents. The combat agent would go to the scene with useful information to provide to the U.S. military. On the

other hand, in Pakistan's far-off anti-terrorism operation, drones are used in areas where there is no military power on the ground and only where targets need to be removed.

Professor of Obesity at Georgetown University stated that it is better to capture terrorists than to kill them. "Then you will be able to get information." "The lion is a silent law," he said, "the operation to remove the terrorist list can only eliminate targets, but it will lose information that can be obtained through captivity."

Thus, there are several limitations to the use of the drone, and from a legal standpoint, there are disputes over the validity of targeted attacks, and attacks outside the conventional battlefield. Therefore, in addition to the basis of the War Act, the following items will consider the legality of unmanned aerial vehicles.

2. The Fundamental Theory of Law of War

In speaking of various international concepts that limit the performance of war, scholars have historically distinguished the theory of war, which consists of war laws that govern the behavior of countries engaging in armed conflict between warring states, and the rules that govern the appeal of armed conflict. The former law applies to conflicts that warring countries would not regard as war. The latter law has been relatively recent and is most authoritative in Chapter 7 and Sections 2:4. On the basis of this distinction, Mitchell Walsh pointed out that a truly legitimate war must meet the needs of both legal domains. War is always judged twice. The first reference point is why the state should fight - the theory of justice - and the second is the means by which they adopt. That is, the legality of combat activities used in combat acts. In other words, they are divided into reasons and means of war.

Law of War is an international law that aims to minimize unnecessary damage caused by war by limiting the conditions at which war begins, the means of force available to war, and the targets to attack. Thus, the war law no longer guarantees a fair war for two warring countries, but is primarily aimed at preventing unnecessary destruction and minimizing pain today. The difficulties in assessing military necessity pale beside those surrounding proportionality. Proportionality is a concept complementary to, and often considered a component of, military necessity. It is perhaps best characterized as the principle of customary international law that prohibits injury or damage disproportionate to the military advantage sought by an action. Measured not in terms of immediate advantage, but rather with regard to the operation as a whole, the concept extends both to collateral damage suffered by civilians and civilian objects and to destruction of otherwise legitimate targets[1].

Traditionally, Law of War is made up of peacetime and wartime law, which are divided into the rules of engagement and the law of neutrality that apply to the relations between warring states and neutral countries. The wartime laws can also be divided into the Jus ad Bellum - the just war theory - and the rules on what actions are allowed and what actions are prohibited in the war - the justification of combat actions. But what is usually discussed today and established by international law is jus in Bello among wartime laws, which is commonly referred to as the war law. The War Act is mainly divided into the Hague Act, which governs war means, and the Geneva Act, which governs war victim protection, but the distinction is not clear today.

3. The Principles of Distinction and UAV Operation

The principles of distinction emphasizes the choice of means, such as weapons and targets.

Emissions of noncombatants and selection of means such as patients, injured and shipwrecks and weapons and targets beyond the war. It refers to geographical content and other limitations. But the most important concept is the distinction between noncombatants and combatants[2].

In general, Law of War prohibits attacks on someone who is considered noncombatant[2]. Law of War established a category of combatants to characterize vulnerable people. The Hague Convention of 1907 on the customs and laws of ground combat refers to the general standard for recognizing combat personnel[3].

- 1) directed by the person responsible for handling the men;
- 2) person with a marked symbol which can be recognized from a distance;
- 3) person who has a weapon in public;
- 4) carry out operations in accordance with the customs and laws of war;

Attacks against combat agents during military operations are legal when using unmanned aerial vehicles[4]. Also in the war on terrorism, it would be legal to command, attack or strike the person who acts directly. In addition, attacks on those who are able to direct their men and those who are under his command (i.e., command system-chain of command) are legitimate, and those who carry weapons in public may also be affected.

High-tech capabilities allow drones to better distinguish between combatants and noncombatants. Historically, combatants have been relatively easy to distinguish because they wear uniformed uniforms. But today's war on terrorism creates new problems because terrorists are not wearing traditional clothes. This makes it more difficult to distinguish between civilians and terrorists. Article 48 of the additional protocol

states that: The parties involved in the fighting should always distinguish between civilian and warrior and civilian targets and conduct direct operations only on military targets.

The U.S. needs to collect more accurate information have increased demand for unmanned aerial vehicles for unmanned aerial vehicles. The drone, which was first adopted as a real-time information collector in case of conflict with al-Qaeda, is a better choice than ground forces.

Civilians cannot attack unless they are directly involved in hostile acts. Some interpret that even civilians engaged in "continuous combat activities" which involve farming by day and fighting by night could be targets of international humanitarian law. In the case of non-international armed conflict, in the case of armed conflict between non-state entities such as the NIAC or the state and terrorist organizations, the state can only attack non-state forces. But laws outside armed conflict are completely different: we cannot attack except in very limited circumstances because everyone is civilians[5]. Although the U.S. government and the media use the terms "combatants" or "army organizations" to describe military operations outside the war zone, this expression is misleading. Outside the armed conflict zone, there can be no "combatant" or "army group." The International Human Rights Act(IHRL) is applied in areas where there is no armed conflict, and a strict limit is placed on possible shoot-to-kill attacks.

The principle of distinction prohibits direct attacks on civilians. According to Article 48 of the additional protocol of the Geneva Convention, "To ensure the respect and protection of civilians and private goods, the parties always distinguish between civilians and combatants, civilian goods and military targets, and their operations should therefore be carried out only on military targets." To conduct an attack under this principle, you must distinguish between those who

are directly involved in the act of hostility and those who are not. The challenge found in nonstate armed conflict is identifying the legitimate target.

As discussed above, Article 48 of Additional Protocol I states that:

in order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

Distinction is also emphasized in Article 51(4) of Additional Protocol I:

Indiscriminate attacks are prohibited. Indiscriminate attacks are:

- (a) Those which are not directed at a specific military objective;
- (b) Those which employ a method or means of combat which cannot be directed at a specific military objective; or
- (c) Those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction[6].

There can be at least three interpretations of the distinction between these fighters and civilians. First, how do you distinguish a soldier from a civilian during the war? Article 4 of the Third Geneva Convention is based on article 50 of the additional protocol which deals with those who deserve protection and their rights as prisoners of war and establishes the definition of civilians.

4. Reference

4.1. Journal articles

- [1] Schmitt MN. Green War: An Assessment of the Environmental Law of International Armed Conflict. *Journal of International Law*, 22(1), 52-55 (1997).

4.2. Books

- [2] Roberts A & Guelff R. Introduction to Documents on the Laws of War. Adam Roberts & Richard Guelff eds (1989).
- [3] Green LC. The Contemporary Law of Armed Conflict (1993).
- [4] John K & Sarah K. Drone Warfare War and Conflict in the Modern World. Polity Press (2014).
- [5] Fisk K & Ramos JM. Preventive Force: Drones, Targeted Killing, and the Transformation of Contemporary Warfare Paperback. NYU Press (2016).

4.3. Additional references

- [6] Sehrawat V. Legal Status of Drones under LOAC and International Law. War in the 21st Century and Collected Works (2017).

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The United Nation's Response Strategy for North KOREA's DENUCLEARIZATION

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Abstract

Since the 1st nuclear test of North Korea in October 2006, the UN Security Council has made economic sanctions against North Korea for the past 20 years beginning with the resolution number 1718, but North Korea has continued to test nuclear weapons and ballistic missiles and has retained inter continental ballistic missiles ICBM and submarine launched ballistic missiles SLBM.

Amidst such international crisis, on June 12, 2018, the US President Donald Trump and Kim Jong Un of North Korea agreed on the complete denuclearization of North Korea through a summit held in Singapore, but ever since, North Korea has not followed up on this agreement.

However, the United States began a trade war with China, an economic sponsor of North Korea, thereby causing serious damages against companies, and the US is deliberating on the use of military options in North Korea.

In this study, I have investigated the strategic plan of South Korea for the active military officers of the Republic of Korea, which is a party to the Korean War and confronted with North Korea geopolitically in the crisis caused by North Korea's possession of nuclear weapons, and analyzed the results of the research to categorize North Korea for a denuclearization plan from the political and military perspectives.

As a result of the study, first, the political direction is to expand international cooperation in response to economic sanctions against North Korea and military provocations. Second, by expanding economic sanctions against North Korea, North Korea should not be allowed to continue military exercises including nuclear tests. Third, expansion of psychological warfare program so that North Korean residents can learn about the human rights violations of the dictatorship regime.

Next, military options include, first, with the consent and management of the United Nations, South Korea can possess nuclear weapons and take strategic advantage. Second, establish and expand the integrated missile defense system of UN and South Korean forces in Northeast Asia.

Lastly, at the conclusion of this study, I presented a specific model of the denuclearization phase for North Korea.

[Keywords] *Military Conflict in Northeast Asia, Missile Defense, Denuclearization, Psychological Warfare, UN*

1. Introduction

1.1. Research background

In order to maintain a single man ruling system over the past 70 years, North Korea has deified its leader, has committed murders and hu-

man rights through the surveillance of its residents, and continued military exercises such as nuclear tests and ballistic missile launches, and after the first nuclear test in October 2006, it repeatedly conducted nuclear tests and finally completed the development of nuclear weapons,

and in August 1993, launched the first intermediate range ballistic missile (IRBM) has threatened Northeast Asia and the international community.

Therefore, in 1994, the United States presented a plan to pursue precision bombing of North Korea's Yongbyon nuclear facility, but failed to complete the denuclearization as the US President Jimmy Carter entered into the Geneva agreement under the condition of nuclear freeze.

However, North Korea withdrew from the Nuclear Non-Proliferation Treaty (NPT) in 2003 and declared its nuclear possession in 2005, and on April 23, 2016, successfully launched a test of the SLBM, or Polar Star 1, from its submarine.

If North Korea succeeds in miniaturizing nuclear warheads and the SLBM becomes strategized, the international community will no longer be able to control North Korea, which may bring about the World War III.

1.2. Historical case analysis

1.2.1. The United States and Japan

According to the North Korean specialist media of 38 North in 2017, the article entitled "Japan 1941, North Korea 2017?" provided an example of how Japan, the hegemon of East Asia, became a defeated nation by the US nuclear attack in World War II[1].

The US first applied economic sanctions against Japan, but after these sanctions failed to produce effective results, the US eventually ended the war by dropping nuclear bombs on Hiroshima and Nagasaki.

The report claims that if the target was Japan

¹ Economic sanctions prohibited scrap metal exports required for manufacturing weapons, crude oil exports, froze Japanese assets in the US, and refused to pass Japanese ships.

² The US' use of nuclear weapons

- Little Boy, an enriched uranium nuclear bomb dropped on Hiroshima on August 6, 1945: Colonel Paul Warfield Tibbets, Jr. (1915-2007) flew a B-29 bomber from Tinian Island of Mariana Islands and dropped it at an altitude of 9,450 meters above Hiroshima and exploded over 550 meters above

in 1941, then North Korea is the target at the present time.

Examples of such economic sanctions and military actions are as follows. When France surrendered to Germany in 1941, Japan invaded Indochina, the French state, and expanded its military power throughout China and Southeast Asia, at which time the US began economic sanctions to constrain Japan's military capabilities¹.

At the time, Japan was importing 93% of the crude oil from the United States, and the Navy was using 400 tons of oil per day, so economic sanctions such as the prohibition of exporting crude oil had a powerful ability to paralyze the military. The Japanese options for such sanctions was as follows.

First, withdraw troops following the demand of the United States.

Second, wait for the oil shortage to weaken the military.

Third, attempt to acquire resources in Southeast Asia by expanding military actions.

Japan's chose to expand military action. As a result, it invaded Pearl Harbor of Hawaii in the United States without declaring war, and forced the United States to withdraw from the Philippines, and at the same time, caused great damages such that it could not counter attack immediately, then took over Southeast Asia and South Pacific and moved into India and Australia, causing the Pacific War. However, eventually, in 1945, a US bomber dropped a nuclear bomb on Japan and ended the war in East Asia as Japan surrendered².

sea level. Its length was approximately 3m, diameter was 71cm, the power was 13-18kt with TNT, and 50% died within 1.2Km from the center of explosion on that day, and 140,000 people died until the end of December 1945.

- Fat Man, a plutonium nuclear bomb dropped on Nagasaki, Japan, on August 9, 1945: Major Charles W. Sweeney (1919-2004) flew a B-29 bomber from Tinian Island of Mariana Islands and dropped it at an altitude of 9,450 meters above sea level and exploded over 550 meters above sea level. Its length was approximately 3.3 m, diameter was

The following <Figure 1> is the US operation schedule of August 13, 1945.

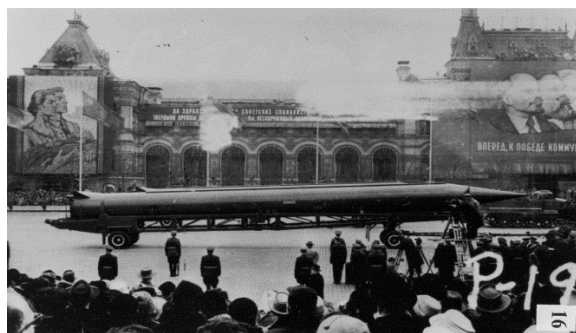
Figure 1. The US's use of nuclear weapons.



1.2.2. The US and the Soviet Union

The Cuban missile crisis led to the verge of the World War III on October 14, 1962, when the Soviet Union began a conflict with the US following the installation of a base for the Soviet SS-4 ballistic missile(MRBM) in Cuba, a communist nation. The following <Figure 2> illustrates the SS-4 ballistic missile introduced at the Moscow Square in the Soviet Union.

Figure 2. The CIA's photograph of the Soviet's medium range ballistic missile(SS-4 in US documents R-12 in Soviet documents) in the red square moscow.



In this incident, the United States issued an official statement that it would take it as a declaration of war if the Soviet Union completed the missile base and that it would face the third World War if necessary.

The world feared that the World War III may

1.5m, and a TNT of 21 kt, and Nagasaki was an uncertain terrain and so despite the reduced power, approximately 73,900 people died and approximately 74,900 people were injured.

be triggered by President Kennedy's remarks. Eventually, the Soviet Union ceased building the missile base, and the entire world was able to avoid the nuclear war.

It was apparent through this case that the common position of the US is that it would never tolerate any threat against the mainland US. However, the situation in North Korea is very dangerous now. This is because North Korea does not the same military power as the Soviet Union of the past and has no diplomatic capability in the international community, and China, which currently is a supporter, is also on the path of decline after having a trade war with the United States.

If North Korea does not perform on the principle of denuclearization it agreed upon, the US will eventually pursue a complete denuclearization(CVID) through North Korea's regime change.

In the past, such cases were repeated in the regime change through the police actions the US took on the dictatorship regimes, which were taken to be actions of protecting, rather than maintaining, peace under the US foreign policy.

1.3. Research method

In order to accomplish the purpose of this study, reference study and empirical analysis were performed concurrently. First, in the reference study, I set up a research analytical model based on the books, academic papers, research reports, websites of government agencies, and data obtained from experts on North Korea's nuclear development and ballistic missiles.

And the contents were analyzed in depth through interviews. This is an inferential methodology for exploring research questions, rather than validating a hypothesis, and a research method that is appropriate for revealing types formed by subjective structures and is a research

method suitable for the topic of exploratory research that has not been conducted so far.

This study examined and conducted previous studies related to this study since the test launch of the SLBM Polar Star 1, launched from a submarine on April 23, 2016, along with North Korea's continued nuclear test. The following <Figure 3> illustrates Polar Star 1 test launched on April 23, 2016 in the northeastern shore of Shinpo.

Figure 3. SLBM(Polar Star 1) test launched by North Korea.



The interviewees who provided the results of this study are an expert group of South Korea, consisted of 20 active military officers (5 from the Army, 5 Navy, 5 Air Force, and 5 from the Marine Corps), and the analytical results are summarized from April 2018.

The sample of the data presented during the interviews were determined by the Factor of Redundancy. This means that interviews are conducted until new information is no longer available, and in this study, from about the 19th interview, new questions were not added to the next interview and responses to the interview questions began to be repeated. This means that enough resources to answer research questions through interviews were secured.

The interviews took between 70 and 90 minutes per participant of the study. The conversations during the interviews were recorded with a digital tape recorder and were transcribed into documents after the interviews. The transcribed conversations were categorized again by research questions and detailed topics through the content analysis, and the categorized data were analyzed through the narrative analysis.

2. Previous Studies

The United Nations and the international community, after the first North Korean nuclear crisis in 1994, passed the resolution of the Security Council to urge North Korea to stop its nuclear militarization and denuclearize itself, but North Korea has not abandoned its nuclear retention policy. Ever since, various studies have been conducted on the denuclearization of North Korea in academic circles. Many studies on North Korea's nuclear issue have been conducted in the geographically neighboring South Korea, but almost no papers in English were published, so none can be indexed to internationally diverse researchers. The following <Table 1> is an analysis of previous studies of this research topic.

Table 1. Previous studies.

Researcher	Key details of previous studies
Jia D & Kideuk H (2010)	Analyzed North Korea's nuclear development and suggested that North Korea is approaching with new concepts of politics and culture of related countries[2].

Thomas P & Ben R (2013)	Analyzed the relationship between China and North Korea and discussed China's support policy for North Korea's nuclear development and its impact on the Korean peninsula[3].
Han (2017)	Analyzed the personality of Kim Jong Un by analyzing North Korea's nuclear development and its threat against Northeast Asia WPTL[4].
Kim & Cohen MD (2017)	Claimed that not only the US, but Korea and Japan should also actively participate in the defense system against North Korea's possession of weapons of mass destruction such as nuclear weapons, questioned whether North Korea will provoke neighboring countries with its nuclear weapons, and inferred counter response methods of the US, Korea, Japan and China[5].

3. The US and North Korea

3.1. Political perspective

In 2018, North Korea reached an agreement after negotiating the denuclearization at the 2018 North Korea-US Summit after the launch of the North Korean ICBM Polar Star 2 in 2018, but six months have passed, and no result has been achieved. The following <Figure 4> is the 2018 North Korea-US Summit.

Figure 1. 2018 North Korea-United States summit.



For the past six months, however, the United States began a trade war with China, an economic supporter of North Korea, and firmly contained China, and confirmed the popular support for the Trump administration in the mid-term

election in November as the Republicans did very well.

In addition, it confirmed that CVID is the way of denuclearization for the US allies and North Korea, and until the denuclearization of North Korea is completed, the international community, centered on the United States, is firmly committed to furthering economic sanctions against North Korea.

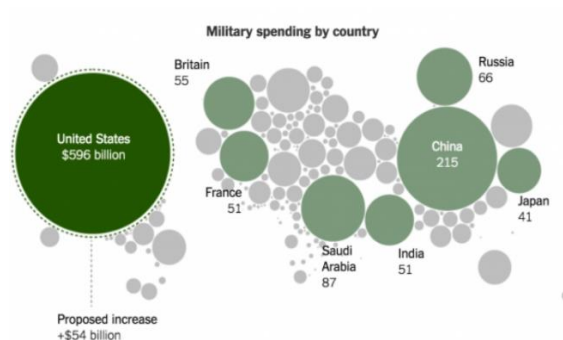
However, the meaning of retaining nuclear weapons is quite significant for the North Korean regime. It is not just a weapon, it is a political tool to maintain North Korea's dictatorship, and it backs up North Korea's bargaining power in the international community.

North Korea's Kim Jong Un regime claimed that it will denuclearize, but it will not be able to agree to denuclearization, and the assumption that the CVID, a denuclearization method required by the international community including the US, will only be achievable through the regime change is perceived to be dominant.

3.2. Military perspective

The US military budget is larger than the sum of the budgets of the nations ranked 2nd to 8th in terms of military power, which demonstrates the capabilities in a real war situation. The following <Figure 5> is a report cited from the Stockholm International Peace Research Institute by the New York Times.

Figure 5. Proportion of the US defense expenditure.



Meanwhile, North Korea is not known as to exactly how much it spends on military because it

does not announce defense expenditure. However, it is estimated that military expenditure was 15.9% of the national budget at the Supreme People's Committee on April 9, 2016, and so and it can be estimated as approximately USD 1,500,000,000 at the official exchange rate of North Korean money and the US Dollar.

On the other hand, the South Korean Ministry of Defense has explained that it is approximately USD 102,000,000,000 because North Korea uses tremendous amounts of money to develop nuclear weapons and missiles, and to purchase and maintain conventional weapons.

Putting together, if the US uses its military option, North Korea will have its regime changed within a few hours.

4. Interview Result

This study was conducted to explore the strategic plans of South Korea with the active military officers of the Republic of Korea, which was a party to the Korean War and faces geopolitically against North Korea, as a UN response strategy for denuclearization of North Korea and conducted in depth interviews with the Interview Guide secured through the Pilot Study, and the following is a transcription of the duplicated key parts by analyzing the contents of the interview on the site.

4.1. Political perspective

4.1.1. Expansion of international cooperation

The North Korean nuclear issue is creating very serious problems internationally. I think that we should work hard together with the Republic of Korea and neighboring countries to rectify these behaviors of deviation(M_KYN).

It is important to emphasize that the possession of nuclear weapons by North Korea is a threat to the international community, and we must mobilize more powerful military forces

with the international community to achieve denuclearization(M_CMH).

We must build a thorough military defense posture in cooperation with the US, an ally, to ensure that there is no margin of error for national defense(M_LYS).

First, it is necessary to focus on nuclear disarmament and take actions sequentially, and we need to resume the six party talks to this end, and we must proceed with dialogues and negotiations with North Korea in a variety of ways (W_HSY).

The problem will be solved only by removing Kim Jong Un and the command unit. If the threat of nuclear provocation will persist, we will assassinate Kim Jong Un in cooperation with the neighboring countries for the peace of Northeast Asia(M_KSH).

4.1.2. Expansion of economic sanctions against North Korea

We should block and sanction foreign trade against North Korea's preparation of nuclear weapons, and we should not provide food and economic support, etc. I think it is time for more powerful and rigorous sanctions against North Korea(M_JHS).

The UN Security Council should condemn North Korea's provocations for the destruction of world peace and sanctions against North Korea should be raised to the farthest extent possible to ensure that North Korea is pressed (M_BS).

If we provide food and supplies, there will be more damages. We should no longer provide support for the weapons production(M_KMR).

From now on, cutting off monetary supply support and strongly responding to even small provocations will be the answer(M_KKD).

4.1.3. Expansion of psychological warfare against North Korea

I think we should continue to broadcast against North Korea. If we continue to appease

North Korea, they will continue to provoke such as by nuclear tests and they will also want more. I think that we should resume the broadcasting to which North Korea responds sensitively and we should no longer accept North Korea's demands(W_LSR).

It is necessary to change the minds of North Koreans by informing them of the realities of North Korea inside North Korean society and the international community. I think there is nothing more fearful than that(M_LJH).

In addition to conducting those in the private sector, just as they did 30 years ago in the armed forces, the armed forces should also distribute flyers to North Korea thereby providing the North Korean residents with opportunities to learn about the realities of the international community(M_KJS).

First, in order to approach Kim Jong Un regime's ruling strategy through nuclear weapons, it is necessary to inform the North Koreans about how the international community feels about the nuclear development in North Korea (W_HAR).

We must help North Koreans, who are not using the Internet, to learn that losses will be much greater than whichever gains achieved by the North Korean regime's possession of nuclear weapons.

4.2. Military perspective

4.2.1. Korea's nuclear weapons development

In order to prevent the recurrence of the Korean War of the 1950s, we should have nuclear weapons and strengthen our military capabilities to punish North Korea in any event(M_KKD).

North Korea's nuclear development will lead to a nuclear domino phenomenon in the Northeast Asia, and we should also prepare for the threat of North Korea by possessing tactical nuclear weapons under a defensive concept with the consent of the international community

(M_HMG).

We need to inform the international community that if North Korea tests nuclear weapons again, South Korea cannot but review nuclear militarization for defense purposes(W_BHJ).

To respond to the unpredictable and unreliable North Korean regime, we must also possess tactical nuclear weapons(M_LSO).

4.2.2. Establishment and expansion of integrated missile defense system

North Korea's nuclear weapons are threatening us day after another. In order to avoid such a situation, I believe that weapons that can be used against North Korea's nuclear weapons are also needed in South Korea(M_CJH).

The enemy's missile must be shot down in the air before they reach the targets, and we must deploy THAAD of the US or develop South Korea's defense weapon capabilities(M_JJI).

We have enough technologies to develop nuclear weapons and missiles, but we should develop weapons that are not vulnerable against North Korean threats by correcting the missile policies which have long been executed with the US(M_SWM).

We should also deploy strategic weapons such as THAAD widely enough to prepare for threats of imminency. I think that a strategic defense weapon on the Korean peninsula is necessary to protect our people and reduce damages (W_LJH).

5. Discussion

5.1. Political perspective

First is the expansion of international cooperation on the denuclearization of North Korea. Even now, the fact that the US and China are still different in their views on the possession of nuclear weapons by North Korea seems to suggest that the international community has not agreed on the common directions for resolving North

Korea's nuclear issue. Therefore, it is necessary to gather and publicize the common views of the international community that sanctions are needed against the North Korean economy until the denuclearization is completed.

Second, the economic sanctions against North Korea should be expanded. The US President Donald Trump has exercised the largest sanctions against North Korea, and these sanctions should be extended to North Korea as well as to China, Russia and all related countries.

Third is the expansion of psychological warfare against North Korea. The issues of human rights and religion for North Koreans is very serious. Therefore, it is necessary to operate the psychological warfare of North Korea including the South Korean military's loudspeaker broadcasting to North Korean people so that they can learn about the values of human rights, ideology, religion and freedom of expression.

5.2. Military perspective

First, South Korea can be authorized to develop and manage nuclear weapons under the UN control. The claim that South Korea should make nuclear weapons on its own is expanding even in the South Korean political realm, as North Korea has reached its status as a nuclear power nation through its sixth nuclear test. South Korea already has a considerable level of nuclear power facilities, and if South Korea decides to develop nuclear weapons, it can make up to 100 nuclear warheads within two years, they said. In July 1970, the US Secretary of State William Rogers informed Minister of Foreign Affairs Choi Kyu-Ha of the US intention to withdraw the 20,000 US troops from South Korea during the Vietnam War Conference held in Saigon, Vietnam, after which South Korea did commence developing nuclear weapons and, at the time, it was very close to completing the nuclear weapons development.

Second, South Korea should build and expand an integrated missile defense system with the US and Japan. While it has been said that the South

Korean government has already developed an independent missile defense system in response to North Korea's nuclear and missile threats, the expansion of the missile defense system through military alliances with the US and Japan will narrow North Korea's intention for denuclearization. Furthermore, it is necessary to jointly participate in the development of the MD system of the United States and Japan to seek a more efficient and complete defense.

6. Conclusion

If North Korea does not cooperate for denuclearization, it may take more than 15 years, so they say, but there is an analysis that it could take far much more time or even impossible to achieve considering the political weight of the nuclear weapons in North Korea.

However, the International Atomic Energy Agency(IAEA) claimed that if North Korea is willing to disclose both its production facilities and the quantity of nuclear substances it retains, 2 to 3 years would be sufficient to denuclearize realistically. The US National Security Adviser John Bolton of the White House and the US Secretary of State Mike Pompeo said that within 3 years is the target. The following <Table 2> illustrates a 5 staged denuclearization model for North Korea.

Table 2. Illustrates North Korea's 5 staged denuclearization model.

Phase	North Korea	UN
1 st phase	<ul style="list-style-type: none"> - Nuclear facility's shutdown - IAEA monitoring unit's nuclear facility shutdown - UN's precision inspection of nuclear weapons by experts - IAEA sealing 	<ul style="list-style-type: none"> - Commencement of relationship improvement discussions
2 nd phase	<ul style="list-style-type: none"> - Report of all nuclear weapons to IAEA - Disabling of nuclear facilities 	<ul style="list-style-type: none"> - Release from the list of terrorist harboring countries - Release of application of the Trading with the Enemy Act

3 rd phase	<ul style="list-style-type: none"> - Disassembly of nuclear program - Exporting of nuclear substance - Migration of nuclear scientists 	<ul style="list-style-type: none"> - Launch of a US-North Korea liaison office - Permission of North Korea to join international financial institutions - Release of BDA financial sanctions
4 th phase	<ul style="list-style-type: none"> - CVID validation 	<ul style="list-style-type: none"> - Operation of peace forum for the Korean peninsula
5 th phase	<ul style="list-style-type: none"> - Completion of denuclearization - Disposal of long distance missiles 	<ul style="list-style-type: none"> - Execution of peace agreement - Launch of the US embassy in North Korea

This study has examined the political and military perspectives of the denuclearization of North Korea in the United States, including the United Nations, as well as how nuclear weapons were used under what circumstances in the past within the international community, and plans were discussed and ultimately a denuclearization model was derived for North Korea.

7. References

7.1. Journal articles

- [2] Jia D & Kideuk H. Global Risk Domestic Framing: Coverage of the North Korean Nuclear Test by US Chinese and South Korean News Agencies. *Asian Journal of Communication*, 20(3), 299-317 (2010).
- [3] Thomas P & Ben R. China North Korea and the Spread of Nuclear Weapons. *Global Politics and Strategy*, 55(2), 61-80 (2013).
- [4] Han M. A Psychological Interpretation on North Korea's Nuclear Program Issue: Focusing on Kim Jong-Un's Personality Analysis. *International Journal of Military Affairs*, 2(1), 1-8 (2017).

7.2. Books

- [5] Kim SC & Cohen MD. North Korea and Nuclear Weapons: Entering the New Era of Deterrence. Georgetown University (2017).

7.3. Additional references

- [1] <https://www.38north.org/>

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- Korea's National Security and Anti-terrorism Strategy - The Cases of Key Figure Assassination and the Direction of Protection Security Activities-, *Korean Police Studies Review*, 17(2) (2018).

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