
Haunting Phantom on the Way to the Korean Reunification? The Chinese People's Volunteer Army in the Korean War and Its Legal Questions

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Although relationships among the former belligerent parties of the Korean War have changed drastically over the decades, the parties still remain under the armistice system because the Korean War is not over legally. The primary purpose of this research is to analyze questions related to the Chinese People's Volunteer Army in the Korean War from an international legal perspective. As a new topic, this is intended to be a precautionary examination of an issue that could haunt the eventual process of peacemaking on the Korean peninsula. The main text of this article consists of three parts. The first examines whether the Chinese People's Volunteer Army's entering the Yalu River was self-defense under Article 51 of the UN Charter. The second part covers various legal questions relating to armed hostilities in the Korean War under international law. The third part discusses the legal questions around an armistice negotiation.

Keywords

CPVA, Korean War, Armistice, POWs, 38th Parallel, Self-Defense, UN Forces, MacArthur, Peng Teh-Huai

*China and Korea are neighboring countries, as closely related as lips and teeth.
If the lips are gone, the teeth are exposed to the cold.*

Zhou En-lai

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I. Introduction

Sixty years have passed since the Korean Armistice Agreement was concluded. Over the past decades, relationships among the former belligerent parties have changed dramatically; China has become the largest trading partner of South Korea with firm diplomatic ties and the US is building a new strategic partnership with China. Despite such seemingly flourishing exchanges and cooperation, the parties still remain under the armistice system because the Korean War is not over legally. Entering the new millennium, the relevant parties began trying to build permanent peace in the Korean peninsula, the first step of which should be replacing the current Armistice Agreement with a true peace treaty. As South Korean President Park Geun-hye declared an initiative for peaceful unification of Korea at Dresden, Germany on March 28, 2014,¹ the peacemaking process between the two Koreas is expected to be accelerated. In this course, however, the Chinese position as a signer of the Armistice may be questionable due to her highly political stance to the military actions, especially through volunteers during the Korean War.

This research aims to analyze questions regarding the Chinese People's Volunteer Army ("CPVA") in the Korean War from an international legal perspective. As a newly tackled topic, it is intended to provide a precautionary examination of an issue that could haunt the eventual process of peacemaking on the Korean peninsula. This article consists of five parts including Introduction and Conclusion. Part two will examine the international legal causes of the Chinese military's intervention in the unusual form of volunteers. Whether the CPVA entering Korea was 'self-defense' will be analyzed here. Part three will cover various legal questions relating to armed hostilities in the Korean War. The CPVA's offensives, declaration of war, and belligerent status will be tackled in terms of international law. Part four will discuss the legal questions in the armistice negotiation. The POW-related issues and the CPVA's position in relation to the People's Republic of China ("PRC") in the Armistice will be analyzed.

This paper has been written as of today, sixty years after the Armistice Agreement. However, international law, especially the law of war invoked here is mainly that of 1953. Additionally, this research will be carried out 'positively' with an international legal viewpoint. The author has endeavored to exclude any political or ideological views regarding the Korean War and the CPVA in this research.

¹ Tae-gyu Kim & Min-uck Chung, *Park hints at flexible approach in aid to NK*, KOREA TIMES, Mar. 28, 2014, available at http://koreatimes.co.kr/www/news/nation/2014/03/113_154245.html (last visited on May 1, 2014).