
Will Trump's Military Option against North Korea Work? Legal and Political Restraints

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North Korea's nuclear weapons and missiles are an unprecedented threat to the security of the United States, which has never been attacked by weapons of mass destruction. Pyongyang's provocations irritated President Trump and led him to openly consider military attacks against North Korea. The possibility of armed conflict between the United States and North Korea increased as both sides exchanged aggressive rhetoric. Military attacks against North Korea are virtually impossible in a legal as well as a practical sense. They will bring only disaster to all involved, including the US. The best way to resolve North Korea's nuclear issue is to rehabilitate the multilateral channel for dialogue and then begin talks. What if President Trump, however, implemented military options against North Korea because of the nuclear weapons development? The focus of this essay is to explore whether Trump can adopt military options against North Korea and if so, what legal and political considerations he must take.

Keywords

Trump, Kim Jong Un, North Korea, Nuclear Test, NPT, Military Option, Security Council Resolution 2375

To fight and conquer in all your battles is not supreme excellence; supreme excellence consists in breaking the enemy's resistance without fighting.

- Sun Tzu -

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1. War Cloud

North Korea conducted its sixth nuclear test on September 3, 2017. It was reportedly a hydrogen bomb (H-bomb), which is much more destructive than those tested previously.¹ There are still questions as to whether this test involved a real H-bomb or a boosted fission bomb. In any case, experts agree that the harmful threat of North Korea's nuclear weapons has been increasing.² The bomb used in North Korea's sixth nuclear weapon test was estimated to be at least 100 kt,³ almost seven times the size of the bomb dropped on Hiroshima (15 kt), which killed approximately 150,000 people.⁴ As seen when comparing the power of the fifth nuclear test (10-30 kt) to that of the sixth test, North Korea's nuclear weapons technology has grown dramatically over the past few years. Miniaturization of nuclear warheads has remained the final stage for actual deployment by Pyongyang. Right after the nuclear test on September 15, North Korea launched an inter-continental ballistic missile ("ICBM") (Hwasong 14).⁵ This missile reached an altitude greater than 3700km and landed about 1000 km from its launch point in Pyongyang; a flatter trajectory could put it within the reach of the US mainland.⁶ To make matters more acute, North Korea allegedly has a detailed plan to attack the US military base in Guam with its missiles.⁷

North Korea's nuclear weapons and missiles pose an unprecedented threat to the security of the US, which has never been attacked by weapons of mass destruction. Pyongyang's provocations irritated President Trump and led him to openly consider military attacks against North Korea. The possibility of armed conflict between the US and North Korea increased as both sides exchanged aggressive rhetoric. What if President Trump actually implemented military options against North Korea in order to dismantle its nuclear weapon programs? This essay will explore whether Trump

¹ See *North Korea nuclear tests: What did they achieve?*, BBC News, Sept. 3, 2017, available at <http://www.bbc.com/news/world-asia-17823706> (last visited on Oct. 17, 2017).

² *Id.*

³ J. Berlinger & Taehoon Lee, *Nuclear test conducted by North Korea, country claims; South Korea responds with drills*, CNN, Sept. 4, 2017, available at <http://edition.cnn.com/2017/09/03/asia/north-korea-nuclear-test/index.html> (last visited on Oct. 17, 2017).

⁴ B. Harris & K. Manson, *North Korea steps closer to end-game in nuclear quest*, FIN. TIMES, Aug. 10, 2017, available at <https://www.ft.com/content/4659bec2-7d7b-11e7-9108-eda0bcbc928> (last visited on Oct. 17, 2017).

⁵ See *Hwasong-14 (kn-20)*, MissileThreat (CSIS Missile Defense Project), available at <https://missilethreat.csis.org/missile/hwasong-14> (last visited on Oct. 17, 2017).

⁶ Harris & Manson, *supra* note 4.

⁷ Christine Kim & Soyoung Kim, *North Korea will develop Guam strike plan by mid-August: KCNA*, REUTERS, Aug. 10, 2017, available at <https://www.reuters.com/article/us-northkorea-missiles-kcna/north-korea-will-develop-guam-strike-plan-by-mid-august-kcna-idUSKBN1AP2P5?il=0> (last visited on Oct. 17, 2017).

can adopt military options against North Korea and if so, what legal and political considerations he must take?

2. Rhetoric: Trump v. Kim Jong Un

Are they really heading for war? This has been a common worldwide concern since Trump and Kim Jong Un began exchange extremely inflammatory communications. Initially, Trump was provoked by Kim's nuclear tests and missile launches. However, such undiplomatic remarks might have been due to Trump's frustration with the United Nations Security Council Resolution ("UNSC") 2375.⁸ The new set of sanctions contained in this resolution would not work effectively without the oil embargo from China.

Shortly after the UNSC unanimously voted to tighten international sanctions against North Korea, Pyongyang was reported to have succeeded in miniaturizing a nuclear warhead that could be fitted onto an ICBM capable of reaching US territory. Trump then said "any more threats" by North Korea would be met with "fire and fury."⁹ Trump also tweeted that the US "is now far stronger and more powerful than ever before."¹⁰ He added that *hopefully* the US would never have to use the military option.¹¹ North Korea responded by releasing a detailed plan to fire an intermediate-range ballistic missile at the US military base in Guam.¹² In his address to the United Nations General Assembly ("UNGA"), Trump said "Rocket Man [Kim Jong Un] is on a suicide mission for himself and for his regime."¹³ He added: "If he echoes thoughts

⁸ U.N. Doc. S/RES/2375 (2017), available at <http://unscr.com/en/resolutions/doc/2375> (last visited on Oct. 17, 2017).

⁹ See *Trump Threatens North Korea With 'Fire and Fury'*, N.Y. TIMES (video), Aug. 8, 2017, available at <https://www.nytimes.com/video/us/politics/100000005346140/north-korea-trump-threat-fire-fury.html> (last visited on Oct. 17, 2017).

¹⁰ D. Trump, My first order as President was to renovate and modernize our nuclear arsenal. It is now far stronger and more powerful than ever before..., Aug. 9, 2017, available at <https://twitter.com/realdonaldtrump/status/895254168570605568> (last visited on Oct. 17, 2017).

¹¹ D. Trump, Hopefully we will never have to use this power, but there will never be a time that we are not the most powerful nation in the world!, Aug. 9, 2017, available at <https://twitter.com/realdonaldtrump/status/895254168570605568> (last visited on Oct. 17, 2017). [Emphasis added]

¹² K. Calamur, *The Trump Administration's Evolving Rhetoric on North Korea: From "fire and fury" to "all options are on the table,"* ATLANTIC, Aug. 29, 2017, available at <https://www.scribd.com/article/357543717/The-Trump-Administration-s-Evolving-Rhetoric-On-North-Korea> (last visited on Oct. 17, 2017).

¹³ J. Pramuk, *Trump at UN: 'Rocket Man' Kim Jong Un 'is on a suicide mission,'* CNBC NEWS, Sept. 19, 2017, available at <https://www.cnbc.com/2017/09/19/trump-at-un-rocket-man-kim-jong-un-is-on-a-suicide-mission.html> (last visited on Oct. 17, 2017).

of Little Rocket Man, they won't be around much longer."¹⁴ North Korea responded that Trump's remarks were an "intolerable insult to the [North] Korean people" and "a declaration of war."¹⁵ Kim Jong Un said that North Korea would consider the "highest level of hardline countermeasure in history" against the US and that Trump's comment confirmed North Korea's nuclear programs were "the correct path."¹⁶ Trump also warned that the sanctions of UNSC 2375 against North Korea "are nothing compared to what ultimately will have to happen" and that he will 'totally destroy' the nation of North Korea.¹⁷ In response to Trump's remarks, North Korea's Foreign Minister Ri Yong Ho told the UNGA that "North Korea would retaliate" against this "declaration of war" from a "mentally deranged US dotard" by downing US military planes and exploding a hydrogen bomb over the Pacific Ocean.¹⁸ Ri also said "targeting the US mainland with its missiles would be inevitable because Mr. 'Evil' President Trump called his leader a 'rocket man' on a suicide mission."¹⁹

Trump's extreme rhetoric against North Korea was exacerbating the current standoff. However, it delivered a warning message to North Korea and China as well as the US allies in this region, such as South Korea and Japan, during the first year of his term. Trump should regard Kim Jong Un's reference to attacking Guam as a serious threat particularly when his domestic political ground is unstable. As shown at the Cuban Missile Crisis, when vital interests of one party are challenged, it should be more willing to find a winning, workable option because, in international politics, no one wants to play 'chicken.' Such conventional ideas are not out of

¹⁴ J. Allen, *Donald Trump warns Kim Jong-un 'won't be around much longer'*, TELEGRAPH, Sept. 24, 2017, available at <http://www.telegraph.co.uk/news/2017/09/24/donald-trump-warns-kim-jong-un-wont-around-much-longer> (last visited on Oct. 17, 2017).

¹⁵ See 'A declaration of war': North Korea condemns Trump in open letter to international leaders, SBS NEWS, Sept. 25, 2017, available at <http://www.sbs.com.au/news/article/2017/09/25/declaration-war-north-korea-condemns-trump-open-letter-international-leaders> (last visited on Oct. 17, 2017).

¹⁶ B. Blanchard & C. Kim, *China urges restraint amid war of words between Trump and North Korea*, REUTERS, Sept. 24, 2017, available at <https://www.reuters.com/article/us-northkorea-missiles-trump-un/china-urges-restraint-amid-war-of-words-between-trump-and-north-korea-idUSKCN1BZ02M> (last visited on Oct. 17, 2017).

¹⁷ M. Pennington, *Trump: North Korea sanctions 'nothing' compared to 'what ultimately will have to happen'*, CHI. TRIBUNE, Sept. 12, 2017, available at <http://www.chicagotribune.com/news/nationworld/ct-north-korea-sanctions-un-20170912-story.html> (last visited on Oct. 17, 2017).

¹⁸ Sang-Hun Choe, *Kim's Rejoinder to Trump's Rocket Man: 'Mentally Deranged US Dotard'*, N.Y. TIMES, Sept. 21, 2017, available at <https://www.nytimes.com/2017/09/21/world/asia/kim-trump-rocketman-dotard.html> (last visited on Oct. 17, 2017).

¹⁹ See D.P.R. Korea denounces US President's 'reckless and violent' comments (Ri Yong Ho's UNGA Address), available at <https://www.youtube.com/watch?v=vKBrIKS0pnA>. For details, see J. McCurry, *Ri Yong-ho: The North Korean diplomat who ridicules Donald Trump*, GUARDIAN, Sept. 24, 2017, available at <https://www.theguardian.com/world/2017/sep/24/ri-yong-ho-north-korean-diplomat-defuse-crisis> (all last visited on Oct. 17, 2017).

date in international politics; on the contrary, they work well in the contemporary international community. One side seeks to persuade the other to avoid war when the costs of aggression are likely to exceed any possible benefits.²⁰ In medieval Europe, *e.g.*, marriage had a delicate relationship with war; if a country had enough military power to easily attack and dominate its enemy, it would take armed measures while, otherwise, suggesting a marriage of convenience between the royal families.²¹ Now is the time for Trump to consider his ‘possible benefits’ and find a peaceful solution.

3. Surroundings

Military options are sometimes used accidentally, but their results are fatal to both sides. War is never an easy task for any nations. Even if one side fully dominates the other with its military forces, the victorious country is also severely damaged. In ancient East Asia, Chinese empires, such as the Sui dynasty and the Tang dynasty, invaded the Gokuryo dynasty of Korea to control Manchuria. The Gokuryo dynasty finally collapsed under these attacks. On the other side, however, the Sui and Tang dynasties also suffered serious economic and military damages due to these wars and were finally destroyed.²² In the late sixteenth century, Toyotomi Hideyoshi of Japan lost his political power and died during the invasion of the Joseon dynasty of Korea, although these attacks not only devastated Korea but also led to the collapse of the Ming dynasty in China.²³ Modern wars have not been significantly different. In the postwar period, particularly, the US was not fully successful with the series of military interventions in such as Vietnam, Iraq, and Afghanistan. These wars only led to serious political and financial deficits and frustrations in American society. All these military interventions were primarily due to a lack of prudence and deliberation on the part of decision-makers unfamiliar with long-term strategy. In light of these lessons, Trump should seriously consider all circumstances.

²⁰ J. Shasha, *North Korea, Trump’s rhetoric on North Korea is a dangerous echo of Pyongyang*, FIN. TIMES, Aug. 9, 2017, available at <https://www.ft.com/content/f9f48c1a-7cf5-11e7-ab01-a13271d1ee9c> (last visited on Oct. 17, 2017).

²¹ See *Who could marry the royalty in the Middle Ages?*, QUORA, available at <https://www.quora.com/Who-could-marry-the-royalty-in-the-Middle-Ages> (last visited on Oct. 17, 2017).

²² M. Cartwright, *Sui Dynasty*, ANCIENT HISTORY ENCYCLOPEDIA, available at https://www.ancient.eu/Sui_Dynasty. See also E. Mark, *Tang Dynasty*, ANCIENT HISTORY ENCYCLOPEDIA, available at https://www.ancient.eu/Tang_Dynasty (all last visited on Oct. 17, 2017).

²³ K. Szczepanski, *Toyotomi Hideyoshi*, ThoughtCo., available at <https://www.thoughtco.com/toyotomi-hideyoshi-195660> (last visited on Oct. 17, 2017).

Unless Trump considers an all-out war against North Korea, he should be delicate when dealing with his adversaries as well as allies because the key to success in this military operation is to unravel adversarial coalitions and integrate allies. In the beginning of military attack, the US air forces will likely target North Korea's nuclear facilities. These initial air bombings, however, will necessarily lead to Chinese intervention as shown in 1950.²⁴ China regards the US military attacks in North Korea as a grave threat to its own national security because it has a shared common security interest with North Korea. Actually, the Chinese believes that all US Forces stationing in South Korea are mainly serving for containing China rather than defending South Korea from North Korea's military attack.²⁵ When the armed clash escalates, Chinese naval forces and land-based air forces including missiles will likely be deployed to respond to the US navy vessels in the East Sea of Korea or even in the East/South China Sea. The 2011 bombardment of Yeonpyeong Island is a noticeable incident to remember. When the aircraft carrier USS *George Washington* announced her plan to patrol up to the Yellow Sea to conduct joint exercise with the South Korean navy from November 28, 2011, North Korea's artillery might shell the island on behalf of China.²⁶ Then, China recognized Kim Jong Il's power transfer to his son, Kim Jong Un. If this course is followed, there is a possibility for the US Forces to lose critical strategic assets, including aircraft carriers. Trump should be ready for that situation. In the meantime, the US military attack will provoke North Korea to launch missiles or other strategic weapons to the US military bases in South Korea, Japan, and Guam. Also, the US military attack against North Korea will seriously aggravate China because, in this case, North Korea will instantly fire long-range artillery guns to South Korea where more than 1,000,000 Chinese people are living.²⁷

Russia is another obstacle to restraining the US military options against North Korea. Historically, Russia has tried to maintain its vital strategic interests in the Far East. The Russo-Japanese war (1905) and the Soviet Union's declaration of war against Japan (1945) were typical examples. The traditional US policy in Asia is to take advantage of the Sino-Russian disputes. The Nixon-Mao détente might have

²⁴ Eric Y.J. Lee, *Haunting Phantom on the Way to the Korean Reunification? The Chinese People's Volunteer Army in the Korean War and Its Legal Questions*, 7 J. EAST ASIA & INT'L L. 114 (2014).

²⁵ Eric Y.J. Lee, *Trans-Pacific Partnership (TPP) as a US Strategic Alliance Initiative under the G2 System: Legal and Political Implications*, 8 J. EAST ASIA & INT'L L. 327-8 (2015).

²⁶ See USS *George Washington* CVN 73, available at <http://www.uscarriers.net/cvn73history.htm>. See also M. McDonald, 'Crisis Status' in South Korea After North Shells Island, N.Y. TIMES, Nov. 23, 2011, available at <http://www.nytimes.com/2010/11/24/world/asia/24korea.html?pagewanted=all> (last visited on Oct. 17, 2017).

²⁷ Korea Immigration Service, Monthly Statistics [통계월보], Aug. 2017, available at http://www.immigration.go.kr/doc_html/attach/imm/t2017//20170927295172_1_1.hwp.files/Sections1.html (last visited on Oct. 17, 2017).

been impossible without border and ideological disputes between China and the then Soviet Union.²⁸ If Trump adopts a military option against North Korea, Russia and China will inevitably unite along the frontline against the US in Northeast Asia.

Another constraint against Trump's military option is his European allies. In particular, Britain's stance will be a key factor in his decision to exercise a military option in the Far East because the Atlantic coalition with the UK is a ground for the US postwar global strategy. France is another main pillar of the US-led security system. In general, both Britain and France would likely agree that their strategic interests have been maintained through global military alliance networks for nuclear deterrence, the core measure of which is the Non-Proliferation Treaty ("NPT").²⁹ They are likely afraid that Trump's military options in Northeast Asia will crack down on the weakest point of these global nuclear deterrence systems.³⁰ In this sense, speaking to British Prime Minister Theresa May via telephone, Chinese President Xi Jinping reiterated that the North Korean nuclear issue should be resolved peacefully via talks.³¹ China hopes Britain will play a constructive role in easing the situation and pushing for resumed talks. Trump's European allies would not want to see a replay of the events that occurred in Sarajevo in 1914 in Pyongyang today.

Finally, any armed attack against North Korea would lead Seoul and Tokyo to decouple from Washington because, in case of war, their military alliances are loosening to escape the most disastrous outcome from North Korea's nuclear attack.

²⁸ US Dept. of State Office of the Historian, *Rapprochement with China, 1972*, available at <https://history.state.gov/milestones/1969-1976/rapprochement-china> (last visited on Oct. 17, 2017). For details, see H. KISSINGER, *ON CHINA* 202-61 (2011).

²⁹ B. Tertrais, *The Last to Disarm? The Future of France's Nuclear Weapons*, 14 *NONPROLIFERATION REV.* 251-73 (2007), available at <https://www.nonproliferation.org/wp-content/uploads/npr/142tertrais.pdf>; J. Gower, *The United Kingdom and Nuclear Weapons: The Necessity for a Strategic View*, Carnegie Endowment for International Peace Report, available at <http://carnegieendowment.org/2015/11/05/united-kingdom-and-nuclear-weapons-necessity-for-strategic-view-pub-61883>; NATO, *Deterrence and Defence Posture Review* (2012), available at https://www.nato.int/cps/en/natohq/official_texts_87597.htm (all last visited on Oct. 17, 2017).

³⁰ B. Tertrais, *Nous vivons dans le monde de l'affirmation du "nationalisme nucléaire"*, *LE MONDE*, Sept. 8, 2017, available at http://www.lemonde.fr/international/article/2017/09/08/bruno-tertrais-nous-vivons-dans-le-monde-de-l-affirmation-du-nationalisme-nucleaire_5182790_3210.html. See also C. Volkery, *A Look at Britain's and France's Nuclear Arsenals*, *SPIEGEL*, Apr. 12, 2010, available at <http://www.spiegel.de/international/europe/deterrent-lite-a-look-at-britain-s-and-france-s-nuclear-arsenals-a-688504.html> (last visited on Oct. 17, 2017).

³¹ Blanchard & Kim, *supra* note 16.

4. Legal Obstacles

A. US Constitution

What if war is imminent? When military options are being considered, the US President should answer some legal questions. The first is to ask Congress to declare war. Under the US Constitution, Congress is given the power to declare war.³² The president is granted ‘executive’ power as the “commander in chief” of the US armed forces.³³ The presidential executive power to go to war bypassing Congress was exercised for the Korean War (1950),³⁴ the Vietnam War (Tonkin Gulf Resolution, 1964), and the Gulf War (1991).³⁵ In Korea and Kuwait, the US led the Security Council to an authorization to use force before taking action. Presidents Truman and Bush were accorded the right to declare war under international law in advance. The US led the unified command and the multinational forces in collective self-defense that the Security Council recommended in Korea and Kuwait, respectively.³⁶ However, the Tonkin Gulf Resolution was a product of political manipulation. President Johnson has been blamed seriously for this fabrication.³⁷

In any case, Congress will consider public opinions when deciding whether to declare war or not. A Washington Post-ABC News poll found that two-thirds of respondents opposed launching a pre-emptive attack against North Korea.³⁸ Another opinion poll from Fox News shows that 70 percent of voters think the president’s statements about North Korea are not helpful.³⁹ This shows that Trump has severe limitations associated with persuading Congress to agree with his military options.

³² US Cons. art. I, §8, cl. 11.

³³ *Id.* art. II, §§ 1 & 2, cl. 1. For details, see L. HENKIN, FOREIGN AFFAIRS AND THE US CONSTITUTION 46 (2d ed. 1996); S. EMANUEL, CONSTITUTIONAL LAW 125 (29th ed. 2011).

³⁴ M. Shulman, *The Legality and Constitutionality of the President's Authority to Initiate an Invasion of Iraq*, 41 COLUM. J. TRANSNAT'L L. 23-4 (2002), available at <http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1221&context=lawfaculty> (last visited on Nov. 13, 2017).

³⁵ HENKIN, *id.* at 47.

³⁶ *Id.* at 255.

³⁷ See 1964 Congress passes Gulf of Tonkin Resolution, HISTORY.com, available at <http://www.history.com/this-day-in-history/congress-passes-gulf-of-tonkin-resolution> (last visited on Oct. 17, 2017).

³⁸ J. Davissept, *Is Trump All Talk on North Korea? The Uncertainty Sends a Shiver*, N.Y. TIMES, Sept. 24, 2017, available at <https://www.nytimes.com/2017/09/24/us/politics/trump-north-korea-kim.html> (last visited on Oct. 17, 2017).

³⁹ M. Quinn, *70 percent of voters call Trump's North Korea rhetoric not helpful*, WASH. EXAMINER, Sept. 28, 2017, available at <http://www.washingtonexaminer.com/70-percent-of-voters-call-trumps-north-korea-rhetoric-not-helpful/article/2635937> (last visited on Oct. 17, 2017).

B. The UN Charter

The UN Charter prohibits the use of force without authorization from the Security Council.⁴⁰ Anticipatory (preemptive) armed attacks are not justified under international law unless “a threat from a foreign power [are] “instant, overwhelming, and leaving no choice of means, and no moment for deliberation.”⁴¹ (Caroline Doctrine) Trump should be required to consult with the UN Security Council for military options against North Korea because the illegality of North Korea’s nuclear weapon test is basically due to its violation of the UN Security Council resolutions. It is unlikely that the Security Council will permit the US to undertake a military operation against North Korea’s nuclear facilities because China and Russia can veto the action. In addition, a preemptive attack involves neither self-defense nor collective security under Chapter VII of the Charter. Furthermore, Trump’s UNGA address, in which he stated that the US “will have no choice but to totally destroy” North Korea was criticized as a breach of the UN Charter because he directly referred to a ‘military threat.’⁴² When carrying out the “War on Terror” in 2003, the US denied the Security Council resolution and attacked Iraq without its authorization. Due to the Bush administration’s audacious defiance to international law, however, the US fell down from its status as “the only superpower” in the global society to a country with a bad reputation.

C. General International Law

Trump also faces international law limitations with regard to his possible military options. Today, only self-defense (both individual and collective) is regarded as a legitimate military action without obtaining prior authorization from the Security Council. All other military actions must be conducted under the authorization of the Security Council. Preemptive strikes and retaliations are not permitted under international law. Moreover, missile launches are not *eo ipso* illegal. There are neither instruments nor customs under international law that directly prevent missile development and launches unless they encroach on the territorial integrity or political independence of another nation.

⁴⁰ U.N. Charter art. 2(4).

⁴¹ N.Y.C. Bar, Letter to President Trump regarding Presidential Authority to Initiate War Against North Korea, Oct. 4, 2017, available at <http://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-president-trump-regarding-presidential-authority-to-initiate-war-against-north-korea> (last visited on Nov. 13, 2017).

⁴² See *Bombastic and nationalist: Trump's UN speech in breach of UN charter, says Swedish FM*, Τετάρτη, Sept. 20, 2017, available at <http://www.elethos.gr/2017/09/bombastic-and-nationalist-trumps-un.html> (last visited on Oct. 17, 2017).

Another controversy is associated with the NPT. Because of the three-track system (nuclear states under the NPT; non-nuclear states under the NPT; nuclear states not under the NPT) inherently embedded in the Treaty, the NPT presents the limitation of fully enforcing nuclear deterrence. Trump's military option against North Korea's nuclear weapons tests would unveil the paradox of a current nuclear deterrence system under the NPT.

5. Conclusion

On CNN's *State of the Union*, the US permanent representative to the UN, Nikki Haley, said, "None of us want war. But we also have to look at the fact that you are dealing with someone [Kim Jong Un] who is being reckless, irresponsible."⁴³ The question remains as to whether Trump's military option is working despite the legal and political restraints discussed above.⁴⁴

Some issues must be considered in practice. First, more than 100,000 US civilians are staying in South Korea. Abe Denmark (former deputy assistant secretary of defense for East Asia under Barack Obama) said, "We would likely see something we have not done yet: an evacuation of Americans - civilians, military family members, and non-essential personnel - from South Korea."⁴⁵ Such an evacuation would signal the onset of military options. In this sense, Trump's military options are unrealistic. Joseph Dunford, the chairman of the Joint Chiefs of Staff, explained to the Senate Armed Services Committee that the Trump administration is in the midst of "a pressurization campaign" led by Rex Tillerson through economic and diplomatic means.⁴⁶

Second, there would be a serious risk of human losses in terms of the US military

⁴³ See Nikki Haley previews Trump's UN trip, CNN (State of the Union), Sept. 17, 2017, available at <http://edition.cnn.com/videos/politics/2017/09/17/nikki-haley-entire-state-of-the-union-intv-sotu.cnn> (last visited on Oct. 17, 2017).

⁴⁴ D. Nakamura & A. Gearan, *U.S. warns that time is running out for peaceful solution with North Korea*, WASH. POST, Sept. 17, 2017, available at https://www.washingtonpost.com/politics/us-warns-that-time-is-running-out-for-peaceful-solution-with-north-korea/2017/09/17/101dcdea-9bd6-11e7-8ea1-ed975285475e_story.html?utm_term=.417d5e3c683b (last visited on Oct. 17, 2017).

⁴⁵ U. Friedman, *How to Tell If North Korea and America Are Actually Headed to War*, ATLANTIC, Sept. 28, 2017, available at <https://www.theatlantic.com/international/archive/2017/09/trump-kim-words-korea/541164> (last visited on Oct. 17, 2017).

⁴⁶ *Id.* Trump tweeted, however, Secretary of State, Tillerson was wasting his time on diplomacy. See P. Baker & D. Sanger, *Trump Says Tillerson Is 'Wasting His Time' on North Korea*, N.Y. TIMES, Oct. 1, 2017, available at <https://www.nytimes.com/2017/10/01/us/politics/trump-tillerson-north-korea.html> (last visited on Nov. 13, 2017).

personnel. North Korea is heavily fortified. This area will be a different battlefield from that faced in the Middle East. In 1994, *e.g.*, President Clinton almost decided to conduct an air strike on a North Korean nuclear reactor, but he did not implement it due to the enormous number of casualties expected.⁴⁷ During the Korean War, the US Marine Corps lost approximately 7,000 troops in the Battle of Chosin Reservoir because of the hard terrain and bitter cold.⁴⁸

Third, armed conflict in the Korean peninsula could easily expand to neighbors, which would lead to a stalemate for the US. Unlike the Vietnam War, in this case, the other side will be China, which is much more powerful than North Vietnam. Currently, China is maintaining a peaceful resolution. China's Foreign Ministry spokesman, Lu Kang, said: "We hope all sides do not continue doing things to irritate each other and should instead exercise restraint."⁴⁹ In late 1950, Prime Minister Zhou En-lai released similar remarks,⁵⁰ but China finally sent the troops to the Korean battlefield when the UN Forces crossed the 38th parallel.

In 1978, President Carter mediated the conflict between Arab and Israel, leading them to sign the Camp David Accord. His efforts finally dissolved the United Arab Front against Israel.⁵¹ The initial stage for resolving North Korea's nuclear issue involves undoing the China-North Korea coalition against the US. The more Trump refers to military options, the more strongly China and North Korea will unite. Trump's decertification of a Joint Comprehensive Plan of Action with Iran would make matters worse; Kim Jong Un would focus more on developing nuclear weapons in order not to be the next to Iran. Trump and his administration should carefully listen to the lessons that can be learned from Carter's Middle East peace initiative.

Sun Tzu, a great strategist in ancient China, wrote in his masterpiece, *THE ART OF WAR*: "The war is of vital importance to the State. It is a matter of life and death, a road either to safety or to ruin. Hence it is a subject of inquiry which can on no account be neglected."⁵² Military attacks against North Korea are virtually impossible in a legal

⁴⁷ J. McIntyre, *Washington was on brink of war with North Korea 5 years ago: Pentagon had predicted up to 1 million deaths*, CNN, Oct. 4, 1999, available at <http://edition.cnn.com/US/9910/04/korea.brink> For details, see R. Cavazos, *Mind the Gap between Rhetoric and Reality*, NAPSNet Special Report, available at <https://nautilus.org/translated-pdfs/nautilus-MIF6s1iW.pdf> (all last visited on Oct. 17, 2017).

⁴⁸ M. Seelinger, *Nightmare at the Chosin Reservoir*, Army History Center, Jan. 20, 2015, available at <https://armyhistory.org/nightmare-at-the-chosin-reservoir> (last visited on Oct. 17, 2017). For details, see R. APPELMAN, *EAST OF CHOSIN: ENTRAPMENT AND BREAKOUT IN KOREA* (1990); T. CLEAVER, *THE FROZEN CHOSEN: THE 1ST MARINE DIVISION AND THE BATTLE OF THE CHOSIN RESERVOIR* (2016).

⁴⁹ Blanchard & Kim, *supra* note 16.

⁵⁰ Lee, *supra* note 24, at 117.

⁵¹ W. QUANDT, *THE MIDDLE EAST: TEN YEARS AFTER CAMP DAVID* 9 (1998).

⁵² SUN TZU, *THE ART OF WAR* (L. Giles trans. into English), ch. 1, available at <http://www.paxlibrorum.com/books/taowde>

as well as a practical sense. They will bring only disaster to all involved, including the US. The best way to resolve North Korea's nuclear issue is to rehabilitate the multilateral channel for dialogue and then begin talks. Engagement should be the initial step. Now is the time for the Trump Administration to take a step back, to reset its approach to resolving the North Korean situation, and to do everything possible to avoid an unnecessary and catastrophic war.