

THE US-DPRK PEACE TREATY: A COMMENTARY

by Eric Yong Joong Lee & Ridoan Karim
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Juhyun Park*

This Commentary provides a detailed analysis of the US-DPRK Peace Treaty, a proposed bilateral peace treaty between the United States and the Democratic People's Republic of Korea (i.e., North Korea). The US-DPRK Peace Treaty was conceived as the first in a series of legal instruments to be executed in furtherance of the establishment of "peace as a system" on the Korean Peninsula. In this monograph, the authors envision that such a peace treaty would serve as a basis for peaceful co-existence between the two countries and, ultimately, a peaceful, non-volatile situation on the Korean Peninsula. The Commentary offers an in-depth explanation of each provision of the US-DPRK Peace Treaty, including the meaning, background, rationale and legal implications of individual provisions of the Peace Treaty. Additionally, it provides insight into relevant international law issues and the history of negotiations and engagement among interested parties in the context of the inter-Korean conflict.

Keywords

US-DPRK Relations, US-DPRK Peace Treaty, Korean Conflict, Korean Armistice Agreement, Non-Proliferation

* Assistant Professor at the Department of International Economics and Law of Hankuk University of Foreign Studies, Seoul-Korea. A.B.(cum laude)/J.D. (Harv.). The Reviewer acknowledges financial assistance from the Hankuk University of Foreign Studies Research Fund. She may be contacted at: juhyun.park@hufs.ac.kr / Address: 11, Cheonjangsan-ro 9-gil, Dongdaemun-gu, Seoul 02449 Korea.

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1. Introduction

Hostilities in the Korean War ended in 1953 with the conclusion of an armistice by and among North Korea, China and the United Nations Command (UNC).¹ The armistice's stated aim is to "ensure a complete cessation of hostilities and of all acts of armed force in Korea until a final peaceful settlement is achieved."² Such a "final peaceful settlement" has proved elusive, especially given North Korea's decades-long pursuit of nuclear weapons, which has resulted in significant technological breakthroughs in recent years. Eric Yong Joong Lee suggests that the conclusion of a peace treaty between the US and North Korea could help break the impasse in the Korean crisis, which implicates US security interests. The proposed Peace Treaty between the US and North Korea (hereinafter US-DPRK Peace Treaty)³ was first published as an addendum to a research article that Lee authored in 2018 titled, "Agreement between the United States of America and the Democratic People's Republic of Korea on the Termination of the 1953 Armistice, Denuclearization and Rapprochement."⁴ This Commentary builds on Lee's earlier research, providing an exposition of the meaning, background, rationale and legal implications of the individual provisions of the proposed Peace Treaty.

2. Analytic Review

The US-DPRK Peace Treaty was conceived, first by Lee and subsequently in this Commentary by Lee and Karim, as the first in a series of legal instruments to be executed in furtherance of the establishment of "peace as a system" on the Korean Peninsula.⁵ The authors state that while the "ideal situation" would be for all four major belligerents of the Korean War – the two Koreas, the United States and China – to collectively enter into a peace accord, such an ambitious undertaking is likely to

¹ South Korea refused to sign the armistice and thus is not formally a party to the Armistice Agreement.

² Korean Armistice Agreement pmb1.

³ The full title is the Agreement between the United States of America and the Democratic People's Republic of Korea on the Termination of the 1953 Armistice, Denuclearization and Rapprochement.

⁴ Eric Yong Joong Lee, *The "Peace Treaty" as a U.S. Doctrinal Option and Its Application to the DPRK: A Historical and Analytic Review*, 51 CORNELL INT'L L.J. 101 (2018).

⁵ ERIC YONG JOONG LEE & RIDOAN KARIM, *THE US-DPRK PEACE TREATY: A COMMENTARY* (2022) at xxxvi.

require “a significant time investment.”⁶ The more pragmatic course, they argue, will be to begin with an “individual approach” involving, initially, peace negotiations between the United States and North Korea, which are more likely to yield concrete results given North Korea’s historical “eager[ness] to talk with the US bilaterally on the Korean peninsula issue.”⁷ If successful, such bilateral peace negotiations could prompt complementary bilateral arrangements between other interested parties (such as South Korea and North Korea, and South Korea and China) and ultimately, lead to conclusion of a “comprehensive peace treaty between the four parties of the Korean War including South Korea and China.”⁸

It is helpful to keep in mind this larger context when reading the US-DPRK Peace Treaty and its Commentary, which naturally center on the relations between the United States and North Korea and the obligations that the parties will assume toward each other. In other words, the US-DPRK Peace Treaty is not intended to provide a final solution to every legal and security issue necessary to resolve the inter-Korean conflict and resulting security crisis. Its core function is more specific and narrow: ending the *de jure* state of war between North Korea and the US and establishing the necessary groundwork for a sustainable state of peaceful co-existence.

This is not to say that the aims of the US-DPRK Peace Treaty are modest, or that the obligations it imposes are merely incremental. The proposed Peace Treaty envisions a new order in which the relationship between the US and North Korea has been fundamentally reset. The parties undertake to “respect the sovereignty, political independence and territorial integrity of the other Party,”⁹ it being implied that the US will abandon its efforts to bring about regime change in North Korea.¹⁰ Both sides agree to “refrain from the threat or the use of force against the other Party under any circumstances.”¹¹ The US agrees not to “deploy any strategic weapons of mass destruction in the Korean peninsula,” while North Korea commits to “discontinue the development and launch of long range missiles.”¹² North Korea agrees to “dismantle and abandon its nuclear weapons development program in a complete, verifiable, and irreversible manner,” to return to the Non-Proliferation of

⁶ *Id.* at xxxiv-xxxv.

⁷ *Id.* at xxxv.

⁸ *Id.* at xxxvi.

⁹ US-DPRK Peace Treaty art. 1.

¹⁰ LEE & KARIM, *supra* note 5, at xxxiv.

¹¹ US-DPRK Peace Treaty art. 6.

¹² *Id.* art. 7.

Nuclear Weapons Treaty system, and to submit to monitoring by the International Atomic Energy Agency (IAEA).¹³ The parties are ultimately to “establish diplomatic ties at the ambassadorial level.”¹⁴ The US agrees to “lift with immediate effect [...] economic sanctions placed against the DPRK through the United Nations Security Council Resolutions”¹⁵ as well as “its ban and any other alienating restrictions on the exports of strategic goods to the DPRK.”¹⁶ The parties agree to “promote trade and investment in the other’s territory”¹⁷ and the US, to “aid the DPRK in tackling the energy shortage [...]”¹⁸ Each of these appears to be standalone obligations, such that a violation of one or more obligations would not necessarily justify the other party’s taking retaliatory measures to the extent such measures are prohibited under the proposed Peace Treaty.

Central to the feasibility of this new order is North Korea’s de-nuclearization. As noted by the authors, neutralizing the North Korean nuclear threat has been a driving force behind Washington’s strategic shift in its approach to North Korea. For example, William Perry, Clinton’s Defense Secretary, has stated that “[i]f the DPRK moved to eliminate its nuclear and long-range missile threats, the United States would normalize relations with the DPRK, relax sanctions that have long constrained trade with the DPRK and take other positive steps that would provide opportunities for the DPRK.”¹⁹

There may be concerns that the US-DPRK Peace Treaty would require the US to forgo important means of leverage against North Korea, such as economic sanctions and military exercises, based solely on North Korea’s promise to dismantle its nuclear weapons program. Some may also question whether the US Forces would be completely withdrawn from the Korean Peninsula, potentially jeopardizing peace in the region. It is important in this regard to note what the US-DPRK Peace Treaty does not require. First, the withdrawal of US troops from South Korea is not mandatory.²⁰ Second, there is no obligation to cease US and South Korean joint military exercises

¹³ *Id.* art. 11.

¹⁴ *Id.* art. 14.

¹⁵ *Id.* art. 19.

¹⁶ *Id.* art. 20.

¹⁷ *Id.* art. 21.

¹⁸ *Id.* art. 22.

¹⁹ WILLIAM PERRY, U.S. DEP’T OF STATE, REVIEW OF THE UNITED STATES POLICY TOWARD NORTH KOREA: FINDINGS AND RECOMMENDATIONS 12-3 (1999), cited in Lee, *supra* note 4, at 132.

²⁰ The Commentary emphasizes this point: “This draft Treaty may create another concern over the US military troops’ withdrawal from South Korea. However, this question should be resolved by political compromise, not legal decision. Recently, North Korea has not put US armed forces in South Korea itself on the negotiation table for the Korean peninsula peace process as an agenda.” See LEE & KARIM, *supra* note 5, at 27.

altogether. Rather, the US-DPRK Peace Treaty only requires the cessation of “large scale” military exercises and advance notification of the other party of “any troop deployment, movements of military personnel or any military training exceeding the scale agreed to by both Parties.”²¹ While the US undertakes to disassemble the UNC stationed in South Korea,²² such a step is not as radical as may seem, because the dissolution of the UNC has already been the subject of UN General Assembly resolutions (3390 A & B) and the UNC’s role in enforcing the armistice is largely symbolic.²³ In brief, the US would not be committing to abandon its involvement in the Korean security situation, but would retain the right to keep its forces on the ground in South Korea. The US would presumably remain vigilant in monitoring North Korea’s compliance with the proposed Peace Treaty, whose aim is to establish a framework that can break the current cycle of escalating armament and hostility, rather than completely and abruptly disengage and hope for the best.

The US-side concessions proposed by the authors are largely based on a cost-benefit analysis. The UNC exists nominally, as mentioned, but its continued presence is likely to irritate North Korea without providing significant benefits.²⁴ While military exercises are a more complex matter, the authors argue that the potential harm from raising tensions and causing North Korea to fear an attack outweighs the military value of large-scale military exercises.²⁵ Regarding economic sanctions, the authors contend that such sanctions have historically been ineffective in deterring North Korea from pursuing its nuclear program, and the US should thus consider abandoning this ineffective tool.²⁶

Notwithstanding such rational justifications for the US-DPRK Peace Treaty’s construct, questions of sequencing and compliance are bound to arise. Of course, parties to a treaty are generally expected to abide by their accords under the principle of *pacta sunt servanda*. However, the US-DPRK Peace Treaty is not an ordinary treaty, and its parties have been locked in a hostile atmosphere of *de jure* war for the past seven decades. They have a history of deeply entrenched distrust, so that implementing the treaty would require good faith and trust from both sides, which are currently lacking.

The US-DPRK Peace Treaty on its face appears to adopt a “no-strings attached”

²¹ US-DPRK Peace Treaty art. 8(1).

²² *Id.* art. 4.

²³ LEE & KARIM, *supra* note 5, at 17-21.

²⁴ *Id.*

²⁵ *Id.* at 43-8.

²⁶ *Id.* at 95-9.

approach. As noted, each party's obligations are not conditioned on the other party's compliance with its own obligations. Thus, the framework departs from the *quid pro quo* approach historically taken by the US, where the expectation was that North Korea would take certain actions to denuclearize first and then receive benefits from the US side such as the lifting of economic sanctions. The US-DPRK Peace Treaty's provisions on economic sanctions and export controls are particularly clear on the issue of "timing": the US undertakes to lift all economic sanctions and export controls on strategic goods with "immediate effect upon the entry into force of this Agreement."²⁷ The authors appear to be of the view that the US's willingness to lift economic sanctions (whose effectiveness is dubious at best) can be a powerful negotiating tool. However, it would be beneficial if the authors' rationale for not choosing a more sequential approach were articulated more clearly. Moreover, the lack of treaty language calling for the US not to resume sanctions in the future raises questions about the possibility of their being resumed under certain conditions.

The US-DPRK Peace Treaty's omission of any mention of human rights is particularly interesting in this context. The Commentary does address the issue of human rights, most notably in the section discussing Article 2.²⁸

[B]oth States must also contribute jointly to the promotion of *shared values* and principles, including, in particular, democracy, the rule of law, *human rights*, and fundamental freedoms. ... Although this may seem as an excessive dream for some, peaceful cohabitation can only be realized via the Parties' *shared ideals and principles* of democracy, the rule of law, *human rights*, and basic freedoms. North Korea must reaffirm its commitment to the Universal Declaration of Human Rights and relevant international human rights conventions in this regard.²⁹

The authors' use of the terms "shared values" and "shared ideals" is noteworthy, given that the current state of affairs does not suggest the existence of such shared values between the parties. The US-DPRK Peace Treaty is meant to be signed and implemented in the present, not at some point in the distant future when North Korea has legitimately committed to the protection of human rights and recognition of human dignity. This raises the question of the implications of North Korea's current human rights violations for the negotiation of the Peace Treaty as well as its implementation, assuming it were executed. Does the US-DPRK Peace Treaty's

²⁷ US-DPRK Peace Treaty arts. 19-20.

²⁸ Article 2 states: "The Contracting Parties shall make efforts to promote peaceful exchanges and cooperation under international law."

²⁹ LEE & KARIM, *supra* note 5, at 5. [Emphasis added]

mandate that the parties stop “insult[ing] or provok[ing] each other” mean that the US will not take any action if North Korea continues its human rights violations? What are the US policy implications for those who flee North Korea and seek asylum? Would the US be at liberty to impose economic sanctions or export control measures based on human rights violations? The authors’ views on such questions are not clearly articulated and could benefit from further elaboration.

As this is a commentary on a proposed treaty, rather than an actual treaty, there are no working documents or negotiating history to examine, only the final text that represents the optimal arrangement in the authors’ view. In practice, the negotiation of such a peace treaty will entail the exchange of many different drafts reflecting the parties’ varying strategic positions. It may be worthwhile for the authors to explore these differing strategic positions in future editions of the Commentary or follow-up research.

3. Conclusion

The authors display an impressive level of expertise on a diverse range of topics relevant to this conflict, including the history of negotiations among interested parties, the non-proliferation regime administered by the IAEA, and North Korea’s domestic laws, constitution and international engagement. The Commentary provides a clear and comprehensive overview of the many factors at play in the ongoing dispute. Although meticulously researched, the Commentary remains accessible even to non-lawyers, and the technical legal discussions are presented in an approachable manner. This reader-friendly approach makes it an excellent resource for scholars, policymakers, and anyone interested in the subject matter. The authors’ innovative approach to addressing a highly challenging geopolitical situation makes this work highly recommended.

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