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ABE'S DEMOCRATIC SECURITY DIAMOND AND NEW QUADRILATERAL INITIATIVE : AN AUSTRALIAN PERSPECTIVE

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Abstract

In December 2012, Japanese Prime Minister Shinzo Abe authored an opinion piece in *Project Syndicate* advocating the creation of a 'democratic security diamond' (DSD) in which Japan, the United States, India and Australia would "safeguard the maritime commons stretching from the Indian Ocean region to the western Pacific" to defend the existing regional order and oppose Chinese "coercion". This paper assesses Abe's DSD from Australia's perspective and asks: how receptive might Australia be to participation in a revived quadrilateral initiative among these four countries? The paper offers a historical explanation of why the antecedent to the DSD, the Quadrilateral Dialogue of 2007, was premature from Australia's perspective. It then analyses Australia's perception of its strategic environment, including the threats and risks identified in the latest 2016 Defence White Paper, and argues that Australia would now be receptive to a revival of quadrilateral cooperation between the four countries because Canberra increasingly views with pessimism the prospect that China will leave the existing liberal rules based order unchallenged as it rises. It argues that quadrilateral cooperation would complement Australia's existing bilateral and trilateral relationships with the United States and Japan, assist in the development of closer relations with India, and further Australia's strategic interests in the Indo-Pacific. However, Australia's interests are best served if this comes in an a looser and less formal format than Abe's DSD idea, focused on HADR and anti-piracy type activities in the Indian Ocean to avoid the creation of a regional security dilemma. Finally, it argues that deeper strategic convergence between the four nations is inevitable, if Chinese assertiveness in the East and South China Seas continues.

Key words: Maritime Security; Indo-Pacific; Quadrilateral Cooperation; Democratic Security Diamond

INTRODUCTION

A day after assuming office for the second time in December 2012, Japanese Prime Minister Shinzo Abe authored an opinion piece in *Project Syndicate* advocating the creation of a ‘democratic security diamond’ (DSD) to “safeguard the maritime commons stretching from the Indian Ocean region to the western Pacific”. Japan, The United States, India and Australia would form each point of this anticipated diamond, with Abe arguing that Chinese “coercion” in both the East and South China Seas directly threatened the interests and values of these four states. Together, they needed to prevent the South China Sea from becoming a “Lake Beijing” from which aircraft carriers and “nuclear attack submarines, capable of launching missiles with nuclear warheads” could be based, with the purpose of intimidating the region (Abe 2012).

This paper seeks to assess Abe’s DSD from Australia’s perspective: how receptive might Australia be to participation in a quadrilateral initiative among these four democratic states? The paper will offer a historical background to the antecedent to the DSD, the Quadrilateral Dialogue (QD) of 2007, and explain why for Australia, such an initiative was premature. Second, it will suggest a number of ways that the contemporary strategic environment has changed since the QD ended with a whimper back in 2008. Third, the paper will assess how the present, Coalition government is likely to view quadrilateral cooperation.

This will involve analysis of Australia’s perception of its strategic and political environment, including the threats and risks identified in the latest 2016 Defense White Paper; Australia’s existing bilateral and trilateral relationships with Japan and the United States, and whether a quad will be complementary to or undermine these relationships; whether the quad will assist in the development of closer relations with India or detract from it; and finally, is the idea of a

‘democratic’ community becoming more of a priority for Canberra and the Region? In making this assessment it will be necessary to also assess whether Australia will independently and proactively accept or reject a quad, or simply follow the lead of the US.

I will argue that Australia’s interests are served by closer quadrilateral cooperation between the four countries, but in a looser and less formal format than Abe’s DSD idea. In the short term, however, the emergence of the DSD is still under question primarily because of India’s reluctance to be perceived to be taking an overtly anti-China stance, and as a result of the fall-out from Australia’s recent decision to procure submarines from France, rather than Japan. In the longer term, and assuming continued Chinese assertiveness in the East and South China Seas, strategic convergence between the four nations is inevitable on structural and interest based factors, providing more fertile ground for a future DSD.

HISTORICAL BACKGROUND : 2007 QI AND WHY THE RUDD GOVERNMENT PULLED OUT

Japan’s first attempt to engender deeper strategic cooperation between Japan, Australia, India and the United States - the Quadrilateral Dialogue (QD) of 2007—was a short-lived experiment that ultimately failed to gain traction in the face of strong Chinese opposition and the loss of office by its major proponents in Australia, Japan and the US. Prime Minister Abe was widely acknowledged as the main protagonist behind the QD, with firm support from the Bush Administration, particularly US Vice President Dick Cheney.

The first and only meeting between the four states took place in May 2007, on the sidelines of the Association of Southeast Asian Nations (ASEAN) Regional Forum in Manila, and involved first-

assistant secretary level foreign ministry officials. On getting wind of the planned meeting, China issued formal diplomatic demarche notes to each of the Quad countries protesting against what it perceived to be the creation of an 'axis of democracies', or a 'mini-NATO', formed with the purpose of encirclement (Nicholson 2007; Varadarajan 2007). Perhaps because of these protests, the meeting was a relatively low-key affair, without an advance agenda, and was not publicized.

Nevertheless, in September 2007, the US and India expanded their regular bilateral "Malabar" naval exercise in the Bay of Bengal to include Australia and Japan for the first time (together with Singapore). Twenty-six warships took part, including the *Nimitz*, a US nuclear powered aircraft carrier. The Malabar exercise proved to be the high point of quadrilateral security cooperation between the four countries and has not since been repeated. Australia was the first to withdraw in February 2008, and the grouping thereafter sank from view (Barry 2015). So, what accounts for the failure of the QD to become an institutionalized feature of the Asian security landscape? There are three compelling explanations for the sinking of the QD.

The first, and most straightforward explanation is that the strongest advocates for its creation lost office in period between 2007-2008 and, over such a brief period of time, were unable to consolidate its institutionalization into the strategic landscape. Japanese Prime Minister Shinzo Abe, who had spearheaded the deepening of India-Japan security cooperation, was forced to resign from office in September 2007 after only one year in power, because of sudden ill health compounded by declining domestic political support. In its final years, the Bush Administration became increasingly preoccupied with the legacy it would leave in the Middle East, and focused resources and attention towards attempting to establish viable states in Iraq and Afghanistan. The potential negative consequences of China's rise would in contrast, not be felt for some years to come, and could afford to be put to one side.

In Australia, the long-serving John Howard Government pushed

for both stronger strategic ties with both Japan and India but lost power in November 2007 to the Labor Party under Kevin Rudd. In opposition, Kevin Rudd had been highly critical of the expansion of the existing US, Japan, Australia trilateral security dialogue to include India because it created “uneasiness” in Beijing (Ryan 2007). As Prime Minister, Rudd’s first diplomatic tour included visits to the US, Britain and China, but not Japan, which was interpreted in Tokyo as a clear signal that Australia was moving closer to China. This was further emphasized by the casual manner in which Foreign Minister Stephen Smith announced Australia’s withdrawal from the QD in February 2008, whilst standing next to the Foreign Minister of China at a joint press conference. There he described China’s “concern” over the QD and stated that the dissolution of the QD was “welcomed by all” of its four members (Office of the Australian Defence Minister 2008).

Secondly, the addition of India to the existing Japan-US-Australia trilateral was perhaps too ambitious in terms of the expectations being placed on India to play the role of Asia’s “swing state”. After all, the framework for US-India nuclear cooperation had only been announced in a joint statement in July 2005 (The Whitehouse 2005), and at the time of the first meeting of the QD, all domestic and international hurdles to the agreement had not been overcome. The international recognition of India’s status as a de-facto nuclear power had not yet come to pass, with the issue of a waiver being granted by the Nuclear Suppliers Group still considered uncertain.

Internally, deep domestic opposition to the agreement existed within India, with many in the strategic community harbouring considerable skepticism about the United States and its trustworthiness as a potential security partner, a continuing legacy of the Cold War. Given the potential for a QD to antagonize China, and draw India into East Asian conflicts, the strong adherence to ‘non-alignment’ as the foundation for Indian foreign policy continued to dominate New Delhi’s strategic thinking.

Over the course of 2007, Australia's contradictory stance over uranium sales to India further extinguished any enthusiasm New Delhi had toward the QD. In August 2007, following the lead of the US, the Howard government approved the sale of uranium to India for the first time, on the basis that India had proven itself to be a 'responsible' nuclear power with a 'very good non-proliferation track record' and as such uranium sales would serve to support rather than undermine the Nuclear Non-Proliferation Treaty (Clarke 2011, 495). Such a move dramatically overturned decades of Australian non-proliferation policy which restricted exports of uranium to countries that were members of the Nuclear Non-proliferation Treaty and in "good standing" with the IAEA (Clarke 2011, 495). This decision raised the prospect of vastly improved bilateral ties. However, barely three months later the newly elected Rudd government once again banned exports to India, spelling the end of New Delhi's participation in the QD.

Thirdly, Beijing's strategy of "smile diplomacy", that aimed to demonstrate that its rise was "peaceful", was still in operation. Whilst the rapid pace and magnitude of China's military modernization were starting to cause anxiety in the region, China had not yet taken consistently aggressive steps to assert its territorial and maritime claims in the South China and East China Seas. As such there were still optimists in Asian capitals who believed that China could be encouraged to play the role of a "responsible stakeholder" in the existing US led order, rather than a challenger to it. In this context, strong domestic voices in Australia asked whether the establishment of the QD was too overtly provocative to China, with the strong potential to create, rather than counter, the conditions for an escalating regional security dilemma. If China were to perceive itself as being excluded from the existing regional order then this might in fact encourage domestic forces to act more assertively.

This to a large part explains why the first meeting of the Quadrilateral Dialogue was so low-key. In wanting to appear to be pursuing

a hedging rather than balancing strategy, members of the Quad took pains to characterize their cooperation as directed towards collectively providing regional public goods rather than aimed at any particular country. Australian officials from the Department of Foreign affairs emphasized that the inaugural meeting was focused on disaster relief, whilst an Indian official told *The Hindu* (after receiving China's diplomatic protests) that "[w]e were conscious of thus not trying to create the impression of a gang-up against them [i.e. China]" (Varadarajan 2007; Australian Financial Review 2007).

Further, on his visit to Beijing in July 2007, the Howard Government's then Defense Minister, Brendan Nelson, was reported to have reassured his Chinese counterpart that Australia was "not interested in forming a security pact with Japan, the US and India as a regional buffer to China" (Kerin 2007). In the following days, Nelson back-tracked even further, stating that Australia would exclude defense and security matters from any quadrilateral dialogue between the four countries, and confine discussion to matters of trade, economics and culture (Ryan 2007b).

Finally, in the context of China's successful smile diplomacy, Chinese diplomats were considerably adept at framing the QD as a retrograde step plunging the region into a security dilemma. China took pains to show its bona fides, and neutralize the justification for a QD, by pushing forward with defense cooperation initiatives with Australia. For example, in September 2007, the same month as the quad countries took part in the Malabar naval exercise together, Australia and China announced the launch of an annual security dialogue to begin the following year at the foreign and defense minister level (Ryan 2007b). In addition, in the same month, Australia, New Zealand and China held their first ever tri-nation naval exercise off the coast of New South Wales.

Thus, in a context where China had not yet overtly challenged US pre-eminence in the region, the conditions were not yet sufficient to justify the creation of a new security institution, which would

supplant existing ASEAN led security groupings, particularly when it was feared this could in fact have the opposite effect of what was intended. As such, the QD was widely viewed as a provocative rather than stabilizing initiative.

THAT WAS THEN, THIS IS NOW...

It has been more than eight years since Australia officially pulled out of the QD and effectively ended the quadrilateral experiment. The question now is whether changes in the regional strategic environment may have increased the appetite for quadrilateral cooperation among the four states. In the intervening years, the critical development that has begun to alter perceptions about the positive role quadrilateral cooperation could play in enhancing stability in region has been China's assertive extension and defense of its territorial and maritime claims in the South and East China Sea, combined with its increased capacity to challenge US and allied military power in these maritime spaces.

Whilst it was noted above that the rapid increase in Chinese defense spending had already begun to cause consternation in Asian capitals in the 2007-2008 period, since then this trend has continued unabated. Total military expenditure by China has increased 107% between 2007-2015, with such expenditure making up 10.6% of all government spending in 2015. Looking at the longer-term trends, Chinese military expenditure has expanded 396% in the period 2000-2015 (adjusted for inflation) (SIPRIa 2014).

The comparison with Asian rivals, Japan and India are also telling. In 2007, China spent 2.3 times and 2.9 times more than Japan and India respectively on its military forces, whilst in 2015 this gap has widened to more than 4 times greater (SIPRIa 2015; SIPRIb 2015). Whilst this expansion is largely in line with the rise of China's GDP

(SIPRIc 2015), questions have arisen about the possible aims Beijing might seek to achieve through the threat or use of its growing military power.

Since 2007, speculation about how China would choose to wield its growing power has been fueled by both a widening of what Beijing considers to be its “core interests” combined with what has been assessed as assertive, and in some quarters, aggressive action to extend and defend its maritime claims in both the East and South China Seas. Since around 2003-2004, Chinese officials have used the term “core interest” to signal the policy issues that Beijing considers to be non-negotiable and able to be defended or prosecuted through the use of force (Swaine 2010).

Initially such core interests were defined in terms of maintaining China’s territorial integrity from separatist claims and to re-claim territory lost during the Chinese civil war. Thus, in 2003 the prevention of Taiwanese de-jure independence was declared a core interest, whilst in 2006 the threat of separatist movements in Tibet and Xinjiang were added to this list (Campbell et al 2013). Re-creating a China based on territories held during the Qing dynasty has become part of the Chinese Communist Parties’ narrative of correcting past “humiliations” at the hands of outside powers, to be protected and prosecuted at all costs.

Since the demise of the QD however, however, the designation of “core interests” has expanded to include the claim to territory that is either controlled or contested by a number of states in the region, thereby directly challenging the territorial status quo and raising the spectre of military conflict. In March 2010, State Councilor Dai informed then US Secretary of State Hillary Clinton that the South China Sea was considered a core interest by Beijing and in April 2013, whilst a spokesperson for the Chinese Ministry of Foreign Affairs stated in a press conference: “The Diaoyu [Senkaku] islands are about sovereignty and territorial integrity. Of course, it is China’s core interest” (The Japan Times 2013). If China now views sovereignty

claims over the South and East China seas in the same vein as those relating to Taiwan, Tibet and Xinjiang, then as Yoshihara and Holmes have argued, the strategic implication must be that such “disputes cannot remain unresolved indefinitely...[China] must get it’s way eventually” (Yoshihara and Holmes 2011, 46).

Underscoring this point is President Xi Jinping’s recent speech at a celebration marking the 95th anniversary of the Communist Party, ahead of the Permanent Court of Arbitration ruling in the case brought by the Philippines against China on their rival claims in the South China Sea (UN Permanent Court of Arbitration 2016). There Xi stated:

“No foreign country...should expect us to swallow the bitter pill of harm to our national sovereignty, security or development interests. We are not afraid of trouble” (The Australian 2016).

As expected, China immediately dismissed the adverse finding by the court in the Philippines’ favor declaring the award as “null and void” with “no binding force” (People’s Republic of China 2016). Few expect any significant slowdown to its island building campaign in the disputed Spratly Islands that has allowed Beijing to consolidate and fortify its control there, as well as more capably assert and defend its broader “nine dash line” claim. The speed and scale of island building there has been unprecedented, with 3,200 acres of land added to seven submerged reefs China occupies there over two years between 2013 and 2015, compared to 50 acres added by other claimants over the same period (Office of the US Secretary of Defense 2016, 13; Carter 2015). Infrastructure such as deep port facilities, communications and surveillance systems, military buildings, fortified aircraft hangers, and an airstrip capable of hosting fighter jets and large transport aircraft have been built which allows China to maintain a consistent presence – civilian enforcement and military – in the area, and to “detect and challenge activities by rival claimants or third parties” more rapidly (Office of the US Secre-

tary of Defense 2016, 13).

Alarm has grown even further since credible evidence emerged that military assets have been deployed by China on disputed islands. In February 2016, the Taiwan Ministry of National Defense reported that surface-to-air missile batteries had been deployed on Woody Island in the Paracel archipelago, also claimed by the Philippines and Taiwan (Forsythe 2016), in contradiction to statements by Chinese President Xi Jinping in September 2015 in Washington that “[r]elevant construction activities... in the island of South Nansha Islands (sic) do not target or impact any country, and China does not intend to pursue militarization” (The Whitehouse 2015b). It is feared that the next step will be the declaration and enforcement of an air defense identification zone over these Islands, extending over the South China Sea, which will be defended using the airstrips built there.

According to the US Department of Defense, “in the long term, Chinese leaders are focused on developing the capabilities they deem necessary to deter or defeat adversary power projection and counter third-party – including U.S. – intervention during a crisis or conflict” (Office of the US Secretary of Defense 2016, Exec Summary i). That point has yet to be reached, but as Chinese assertiveness continues, the US and its alliance partners have come under pressure to take practical action to defend the existing order. It is in this context that speculation about a revival of the QD has emerged. In assessing Australia’s attitude to a revived QD it is necessary to look at Canberra’s assessment of challenges emerging in the region going forward.

AUSTRALIA’S STRATEGIC OUTLOOK

On 25 February 2016, Australia released its latest Defense White Paper, the third in just under seven years. In it, Canberra puts forward its view of Australia’s main defense interests and objectives,

and as well as the greatest threats to those interests emanating from the country's strategic and political environment going forward to 2035. China's strategic assertiveness and challenge to the status quo looms large in the this White Paper with Canberra becoming much more pessimistic about the possibility that China will rise within the existing US led order since last 2013 White Paper.

In terms of strategic defense objectives, the 2016 White Paper names three, each of equal weight: first, to “deter, deny and defeat attacks on or threats to Australia and its national interests, and northern approaches” (Australian Department of Defense 2016, 68); second, to make ‘effective military contributions to support the security of maritime South East Asia...’ (Australian Department of Defense 2016, 71) and assist Papua New Guinea, Timor-Leste and the Pacific Island nations to build their security capacities (Australian Department of Defense 2016, 75); and third, to “work closely with our ally the United States and other international partners to provide meaningful contributions to global responses to emergent threats to the rules-based global order that threaten Australia and its interests” (Australian Department of Defense 2016, 75). On the latter, *meaningful contributions* include also “contributing to security in North Asia and helping to protect the extensive sea lines of communication that support Australian trade where our interests are sufficiently engaged” (Australian Department of Defense 2016, 76).

Previous White Papers looked further afield for threats to Australian interests on the basis that ‘there is no more than a remote chance of a military attack on Australian territory by another country’ (Australian Department of Defense 2016, 71). The current White Paper offers a ‘strategic outlook’ pointing out Australia’s greatest opportunities and threats (styled more diplomatically as “uncertainties”) as emerging from the Indo-Pacific region over the next twenty years. Both opportunities and threats are specifically related to rise of China as a great power in this period.

A primary focus in the ‘strategic outlook’ is Australia’s current and

future trade interests with countries in the Indo-Pacific, a region that is described as undergoing “a period of significant economic transformation” with “almost half the world’s economic output” expected to come from this region “by 2050” (Australian Department of Defense 2016, 14). The White Paper states “Australia is well placed to benefit from economic growth” (Australian Department of Defense 2016, 39) in this region through the export of goods and services, and highlights Canberra’s recent free trade agreements that have entered into force since December 2015 between Australia, and South Korea, Japan and China respectively, as well as the Trans Pacific Partnership agreement (Australian Department of Defense 2016, 39).

Turning to strategic uncertainties, of the “six key drivers [that] will shape the development of Australia’s security environment to 2035”, three have *the most* direct potential to impact on Australia’s regional trade interests – “the roles of the United States and China and the relationship between them”, “challenges to the stability of the rules-based global order”, and “the pace of military modernization and the development of more capable regional military forces” (Australian Department of Defense 2016, 40-41).

Here, it is clear that the accelerating change in the balance of power in the region, as China continues to rise and expand and modernize its military forces, has created the greatest uncertainty in Canberra about the increasing potential for instability in the Indo-Pacific going forward to 2035. The White Paper itself states that:

“the roles of the United States and China in our region and the relationship between them will continue to be the most strategically important factors in the security and economic development of the Indo-Pacific to 2035”[my emphasis] (Australian Department of Defense 2016, 41).

Whilst much has been written about Australia’s economic versus strategic “China choice”, the White Paper is unequivocal about Canberra’s

preference for the status quo balance of power to continue. It proceeds on the basis that the United States will “remain the pre-eminent global military power” over the next 20 years. Nevertheless, this is expected to come under challenge with the prediction that Chinese military spending will equal that of the United States by 2035 (Australian Department of Defense 2016, 49). As a country dependent upon the US alliance for its security, it is not surprising that Australia views the “active presence” of the US in the region as essential to “underpin the stability” of the Indo-Pacific and the “rules-based global order on which Australia relies for [its] security and prosperity” (Australian Department of Defense 2016, 41). That is, for Australia, the role of the US in the region is only positive, and should be encouraged, as the bulwark against the potential for disruptive and destabilizing challenges to the existing rules of the road as China rises.

In discussion of the second driver of Australia’s security environment - the existence of “a stable, rules-based global order which supports the peaceful resolution of disputes, facilitates free and open trade and enables unfettered access to the global commons to support economic development” (Australian Department of Defense 2016, 44) – it becomes clear that Canberra fears that it is China that will play the role of disruptor and de-stabilizer of this order (Australian Department of Defense 2016, 42). As opposed to the more optimistic 2013 White Paper, Canberra makes the judgment that greater competition, rather than cooperation is in store in the Indo-Pacific in the years ahead. The White Paper warns that this order is showing “signs of fragility” as “newly powerful countries want greater influence and to challenge some of the rules in the global architecture established some 70 years ago” (Australian Department of Defense 2016, 45).

Australia accepts that a rising great power like China will “seek greater influence in the region” (Australian Department of Defense 2016, 42). However, Canberra also declares that:

“While it is natural for newly powerful countries to seek greater influence, they also have a responsibility to act in a way that *constructively contributes* to global stability, security and prosperity. However, some countries and non-state actors have sought to challenge the rules that govern actions in the global commons of the high seas, cyberspace and space in unhelpful ways, leading to uncertainty and tension.’ [My emphasis] (Australian Department of Defense 2016, 45-46)

In addition to accusing Russia and the Democratic Peoples Republic of Korea of acting in ways “inconsistent with international law and standards of behaviour” (Australian Department of Defense 2016, 47) specific aspects of Beijing’s approach to the assertion of maritime and territorial claims in the South and East China Seas also come under overt censure (Australian Department of Defense 2016, 43).

Here, Canberra expresses its opposition to “any coercive or unilateral actions to change the status quo in the East China Sea”, specifically referring to China’s 2013 declaration of an Air Defense Identification Zone there (Australian Department of Defense 2016, 61). Further, “concern” is expressed about “the unprecedented pace and scale of China’s land reclamation activities” in the South China Sea, as is opposition to “the assertion of associated territorial claims and maritime rights” under international law, including UNCLOS, on the basis of these “artificial structures” (Australian Department of Defense 2016, 58).

Canberra is openly fearful of the prospect of military escalation in the South China Sea, including outright conflict, should China base military assets on these artificial islands to assert its territorial and maritime claims against rival claimants more forcefully. It also questions the “end state purposes” of China’s land reclamation activities (Australian Department of Defense 2016, 58), which is diplomatic code for the broader strategic risk that “unimpeded trade and freedom

of navigation and over-flight” (Australian Department of Defense 2016, 57) may no longer be guaranteed should the islands be militarized, with obvious implications for Australia’s trade interests.

In short, Canberra seeks to avoid becoming subject to the potential “coercive use of economic or military power” by China, which would “diminish the freedom of ... Australia to take independent action in our national interest” (Australian Department of Defense 2016, 46). The overwhelming message brought out in the White Paper is that Canberra views with pessimism the prospect that China, as it continues to rise, will continue to leave the existing western rules based order unchallenged. It expects more of the same from Beijing: persistent efforts to extract strategic advantage from its territorial and maritime claims, short of the use of military force, backed up by an alternative framework justifying these claims based on a nationalistic historical narrative, directly in competition with UNCLOS.

AUSTRALIA’S RESPONSE TO STRATEGIC UNCERTAINTY : SUPPORTING US PRE-EMINENCE

Given this anticipation of future regional instability, Canberra has taken three main steps to play a part in supporting the status quo, that is, to shore up the longevity of the existing rules based order underpinned by US pre-eminence in the Indo-Pacific.

Firstly, Canberra has acted to sustain the pre-eminence of the United States in the Indo pacific by allowing the latter to use Australian territory in its “rebalance” to Asia. With the main opportunities and challenges now in Australia’s own backyard, Canberra has every reason to encourage US engagement in the region, to prove Australia’s value as an alliance partner, and to enhance the skills of its own defense forces to act both independently as well as jointly

with those of the US. The centre-piece of this strategy was the 2013 agreement to allow the rotation of up to 2,500 US marines per annum through northern Australia by 2017 (McDonnell and Brown 2013).

The initiative plainly aims to improve Australia-US force interoperability via bilateral military exercises, high-end training, and joint contingency planning. The symbolism of the initiative also would not have been lost in the region as staking Australia's commitment to the existing US led order, and the willingness to share the burden of doing so. In announcing the initiative, then Prime Minister Julia Gillard was at pains to emphasize that the rotation's purpose was to strengthen the alliance, and hence bolster regional stability (ABC News 2013), whilst for US President Obama it represented a demonstration of his country's "commitment to the entire Asia-Pacific" to ensure that China "play[s] by the rules of the road" (ABC News 2013).

The 2014 Australia-US Force Posture Agreement (Government of Australia and Government of the United States 2014) that gives effect to this "US Marine Corps Initiative" enhances US force projection into South East Asia, with US military equipment and supplies likely to be prepositioned in Darwin. Similarly, whilst the details of the "Enhanced Air Cooperation Initiative" are still under discussion, increased US Air Force rotations in northern Australia are planned (Australian Department of Defense undated). What kind of aircraft could be rotated is another issue that will send a signal to the region about the strategic significance of the initiative.

In May 2015 both sides denied that B1 bombers and surveillance aircraft would be based in Australia as a deterrent to Chinese activities in the South China Sea (Vincent 2015), however, by March 2016 the Commander of US Pacific Air Forces, General Lori Robinson, revealed that discussions about B1 bombers and aerial tanks being rotated through RAAF Tindal and Base Darwin were in fact underway (Greene 2016).

The two countries' ambitions regarding Australia's role in US naval projection into the Indo-Pacific is also under discussion. In February

2015, during a visit to Australia, US chief of navy operations, Admiral Jonathan Greenert spoke publically about a joint study being undertaken with the Australian Defense Force on additional naval cooperation, including the possibility of a permanent US naval base in Darwin (ABC News 2015). Of further potential significance is Australia's stated willingness to "explore opportunities to expand cooperation on ballistic missile defense, working [with the US] to identify potential Australian contributions to ballistic missile defense in the Asia-Pacific region" (The Whitehouse 2014).

Australia's second substantive response to coming regional uncertainty is to fully commit to defense acquisitions that enhance its ability to play an active role in US-led operations to defend the maritime order specifically in the Indo-Pacific. For the first time, defense force posture is primarily directed towards the protection of Australian interests and bolstering alliance credibility in the Indo-Pacific. This is demonstrated by both the firm commitment to fund defense acquisitions in the medium to long term, as well as the kind of acquisitions that are being funded.

The procurement plans announced in the 2016 White Paper go some way to fulfill the two regional strategic objectives of the White Paper, mentioned above. These are overwhelmingly maritime objectives (aimed at protecting Australia's maritime borders, northern approaches and proximate sea lines of communication and to project force into the region) and to this end the White Paper claims to "set out the most ambitious plan to regenerate the Royal Australian Navy since the Second World War." (Australian Department of Defense 2016, Introduction). The Liberal-National coalition government has committed to return defense spending to a target of 2% of GDP per annum by 2023-24 (Greene and Anderson 2016) with approximately AUD\$195 billion being allocated for new and enhanced capabilities over the decade to 2026 (Australian Department of Defense 2016, 86).

Major investments are made in submarines, surface warships,

surveillance aircraft and support vessels to enhance capabilities in situational awareness, intelligence, surveillance and reconnaissance, cyber, electronic warfare and anti-submarine warfare over longer distances (Australian Department of Defense 2016, 89) as well as better integration of support and combat systems.

Of note is the deferred 2009 decision to acquire twelve new submarines to replace the aging and beleaguered *Collins* class subs was finally acted upon in April 2016. France's DCNS was selected as the winner of the competitive tender offering 4000 ton diesel-electric variant of the *Barracuda*-class nuclear attack submarine, dubbed the Shortfin *Barracuda* Block 1A, beating out Germany's Type 216 and the Japanese *Soryu*-class diesel electric submarines (Panda 2016a; Crowe 2016). This is Australia's largest ever defense acquisition costing an estimated AUD\$50 billion over the lifecycle of the project, with all submarines to be built in Australia at a considerable premium. Officially, the French bid succeeded based on technical grounds, namely "superior sensor performance and stealth characteristics, as well as range and endurance similar to the *Collins* Class Submarine" (The Government of Australia 2016).

Canberra's doubling of Australia's submarine fleet from six to twelve boats provides a small but still significant contribution to burden sharing within the alliance, given their advanced capabilities (once built). The coming challenge to the submarine balance in the region is directly identified in the White Paper with the statement that "around half the world's submarines will be operating in the Indo-Pacific" by 2035 (Australian Department of Defense 2016, 90). For example, already, in the period 1995-2015, China has significantly modernized its submarine force, adding an average of 2.7 new submarines per year, with the US Office of National Intelligence assessing that its new submarines are "optimized primarily for regional anti-surface warfare missions near major sea lines of communication" (Karotkin 2014; O'Rourke 2016, 12 and 16). During this time China has added 41 new modern attack boats to its navy,

including twelve Russian Kilo-class non-nuclear powered attack submarines, three Chinese made nuclear powered attack submarines, and four nuclear powered ballistic missile submarines (O'Rourke 2016, 16). Given that US Naval resources are stretched globally, Australia's new submarine forces will enhance situational awareness capabilities as well as anti-surface warfare, and anti-submarine warfare capabilities to the alliance in the vast spaces of the Indo-Pacific, with potential application around key chokepoints (Shearer 2016, 18).

Australia's third response to the predicted strategic uncertainty has been to develop closer cooperation with states in the region that support the continued presence of the US as a stabilizing force. This strategy is appropriately given Australia's middle power status and the size of its navy relative to the size of the maritime strategic environment in the Indo-Pacific. Australia has been particularly keen to progress strategic relations with former DSD partners, in both bilateral and trilateral formats. Relations have progressed considerably with Japan, and in recent years efforts have been made toward courting India.

On a bilateral level Australia's relationship with Japan has deepened significantly since the original quad disbanded in 2008, including a period of significant acceleration between 2012 and 2015 during the crossover in the Prime Ministerships of Australia's Tony Abbott and Shinzo Abe. Progressing from the 2007 Japan-Australia Joint Declaration on Security Cooperation, the security relationship between the two countries has become the most institutionalized bilateral relationship they have with any country, apart from the United States. This includes annual "two-plus-two" defense and foreign minister level meetings since 2007, and the establishment of key agreements facilitating deeper defense cooperation between the Australian Defense force and the Japanese Self Defense force: the Acquisition and Cross-Servicing Agreement (2010) covering logistics, and the General Security of Military Information

Agreement (2012) on information security. Current negotiations are underway on a reciprocal access agreement to “improve administrative, policy and legal procedures”, an agreement that is necessary to enable an expansion of joint exercises and operations (Government of Japan and Government of Australia 2015).

In 2014 the relationship was upgraded by the two countries from a strategic partnership to a “new special relationship”, and was again upgraded in 2015 to a “special strategic partnership” (Government of Japan and Government of Australia 2015). Then Prime Minister Abbott went as far as describing Japan as “Australia’s best friend in Asia,” (The Australian 2013) an “exemplary international citizen,” and welcomed Abe’s “decision to be a more capable strategic partner in our region” (Abbott 2014). Abe’s proactive contribution to peace agenda has opened up new possibilities to significantly deepen bilateral (and trilateral) defense cooperation. The most obvious implication of the Japanese cabinet’s “Three Principles on Transfer of Defense Equipment and Technology” document of 2014 is that its accommodating terms allow Australia to benefit from Japanese defence exports and joint research and development opportunities (Government of Japan 2014). With this in mind, included in the upgrade of relations between Tokyo and Canberra was the agreement in July 2014 on the transfer of defense equipment and technology (Government of Japan and Government of Australia 2014b).

So far the two countries have announced the intention to undertake “joint research in the field of marine hydrodynamics” (Government of Japan and Government of Australia 2014a) whilst Australia’s 2016 White Paper speaks of cooperation in “developing common capabilities like the Joint Strike Fighter, air and missile defense and maritime warfare technologies” (Australian Department of Defense 2016, 133). In addition, the two countries are working towards “enhancing training and exercises, increased personnel exchanges, deepening cooperation on humanitarian assistance and disaster relief, maritime security, peacekeeping, capacity building

and enhanced trilateral defense cooperation with the United States” (Government of Japan and Government of Australia 2015). The level of trust that has developed between the two countries was made clear by the Japanese National Security Council’s decision in 2015 to take the “unprecedented step” of sharing classified technical data on the country’s submarine technology with Australia as part of its competitive bid to build Australia’s new fleet. Such information had only previously been shared with the United States (Gady, 2015). This has created fertile ground for trilateral cooperation between these two countries and the US, even if such cooperation is unlikely to evolve into a formal alliance in the foreseeable future.

Since the establishment of the Trilateral Security Dialogue (TSD) in 2002 (later renamed the Trilateral Strategic Dialogue) the TSD has become the most developed trilateral security relationship in the region, with the three countries drawn together by “shared (strategic) outlooks as Asia-Pacific maritime democracies; complementary strategic geography; capable maritime forces; and increasing levels of interoperability” (Shearer 2016, 19). Whilst the common liberal democratic identity of each of the participants is not broadcast as its primary *raison d’être*, the TSD is openly premised on the desire to leverage their collective strategic weight to achieve the shared goal of maintaining peace and stability in the Indo-Pacific by defending the existing liberal rules based order. Together (and separately), particularly after 2012, the three countries have taken strong positions opposing the gamut of assertive Chinese activities in the East and South China Seas (e.g. Australia, United States and Japan 2013).

For example, the firmly worded “Trilateral Strategic Dialogue Joint Statement” released just over a week after the UN Arbitral Tribunal’s Award on the Philippines-China case delivered its findings called on “China and the Philippines to abide by the Arbitral Tribunal’s Award of July 12” and pointedly described it as “final and legally binding on both parties” (Japan, United States and Australia 2016). In light of Beijing’s refusal to accept the Tribunal’s decision, the

unequivocal wording of the TSD statement suggests that all three states saw their response to the award as a test of their resolve to defend the existing rules based order that would be closely watched by China and the rest of the region.

ASEAN's failure to follow their lead leaves open the prospect that the three nations will become increasingly frustrated by the group's unwillingness to stand firm against Beijing's assertiveness, raising the likelihood that the three countries may well look to the TSD as a more potent grouping in defending the existing liberal order.

The three countries rhetoric has been matched by an increase in practical defence cooperation. Whilst initially trilateral cooperation was focused on benign public goods type action such as HA/DR activities and anti-piracy, from 2012 onwards, the trend has been towards "developing interoperability in high-intensity operations" (Shearer 2016, 24) as well as information sharing and cooperation on counter-proliferation and missile defense (Schoff 2015, 43). Deepening trilateral cooperation has been driven at the sub-ministerial level via two functional subsidiary organizations - the Security and Defense Cooperation Forum (SDCF); and the trilateral missile defense forum. Here interaction between mid-level officials from the defense and foreign ministries of each country has been institutionalized (at first assistant secretary level) with the aim to advance, launch and review new initiatives for cooperation (Schoff 2015, 42).

On an operational level, the number and scope of trilateral military exercises has also increased. Trilateral air force exercises have taken place each year in 2012, 2013, and 2014 including exercise Cope North, first held in Guam in 2012, which focused on HA/DR preparedness, combat readiness and battle interoperability. A live-fire trilateral exercise, Southern Jackaroo, took place in 2013 and 2015 (Japan, US and Australia 2015), and in 2015, around 30 JSDF personnel took part in exercise Talisman Sabre, which is a primary US-Australia military training exercise "focused on planning and conduct of mid-intensity 'high end' war fighting" (Shearer, 23-24).

Maritime exercises have also expanded after 2012, including Operation Pacific Bond, conducted off the coast of Kyushu, Japan in that year, and again in 2013 in the Western Pacific Ocean. These exercises focused on strike group anti-submarine warfare, maritime interdiction, air defense, and communications training, helicopter visits, and search and seizure (Cole 2012; McDuline 2013). A further anti-submarine warfare exercise was held in August 2014, and the three navies were involved in a trilateral passing exercise in Java Sea in April 2016 to enhance maritime interoperability (Parameswaran 2016). Australia-US-Japan interoperability has been further tested in the disaster response of the three countries to the 2011 Great East Japan Earthquake and tsunami and the 2014 search for Malaysian airliner MH370.

ASSESSING THE STRATEGIC LOGIC OF QUADRILATERAL COOPERATION WITH INDIA

On the face of it, there may well be a clear strategic logic for expanding the TSD to include India in a quadrilateral format, as envisaged by Abe's "democratic diamond".

Firstly, India already has strong bilateral relationships with Japan and the US in the maritime space already, and significant investment in resources would not be required to add Australia to the mix. Under the leadership of Prime Minister Modi, India has moved further away from its Cold War distrust of the US, and has taken firm steps to deepen their defense relationship as elaborated in their 2015 *Joint Strategic Vision for the Asia-Pacific and the Indian Ocean Region* (The Whitehouse 2015a). Of note is the June 2016 Logistics Exchange Memorandum of Agreement (LEMOA), which underpins joint logistics support and the sharing of defense facilities, and the announcement that India had been classified as a "major defense

partner” allowing it access to the same level of high technology items as US allies and partners. The US has already become a major defense supplier and under the Defense Technology and Trade Initiative the two countries intend to expand coproduction and co-development of military technologies, including naval, air and other weapons systems (The Whitehouse 2016).

Japan-India relations have also been upgraded to a “Special Strategic and Global Partnership” under the joint leadership of Abe and Modi. Like Australia, India is keen to gain access to Japanese defense technologies now made possible by Abe’s “proactive contribution to peace” agenda, with the planned export of US-2 amphibious planes to India, including the transfer of technology. In terms of maritime security cooperation, from 2012, both countries take part in annual naval exercise (Japan-India Maritime Exercise – JIMEX) as well as the Indian Ocean Naval Symposium.

The three countries have also progressed a level of trilateral cooperation having established a Strategic Dialogue in 2011 at the assistant secretary level, which was then upgraded to foreign ministerial level in 2015. Greater interoperability and understanding has also been developed as a result of Japan’s participation in the annual US-India bilateral MALABAR naval exercise in 2009, 2011 (in the Bay of Bengal) and in 2014, where the exercises were held in the North West Pacific.

Given these already established defense relationships, expanding practical maritime cooperation would not require a significant investment. The weakest bilateral relationship remains that between Australia and India (see Brewster 2016).

However, both countries conducted their first post WWII maritime exercise – AUSINDEX – in the Bay of Bengal in 2015, and Australia, Japan and India held their first trilateral at the foreign secretary level in the same year. For its part, former Defense Minister Kevin Andrews told an audience in New Delhi that Canberra’s withdrawal from the QSD was a mistake and that Australia would participate in the

annual Malabar naval exercises with Japan and the United States, if invited to do so again (Parameswaran, 2015). The only trilateral combination that has yet to be forged is potentially that between Australia, Japan and India.

Secondly, the four countries share a complementary strategic geography, with their combined forces covering the entire Indo-Pacific region and the critical sea-lines of communication in the region. If Australia is often described as the southern anchor, and Japan the Northern anchor of the San Francisco alliance system, the addition of India as a strategic partner would support the interests of all in preventing instability from emerging in the Indian Ocean. Whilst the United States remains the primary security provider in the Indian Ocean, it has encouraged India to take on the role of being 'net security provider' (US Department of Defense 2010) in the Indian Ocean, an idea that New Delhi has been receptive to (Khurana 2016). This would potentially allow the concentration of US forces on the South and East China Seas.

A division of responsibilities is possible given that India views the Indian Ocean as its primary area of maritime interest (Indian Ministry of Defense 2015, 32), and has the strategic advantage of being a littoral state in the Indian Ocean. India's tri-service integrated command in the Andaman and Nicobar Islands, gives it force projection capabilities by air and sea at the western end of the strategic choke point of the Malacca Straits.

Thirdly, India shares with Japan, Australia and the United States similar anxieties about the rise of China and the potential threat posed to trade and energy SLOCs from the Middle East, Africa and East and South East Asia should future tensions exacerbate. For example, India transacts 90% of its external trade by volume by sea (Indian Ministry of Defense 2015, Foreword i). Whilst India and China have a practical economic relationship, Indian strategic thinking is highly influenced by its historic defeat by China in the border war of 1962, with the territorial boundary between the

two states still under dispute, together with China's role as strategic and defense patron of Pakistan. New Delhi's maritime security document, *Enduring Seas*, refers to threats emanating from states "with organized military capability and resources, which harbor adversarial posture and inimical intent towards India", and with such threats likely to come from "states with a history of aggression against India, and those with continuing disputes or maintaining adversarial postures to India's national interests" (Indian Ministry of Defense 2015, 37). India has become increasingly anxious about the growing presence of the People's Liberation Army Navy (PLAN) in the Indian Ocean, including the deployment of a Chinese nuclear attack submarine in the Indian Ocean for the first time in 2014, and the agreement with Djibouti to set up a naval base there in the same year (Abhijit Singh 2015, 10).

In terms of shared values and interests, India has already proven its worth as a diplomatic defender of the normative status quo. As a non-party to the territorial and maritime conflicts in the South and East China seas, India speaks with the voice of impartiality on these disputes, with added weight attached to the fact that it is not a formal ally of the United States and has a long history of maintaining a strong level of autonomy in its foreign policy. India champions the use of arbitration as a means of resolving maritime and territorial disputes among neighbours. In direct contrast to Beijing's position, New Delhi has accepted the verdict delivered against it in July 2014 by the Permanent Court of Arbitration, which applied principles contained in UNCLOS to resolve a 40-year maritime boundary dispute with Bangladesh (Panda 2016).

Apart from a shared strategic outlook, and complementary geography, India is developing formidable naval capabilities as part of a naval modernization program that would complement those of the existing TSD partners. Its navy is now considered to have acquired 'blue water' status, and includes a multi-spectrum force of 14 submarines, 27 principle surface combatants and nearly 100 patrol and

coastal combatants, supported by two squadrons of maritime patrol aircraft, and a dedicated satellite information system (IISS 2015, iii-iv). This includes a second aircraft in 2014, the *INS Vikramaditya*, and the development of three carrier battle groups planned by 2020. These battle groups will be supported by an existing submarine force made up of 13 Russian and German designed diesel electric attack boats, the indigenously produced *INS Arihant* nuclear powered ballistic-missile submarine, and the *Chakra*, a nuclear-powered *Akula* class attack boat on acquired a 10 year lease from Russia. A further three ballistic nuclear submarines (under construction) and six *Scorpene* class diesel electric attack boats are in the pipeline (Sushanth Singh 2015).

India's value within a quadrilateral formation would be firmly rooted in the Indian Ocean due to existing limitations when it comes to projecting power further afield of its periphery (Khurana 2016, 4). Whilst India rules out "joint operations", in keeping with its preference for maintaining strategic autonomy, "coordinated operations" between the four countries would be more palatable to New Delhi because national command and control structures would remain separate. It was on this basis that India participated in HADR missions after the Indian Ocean Tsunami (Khurana 2016, 6). At the very least, India's involvement in a quadrilateral would complicate strategic matters for China, and may force it to spread its naval capabilities away from the South and East China Seas to the Indian Ocean.

Finally, pursuing the formation of a quadrilateral makes much more strategic sense now that it did in 2007, when China was still maintaining a policy of "smile" diplomacy. The pressure to expand trilateral cooperation will build even further if China continues on its present trajectory in asserting even more strongly its territorial and maritime claims in the South and East China Seas, in defiance of the Arbitration award. In a show of force, the Chinese Navy held live-fire combat drills in the South China Sea in early July 2016

(Panda 2016b), and again in the East China Sea in August 2016 (Johnson 2016a). Sending an undisguised signal to the region that it would defend its control over disputed islands, China conducted naval exercises with Russia in September 2016 in the South China Sea for the first time, with a focus on anti-submarine warfare, joint air-defense, island defense and “island seizing” by amphibious and airborne troops (Johnson 2016b). The Japanese government has also documented a significant upswing in the number of Chinese fishing vessels and particularly coastguard operating intruding in the territorial waters surrounding the Senkaku Islands since the award was handed down (Japanese Ministry of Foreign Affairs 2016). China’s rejection of the arbitration award creates even greater expectations that practical responses will be made by the US alone, and in combination with its alliance partners. The formation of a revived QSD is one such likely response.

THE AUSTRALIAN PREFERENCE FOR INFORMALITY

In this context, how then will Australia respond to a resurgence of Abe’s quadrilateral dialogue concept? Canberra would have a likely preference for quadrilateral cooperation to take place in an informal format, avoiding the set-up of permanent institutional structures and common democratic identity as the central rallying point. This is for a number of reasons.

Firstly, a formal, institutionalized quadrilateral grouping would be strongly opposed by the members of ASEAN who have worked hard to ensure its centrality in the management of regional problems, and ensures that their interests are taken into account by larger powers. ASEAN would work hard to oppose the establishment of a new institution that would displace its role as the region’s agenda

setter.

Secondly, ASEAN members would be alarmed by a quadrilateral grouping with exclusive membership by democratic countries in Asia, given the variety of forms of democracy practiced by many of them. If a revived quadrilateral confined itself to defending and promoting the external manifestations of a liberal order – freedom of trade, navigation, over-flight, formal equality and the resolution of disputes using international law – then this would be acceptable to most of them (Lee and Lee 2016, 299-300).

With these caveats in mind, ASEAN countries would no doubt be aware that the impetus for quadrilateral cooperation is in part triggered by persistent division among its members on whether and how to challenge Chinese assertiveness in the region. The limp response of ASEAN to the arbitration decision itself threatens ASEAN centrality as Australia, Japan, and the US in particular, lose patience and seek new means to achieve the objective of diplomatically isolating China. The emerging plethora of trilateral dialogues and exercises suggests that states are seeking out like-minded partners where deadlock in ASEAN prevents a common response.

India would also share Australia's likely preference for informality, albeit for different reasons. Whilst India has left behind "non-alignment" as the official basis of its foreign policy, its current iteration is often described as the pursuit of 'strategic autonomy' (see Khilnani et al 2012), which encompasses maximizing freedom of action and avoiding entangling alliances. Whilst India has modified its view of what strategic autonomy entails, and has developed a number of close strategic partnerships with major powers such as Russia, Japan and the United States, this itself is part of a strategy of maximizing autonomy by not being too reliant on any one state. As such, the formalization of a quadrilateral would be ruled out and rather cooperation would be based on ad hoc practical cooperation. New Delhi would see the benefits of closer quadrilateral cooperation given that at this stage of India's development, much could be

gained by leveraging off the combined forces, access to military technology and facilities of the TSD countries as China encroaches further into the Indian Ocean Region (IOR) (Lee and Lee 2016, 12-15).

Finally, a formal quadrilateral formation would also create more problems than it solves. Whilst China's defiant response to the arbitration award has increased tensions in the region further, the South and East China Sea disputes have not yet become truly militarized. There are still a number of steps to go before outright military conflict would be contemplated. Thus far, China has been able to achieve a change to the status quo through the deployment of maritime law enforcement ships and fishing vessels. In these circumstances, the creation of a formal quadrilateral grouping on the lines of a DSD would be unwise, constraining all parties ability to be flexible in their responses to future behaviour by Beijing. Each will have different calculations of their interests and therefore their own response ladder. The four countries would also acknowledge that ASEAN has its uses as a venue to diplomatically isolate China where needed. Both Japan and India also need ASEAN support to project power in the region, albeit for differing reasons.

Thus, quadrilateral cooperation is likely to be informal, and to focus on practical cooperation to protect the maritime commons from transnational threats such as piracy terrorism and HA/DR, whilst at the same time developing greater interoperability between their forces. Maritime exercises are also most likely to take place in the Indian Ocean, because this will be less able to be construed as inflammatory by China and ASEAN countries, as compared to exercises in the South or East China Seas. China will no doubt read this as a signal that the four countries could, at a future time, work together more effectively in less benign contexts to build on their capability gaps in war-fighting across the Indo-Pacific region, including the sharing of intelligence, surveillance and reconnaissance, logistics facilities, joint weapons development and to advance greater

interoperability vis-à-vis anti-submarine warfare, amphibious warfare and the joint development of weapons systems.

Finally, whilst Australia is likely to be receptive to quadrilateral cooperation for the reasons discussed above, given Australia has the least institutionalized relationship with India, and the least to offer it as a strategic partner, Canberra does not have a strong basis from which to push aggressively for the formation of a quadrilateral. It will require the US to take the lead, supported by Japan, both of whom have much more developed strategic and defense ties with India.

CONCLUSION

The idea of strategic quadrilateral defense cooperation between Japan, Australia, the United States and India was once viewed as a provocative development, rather than a stabilizing force in the Indo-Pacific. China's "smile diplomacy" ensured that any quadrilateral grouping, however benignly calibrated, would be viewed as creating rather than countering the conditions for an escalating regional security dilemma. Despite this, given the convergence of interests, identity, strategic geography, capability and growing interoperability between the four nations, quadrilateral cooperation between them is inevitable even if, for now, the quad remains a nascent idea. Australia and others in the region now view with pessimism the prospect that China, as it rises, will leave the existing liberal rules based order unchallenged. If China chooses to assert its maritime and territorial claims even more strongly, as it has done after the recent award of the Permanent Court of Arbitration, the US and other like-minded states will come under increasing pressure to take practical action to defend the existing order. A revival of the QD, with a focus first on the defense of the global commons in areas like

HADR and anti-piracy operations, is likely in these circumstances. Such a strategy builds interoperability between the four countries, whilst not yet abandoning outright a hedging strategy vis a vis China. Further, if China continues to assertively challenge the status quo, the members of ASEAN, and possibly even the Republic of Korea, may well choose to “outsource” confrontation and balancing to the Quad countries. In other words, quadrilateral cooperation is steadily becoming more attractive to the region as a force for stabilization. For the moment the Quad remains a dormant idea, but is certainly not dead. It is up to Beijing whether it will be revived.

REFERENCES

- The Australian Financial Review*. 2007. India talks test China relations. 13 July. [no author specified].
- ABC News. 2013. Gillard, Obama detail US troop deployment. 2013.26 April. Available <http://www.abc.net.au/news/2011-11-16/gillard2c-obama-announce-darwin-troop-deployment/3675596>
- ABC News. 2015. US Navy ships look to establish Darwin military base, but China won't be happy, warns expert. 13 February.
- Abe, Shinzo. 2012. Asia's Democratic Security Diamond. *Project Syndicate*. 27 December. Available <https://www.project-syndicate.org/commentary/a-strategic-alliance-for-japan-and-india-by-shinzo-abe?barrier=true>
- Australia, United States and Japan. 2013. Joint Trilateral Strategic Dialogue Statement. 4 October. Available http://foreignminister.gov.au/releases/Pages/2013/jb_mr_131004.aspx?ministerid=4;
- Australian Department of Defense. 2016. Defense White Paper 2016. Available <http://www.defence.gov.au/whitepaper/Docs/2016-Defence-White-Paper.pdf>
- Australian Department of Defense. Undated. United States Force Posture Initiatives in Australia. Undated. Available <http://defence.gov.au/usfpi/>
- Barry, Ellen. 2015. Modi and Obama, Hugging for India's Security. *The New York Times*. 27 January.
- Brewster, David. 2016. Australia, India and the United States: The challenge of forging new alignments in the Indo-Pacific. United States Studies Centre at the University of Sydney. August. Available <http://ussc.edu.au/publications/Australia-India-and-the-United-States-The-Challenge-of-Forging-New-Alignments-in-the-Indo-Pacific>
- Campbell, Caitlin, Ethan Meick, Kimberly Hsu and Craig Murray. 2013. China's 'Core Interests' and the East China Sea. *US-China*

- Economic and Security Review Commission*. 10 May. Available <http://www.uscc.gov/sites/default/files/Research/China's%20Core%20Interests%20and%20the%20East%20China%20Sea.pdf>
- Carter, Ashton. 2015. US Secretary of Defense Address to the IISS Shangri-La Dialogue: A regional Security Architecture Where Everyone Rises. May. Available <http://www.defense.gov/News/Speeches/Speech-View/Article/606676>
- Clarke, Michael. 2011. Australia, India and the Uranium question. *Australian Journal of Political Science* 46(3): 489-502.
- Cole, Matthew R. 2012. USS McCampbell participates in Exercise Pacific Bond 2012.12 June. Available at <http://www.public.navy.mil/surfor/ddg85/Pages/USSMcCampbellparticipatesinExercisePacificBond2012.aspx>
- Crowe, David. 2016. Australian submarines: France wins \$50bn contract. *The Australian*. 26 April.
- Forsythe, Michael. 2016. China Deployed Missiles on Disputed Island, U.S. Says. *The New York Times*. 16 February.
- Gady, Franz-Stefan. 2015. Japan Approves Disclosing Secret Sub Info to Australia. *The Diplomat*. 22 May.
- Government of Japan and Government of Australia. 2014a. Joint Press Statement, Fifth Japan-Australia Joint Foreign and Defense Ministerial Consultations (2+2). June 11. Available at http://foreignminister.gov.au/releases/Pages/2014/jb_mr_140612a.aspx?w=tblCaGpkPX%2FIS0K%2Bg9ZKEg%3D%3D
- Government of Japan and the Government of Australia. 2014b. Agreement concerning the Transfer of Defense Equipment and Technology. 8 July. Available <http://www.mofa.go.jp/files/000044447.pdf>
- Government of Japan and Government of Australia. 2015. Joint Communique Sixth Japan-Australia 2+2 Foreign and Defense Ministerial Consultations. 22 November.
- Government of Japan. 2014. Three Principles on Transfer of Defense Equipment and Technology. 1 April. Available <http://www.mofa>.

- go.jp/files/000034953.pdf
- Greene, Andrew and Stephanie Anderson. 2016. Malcolm Turnbull sticks to Tony Abbott's defense spending pledges in long-awaited white paper. *ABC News*. 24 February.
- Greene, Andrew. 2016. Long Range heavy bombers could be based in Australia, US general reveals. *ABC News*. 8 March.
http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/26_August_2014/Terms_of_Reference
- Indian Ministry of Defense. 2015. Ensuring Secure Seas: Indian Maritime Security Strategy. *Naval Strategic Publication*. October. Available http://indiannavy.nic.in/sites/default/files/Indian_Maritime_Security_Strategy_Document_25Jan16.pdf
- Institute for International Security Studies. 2015. India's New Maritime Strategy. *Strategic Comments* 21 (9-10): iii-iv.
- Japan, United States and Australia. 2015. Joint Statement – Japan-US-Australia Defense Ministers Meeting. 30 May. Available-
<http://www.minister.defence.gov.au/2015/05/30/minister-for-defence-japan-us-australia-defense-ministers-meeting-joint-statement/>
- Japan, United States and Australia. 2016. Trilateral Strategic Dialogue Joint Statement. 25 July. Available http://foreignminister.gov.au/releases/Pages/2016/jb_mr_160725.aspx
- Japanese Ministry of Foreign Affairs. 2016. Status of Activities by Chinese government vessels and Chinese fishing vessels in waters surrounding the Senkaku Islands. 26 August. Available <http://www.mofa.go.jp/files/000180283.pdf>
- Johnson, Jesse. 2016a. Chinese Navy holds live-fire drills in East China Sea. *The Japan Times*. 2 August.
- Johnson, Jesse. 2016b. Joint China-Russia naval drills in South China Sea focus on anti-submarine, 'island seizing' operations. *The Japan Times*. 12 September.
- Karotkin, Jesse L., Senior Intelligence Officer for China, US Office of Naval Intelligence. 2014. Testimony at the Hearing on Trends

- in China's Naval Modernization before US China Economic and Security Review Commission. 30 January.
- Kerin, John. 2007. Nelson calms Beijing's fears. *The Australian Financial Review*. 10 July.
- Khilnani et al. 2012. NonAlignment 2.0: A Foreign and Strategic Policy for India in the Twenty First Century. Centre for Policy Research. 29 February. Available <http://www.cprindia.org/research/reports/nonalignment-20-foreign-and-strategic-policy-india-twenty-first-century>
- Khurana, Gurpreet S. 2016. America's Expectation versus India's Expediency: India as a Regional 'Net Security Provider. *National Maritime Foundation*. 4 April. Available <http://www.maritimeindia.org/View%20Profile/635838396645834619.pdf>
- Lee, Lavina and John Lee. 2016. Japan-India Cooperation and Abe's Democratic Security Diamond: Possibilities, Limitations and the View from Southeast Asia. *Contemporary Southeast Asia* 38(2): 284-308.
- McDonnell, Stephen and Helen Brown. 2013. China, Indonesia wary of US troops in Darwin. *ABC News*. 26 April.
- McDuling, Lt Grant. 2013. Aussie Ship commands surface action group in Pacific Bond. 24 June. Available http://www.public.navy.mil/surfor/ddg88/Pages/AussieShipCommandsSurfaceActionGroupinPacificBond.aspx#V_sUkpN96V4
- Nicholson, Brendan. 2007. China warns Canberra on Security Pact. *The Age*. 15 June.
- O'Rourke, Ronald. 2016. China Naval Modernization: Implications for US Navy Capabilities: Background and Issues for Congress. *Congressional Research Service Report* RL33153. 16 June. Available at <https://www.fas.org/sgp/crs/row/RL33153.pdf>
- Office of the Australian Defense Minister. 2008. Transcript: The Hon Stephen Smith MP, Australian Minister for Foreign Affairs and Trade, Joint Press Conference with Chinese Foreign Minister. 5 February 2008. Available <http://foreignminister.gov.au/transcripts/>

2008/080205_jpc.html

Office of the US Secretary of Defense. 2016. Annual Report to Congress: Military and Security Developments Involving the People's Republic of China 2016. 26 April. <http://www.defense.gov/Portals/1/Documents/pubs/2016%20China%20Military%20Power%20Report.pdf>

Panda, Ankit. 2015. India's got a plan for the South China Sea disputes (and China Won't Like it). *The Diplomat*. 11 March. Available <http://thediplomat.com/2015/03/indias-got-a-plan-for-south-china-sea-disputes-and-china-wont-like-it/>

Panda, Ankit. 2016a. It's Official: France's DCNS Wins Australia's \$50 billion Future Submarine Contract. *The Diplomat*. 26 April.

Panda, Ankit. 2016b. South China Sea: Days Before International Court Verdict, Chinese Navy Stages Live-Fire Drills. *The Diplomat*. 11 July.

Parameswaran, Prashanth. 2016. US Conducts Trilateral Naval Drill with Japan, Australia after Indonesia Exercise. *The Diplomat*. 21 April.

Parameswaran, Prashanth. 2015. Australia wants to join India, US and Japan in Naval Exercises: Defense Minister. *The Diplomat*. 5 September.

People's Republic of China. 2016. Statement on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines. 12 July. Available http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1379492.shtml

Prime Minister Tony Abbott. 2014. Address to Parliament, House of Representatives, Parliament House. 8 July. Available at <https://pmtranscripts.dpmc.gov.au/release/transcript-23624>

Ryan, Colleen. 2007a. India's rise a thorn in rosy relationship. *The Australian Financial Review*. 3 September.

Ryan, Colleen. 2007b. New dialogue helps Sino-Australia link. *The Australian Financial Review*. 7 September.

Sanger, David E., and Rick Gladstone. 2016. New Photos Cast Doubt

- on China's Vow Not to Militarize Disputed Islands. *The New York Times*. 8 August.
- Schoff, James L. 2015. The Evolution of US-Japan-Australia Security Cooperation in *US-Japan-Australia Security Cooperation: Prospects and Challenges*, edited by Yuki Tatsumi, 37-49. *The Stimpson Centre*.
- Shearer, Andrew. 2016. Australia-Japan-US Maritime Cooperation: Creating Federated Capabilities for the Asia-Pacific. *Centre for Strategic and International Studies*. April. Available https://csis-prod.s3.amazonaws.com/s3fs-public/publication/160401_Shearer_AustJapanUSMaritime_Web.pdf
- Singh, Abhijit. 2015. An Indian Maritime Strategy for an Era of Geopolitical Uncertainty. *Journal of Defense Studies* 9(4):7-19.
- Singh, Sushant. 2015. Explained: India's submarine story in deep waters, long way to go. *The Indian Express*. 13 November.
- Stockholm International Peace Research Institute (SIPRI) a. Military Expenditure Database: Military expenditure by country, in constant (2014) US\$ m., 1988-2015. Available http://www.sipri.org/research/armaments/milex/milex_database. Accessed 25 May 2016.
- Stockholm International Peace Research Institute (SIPRI) b. Military Expenditure Database: Military expenditure by country as percentage of Government spending, 1988-2015. Available http://www.sipri.org/research/armaments/milex/milex_database. Accessed 25 May 2016.
- Stockholm International Peace Research Institute (SIPRI) c. Military Expenditure Database: Military expenditure by country as percentage of gross domestic product, 1988-2015. Available http://www.sipri.org/research/armaments/milex/milex_database. Accessed 25 May 2016.
- Swaine, Michael D. 2010. China's Assertive Behaviour Part One: On "Core Interests". *China Leadership Monitor: Carnegie Endowment for International Peace* 34. 15 November. Available <http://carnegieendowment.org/2010/11/15/china-s-assertive-behavior-part>

one-on-core-interests

The Australian. 2013. Tony Abbott reaches out to Australia's "best friend in Asia", Japan. 10 October.

The Australian. 2016. China's President Xi Jinping talks tough ahead of sea ruling. 2 July.

The Government of Australia and the Government of the United States. 2014. The Force Posture Agreement between the Government of Australia and the Government of the United States of America. 12 August 2014. Available

The Government of Australia. 2016. Prime Minister, Minister for Defense – Joint media release – Future submarine program. April. Available <http://www.minister.defence.gov.au/2016/04/26/prime-minister-minister-for-defence-joint-media-release-future-submarine-program/>

The Japan Times, 2013. China officially labels Senkakus a 'core interest'. April 26. 2013.

The Whitehouse, 2005. Joint Statement by President George W. Bush and Prime Minister Manmohan Singh. 15 July. Available <https://2001-2009.state.gov/p/sca/rls/pr/2005/49763.htm>

The Whitehouse. 2014. Fact Sheet: The United States and Australia: An Alliance for the Future. 12 June. Available <https://www.whitehouse.gov/the-press-office/2014/06/12/fact-sheet-united-states-and-australia-alliance-future>

The White House. 2015a. US-India Joint Strategic Vision for the Asia-Pacific and the Indian Ocean Region. 25 January.

The Whitehouse. 2015b. Remarks by President Obama and President Xi of the People's Republic of China in Joint Press Conference. 25 September. Available <https://www.whitehouse.gov/the-press-office/2015/09/25/remarks-president-obama-and-president-xi-peoples-republic-china-joint>

The White House. 2016. Joint Statement: The United States and India: Enduring Global Partners in the 21st Century. 7 June. Available <https://www.whitehouse.gov/the-press-office/2016/06/07/joint->

- statement-united-states-and-india-enduring-global-partners-21st
UN Permanent Court of Arbitration. 2016. Award PCA Case No.
2013-19: In the Matter of the South China Sea Arbitration before
an Arbitral Tribunal Constituted Under Annex VII to the 1982
United Nations Convention on the Law of the Sea between The
Republic of the Philippines and The People's Republic of China.
12 July Available [https://pca-cpa.org/wp-content/uploads/
sites/175/2016/07/PH-CN-20160712-Award.pdf](https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Award.pdf)
- US Department of Defense. 2010. Quadrennial Defense Review
2010.
- Varadarajan, Siddharth. 2007. China demarches to 4 nations. *The
Hindu*. 14 June. Available at [http://www.thehindu.com/todays-
paper/tp-international/article1856000.ece](http://www.thehindu.com/todays-paper/tp-international/article1856000.ece)
- Vincent, Michael. Tony Abbott confirms US has no plans to send B1
bombers to Australia, says defense official “misspoke”. 2015. *ABC
News*. 15 May.
- Yoshihara, Toshi and James R. Holmes. Can China Defend a “Core
Interest” in the South China Sea? 2011. *The Washington Quarterly*
34(2): 45-59.

THE STATUS OF NORTH KOREAN REFUGEE AND THEIR PROTECTION IN INTERNATIONAL LAW

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Abstract

The number of refugee has been on the increase due to war, internal conflict, natural disaster, starvation etc, estimated to be around 60 million around the globe. More than half a century has elapsed since the adoption of the 1951 Refugees Convention and 1967 Protocol. Reflecting the big change in the political, economic environment since then, the necessity for the amendment to the narrow conventional concept of refugee has been raised continuously in order to cover those who fled their own country not only for political reasons, but for humanitarian, and economic reasons.

Over the past 20 years or so North Korean refugees have reached some 30,000 in South Korea. The status of North Korean refugee is not recognized by the Chinese government, which is a party to the Refugees Convention and Protocol, for reason that they breached the China-North Korea Bilateral Border Control Agreement. Considering the special trepidation of North Korean refugee and persecution as a result of forced repatriation to North Korea, the principle of non-refoulement which has obtained the status of general international norm character should be well respected and adhered to by the Chinese government. The principle of non-refoulement and the Refugees Convention overrides the Bilateral Border Control Agreement.

Outside the territory of North Korea, North Korean refugees are entitled to the diplomatic protection of South Korean government, as North Koreans are granted South Korean nationality under the South Korean constitution. South Korean government intervenes to exercise the right of diplomatic protection of North Korean refugee.

Korean government enacted the Refugee Act in 2012 to be more fully in compliance with the Refugees Convention and Protocol, adopting the approach respecting human rights and shifting away from the immigration control.

Key words: refugee, non-refoulement, diplomatic protection, UNHCR, convention and protocol

INTRODUCTION

In modern times people involuntarily leave their own home country to seek safety in other area, mainly owing to fear out of war, conflict, food shortage, and political oppression etc. After World War II, as the number of refugee surges, international community has established UNHCR to take on the impending issue of refugee and concluded the Refugee Convention in 1951. Thus the basic structure has been put in place thanks to the strenuous efforts of the whole international community facing the urgent task of protecting the human rights of people in trouble, and on this basis it is said that a big stride has been made in improving the living condition of the wretched people and preventing the occurrence of situation that will lead to possible conflict. As the saying goes, there is no human society without conflict, and as far as conflagration of conflict remains, some of people on the vanquished, oppressed side tend to leave the home. Whenever upheaval took place, it brought along side-effects of people of looking for safe place. With the dissolution of East-West cold war confrontation, the restrained impulse of ethnic, religious, linguistic entity came overflowing, taking more conflictual forms. As a result people left to evade the dangerous situation, crossing into other countries and subjecting them to the wherewithal of the local countries. Reflecting the number of dispute throughout the world, it is estimated that refugee numbers around 60 million or so¹.

The status of North Korean refugee is the case in point in this article. The flight of North Koreans into China and other neighboring countries has attracted a huge attention around the world. In mid-1990s North Korea was plagued by flooding, drought and

¹ The UNHCR estimates that the number of forcibly displaced persons reached 65.3 million as of the end of 2015, among which 21.3 million persons were refugees and 40.8 million internally displaced persons.

poor harvest. For economic reasons mainly North Koreans left their home for foreign countries, and the problem was North Korea's strict control on the movement of people especially across the border, putting them under severe punishment in accordance with municipal laws. In this light the superficial purpose of their flight might be similar to other cases, but upon their return they are highly likely to face persecution. Therefore, their move out of the country takes upon political character.

The process of deciding upon North Korean refugee involves mainly China and South Korea. Most, almost all of North Koreans stay in hiding in China before they finally land in South Korea. They desire to come to South Korea, to be reunited with their family or because South Korea is not foreign to them. Hereby several questions arise. In light of the 1951 Refugee Convention, it is doubted whether the fleeing North Koreans could be regarded as refugee, to be protected by the Convention. As a member of the Convention, China has an obligation to conform to the required provision, but the question is whether the obligation of the Convention prevails against the obligation required of China-North Korea border control agreement. South Korea's constitution treats North Korea in its own perspective, to the disregard of actual existence of North Korea. The constitution sees North Koreans as entitled to South Koreans nationality, which is not consistent with the international reality. In the present international legal system, the remit of UNHCR is overruled by the sovereign power of states in deciding upon the status of North Korean refugee. The Convention has revealed the limitation as an effective norm in regulating the refugee issue and needs to be studied for possible amendment to reflect the shift of the situation over the past decades.

The practice and domestic law of countries varies among countries and regions. Europe, as characterized by the efforts toward the unity of European region, has been lenient in accepting refugee based upon the agreement with UNHCR. South Korea's perspective and laws are considered, together with its attitude.

INTERNATIONAL REFUGEE LAW AND ITS DEVELOPMENTS AND PRINCIPLES

Historical Developments in International Refugee Law

Throughout the human history there always have been the political oppression and refugee issue, though the extent might be varied from time to time, for the refugee has been attributable to the outbreak of natural disaster, economic devastation, political persecution, war and conflicts. However, refugee issue mainly started to attract international attention in the wake of World War I and the dissolution of the Russian empire led by the revolt of communist ideologues. These events were on the unprecedented scale and required the efforts of the international community toward the resolution, for fear that without the issue being resolved the stable life of people and national cooperation could not have been made possible.

World war has convoluted the lives of a large number of people and especially millions of Russians, who have not sympathized with or opposed the ideology of communism, left Russia for fear of persecution by the newly established communist regime. The League of Nations appointed Norwegian professor Nansen to address the refugee issues that plagued post-war Europe. His most notable feat was to issue Nansen passports to refugee to secure their status in the host countries, contributing to the resettlement of European refugee in a new environment.

Thereafter, international efforts have been exerted to make agreements² to provide for the refugee issues on the legal basis. In the 1930s the first mode of international agreement bore fruit, but

² Several typical agreements concluded around this time are: Arrangement relating to the issue of identity certification in Russian and Armenian refugee in 1926; Arrangement for those fleeing Germany in 1936; Convention concerning the Status of Refugees coming from Germany in 1938.

the result of consultation and agreement among very limited number of countries did not go far. A great momentum was added to this endeavor following the World War II which involved most of nations of the world in the largest scale of human disaster, resulting in the biggest casualties in human history. It is said that human beings learn a lesson from their experience, and however imaginative, their intelligence has limitations until humans meet with the difficulties in reality. Having observed the enormous disaster and disruption in the lives, the firm determination of international community backed by the public opinion led to formation of international organization and conclusion of agreements. Immediately after the World War II the International Refugee Organization(IRO)³, as a temporary organization, came into being to care for Jewish and other refugee ousted by Nazis and Fascist regime. Through the adoption of UN General Assembly Resolution 428(V) in 1950, United Nations High Commission for Refugee(UNHCR) was established to carry out the functions and role of protecting the refugee. UNHCR, as the main body of the UN concerned with the refugee, has involved itself with the refugee throughout the world and contributed to the reduction and prevention of the refugee issues through consultation and sometimes pressure with countries. It needs to be studied whether the decision of UNHCR on the status of refugee will have binding force. UNHCR is a subsidiary organ of the General Assembly of the UN and follows the policy directive of the General Assembly and Economic and Social Council. Considering that the recommendation of the General Assembly is not binding, it follows that UNHCR's decision will not have the binding force on the member states, although member states are required to provide facilities to the UNHCR in carrying out its missions according to Article 35 para 1 of the Refugee Convention.

³ See IRO Constitution, part I, section A(1).

The purpose of UNHCR is holy and ideal, with no objection from nations. But the realization of these objectives could not be made possible without the cooperation of nations where the refugees are placed. The permission of refugee status is in the hands of sovereign states, which are on occasions reluctant to extend assistance mindful of economic cost and burden. Because of this divergence of interests between states and UNHCR, UNHCR has made use of various methods including persuasion, pressure, condemnation and economic incentive. Having set up offices behind the frontline of conflicts to provide relief assistance to refugee, many of the organization's effort include the provision of food, makeshift shelter, supply of drinkable water, sanitation and cure and prevention of communicable diseases, treatment of sewage, to name just a few. As the term 'mandate refugee' indicates, the scope of refugee given by the definition of the UNHCR is lenient and wide compared with the so-called 'convention refugee' which is implied in the 1951 Refugee Convention. This interpretation reflects the objective of the Organization to allay the problem of refugee. The Organization is involved in the care of the temporary refugee, as they occur, though strictly speaking outside the scope of the Organization guideline. UNHCR is of the opinion that refugee issue, unless handled at initial stage, tends to get more tricky and costly to be dealt with over time. UNHCR, in Article 6, paragraph A, section 2, restricted the range of refugee to "any person who is outside the country of his nationality ... has a well-founded fear of persecution ... unwilling to avail himself of the protection of the government of the country of nationality..."⁴

The 1951 Refugee Convention is the result of international

⁴ This Article stipulates: "Any person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had a well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his habitual residence."

efforts to work out the refugee issue in Europe that came about around the World War II, with the application restricted to the time prior to the year 1951 and the area of Europe⁵. The Convention and UNHCR recognize refugee in the narrower sense⁶. These agreements had limitations temporally as well as geographically as a political compromise to deal with refugee that took place in Europe in the period from the end of World War I to World War II. With the outbreak of refugee being continued, the limitation was corrected with the conclusion of the 1967 Protocol. Many of the provisions in the Convention reflect the prevalent customs and practice accepted by many nations. The Convention is the most typical and widely representing written agreement, and still the issue that is not touched upon in the Convention could be turned to the customary laws⁷. With passage of over 50 years' time, the criticism has been leveled at the Convention, for it is worried that though there is no doubt that the Convention is still used as the basic yardstick against which the scope of refugee is defined, it does not reflect the most dominant form of refugee. The question that has consistently been raised is the validity of excluding the economic, humanitarian refugee under any circumstances. The Convention admits the most conventional form of political refugee, which is quite rare. The phenomenon of refugee is hard to distinguish among various modes; political refugee, economic refugee, humanitarian refugee, and war

⁵ The Convention defines the refugee in Article 1, paragraph A, section 2 as follows: "As a result of event occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

⁶ Guy S. Goodwin-Gill, *The Refugee in International Law*, Oxford University Press, 1996, p.18.

⁷ Regional agreements had been made to fill in the shortfall of the Convention: The 1951 Caracas Convention on Territorial Asylum, The 1969 OAU Convention on Refugee Problems in Africa and The 1984 Cartagena Declaration.

refugee etc. More common refugee is of mixed form. At issue is how to categorize the range of refugee that could be regulated in the Convention. Naturally the pure political refugee should be protected by the Convention, and the mixture form could include the refugee who, facing the impending economic plight, flee from the country following the condemnatory remarks made against the political leadership susceptible to possible backlash. Political refugee are the category of people who have attempted to plot the transformation of the current regime or political order by changing the existing political status. Since they are oriented toward the change or destruction of the current political system, on the part of government they are considered a big threat to the stability of domestic system and therefore to be gotten rid of by any possible means. This phenomenon could be seen in light of power struggle. If stronger party could take power, the other party could be persecuted, whether they are relegated to the level of adversary in ancient time, or take opposite position while aiming at second chance in the future. In the process of political struggle those defeated seek the safety in the refuge state which is favorable to the ideological orientation or sympathetic to the aggrieved status of the revolutionaries. With the advent and spread of democracy in modern times, those supposition for the grant of political refugee is rather exceptional than the norm. In this context the usefulness of the Convention, if the scope of applicability is restricted to the pure sense of political refugee, could be limited under the present circumstances.

Refugee Convention in its article 1 on definition of refugee enumerates six elements to be qualified to become the refugee: race, religion, language, nationality, social group and political opinion. It is provided that a person should be outside of the country of origin and does not seek the assistance of the country concerned for fear of persecution upon return for the above reasons. This definition clause is elemental and sets out the basic direction of the refugee issue together with the non-refoulement of the article 33 of the

Convention. People scared of being persecuted attributable to one of the above six elements could claim the status of refugee in the country where they are situated. North Korea is a homogeneous country where people are of the same race, and the same language is spoken. In North Korea the freedom of religion is not permitted in practice, yet religious activities in the church, temple and other religious buildings are in existence to show off the semblance of religious freedom. Persecution attributable to possession of religion could be done in light of North Korea's communist political system. At the initial stage of forming North Korean regime in late 1940s, North Korea persecuted famous indigenous religious leaders, to incorporate and establish communism in the new environment. About the social group, it is known that the communist North Korea classified its people into three main groups of antagonistic, sympathetic and loyal nature. Each group is subdivided in smaller ones to manage and control the society in general. The register document must be confidential and hard to come by and so the group to which a person belong could be presumed considering the social status, occupation, family history and origin, and the existence of relatives in South Korea. Take an example, a family whose member defected to South Korea will be classified as the object to be observed with a high degree of care. This family not only could be treated under a special category, but their activities could be scrutinized with political suspicion of revolting against the regime. It goes without saying that people of different political opinion is under constant threat and persecution from authorities, for North Korea has since its formation shown numerous records of having persecuted political opponents and suspects indiscriminately and mercilessly. To be sure, North Koreans having plotted to revolt against North Korean regime and seeking refuge in other countries are considered to meet the conditions to get entitled to the status and treatment of refugee. Occasionally there was rumor that middle ranking military officers staged aborted coup'etat and crossed into China to seek safety.

Because of tight control on information in North Korea, it is very hard, almost impossible, to confirm the rumor with evidence. Such incident under North Korean political system must be rare, for suspect, disloyal behavior could be easily detected through the secret network of informants. It can be thought that ordinary criminals could search for the protection of refugee under the cloak of political defectors. In reality, distinguishing between the genuine and fake refugee takes sophisticated skill and experience. That is why refugee status could be decided upon after meticulous, lengthy investigation.

National Practice and Legislation on the Treatment of Refugee

The practice and domestic legal system of countries in deciding upon the status of refugee varies from country to country, reflecting the historical background, political interests, and domestic legislation. Most of countries subscribe to the view that the admission of refugee for settlement in the countries is the issue of sovereignty, but some of the European countries, accepting the recommendation of UNHCR, leave the decision for the granting of refugee status to the UNHCR through the bilateral treaties with UNHCR. These countries have been lenient and active in accommodating people from areas or countries that have been plagued by disputes or various types of conflict, taking into consideration their extremely troubling situation and for the purpose of protecting the human rights. The countries put a great emphasis upon the respect of human rights, characterized by the European Human Rights Convention. Individuals are allowed to petition indiscriminate or unequal treatment by the state authorities directly to the Tribunal on the European Human Rights, elevating the status of individuals to the same footing as states on the international plane. The active posture of European countries could be understood in the history of forming European community and later European Union.

In Britain, the granting of refugee status is decided upon in

accordance with the 1951 Refugee Convention and domestic act. Those having fled from war-torn countries or dictatorial states tend to be admitted into Britain for settlement. People from Afghanistan, Iraq, Sudan, Syria and Somalia are currently mainstream refugee accepted by Britain. North Koreans have been granted refugee status since mid-1990s. The number of North Korean refugee cases skyrocketed between 2012 and 2013 from 29 to 140. In 2012 most applicants were granted refugee status, thereafter the tide has turned. By 2013, 128 applicants out of 140 were turned down⁸. In contrast with Europe, the US started to recognize North Korean refugee following the enactment of North Korean Human Rights Law in 2004 and the US court handed down judgment recognizing the refugee status for North Koreans. The US diplomacy toward North Korea is concerned with the efforts to undermine the North Korean regime which was regarded as a rogue state or axis of evil. Despite strong criticism from Congress, the US administration has been reluctant in extending sympathetic hand toward the wretched North Koreans, for fear that the precedent of accepting North Koreans could open the floodgate to streams of potential North Korean refugee. Under pressure from Congress and public opinion, the US administration has backed down, giving the same treatment to North Koreans as other oppressed foreign nationals.

International refugee law and basic principles

International refugee laws are associated with international human rights laws and international humanitarian laws, all of which are concerned with the protection of human life and rights. Human rights laws are applied irrespective of whether peacetime or war, while humanitarian laws are mainly concerned with the allaying of unnecessary anguish of sacrifice during the period of war or conflicts.

⁸ UPI report(June 16, 2015), 'More North Korean defectors rejected for asylum in Europe'.

International refugee laws aim to protect the rights of human beings facing difficulties mainly in peacetime. These three systems of laws are sometimes interchangeably mingled with each other and difficult to distinguish clearly. Human right laws are more universal and overriding, and the principles of human rights laws could lay the foundation for the other two legal systems. Refugee laws and humanitarian laws regulate more concrete situations, with respect to the occurrence of refugee and the methods of waging of war or hostilities respectively.

The main refugee laws are composed of the 1951 Convention, 1967 Protocol and UNHCR Guideline. Refugee law system is complemented by regional agreements and customary laws. The purpose of refugee laws is to protect the human rights and help the settlement of refugee in local society. In this regard the purpose and spirit of refugee law is rooted in and based upon the 1948 UN Declaration of Human Rights and the 1966 Covenant on Civil and Political Rights. The Universal Declaration of Human Rights provides for the right to asylum in other countries to evade persecution⁹. The Covenant on Civil and Political Rights provides for the respect of rights of human beings without distinction of race, colors, gender, language, religion, political opinion, social background or other status¹⁰. The 1951 Convention provides for the protection of refugees who fled from the countries of origin facing the danger to the safety or freedom in the articles on the non-punishment of illegal stayer¹¹, non-expulsion¹², and non-refoulement.

⁹ Article 13, para 2 and Article 14, para 1 of the Declaration of Human Rights.

¹⁰ Article 2, para 2 of the Covenant.

¹¹ Article 31, para 1 of the Convention stipulates: "The Contracting States shall not impose penalties, on account of their illegal entry or presence on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

¹² Article 32, para 1 stipulates: "The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order."

The first temporary measure that will be taken for the protection of refugee is asylum, the provision of protection from possible threat in the local countries by allowing them to stay until the formal decision is to be made. They are to stay in an enclosed area, supplied with food and water, other daily necessities. Vietnamese boat people, once rescued and brought on shore in nearby countries like Malaysia, Singapore, and Hong Kong decades ago, were enclosed in an asylum area until their final destination was determined. This measure of being provided asylum was tentative, yet sometimes their wish to move forward was not decided swiftly. While the stay was delayed and the refugee's patience was stretched, revolt took place. International norms contained clauses on asylum¹³ as is the case with the 1948 Universal Declaration on Human Rights, Article 14, para 1¹⁴, UN General Assembly resolution 428(V)¹⁵ which established the UNHCR, the UN Declaration of Territorial Asylum of 1967, and the 1981 African Charter of Human and Peoples' Rights, Article 12 para 3¹⁶. These norms considered the asylum as the right of individuals, which did not reflect the international reality as it is composed of sovereign states which ultimately make decisions whether to grant asylum. As some of European countries have the obligation to provide asylum in accordance with the agreements, the concept was formed that it is not just a right of sovereign state, but an obligation for the state to protect refugee who came to seek refuge¹⁷. The system of

¹³ Guy S. Goodwin-Gill, *supra* note 6, p.174-175.

¹⁴ It stipulates: "Everyone has the right to seek and to enjoy in other countries asylum from persecution."

¹⁵ UN General Assembly resolution 428(V) requests the member states to extend cooperation to UN High Commissioner for Refugee on the asylum and protection of refugee.

¹⁶ It stipulates: "Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions."

¹⁷ The individual has no right to be granted asylum. The right pertains to states and the correlative duty is the one which obliges other states to respect the grant of asylum. In

asylum moves in the direction of *lege lata* from the initial stage of *lege ferenda*. The obligation of asylum on the part of states is being consolidated, as the system accumulates the *opinio juris*. North Koreans who departed from North Korea under severe dire conditions are entitled to asylum, and thus the local country of China will have committed wrongs if deporting them, regarding the issue as the sovereign act.

Principle of Non-Refoulement

The key element in the refugee law is that the refugee should not be returned to the country of origin under any circumstances, otherwise the life of refugee is susceptible to the danger of persecution and other forms of mistreatment or torture. This principle is stipulated in Article 33 para 1 of the Refugee Convention¹⁸. Having left their country of origin which has been foundation for the life, refugees have been left in vulnerable positions. The principle aims to protect the weak from the unreasonable, arbitrary exercise of power of the host country to force them back to the country of origin. Admission of refugee adds to economic burden of the host country, and the host country understandably reacts reluctantly to the application for the status of refugee, especially group refugee. Nevertheless, the host country contravenes the principle of non-refoulement if people seeking for refuge are to be rejected admission at the point of entry. In this regard, the scope of this principle embraces the non-refusal of entry for people in trouble at the immigration point, not only those who are already staying in the host country. The principle

the practice of many states party to the 1951 Convention/1967 Protocol, the person with well-founded fear of persecution is entitled to asylum. Guy S. Goodwin-Gill, *ibid*, pp.202-203.

¹⁸ Article 33(1) of the 1951 Convention stipulates: "No Contracting State shall expel or return('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

has been embraced in many international agreements relating to refugee or human rights, universal as well as regional¹⁹. Typically the OAU Convention governing the Specific Aspects of Refugees Problems in Africa, Article II para 3²⁰ and the 1984 UN Convention against Torture, Article 3 para 1²¹ clearly mention the principle of non-refoulement. The 1969 American Convention on Human Rights, Article 22 para 8, and other agreements²² embrace implicitly the principle of non-refoulement. Other related agreements put forth similar articles. To that extent the principle reflects the importance attached to the fact that refugee should not be forced back or refused entry.

It has been clearly seen that the non-refoulement principle has been highly couched in international law, but the character of this principle has been viewed and interpreted differently by scholars. Some view it as part of customary international law²³, and irrespective of the clause in the relevant agreements, states are obligated to conform to the principle. Others, denying the nature of customary law, argue that only explicit clause imposes obligation upon states as members of the agreement. Minority view is more forward-looking, in arguing that the principle has the force of peremptory nature. According to this opinion, this principle has been formulated and

¹⁹ Chang Bok-hee, "The Legal Status and Scope of Application of the Non-refoulement Principle in International Law", Seoul International Law Research, vol.1, 2001, pp.119-121; Guy Goodwin-Gill, *ibid*, pp.124-125.

²⁰ It stipulates: "Nor personal shall be subjected ... to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened."

²¹ It stipulates: " No State Party shall expel, return(refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

²² Some of these agreements include the 1950 European Convention on Human Rights, Article 3, the 1966 Principle concerning Treatment of Refugee, Article III para 3, the 1967 Declaration on Territorial Asylum, the 1992 UN Declaration on the Protection of All Persons from Enforced Disappearance, Article 8 para 1.

²³ Kim Chan-kyu, "Study on the Refugee Status and Treatment of North Korean Refugee", Human Rights and Justice Journal 214, 1994, pp.14-16.

supported for a long time by most of states to the extent of being accepted as general international law, more concretely *jus cogens*²⁴. All states, whether members or non-members of international agreement, are required to respect and conform to the principle²⁵. The argument for peremptory nature is found to be incompatible with the current practice of states. The acceptance of this principle by many states as members of the 1951 Refugee Convention implies that it is regarded as general international norm, to be conformed unless insistenty objected. Chinese act of repatriating North Koreans to North Korea is a clear violation of this principle²⁶. Furthermore, China has to carry out the obligation of non-refoulement in Article 33 of the 1951 Refugee Convention to which it acceded in 1980s. Chinese argument that they are not refugee is not acceptable and justifiable, considering that people not yet confirmed as refugee is to be protected as far as non-refoulement is concerned. The non-refoulement principle attracted huge attention and brought strong criticism to bear upon China in 2000 when China, defying and disregarding the decision of UNHCR to confer the refugee status upon seven North Korean loggers who were caught in Siberia and transferred to China, turned over North Korean loggers to North Korea. The fate of seven loggers have not been known up to the present, but it is assumed that they faced severe punishment up to the level of execution.

²⁴ Kim Chan-kyu, *ibid*; Kim Myung-ki et.al, "Study on the Legal Status of North Korean Refugee in China in International Law", *Korean Journal of International Law*, Vol.2, 1997, pp.32-33.

²⁵ Today the principle forms part of general international law. Substantial authority exists that the principle is binding on all states, irrespective of assent. Guy Goodwin-Gill, *ibid*, p.167.

²⁶ China's act of repatriating North Korean refugee to North Korea is in violation of the Universal Declaration of Human Rights and the human rights clauses of the United Nations Charter. Kim Myung-ki, "The Illegality of Forced Repatriation of North Korean Defectors under the U.N. Charter", *International Affairs*, June 1999, p.14.

SPECIAL STATUS AND CHARACTER OF NORTH KOREAN REFUGEE

The Factor of Trepidation

In making a decision on the status of refugee, there are two factors, one objective and the other subjective and psychological. Among these factors the objective ones are to be visible, easily distinguished and less complicated. In a society of mixed race differentiation of races could be made with ease in most cases, looking into the face, color, and bodily shape. The same goes with the nationality and religion, but less easily in the case of social group. The factor of political opinion is much different from other previously mentioned ones. The record of staging public protest against the current regime or news report on the person's defiant political activities would be grouped under the objective factor. The situation without any public record, still with the person insisting upon the fearful state of mind or feeling arising from the attitude or uttering, complicates the decision further.

The first and foremost in the psychological factors is the fear or trepidation of persecution upon return to the country of origin, as is clearly mentioned in the term "well-founded fear of being persecuted". The definition of persecution²⁷ is given in Article 7 para 2(g) of the Statute of International Criminal Court which reads that "persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity. In being regarded as persecution, above all the condition of "by reason of the identity of the group or collectivity" is reiterated. The most typical is the feeling of trepidation due to

²⁷ 'Persecution' is not defined in the Refugee Convention. Articles 31 and 33 of the Convention refer to those whose life or freedom was or would be threatened. The core meaning of persecution includes the threat of deprivation of life or physical freedom. Guy Goodwin-Gill, *ibid*, pp.66-68.

political revolt or opposition, not just in the active manner, but for reason of belonging to opposition political group or having signed a petition which contains some phrases denouncing the government. Less conspicuous, yet tenuous cases could be found in other factors of religion, nationality, race and social group. If a person is likely to be discriminated against others mainly because of difference of race, religion or nationality even with the same merits, it is clear that the situation could lead the person to the feeling of trepidation of persecution. Persecution of this nature is rare nowadays.

The Special Case of North Korean Trepidation

It is worth mentioning North Korea's unique political system and domestic legal structure which assigns most of personnel and material resources to constrain and control people. Its main interest is in maintaining the social order and political leadership and it uses any means available to root out potential and imminent possibilities of disruption and opposition. Thus North Korea's political regime is notorious for human rights violation including summary execution without proper trial, torture and other inhuman treatment, and numerous contravention of international human rights²⁸. One of the features and principles of the extradition treaty is that extraditable criminal act is to be regulated as acts to be punishable by all party

²⁸ North Korean penal law provides for 5 -10 years' imprisonment with hard labor for those who escape to commit treason to overturn North Korean regime and 3 years' imprisonment with hard labor for those who cross the border without permission. Among the two, the mere crossing of the border will be punishable up to 3 years' imprisonment. Will it be considered a sort of persecution? Prof. Kim Chan-kyu sees it in the negative. He is of the opinion that the persecution entails 'discriminatory practices resulting in physical or mental harm'. The act of crossing the border punishable up to 3 years' imprisonment will be very severe punishment, but will not be a category of discriminatory practice. Therefore, illegal border crossers should be protected by the international human rights norms. Kim Chan-kyu, "The Protection of North Korean Defectors in International Law", Koreans of Chinese Nationality and the Issue of North Korean Refugee, edited by Chung Il-young et.al. Backsang Foundation, 2003, pp.161-163.

states of the treaty. Here comes up the tricky question whether the act of crossing the border is to be treated as punishable on the part of China as well. For China, Chinese fleeing into foreign countries will not face similar destiny of severe punishment under normal circumstances, just because of flight abroad without committing other grave criminal acts. Strictly speaking, it turns out that China has no legally binding obligation to return North Koreans to the requesting country. Presumably China has returned them out of comity and in terms of friendly relations with North Korea. This act of China brought about the repercussion of condemnation from UNHCR and international community for subjecting hapless North Koreans to torture and other unprecedented severe punishment. Here it needs to study which obligations would prevail among the obligation of bilateral treaty or Refugee Convention. The issue is not simple and therefore requires consideration of various elements. The principle "new laws prevail over older law" could at first sight be taken into account. The bilateral treaty with North Korea is more recent and according to this principle the obligation out of this bilateral treaty seems to prevail. However, this principle is not absolute and overpowering. The peremptory nature(*jus cogens*) of the international norm will determine the absolute validity of the norm. Though disputed, the non-refoulement principle is treated as a kind of *jus cogens* by minority of international jurists. In this opinion, China has to follow the obligation required of the Refugee Convention to the disregard of bilateral treaty. Another more universally accepted principle is the respect for the basic international organization represented by the United Nations. The article 102 of the UN Charter stipulates that the obligation of the UN Charter shall predominate against incompatible obligation of other treaties. The purpose of the UN is to preserve international peace and security and promote cooperation among nations and respect for human right. As a permanent member of the UN Security Council, China should keep in mind the purpose and obligation of the UN above

all else and strive to carry out this obligation even to the detriment of traditional bilateral relations with North Korea²⁹.

Status of North Koreans in perspective of South Korean Law

North Koreans' legal status is very unique in the perspective of South Korean municipal laws in light of the division of Korean peninsula. It is thought that the formation of South Korean government was legitimized by the supervision of the United Nations delegation in 1948, and recognized as the only legitimate government representing Korea thus. This was reflected in its constitution, which provides in Article 3 that the Republic of Korea is composed of the Korean peninsula and its accompanying islands. In this regard the legitimacy of North Korea's entity is disregarded, and the regime established on the northern territory of Korean peninsula is considered as illegal entity and to be disavowed and demolished by any means, as far as South Korea's municipal law is concerned³⁰. In this context people governed by North Korean regime in theory cannot take the nationality of North Korea, and instead should take South Korean nationality as a result of being governed under the jurisdiction of South Korean government. As a legal corollary of this phenomenon it follows that North Koreans, left out in the cold in foreign countries and if not seeking the protection of North Korean government for fear of probable persecution, could be protected by the South Korean government as part of an exercise of diplomatic protection inherent in international law³¹. This argument could be made only based upon the perspective of South Korea's municipal

²⁹ Kim Myung-ki et.al, "Study on the Legal Status of North Korean Refugee in China in International Law", Korean Journal of International Law, vol.2, 1997, pp.31-33.

³⁰ Chi Bong-do, "Legal Settlement of North Korean Refugee in China", Journal of Humanitarian Law, July 1997, pp.55-56.

³¹ Kim Myung-ki, "Legal Obligation of Protection to Overseas North Korean Refugee", seminar publication on the life and human rights of Overseas North Koreans, 1997, p.7.

legal system and this is the position taken up by the supreme court of South Korea in its judgments consistently. Politically and in domestic legal point of view, this interpretation is justified and without any fault. This position has been held not just by the judiciary organs, but also by the administrative bodies all the way since the formation of its modern government.

It could be easily understood that the above South Korean position will not be accommodated by the North Korean regime in any manner, and by the international community. It is very clear that North Korea is a subject of international law as a member of the United Nations and has been treated as such, apart from the fact that it was once labeled as an aggressor state in the UN security resolution in 1950 when it invaded South Korea. The view of North Korea as expounded in its legislation and administrative actions concerning the entity of South Korea is compared to the other side of the coin taken by South Korean regime. In legal point of view each side does not recognize the other party at all cost, totally denying the other's legal status. On the other hand, it cannot be disavowed that North Korea has on numerous occasions entered into international business activities of establishing diplomatic relations with other friendly countries and acceding to international organizations, concluding treaties and performing other forms of international rights and duties. These acts symbolize the status and entity enjoyed by North Korea on the international scene. Apparently North Korea has authority over its own population who will be accorded its nationality and, if abroad, diplomatic protection. It is a fact of life in international society, despite the domestic legal position of South Korea.

The legal status of North Koreans having fled from the territory of North Korea and having no intention to return to the country of origin is controversial and requires more careful study in the

perspective of international law and municipal law³². The motive of North Koreans' flight to other countries is varied and complicated, though the economic one to overcome imminent famine and over the long term to search for better welfare is dominant, but cannot exclude other political, religious, humanitarian background. The majority of North Koreans, due to geographic proximity to China, seek refuge in China, and much less in eastern region of Russia. China and Russia seem seldom likely to recognize the room for the involvement of South Korean regime in providing the diplomatic protection to North Koreans on the prowl in those areas, mainly because those two countries have been the politically robust allies of North Korea, and have been under the legal obligation toward North Korea to offer cooperation in repatriating them back to North Korea in order to maintain order and security around the border. These countries have consistently been of the position that North Koreans out of the territory of North Korea, albeit having no intention to seek the protection of North Korea, retain the North Korean nationality, and South Korea has no title to intervene in the matter of protecting North Korean nationals abroad. In the eyes of China, both South and North Korea are the same international entity to be treated equally, though the political relations and exchange, and historical links might be divergent. North Koreans, unless going through the procedure of amending nationality, remain of North Korean nationality through and through and cannot be recognized as acquiring South Korean nationality all of sudden, just because they are placed out of North Korean territory or do not intend to get the protection of original country. Nationality, as establishing the legal links between the country and the person, shall be regulated by the legal regime, not to be placed at the whims of each individual, so that relations between the nations and individuals could be put

³² Chi Bong-do, *ibid*, pp.54-55.

in order. This argument and position can be made and postulated under normal circumstances whereby North Koreans, attaching feeling of loyalty to their mother country, are voluntarily to return to the country of birth.

Here a question arises as to whether the same argument could be applied to North Koreans who are afraid to go back to the mother country mainly for reasons of difference of political opinion and other factors leading to possible fear of persecution. To be sure, these categories of North Koreans left North Korea in most of cases not expecting any reasonable assistance from their mother country, and much more worrying about the forced repatriation for any punishment. It is much understandable in the case of North Korea, which has been notorious for its brutal, harsh treatment of its own people, subjecting them to summary execution and inhumane, degrading torture. In this context the leeway for intervention of South Korean authority to provide diplomatic protection to North Koreans under severe circumstances, with no reliable authority to turn to, comes to pass. On the international plane it is clear that the odds of South Korea's municipal law argument being accepted by other nations, much less China, would be very slim, or almost nil, although South Korea strongly legitimizes and underlines its position. Especially the position has been explicitly disclosed by the response of China on numerous occasions.

While seeking theoretical justification for this occasion, the case of German formulation of theory could be used as a reference point³³. Germany posited Open Door policy(offene Tuer) and single nationality theory. This theory was formulated in the handing down of court judgments concerning similar collection of cases. According to the open door policy, East Germans could be amenable

³³ Kim Tae-chun, "The Responses to Situations of Mass Influx of Residents Escaping from North Korea in the Context of International Law", *Korean Yearbook of International Law*, vol. 2, 1998, p.199-242.

to West German nationality under certain circumstances, whereby East Germany does not exercise its requisite right and obligation to protect East Germans, or East Germans do not seek the protection of its own country for fear of later persecution resulting from different political opinions which are hardly condoned by the communist mother country. In a similar vein, single nationality stipulates that all Germans hold one German nationality, though division of Germany is incomplete and is to be unified sometime. East German nationality is temporary and stop-gap measure, limited in its validity. The single nationality theory argues that East Germans, who left the jurisdiction of East Germany and would have no, if little, expectation of East German protection, could acquire West German nationality and in this circumstance West Germany should actively offer protection to the fleeing East Germans. The division and confrontation between two Germanys have something in common with the two Koreas and the German case of according nationality to the people of other separated party could be used as reference model. The extent of the applicability needs to be examined more carefully, for on the surface similarity exists, yet the status of the other party in each domestic legislation is more or less divergent. As a result the application of German theory will be restricted and its application in whole lock, stock and barrel to Korean example would be difficult.

Germany has enacted and applied the basic law(Grundgesetz) to regulate the separated west side of Germany pending the unification, in light of the special nature of division of a nation, and the occupation and management of the German territory by the four allied Powers. It was the result of political situation having evolved following the World War II, the main purpose of which was to evade the outbreak of war or other type of conflict by any means. The situation was forced upon Germany by the allied Powers to establish a new international order. The German domestic legal system should be viewed in this way, on one hand to put a domestic legal order in place and on other hand to reflect and harmonize the

aspiration and necessity of international community. The preference of the term of basic law could presumably be in evading the unnecessary misunderstanding and confusion of the outside world, mainly aiming at managing the separate half of a nation, and even after the unification maintaining legal order itself. This purpose is to be looked upon in insisting on the use of the same term in the wake of its unification in 1990. As reflected in the purpose and spirit of the basic law, West Germany has not thought of the other separate party as one to be demolished, and recognized that East Germany held the nature of international entity to act on the international plane. Both sides, on the basis of de facto recognition of status quo of German division, pursued exchange and cooperation, as far as possible, to overcome the internationally forced regime of confrontation and hostility. Both Germanys joined the United Nations and dispatched each representative to the other capital to carry out any probable diplomatic functions. This policy of recognizing de facto the other party contributed and led to the formation of favorable environment to the ultimate unification. As is clearly shown in the recognition of legal entity of the other party, a line was not drawn about the German's legal status. As far as East Germans reside in the territory of East Germany, East German nationality has been recognized and respected by West Germany. But the door has been open for East Germans braving the physical danger of crossing the fortified demarcation line to apply for and easily obtain West German nationality being treated separately from ordinary foreigners. On this point the open door policy comes about in its origin and background. The accessibility of West German nationality for East Germans is widely open and recognizable. In similar vein, single nationality theory is attributed to the racial integrity of both Germans, and directed toward one nationality of Germans, as a way of overcoming the division of the German territory. This theory postulates that the division makes the two German nationality unavoidable under the present circumstances, and nevertheless unification and even certain

conditions would accommodate one German nationality. The likely typical conditions would include the placement of East Germans out of East Germany. Once East Germans left the jurisdiction of East Germany and are put in the territory of other countries and terrain of no jurisdiction, West German government has the authority to intervene in the protection of East Germans by according nationality.

The background and origin of the division of Korea and Germany are different internally and externally, and therefore the approach to the making of domestic legal system dissimilar as a result. This aspect is shown in the use of the term of constitution and basic law respectively. Despite such differences, both countries have similarities in both substance and style. Especially noteworthy, quite differently from the case of Germany, are the relations of traditional North Korean allies of China and Russia which are stringent and reluctant to recognize the likelihood of the conversion of North Korean nationality into South Korean one, as far as North Koreans remain in their territory. The limitations of open door policy and single nationality are to be noted in the case of Korea. This hurdle is in a sense an expression of international political aspects, and enhancement of political relations could contribute to the resolution of these international legal issues. The relations of China with North Korea are littered and strengthened with a host of historical, political, cultural, territorial and other various factors which are complicated and intractable to sort out and outstrip with only robust economic relations. China, having established diplomatic relations with both Koreas, differentiates distinctly the South and North Korean nationality, based upon the recognition of each Korea's legal and political system. In bilateral treaties China is under obligation towards North Korea to treat North Koreans staying in China without proper documents as criminals, to be repatriated to North Korea swiftly. Defying mounting international pressures about such despicable, condemnable behavior on humanitarian grounds, China extends bilateral cooperation to North Korea and endures strong criticism

and resulting sacrifice. China has turned a deaf ear to South Korea's public protest through diplomatic channels and having sensed the limitations of diplomatic efforts, South Korea turned rather toward clandestine dealings, producing more effective outcome. China's murky, agonizing position on this issue could be revealed in the process of rejecting open protest of South Korea and acquiescing in the behind-the-scene dealings. It is suspected that in face of the fundamental shifts of international political, economic environment China could make amends to its conventional policy and attitude towards neighboring countries, and the time might come for China to recognize the conversion of North Korean nationality into South Korean one meeting certain conditions. International legal regime is not fixed and like domestic law reflecting the changing outside environment tries to adapt to and reflect the changes of environment, though invisible in most of the cases.

DIPLOMATIC PROTECTION OF ITS OWN PEOPLE ABROAD : THE ISSUE OF PROTECTION BY THE SOUTH KOREAN GOVERNMENT

Diplomatic Protection in general

Diplomatic protection of its own people while abroad takes up a significant position in international law, with its importance on the rapid increase as the role of diplomacy in modern times focuses more upon the protection of its own people. The right of diplomatic protection is vested in the state, the decision on the exercise of which will be made by the concerned government, therefore not to be exercised by the damaged individual. If foreign nationals' interest has been harmed by the host state illegally, unjustifiably, or discriminately, and the foreigner exhausted all available means to remedy the damage incurred for compensation or restitution, still

to remain pending, at the next stage the mother state intervenes to correct the injustice of the situation in its own right.

It is generally admitted that two conditions should be met before the right of diplomatic protection could be exercised. First, domestic exhaustion, and second, the principle that nationality should continue from the moment of the incident at least to the point of time when the issue is to be taken up by the state of origin³⁴. Considering the North Korean nationality in normal circumstances, it is not in any doubt that ordinary North Koreans, if abroad, is under the diplomatic protection of North Korea, but it would be unreasonable and insensible for North Koreans to be left alone if North Koreans fleeing from the North Korean authority and naturally seeking no assistance of their government do not have any governmental body to turn to other than North Korea. In this regard the question of South Korea's claim of diplomatic protection of North Koreans arises even based upon South Korea's domestic law and the special circumstances of Korea's separation, since leaving North Koreans in the lurch without the ultimate diplomatic protection of a government would contravene one of the basic tenets of international law. The most intractable problems come to pass for North Koreans residing in China who not only refuse to return to North Korea, but avoid the assistance and scrutiny of North Korea. In the view of China, the North Koreans hold North Korean nationality, and it is North Korea who will provide the diplomatic protection to them, irrespective of their liking or not. The criticism about this Chinese position is that China disregards North Koreans' humanitarian situation and gives consideration to political ties with North Korea. This attitude of China is criticized for its lack of flexibility about extremely painful, scary fate in which North Koreans in flight are confronted.

It is generally known that North Koreans on the run who are

³⁴ Andrew Clapham, *Brierly's Law of Nations*, seventh edition, Oxford University Press, 2012, pp.261-263.

apprehended and returned to North Korea will face severe punishment, even summary execution, whose mobile pictures are shown on internet. In this light South Korea's attempt to protect those dire North Koreans could be justified and rationalized, though it will require more sophisticated theory about this undertaking and recognition of other countries. Admittedly individuals have the right of choice on their nationality, and as its corollary are entitled to surrender their originality, if the act itself is consistent with the principle of international law³⁵. Non-nationality and dual nationality are deemed to be contrary to the basic norms of international law, unless this result comes about under unavoidable circumstances. In this context it is to be concluded that North Koreans in dire conditions could be interpreted to surrender their nationality by refusing the protection of North Korean government and seek the protection of the country of South Korea which is deemed the most close and familiar on racial, linguistic, cultural and historical grounds and obtain South Korean nationality by putting forth the proper proof³⁶. Proving the relevant ties must be hard and tricky for North Koreans running away for their life. Normally they would be moving around with almost nothing in their possession, much less travel documents or birth certificates. Taking into favorable consideration this impending situation would be desired in investigating the fate of the runaway North Koreans, giving beneficial interpretation of their explanation and presumptive inkling. Their origin of North Korea could be proved through careful and meticulous interview, without depending upon any document. Once this origin is established, the host country could recognize the intervention of South Korea for diplomatic protection, assuming that North Koreans are entitled to South Korean nationality by being issued passport

³⁵ Ian Brownlie, *Principles of Public International Law*, 4th ed., Clarendon Press, 1990, pp.399-401.

³⁶ Kim Tae-chun, *supra* note 23, p.207.

or travel document. On humanitarian grounds, and for fear of severe persecution upon return to North Korea, host countries on many occasions tend to give recognition to this practice, though not firmly established to the extent of forming *opinio juris*, and the practice varies from country to country. The immediate concern is the practice of China, where the majority of North Koreans in flight have stayed. The principle of China's policy has never accepted the theory of North Koreans obtaining South Korean nationality, but exceptionally the practice is obliquely open for the possibility of obtaining South Korean nationality in third countries in the way of expelling them out of China under special circumstances whereby they enter the perimeter of diplomatic or consular compounds which enjoy the diplomatic privilege and immunity under the Vienna Convention on Diplomatic Relations. The expulsion of North Koreans seeking refuge in the diplomatic premises could be used as making face for China, which thought with justification that their location in the diplomatic premises should be differentiated from North Koreans placed in other areas. Giving special consideration to the diplomatic premise and people inside the premises which restrict the access of officials of the host state seems specious, if not totally admissible. This act of differentiation on the part of China attracted a slew of North Koreans to the diplomatic premises, causing a great pain and trouble to foreign embassies and consular offices. Many of them, sometimes hundreds of them, stayed inside the compact embassies until they are given permission to leave the country. It seems that this stop-gap measure would have difficulties in sustaining itself over the long haul, and China widens the availability of the methods of expulsion even to those staying in international school and other foreign facilities. Differently from other countries, China has generally stuck to the firm position of denying South Korean nationality to a certain category of North Koreans, but since it is rooted mainly in political consideration, the policy is susceptible to the shifts of political relations.

Diplomatic Missions and Protection of Refugee

It is generally agreed, and endorsed in the judgment of international court, that the diplomatic missions are not inhered with the right to provide asylum to people who seek refuge in other countries. That is to say, the right of diplomatic asylum has been denied to the embassies or consulates. Nevertheless, refugee having entered and stayed inside the premise of diplomatic missions will be differentiated from other refugee located outside the diplomatic compound in the extent of restriction of officials of the host country approaching the refugee. Diplomatic missions are guaranteed the right of inviolability. The Vienna Convention on the Diplomatic Relations provides that officials of the host state are not permitted to enter the premises of diplomatic missions without the authorization of the chief of missions. The inviolability is the key aspect of diplomatic privilege which is recognized to ensure that the diplomatic missions carry out the functions effectively without the unjustifiable interference of the host state³⁷. Though exception of entering the missions without permission could be thought of in the case of emergency like outbreak of fire or natural disaster, the exception clause was not inserted in the Vienna Convention, for fear that the exception would undermine the sanctity of the inviolability of the diplomatic missions. Because of this inviolability, political opponents have sought refuge in the diplomatic missions which granted them convenience of staying in the embassy premises, causing conflict or friction between the country of missions and the host state. Sometimes the confrontation has lasted for a long time, on and off being provoked and then stalled. In the case of cardinal Mintzenty, who sought asylum in the US embassy in Budapest, the cardinal has remained in the American embassy for about three years, causing conflict between the two countries in the meantime.

³⁷ Lee Han-ki, *Lecture on International Law*, Parkyoungsa Press, 1990, pp.537-539.

The interpretation about whether the embassy has the right to provide safety to an asylum seeker has shown a wide gap among the countries concerned, reflecting the interests of the countries. The western countries have given priority to the protection of the oppressed from the probable persecution of the communist countries, while communist states viewed the issue, focused upon the original function of diplomatic missions and denying the right of asylum of the diplomatic missions. The tension and confrontation could be dissolved through political compromise, giving the cardinal the free conduct to leave Hungary.

Latin American countries, where coup'detat took place frequently in the past, used to nourish and keep the practice of granting asylum to the oppressed in the diplomatic missions. Through this practice politically unstable Latin American countries aimed to enhance the political stability in the area, typically by the conclusion of Havana Treaty in 1928³⁸. It can be said that the customs arise out of the necessity of regional countries and the accumulation of tacit or written agreements. Because the practice has been confined to Latin American countries, it does not follow that diplomatic missions generally could exercise the right of asylum in other areas. The diplomatic asylum has caused controversy, depending upon the method of interpretation.

Facing the imminent dangerous situation, North Koreans sought refuge in the embassies in Beijing, at least to prevent the forced repatriation, and they used the inviolability of diplomatic missions to maximum benefit of them. Officials of China have been restricted in their access to the embassies to capture North Koreans, and as far as inside the embassies, their physical arrest and repatriation was precluded. Their attempt was a kind of self-help act. China, following the general interpretation of asylum and in light of its

³⁸ Lee Han-ki, *ibid*, p.530.

relations with North Korea, has never conceded the right of asylum to diplomatic missions. In order to evade the prolongation of the hiding in the embassies, China has made way for them to be deported to third countries, not directly to South Korea which is their ultimate destination. In this way China saved its face and evaded the possible friction with North Korea. The problem is that North Koreans outsmart the Chinese government, by streaming into foreign missions throughout China, causing trouble to embassies as well as China. As many as hundreds of North Koreans stay inside embassies for some time, bringing about financial burden to foreign missions. Under the present circumstances China needs to consider again its policy about the way to treat refugee in the embassies. The present method is only stop-gap act having limited effect, for diplomatic compound cannot be guarded to deter the entry of refugee through and through. Chinese way of treating North Koreans might be in the process of formulating a new custom on the status of diplomatic missions for the protection of refugee.

Diplomatic Protection of North Korean Refugee

The UNHCR has exerted enormous efforts to allay the anguish of refugee as far as possible, in cooperation with the concerned countries. Refugee has been caught in the middle of the position of the organization and the sovereign state. The number of refugee has been on the increase steadily following World War II, and steadied during the cold war, and thereafter again skyrocketed steeply as a result of surge of violence and the splitting of states along the ethnic and religious faultline. Facing the surge of refugee, the best policy is to make preparation for the prevention of such occurrences, though very difficult, and secondly to come up with curative measures. Among the curative measures, voluntary return of refugee to the country of origin would be the most desirable, once it gets further stabilized. The other two methods are the resettlement in the host

country and flow into the willing third country.

The country that was hit by civil war or conflict short of war would produce lots of victims who flee to safer neighboring countries. If one party of insurgency prevails against the other, the vanquished would succumb and the victor governs and extends the gesture of reconciliation toward the other group of people. Through this process, animosities would calm down and both sides slowly begin to be ready to make compromise. People who have left the country watch carefully whether the situation returns to the original safe status. The victims here are of economic nature, not in the ordinary sense of the refugee. Without addressing the economic refugee, endemic refugee problems could be hardly dealt with in modern times. With the sea change of international circumstances since the conclusion of the 1951 Convention and 1967 Protocol, the demand has been made to take into consideration the changing nature of refugee and adapt to the changed international environment. The issue is how to narrow down the gap between the reality and the provisions of the Refugee Convention. In reality, the demand for the broader definition of refugee has increased, but the reluctant posture of sovereign state remains a big hurdle³⁹. To settle this issue an international conference could be called forth, where experts and government delegations could exchange views and fashion a direction for the amendment of the Convention. The negotiation itself requires strenuous, tedious effort to come up with the most consensual view, otherwise the conclusion is likely to fail to get the widest possible support of nations. The Achilles heels are the definition of the range of refugee, to cover whether the refugee could include people suffering from the involuntary economic plight, which was brought about as a result of war, natural disaster, and other severe economic troubles imposed upon people. People

³⁹ Oh Seung-jin, "The Task of Refugee Law following the End of Cold War", *The Korean Journal of International Law*, vol.1, 2011, p.196.

under this fate are forced to seek their minimum existential safety, different from people searching for better economic conditions out of dissatisfaction with the present level of economic standing. It is strongly urged that at minimum this type of refugee should be included in the consideration of the amendment to the 1951 Convention.

Presumably most of North Koreans on the prowl in northern part of China might have crossed the borderline at risk of their lives to escape from abject poverty and starvation looking for food and to earn money. In this regard they are not classified as the convention refugee, and nevertheless in consideration of the involuntary nature of the refugee need to be protected by UNHCR as mandate refugee. In the spirit and purpose of the Convention, this type of refugee should not be returned to the country of origin, not to be rejected at the border point, and given the opportunity to be investigated for the granting of refugee status. This is especially so, for they would be subject to severe persecution upon return to their country. Some of North Koreans cross the border frequently like tradesmen, which strongly implies the pure economic nature of the status. This group of people are less likely to fear returning to the original place, and therefore cannot be classified as refugee. As far as the present North Korean regime takes the helm of power, the most ideal form of settlement is hardly to be achieved.

North Koreans are not recognized as refugee by the Chinese government⁴⁰, even as mandate refugee to be protected by UNHCR, and so the odds of being officially permitted to stay in China come to naught under the present circumstances. North Koreans in China are under constant threat of being captured by the Chinese and North Korean officials, and being transferred to North Korea. Under this dire condition, it is natural that they strive to escape from the Chinese territory, as far as to South East Asia and farther away to

⁴⁰ Lee Kyu-chang, "The Protection of North Korean Refugee and Anti-torture Convention", *The Korean Journal of International Law*, vol.1, 2006, p.20.

Europe. Their final destination is South Korea, which is the most comfortable in terms of cultural, linguistic affinity. At present some 30,000 North Koreans have settled in South Korea, owing to South Korean government's policy to accommodate all North Koreans who defect in accordance with the domestic law. Once they land in South Korea, they are accommodated in the training center run by the Unification Ministry for about three months to learn to adapt to a new environment. One person is given about tens of thousands of dollars for expenses of resettlement. This handout money is reduced as more North Koreans come to South Korea. In the mid-1990s tens of North Koreans came to South Korea annually, seldom in the hundreds. Nowadays, annual arrivals of thousands became norms. Current level of fund and personnel hardly meets the rising tide of North Korean refugee, and revamp for resettlement program is urgent. North Koreans who have lived in a different political, economic system for a long time have great difficulties in adjusting to a capitalist society. In a communist country of command economic system, they might be accustomed to responding to a command and control, showing seldom voluntary initiative to do things in a totally controlled society. In a new society, they feel as if they are left alone, at a loss what to do. Therefore, the education program is required to be organized in consideration of these factors.

The basic relevant law relating to the protection of North Koreans in South Korea is "the Act for the protection and resettlement of North Koreans" which was enacted on July 14, 1997. Under the law, implementing executive orders and rules have been made and enacted for detailed implementation of policy and purpose mentioned in the Act. The Act has been amended to catch up with the reality, especially with regard to the inflow of North Koreans. South Korea's acceptance of other foreigners as refugee has been very stingy and reluctant since its accession to the Refugee Convention and the Refugee Protocol on Dec. 3, 1992. Upon its accession to the

Convention and Protocol, the relevant law⁴¹ was amended to comply with, but fell short of the expectation from the international community. Being criticized for its reluctance to accept refugee, Korea enacted the Refugee Act in 2012, which came into force on July 1, 2013. It reflected Korean government's continuous efforts and commitments to meeting its obligation under the Refugee Convention and shift from immigration control towards more human rights-based approach⁴².

CONCLUSION

Since the dissolution of ideological confrontation in early 1990s, the Convention refugee in its real sense resulting from the possibility of political persecution due to ideological differences has to a large extent reduced. Instead the refugees are mostly of mixed nature, ie. economic, humanitarian and conflictual. The number of this refugee has been steadily on the rise, escaping from internal strife and economic disaster looking for better living environment.

The issue of North Korean refugee has come to the fore from mid-1990s, since North Korea was hit by severe drought, flood and other natural catastrophe. North Koreans have crossed the border into China looking for food and shelter, with some returning home. North Korea imposes severe control on its people moving across the national border. China has apprehended and repatriated North Koreans under the bilateral border control agreement, breaching the non-refoulement of the Refugee Convention which it has joined. The element of trepidation North Korean defectors will feel under

⁴¹ The Immigration Control Act was amended to include provisions on refugee protection measures and asylum application process.

⁴² Lee Se-Ryon, "Korea's Refugee Act; Towards Fuller Implementation of the Refugee Convention", *Korean Yearbook of International Law*, vol.2, 2014, p.297.

North Korean regime should guarantee the non-refoulement.

North Koreans have special status in the perspective of South Korea, in the sense that outside of the North Korean territory they are entitled to claim the nationality and protection of South Korea. Diplomatic protection is to be provided to North Korean refugee by South Korean government. As a result North Koreans will be issued South Korean passports and reside in South Korea.

Korea has enacted the Refugee Act to be more in compliance with the Refugee Convention and Protocol, adopting the approach respecting human rights and shifting away from the immigration control.

REFERENCES

- Andrew Clapham, *Brierly's Law of Nations*, seventh edition, Oxford University Press, 2012.
- Guy S. Goodwin-Gill, *The Refugee in International Law*, Oxford University Press, 1996.
- Ian Brownlie, *Principles of Public International Law*, 4th ed., Clarendon Press, 1990.
- Lee Han-ki, *Lecture on International Law*, Parkyoungsa Press, 1990.
- Chang Bok-hee, "The Legal Status and Scope of Application of the Non-refoulement Principle in International Law", *Seoul International Law Research*, vol.1, 2001,
- Chi Bong-do, "Legal Settlement of North Korean Refugee in China", *Journal of Humanitarian Law*, July 1997.
- Kim Tae-chun, "The Responses to Situation of Mass Influx of Residents Escaping from North Korea in the context of International Law", *Korean Yearbook of International Law*, Vol.2, 1998.
- Kim Chan-kyu, "Study on the Refugee Status and Treatment of North Korean Refugee", *Human Rights and Justice Journal* 214, 1994.
- Kim Chan-kyu, "The Protection of North Korean Defectors in International Law", *Koreans of Chinese Nationality and the Issue of North Korean Refugee*, edited by Chung Il-young et.al. Backsang Foundation, 2003.
- Kim Myung-ki, "Legal Obligation of Protection to Overseas North Korean Refugee", seminar publication on the life and human rights of Overseas North Koreans, 1997.
- Kim Myung-ki et.al, "Study on the Legal Status of North Korean Refugee in China in International Law", *Korean Journal of International Law*, vol.2, 1997.
- Kim Myung-ki, "The Illegality of Forced Repatriation of North Korean Defectors under the U.N. Charter", *International Affairs*,

- June 1999.
- Lee Kyu-chang, "The Protection of North Korean Refugee and Anti-torture Convention", *The Korean Journal of International Law*, vol.1, 2006.
- Lee Se-ryon, "Korea's Refugee Act; Towards Fuller Implementation of the Refugee Convention", *Korean Yearbook of International Law*, Vol.2, 2014.
- Oh Seoung-jin, "The Task of Refugee Law following the End of Cold War", *The Korean Journal of International Law*, vol.1, 2011.
- UPI Report(June 16, 2015), More North Korean Defectors rejected for asylum in Europe.

NORTH KOREA'S NUCLEAR THREATS AND COUNTER-STRATEGIES*

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Abstract

North Korea's nuclear weapons program and its ballistic missile programs have developed compelling capabilities that can potentially threaten South Korea and its neighbors even including the United States. But, due to Kim Jong Un's opaqueness and unpredictability, deterring the North Korea's nuclear threats is fraught with difficulty. Thus, U.S. needs to reaffirm its commitment to provide and strengthen deterrence for South Korea using the full range of military capabilities including its nuclear umbrella, conventional strike, and missile defense capabilities. South Korea also needs to make every effort to detect, defend, disrupt, and destroy the North's missiles through its Kill Chain and Korean Air and Missile Defense. In addition, despite the official desire to keep the Korean Air and Missile Defense (KAMD) system independent of U.S. missile defense (MD) system, South Korea needs to develop various options for reinforcing interoperability with the U.S. missile system.

Key words: Nuclear weapons, Ballistic missile, ICBM, SLBM, Tailored deterrence, Extended deterrence, Kill Chain, KAMD, North Korean threats, PAC-2, PAC-3, SM-2, SM-3, SM-6, KN-08.

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INTRODUCTION

North Korea is not bound by any global rules. North Korea signed Nuclear Nonproliferation Treaty, declared it was withdrawing, later pledged to denuclearize, and then reneged on its commitment. It can, thus, be said that North Korea's nuclear policies have been damaging to the treaty and international stability. These noxious behaviors are still going on even today in North Korea. Kim Jong Un was just 27 when he came to power with little time to prepare. He is very young and lacks experience. Add to that, Kim certainly seems to be in a rush to perfect his nuclear and missile capabilities, and the intensity of testing this year alone is unusual even for North Korea. If we look at his father, Kim Jong Il, during his 18 year reign, there were about 18 missile tests. During Kim Jong Un's four year reign, as of July in 2016, there have been 25 missile tests.¹

The hereditary dictator also imposes forced labor on hundreds of thousands of his people in the gulag without trial or hope of release. He frequently threatens to drench Seoul in a sea of fire. Nuclear weapons are central to his regime's identity and survival. At the recent Workers' Party Congress, Kim Jong Un made it clear that North Korea is a nuclear power and will remain one. But, ROK and U.S. including other countries will never acknowledge a nuclear North Korea. Therefore, we have to keep pressuring to make denuclearization possible. The recent round of UN sanctions is the way to do that. It is with our hope that the sanctions can convince Kim Jong Un to give up his nuclear ambitions, cornerstone of his leadership that he believes his very survival depends on.

Right now, we are not convinced whether or not North Korea can miniaturize nuclear weapons or fit a nuclear warhead onto a

¹ Bechtol Jr Bruce E, "The Military Threat in 2015: The Threat to the ROK-U.S. Alliance and Peninsula Unification," *International Journal of Korean Studies*, Vol. XIX, No. 1, p. 3. For more details, visit <http://www.icks.org/publication/pdf/2015-SPRING-SUMMER/1.pdf>.

missile, but we have to acknowledge that practice makes perfect. If North Korea continue to progress with the miniaturization technology, it may be possible for it to deliver nuclear weapons in other ways such as an artillery shell or in the form of a nuclear mine.

The grim realities characterized by Kim Jong Un's unpredictability, ruthlessness, and fragility just remind us of the Murphy's law, "left to themselves, things tend to go from bad to worse." If current situations regarding nuclear developments in North Korea are left to themselves, then they would simmer and boil, heating up the Korean peninsula. In other words, it is a high time for us to have to address these grim realities. This is the reason this paper was written. This paper is mainly composed of two parts. The first part seeks to understand North Korean nuclear threat. It begins from a short history of North Korea's nuclear ambitions, reasons the country's nuclear weapons matter, and underlying motivations of the nuclear development. In the second part, counter-strategies will be sought for dealing with the nuclear threats. Then this paper will conclude with some suggestions that need to be further studied.

AN EVOLUTION OF NORTH KOREA'S NUCLEAR AMBITIONS

North Korea's nuclear program goes back to the 1990s and North Korea is now assessed by many to be capable of weaponizing both Plutonium and Highly Enriched Uranium (HEU). A series of four underground nuclear tests has each produced higher yields.² The first detonation of nuclear device by North Korea was conducted on October 9, 2006. The test was done at the underground tunnels dug into a remote mountainous site called Punggye-ri located in the

² *Ibid.*

north-east part of the country. The device was assumed to use plutonium the source of which was believed to come from the country's nuclear facility at Yongbyon.

The low yield of the test initially raised questions as to whether it was a nuclear explosion or not, but detection of airborne radioactive isotopes by a United States military aircraft confirmed that it was a nuclear explosion. Many analysts assessed that a yield produced by the test was 0.5 to one kiloton. But, due to the small yield, a question was raised regarding whether it was a successful test of an unusually small device or a partially failed fizzle or dud. In general testing the small device was believed to require sophisticated technology. But, the device might be a nuclear explosive that misfired.

On October 10, 2006, an unnamed North Korean official was quoted as saying that North Korea could launch a nuclear missile unless the United States sits down for face-to-face talks.³ However, few military and defense experts believed that the North Koreans possessed the technology to mount a nuclear warhead to a ballistic missile. On October 14, 2006, the UN Security Council unanimously approved limited military and economic sanctions against North Korea. All five permanent members stated that the sanctions, set out in UNSC Resolution 1718, were intended to penalize the North Korean regime not the country's inhabitants. Later, the North Korean envoy to the U.N. said it would be better for the Security Council to offer its congratulations rather than pass useless resolutions.

The second nuclear test was conducted on Monday, May 25, 2009 at Mantapsan in the vicinity of Punggyri which was the site of the first nuclear. Just like the first, it was the underground detonation of a nuclear device. The test came after a message stating that the North Korea had miniaturized warheads for medium-range missiles and that the country had been recognized by analysts as a fully-

³ "North Korean test 'went wrong,' U.S. official says," *CNN*, archived from the original on October 10, 2006. Retrieved June 5, 2016.

fledged nuclear power.

But, interestingly no radionuclide was detected after the blast. No detection was reported by all countries and organizations concerned such as Comprehensive Nuclear Test Ban Treaty, U.S., South Korea and Japan. Only the seismic wave from the blast site could be recorded with the U.S. reporting a magnitude 4.7, Japan reporting 5.3 and South Korea reporting a magnitude far stronger than in 2006.⁴ However, the lack of detection does not necessarily mean that the blast was non-nuclear test. It further needs to be kept in mind that no radiation after the blast may be taken to mean a great advance in the ability to contain the nuclear test. The North Korea may have buried the test device deep enough in the appropriate rock not to yield remotely detectable radionuclide, making more difficult to prove whether the test was nuclear.

It was widely believed that the test was conducted as a result of a succession crisis in the country. After Kim Jong-il had suffered a stroke in the summer of 2008, arrangements were made for his third son, Kim Jong-Un, to take power upon his death. This also amounts to saying that the North Korea conducted the nuclear test to show it did not intend to give up its nuclear weapons program even in time of possible weakness. In addition, the purpose of the nuclear test might be to establish North Korea as a nuclear power within Kim Jong-il's lifetime.

The test was nearly universally condemned by the international community. In response to the test, the United Nations Security Council unanimously adopted resolution 1874, imposing further economic sanctions on the country and authorizing UN member states to inspect North Korean cargo and destroy any materials that may be involved in the nuclear program. In response to the sanction, North Korea released a statement that it would begin to

⁴ "2009 North Korean nuclear test" at https://en.wikipedia.org/wiki/2009_North_Korean_nuclear_test. Retrieved April 25, 2016.

weaponize its plutonium stockpiles, and would start uranium enrichment. But, it was unusual that the statement lacked the usual bitterness of most North Korean statements. The harshest one at that time was that any U.S.-led attempts to blockade North Korea are viewed as an act of war.

On 12 February 2013, North Korea state media announced it had conducted an underground nuclear test, its third in seven years. A spokesman also said that the country had successfully conducted a third underground nuclear test, and that the test had used a miniaturized nuclear device with greater explosive power.⁵ A large shock, first estimated at magnitude of 4.9, was detected in North Korea, and governments in the region were trying to determine whether it was a third nuclear test. The U.S. Geological Survey (USGS) upgraded the magnitude of the possibly nuclear tremor from 4.9 to 5.1, located 24Km east-northeast of Sungjibaegam, North Korea. The USGS said the hyper center of the event was only one kilometer deep.⁶

In response, Japan summoned an emergency United Nations meeting for 12 February and South Korea raised its military alert status. It was not known whether the explosion had been nuclear or a conventional explosion designed to imitate a nuclear blast. In two days since the blast, Chinese, Japanese, and South Korean investigators failed to detect any radiation.

North Korea conducted its fourth nuclear detonation on 6 January 2016 at the Punggye-ri Nuclear Test Site. Approximately 50Km northwest of Kilju City in Kilju County, an underground test was carried out. The USGS reported a 5.1 magnitude earthquake from the location, and the China Earthquake Networks Center reported

⁵ "(URGENT) N. Korea confirms it conducted third nuclear test," *YonHapNews*. 12 February 2013. Retrieved 12 May 2016.

⁶ "M5.1 – 24km ENE of Sungjibaegam, North Korea," *USGS*. 12 February 2013. Retrieved 12 May 2016. For more details, visit <http://earthquake.usgs.gov/earthquakes/eventpage/usc000f5t0#general>

the magnitude as 4.9.⁷

North Korean media made announcements that the regime had successfully tested a hydrogen bomb. However third-party experts as well as officials and agencies in South Korea doubted North Korea's claims and contended that the device had been more likely to be a fission bomb like a boosted fission weapon. Such weapons use hydrogen fusion to produce smaller, lighter warheads suitable for arming a delivery device such as a missile, rather than to attain the destructive power of a true hydrogen bomb. The North Korean government described the test as a complete success and characterized it as self-defense against the United States. North Korean media claimed that the bomb had been existed a month before the test was carried out.

Official state media from the Democratic People's Republic of Korea (DPRK) announced the test. The Korean Central Television said that the U.S. has gathered forces hostile to the DPRK and raised a slanderous human rights issue to hinder the DPRK's improvement.⁸ The media went on to say that North Korea had just hoped to have an H-bomb as self-defense against the U.S. that holds numerous and humongous nuclear weapons, and therefore its own fate should be protected by the DPRK itself not by any other countries.

The Korean Central News Agency further stated that the Saddam Hussein regime in Iraq and the Gaddafi regime in Libya could not escape the fate of destruction after being deprived of their foundations for nuclear development and giving up nuclear programs of their own accord, yielding to the pressure of the US and the West keen on their regime changes, adding that a bitter lesson should

⁷ "2016 North Korea nuclear test" at https://en.wikipedia.org/wiki/2016_North_Korean_nuclear_test. Retrieved May15, 2016.

⁸ "North Korea says it tested hydrogen bomb," *NK News*, 6 January 2016. Retrieved 6 May 6, 2016.

be drawn from those events.⁹ Later, the North Korean television news anchor appeared and announced that the program would be abandoned only if the US rolled back its outrageous hostile policy toward the DPRK and imperialist aggression forces gave up their infringement upon sovereignty by use of force in the international arena.¹⁰

In addition to the North Korea's nuclear weapons devilment, just as introduced so far, there have also been desperate efforts toward missile development program. It is believed to have had more than 1,000 missiles of varying capabilities, including long-range missiles which could one day strike the United States.¹¹ Pyongyang's program has progressed over the last few decades from tactical artillery rockets in the 1960s and 70s to short-range and medium-range ballistic missiles in the 1980s and 90s. Systems capable of greater ranges are understood to be under research and development. The country's missile program has mainly been developed from the Scud, itself a development from the German V2 rockets of World War II.

North Korea first obtained tactical missiles from the Soviet Union as early as 1969, but its first Scuds allegedly came via Egypt in 1976. Egypt was believed to have supplied North Korea with missiles and designs in return for its support against Israel in the Yom Kippur War. By 1984, North Korea built its own Scuds named the Hwasong-5. Hwasong-6 ensued as an upgraded version, and it was larger and longer than the previous version. The Nodong, as a next version, is essentially a 50% larger than Hwasong-6 followed, and following the Nodong came the multiple-stage Taepodong

⁹ "'H-Bomb of justice': Pyongyang brings up Iraq & Libya doom as nuclear deterrence justification," *RT*, 9 January 2016. Retrieved 10 April 2016.

¹⁰ *Ibid.*

¹¹ "North Korea's missile programme," *BBC NEWS* at <http://www.bbc.com/news/world-asia-17399847>. Retrieved May 21 2016.

missiles, which could potentially be configured as satellite launchers or missiles.

Following the first nuclear test in 2006, North Korea test-fired a Taepodong-2 missile which was allegedly able to reach targets many thousands of miles away from its launch pad. North Korea also fired rockets for testing with related technology in both 2009 and 2012. But, all three launches ended in failure. However, having followed its previous failed launch attempts, on 12 December 2012, North Korea appeared to make a successful launch of a three-stage rocket using the same Unha technology. The launch was condemned by several nations because it was test for intercontinental ballistic missile not for satellite-carried rocket.¹² In June 2014, a North Korean propaganda film briefly showed what some experts said might be a newly developed cruise missile, believed to be similar to the Russian KH-35 anti-ship missile. It is unclear whether North Korea previously owned any cruise missiles.¹³

In February 2016, North Korea claimed it had successfully launched a satellite into orbit, and pledged to launch more. The North said it successfully launched the “Kwangmyongsong-4 satellite”, a more advanced model than it launched in Dec 2012.¹⁴ It is not yet clear whether the launch was indeed a success. But, while some North Korean pronouncements have been treated with skepticism and ridicule, analysts are treating the unusual pace of North Korean rocket and nuclear testing in early 2016 quite seriously. It was initially claimed that the satellite was tumbling in orbit and that no signals had yet been detected being transmitted from it.¹⁵

¹² For more information, visit https://en.wikipedia.org/wiki/Kwangmy%C5%8Fngs%C5%8Fng-3_Unit_2. Retrieved April 30 2016.

¹³ “2014 North Korea missile tests” at https://en.wikipedia.org/wiki/2014_North_Korean_missile_tests. Retrieved April 23 2016.

¹⁴ “Kwangmyŏngsŏng-4” at <https://en.wikipedia.org/wiki/Kwangmy%C5%8Fngs%C5%8Fng-4>. Retrieved April 10 2016.

¹⁵ Andrea Shalal; David Brunnstrom (10 February 2016), “North Korea satellite in stable orbit

However, it was later reported the tumbling had been brought under control and the orbit stabilized. The satellite was estimated to be almost twice as large as Kwangmyongsong-3 and to be 200kg in mass. North Korea registered the satellite with the United Nations Office for Outer Space Affairs on May 9.

North Korea has also continued to focus on the development of submarine-launched ballistic missiles. On 9 May 2015, North Korea's state run television reported that it successfully tested a submarine launched ballistic missile without providing much details such as place of test, time of test, as well as technical details such as the missile name and its range. The information it provided is a pictures and videos showing that Kim Jong Un was watching the test with a missile fired from a submarine with the name Bukkeukseong-1 or Polaris-1 inscribed on the missile body. It was assumed that the missile was fired from an underwater barge rather than a submarine, and that it flew only 100 meters above the water.

In late November 2015, a second test of the KN-11 was conducted, which also apparently failed. Reportedly, the missile was fired from a Sinpo-class submarine and did not successfully eject, resulting in damage to the conning tower of the submarine. A subsequent ejection test in the same month seemed successful, but it exploded upon ignition after ejection from launch pad. On 23 April 2016, it conducted another round of Submarine-Launched Ballistic Missile (SLBM) test.¹⁶ The test was reported to be a success in achieving cold launch technology and able to ignite the rocket engine only after the missile was ejected from a submarine to a certain height. However, the missile flew only for a few minutes and estimated range it travelled was about 30km that is well short of expected 300km range as the minimum SLBM range. But, the KN-11 should be

but not seen transmitting: U.S. sources,"*Reuters*. Retrieved 10 April 2016.

¹⁶ John Shilling, "A New Submarine-Launched Ballistic Missile for North Korea," *38 NORTH*, April 25, 2016, <http://38north.org/2016/04/jschilling042516/>. Retrieved 12 May 2016.

taken as the first sign of a North Korean sea-based nuclear deterrent, which complicates the U.S. and South Korean ability to preemptively destroy the country's nuclear capabilities by threatening a second strike.

In a continuous string of nuclear and missile tests, North Korea has attempted to launch Musudan missiles, intermediate-range ballistic missiles (IRBM), from April through May. It tried four times to display its military muscle, and the last one is done 31 May 2016. But, Pyongyang has never successfully launched one of the IRBM. With an estimated range of between 2,500km and 4,000km, the Musudan is theoretically capable of reaching any places in both South Korea and Japan, and possibly military bases on the U.S. Pacific territory of Guam. North Korea is believed to have deployed about 50 missiles of the type across the nation in the last decade.

ASSESSING NORTH KOREAN NUCLEAR CAPABILITIES

In order to know how capable the North Korea's nuclear weapons are, we need to know answers to the following three questions as raised by Jeffrey Lewis: Can North Korea make a nuclear weapon small enough?; Can North Korea's compact nuclear weapon survive the shock, vibration and temperature change associated with ballistic missile flight?; Can North Korea construct a reentry vehicle (RV) that can survive the extreme heat of reentry, a problem that gets worse with range?¹⁷

There are two primary ways modern militaries deliver strategic nuclear weapons. One is to drop a bomb from a plane, as in Hiroshima

¹⁷ Jeffrey Lewis, "North Korea's Nuclear Weapons: The Great Miniaturization Debate", 38 *NORTH*, 05 February 2015. For detailed analysis, refer to <http://38north.org/2015/02/jlewis020515/>. Retrieved 10 April 2016.

or Nagasaki. The other one is to fire a long-range missile from a submarine or a ground-based silo. In order to make the latter work, a much smaller nuclear device than the former is need. Otherwise, the latter will not fit into a warhead. This is why miniaturization is so important to North Korea. Without that miniaturizing capability, the long-range missiles the North Korea has been testing thus far are just really expensive conventional weapons.

North Korea's regime is well-known for making outrageous and often false claims. But, its latest claim seems at least plausible that it had successfully miniaturized a nuclear weapon in a way its nuclear weapons can fit on the top a warhead. North Korea's state media released some photos showing off a metal sphere, one of three parts related to a warhead. The metal sphere is core element containing the fissile material, and the other two are a heat shield and a fuel-filled cylinder. The metal sphere appears to indeed resemble a warhead, and ten years and four tests seem to suggest it is at least within the realm of possibility that the country could have achieved miniaturization.

As pointed out Jeffrey Lewis in a very affirmative way, if we consider the ten years the North has devoted to and four rounds of nuclear tests it has conducted in developing miniaturization technology and building miniaturized device since 2006, and when asked about the plausibility of its nuclear miniaturization, "yeah, probably rather than yeah, maybe" as an answer is more compelling.

Miniaturization of nuclear weapons is matter of mass and compactness of nuclear device. Materials used in the tests for developing miniaturization are conventional explosives to trigger the nuclear device. As always stated by U.S. intelligence community, and as evidenced by nuclear tests done by many countries, a country could skip right toward building much smaller devices on the order of 1,000 kg, although such weapons would be unreliable without nuclear

testing.¹⁸ When North Korea's first test in 2006 produced a very disappointing yield, many experts took the small yield to mean that North Korea had tried to skip directly to a compact device, resulting in a failure. But, since then, North Korea has conducted three more nuclear tests that produced far higher yields with number of test increasing. Following the test in 2013, the North Koreans announced they had "miniaturized" their nuclear devices.

Many countries have moved quickly to develop relatively smaller nuclear devices. The Chinese provided a uranium-based design to Pakistan that was 500kg and 90cm in diameter, which the Pakistanis miniaturized and passed on to Libya. Such a warhead is certainly small enough to arm a Nodong and might just fit on a notional the North's inter-continental ballistic missile. But, right now, it is impossible to say for sure whether North Korea was telling the truth, and it is still hot debate going on in both academic and policy circles. Nevertheless, the ten years and four tests seem to bring the miniaturizing capability much closer. Based on experiences of U.S. and other countries, Jeffrey Lewis estimated that, after the first three tests, the North Koreans could have a nuclear weapons design somewhere in the Mark 12 to March 7 range 450-750kg in mass with a diameter between 60 and 90cm.¹⁹

Next question, more interesting, is about whether North's compact nuclear weapon can survive shock, vibration and temperature change caused by ballistic missile flight. As mentioned above, it couldn't be better to design and have a much smaller nuclear weapon using state-of-arts electronics and other related technologies, but the design of nuclear weapon must be rugged enough to survive the shock, vibration and temperature extremes while it is taking a ride on a ballistic missile. No matter how compact the miniaturized nuclear

¹⁸ *Ibid.*

¹⁹ *Ibid.*

weapons are, they have to prove successful and reliable during the actual flight. It is very hard to determine or to demonstrate the capability short of testing on the tip of flying missiles. This is a question of missile design, not of miniaturization. North Korea needs to accomplish both in order to test, and thus prove, that it has miniaturized a device.

This was a real problem for the Chinese in the 1960s, too. The Chinese developed a missile-delivered warhead for their DF-2 ballistic missile. It was the same design that China provided to Pakistan. China originally planned and conducted tests for knowing ruggedness its miniaturized nuclear weapons in simulated environments. But, as a result, China found that it was really hard to simulate the extreme conditions of flight.

After a fair amount of back-and-forth between the weaponeers and the central leadership, Zhou Enlai authorized a very unusual live test of a real nuclear weapon on a real ballistic missile. China fired a nuclear-armed DF-2 in October 1966. It worked.²⁰ The Chinese weren't alone. There was the same debate in the United States a few years before the Chinese real tests. Like China, U.S. also settled for a one-off demonstration called Operation Frigate Bird, in which its submarine fired a nuclear-armed Polaris missile at a nuclear test site in the South Pacific. It worked too, although it later turned out that the warhead in question was judged unreliable.

Currently, how much confidence do we place on North Korea's ability to manufacture a reliable miniaturized nuclear weapon? And also does the North Korea itself lack confidence in its warheads? What if, like Operation Frigate Bird, the unreliable weapon just happens to work when it's fired? These are questions regarding reliability, confidence and deterrence. But, as stated by Jeffrey Lewis, addressing questions like these does not seem to help to assess the

²⁰ *Ibid.*

North Korea's nuclear capabilities. The only thing of primary importance is that the nature of security is to be prepared against the worst cases.

Final question is whether North Korea's nuclear warhead has a working reentry vehicle. Intercontinental ballistic missiles work by exiting earth's atmosphere. For inter-continental ballistic missile (ICBM) to work, it needs to be able to survive the heat created by reentry. Otherwise, it will either be thrown way off target or burn up entirely.

No matter how rugged one makes a nuclear warhead, it has to be packaged in a reentry vehicle that can survive the heat created as it reenters the earth's atmosphere. It is a significant challenge for an ICBM, where reentry speeds can reach 7 km/s. China, for example, struggled in the 1970s with developing a reentry vehicle for the DF-5 ICBM that could handle such temperatures. It was really difficult technically for China's defense industries. But, ultimately, China solved that problem. In fact, it is quite plausible for a single state to develop an ICBM, but not easy to put a passable reentry vehicle on top of it.

North Korea has displayed two types of warhead during the parades. One is the so-called "triconic" reentry vehicles that are sort of a compromise between blunt reentry bodies and the slender cones that arm missiles in the US and other advanced nuclear powers. A triconic reentry body must deal with heat through ablation. In other words, the reentry body must be made of material that burns off, taking the heat with it.²¹

The other one is a blunt reentry body that would be inaccurate, very heavy and potentially vulnerable to theater missile defense systems, but it would still survive reentry. The blunt one, latest version,

²¹ John Schilling, Jeffrey Lewis and David Schmerler, "A New ICBM for North Korea?" at http://38north.org/wp-content/uploads/2015/12/38-North_ICBM-Report122215.pdf. Retrieved 12 May 2016.

is about a meter and a half shorter and much less pointy than the triconic one. The previous triconic warhead was a compromise between simplicity and performance, and would still be fast and accurate enough to reach a small and well-defended target.²² The new RV, a blunt one, reduces the concentrated heat loads, allowing for a very simple and robust design. It's probably lighter as well. But, it also means the missile will be much less accurate, and much slower at the end of its flight.

Blunt RVs were too inaccurate to be of military use even when equipped with large thermonuclear warheads. Perhaps more importantly, they are slow enough to be engaged by ordinary surface-to-air missiles as they descend toward their targets. If North Korea is planning on fielding such warheads, they are playing it very safe technologically, but they are limiting themselves to a system that can be used only against large, undefended targets.

Currently, it is not entirely clear which type of RVs North Korea is fielding. But, considering large body of open source information, better computer simulation capabilities, advanced new materials, a little help from its friend countries, and maybe a little confidence, the flight of North Korea's reentry body is not likely to fail. But, the reentry body is more likely to just wildly miss the intended target. The RV may land in San Jose when it was aimed at San Francisco. That is a problem, but Kim Jong-Un might be happy with the results.

REASONS THE NORTH KOREA'S NUCLEAR WEAPONS MATTER

Whenever the North Korea claims to have nuclear bombs, some like to think that it is bluffing and others like to think that it is

²² *Ibid.*

issuing real threats. But, we have to pay attention to either way because we should be prepared for the worst case even while we can hope for the best case. That's why we need to be concerned about Korea's nuclear arsenal now and in the future due to the following reasons.²³

Firstly, an immediate danger to be caused by the North Korea's nukes is that it could use nuclear weapons against its neighbors such as South Korea and Japan. Right now, its attack with nuclear weapons on the continental United States is not likely because its missiles cannot fly far enough carrying a heavy nuclear warhead. But, it is expected that the North Korea will make progress in its nuclear capabilities as times go by.

As a response to the potential threat, Secretary Hagel made an announcement that the U.S. plans to position interceptors in Alaska and possibly on the west coast to shoot down North Korean missiles is important.²⁴ Anyway, most experts believe that if there is a war on the peninsula, Pyongyang could probably put nuclear warheads on shorter-range missiles and attack major population centers. A North Korean nuclear bomb dropped on Seoul or Tokyo would inflict enormous devastation, killing or injuring an estimated two million people in each city, not to mention radioactivity that would last for decades. Pyongyang's ability to inflict horrendous damage is only going to grow if it builds new and more powerful bombs.

Secondly, there still exists a potential for the North Korea to export its nuclear weapons. The North has already tried to help Syria build a nuclear reactor that could produce materials for nuclear weapons. Luckily, that reactor was destroyed by Israeli warplanes in 2006. But if Pyongyang's inventory of nuclear bombs grows, its technological

²³ Joel S. Wit and Jenny Town, "7 Reasons to worry about North Korea's Weapons," *The Atlantic*, 16 April 2013. Formore detailed analysis, look at following website address; <http://www.theatlantic.com/international/archive/2013/04/7-reasons-to-worry-about-north-koreas-weapons/27502/>. Retrieved 26 May 2016.

²⁴ *Ibid.*

base expands, and its need for hard currency to help cope with international sanctions increases, the North will have a larger inventory of merchandise, plus the incentive to look for overseas buyers. It's worth noting that some exports can be done just with the push of a button. That's all it takes to transfer a bomb design in today's connected world.

Even if we detect transfers, because Pyongyang's own nuclear security blanket may grow, the international community will be less able to stop exports. While some argue that the U.S. should simply attack North Korea if it is caught sending nuclear bombs or technology to U.S. enemies, launching military strikes against a North Korea that has a bristling arsenal of weapons and is not afraid to threaten or even use them would be extremely risky.

Thirdly, North Korea's nuclear bombs can make strains grow on the U.S. nuclear umbrella provided to its allies. America's alliances with South Korea and Japan are designed to protect them from attack. That includes not just stationing U.S. troops in those countries but also willingness to threaten and even use nuclear weapons in their defense against other nuclear-armed countries. While some experts question how effective the "nuclear umbrella" has been, South Korea and Japan see it as vital.

It stands to reason that if the threat from North Korea's nuclear arsenal increases, the stress on the U.S. umbrella will also grow, requiring constant reassurance for its allies. But, in fact, the U.S. has sent B-2 and B-52 bombers able to carry nuclear weapons to South Korea during crises to calm its ally's growing security concerns while telegraphing a warning to the North. Such an approach apparently has been effective so far. Nevertheless, Washington's moment of truth may come if North Korea develops nuclear-armed missiles able to reach the United States and South Koreans ask themselves whether the U.S. will risk sacrificing Los Angeles to protect Seoul.

Fourthly, there still exists a possibility that war can break out in the Korean peninsula by miscalculation. Pyongyang may believe

that its nuclear arsenal gives it more freedom to conduct limited military provocations such as the 2010 sinking of a South Korean ship and artillery attack on the South's Yeonpyeong Island without reprisal. That was true then although Washington seemed to restrain the South from launching a serious military response to those actions for fear of triggering a second Korean war.

However, now the South Korea is working with the U.S. on a new proactive strategy. This means launching preventive attacks if intelligence indicates that the North is preparing for a limited strike. It also means responding militarily to provocations like those in 2010. In either case, the dynamics set in motion could trigger an all-out war. North Korea will be more likely to go for broke rather than to roll over and play dead when South Korea mistakenly identifies North Korean preparations for a strike against the South, because not responding after all would show a fatal weakness.

Fifthly, fault line that has been existed between U.S. and China can be further aggravated by the increasing North Korea's nukes. Every time North Korea does something wrong, there is an inevitable outcry that China should solve this problem for us. The logic is, as the North's closest political and economic ally, Beijing has more influence with Pyongyang than anyone else. China, however, is right in claiming that its influence is limited, not only because the North Koreans are adept at resisting pressure from all comers, but also because Beijing has its own national interests. China's top priority has been to avoid instability on its borders, not to denuclearize the North Korea that is the U.S prime objective. China has been making sure that North Korea stays solvent in order to avoid collapse and the emergence of a unified Korea aligned with the U.S. on its doorstep.

Now, China joins international sanctions placed on the North Korea. But, if Pyongyang's arsenal continues to grow and China does not join in further efforts to stop it, fault line already appearing between Beijing and Washington on the North Korea's nuclear issue

will get more worsening even other whole raft of issues in Asia and elsewhere. The split between the two will deepen, as will the divide between China and South Korea and Japan, who remain the target of threats by Pyongyang. That will create more tensions in a vital region already beset by a host of other problems.

Sixthly, an international regime intended to stop the spread of nuclear weapons will be broken down with the nuclear programs North Korea pursues. North Korea's nuclear program has been regarded as a setback for efforts to stop the spread of these weapons, and it has also been regarded as a trigger that can be led to far worse developments.

In South Korea, where an official discussion of building nuclear weapons on government level is unheard, public opinion polls show two-thirds of Korean citizens now support the idea. They insist nuclear-armed country using an analogy of having a nuclear North Korea is like facing a person holding a gun with their bare hands. Of course, the downsides would be serious. A nuclear-armed South Korea would not only suffer from the economic blowback from its trading partners but its building of nuclear weapons might convince Japan, which has not always been on the best of terms with the South, to follow suit. That in turn, would create further tensions with Japan's rival, China.

At the end of the day, faced with a bullying, nuclear-armed Pyongyang, whose ultimate objective is reunification of the Korean peninsula on its terms, Seoul may have no choice but to rely on its own nuclear umbrella. Where the nuclear dominos fall will depend on Washington's ability to cope with the dangers posed by a nuclear North and to shield its ally.

Lastly, there still exists a possibility that instability of the North Korea can lead to a nuclear coup, nuclear civil war, and bombs' leaking beyond the North's borders. Experts have been predicting for decades that North Korea would collapse just like the Soviet Union even though they have been proven wrong simultaneously

to these days. But, instability today remains possible. North Korea could experience convulsions, perhaps because the military is fed up with the young leader pursuing policies contrary to its interest, and because new food shortages could lead to unrest and the unraveling of the government or factional fighting between those supporting reform and others who want to maintain the status quo could break out. And when North Korea becomes unstable, the odds are that nuclear bombs may simply disappear, or may be smuggled abroad and sold to the highest bidder.

UNDERSTANDING NORTH KOREAN NUCLEAR MOTIVATIONS

The three theoretical models offered by Scott Sagan may be of great help in capturing motivation and explanations for North Korea's nuclear acquisition programs.²⁵ First model is realist security model. According to this model, states make decisions on nuclear-weapons acquisition on the basis of whether it increases state security against foreign threats, especially nuclear threats. From this perspective, the principal motivations for North Korea's acquisition of nuclear weapons are the security of the state and survival of the regime. North Korea's security concerns focus on the United States which the North believes threatens its survival both directly and indirectly with the support of the South Korea. In the eyes of North Korea, potential U.S. attack for various reasons with either conventional or nuclear weapons is viewed as obstruct to the reunification of Korea

²⁵ Scott D. Sagan, "Why Do States Build Nuclear Weapons?: Three Models in Search of a Bomb." *International Security* 21.3 (1996): 54-86. In this article, Scott Sagan offers a useful typology of conceptual categories to capture a fuller range of motivations and explanations for nuclear acquisition programs: state security, domestic politics, and ideational attractions.

on Pyongyang's terms.²⁶

In this outlook, North Korea's nuclear weapons option is viewed just as a means to rectify its growing conventional inferiority to the U.S. and South Korean forces aligned against it. The North Koreans' belief that its nuclear weapons can deter any solely U.S. preemptive action can also be valid in this security model. It can be further inferred from this model that North Korea would trade its nuclear weapons away for a package that includes reliable U.S. security assurances which would probably necessitate a broader regional security accord formally ending the state of war on the Korean peninsula.

According to the model, impetus for North Korea to develop nuclear capabilities was also caused by the weakening military ties with the former Soviet Union and China in the 1990s. Prior to the collapse of the Soviet Union and the Chinese economic reform era, North Korea enjoyed nuclear umbrellas from these neighboring states. The defense pact with the Soviet Union and the 1961 Sino-Korean Treaty on Friendship, Cooperation, and Mutual Assistance both stipulated that any armed attack afflicting either party would compel the other contracting party to provide extended military and other assistance by all means at its disposal.²⁷ However, the collapse of the Soviet Union, the integration of China and later Russia into the global economy no longer guaranteed these security commitments. In a self-help international system, the defection of two important allies compelled North Korea to increase their own military capabilities to compensate for its former military dependency on the Soviet Union and China.²⁸ The lack of a credible nuclear deterrent

²⁶ Wade L. Huntley, "Bucks for the Bang: North Korea's Nuclear Program and Northeast Asian Military Spending," 7 May 2010. http://fpif.org/north_koreas_nuclear_program/. Retrieved 20 May 2016.

²⁷ JiYewon, "Three paradigms of North Korea's nuclear ambitions," *Journal of Political Inquiry* 2(2009), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.571.8536&rep=rep1&type=pdf>. Retrieved 1 May 2016.

²⁸ *Ibid.*

extended by the Soviet Union and China created a lapse in deterrent capabilities, leading North Korea to develop its own.

Nevertheless, this model also reveals a limitation. Most notably, it fails to explain the initial stages of nuclear weapon development under Kim Il-Sung, whereas it provides powerful explanatory power for later efforts under the dictatorships of Kim Jong-Il and Kim Jong-Un. North Korea undeniably intensified its efforts to develop a nuclear weapons program in the 1960s under the command of Kim Il-Sung.²⁹ However, during that time, Soviet intelligence assessments confirmed that the U.S. did not intend to wage another Korean War nor increase tension in the region. Although the security model predicts that countries will pursue capabilities to counter a threat, the U.S. was perceived to be the least threatening during the initial stages of nuclear development.³⁰ The fact that North Korea enjoyed two nuclear umbrellas under the Soviet Union and China at a time when the U.S. revealed an unwillingness to wage a preemptive nuclear attack exposes an inconsistency between the security model and reality.

Second model is the domestic model. In this model, states make decisions on the acquisition of nuclear weapons on the basis of parochial domestic and bureaucratic interests. An examination of the fundamental domestic structure of North Korea largely coincides with the predictions of the domestic model. The ultimate goal of developing a nuclear weapons program is to keep its political regime in power, not to assure the security of the North Korean state. Domestic politics of regime survival emerges as the significant variable in explaining the underlying cause for the acquisition of nuclear weapons. Domestic philosophies such as the military-first policy, the fundamental principle of self-reliance, the subsumed

²⁹ *Ibid.*

³⁰ *Ibid.*

role of international trade, and nuclear weapons as a source of hard currency can be of help in explaining North Korea's nuclear ambitions.

North Korea certainly has domestic factions. There are three sets of institutions that control the real power in the country. Those are party, the military and the security services. While Kim Jong-un appears to have not yet fully consolidated his power in any of them, he has purged the most officials in the military to gain him support there. This is also a legacy issue for the credibility of what Georgetown University professor David Maxwell calls the Kim Family Regime (KFR). As stated above, Kim Il-sung started the nuclear program, his son Kim Jong-il continued it, and now the third in line, Kim Jong-un, has brought it to its most threatening status ever. Thus, the nuclear program, and the platforms that carry it, are a source of power credibility for the KFR and ultimately for the success of the power institutions that support and protect the regime.

But there are more behind North Korean motivations than simply internal power credibility, regime legacy or even deterring outside attacks on the North Korea. The fundamental principle of self-reliance and self-sufficiency, referred to as "*juche*", also reflects the objective of the dictator to maintain his legitimacy and monolithic power through the possession of nuclear weapons. The governing principle of *juche* is characterized by four aspects of independence in thought, politics and diplomacy, economics, and defense.³¹

Accordingly, North Korea is identified as economically collectivist, ethnically racist, diplomatically isolationist, and culturally nationalist, which justifies the dictator's complete control over all aspects of the state.³² North Korea still envisions a utopian state where the need to depend economically or militarily on other states is unnecessary and undesirable to preserve the sovereignty of the state. Given

³¹ *Ibid.*

³² *Ibid.*

this national priority of self-sufficiency, the acquisition of nuclear weapons is perceived as inevitable to achieve the realization of this fundamental governing principle. North Korea's nuclear weapons program is the ultimate expression of *juche* in national security. Thus, the interests of the Kim Jong-En's current governing regime are inevitably concentrated on the nuclear weapons program to assure the survival of his regime.

Kim Jong-Un right now seeks sources of hard currency without substantially changing the fundamental structure of economy. The underlying principle of *juche* coupled with the need to prevent the economic dissolution of the ruling groups generated strong incentives to engage in illicit activity. Transferring nuclear technology or materials to other states emerged as an attractive nontraditional source of hard currency, which in turn encouraged the continuing development of the nuclear weapons program. In April 2005, U.S. officials estimated North Korea's total income from illicit activities at 500 million dollars, which accounts for thirty five to forty percent of the revenue of legitimate exports.³³ This illicit activity, including transfers of nuclear technology to clients such as Egypt, Iran, Syria, or Yemen, will be vital to maintaining the power of Kim Jong-Un. The threat of economic collapse only adds to the motivation to develop and maintain nuclear weapons as an additional means of income.

The explanation of the domestic politics model, which takes into consideration the parochial interests of domestic actors as the primary cause of the nuclear acquisition, does not adequately account for the nuclear behavior of North Korea during the 1990s. North Korea's decision to sign the Agreed Framework on October 21, 1994, is considered an anomaly in the framework of the domestic politics model. Despite the dire circumstances

³³ Sheena Chestnut, "Illicit Activity and Proliferation: North Korean Smuggling Networks," *International Security* 32, no. 1 (Summer 2007), p. 92.

characterized by the severe food shortages, natural disasters, economic collapse, and increased concentration of power in the military, North Korea agreed to halt its nuclear weapons program in 1994. This bilateral agreement between North Korea and the U.S. called for North Korea to freeze reactors in Yongbyon, allow inspections by the International Atomic Energy Agency (IAEA), and remain a party to the Nuclear Non-proliferation Treaty (NPT). The Agreed Framework demonstrated North Korea's willingness to suspend its nuclear weapons program and thus abandon the most profitable source of revenue supporting the ruling groups and Kim Jong-Il himself. This reversal of nuclear behavior of North Korea, despite severe domestic pressure, does not follow the logic of the domestic politics model.

The third and last model is the norms model. According to this model, states make decisions on nuclear weapons acquisition on the basis of evoking important symbols of the state's modernity and identity. The norms model takes into consideration the identity of the state, symbolic functions of nuclear weapons, and prevailing shared norms in the international community as the primary units of analysis in explaining the choice to develop a nuclear weapons program. It shares a commonality with the domestic politics model in that both have received little attention in explaining a state's nuclear behavior. The major assumption of the norms model maintains that states are motivated to acquire nuclear capabilities when they perceive it as symbol of prestige and modernity, thus being able to enhance a state's status.

To the contrary, the formation of norms within the international regimes provides a counter rationale to acquiring nuclear capabilities. Sagan maintains that shared norms and beliefs determine legitimate and appropriate actions in international relations. Codified norms in the international regimes, such as the NPT, constrain state behavior by discouraging actions against the shared values of the international community. Defecting states are highly condemned at the international

level and subsequently perceived as illegitimate.

In fact, there is a prevailing view in international relations that the norms model provides the least explanatory power in comparison to the security model and domestic politics model. Nonetheless, it is undeniable that this model offers another theoretical analysis in examining state behavior. In accordance with the norms model, it is possible to argue that the symbolic functions of nuclear weapons partly serve as the cause of the development of nuclear weapons program in North Korea. On April 24, 2006, North Korea officially stated that the development of nuclear weapons is a great achievement that matchlessly glorifies the country's dignity and the nation's pride. Accordingly, the acquisition of nuclear capabilities contributes to shaping the positive perception of this regime's identity, generating intense feelings of nationalism and pride particularly when regime survival is threatened. The symbolic functions of nuclear weapons that create a modernized national identity both within and beyond its territory undergird the legitimacy and coercive power of the dictatorship.

The norms model also reveals severe limitations in explaining the North Korea's decision to develop nuclear weapons. Overall, the North Korean case does not conform to the constructivist perspective that emphasizes norms as a significant factor shaping state behavior. The argument that North Korea developed its nuclear weapons program to assert prestige and modernity is in conflict with another argument that the shared norms against nuclear weapons at the international level stigmatizes any regime that attempts to acquire nuclear capabilities. Since the initial nuclear bombings of Hiroshima and Nagasaki in Japan by the U.S. in 1945, the normative stigma against nuclear use has been commonly accepted by the international community.³⁴

³⁴ JiYewon, *op.cit.*

According to the norms model, compliance with the shared nuclear norms reinforces the identity of states and their status as legitimate members of the international community. However, these shared global norms and codified treaties against the acquisition of nuclear weapons could not ultimately constrain the behavior of North Korea. Consequently, North Korea's nuclear weapons program invited various sanctions by the U.N. and severe criticism at the international level, stigmatizing the identity of North Korea as a rogue state or axis of evil. While the norms model may have predicted such stigmatization, it failed to predict that North Korea would still choose nuclear armament. The nuclear taboo of the norms model appears to lack sufficient explanatory power in this case.

Overall, the three models are ideal types, meaning that any given state's decision making can involve elements of each model to varying degrees. None of the models tells the real story about the motivations underlying the North Korea's acquisition of nuclear weapons. Moreover, the relative weighting of the factors flowing from each model is found to vary over time in the country. Nevertheless, in the case of North Korea, the three motivational models seems to be very useful in that they could expand analysis of the scant information available and elucidate the complex forces likely intermingling to produce North Korean behavior over time.

COUNTER-STRATEGIES AGAINST THE NORTH KOREA'S NUCLEAR THREATS

Tailored deterrence strategy

In its 2006 *Quadrennial Defense Review (QDR) Report*, the Bush administration set forth a vision for tailored deterrence, continuing a shift from a one-size-fits-all notion of deterrence toward more

adaptable approaches suitable for advanced military competitors, regional weapons of mass destruction states, as well as non-state terrorist networks, while assuring allies and dissuading potential competitors.³⁵ Deterrence aims to prevent a hostile action such as aggression or weapons of mass destruction (WMD) use by ensuring that, in the mind of a potential adversary, the risks of action outweigh the benefits, while taking into account the consequences of inaction. Having said that, there is nothing immutable about how the concept should be applied in the face of an evolving security environment.

Elaine Bunn proposes three facets of the tailored deterrence for comprehending fully and applying the deterrence concept to current security situation effectively.³⁶ First one is to tailor to specific actors and specific situations. The tailored deterrence emphasizes the need to understand each potential adversary's decision calculus among different deterrees. That is why it is said to be context specific and culturally sensitive. Second one is to tailor capabilities. This type of deterrence draws attention to the need for clarity regarding what kinds of capabilities, be they either broadly or narrowly defined, would be needed for implementation. It has also tendency to lead to potentially large programmatic and resource implications due to the need for new or modified weapons and platforms. The precise capabilities for any particular adversary and scenario would be tailored by choosing a particular mix among all those available. Third one is to tailor communications. Intent of communication in this type of deterrence is of great importance because the kind of message deterrer wants to send using either words or actions can contribute to

³⁵ Department of Defense, *Quadrennial Defense Review(QDR) Report* (Washington, DC: Department of Defense, February 6, 006), p 2. Additional discussion of tailored deterrence in the 2006 QDR can be found on pages 4, 27, and 50–51.

³⁶ M. Elaine Bunn, "Can Deterrence Be Tailored?" in *Strategic Forum*, No. 225 (Washington, D.C.: Institute for National Strategic Studies, National Defense University), January 2007, pp. 1-2.

efforts to deter specific actors in both peacetime and crisis situations.

The strategic realities of Korean peninsula have been becoming more fluid or multi-faceted with multiple threat dimensions. North Korea's nuclear weapons test and missile tests, the August 2015 DMZ landmine incident, 2014 cyber-attacks against Sony Pictures Entertainment, the 2010 Cheonan's sinking and artillery shelling of the Yeonpyeong Island, and etc. are only the latest illumination of how security environment changes dramatically in Korea peninsula. Due to the changing security situation, defense planners in the ROK-U.S. Alliance have been rethinking existing strategies for responding to various levels of threats North Korea poses.

During the 1993-1994 first nuclear crisis, the Clinton Administration considered preemptive air strikes on North Korea's nuclear facilities and ballistic missile sites. The US planned to launch cruise missiles and send F-117 stealth fighters to destroy the plutonium reactor site at Yongbyon, and deny Pyongyang the capability to procure nuclear weapons. At that time, six F-117s were deployed by the US Air Force at the Kunsan Air Base. The plans, however, were eventually rejected given retaliatory risks and escalation pressures that could lead to an all-out war.³⁷

In 2006, renewed calls emerged in the US for a surgical strike on North Korea and its ballistic missiles and associated facilities, particularly in the wake of an imminent ballistic missile launch of the long-range Taepodong 2 missile. By then, however, North Korea had reached nuclear weapons capability. Since then, U.S.-ROK defense planners have been searching for a new defense strategy with relevant operational concepts, which would allow greater flexibility, adaptability, and autonomy under conditions of strategic uncertainty.

In March 2011, South Korea's Ministry of Defense announced a new force modernization plan titled "Defense Reform 307" which

³⁷ Michael Raska, "Tailored Deterrence: Influencing North Korean Decision-Making-Analysis," *Eurasia Review, A Journal of Analysis and News*, p. 4.

introduced the concept of “Proactive Deterrence” as a response to North Korean asymmetric attacks such as the sinking of the ROK Navy ship Cheon An and artillery attack on the Yeonpyeong-do Island. In similar future crises, the ROK promised that it would no longer rely on passive deterrent, but would immediately retaliate by using prompt, focused, and proportional retaliation.

At the operational level, the proactive deterrence has been embedded into the “2013 Combined Counter-Provocation Plan (CCP)” that provides a series of options for a joint response, principally under South Korea’s lead with the assistance of U.S. forces, to future North Korean provocations the levels of which are short of all-out war.

At the same time, ROK-U.S. officials have been rethinking strategic deterrence against North Korea’s WMD programs. In 2013, they signed the bilateral “Tailored Deterrence Strategy” that establishes a strategic alliance framework for tailoring deterrence against key North Korean nuclear threat scenarios across armistice and wartime, and strengthens the integration of alliance capabilities to maximize their deterrent effects. While details of the strategy remain classified, Gen. Curtis M. Scaparrotti, Commander of the U.S. Forces Korea, noted that the strategy would focus on options that raise the cost of North Korean WMD or ballistic missile use, deny the benefits of their use, and encourage restraint from using WMD or ballistic missiles. The strategy provides bilaterally agreed upon concepts and principles for deterring North Korean WMD use and countering North Korean coercion.

The tailored deterrence strategy is currently being applied in the ROK-U.S. allied military exercises such as annual Key Resolve command post drills and Foal Eagle field training exercise. And as a means to implement the bilateral tailored deterrence agreement, the United States and South Korea created strategic and policy-level framework within the alliance in order to deter specific types of threats from North Korean nuclear weapons and other weapons

of mass destruction. The framework will help them work together more seamlessly to maximize the effects of the deterrence. Both countries have agreed on the need for a more future-oriented and comprehensive strategic alliance.

The agreement of the tailored deterrence reaffirmed U.S. commitment to provide and strengthen deterrence for South Korea using the full range of military capabilities including the U.S. nuclear umbrella, conventional strike, and missile defense capabilities. In 2014, both countries established the concept and principles of a comprehensive counter-missile strategy in order to detect, defend, deter and destroy threats from the North Korean missiles. The so-called 4D strategy, as means to implement the tailored deterrence strategy on operational level, states that South Korea continue not only to build reliable interoperable response capabilities but also to develop the Korean Air and Missile Defense system. The strategy also emphasizes that both sides further interoperability of the alliance's command and control system. The combined tailored deterrence strategy is a good and important example among all achievements the alliance has made so far, meaning that the strategy is worth working together.

Robust extended deterrence and assurance

Deterrence, in order to be effective, has to rest not only with the balance of capabilities but also with the balance of interests at stake in particular conflict. The balance of interests is particularly important for extended deterrence because it faces a structural problem that sets it apart from more straightforward deterrence.³⁸ The extended deterrence requires convincing an adversary that a

³⁸ Shane Smith, "Implications for US Extended Deterrence and Assurance in East Asia," November 2015, *North Korea's Nuclear Futures Series*, US-Korea Institute at SAIS. For an excellent analysis of the issue, see the following website address.
<http://38north.org/wp-content/uploads/2015/11/NKNF-Smith-Extended-Deterrence-Assurance.pdf>. Retrieved 21 May 2016.

detering one is willing to accept high costs in defense of an ally even in situations where its national interests are not self-evident.

Thus, in this context, a question can be raised whether there are US vital interests in East Asia in general and in its allies such as South Korea and Japan in particular. This question can be answered with the following facts: “The Asia Pacific region is home to about 40 percent of the world’s population and nearly 60 percent of global gross domestic product (GDP), with economies that similarly represent about 60 percent of overall U.S. trade. The region is also host to six countries with nuclear weapons programs, including North Korea; three of the world’s six largest defense budgets; and six of the world’s largest militaries.”³⁹

The U.S. rebalance strategy is also an expression of its growing interests in the region. Alliance relationships U.S. maintains with both South Korea and Japan are fundamental to the strategy and to its regional presence. As stressed in 2012 DOD Strategic Guidance and 2014 presidential speech at the U.S. Military Academy, U.S. relationships with Asian allies and key partners are critical to the future stability and growth of the region, and the security of the region and the allies is a core U.S. interest that is worth fighting for.

But, as stated above, the fact that the United States has significant interests at stake in current security situations in the region and thus has the will to defend the regional allies does not necessarily mean that its national survival is likely to be threatened in a conflict on the Korean peninsula. However, survival in the North Korea and its neighbors will be very well on the line in potential war in the Korean peninsula. The absence of the symmetrical interest relations, thus, can be taken to mean that the North Korea will take a go-for-broke position not roll-over and play-dead position in a conflict with the United States.

³⁹ *Ibid.*

This apparent asymmetry of interests exposes the fundamental challenge for extended deterrence against a nuclear-armed North Korea. North Korea's leaders might think that by threatening nuclear attack, they can raise the potential costs of a conflict beyond what the United States is willing to accept and thereby persuade it to agree to an outcome on Pyongyang's terms.

Today, as stated before, North Korea pursues intercontinental ballistic missiles, particularly the road mobile KN-08. Emerging concern regarding the extended deterrence in this situation is whether U.S. will risk San Francisco, Los Angeles or Honolulu to defend Seoul or Busan if and when North Korea can target the US cities with nuclear weapons. As far back as the 1980s, during the early developments of the Taepodong missile, Kim Jong Il's disdainful remarks "if we can develop this we have nothing to fear. Even the American Bastards won't be able to bother us." seems to deepen further the concern.

There is a dexterous calculus behind North Korea's efforts to nullify the U.S. extended deterrence strategy to South Korea and Japan. If North Korea invades or attacks South Korea, it just means the failure of the extended deterrence. Then, U.S. will be left with just two options. One is to engage and retaliate and the other one is not. In the former case U.S. will risk New York over a fight in Seoul, and in the latter case U.S. will risk its ally. This is the reason North Korea builds intercontinental missiles with aim to decouple the U.S.-ROK alliance. There is another strategy titled triangular decoupling strategy pursued by North Korea with its nuclear weapons and missiles. On one level, North Korean leaders might think that by threatening Japan, the United States would be forced to choose between allies and that it would be reluctant to risk Japan over a fight on the peninsula. On another level, North Korean leaders could think that nuclear threats would prevent Japan from supporting US efforts to defend South Korea. If we recall a remark by one Japanese strategist "We are increasingly being asked to trade Tokyo

for Seoul.” and other one by Prime Minister Shinzo Abe “Japan’s consent to using bases located on its soil to defend South Korea should not be taken for granted.” we can also come to know how serious the emerging dilemma is.

The ROK-U.S. alliance must show through action that if North Korea uses nuclear or bio-chemical weapons, nuclear retaliation will be followed in response. As the ROK-U.S. combined readiness posture has failed to deter aggressive activities by North Korea in peacetime, there has been a growing voice within the Korean population that South Korea should build up its own indigenous nuclear capabilities, or adopt nuclear hedging strategy at least. Therefore, the US needs to assure its ROK ally that U.S. extended deterrence is credible and effective, and that security interests of the ROK can be protected without its own nuclear deterrent capabilities.

In this context, in 2011 ROK-U.S. reaffirmed the U.S. promise to defend the ROK with the full spectrum of military capabilities, ranging from nuclear to conventional weapons, and agreed to utilize the Extended Deterrence Policy Committee (EDPC) to develop a tailored extended deterrence policy options against the nuclear and WMD threats from North Korea. This implies that a way to offset North Korea’s confidence in its nuclear capabilities must be part of an effective ROK-U.S. cooperation to deter North Korean provocation. The followings are areas where the ROK-U.S. navies can work together for putting the extended deterrence into practice.⁴⁰

Firstly, in order to ensure a nuclear umbrella, nuclear deterrent capabilities must be deployed appropriately on or around the Korean Peninsula. As there are no U.S. tactical nuclear weapons deployed in the waters surrounding the Peninsula, the US navy often deploys ballistic missile submarines to the ROK or to waters near the Peninsula.

⁴⁰ The following suggestions rely mainly on Admiral Jung Ho-Sub, “Ways to Strengthen ROK-U.S. Naval Cooperation to Deter Provocations by North Korea,” *International Journal of Korean Studies*, Vol. XVI No. 1, Spring 2012, pp. 193-196.

In peacetime, these submarines are usually involved in activities such as port visits, combined exercises, and normal patrol missions. In emergencies, they are forward deployed as a show of force in support of extended deterrence. This is to confirm U.S. commitment to the defense of the ROK and to demonstrate U.S. readiness to provide a nuclear umbrella. In particular, ballistic missile submarines have a long-range reach and deploying them in Guam provides sufficient deterrent capacity, capable of striking North Korea. Port calls by nuclear-capable vessels also present a visible way of demonstrating US commitment to the defense of the ROK.

Secondly, the two navies should improve cooperation in maritime missile defense. As outlined by the 2010 Nuclear Posture Review, the U.S. has adopted as a global strategy a policy of reducing the role and number of nuclear weapons and emphasizing extended deterrence, based on missile defense and conventional strike capabilities. This means that the bolstering of ROK-U.S. conventional strike capability and MD must be actively promoted as a deterrent to North Korean threats of nuclear weapons and long-range missiles.

In this context, the two governments decided to evaluate comprehensive ways to strengthen combined defense against an increasing North Korean missile threat at the June 2012 Foreign and Defense Ministers' Meeting (2+2). In consideration of North Korea's nuclear weapons and long-range missile development, strengthening cooperation between the U.S. MD and KAMD systems is an obvious and necessary measure to promote the credibility of nuclear extended deterrence.

In terms of naval cooperation, since the ROK navy possesses Aegis destroyers it should expand cooperation in the use of available assets, target information sharing, and battlefield management C4I with the U.S. navy. In doing so, it will be desirable for ROK and U.S. navies to strengthen operational collaboration through combined training and exercise, especially for target information sharing via data link system. The operation collaboration between the two navies

in response to the April 13 launch of the North Korean long-range missile, ostensibly called Kwang Myoung Sung No. 3, was a very good example in point.

In addition, the ROK-U.S. navies must increase cooperative activities in the Proliferation Security Initiative (PSI). By sharing information on WMDs and actively participating in PSI exercises and workshops, the two navies can increase opportunities to deny the proliferation of North Korean WMDs and facilitate multinational cooperation activities for regional maritime security.

Lastly, in addition to the presence of nuclear deterrent and cooperation in maritime MD, the ROK-U.S. alliance also needs to possess conventional precision strike capability, capable of striking the source of attack or supporting forces in order to deter North Korean provocations. For this, the alliance must have capabilities to conduct ISR missions, and precisely identify selected targets in the enemy deep areas. Only doing so will make ROK-U.S. alliance be able to demonstrate that its will to retaliate is not simply diplomatic or rhetorical saber-rattling but active strategy put into action.

In particular, the ROK navy needs to possess strike capabilities such as ship-to-ground missiles so that it can immediately strike precisely coastal artillery, and coastal defense cruise missile (CDCM) bases, deployed near maritime areas of conflict, in case of an act of aggression by North Korean navy. For deterring provocation, it is further recommended that the ROK navy possess the capability to strike tactical center of gravity of North Korean navy, such as tactical command and control posts, submarine bases, tactical assembly area of maritime special operation forces, etc..Of course, if the ROK navy does not have this capacity, the U.S. navy must support conventional precision strike forces on or around the Korean Peninsula in contingency.

While deployed in crisis, these forces will have significant value as part of a show of force and, at the same time, will contribute to maintaining a high level of allied readiness posture by conducting

combined exercise and training. Deploying U.S. naval strike forces such as carrier strike groups, maritime action groups on the Korean peninsula and having them participate in combined exercises with the ROK navy shows that the US is fully prepared to deter further provocations by the North. In order to promote the credibility of the US commitment to the defense of the ROK, deployment of carrier strike group is most effective as this represents one of the most powerful symbols of American military might.

Other measures to improve our combined readiness posture

As the wartime OPCON transfer is looming ahead, ROK and U.S. need to prepare for an effective joint operation system. The ROK-U.S. Combined Forces Command (CFC) will be dissolved with the transfer of the OPCON to the ROK in the near future. The wartime OPCON transfer implies that the combined defense system which served as a practical deterrent against North Korea's nuclear threat will be dissolved. Accordingly, the dissolution of the CFC could be seen as a weakening U.S. extended deterrence commitment. It is, therefore, extremely important for both countries to establish a joint operation system that can effectively respond to North Korean aggression, and facilitate ROK-U.S. joint operations both in war and in peacetime.

Most essentially, the two countries should promote strategic and operational interoperability in preparation for a new joint operation system. The ROK should create a strategic leverage so that it can demand what it needs from the U.S. by addressing U.S. weakness in the region; in other words, the ROK should possess the ability to obtain what the U.S. needs but does not possess. In terms of naval cooperation, the ROK navy needs to build up forces that can cooperate and conduct combined operations with the US navy, and supplement the US navy, not merely to deter North Korean provocation but also to immediately respond to maritime threats in the

region. Mine warfare capability, for example, must be augmented for the ROK navy as it can contribute to naval cooperative activities in support of maritime security of the region. That is a strategic interoperability.⁴¹

With the dissolution of the CFC, there will appear an allied system of ‘two nations, two commands’ for the defense of the ROK. However, in order to deal with North Korea military threats in general and its nuclear threats in particular in ways of seamless and consistency, the ROK and the U.S. should ensure that all operations they conduct go on in a manner of ‘one team, one fight’ on both strategic level and operational level.

In building a new joint operation system, therefore, it is more important than anything else for the ROK-U.S. navies to establish command relations that maximize unity of command and unity of effort both in wartime and in peacetime. In doing so, the two navies need to promote C4ISR interoperability and real-time information sharing.⁴²

Considering the primary threat of North Korean navy comes from mine-laying capability by submarines, it is recommended that the two navies conduct joint anti-submarine operations, and mine warfare in vital SLOCs around major sea ports, such as Busan, Yeosu·Gwangyang, and Pyeongtaek. Safe arrival of US augmentation forces in case of contingency and even the success of the entire theater operations on the peninsula depend on safety of vital SLOCs.

After all, the most important thing for the two navies to build a seamless common operation system after wartime OPCON transfer is to construct close inter-allied consultations on all matters such as forward deployment, combined exercise and training, show of force, C4ISR interoperability, mutual logistic support, etc... Currently,

⁴¹ *Ibid.*

⁴² *Ibid.*

Naval Operation Coordination Team (NOCT) is being organized to assume only the function of liaison between ROK Fleet and U.S. Seventh Fleet.

In addition to establishing the ROK-U.S. joint operation system associated with the wartime OPCON transfer, the two countries has to make the extended deterrence credible even to China that can exercise most influence on North Korea in international efforts to dissuade the North from developing nuclear weapons.

While continuing to encourage China to participate in international efforts to dissuade the North Korea's nuclear ambitions, the ROK-U.S. alliance should show the Alliance's determined will to retaliate against any further provocations, be it either nuclear or conventional. Once North Korean provocations cross any thresholds forbidden by the ROK-U.S.alliance, decisive retaliation measures should be taken immediately in a way they can easily be escalated into a full-scale war. It is an effective way to make the extended deterrence more credible in eyes of Chinese people and to make China think that its unilateral efforts to protect North Korea could lead to self-defeating result and enormous costs.

As an effort to coerce China to have North Korea refrain its nuclear nuttiness, U.S. must deploy its carrier strike groups and ballistic missile submarines and conduct combined exercises with the ROK navy in time of crisis especially in the West Sea, an area of concern to China. Live fire exercise is just one option the allied navies can choose in the area in contingency. By doing so, we can achieve the effect of extended deterrence against North Korea.

Nevertheless, this coercive strategy does not deny China opportunities to engage in multinational naval cooperative activities such as search and rescue (SAR) exercises or humanitarian assistance/disaster relief (HA/DR) for regional maritime security. As already noted, China now participate in anti-piracy operations off Somalia. China has been active in cooperative activities such as information-

sharing among participating navies in the region.⁴³ Good habits of cooperation in international arena through abiding by international norms and regulations can induce further cooperative behaviors especially in international efforts to prevent the nuclearization of North Korea. China does not like to see the strengthening of the ROK-U.S. alliance, but has to acknowledge that the cause of the alliance getting robust comes directly from nuclear weapons program and armed provocations by North Korea.

Phased development of the Kill Chain and Korea Air and Missile Defense

The term kill chain was originally used as a military concept related to the structure of an attack. It consists of target identification, force dispatch to target, decision and order to attack the target, and finally the destruction of the target. Conversely, the idea of breaking an opponent's kill chain is a method of defense or preemptive action. The goal in the concept of the kill chain is to put weapons on time sensitive targets in single-digit minutes.

Within the framework of the tailored deterrence strategy, the ROK military has established the Kill Chain capable of immediate "Find, Fix, Target, and Engage" as a preparation for coping effectively with North Korean missile threats. It is a series of attack systems that fixes the location of a target by finding missile threats in real time with means to effectively engage to destroy, and carries out the strike.

The ROK military is trying to strengthen its surveillance and reconnaissance capabilities and strike capability, which are the core functions of the Kill Chain. To enhance the surveillance and reconnaissance capabilities, the ROK military is expected to purchase four RQ-4B Block 30 Global Hawk air vehicles from Northrop

⁴³ *Ibid.*

Grumman Systems Corp., San Diego, California. The vehicle is a high-altitude unmanned aerial vehicle for reconnaissance, and the purchase will be complete by June 28, 2019.⁴⁴ The ROK military also plans to procure reconnaissance satellites as a mid-to long-term plan. In particular, the ROK military will gradually expand its military information and surveillance capabilities.

It also plans to acquire the capability to promptly strike fixed and mobile facilities related to nuclear weapons and missiles throughout all domains of North Korea from the ground, sea, and air. To achieve this, it will enhance the accuracy, range, and power of existing ground-to-ground missiles. By acquiring long-range air-to-surface missiles, medium-range air-to-surface missiles, Joint Direct Attack Munitions (JDAMs), and laser-guided bombs, fighters will be able to carry out long-distance precision strikes. Also, the ROK military will improve the performance of its submarine-to-surface and ship-to-surface missiles, and will develop tactical ship-to-surface missiles to reinforce its sea-based strike capability.

In 2006, South Korea announced its plan to build the KAMD system to defend the country against a possible North Korean missile attack. The KAMD system establishes a terminal-phase, and lower tier overlapped missile defense system in consideration of the battlefield environment of the Korean Peninsula. The system was initially intended to be made up solely of Patriot-2 (PAC-2) missile interceptors and radar. The PAC-2 missile defense system is mobile, low-tire, land-based missile interceptor system designed to intercept incoming tactical ballistic missiles, cruise missiles, or aircraft. The plan termed the SAM-X program began by purchasing the PAC-2 missile defense system from Germany, and later it acquired several Aegis combat systems from the United States.

⁴⁴ For more details on RQ-4B Block 30 Global Hawk air vehicles, see the following website address: http://bemil.chosun.com/nbrd/bbs/view.html?b_bbs_id=10040&num=81922. Retrieved 9 May 2016.

The radar in the KAMD system is the Green Pine radar that is transportable ground-based, multimode solid state phased array radar. Its operational capabilities include early warning alert, theater ballistic missile impact point prediction, theater ballistic missile launch point location, and accurate tracking of missile. Furthermore, the radar also has a reported detecting and tracking range of about 800 kilometers, and is said to work in any weather condition. Although the Green Pine radar was initially developed to work with Israel's Arrow missile defense system, it is interoperable with any other defense system as well.

South Korea currently has about 300 PAC-2 missiles, 48 of which were purchased from Germany in 2008, and which reached initial operational deployment in 2010. But, the purchase of the PAC-3 system from U.S. was suggested as an alternative to the PAC-2 system. The PAC-3 is a guided missile system with long-range, medium to high-altitude, all-weather capabilities designed to counter tactical ballistic missiles, cruise missiles, and advanced aircraft. The PAC-3 is more advanced than the PAC-2. It holds 12 more interceptors, uses hit-to-kill technology, and has an onboard radar transmitter and guidance computer. The PAC-3 systems were reported to be delivered to South Korea from 2015 through 2020.

In addition, South Korea currently possesses three Sejong-Daewang KDX-III Aegis destroyers equipped with the Standard Missile-2 Block IIIA/B(SM-2 Block IIIA/B). The SM-2 is the world's premier fleet-area air defense weapon, providing increased intercept range, high-and low-intercept capability, and the performance against advanced and anti-ship missile threats and enemy aircraft.

In the summer of 2013, South Korea announced it would begin equipping its ships with the SM-6. Designed as a replacement for the SM-2, the SM-6 provides extended range and incorporates advanced signal processing and guidance control capabilities. It can travel as far as 250 miles, and it is an enhancement over the older SM-2 system, whose shorter range cannot adequately counter North

Korean ballistic missiles. But, as of the time of writing this paper, nothing is heard about the purchase of the Standard Missile-6 (SM-6) by the ROK navy. Instead, recently, the ROK navy is said to acquire three more Aegis destroyers in the near future, it hopes to equip those ships with either SM-6 or SM-3. The SM-3 is an advanced land or ship-based hit-kill missiles. Its maximum intercept range is unknown, but it is known to be able to intercept targets at the mid-course and terminal phases.

But, a hope of purchasing the SM-3 may be taken mistakenly to mean that the KAMD will be integrated with ongoing U.S. missile defense efforts in the North East Asia. Official position South Korea has taken so far regarding the KAMD system is that it pursues the system independently of the U.S. and Japan's joint system in the region. In fact, in addition to acquiring improved Patriot missiles, the ROK military plans to acquire medium-range surface-to-air missiles (M-SAM), and will also develop long-range surface-to-air missiles (L-SAM) with an extended intercept range using domestic technology and deploy them by the mid-2020s.

Nevertheless, despite the official desire to keep the KAMD system independent of the U.S., there are several critical point of contact. First, the South Korean system is using mostly U.S.-made equipment. Furthermore, in operations, the South Korean systems will not be completely independent of the U.S. missile defense. Reality is that the Air and Missile Defense Cell(AMD-Cell) operated by the ROK military analyzes information acquired from the U.S. early missile warning satellites and South Korea's radar system and sends it to Patriot missile units.

The ROK military will continuously enhance the effectiveness and credibility of its missile response capabilities by identifying the development requirements of the Kill Chain and KAMD system, and by discussing options to reinforce interoperability with the U.S. missile defense system.

CONCLUSION

North Korea secured nuclear materials obtained from the reprocessing spent fuel rods after operating a nuclear reactor in the Yongbyon nuclear facility. Then, in October 2006, May 2009 and February 2013, January 2016, North Korea conducted nuclear tests. It is estimated that North Korea possesses about 40kg of plutonium that can be used to produce nuclear weapons after several rounds of reprocessing spent fuel rods, and it is also assessed that a highly enriched uranium (HEU) program and another round of reprocessing spent fuel rods are underway. North Korea has also been accelerating, expanding and modernizing its deployed missile forces consisting of close-, short-, medium-, and intermediate-range systems, including the development of road-mobile intercontinental ballistic missiles (ICBM) and solid-fueled short-range submarine-launched ballistic missiles (SLBM).

North Korea's ability to miniaturize nuclear weapons seems to have reached a considerable level. After the four tests, it could have a nuclear weapons weighing 450-750kg in mass with 60-90cm in diameter. But, due to Kim Jong-Un's opaqueness and unpredictability, deterring the North Korea's nuclear threats is fraught with difficulty. This is the reason this paper introduced a deterrence strategy that can be tailored to specific actions and specific situations going on in North Korea. The tailored deterrence strategy, as a combined strategy, has always been in place against the North Korea's nuclear threats and non-nuclear threats as well. The agreement of the strategy between ROK and U.S. is a reaffirmation of US commitment to provide and strengthen deterrence for South Korea using the full range of military capabilities including its nuclear umbrella, conventional strike, and missile defense capabilities.

In addition, based on the comprehensive alliance counter-missile operation established on operational level between South Korea

and U.S., ROK's efforts to detect, defend, disrupt, and destroy the North's missiles are underway through its Kill Chain and KAMD that will reach their fullest capabilities soon. However, in order to make the extended deterrence and assurance more robust and reliable, U.S. nuclear deterrent capabilities must be deployed appropriately in and around the Korean peninsula. And more cooperation between the two countries should be made in areas of missile defense such as ISR and conventional precision strike capabilities.

Despite the official desire to keep the KAMD system independent of U.S. MD system, a further study needs to be done for South Korea to find various options for reinforcing interoperability with the U.S. missile system. And as strategic realities associated with the North's nuclear quagmire are getting more fluid and multifaceted with multiple dimensions, another study is desirable to find out what is needed technically and adopted politically for applying nuclear hedging strategy to the South Korea.

REFERENCES

Books

- Allen, W. Kenneth, et. al. *Theater Missile Defenses in the Asia-Pacific Region*. Working Group Report No. 34. Washington, D.C.: The Henry L. Stimson Center, 2000.
- Department of Defense, *Quadrennial Defense Review(QDR) Report* (Washington, DC:Department of Defense, February 6, 006).
- Direction Generale de l'armement.*M51-Missile Mer-sol Balistique Strategique*.Paris, 2011.
- Federal Council to the Federal Assembly.*Civil Protection Concept*. October 2001.
- Hildreth, A. Steven, et al. *Ballistic Missile Defense: Historical Overview*-CRS Report for Congress RS22120. Washington,D.C.: The library of Congress, 2007.
- Kearny, H. Cresson. *Nuclear War Survival Skills*. T.N.: Oak Ridge National Laboratoy, 1987.
- Kennedy, Paul. *The Rise and Fall of the Great Powers*. N.Y.:Random House, 1987.
- Krostadt, K. Alan. *Major US Arms Sales and Grants to Pakistan Since 2001*. Washington, D.C.:Congressional ResearchService, 2011.
- McDevitt,Michael, "Small Navies in Asia: The Strategic Rationale for Growth," in *Small Navies:Strategy and Policy for Small Navies in War and Peace*, eds. Michael Mulqueen, Deborah Sanders (Routledge, 2014).
- Mearsheimer, J. John. *The Tragedy of Great Power Politics*. N.Y.:Norton, 2001.
- Twining,Daniel, "Strengthening the U.S.-Korea Alliance for the 21st Century – The Role of Korean-American Partnership in Shaping Asia's Emerging Order," in *The U.S.-ROK Alliance in the 21st Century*, eds. Jung-Ho Bae, Abraham Denmark (Seoul: Korea Institute for National Unification, 2009).

Journals

- Bunn, M. Elaine, "Can Deterrence Be Tailored?" in *Strategic Forum*, No. 225 (Washington, D.C.: Institute for National Strategic Studies, National Defense University), January 2007.
- Bruce E. Bechtol, "The Military Threat in 2015: The Threat to the ROK-U.S. Alliance and Peninsula Unification," *International Journal of Korean Studies*, Vol. XIX, No. 1.
- Chestnut, Sheena, "Illicit Activity and Proliferation: North Korean Smuggling Networks," *International Security* 32, no. 1 (Summer 2007).
- Ho-Sub, Jung, "Ways to Strengthen ROK-U.S. Naval Cooperation to Deter Provocations by North Korea," *International Journal of Korean Studies*, Vol. XVI No. 1, Spring 2012.
- Lewis, Jeffrey, "North Korea's Nuclear Weapons: The Great Miniaturization Debate," *38NORTH*, 05 February 2015.
- Raska, Michael, "Tailored Deterrence: Influencing North Korean Decision-Making-Analysis," *Eurasia Review, A Journal of Analysis and News*.
- Sagan, Scott D, "Why Do States Build Nuclear Weapons?: Three Models in Search of a Bomb." *International Security* 21.3 (1996).
- Shilling, John, "A New Submarine-Launched Ballistic Missile for North Korea," *38 NORTH*, April 25, 2016.
- Smith, Shane, "Implications for US Extended Deterrence and Assurance in East Asia," November 2015, *North Korea's Nuclear Futures Series*, US-Korea Institute at SAIS.
- Wit, Joel S. and Town, Jenny, "7 Reasons to worry about North Korea's Weapons," *The Atlantic*, 16 April 2013.
- Yewon, Ji, "Three paradigms of North Korea's nuclear ambitions," *Journal of Political Inquiry* 2(2009),

Websites

<http://www.icks.org/publication/pdf/2015-SPRING-SUMMER/1.pdf>.
https://en.wikipedia.org/wiki/2009_North_Korean_nuclear_test.
<http://earthquake.usgs.gov/earthquakes/eventpage/usc000f5t0#general>
https://en.wikipedia.org/wiki/2016_North_Korean_nuclear_test.
<http://www.bbc.com/news/world-asia-17399847>.
https://en.wikipedia.org/wiki/Kwangmy%C5%8Fngs%C5%8Fng-3_Unit_2
https://en.wikipedia.org/wiki/2014_North_Korean_missile_tests.
<https://en.wikipedia.org/wiki/Kwangmy%C5%8Fngs%C5%8Fng-4>.
<http://38north.org/2016/04/jschilling042516/>
<http://38north.org/2015/02/jlewis020515/>
http://38north.org/wp-content/uploads/2015/12/38-North_ICBM-Report122215.pdf.
http://fpif.org/north_koreas_nuclear_program/.
<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.571.8536&rep=rep1&type=pdf>.
http://bemil.chosun.com/nbrd/bbs/view.html?b_bbs_id=10040&num=81922.
<http://38north.org/wp-content/uploads/2015/11/NKNF-Smith-Extended-Deterrence-Assurance.pdf>.

Medias

BBC NEWS
CNN
NK News
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USGS
YonHapNews.

A CRITICAL EVALUATION ON THE CULTURAL NATIONALISM OF THE TWO KOREAS

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Abstract

Unlike the ideology of the French Revolution, Korean nationalism did not demand freedom and equality all at once. After the liberation from the Japanese colony, Korean nationalism strongly became a pervasive characteristic of the Korean people. This nationalism represented a collective ideology with the absence of strong individualistic aims. After this development, Korean society was caught within a South-South conflict between the force of national cooperation and that of anti-communism conservatism. The negative effects of this national ideology appeared in the form of using the idea of the 'nation' for political purposes. 'Nation' is not limited to 'tribes' but also encapsulated a 'people' with broad political implications. This disorder within the Korean concept of the 'nation' lacks the national civic element of Rousseau's definition.

North Korea's Kim, Il Sung originally rejected nationalism. In the late 1980s, North Korea had to maintain its system based on the nationalism of 'Juche' (self-reliance). Nationalism was internalized as a subordinate concept to the Juche ideology. North Korean nationalism can be described as Kimilsungism. The nationalism of 'Sovereignty rests with the people', based on the ideas of freedom and equality, has been completely replaced by the ruling ideology of the North Korean hereditary dynasty, which maintains its system through the force of rule.

Nationalistic ideologies should clear away their cultural-romantic lineages, which were used to uphold political hegemony. The internalization of civil nationalism must overcome cultural nationalism in order to strengthen the Korean identity. Korea needs to establish a foundation for developing and cultivating civil nationalism within its peoples.

Key words: Nation, Nationalism, Cultural (Romantic) Nationalism, Civil Nationalism, Internalization

INTRODUCTION

As nationalism can have many different characteristics, Korean nationalism manifests itself in a variety of forms and combines different ideological systems. This research aims to trace the origin of why the Korean nationalistic identity still experiences controversy and disorder as it developed upon the basis of understanding the nation and nationalism while seemingly following the ideological trajectory of its ethnic group.

In setting up the boundaries of the research, a few cultural-romantic nationalistic perspective were kept in mind. Korean nationalism is a resistant nationalism in which organic collectivism, authoritarianism, and nationalism are inherited. It carries the danger of misusing nationalistic ideologies and could distort or gloss over the values of the liberal democratic system¹

This research focuses on understanding Rousseau and Herder's theoretical concept of ethnic group-nationalism, the ideological basis of the modern nation-state, and the sources of early Korean nationalism as well as identity. After democratization, many different forms of South and North Korean nationalism remained intact to act as perspective in evaluating and creating new paradigms, as they emphasized an ideological point of view similar to that of the French Revolution, which focused on individual freedom and equality.

This research also raises awareness on the problems regarding nationalism and it suggests a research direction for practical issues regarding the ideological basis of the modern nation-state. The major concepts of existing theories of nationalism are to be examined, and the concepts of civil nationalism and cultural nationalism will be

¹ Noh, Jaebong, et al., 『Political Conversation』, Sungshin Women's University Press, 2015, p. 210.

established. While arguing for the need of civil nationalism within the Korean nationalistic identity, the necessity of a critical evaluation on South-North Korean cultural nationalism is emphasized.

A critical evaluation and consideration of South Korean cultural nationalism comes next in the research. These ideological forms, their double-sidedness, their limitations to resistant nationalism, and Korean nationalism's *situational* double-sidedness are to be analyzed. In addition, Korean nationalism's original limitations and weaknesses will be evaluated by looking into Korean nationalism's ideological and tribal pre-modernism.

While analyzing North Korea's cultural-romantic nationalism, the Juche (self-reliance) nationalism, the basis of North Korea's cultural nationalism, various models of nationalistic paradigms are to be considered. By looking carefully into how the value of freedom and equality, are reflected into the basis of Korea's national ideological conflict and North Korean cultural nationalism is to be critically evaluated.

Lastly, the critical evaluation on the previously suggested South-North cultural nationalistic paradigms is to be concluded as follows: Korean nationalism, the fundamental issue of modern Korean political history, could prudently resolve social conflicts by blending Tocqueville's 'equality of conditions' with political liberalism.

THE CONCEPTS OF NATION AND NATIONALISM

The Westphalia Treaty (1648) inaugurated modern international relations and promoted sovereign nations to emphasize equality in the principle of mutual sovereignty. However, the ones who exerted 'sovereignty' were the autocrats who used power and force.²

² Charles Tilly, "Reflection on the History of European State-Making," in C. Tilly, ed., *The*

Medieval sovereign nations were reconstituted to become modern 'nation-states' by undergoing the events of the French Revolution in 1789. In theory, "the people" became the force of sovereignty over the autocrat.

In other words, based on Rousseau's idea of 'sovereignty rests with people,'³ a modern nation-state is that where 'the people' constitute the nation as opposed to a nation with a sovereign autocratic leader. This is the foundation of modern nation ideology based upon Rousseau's general will as the 'theory of sovereignty'.

Essentially, nationalism secures the legitimacy of national authority.⁴ Nationalism represents statehood by the people and territoriality. A nation-state carries the concept of the sovereignty of the people. Sovereignty and nationalism are the basic foundation for modern nations. A mutual relation between sovereignty and nationalism is one of the most important concepts for modern nations in securing legitimacy. Western modern nations have given legitimacy to national authority through the sovereignty of the people. Which means, nation-centered sovereignty can be developed as a modern nation-state. Thus, the modern nation-state contains both liberalism and the democratic principles of 'freedom' and 'equality' from the beginning. Ignoring the value of freedom and equality of individuals by only focusing on the group itself is a national ideology that does not coincide with the fundamentals of modern liberal nationhood.

The concept of nationalism is very practical and is not established for merely abstract scholarly purposes. Sometimes nationalism

Formation of National States in Western Europe (Princeton, N. J.: Princeton Press, 1974), pp. 51-70.

³ Frederick Coplston S. J, A History of Philosophy vpl 6: The french enlightenment to kant(New York: A Division of Doubleday & Company lcc. 1964), p. 76.

⁴ Aleasner B. Murphy, " the Sovereign State as Political Territorial Ideal: Historical and Contemporary Consideration",in Thomas J. Bierstecker and Cynthia Weber(eds.), State Sovereignty as Social Construct(Cambridge: Cambridge University Press, 1996), p. 97.

was a reason to fight and sacrifice one's life and was a value that steered the political fate of nations. Nationalism is the values of a people, and it has distinct characteristics that stem from a particular living area and environment. Nationalism starts from the idea of nation- and people-centered politics. Nationalism carries the characteristics of self-determination and developed as a concept of national sovereignty with the ideological basis of freedom and equality.

Rousseau's 'theory of sovereignty' by general will arouses ideas of freedom, equality and civil rights for Enlightenment philosophers. This idea influenced the French Revolution, which forged the fundamental idea of the modern nation. A country with a sovereign nation is a modern nation state. Thus, modern nation state connotes both liberalism and democratic principles of 'freedom' and 'equality' from the beginning. Ignoring these underlying elements of nationalism, freedom and equality, and having a group in the front line rather than an individual is a 'national ideology' that is not exactly in accord with the fundamental ideas of modern national statehood.

The civil nationalism of France and the United Kingdom demanded the abolition of privilege and government responsibility towards the welfare of the people. Early notions of the 'civic nation' cater to the needs of a middle class that was commercially expanding onto the international stage. The French Revolution made clear that the state existed for the good of the nation.⁵

As Benedict Anderson said, "The nation is an imagined political community and imagined as both inherently limited and sovereign".⁶ The ease of communication from paper and printing technology became the base of forming the 'foundation of an imagined community' that shares time and space.

⁵ Baylis, John. Smith, Steve. Owens, Patricia. (Ed.), Youngseon Ha, et al. 『The Globalization of World Politics』, (Seoul: Eulyoo Publishing), 2013. P. 497.

⁶ Benedict Anderson, *"Imaged Communities: Reflections on the Origin and Spread of Nationalism"*(London: Verso)". 1983; revised 1991. pp. 5-6.

Ernest Renan criticized the ‘ideology of nationalism’, which emphasizes a racial belonging to a group. He emphasized that it is not the matter of ethnicity or cultural homogeneity, but one’s choice, agreement, and personal volition are important. It means that an individual’s free will to make choices should be the most important standard to the legitimate existence of a nation. As Renan stated, a nation cannot be formed without freedom and equality, so nationalism has to go with democracy from the beginning.

Nationalism is actually very irrational and poly-semantic, so it is difficult to define. However, nationalism can be broadly defined as ‘the ideological driving force of a community to organize a nation-state on the basis of rules and predicated upon the principles of freedom, equality and democracy’.

THE TWO TYPES OF NATIONALISM

Civil Nationalism and Cultural Nationalism

The French Revolution advocated the sovereignty of the people and showed that members of nation’s homogeneity and equality can be secured by exertion of the sovereignty of the people. Sieyès defined nation as “a body of associates, living under a ‘common’ law, and represented by the same legislature, etc.’ Nation means all the members of a nation with legislature and formality. ‘Sovereignty of the people’s rule’ becomes a root to government power.

Modern conception of nation is not just a simple matter of ethnic belongingness. If freedom and equality if not guaranteed, nation cannot be formed, so nationalism has to go with democracy from the beginning. Meinecke’s ideology, an individual has free will and subjective belief to freely make choices, have same direction with Renan’s liberal democratic nation concept of ‘daily referendum.’ The people are nation itself. It is emphasized that nationalism is not

the matter of ethnicity or cultural homogeneity, but without social ranking system, free and equal individual's choice and agreement of their own volition is important.

When nation is considered as a civil community in combination value of individual's freedom and equality, civil nationalism is oriented and it means of a citizenry nation beyond cultural-ethnic notions. It can be said that civil nationalism is politically rational. First of all, value of political liberalism and equality can be realized that coincides with Rousseau's notions of nation. It is a suitable ideology for diversify society. It can meet the needs of Korean society that is expected to be beyond multi-cultural society and become a country of immigrants by 2030. Civil nationalism of nation community realizes equal human value of member of the nation and it is the only alternative for the value of liberalism. Confidence in pluralism and political virtues from generosity can be basis for new nationalism.

Secondly, civil nationalism carries the notions of civil nation community that can break through ideological illusion of cultural nationalism in the era of united nation state and it would be a very useful for settling standardized society over racial-cultural ideas.

Third, civil nationalism is progressive nationalism where social justice and an individual's volition runs under the principle of equality in which the society may become healthy society by solving social conflicts with law and regulations.

Meanwhile, cultural nationalism with basis of non-political-irrational ideas have linguistic-ethical 'national spirit', such as language-national tradition of Herder's romantic nationalism, as a standard. An individual has a meaning as a part of 'national community' rather than legal security. There cannot be internationalism and chauvinism is in the center of it. Concept of kulturenation brings common objectivity, such as parentage and language, to the nature and historical destiny and displays tendency of romantic, undemocratic-irrational nationalism.

Cultural nationalism left sad history of 20th century's biggest tragedy of human kind, combination of fascism and nationalism. Being against the rational democratic principle, romantic 'volsgeist' of cultural nationalism has formed a huge stream. Renan's notions of liberal democratic nation, daily referendum, criticize cultural ideology with emphasis on ethnic belongingness. It is the reason why cultural nationalism can not accept the value of rational liberalism but stays with romantic ideology.

the Critical Perspective on Cultural Nationalism

Renan or Anderson considered race-ethnic are not essential elements of nation. However, Korean nationalism has blood tied relationship centered characteristic so it germinates incompatible sides of liberal nationalism.⁷ It is resistant nationalism with characteristics of group ideology that combines with other ideology.⁸ Relationship among an individual, nation group or nation state transformed to civil unification or collective restriction. Nation and society's lack of system dissolved individual's distinct characteristic and rights from nation community. It is organic collectivity of cultural nationalism.

Collectivity of cultural nationalism appears as mobilized or state nationalism to be used for political purposes. Human beings' freedom and sovereign identity cannot exist as a name of citizen but subjugated to collective will of national popular.⁹ Cultural nationalism's organic collectivity ignores individual's free will and equality. It opposes the value of liberalism as it appears in the popular ideology.

After liberated from Japanese colonial era, Korean nationalism

⁷ Jang, Dong-jin, Hwang, Min-hyuk, "Foreign Workers and Korean Nationalism: Inclusion of Others through Liberal Nationalism", 『21c Korean Political Science Review Vol.17 no.3』, 2007. p. 237.

⁸ Yoon, Hae Dong, "Imploding Nationalism", 『Historical Studies』 (Vol.5, 2012.), p. 183.

⁹ Kate Crehan, *Gramsci, Culture and Anthropology* (Kim, Woo Young), 2002. pp. 209-211.

was developed as mobilized nationalism for national power unification rather than state-centered nationalism of Rhee, Syngman's one nation principle or Park, Chung-hee's national democracy. It is a form of Herder's romantic cultural nationalism which is neither rational nor systematic.

As historical group community, Nationalism is considered to advocate nation's political self-determination or nation state's independence during Japanese colonial era. It is similar to the notions that Shin, Chae-ho made an effort to advocate nationalism to unify resistant awareness against imperialism. Shin, Chae-ho's collective resistant awareness having nation's independence and political self-determination in the front brought a chance to find distinct national culture, ethnic solidarity. Advocacy on political self-determination of the people of the Korean Peninsula were the political beginning of organic cultural nationalism.

It is cultural element dividing 'We' and 'They' that has tendency to be 'cultural nationalism' with basis of parentage·language·religion·custom·historical sharing.¹⁰ Herder's romantic cultural nationalism is an ideology based on the French Revolution's liberal ideas realizing distinct national culture and individual humanity. Herder's humanity ideology was non-political and negative in the political system. Herder's cultural nationalism attempts to have harmonious environment by non-violence and non-political humanism. However, Herder's cultural nationalism which was sharing ideological value of Rousseau's freedom·equality had romantic risk of irrational counter reformation and conservative reaction by misled as Nazism.¹¹ Killings of other race and giving cultural

¹⁰ Kim, Chul-Min, "A Study on the Yugoslavia between the World Wars through the Nationalism : Political Nationalism vs Cultural Nationalism," 『East European and Balkan Studies』 Vol.38 no.4 (Hankuk University of Foreign Studies. East European and Balkan Institute, 2014), p. 211.

¹¹ Park, Soon-Young, "Cultural Nationalism, Its Meaning and Problems," 『Philosophy』 (Korean Philosophical Association 37, 2009), pp. 88-101.

oppression with extreme racism based on superiority are remembered as huge historical errors. Distorted cultural nationalism was carried out.

Early Korean nationalism set high value on enlightenment for modernization as Herder's intention for Germany's enlightenment of falling behind society culture. However, practical issue, independence of the nation in Japanese colonial era, which was right in the front, Korean nationalism kept focusing down to the public resistant movement for its independence. It was the limit for cultural nationalism. Park, Eun-sik's promising national spirit and Shin Chae Ho's creative belief were settled down as the public ideology which drove collective unity as the public force. It is important to see clearly how cultural nationalism as group centered totalitarianism sometimes used to secure dictatorship legitimacy and how its ideological aspects are formed and activated.

What it means is to find out the original reason why the romantic collective ideology could not accept the value of rational liberalism and withdrew into itself. It needs to be found that what can be the only alternative for realizing the liberal values.

Nationalism was an ideology to promote individual's freedom and happiness. Cultural nationalism is not just a nationalism that uses cultural methods in the narrow sense of language, custom or historical tradition. Herder's nationalism does not bring out universal standardization or imperialistic oppression. It is because its fundamental if from the French Revolution's or Rousseau's ideas of freedom·equality·benevolent spirit. If nation as a whole comes before an individual's freedom and happiness, cultural life of diversity and universality will be destroyed and that individuals' freedom and equality, liberal democracy's ideological values will eventually be destroyed.

Civil nationalism based on political liberalism, democratized social relation, became in the need of internalization of rational romantic culture unification. Development of civil nationalism

can carry cultural sympathy such as language, custom, historical consciousness or belongingness. For healthy internalization of civil nationalism, true nature of romantic nationalism should be comprehended to find effective alternative. Ideological quality of cultural nationalism is creating inherent conflicts with civil nationalism. South Korean cultural nationalism's organic collectiveness or North Korean cultural nationalism, self-reliance ideology's distorted totalitarianism and nationalism's transformation should be critically evaluated for their error and irrational elements.

THE EVALUATION ON THE SOUTH KOREAN CULTURAL NATIONALISM

Ideological type of Korean Nationalism

March First Independence Movement has given historicity to Korean nationalism. National sovereignty oriented nationalism with independence is based on the ideology of equality. Being connected with principle of national self-determination it was a valuable historic gain. Intellectuals and general public gained its identity as the people where the country belongs to, got rid of being a subject to the emperor, and actively sought to regain sovereignty. "Finally 'nation' began to come in the world." This led the people of the Joseon to escape from the emperor's rule which historically means a lot, and it was an opportunity to establish their identity as the people where the nation belongs to.¹²

Enlightenment movement in the end of Korean empire era accepted both theory of social evolution and organic theory of state. Shin Chae Ho who was influenced by Liang Qichao recognized

¹² Kim, Hyun Sook, "The Invention of Korean Nationalism during the Late 19th and the Early 20th Century", 『History of Asian Political Thoughts Vol.5 no.1』, 2005. p128.

nation as an organism that is formed by national spirit. Modern Korean nationalists generally share organic nationalism. If the theory of social evolution cannot be overcome, nationalism begins to have organic characteristics as matter of course. However, organic characteristic of nationalism shall block the growth of individualism.¹³

A State Nationalism

After liberation, Korean nationalism strengthened its national characteristic. State nationalism displays mobilization and consolidation functions with the original characteristics of nationalism and it supplements nationalism's negative elements through anti-communism. Official nationalism has different inside and outside relationship with anti-communism so it gets settled down during the Cold War. In South Korea adapts Rhee, Syngman's one nation principle, and Park, Chung-hee's national democracy. North Korea adapts Juche (self-reliance) ideology to strengthen the regime. Nationalism that Korean people accepted was not liberal nationalism that individual rights are in the basis. It was German nationalism which focuses internal autonomy. "German romantic nationalism focuses the inner world and one's inner independence. It was serious issue that it could not be linked to any power system externally." This could mean that there are concerns that it could be developed as systematic-irrational nationalism that are cultural-organic. Western nationalism has been developed based on liberal democracy but Korean nationalism had its beginning with resistant nationalism so it could not be developed on stable foundation with historic limitations.¹⁴ It could have caused ideological conflicts over Korean national history.

¹³ Yoon, Hae Dong, "The Critique of Korean Nationalism's Modernity," 『Historical Studies』, (Vol.4, 2013.), p. 60.

¹⁴ Noh, Jaebong, 『Political Conversation』, (Seoul: Sungshin Women's University Press, 2015), p. 215.

As a country that was divided by foreign powers, national value is desperate. Problem is that there are side effects of the resistant nationalism being deluded that it could go beyond the universal value of liberal democracy. Korean nationalism discourse was not complete nationalism that resolves internal complaints after rationality, liberal openness and pluralistic conception formation like Western's. It was nationalism against the invasion of Japanese imperialism. Elements of collective, authoritarianism, and nationalism are inherited on the side. It is effective to unite the people and to solve problems. However, it also carries risk of misusing national ideology.

Rhee Syng Man government used 'one nation principle' that was proclaimed in September, 1945 as a symbol of nationalism and anti-communism. One nation principle is national unification and nation unity oriented parentage-ethnic nationalism. It is to remove threatening element of system from the basis and it is a logic that denies social disruption, individualism, and liberalism.

Anti-nomical ideology that claimed to support liberal democracy emphasized loyalty of group rather than individual to the people. 'A community where one's freedom and equality is guaranteed and an individual's free will is respected' is called a nation but nationalism without an individual was there as collective ideology.

Park, Chung-hee's national democracy was 'era of state' when military authorities held power in May 16, 1961. For modernization of the country, Park Chung Hee government knew that nationalism's explosive dynamics cannot be given up as an ideology of national mobilization and unification. It is effective ruling method that nationalism is ideological driving force seeking nation unification and democracy which cannot be ignored. As Tom Nairn said, Korean nationalism has "face of Janus."

In 1960s, official nationalism of Park, Chung-hee government has characteristics of combination of nationalism elements emphasizing superiority of modernization and emotional-cultural

ties of nation. Park, Chung-hee era's nationalism was retro and was in a boundary of retrospective nationalism. Restoration of Hyeonchungsa Shrine, construction of a statue of Admiral Yi, Sunshin, re-discover traditional culture and other traditional national consciousness were vented to induce the nation. Park, Chung-hee's 'nation economy oriented nationalism', as ideology of national mobilization and unification, was needed to dynamically carry out 'modernization of the country'.¹⁵

The Confusion of People's Nationalism and Ethnic Nationalism

Nationalism discourse of the student movement in the late 80s shows the forms of organic nationalism suggesting national unification as a keyword. The appropriateness of national unification is given to nation as an organism. Discourse of nationalism changed its direction to emphasizing national unification as an organism with criticism of economic subordination of the US and Japan, anti-Ameirca for independence, and new understanding of North Korea.¹⁶

Major issues over nationalism claim that they are the true nationalism and others are not real. Especially, from the perspective of unification oriented nationalism, national economy oriented nationalism, and anti-America nationalism, Park, Chung-hee's national modernization's nationalist character (defensive modernization nationalism) was not accepted. On the other side, as there is a struggle for hegemony of modern nationalism, nationalism is being spread. But, nationalism hegemony is being transferred to the people's nationalism lacking individualism.

Korean nationalism's one of the most significant characteristics

¹⁵ Park, Hosung, 『A Comparative Research of South and North Korean Nationalism』, (Seoul: Dang Dae), 1997. pp. 71~83.

¹⁶ Lee, Soo-In, "Nationalist Discussion of Student Movement in 1980s," 『Memory and Future Vision Vol.18』, Korea Democracy Foundagion, 2008. p. 98.

may be a 'parentage' based ethnic nationalism. In a public survey, more than 70 % of Koreans consider "blood" as the most important standard for the Korean race. Parentage centered characteristic is on the basis of Korean nationalism so it is difficult to coexist with liberal nationalism which focuses individuals' freedom and rights. Every one of individuals means to be a 'social individual.' There is no Robinson Crusoe type of individuals. The reason why we are referring social individual is that fundamental rights of human beings and democratic values are the important issues.¹⁷

Korean nationalism's weakness that liberal democracy could not be the fundamental of it and its goal-oriented growth were not able to help break through its dual characteristics. From the resistant nationalism of the Japanese colonial era to developmental dictatorship's economic nationalism of post-liberation divided nationalism, state centered nationalism did not give chance to form soil ecosystem for ideology of individual's freedom and equality to take root.

Since the Korean War, Korean nationalism was on the path to form its own nation development. Park, Chung-hee government accelerated its own economic development by putting discourses of nationalism, 'national modernization' and 'national restoration', before anything. Positive slogans, 'Let's live well', 'We can do it', strengthened loyalty to the country which can be its political identity. It is justified with exclusive nationalism with basis of anti-communism ideas based on 'Anti-communist unification' and 'victorious unification over communism'.

However, democratization in 1987 and collapse of the Cold War system restored ideology of ethnic nation in Korean nationalism. Kim Dae Jung·Roh Moo Hyun government revitalized private exchanges by reconciliation policy over North Korea and its ethical identity became against with political nation ideology based on

¹⁷ Yoon, Hae Dong, "Imploding Nationalism", 『Historical Studies』, (Vol.5, 2012.), p. 195.

security logic. Eventually after Kim, Dae-jung's people's government, Korean society had "South-South conflict" between 'national cooperation' force and 'anti-communism conservative' force. This shows that ethical identity and political identity coexist in Korean nationalism but there also are conflicts between them.¹⁸ Having history arguments of Korean modern-contemporary history textbooks is also a part of Korean nationalism's rift.

THE EVALUATION ON THE NORTH KOREAN JUCHE NATIONALISM

North Korean Cultural Nationalism

Marxist believed that nationalism of bourgeois revolution would be disappeared with collapse of capitalism.

Nation ideology of the Communist's frame was built by Stalin. Stalin's definition on nation is "*a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life, and psychological make-up manifested in a common culture.*" In the book 『Chosonmal Sajon』 published in 1960.¹⁹

At first, North Korea denied nation but followed Stalin's concept of nation until 1960s. However, North Korean nationalism ideology became connected to Juche ideology in 1970-80s. Nation is defined as "social group that blood, language, culture and territory commonness are on the basis through the historical struggle of independence of people who used to live as clan and tribes." Being outside of Stalin's concept of nation, North Korea's own concept of

¹⁸ Jeon, Jae-Ho, "A Study on the Conflict of Historical Recognition in the Textbooks of Korean Modern and Contemporary History: On the Concept of Korean Nationalism", 『Korea and World Politics』, (Vol.26 no.3, 2010 Fall), pp. 165-168.

¹⁹ Smith, "Communitistic Nationalism" (Cha, Ki-Byuk), 『Nationalism』 (Seoul:Jongro Books), 1984. pp. 320-348.

nationalism was established.

Current North Korean concept of nationalism is “historically formed social unit that is based on commonness of blood, language, and territory.” It highlights commonness of language and blood to make them “the most important marks that distinguish nation.”²⁰

Concept of North Korean nationalism is very romantic and cultural. In 1989, Kim, Jong-il said nation is “a nation-state living in same territory with one blood, language and culture.” It is basic and romantic idea. Nation is historical and practical. Therefore, concept of nationalism reflects common experience of nation that historically built up. At the same time, it compressively has practical national goal in it. When concept of nation is established intentionally by a country or by a political party just like North Korea, it functions as a base for official declaration of its goal-oriented will.

North Korea's racism, nation first principle comes from combination of socialism and romantic-cultural nationalism. Purpose of North Korea highlighting nation first principle is not just for national pride but for “higher respect of nation through establishing socialism.” It is typical romanticism that it lights passionate internal will of the people for higher nation dignity and glory. ‘The sovereignty of people’ ideology does not have nation in it but there are only dignity and glory left that reflects North Korean romantic nationalism of cultural collectiveness.

It is agreeable what Henry Kissinger said about North Korea that “North Korea is not comparable with other various systems that I historically researched.” It is strange country with extreme poverty society “where there are escapes but never will have revolution.” There is no democracy, people, or republic in ‘the Democratic People's Republic of Korea’ and ‘dynastic totalitarianism’ system only lies in this organic cultural group. Basically an element of equality

²⁰ National Security Planning Agency, 『Nationalism Propaganda of North Korea』(1995. 12), pp. 54~55

is in the concept of nation so it naturally has freedom as key concept. Modern nation-state contains concept of liberal democracy in it. Nation is people with equality that has democratic and liberal principles.

As 'culture' is being focused, 'internal identity of group' is emphasized. It can be said that it is essence of political romanticism. North Korea's 'Joseon nation first principle' is essence of North Korean romantic nationalism from unity of socialism. Consequently, romantic nationalism at the lack of individuals became threat to liberal democracy.²¹

Negative perspectives of nationalism were there in North Korea at the beginning. In 1957, Kim, Il-sung clarified "it is new stage of socialist camp's unification and international communist movement." He rejected nationalism by stating "we reject all bourgeois nationalism and exclusivism. Nationalism not only destroys people's mutual relationship but also placed in national benefit and laborer's class distinct benefits."²² North Korea excludes nationalism as it is considered as bourgeois ideology and place 'socialistic patriotism' on the same level as Proletarian internationalism.

Because of the East-European bloc's collapse, Kim, Il-sung urgently clarifies in 1991 statement that in "our nation-state" "true nationalism" is "patriotism." Kim, Il-sung called himself a "communist, a nationalist and also a internationalist" to declare that he is a nationalist. Nationalism seems like to have unified organization with internationalism and communism, but for Kim, Il-sung, nation comes before class. He said "there is class when there is a nation and when nation's benefit is guaranteed class benefit can be secured."²³

²¹ Noh, Jaebong et al., 『Political Conversation』, Sungshin Women's University Press, 2015, pp. 210-212.

²² National Security Planning Agency, Class and Nation, 『Theory of philosophy of subject』 (1989), p. 16.

²³ Kim, Il Sung, 『Let's accomplish the great unification of our nation』, National Security Planning Agency, Class and Nation, 『Theory of philosophy of subject』(1989), p. 537. p. 544.

The Ruling Ideology of 'Joseon Nation First Principle'

In July, 1986, Kim, Jung-il advocated 'Joseon nation first principle' and since then North Korean leadership's started to change their understandings. Nation first principle is "a proud superior socialism system where the great leader and the great political party lead the great self-reliance ideology as governing ideology."

North Korea says they speak about freedom and equality. However it is not based on Rousseau's individualism but is based on organic collectivism of dynastic totalitarianism. North Korean collectivism introduces 'nation' as a totality. North Korea entered communist society as soon as the Japanese colonial era is over and that it did not experience 'liberal modernity' in which citizens are on the basis of it. It transformed from dynastic monarchy to totalitarian autocratic state. North Korea did not get to liberalism or modern Marxism and they were sovietized.

Early concept of nation in North Korea is logically not systemized and followed Stalin's definition. In 1973, they asserted nation by adding 'parentage' and 'psychology.' Kim, Il-sung had negative perspectives on nationalism, but he started using it to strengthen self-reliance system in 1980s. It was an opportunity to transcend proletarian nationalism.

On the other hand, 'independence' as a core idea of Juche ideology, it functions to regulate North Korea system's nationalistic character.²⁴ Juche ideology infuses nation 'independence' as a life of nation. Correlation of Juche ideology and North Korean nationalism establishes 'independence', 'self-reliance', and 'self-defense' as goals of the ideology. It can be understood that it is the most explicit and comprehensive nationalistic ideological system.

North Korean national view is based on 'genuine nationalism.'

²⁴ Bae, Sung In, 'Nationalism for Integration of South-North Korea: For the Communication with Globalization and Juche Ideology', 『National Unification Research Vol.37』, 2002. p. 244.

There is nationalism internalized as a subordinate of Juche ideology. Great value of nationalism that started from ideas of individual's freedom and equality has been used by Juche ideology. It seems like kind nationalism has gone to evil Juche ideology. In nation first principle that subordinated to genuine nationalism, presence of individual does not mean anything and it only appeared as group organism. It is understood that individual can be considered as a person by going through though-remolding within the group.

Juche Ideology and its Link with 'Our Race Alone'

'Our race alone' appeared in the first article of the joint statement of the 6.15 Inter-Korea Summit Talks, "The South and the North is to cooperate to solve unification problem by independently our race alone." 'Our race alone' means to 'do together as a nation' and let people fall into emotional trap which caused loss of rational judgment on the South and the North Korea relationship.

North Korea took advantage of South Korean economic power and support to overcome economic crisis and regime collapse. Nation cooperation ideology 'our race only' was highlighted to hold the strong policy of US against North Korea. Genuine nationalism's Joseon nation first principle took a role as a governing ideology of dictatorship. North Korea's concept of 'nation' was transformed to 'our race only' concept of anti-America·pro-North Korea activities under South Korea government's insensibility and North Korea, Kim, Jung-il's careful plan.

It is reasonable to see 'Our race alone' as a slogan that fulfills Juche ideology and it is for the people who support Kim, Il-sung's hereditary dynasty's 'Kim, Il-sung nationalism.' If 'our race alone' do not cooperate each other it is anti-national and it is a betrayal of the country, so not accepting Kim, Il-sung nationalism is eventually a betrayal of the county. North Korea considers 'our race alone' and an incorporative method of revolution. Cooperative ones are comrades

but the others are considered enemies.

North Korea said they will strengthen patriotic democratic capability of unification front from the strategy to South Korea that was amended at the third meeting of the Workers' Party's representatives in September 2010. It emphasizes that 'our race alone' should fight together for independence and strengthen unification front strategy for Anti-foreign·anti-America.

This means 'our race alone' is openly declared as an important theme of unification front strategy. To strengthen revolutionary capability in South Korea, unification front is broadly formed to fight for 'anti-America independence' and 'anti-government democratization.' It is useful strategy to secure cooperative capability of Kim Il-sung nationalism.

'Our race alone' ideology that Kim, Jung-il reflected in the 6.15 North-South joint declarations was able to make unification front strategy in South Korea. North Korean core self-reliance theme advocated independence, anti-America national cooperation and Kim, Il-sung nationalism unification of the Korean Peninsula. It is used as logical instigation of 'cooperation of nation and rejection of foreign force' for North Korean dynasty hereditary. We are eventually seeing the result of Kim, Jung-il's detailed plan from the reflection of 'our race alone' in the 6.15 North-South joint declarations.

What became the base of the theory of nation cooperation was 'our nation first principle' and abstract principles of 'the great national unity.' North Korea rejected foreign interference regarding national unification issue and insisted that the North and the South should cooperate together as one nation. As a result the concept of North Korean nationalism has been keeping instigation theme for realization of Kim, Il-sung hereditary regime based on Juche ideology.

In 1991, Kim, Il-sung declared that he is 'a communist and a nationalist at the same time,' and that there is positivity in 'true nationalism.' In socialism, 'nation is the people' and at the same time 'the people is nation.' It is independent Juche ideological human

being as a part of a group without individuality. Juche ideology was to unite the people with one ideology as one united group to have Kim, Il-sung's cult of personality. Nationalism was the outer shell that covers Kim Il-sungism.²⁵

A DISTORTION OF NATIONAL IDENTITY AND SOUTH-SOUTH CONFLICT

A Distortion of National Identity

The North Korean Juche ideology was not just a declaration but was developed as a governing ideology. Juche ideology is not only a universal ideology but was a typical political power ideology. The Joseon nation-first principle materialized socialism to stop the winds of change by insisting that North Korea is a different nation from the Soviet Union, Eastern Europe, and China, with a different bloodline and language. As in Juche ideology, the Joseon nation-first principle is also connected to the idolization of Kim, Il-sung and Kim, Jung-il.²⁶

North Korea strengthened the 'Joseon nation-first principle' and concluded that the nation of Joseon is a leader, and it is the 'nation of the leader Kim, Il-sung', and it is the 'Kim, Il-sung nation.' Emphasis on the Kim, Il-sung nation has broadened its nationalism discourse to form legitimacy through hereditary regime of Kim, Jung-il and Kim, Jung-eun. The key of Kim, Il-sung's national

²⁵ Cha, Nam Hee, "Juche Idea and Nationalism: Constancy and Variation of the Governing Ideology in North Korea-, 『Discourse 201』, Vol.15 no.4 Korean Association of Socio-Historical Studies, 2012. pp. 109-140.

²⁶ Seo, Jaemin, "North Korean Nationalism: Theoretical Transformation of Juche Ideology," 『Unification Research Collection』, Korea Institute for National Unification, 1993. pp. 88-93.

formation is unconditional loyalty.²⁷ The society's Juche ideology implies a thorough remolding for communism: remolding human beings to unconditionally give themselves to the leader.

North Korean nationalism is not a mainstream nationalism that forms a modern nation state. It is just the North Korean style of cultural-romantic nationalism for a tribal nation. As North Korean nationalism is called 'nationalism without nation,' or 'prefix nationalism', there is no nationalism but only a mutant ideology that changes via political power. The mutant has changed its form over and over; it keeps working to aggravate conflicts between the South and North, and grows power and alignment within South Korean society. Moreover, while the liberal democratic system remains glorified, still some romantic forces with a lack of national identity create conflict by falsely constituting the meaning of a 'nation'. There is a lack of active integration for the growth of intelligentsia groups in the make up and development of the society. This results from the conflict of belongingness and the lack of belongingness. This exclusiveness is also a significant error in the South, which could result in a South-South conflict.

South-South Conflict

The antagonism between conservatism and progressivism, as well as that between the political powers of the left and right, constitutes the South-South ideological conflict. Thus, South-South conflict regarding the policy on North Korea features a difference in approaching strategy, different opinions on the peace and security of the Korean Peninsula, as well as a political perception gap.

The phenomenal cause of the 'South-South conflict' can under-

²⁷ Nam, Keunwoo, "Quasi-Ethnicity of the Overseas Koreans and Culture Fragmentation: A Comparative Study on the Kim Il-sung Minjok, Chinese Chosun Tribe, Zainichi," 『World Politics Studies』, 2012. pp. 235-249.

stood as a procedural error of a one-sided sunshine policy and is also caused by domestic political availability and government achievement. The ideological oppositions of left-right and progressivism-conservatism remain relevant in the process of the establishment, division, development, and democratization of the country. Especially this opposition is related to the knowledge structure of the sociological competitive pattern that was created in the process of internal democratization and the end of the cold war. After democratization, Korean intellectuals' ideological competitive pattern mainly reflected Gramsci's 'theory of hegemony'. Korean progressivism left the political party structured according to a social ideology of hegemony in the cultural struggle against the growth-first principle as well as against the emergence of dictatorship.²⁸

Ideological opposition caused the South-South conflict, and it resulted from the post-liberation political progress of Korean society. In this unique relationship between South and North Korea, the dual perspective for North Korea may be the biggest reason.²⁹ There was a lack of effort to narrow the perspective gap on the process of political decision-making for North Korea. Even if it there were good policies, if member opinions were not reflected in the decision-making process, it would cause conflict. Especially for the policy on North Korea, the lack of 'national agreement' through democratic procedure exacerbated the South-South conflict and resulted in a waste of national power.

The kernel of the South-South conflict consistently arose from the North Korea engagement policy and one-sided support for the North. Change of North Korea has not been seen, and here, the conflict started from the criticism of a 'supremacy of nationalism.'

²⁸ Cho, Sung Hwan, "Intellectual Sociology of Korean Unification: A Critics on Nationalist Paradigm," 『History of Asian Political Thoughts Vol.3 no1』, 2004. p. 249.

²⁹ Lee, Han Woo, "Lived' Experience, Expression, and Understanding," 『Journal of Korean Unification Studies』 Vol.12 no.2, 2003. p. 95.

North Korea brings an 'our race only' and 'national cooperation' to the fore whenever they have a chance. Their strategy creates and exacerbates the South-South conflict. When bringing up nationalism, South Korean society does not have clear ideological awareness or an intelligentsia's knowledge of sociological activities for a rational response to North Korea.

CONCLUSION

Nationalism and democracy has been a cure for us. The value of nationalism has been viewed through a critical evaluation of cultural nationalism in South and North Korea. The issue of individual 'freedom' needs to be examined. Modern nations need to be social communities where one's freedom and equality is guaranteed. According to 'the Declaration of the Rights of Man and Citizen', a nation is a bearer of citizenship, and nationalism is not 'cultural-tribal' but a democracy-oriented political and civil ideology.

North Korea's concept of nationhood is unreasonable and features strong elements of romantic-cultural nationalism. Nation is historical and practical concept. The concept of a nation needs to reflect the common experience of a nation and practically carry out national goals. If the country or the political party provides romantic motivation, it could only be used as a foothold for a collectively-declared, goal-oriented will. It is an ideology that only strives to maintain its system, and this reflects the terms where 'nation' and 'nationalism' demands loyalty to the leader.

The nation-first principle expresses a group's national position of socialism. The self-reliance perspective on the view of the nation recognizes the nation as a united social organism, and it is expressed by its independence. The supremacy of nationalism in the 'self-reliance' perspective towards nation does not have a meaning

of existence. An individual can only be considered as a person by going through the thorough-remolding within the group. The supremacy of nationalism is only a mutant ideology of the newly established nationalism. Nationalism functions as the central ideology of a socialist system.

North Korea denies the presence of nationalism but firmly declares the autocracy of Juche ideology, forming the 'self-reliance' view of nationhood. 'Our race alone' is the result of a well-planned strategy of Kim, Jung-il by the counter-utilization of the 'Sunshine Policy' from Kim, Dae-jung's government. As it is used as a slogan to form the united front, it became a weapon to expand the capability of national cooperation for independence against America. 'Our race alone' became the main idea to expand its force of alignment. It denotes an anti-American form of independence and became the base of a 'pro-North Korean principle.'

'Our race alone' from the 6.15 North-South joint declarations significantly improved South-North Korea relations, but it was the cause of further 'South-South conflict'. As a result, a pro-North Korean principle became the bridgehead for creating internal conflict by establishing Gramsci's hegemony for a united front.

'Our race alone' is the base of inter-Korean cooperation. It is a united strategic front ideology to reject foreign interference in order to solve problems independently as a nation. 'National cooperation theory' is a practical ideology for the realization of tge 'Kim, Il-sung nation' and 'Kim, Il-sung nationalism' as political-ideological tool. North Korea provided a meaning to nationalism to justify packaging it as an effort for national development, but it is typical form of distorted cultural nationalism for maintaining the hereditary power system.

Korean society fell into cultural nationalism; the 'fantasy of nation' was in the swamp of South-South conflict regarding South-North problems and unification issues. North Korean cultural nationalism was linked to Juche ideology, based on Kim, Il-sung nationalism

and carrying out the 'our race alone' and 'national cooperation' ideological unification strategy. South Korean society was still in the 'fantasy of nation' stage and was not ready to respond to North Korea's attack on national ideology. There was no clear essence to its identity, so South Korea did not expel the 'South-South conflict' and leave itself to romantic-cultural nationalism. Cultural nationalism with no national identity can help ignore the 'nation', 'the people' as a subject of rights. As a result, Korean cultural-romantic nationalism could not move forward toward a 'progressive nationalism' focusing on rights of individuals.

Progressive nationalism is civil nationalism, which means it is a liberal nationalism where democratic citizenship is guaranteed. That is the logic that nationalism is reasonable in the boundaries of liberalism. Therefore, a liberalism-based civil nationalism is a necessity for Korean nationhood. The internalization of reasonable and harmonious unification is needed. The basis for legitimacy in the need for a new nationalism should be built upon confidence in pluralism and political generosity. If the essence of politics lies in social conflict, Korean nationalism should promise healthy social development through the prudence of a civil unification that can resolve conflicts with a sense of national belongingness.

REFERENCES

- Kim, Yungho, Revolution for the Establishment of the Republic of Korea, Sungshin Women's University Press, 2015
- Noh, Jaebong, Political Conversation, Sungshin Women's University Press, 2015
- Park, Hosung, A Comparative Research of South and North Korean Nationalism, Seoul: Dang Dae. 1997.
- Park, Chan-seung, Nation·Nationalism, Seoul: Sowha, 2010.
- Cho, Sung-hwan, et al. Globalization and East Asia Nationalism, Seoul, 2011.
- Hobsbawm , Eric, *Nations and Nationalism since 1780* (Myeong-se Kang), Gyeonggi Paju: Changbi 2012.
- Kim, Il Young, "Four Faces of Korean Nationalism under Park Jung Hee Regime," *Journal of Korean Political and Diplomatic History* vol. 28 no.1, 2006.
- Kim, Hye Seung, "The Korean Nationalism Circumstance and Perspective: Understanding of the Substance and Perspective of 21stCentury," *History of Asian Political Thoughts* Vol.5, no.1, 2004.
- Park, Uikyung, "National Cultural and Political Letigimacy: Rousseau and Herder" *Korean Political Science Review* Vol.36, no 3, 2002.
- Cho, Sung Hwan, "Intellectual Sociology of Korean Unification: A Critics on Nationalist Paradigm," *History of Asian Political Thoughts* Vol.3 no1, 2002.
- Lamont De Haven, King., "Nations Without Nationalism: Ethno-Political Theory and the Demise of the Nation-State," *Journal of developing societies*, E J Brill. 2002(SCOPUS)
- Miller, David., "Citizenship and national identity," David Miller is Official Fellow in *Social and Political Theory*, Nuffield College, Oxford
- Murphy, Aleasner B., " the Sovereign State as Political Territorial

- Ideal: Historical and Contemporary Consideration,” in Thomas J. Bierstecker and Cynthia Weber(eds.), *State Sovereignty as Social Contract*(Cambridge: Cambridge University Press, 1996)
- Mason, Andrew., “Political Community, Liberal-Nationalism, and the Ethics of Assimilation,” *Ethics*, University of Chicago Press, 1999.
- Mill, John Stuart., “Considerations on Representative Government,” p. 309. See also E. Barker, *National Character and the Factors in Its Formation*(London: Methuen, 1927)
- Stilz, Anna., “Civic Nationalism and Language Policy,” *Philosophy & public affairs*, Blackwell Publishing Ltd. 2009.
- Watson, Hugh Seaton. “Nations & States : An enquiry into the origins of nations and the politics of nationalism,” (Methuen-London, 1997, University paperback 776), pp. 147~148. : Benedict Anderson, *Imagined Communities : Reflections on the Origin and Spread of Nationalism*, London : Verso, 1983.

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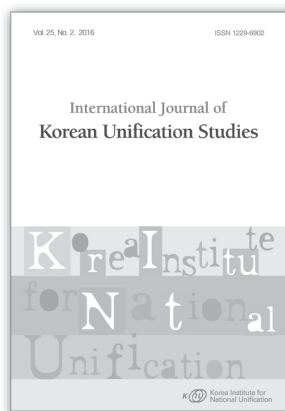
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