

## Militarization of the Border Area and The Right to Live in Peace

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### 1. The nature of the border area as an area under military occupation

June 15, 1954, was a day that Geneva Conference fell apart. From this date the Syngman Rhee administration and the US government began discussions on sovereignty that had been postponed. The object of the discussions was the so-called reclaimed area north to the 38<sup>th</sup> parallel that spanned from Yangyang of Gangwon Province to Yeoncheon of Gyeonggi Province. The US maintained its stance that the area north to the 38<sup>th</sup> parallel was an area under the military occupation by the UN Commander in accordance with the internal decision of the UN Commission for the Unification and Rehabilitation of Korea(UNCURK) Temporary Commission on October 12, 1950. It naturally became a problem as the South Korean government's legislative, judicial and administrative control did not reach the area even after the armistice. The Syngman Rhee administration on September 1 made a request to the US to handover the sovereignty of this area. The US, however, said it would handover only the administrative control. The Syngman Rhee administration gave up the redemption of sovereignty and redeemed only the administrative control on November 17. There was no ratification by the National Assembly. The official document sent by the UN in the name of the UN Commander to the South Korean government stated the following. "This area is a military occupied area of the UN Commander and only the administrative control is handed over to the government of Republic of Korea." As it was an occupied area of the US and only the administrative control was transferred, we did not have legislative or judicial power over the area. Anumber of years passed and elections began to be held and jurisdiction was exercised over the region, but there has surprisingly been no renegotiation to officially redeem the sovereignty of this region. The evil from the Syngman Rhee administration has not yet been settled in the area north to the 38<sup>th</sup> parallel and DMZ to its south. Such deep-rooted evil was repeated on July 1, 1966 under the Park Chung-hee administration. The object at the time was Daeseong-dong village of liberation that is a civilian village south to the DMZ. The US Department of State discovered that the UN and the Park Chung-hee administration was undergoing discussions to transfer administrative control, stopped the negotiations, and issued a document that confirmed the status of the area as an area under the military occupation by the UN Commander and that any negotiations including the transfer of administrative control to the South Korean government must be under the

control of the US Department of State. The Park Chung-hee administration yielded without even being designated, let alone transferred, the administrative control. This is why the Republic of Korea can not impose the duties of taxation and national defense, which are among the four duties of the Korean people, to residents of Daeseong-dong. South Korea's sovereignty does not completely reach the area. Even though the inconvenience of the residents has been largely resolved through several amendments of the UNC Regulation, this place is still 'under the military occupation' by the UNC in the UNC's official documents.

The UN Commander has been insisting the mandate over the region North to the 38<sup>th</sup> parallel that was designated by the UNCURK Temporary Commission formed by the UN General Assembly on October 12, 1950. However, this decision was based on the premise was that it was a temporary decision until the arrival of the UNCURK to South Korea. Therefore, such delegation ended when the UNCURK arrived in Seoul on November 26.<sup>1)</sup> In addition, as UNCURK itself was dissolved in 1973 by the UN General Assembly, the governance dispute regarding the North Korean region in terms of the UN has ended. However, the UNC still retains its position that it is the occupier and holder of mandate over the region North to the 38<sup>th</sup> parallel.<sup>2)</sup> It was only natural that the militarization of the DMZ-border area that was led by the US and the conservatization of pro-US anti-communist accelerated based on this.

## 2. Militarization of the border area.

Historians can contribute the most to understanding of history by connecting different events and places within the same historical period.<sup>3)</sup> It is necessary to comprehensively perceive the domestic history along with the world history. Militarization of the border area occurred at the same time as the major international events in which the US's world strategy clashed. In 1957, Article 13(d) of the Armistice Agreement was discarded and nuclear weapons were

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1) A/1881. REPORT OF THE UNITED NATIONS COMMISSION FOR THE UNIFICATION AND REHABILITATION OF KOREA, (1951.1.1.), p.13

2) The claim that area north to the 38<sup>th</sup> parallel is an area occupied by the UNC was officially expressed to the South Korean government in the 1954 transfer of administrative control of the area and during the 1962 negotiations on transfer of administrative control of Daeseong-dong. 'The UNC is currently prepared to transfer the administrative control of the area north to the 38<sup>th</sup> parallel that is under the military occupation by the UNC to South Korea. 'Text of my letter to President Rhee. From Tokyo CINCUNC To Secretary of State No:C-69271, Aug10, 1954(Army Message)

3) Andre Gunder Frank, *ReORIENT: Global Economy in the Asian Age*, (California: University of California Press, 1998)/ Translation by Hee Jae Lee, *Reorient*, (Seoul: Isan, 2003, first edition 3rd), p.364

deployed.<sup>4)</sup> When the Cuban Missile Crisis happened in 1962, the US forces in Korea buried anti personnel mines across the DMZ, civilian control line(CCL), and the entire border area.<sup>5)</sup> Next, the US demanded the dispatch of South Korean troops to the Vietnam War and instructed and carried out the installation of modernized barbed-wire fences across the DMZ area. After January of 1968, the US proposed that US should mainly spend its 100million dollars to enhance the counter insurgency and counter infiltration capability of the South Korean army, and mentioned the improvement of the DMZ fences.<sup>6)</sup> On December 2017, President Park Chung-hee issued directive No.18 'Directive on Spy Blockade', which instructed in particular the construction of the DMZ's fences, strengthening of the surveillance facilities, and strengthening of the defense capability of the guard posts, checkpoints.<sup>7)</sup> Kim Sung Un the Minister of National Defense followed by stating that he will has ten to strengthen the strong hold of the Military Demarcation Line(MDL) and installment of the barricades.<sup>8)</sup> As a result, the construction of the counterinfiltration system by South Korea and Us formed the core of militarization of the DMZ border area. South Korea mostly relied on the Us forces for materials needed for the construction of the DMZ barbed-wire fences. The construction of barbed-wire fences, however, provoked substantial resistance. A first lieutenant who belonged to the twelfth infantry division and who worked on the installment of barbed-wire fences wrote a letter stating "I do not know came up with such plans, but I cannot morally wok on a project to install barbed-wire fence there when it is painful to see the country divided with the DMZ and am therefore leaving" and defected to North Korea.<sup>9)</sup> In 1968 of the same period, defoliants were sprayed. Even until recently, signs that suggested violations of the Chemical Weapons Convention(CWC) were discovered at five ammunition dumps by the US forces in Korea and the Korean Army within the border area.<sup>10)</sup>

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4) Jung Koo Kang, Yeong Dae Ko, et al., *Creating New Landscape for US-South Korea Relations at the Turning Point*, (Paju: Hanwool, 2007), p.269

5) 'The unnamed person (name undisclosed as was promised) who was discharged from the army as lieutenant colonel and currently serves as the senior leader of the village buried tens of thousands of landmines with him own hands when after the 1962 Cuban Missile Crisis the US forces that were stationed in the CCL area were all burying landmines in the event of emergency, and deeply regrets it as residents suffered damage from the mines.' South Korea Antipersonnel Mine Meeting, Burial of Antipersonnel Mines in the Korean Peninsula by US Forces in Korea and Its State of Damage, (2003.1.15), p.15

6) "181. Memorandum From Cyrus R. Vance to President Johnson" Washington, February 20, 1968, *FRUS 1964-68 KOREA* ; Han Monica, 'Militarization Process and Background of the DMZ of the 1960s', *History Studies* No. 135, (2019. 9), p.189

7) 'Strengthening of Spy Facilities', *Kyeonghyang Sinmun* (1968.1.16)

8) Dan Kim, 'Lee Jae-Jeon. Stories of Barbed-Wire Fence Installment -下-, *Kukbang Ilbo* (2003.04.16)

9) Si Woo Lee, 'US Forces in Korea's Defoliant Operation Experiment Program and Documents on its Reality', *Tongil News*, (2011.7.25.); Si Woo Lee, 'Final Report on the Vegetation Control Plan of 1968', *Tongil News*, (2011.7.27)

The South Korean government also led the militarization. In 1974 President Park Chung-hee changed the concept of operation of the five islands in the West Sea from “withdraw first and then retaliate with an attack” to “absolute defense” in February 1974 and secretly dispatched a high-level military inspection team to Quemoy Island of Taiwan and fortified the five islands in the West Sea by modeling it after the fortification facility.<sup>11)</sup> As such, when led by the South Korean government it faithfully followed the examples of other divided countries. The new concept of operation of ‘absolute defense’ meant that the islands needed to be protected without support. Therefore, it was necessary to strengthen the military power at the five islands in the West Sea, which led to an increase in the military risk in the five islands of the West Sea, which became a factor that threatened the life and safety of residents. In other words, it served to unify the relation between national security and security of the residents.<sup>12)</sup>

Most importantly, this area became an area of concentrated militarization as the stations of the US forces in Korea and South Korean Army’s combat units became concentrated in the border area. The possibility that the area will be the object of first attack by the enemy country in case of emergency significantly increased as a result. For example, the ‘Rules of Air Warfare’ (Proposed) (1922) that organized the customs of air battles established through WWI states that “air strike is legal when it is performed against a military object the destruction of which will bring clear military benefits to the belligerent (Article 24 clause 1).” Article 25 of ‘Laws and Customs on War on Land’ (1907) states that “[t]he attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.” The violation of the right to live in peace and the difficulty of relief as a result of militarization of a certain region can also be found in the Geneva Conventions’ Additional Protocols. The Protocols differentiate an attack on the military base or military object from an attack on demilitarized zone. If border area is a demilitarized zone without any military base, then even in times of emergency

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10) Jin Seob Choi, *Photograph, Imagination of Peace*, (Seoul: Yeoksa In, 2015), pp.96-103. The author checked the ammunition dumps of the Korean Army other than that in Camp Bonifas, UNC military base through field investigations. There was one in Gyeonggi Province and three in Gangwon Province.

11) Pil Woo Kim, ‘Study on the Geographical Characteristics of the Five Islands of the West Sea and the Right to Move’, (Inha University Master’s degree paper, 2010), p.37; Similarly, Lee Myung Back administration seems to have planned a military inspection of Quemoy Island but did not carry it out due to diplomatic reasons.

12) Won Keun Cheon, ‘Formation of Cold-War Scenery at Nak-do, Front Line of East Asia - Focus on the Fortification and Development of the Five Islands of the West Sea in the 1970s’, *Society and History* No. 104, (2014), p.88

on the Korean Peninsula it does not bear any possibility of attack at least in terms of international law, but if it is a militarized zone then it does not receive the protection of international law on war such as the Geneva Conventions or that of international humanitarian law.<sup>13)</sup>

The border area is also the central region for training by the ROK-US joint forces. It is not just training for operation, but the best means of camouflage and deceptive space that can carry out the operation functions by in and of itself. The means that the coup d'état force that aimed to overthrow Noriega in Panama and the conspiring US used to support the requested blockade without triggering Noriega was 'regular military training.' Because of such nature of military training, the possibility of outbreak of war is higher due to the military training.<sup>14)</sup> This could correspond to 'aggression'<sup>15)</sup> adopted by the UN General Assembly in 1974 and it is highly likely that this violates the spirit of the UN.<sup>16)</sup>

### 3. The right to live in peace

Residents of the border area are sensitive to the right to life, the right to safety, and the right to live in peace. The right to life is a passive right to not be infringed by the country and actively demand the protection of life to the country, and is discussed in the context of euthanasia, abortion, and brain death in reality.<sup>17)</sup> The right to safety refers to the protection from threats that can happen through out the society. The right to live in peace refers to the right to be free from the infringement of life that necessarily accompanies conflict.<sup>18)</sup> The right to live in peace can be viewed as one of the "non-enumerated rights" in Article 37 Clause 1 of the Constitution.<sup>19)</sup> The right

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13) Kyung Joo Lee, 'The Right to Live in Peace's Constitutional Practice Importance', *Democracy Legal Studies* No. 41 (2009. 11), p.201

14) Bove Woodward, *The Commanders*, (Joongang Publisher), p.123

15) Resolutions on the 'definition of aggression' adopted by the UN General Assembly in Article 3 has various definitions of aggression. (f) and (g) of the resolutions are the following. (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State, (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein. 2007 Confirmation of Unconstitutionality of Personnel Operations Training (2007 Heonma 369), a petition to the Constitutional Court pp. 14-15, reference within.

16) Kyung Joo Lee, 'The Right to Live in Peace's Constitutional Practice Importance', *Democracy Legal Studies* No. 41 (2009. 11), p.202

17) Joon Il Lee, *Constitutional Law Studies Lecture*, (Seoul: Hong Moon Sa, 2008), (footnote 28), p.524

18) Cheol Soo Kim, *Constitutional Law Studies New Theory*, (Seoul: Park Young Sa, 2001), (footnote 23), p.257

19) Min Soo Kim, 'A Look at Military Base and the Reconciliation Method Between the

to live in peace and the right to self-determination are similar, but have differences. The right to self-determination is the right of the people to determine its own problem such that they are not subject to the threat of war or invasion. The right to self-determination is understood to mean that the people are willing to undergo even war for peaceful existence. On the other hand, the right to live in peace is a right of a group, but is different in that it does not agree to war for the sake of peace.<sup>20)</sup> It can also be compared to the threat off peace of destruction of peace as defined by the UN Charter. Peace can be 'maintained' not through suppression of invasion, but removal and suppression of threats to peace.<sup>21)</sup> The right to live in peace plays the role of removing and preventing threats to peace before destruction of peace occurs. If threats to peace is an international issue, the right to live in peace is a domestic one.

In 1962, Hoshino Yasumi (星野安三郎) systemized the 'right to live in peace' as stated in the text of Japan's Constitution as a concept of the right to live in peace. He claimed that specifically, the right to live in peace should be guaranteed by Article 9 (Renouncement of War, Prohibition of Armament) of Japan's Constitution. He explained that the suppression and infringement of basic rights for the sake of the military and war are removed only by the renouncement of war and prohibition of armament. He therefore stated that the right to live in peace is a humanitarian expression of Article 9 of Japan's Constitution.<sup>22)</sup> In 1973, the first ruling for the Hokkaido Nike missile military base lawsuit acknowledged the right to live in peace as not only a constitutional principle but also as a legal norms in the following.

Military base is acknowledged as the first object of attack by the opposing country in case of emergency and there is danger that the plaintiffs' right to live in peace may be infringed. Moreover, as relief is meaningless or extremely difficult once such infringement occurs in most instances, plaintiff ...have the legal interest to demand such cancellation.<sup>23)</sup>

Hoshino Yasumi categorized the right to live in peace as passive right, active right, and positive right. Passive right is defined as the right to exclude human rights violations by war, war preparations, and further by the military force,

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Military Facility and Nearby Residents」, *Tongil Studies* vol.20, no.2, (2016), p.31.

20) Kyung Joo Lee, 「The Right to Live in Peace's Constitutional Practice Importance」, *Democracy Legal Studies* No. 41 (2009. 11), p.203

21) Hans Kelsen, *The Law of The United Nations A Critical Analysis of Its Fundamental Problems* (New York: Frederick A. Praeger, 1950), pp.13-14

22) 星野安三郎, 『平和の生存権序説』, (法律文化社, 1962年), p.5

23) 判例時報712号(1973), p.65.

and it includes the 'right to not be forced to serve in the military' and the 'right to exclude restrictions on the freedom of expression, such as assembly, media, publications, or group activity, due to national security.' Active right is the 'right to oppose war, suppress war, and the freedom to lead and participate in movement for reduction and abolishment of military force,' and positive right is 'the right to actively demand the country, public institutions, and government power to create and secure peace that is appropriate for social justice, permanent, stable, and rich.'<sup>24)</sup>

The unified opposition by border area residents against the distribution of North Korean flyers that was expressed regardless of their political leanings was an expression of the right to live in peace's passive right. The local residents, however, strongly opposed the regional economic cooperation due to the withdrawal of military forces. It should be noted, however, that the focus was not on the withdrawal of military forces but on regional economic cooperation. The law that supports border area is focused on property rights. The right to live in peace and property rights are the typical model through which to divide the local residents and govern them through division. Such division can be resolved when the right to live in peace does not stop at being a passive right but progresses into positive right.

#### **4. Political potential of the concept of the right to live in peace**

Attorney Lee Jung Hee proposed the concept of the right to peaceful information gathering when she explained the meaning of the first ruling of Lee Si Woo National Security Law case.

This ruling acknowledged that the gathering and analysis of information on the government or the military...is a constitutional right. It is a key passage that shows that this ruling is a judgment based on the Constitution is not limited to the legal dimension...the right to information gathering for peace movement should be seen as also being included in the right to live in peace, and the substance and scope of the right to live in peace that is guaranteed by the Constitution will further be enriched through growth.<sup>25)</sup>

One of passive rights that form the basis of the right to live in peace is the

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24) 星野安三郎, 『平和に生きる権利』, (法律文化社, 1974), p.136.; Kyung Joo Lee, 'The Right to Live in Peace's Constitutional Practice Importance', *Democracy Legal Studies* No. 41 (2009. 11), pp.182-183

25) Jung Hee Lee, 'Peace Photographer Si Woo Lee Judgment of Not Guilty for Violation of National Security Law, Its Meaning and Background Stories', *Tongil News*, (2008.2.4); <http://www.tongilnews.com/news/articleView.html?idxno=76586>

right to peaceful information gathering, the right to monitor peace. Accurate information is necessary to empower resistance movement, an active right. The Constitutional Court acknowledged the right to live in peace as a constitutional right in the lawsuit on Pyeongtaek US military base, but denied it in the 2007 lawsuit on personnel operation training. The right to live in peace does not operate as a legal norm at the Constitutional Court. This means that you cannot receive legal relief on the basis of the right to live in peace. However, the concept of the right to live in peace is continually evolving. Even if it cannot function as a legal norm, it is still valid as a political norm. This means that you ask not the Constitutional Court, but the sovereign. The path to use the political space to obtain judgment by the sovereign and to legalize it through legislation in the political sphere is open.

The right to live in peace will move from the periphery of politics to the center of law, from passive to active, movement to politics, politics to legal system. Also, the differences between the right to self-determination and the right to live in peace is offset only when it is not reunification by force but reunification by peace in South Korea. Therefore, a movement that regularly monitors and opposes all attempts to prevent reunification by peace can be the basis of offsetting the difference between the right to self-determination and the right to live in peace.

The right to live in peace within a superpower plays the role of guaranteeing the lesser power's right to self-determination without resorting to war. This coincides with the principle of nonintervention defined in Article 2 Clause 4 of the UN Charter. As was mentioned above, militarization of South Korea's border area is based on the illegal claim by the US' UNC, created through hegemonic application of the UN Charter, and the UN Commander that the area north to the 38<sup>th</sup> parallel is under the military occupation. UNC/US forces in Korea systemized and solidified militarization of the border area by projecting the events that happened in relation to US hegemony to the Korean Peninsula. Such militarization was even completed as scenery and solidified as resentment in terms of psychology. The agent of the right to live in peace can strengthen and enrich the right when one is able to protect and expand one's own right from a global perspective. We need to find lessons from the successes and failures of the past resistance, such as opposition against Maehyang-ri firingrange, Stories firingrange, and Moogeon-ri firingrange. The right to live in peace can function as the domestic and sovereign basis on which to remove threats to international defense as defined by the UN Charter. The right to live in peace already has the framework of rights that can develop from human rights to sovereignty and from sovereignty to international peace.

