



A Study on the Legal Issues Related to Revitalization of the United Nations Command (UNC):

**Focusing on Violations of International Laws and
the Constitution of the Republic of Korea**

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1. Introduction: Why Revitalize the UNC?

In Korea, media coverage of the UNC has increased noticeably in recent years. For example, a media outlet reported that the UNC turned down Seoul's application to pass through the Military Demarcation Line (MDL) for a test run of the inter-Korean railroad in the summer of 2018, when positive expectations for inter-Korean relations were at their peak. The reason for this rejection was that the documents submitted by the Ministry of Unification (MOU) were insufficient. It is said that the Deputy Unification Minister, Chun Hae Sung, rushed to the UNC for an urgent meeting with its Commander, General Vincent K. Brooks. Nevertheless, Chun could not reverse the decision to forbid permission.

Public opinion on the UNC has worsened, fueled by criticism that the UNC is abusing its authority to manage the DMZ and hindering inter-Korean efforts for reconciliation. Some asserted that the UNC should hand over its management authority, which was bestowed by the armistice agreement to the South Korean government. In addition, after the US revealed the actual content of the 'UNC Revitalization,' which it has promoted since 2014, people raised doubts as to whether the US is trying to maintain its influence on the Korean Peninsula by returning the UNC to the Combat Command, while preparing the transfer of wartime operational control authority from the US to the ROK. The reasons why this article focuses on revitalization of the UNC are multifold: first, Korea has experienced the UNC as presenting obstacles to the effort for inter-Korean reconciliation; second, a project called the UNC revitalization, which the United States promotes, is believed to be in the background of such obstacles; and third, such a project has been, and is still being, pursued regardless of the will of the Korean people.

2. Content and Characteristics of UNC Revitalization:

What is UNC revitalization? Why has it been promoted? And how far has it come?

(1) Overview and Progress of UNC Revitalization

During the Korean War, the UNC was established by the United Nations Security Council (UNSC) Resolution 84, and it performed combat functions as a United States-led unified military command for combat forces from 16 countries. Later, in 1953, South Korea refused to negotiate or sign the Armistice Agreement. Instead, the UNC commander signed the agreement to exercise the rights and obligations of a signatory to an armistice. After the armistice agreement was signed, 15 countries withdrew their troops from Korea. The US military stayed, which was legally supported by the ROK-US Mutual Defense Treaty, and remained as the only force to form the UNC. The UNC exercised operational control (OPCON) over the ROK military during the Korean War, but its responsibility was reduced to maintaining the armistice and managing the agreement following the establishment of the ROK-US Combined Forces Command (CFC) in 1978. However, the latest move is very different from its traditional role. To understand the background, it is necessary to first look at the development of the UNC activities since the 2000s, when the OPCON discussions were in full swing.

In March 2006, UNC Commander General Burwell B. Bell said that the UNC would be developed into a permanent coalition at a defense budget review hearing of the US Senate Committee on Armed Services. Furthermore, in a speech invited to the Foreign Correspondents' Club on January 18th, 2007, Commander Bell pointed out that "the inactivation of Combined Forces Command and the transfer of ROK forces wartime OPCON

to an independent ROK military command will, however, create a military authority to responsibility mismatch for the United Nations Command,” and that “with the inactivation of CFC, the UNC Commander will no longer have immediate access to ROK combat troops which are postured along the DMZ and elsewhere, as he has had under the Combined Forces Command.” General Bell further suggested that “when Combined Forces Command inactivates, we must organize ourselves so we have unity in our chain of command from armistice through crisis escalation and into war, should war break out.” Furthermore, the Commander stressed that (without access to Japanese bases), “we could not flow (...) international forces rapidly enough to meet the needs of the Republic of Korea. So maintaining a mechanism to swiftly support Alliance forces is extremely important” and added that the UNC Commander “would retain operational command over all supporting UN forces.” In other words, the US was concerned that if the UNC returned the wartime OPCON authority which it held through the ROK-US Combined Forces to the ROK forces, the UNC would not be able to perform the essential functions of maintaining the armistice agreement under the condition of being without an independent combat unit under its structure.

In a letter to the Secretary of Defense on July 28th, 2014, UNC Commander Scaparotti recognized the “untapped potential” of the UNC. Also, while Korea mainly focuses on the UNC’s role in maintaining the armistice, it seems to have an intention to consider a multi-national contribution to security. According to the official position of the UN, it was in 2015 that the UNC commander made UNC revitalization an official goal of the command. Moreover, Commander Scaparotti said to the US Senate Committee on Armed Services in 2016 that “Last year, we increased our efforts to strengthen further the engagement of the United Nations Command’s 17 Sending States in our day-to-day operations.” Commander Scaparotti also said that “a senior Australian officer on our staff leads a sustained effort to enhance Sending State engagement in UNC’s work” and further stated that “during the ULCHI FREEDOM GUARDIAN 2015 exercise, the Command greatly appreciated the 89 participants from seven UNC Sending States.”

(2) Characteristics of UNC revitalization

The characteristics of the UNC revitalization can be summarized as follows:

- (i) The troops to be commanded by the UNC in contingency should be prepared in a ‘workable’ manner;
- (ii) To this end, the ROK-US CFC should be separated from the UNC, which should become a multi-national force requiring the participation of armed forces from various countries, as was the case during the Korea War; and
- (iii) The focus of restoring the UNC functions should be on restoring the ‘combat command function,’ which should be verified through the joint training of multi-national forces.

The USFK Strategic Digest states that “During the 2012 Key Resolve exercise, 23 multi-national representatives actively participated. The Ulchi Freedom Guardian 2012 saw 560 multi-national officers taking part” in its 2013 publication, and that “participation during the annual exercise ULCHI FREEDOM GUARDIAN increased from three countries and seven officers in 2009 to seven countries and 153 officers in 2014” in its 2015 publication. Also, according to media reports, in March 2016, approximately 130 Australian and 60 New Zealand soldiers participated in Ssang Yong, a combined amphibious exercise conducted by Navy and Marine Corps forces from the RPK and the US. In June 2017, Korea, the US, and Canada conducted a joint naval exercise in the waters off Jeju Island.

The UNC revitalization project is being pursued for two reasons. One is to find a way for the UNC to continue performing the functions of maintaining the armistice agreement and providing forces and command on the Korean Peninsula in contingency situations as well as after the wartime OPCON transfer takes place between the ROK and the US. The other reason comes from a more fundamental concern. The US handover of OPCON to the ROK, along with the improvement of inter-Korean relations, may end hostility on the Korean Peninsula. Against this backdrop, the US wants to secure a command structure to maintain and strengthen its military influence on the Korean Peninsula and Northeast Asia. Accordingly, it is presumed that in the UNC revitalization, the focus of the UNC was on the recovery of the 'combat command function,' which was verified and strengthened through joint military exercises participated in physically by multi-national forces. The UNC officially rejected this idea, saying it had no plan to return to combat command. Still, many journalists and experts analyze that the key to revitalization of the UNC is to restore the combat command function that it had during the Korean War. As such, the UNC is pursuing the restoration of combat command functions as the main goal of the revitalization project, along with the forming of 'workable' multi-national forces.

3. A Study on Legal Issues Related to the UNC Revitalization

(1) Whether or Not the International Law is Violated

I. Whether International Law Provides a Basis for UNC Revitalization

(i.) Whether or Not UNSC Resolutions 82, 83, and 84 of 1950 Remain in Effect

Some have argued that the UNC revitalization project is being pursued under UNSC resolutions 82, 83, and most importantly, resolution 84, which establishes a United States-led unified command to support multi-national forces deployed in Korea. However, 70 years have already passed, and there has not been a proper discussion on whether the resolutions are still in effect.

First, the signing of the Armistice Agreement on July 27th, 1953, marked the end of a 'peace destructing' situation caused by North Korea's armed attack, achieving the purposes of UNSC resolutions, which are the "immediate cessation of hostilities" and for North Korea "to withdraw forthwith their armed forces to the 38th parallel" (Resolution 82) and "repel the armed attack" (Resolution 83). Therefore, with the conclusion of the armistice agreement, it can be said that Resolutions 82 and 83 cease to have an effect and that Resolution 84, which was developed upon the two resolutions, lost effect as well. Many international law researchers also believe that the Korean War ended the armed conflict by signing the Armistice Agreement. In particular, the classical concept of armistice allows the resumption of hostilities on the premise of expiration of the armistice or the satisfaction of specific procedural requirements. In contrast, the 1953 Agreement aims at "establishing an armistice which will ensure a complete cessation of hostilities and of all acts of armed force in Korea," and this point is evident in the expression "to prevent the occurrence of incidents which might lead to a resumption of hostilities." As such, the armistice currently established on the Korean Peninsula should be seen at least as an agreement on 'ultimate renunciation of the will to engage in a war in the future.' The nature of the armistice agreement is not to agree on a temporary ceasefire but on ending hostilities, in light of the fact that the two sides agreed to establish the Military Demarcation Line at the beginning of the armistice negotiations on November

27th, 1951; declared a temporary ceasefire to stop fighting for a month until December 27; and then resumed the use of force when the talks broke down. Thus, when a party of the agreement resorts to force, it is regarded to have engaged in a new act of aggression, not the resumption of the existing hostilities that have been put on hold. The use of force by the UNC would therefore require a new resolution at the UN level.

The UNSC resolutions of the 1950s, which allowed the UNC member states to use force in exceptional cases, are no longer valid because they achieved their purposes by signing the Armistice Agreement. Also, it goes against the UN Charter, which stipulates the principle of non-use of force to argue that UNC has maintained the authority to use force for 70 years. In this vein, the UNSC Resolutions 82, 83, and 84 of the 1950s do not establish the basis for UNC revitalization. In summary, there is no international legal basis for the UNC to formulate a military operation plan on the premise that it can use force in any form.

(2) Whether the 1953 Washington Declaration is Still Valid

Some argue that the 1953 Washington Declaration, a joint policy declaration on the Korean armistice, is also the basis for revitalizing the UNC. However, the key to the Washington Declaration lies in support of and in commitment to the UNC's implementation of the Armistice Agreement through the sending states. Therefore, it would be an erroneous interpretation of the content and nature of the declaration to argue that it can be used as a basis for the UNC to restore its combat function before the agreement, if the Korean peninsula relapses into a war. The declaration stipulates that if an armed attack against the principles of the United Nations recurs, they will unite again and immediately resist the attack to promote world peace. It means that the general member states of the UN will take action to protect peace under a new resolution under the procedures set by the UNC Charter, not through the existing UNC structure. Furthermore, nowhere in the Washington Declaration confirms the continuation of the UNC's military operation mission in Korea. Even if it does, the declaration is only a statement that lacks normative power. Therefore, the argument of using the Washington Declaration for the UNC to establish a military operation plan in contingency situations is also without an international legal basis.

II. Whether Revitalizing the UNC Violates the Duty of Mutual Respect for Sovereignty under International Law

The UNC revitalization project violates the duty of mutual respect for sovereignty as it promotes participation of multi-national forces, recovery of combat command functions, and expansion of annual military exercises on the Korean territory. This move comes without a basis under international law or consent of the ROK. In particular, the UNC attempted to have Germany, which does not belong to the UNC's 16 sending states, or Japan, which has a sensitive relationship with Korea, participate in the UNC military training per the interests of the US. It is a clear violation of the duty of mutual respect for national sovereignty.

(ii.) Whether the UNC Revitalization is in Violation of Article 60 (2) of the ROK Constitution and the Principle of National Sovereignty

The core of the UNC revitalization is the 'recovery of operational functions' by the UNC, and the US promoted revitalization through the verification and strengthening of joint exercises for multi-national forces. In addition, the US is promoting 'participation' of the UNC's 16 sending states in 'routine operations,' as a way of seeking the establishment of permanent, regular multi-national forces, which clearly require the National Assembly's consent to "the stationing of alien forces in the territory of the Republic of Korea" as stipulated in Article 60 Paragraph 2 of the ROK Constitution. So far, however, there has been no consent from the National Assembly or even a

request for such consideration. Thus, a revitalization of the UNC carried out without the consent of the National Assembly violates Article 60 Paragraph 2 of the Constitution and infringes on 'the right of the National Assembly to consent to the foreign military deployment within the ROK territory.' It also violates the principle of popular sovereignty, the basic principle in the Constitution that requires public opinion to be heard and implemented. Moreover, it is also a serious problem that the UNC revitalization process has been promoted thus far without a treaty in place, although it can be said that a significant part of it could place restrictions on the security guarantee or sovereignty of a state. Therefore, belated as it may be, there is a need to carry out a review based on a national consensus and a discussion at the National Assembly as soon as possible.

4. Conclusion

Korea must overcome the UNC issue to restore its military sovereignty in full. Since the military function of the UNC, which has become fragmented, is being revitalized, Korea's interest in it also needs to be reactivated. The starting point should be to raise a question about the grounds for the *raison d'être* of the UNC, which are taken for granted in Korea. There is an urgent need to discuss the political characteristics and legal significance of the UNC, which has evolved outside the scope of control by a sovereign state, along with the Armistice Agreement, which was temporary in nature but has nevertheless been maintained in the past 70 years.

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