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PERSPECTIVES FOR THE TREATY CLOSING THE KOREAN WAR

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The Korean Peninsula has a strategic place in East Asia. According to Korean historic sources the early beginnings of Korean statehood can be traced back many centuries before Christ. Korean history, when considering some events, has some similarities to the history of Poland. Very often Koreans, during the official meetings compare their historic struggles with ours, for example times of partitions and fighting against numerous occupying powers. In the past due to its geographic location, Korea had to continuously withstand the expansion of its neighbours, especially China and Japan. Particularly painful was the period of fighting against the Japanese invader at the beginning of 20th century, when after the annexation of Korea, the Japanese were imposing the policy of assimilation and were trying to completely colonize this country¹. It has unleashed very strong nationalist sentiments within the Korean nation.

The defeat of Japan at the end of the Second World War has not fulfilled long awaited liberation by Koreans. The great powers (the United States of America and the Soviet Union) have decided to create on the territory of Korea their own zones of influence and temporarily marked their

¹ Facts about Korea. Korean Overseas Information Service, Seoul 1991.

boundary along the thirty eight parallel, planning to create separate states with different political systems. National elections held on 10th May 1948 authorized by UN Security Council resolution from November 1947, were conducted only in the southern part of Korea. As a result of this election the government of Republic of Korea (ROK) was created. North Korea has introduced a communist government system.

The Korean War erupted on 25th June 1950 as the result of aggression of Democratic People's Republic of Korea (DPRK) against the Republic of Korea and has not formally ended up to this day. The UN Security Council called by the US in a emergency mode has passed two resolutions – first on June 25th 1950 demanded for the invasion to halt and restoring the status quo ante bellum, the second from June 27th 1950 for the UN member states to provide military assistance to the ROK and create international military forces based on Article 42 of the United Nations charter with the goal to restore peace on the Korean Peninsula. Fifteen nations have assigned their contingents – from battalion to brigade. For the commander of United Nations Command has been designated general Douglas MacArthur. Five nations have contributed with their medical units. The most significant part of the UN forces has been formed by American troops with a component of ROK forces. American soldiers appeared on the war front on July 2nd 1950 near Daejeon. It was the first battalion of 24th Infantry Division commanded by general William Dean. In November 1950 China entered the war. The border river of Yalu was crossed by 200 thousands Renmin Zhiyuanjun, or Chinese People's Volunteers Force (CPVF), commanded by general Peng Tehuai. The volatile and sanguinary course of war forced US president Harry S. Truman to enter into negotiations regarding a ceasefire. Those talks started in Gaeseong on 10th July 1951 and since 25th October 1951 were held in the village of Panmunjom, located 3 miles (5 km) south of the 38th parallel, dividing “two Koreas”. The talks lasted until mid 1953 (there were all together two hundred meetings). As a result of those talks on 27th July 1953 the armistice agreement was signed². It was signed by: from the KPA (Korean's People Army)

² <http://news.findlaw.com/com/wp/docs/Korea/kwarmagr072753.html>, Text of the Korean War Armistice Agreement, 27.07.1953.

marshal Kim Il Sung and the commander of Chinese People's Volunteers Force (CPVF) Peng Tehuai, from the UNC – their commander American general Mark W. Clark. The Armistice Treaty signed by combatant parties has contained provisions regarding cessation of military operations, liberation and repatriation of prisoners of war and people displaced. Also the Military Armistice Commission, Neutral Nations Supervisory Commission and the Neutral Nations Repatriation Commission were created to monitor any violations of the agreement and to ensure execution of its provisions. The agreement has obliged both sides to withdraw their forces two kilometers from the military demarcation line. So was established a demilitarized zone as a buffer zone between the opposing forces, 4 km wide. Both sides in their respective part of the zone could maintain civil administration personnel. The provisions of the agreement said also ceasing by both combatant parties the introduction into Korea of reinforcing combat aircraft, armored vehicles, weapons, and ammunition. The main, permanent body enacted to supervise the implementation of the Armistice Agreement and to settle through negotiations any violations of the Armistice Agreement was the Military Armistice Commission. Both sides have appointed five high ranking officers to this Commission.

To support execution of the Commission's tasks the necessary administrative personnel and a secretariat was appointed. The main tasks of the Commission consisted of settle through negotiations any violations of the Armistice Agreement with special regard to the area of the demilitarized zone. The commission was authorized to appoint Joint Observers Teams, composed out of representatives from both sides of the conflict. Their mission was to investigate any violation of the Armistice Agreement pertaining to the Demilitarized Zone and to the Han River Estuary. Another body created to supervise the implementation of the Armistice Agreement was Neutral Nations Supervisory Commission. It was composed of four senior officers. Two of them were appointed by neutral nations nominated by the Commander-in-Chief, United Nations Command (these were Sweden and Switzerland). The other two were designated by neutral nations nominated jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, namely (these were Poland and Czechoslovakia). The term "neutral nations" was defined as those

nations whose combatant forces have not participated in the war in Korea³. The Neutral Nations Supervisory Commission located its headquarters in the village of Panmunjom on the river Sanchon (this is in close proximity to the western end of the demilitarized zone) and it remains there up to this day. Officially described as the Joint Security Area (JSA) of UNC and KPA, was created as a neutral area (not under the jurisdiction of any of the states). Its area consists of twenty buildings, including special compounds where the official meeting of MAC and NNSC are held. The Military Demarcation Line (MDL) separating South and North Korea, bisects also the JSA. The line crosses through the middle of the conference buildings along microphone wires. Those microphones are located in the middle of the tables located within the conference rooms of the Military Armistice Commission and Neutral Nations Supervisory Commission, which the Korean People Army does not recognize, established shortly after the signing of the Armistice, a line in the Yellow Sea drawn unilaterally by the United Nations Command (UNC). Very frequently there are incidents involving warships of both conflicted Korean states. Since 1976, when during the incident within the JSA, two American officers were murdered the dividing line was enforced. (Americans together with South Korean soldiers attempted to cut a poplar tree. This is known as the Axe Murder Incident). The tasks of Neutral Nations Supervisory Commission⁴ contained supervision, observation, inspections and investigation connected with the exchange of military personnel, weaponry and equipment, investigation of reported incidents within the DMZ and also providing MAC with the reports on results of observation, investigation and supervision. Neutral Nations Inspection Teams (NNIT) were designed as executing bodies. The Armistice Agreement envisioned the creation of 20 such teams. Their number may be reduced by agreement of the senior members of both sides of the Military Armistice Commission. Each Neutral Nations Inspection Team shall be composed of not less than four officers, half of whom

³ G. Jonsson, *Peace-keeping In the Korean Peninsula: The role of Commissions*, Seoul 2009, p. 11.

⁴ C. Birchmeier, M. Burdelski, E. Jendraszczyk, *50 lecie Komisji Nadzorczej Państw Neutralnych w Korei*, Toruń 2003, pp. 25–26.

shall be from the neutral nations nominated by the Commander-in-Chief, United Nations Command, and half of whom shall be from the neutral nations nominated jointly by the Supreme Commander of the Korean People's Army, and the Commander of the Chinese People's Volunteers. The most intensive period of NNSC activities occurred during the years 1953–1956. On 18th August 1953 ten permanent inspection groups started their work. According to provisions of the Armistice Agreement they were developed in the following harbors, known as ports of entry – on the territory under control of Korean People's Army and Chinese People's Volunteers Force (CPVF) in: Sinuiju, Chonjin, Hungnam, Nampo, Sinanju; – on the territory of the United Nations Command in: Taejon, Taegu, Pusan, Gangnam, Kunsan. Inspection Teams of Neutral Nations initially had the right, provided in the agreement, to free movement over the areas and the routes of communication agreed between the sides of the Armistice. They have followed guidelines only coming from Neutral Nations Supervisory Commission and report only to this body. When performing their supervisory, inspection and control duties were working as whole teams or smaller sub-teams. Notwithstanding the supervision of military personnel rotation and replacement of military airplanes, weaponry and ammunition, performed according to previous information provided by both sides, the teams have been conducting random inspections within the areas of their ports of entry, whenever they found it necessary. They have checked if the personnel, weaponry and equipment was not the subject of export from Korea not registered previously. In the case of detecting the violations they demanded from local authorities satisfactory explanations. NNIT were obliged to ask for information regarding closed coffers marked as confidential or classified and demanded from authorities to open such coffers. This should have been done as per random inspection in order to compare their content to the information provided earlier by authorities⁵. After cessation of NNIT the activities of Neutral Nations Supervisory Commission had been confined. Due to lack of inspection instrument the member states have systematically reduced their components.

⁵ J. Balicki, *Rozejm koreański w praktyce i teorii*, Warszawa 1956, p. 199.

The legal interpretation of the Armistice Agreement from 27th July 1953 is subject for dissent opinions. Some analysts emphasize its strictly military role. The Agreement was signed by the commanders of two combatant sides indeed, although Kim Il Sung was not only the supreme commander of the Korean People's Army, but also the DPRK's prime minister, the man in charge of key roles in the state. Many doubts surround the status of the UN and Chinese People's Volunteers Force (CPVF). For the bipartisan analysts beyond doubt is the fact that People's Republic of China was a combatant nation in Korea. Used by Chinese soldiers the name of Chinese People's Volunteers Force was only a clever evasion. UN's Security Council has called PRC an aggressor in Korea. The participation of China in the Geneva conference clearly indicates their combatant status. The United States is not formally party to this Agreement. However the fact of signing the agreement by the American general on behalf of the UN also positions the United States as a combatant nation. The author from the Nautilus Institute in San Diego⁶ thinks that the following nations and states should be the sides of a future peace treaty replacing the Armistice Agreement: two Korean states, United States and China. This view is based on the realistic analysis of the situation. The position of DPRK among the proposed signing parties is without question, the Republic of Korea should also have a place at the table, despite that president Syngman Rhee did not sign the Armistice Agreement. Republic of Korea was actively participating in the Geneva conference, which was the consequence of the Armistice Agreement. The United States should be a side of the treaty, that is clearly declared by the UN's Security Council resolution 84(V) from 1950, which has charged the American general with the task of supreme commander of the United Nations' forces in Korea. The participation of the USA in the Geneva conference also gives them a mandate to negotiate and sign a peace treaty. Sometimes it appears considerations regarding possible participation of Russia and Japan in the negotiations of the peace treaty, due to their participation in the six parties talks on the North Korean nuclear program. Because Russia and Japan were not combatant nations,

⁶ <http://www.nautilus.org> P. Hayes, *Time to Talk: the Threat of nuclear and conventional War in Korea*, "Policy Forum", 24,11.2010.

their participation in the negotiations and signing of a peace treaty should almost certainly be ruled out.

THE MYSTERY OF THE YELLOW SEA INCIDENT

One of the article's authors, Marceli Burdelski, on 23rd November 2010 – was in DPRK during the bombardment of Yeonpyeong island by North Korean artillery. It was an opportunity to learn about the position of authorities in Pyongyang on this incident. We will present it in a large brief. It has to be remembered that the officially agreed border line between two combatant states on land was a line of demarcation between the two fighting armies along the thirty eighth parallel. Regarding the boundary on the sea no definitive decisions have been agreed upon. The implemented, actual outcome was always considered by the DPRK as unilaterally imposed by the UN's Command in Korea and unacceptable⁷. North Korea has never recognized this line and proposed that the maritime part of the demarcation line to be a subject of bilateral talks. According to DPRK's authorities the development of a standoff surrounding the resolution of the disputed maritime boundary has the following history:

- In the nineties of the 20th century there were many meetings of representatives of DPRK and Republic of Korea in order to precisely delimit the route of the maritime border. The proposal was to create in this area a so called peace zone where free movement of ships and other vessels would be granted.
- Despite these talks between the two Korean states, the United States together with the army of South Korea have conducted naval exercises in the disputed zone.
- On 2nd September 1999 the spokesman of General Staff of Korean People's Army (KPA) was informed about the route of the maritime military demarcation line. The border was limited by North Korea according to international treaties and agreements on maritime

⁷ After Korean War, gen. Mark W. Clark, UN Commander in Korea created NLL (Northern Limitation Line) personally. This was oneside action given by UN.

boundaries and also the provisions of the Armistice Agreement. At the same time he warned against any military exercises between the northern maritime line and the military demarcation line until the final resolution of the issues regarding the maritime boundary route.

- This request from DPRK was left without any response and every year the military exercises in the disputed zone have been conducted.
- When in 2010 the authorities of Republic of Korea have been informed about their plans to run the exercises in the disputed zone, the spokesman of General Staff of the Korean People's Army had announced that a tangible reaction from the DPRK side should be expected.
- On 23rd November 2010 at 8.00 AM the spokesman of the representation of KPA in Panmunjom had called the representative of Republic of Korea army and was warned one more time. At 1 PM the same day, the army of Republic of Korea started the exercises – the salvo towards North Korea was fired. Responding to these developments the army of DPRK at 14.30 local time bombarded the military base on Yeonpyeong island.
- The whole situation is commented in the DPRK by using the following phrase: "This is quite normal that nobody likes bad things occurring in front of house doors". Democratic People's Republic of Korea was provoked by the exercises of Republic of Korea and US armies taking place in this area.

THE POSITIONS OF THE STATES TO THE PEACE TREATY

DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

The proposal to conclude a peace treaty with the United States announced in 2010 by the DPRK is not new. For the first time the government of North Korea has presented the concept of signing such a bilateral treaty on 25th March 1974. The proposition contained complete withdrawal

of US troops from South Korea. It also excluded Republic of Korea as a side to the treaty. North Korea has justified it by pointing out that they have never signed an Armistice Agreement with the Republic of Korea. In December 1991 North and South Korea signed the following document: "The Agreement on Reconciliation, Nonaggression, Cooperation, and Exchange Between North and South". It provides for transforming Armistice Agreement into a Peace Treaty. Since 1991 the DPRK has been trying continuously to undermine the Armistice Agreement. The representative of KPA in Panmunjom has boycotted the meetings of Military Armistice Commission. In 1993 the North Korean side expelled the delegation from the Czech Republic to the NNSC under the pretext of cessation of existence of Czechoslovakia as a sovereign state and DPRK did not recognize the rights of the Czech Republic to represent Czechoslovakia. The Ministry of Foreign Affairs of DPRK on 24th April 1994 has declared the Armistice Agreement as a white scrap-paper and demanded the negotiations on the peace treaty with the United States. Korean People's Army has withdrawn its mission from the Military Armistice Commission and has established a Military Liaison Office of Korean People's Army in the area of Panmunjom with the mandate to lead direct talks with the United States. On 2nd September 1994 DPRK and PRC announced a joint communiqué regarding withdrawing Chinese People's Volunteers Force (CPVF) from the MAC. It stated that it happened due to the request of Korean People's Army. During the talks in September and October 1994 on the issue of a nuclear program, North Korea has insisted on expanding their agenda on the peace treaty subject. In January 1995 DPRK proposed to the United States a creation of military liaison office and called them to the negotiation on a peace treaty. The members of liaison office of Korean People's Army have invited American officers for a meeting outside the framework of Military Armistice Commission. In March 1995 DPRK has forced the Polish mission at Neutral Nations Supervisory Commission to exit the Polish camp, located within the northern part of the Joint Security Area. Consequently the government of the Republic of Poland made the decision to evacuate the whole Polish mission through Beijing. At the same time Poland remains in the structures of NNSC and will continue to fulfill its Agreement's obligations. According to the provisions of the Armistice

Agreement, the meetings of NNSC to be valid require the participation of at least three delegations. Since 1995 DPRK does not recognize the status of NNSC and claims that its mission is terminated⁸. This also refers to the participation of Poland in the NNSC. The last proposal of DPRK's government from 11th January 2010 addressed to the United States has suggested that a peace treaty, formally concluding the Korean War, would have been signed in December 2010. Negotiations leading to its signing should occur independently of six party talks on the nuclear program or within its framework. This proposal appeared after the earlier one calling the United States to the bilateral talks to resolve the North Korean nuclear standoff. The statement of DPRK does not specify the detailed solutions that should be written within the peace treaty. Many questions concern both DPRK and Republic of Korea. Termination of the Military Demarcation Line and Demilitarized Zone would have to be done with the approval of both Korean states. Nothing is mentioned about the role of the UN, which is the side of the Armistice Agreement. DPRK on the one hand does not acknowledge the right of the Security Council to impose sanctions against it, claiming that the UN is on a state of war with North Korea and could not be an objective body. On the other hand DPRK ignores the fact of being in a state of war with the UN and calling the United States to bilateral talks on a peace treaty. It looks that such actions have a tactical nature. The strategy of DPRK is aiming at the survival in a changing world after the systemic upheaval in Russia and Central-Eastern Europe. Many means are used here including diplomatic actions. The nuclear and rocket program is supposed to be a trump card. One has to add that this is not the end itself. Recent actions aim for United States to recognize DPRK as a nuclear state. Eventual renunciation of nuclear weapons and termination of nuclear arsenals would be very costly then for the United States and other partners among the six nations talks.

⁸ From 1995 polish delegation to NNSC traveled to the NNSC meetings in Panmunjom from South part of JSA.

REPUBLIC OF KOREA

This state does not deny the importance of a peace treaty. It rejects however any proposals made by DRPK eliminating Republic of Korea from the negotiations and signing of such a document. In August 1995 the president of Republic of Korea Kim Young Sam had submitted the project to sign a peace treaty between the South and North with the guarantees of the United States and China. The government of Republic of Korea has rejected the North Korean proposal from January 2010. The minister of defense of Republic of Korea, Kim Tae-Young, has declared: "We can talk about the peace treaty, when the six party talks are resumed and progress made there⁹." North Korea is famous from the peaceful gestures offered on one hand and the provocations held on the other hand. Negotiating of a Peace Treaty concluding the Korean War is one of the subjects of six party talks. The working group has been formed. Currently the six party talks have been suspended. During the current freeze of North-South relations nothing indicates that anything will change here in the near future. Secret talks between the representatives of both sides, aiming at preparing the third inter-Korean summit have fallen through. The southern side demanded DPRK to admit responsibility for sinking the warship Choenan and officialy express regret for it, also apologize for bombarding Yongpyong island and killing South Korean citizens. After artillery exercises of Republic of Korea Army, where picture targets of Kim Jong Il and Kim Chung Un were used, the Command of Korean People's Army has issued a declaration of readiness to the holy war. North Korean media use the worst invectives and insults when describing the president of Republic of Korea Lee Myung Back, calling him a traitor, renegade and puppet. The special attack occurred against president Lee Myung Back after his visit to Berlin and his statement that Korean unification is possible based on the German model, so by absorbing the DPRK by Republic of Korea.

⁹ "The Korea Herald", 20.01.2010.

UNITED STATES OF AMERICA

The US also does not reject the concept of signing a peace treaty with the Democratic People's Republic of Korea. USA aid has multiple times responded to the proposals made by North Korea. The US government claimed that the start of the negotiations on a peace treaty is possible only when DPRK fulfills some specified conditions. North Korea's proposition from 11th January 2010 was rejected by the United States. The condition of lifting the sanctions of UN's Security Council before entering the six party talks is not acceptable. The Americans have stated that DRPK must return to the six party talks and display real progress in the renunciation of the nuclear weapons program and the dismantling of the nuclear arsenal. The US State Department spokesman Philip J. Crowley has stated that: "We will not pay North Korea for their return to six party talks". United States consider North Korea's proposal as a smokescreen. It is supposed to strengthen their bargaining position in negotiations with the United States and Republic of Korea. American diplomats think that North Korea will utilize the time for further development of their nuclear arsenal.

PEOPLE'S REPUBLIC OF CHINA

As a host of six party talks China actively participates in diplomatic actions aimed at finding a peaceful resolution to the North Korean nuclear weapons program. China considers the Korean Peninsula as an area of vital interests connected with national security. In the past Korea was a vassal state of the Chinese Empire. Currently Chinese leaders as a part of the national security strategy treat as a priority the creation of a secure environment on the borders of China. The Chinese state is willing to maintain the largest possible influence on the Korean Peninsula. China rules out Korean reunification as the absorbing of the North by the South. The united, anti-communist and democratic Korea is not acceptable to China. On the other hand the DPRK with their economic problems and challenges posed by the nuclear program is a reason of concerns for China. This is why Chinese leaders are undertaking steps to resolve the North Korean nuclear standoff and give economic aid that should stabilize the economy and stop the tide

of economic emigrants from North Korea to China, that is also a troublesome issue. Since 1994 China does not participate in the Armistice mechanism in Korea. North Korean proposal from 11th January 2010 has been met with many comments in China, from both official government positions and the media as well. On 9th February the spokesman of the Chinese Foreign Ministry Ma Zhaoxu stated that the resuming of six party talks will serve nuclear disarmament on the Korean Peninsula. In the article published within the „Beijing Review”, Shi Yongming, the researcher from the Institute of International Relations ascertains that the proposal of DPRK has not surprised anybody¹⁰. Putting an alternative openly: peace treaty or denuclearization makes it unrealistic. The author thinks that the administration of Barack Obama has not worked out a new efficient policy towards North Korea. He underscores that Americans don't have any spectacular achievements here. So far they have not found efficient ways of persuasion towards the leaders of the DPRK. According to this author the peace treaty should resolve not only the question of nonaggression, but also in a complex way the range of security systems and military issues. China remains an important participant of the six party talks, however it is not currently in a “mouth-teeth” type of relationship, as Mao Zedong has described the relations between China and DPRK. China has not agreed with the position of Republic of Korea and United States regarding sinking of the South Korean frigate Choenan with Yellow Sea on 26th March 2010. China condemned the sinking of the warship and at the same time admitted that there are no clear evidences blaming Democratic People's Republic of Korea for this incident. China has also called for further investigation in this matter. A similar position was taken by Russia regarding this.

RUSSIA

Russia participates in the six party talks and would like to achieve results in line with its national interests. Russia is seen here as a partner looking for benefits that can benefit almost all political players in this complex process. That is why it will be an uneasy task to get its uncondi-

¹⁰ Shi Yongming, *Future Peace in Korea*, “Beijing Review”, No. 51, p. 3.

tional approval for possible solutions of these issues, without taking into consideration Russia's, non-fully explicit expectations.

JAPAN

Japan participates in the six party talks due to their vital national interests. The relations between Japan and DPRK have a very complex character. This is related especially to mutual historical experiences, including issue of Japanese citizens abducted by North Korea.

THE FUTURE PEACE TREATY AND THE INTERNAL, EXTERNAL FACTORS

It seems that signing a peace treaty without resolving the nuclear standoff is impossible. This results mainly from the above mentioned strategy of DPRK – surviving in the changing world and gaining new means for further existence. North Korea uses the tactics of provocation and escalating tensions, subsequently reducing it by submitting peace proposals and declarations and return to the negotiation table. As a result of too shallow an insight in previous behaviors of the authorities in Pyongyang one could be deluded that this is a slow and planned process of approaching a peaceful resolution to the conflict. The question remains: how, if this is applicable, shall we look at the conditions of concluding peace? It seems necessary that the administration of Barack Obama will work out new ways of effective influence on DPRK's authorities. Leader change in DPRK after KIM Jong-il death is a new factor. We must wait for the new Leader Kim Jong-un's policy directions. Very important is one, single, pre-agreed position of the states taking part in the six party talks. So far the diplomacy of North Korea was trying to set China and Russia against the United States. The peace treaty cannot be a general document, it must contain provisions regarding a security system on the Korean Peninsula and the surrounding region¹¹. Not in one single study of the American experts can a remark be found on the role and possible par-

¹¹ J.L. Schoff, *Broaching peace Regime Concepts to Support north Korean Denuclear-*

ticipation of the members states of NNSC in the future peace mechanism. To the investigation led by Republic of Korea on sinking of the frigate Choenan the representatives of NNSC were not invited. Swedish experts have taken part in this these however not as an official delegation within the NNSC framework.

Poland, with regard to its previous record and participation in the work of Neutral Nations Supervisory Committee and due to its many years of diplomatic presence in the DPRK should exploit this fact and more actively join the process of construction of a new peace mechanism on the Korean Peninsula. Highly recommended are common actions together with Sweden and Switzerland and also gaining support for those undertaken steps from the United States and from the European Union that is still not a very active player in creating a security policy in Eastern Asia.

ization, IFPA, 2009, <http://www.2law.columbia.edu>; P.N. Norton, *Ending the Korean Armistice Agreement*, "The legal issues", March 1997.