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“Korean Three Pillars Strategy” : A Legal Justification

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North Korean nuclear and missile programs have been developed and sophisticated in such a manner as to present a significant threat to Korea’s national security. A strategic response to these weapon systems is without doubt a necessity. Nonetheless, the tenet of such a response must be compliance with international law because the international legal assessment of certain acts of a state determines the legitimacy of the defense and foreign policies of the state concerned. A telling example is the controversy in and around the United Nations over legal justifications presented by Russia when it invaded Ukraine in February this year. It is necessary to prepare for the potential “lawfare” to be waged diplomatically by North Korea, Russia and China combined, which may question Korea’s lawful and legitimate military responses to North Korea’s imminent armed attacks.

The “Korean Three Pillars Strategy,” which the Korean government presents as a comprehensive set of responses to North Korean nuclear and ballistic missile programs, is composed of three stages. The first stage is called the “Kill Chain,” which is built around the idea of hitting the origins of North Korean nuke-embedded ballistic missiles with Korean weaponry, in case of an imminent attack. The next stage, termed the “Korea Air and Missile Defense (KAMD),” uses the multi-layered missile defense system to intercept and destroy incoming North Korean missiles before they land in Korean territory. The final stage is named the “Korea Massive Punishment and Retaliation (KMPR),” which intends to retaliate

against North Korea if material damage and human casualties are incurred by its nuclear and non-nuclear missile barrage. These retaliatory measures are nicknamed as “decapitation operations,” which target Pyongyang and the military and political leadership in North Korea, with the dropping of bunker-busters included as an option. It is critical that these three pillars of Korea’s military strategy be justifiably in compliance with international law.

In international law, it is generally recognized that all states must refrain from the “threat or use of force against the territorial integrity or political independence,” articulated in Article 2, paragraph 4 of the Charter of the United Nations. At the same time, Article 51 of the Charter provides an exception to the Charter’s general prohibition on the use of force in the form of the “right of self-defense” as an inherent right of sovereign states. It permits a state to act in unilateral or collective self-defense if – but only if – an “armed attack occurs.”

Thus the use of force can be legal if the force is employed to counter an armed attack against the state concerned. Several conditions need to be met for this use of force to be justified, which include 1) imminency of an expected armed attack, 2) necessity in the sense that the use of force would be the only way to stop the armed attack, and 3) proportionality between the armed attack and the responding use of force.

In the case of the Kill Chain, it involves the use of force to repel an enemy’s armed attack, but controversies might arise in relation to this response as the initiation of the Kill Chain may precede the actual occurrence of an armed attack. However, considering that contemporary weapon systems such as ballistic missiles would make it almost impossible for the targeted state to effectively respond to them if launched, the right of self-defense can be extended so that it allows the targeted state to anticipate the incoming armed attack and proactively use force to prevent such missile attacks from occurring at all. Such an expansive concept, named “anticipatory self-defense,” is well accepted as legitimate in the international law community.

The KAMD perfectly fits the conventional definition of the right of self-defense, and it would not raise any issues of legality when employed.

The KMPR would, at least from a purely theoretical perspective, be difficult to justify as the legitimate exercise of the right of self-defense, because it would not satisfy the requirements of imminency of the armed attack and the proportionality between the armed attack and the responses involved. Nonetheless, this concept could be understood as a type of anticipatory self-defense, when North Korea’s successive and imminent missile attacks are expected after the first strike. In addition, if the situation evolves from a local armed provocation to an all-scale war, an extended use of force in the form of the KMPR would be justifiable as a military operation that will be waged within the context of the law of the armed conflict.

While there is no doubt that the Korean Three Pillars Strategy is a legitimate military campaign that can be employed in response to unlawful North Korean armed attacks and in accordance with international

law, the Korean government should take a close look at the United States' policy documents such as the National Security Strategy (NSS) and the Nuclear Posture Review (NPR), as these documents clearly advocate the national security strategies' compliance with international law. Following the U.S.'s example, Korea would better publish a national report on the legality and justification of the three Pillars Strategy, demonstrating its willingness to act in conformity with international law.

On the other hand, there is a possibility that the Korean Three Pillars Strategy will be activated on the basis of inaccurate information/intelligence, resulting in an unwarranted exercise of the right of self-defense and generating state responsibility. Therefore, the Korean government must act to foreclose such a possibility, in the form of strengthened intelligence cooperation among U.S., Japan and Korea, but more specifically with the normalization in operation of the General Security of Military Information Agreement (GSOMIA) concluded between Korea and Japan.

Lastly, it would not be an effective strategy for Korea to counter North Korea's nuclear capabilities with its conventional non-nuclear weapons, however sophisticated they may be. The United States, as the only security ally of Korea's, could provide nuclear deterrence by deploying strategic assets such as B-1B bombers in or near the Korean peninsula. It is essential that Korea keep the United States engaged in the discussion of providing nuclear deterrence for North Korean nuclear programs and nuclear assurances for the Korean public.

The most recent meeting of the Extended Deterrence Strategy and Consultation Group (EDSCG), held in September this year, brought about promising outcomes by securing the United States' commitment to "continue to deploy and exercise strategic assets in the region in a timely and effective manner." Korea and the United States must continuously make joint efforts to deter and respond to the DPRK, and the two allied nations' defensive posture will be greatly strengthened by the combination of the U.S. strategic assets and the Korean Three Pillars Strategy.

* The view expressed herein was published on December 16 in KOREA ON POINT (Sejong Institute) and does not necessarily reflect the views of the Asan Institute for Policy Studies