

# Just War and Just Battle

## The Examination of North Korea's Attack against the ROKS Cheonan Based on the Just War Principles

*Kil Joo Ban*

In March 2010, a North Korean submarine fired a torpedo against the South Korean ship Cheonan, which resulted in the deaths of 46 sailors. Is its surprise attack justified? The academic examination has rarely been made over whether North Korea's use of military force is justified in this battle. As the just war theory to date has dealt mostly with major wars, it also can guide us to judge whether this limited warfare is just or not. The just war principles are composed of three axes: before, in and after wars. First, North Korea's provocation had neither right cause nor right intension because it attacked the Cheonan preventively, not preemptively, and was intended to achieve its domestic objective, the stable succession of the Kim regime. Second, North Korea also did not observe in-war principles in the sense that it attacked and sank the Cheonan unproportionally to maximize the effectiveness of revenge. Third, North Korea was not interested in post-battle settlements but intended to aggravate tensions in the region, which is not compliant with post-war principles. The examination sheds some light on the need to expand the scope of just war principles from war to limited warfare and battles particularly in the sense that it helps restrain unethical warfare and maintain the rules-

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based international order. This expansion also will contribute to not only the richness of the just war theory but also further leading it to evolve into a grand theory of war.

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In March 2010, a midget submarine of North Korea secretly violated South Korea's territorial water in the West Sea (called the Yellow Sea by China) and fired a torpedo against the Republic of Korea Navy Ship (ROKS) *Cheonan*, which resulted in its sinking and the deaths of 46 sailors.<sup>1</sup> Could the North Korean military's method to attack an opponent ship be justified ethically, legally or militarily in terms of just war principles? When is the use of military force justified in general? If it had not been just, should the discourse of unjust warfare have been created back then? Surprise attack without the right cause and the proportional use of force is not justified by the just war principles. This examination itself matters because it can evolve into norms or even institutions that impose restrictions on the unjust behaviour of the state. The absence of a relevant restraint makes unjust behaviour more likely to continue. When a state is not restrained from initiating unethical warfare, even small sea battles, the rules-based order can be rubbed away gradually in international politics. Seen in this light, the *Cheonan* incident serves as a significant case to provide insight into the expansion of the just war principles.

The Civilian-Military Joint Investigation Group (JIG) revealed that North Korea attacked the *Cheonan*, and in June 2010, it submitted the report to the United Nations Security Council (UNSC).<sup>2</sup> It was apparent that North Korea's attack on the *Cheonan* was not a justified military action. Thus, the international community condemned North Korea for the *Cheonan* incident. The concept of just warfare, however, had been paid little attention to scholarly and politically even in the post-investigation period as well as in the midst of this shocking incident. A lack of concern for just war ideas led to another unethical act of warfare, which was initiated by North Korea in the same year. In November 2010, North Korea bombed South Korea's sovereign territory, *Yeonpyeong* Island, which led to the deaths of two marines and two civilians.<sup>3</sup> While there have been little effort to analyse the *Cheonan* incident with the just war principles, South Korea has been politically

divided over whether Pyongyang should be blamed for this Incident and this division continues to this day.<sup>4</sup>

The just war tradition has existed for thousands of years, from ancient scholars, such as Aristotle, Ambrose and Thucydides to medieval thinkers, such as Victoria and Grotius, to contemporary scholars, including Walzer.<sup>5</sup> These philosophical or theoretical discussions have had an impact on the practical use of military force while contributing to the establishment of international norms or institutions, such as the UN Charter Article 51 and the UN's High-level Panel Report (HLPR) in 2014.<sup>6</sup> The just war principles, such as a last resort, have contributed to constraining the ruthless use of military force and reducing war crimes. War has been diversified over the decades, though. Accordingly, the just war theory should expand its scope by examining legitimacy over the use of military force in general simply beyond wars, in an effort to achieve its practical synergy. Thus, this paper examines the *Cheonan* incident with the framework of just war principles as part of the effort to expand its scope.

## **Just war theory, its impact and war vs. battle**

### *The literature of just war theory*

There exist three views over the relationship between politics and war: war with no legitimacy at any time, war without hindrance and restraint in war.<sup>7</sup> The school of just war theory has paid attention to the third perspective. In the 1960s, the ancient philosophy of just war began to be revived in the world of academia due to the emergence of a new international system and modern technology.<sup>8</sup> Walzer (1977) served as the most influential scholar to revive the just war tradition while promoting the debate over the Vietnam War, which continued to another pioneering work in 1983, *Spheres of Justice*.<sup>9</sup> The 9/11 attacks and the U.S's subsequent invasion of Iraq also encouraged the concept of just war to be paid more attention.<sup>10</sup> Likewise, the emergence of global terrorism is examined from the viewpoint of the just war theory in a situation where terrorists kill many innocent civilians.<sup>11</sup>

The just war theory is often asked over whether it needs to be in an academic area. Thus, O'Driscoll (2013) argues that the discourse of just war should be dealt with as a vocation based on personal beliefs, 'not as a purely intellectual pursuit'.<sup>12</sup> The just war theory is also often criticised due to its two different characteristics: one aspect is the restraint of war, and the other is its justification.<sup>13</sup> There are scholarly attempts

to resolve these obstacles by articulating the just war theory. One proposes the language of 'just peace' instead of just war.<sup>14</sup> Faced with the just war theory's inability to deal with military restraint or realities on the ground, the term of 'ethical peace' is also outlined.<sup>15</sup>

How to make the just war theory more practically applied is also a primary concern, and to that end, institutionalising its norm is proposed.<sup>16</sup> Likewise, empirical inquiries are also one of their focuses in the field. A framework of just war is used to examine military interventions, such as the UN forces' role in Yugoslavia with three scenarios.<sup>17</sup> The U.S., as an international hegemon, has intervened in many wars, and thus, its interventions, such as the War in Afghanistan, serve as key case studies.<sup>18</sup> How armed forces use this theory on the ground is also explored in a more practical way.<sup>19</sup> An intervention in Syria often serves as an analysis of just war theory.<sup>20</sup>

The extant literature of just war theory to date is primarily philosophical or theoretical, although there has been some attempt to examine historical cases with its theory. More importantly, a single battle, not a war, is rarely explored from the viewpoint of the just war theory. Unjustified or brutal behaviour by combatants in a battle, which is part of the war, have been investigated, but sea battles, such as the *Cheonan* Incident, remain unanswered regarding the just war theory. Empirical inquiries should be expanded into a tactical level of a battle to make the just war theory richer and more applicable to the world.

### *War vs. battle*

There are major differences between a war and a battle. 'Battle' is defined as 'a fight between armies, ships or planes, especially during a war' or 'a violent fight between groups of people.'<sup>21</sup> 'War' is defined as 'a situation in which two or more countries or groups of people fight against each other over a period of time.'<sup>22</sup> With these definitions in mind, a battle can be conceptualised as a military fight between two forces at a tactical level, whereas war can be defined as a large scale fight between two states at a political or strategic level. In addition, there is a difference in terms of duration. A battle can be short, even a few minutes, whereas a war can last more than ten years. Also, battle and war are different in terms of scope. Mostly, a war is composed of several battles. Similarly, war is a large scale of conflicts in which many combatants are required to engage, whereas a battle needs a relatively smaller scale of soldiers than a war.

Although there are many battles in a war, all battles do not always go to war. There are two ways in general: a battle could escalate into a full-scale war, or a battle could be finished without war escalation. How to restrain a single battle is important not to escalate into war. The *Cheonan* Incident was not a war but a battle between two Korea's forces, which occurred at sea. This incident has been dealt with primarily as an attack rather than a battle. This framing hinders this incident from being explored in various ways. This paper attempts to define the *Cheonan* Incident not only as an attack but also as a battle for two reasons. First, the West Sea has functioned as a battlefield due to the Northern Limit Line (NLL) friction between the two Korea's which led to the First and Second *Yeonpyeong* Sea Battles.<sup>23</sup> In particular, the North Korean Navy has initiated battles in the West Sea with the use of preemptive or preventive attacks over the decades. The *Cheonan* Incident shows that the same pattern took place in this sea in 2010. Second, the way the ROK navy responded in the event of being attacked allows this incident to be defined as a battle. When this incident occurred, all naval units under the Second Fleet were on the highest alert as part of conducting battles. In particular, naval forces had conducted anti-submarine operations on the spot to counter North Korea's attack.<sup>24</sup> To top it off, the ROKS *Sokcho* fired guns at an unidentified target moving fast in the vicinity of the *Cheonan*.

Unjustified military actions have been a part of concern vis-à-vis the just war theory. The U.S. invasion of Iraq has been discussed from a viewpoint of the just war concept, which turned out to be seen as illegal.<sup>25</sup> However, unjustified military actions in sea battles leave unexplored in terms of the just war principles.<sup>26</sup> This battle did not escalate into war but posed a serious threat to regional security. How to prevent provocations has something to do with how to restrain the use of military force. Thus, the discourse of just battle principles should be dealt with as equally crucial as the discourse of justness in major wars.

#### *North Korea as the state actor in the concept of just war*

North Korea attacked the *Cheonan* to achieve its political goal as the state actor, which implies that its provocation should be understood as a clandestine but official action. When dealing with foreign policy decisions, a state can be conceptualised in two different ways: a unitary actor and one state with multiple sub-actors. The former is based upon

the rational actor model which assumes a state as a single primary actor to achieve its one national goal.<sup>27</sup> The latter is centred on the presence of multi-actors under one state that attempt to maximise their individual or organisational interests.<sup>28</sup> North Korea's provocation is clearly seen as an action by a unitary state rather than by one of the multiple sub-actors in the North Korean regime.

After the incident, rumour has it that Kim Jong-un planned this attack to guarantee and consolidate his leadership in the North Korean regime without informing his father, Kim Jong-il, of his plan.<sup>29</sup> However, this rumour turned out to be less groundless as time went by. Through his book of memoir, *Smoking Gun*, Jong-hun Lee who served as working staff of the Blu House in the event of this unjust action mentioned that the incident was politically designed for Kim Jong-il to provide Kim Jong-un with a window of opportunity vis-à-vis leadership transition.<sup>30</sup> In 2018, Lee once again made it clear in a conversation with Co-Chairman of JIG, ROK Army GEN Jung-I Park, that Kim Jong-il was highly likely to be informed of this Incident.<sup>31</sup> In September 2009, Kim Jong-un had already been designated as the next leader by Kim Jong-il and the transition process had been being made.<sup>32</sup> In this process, Kim Jong-un needed a big event to show his assertiveness as the next leader. These provocations had taken place for Kim Jong-il to consolidate his leadership transition from his father, Kim Il-sung. In this regard, in 2010, Kim Jong-il's interest was inherently the same as Kim Jong-un's.

Similarly, in February 2018, South Korea's Defense Minister Song, Young-moo revealed that Kim Yong-chul, the then-Chief of North Korea's Reconnaissance General Bureau (RGB), played a primary role in sinking the *Cheonan*.<sup>33</sup> Since Kim Yong-chul was appointed as a spy-master of RGB by Kim Jong-il, he was in a position where he should report not only what he had planned but also what he achieved through this attack. Thus, it is more relevant to suppose that Kim Jong-il approved the attack plan and Kim Young-chul carried out this plan under the direct guidance of Kim Jong-un. In this aspect, the two Kims are not two actors but simply one actor defined as the Kim regime. North Korea as a state actor has aimed at achieving a single objective: the Kim regime survival. Multiple sub-actors are existential but they compete with a small portion of domestic affairs, not a regime change. This insight allows North Korea to be conceptualised as a single state actor when it comes to the decision of the *Cheonan* Incident.

The role of public opinion should also be taken into consideration. The impact of public opinion depends on a regime type: democracy or authoritarian. Decision making for foreign policy is more espoused by the public in democratic regimes than in authoritarian regimes. Seen in this light, a bottom-up theory is well-placed to be explaining foreign policy-making of the U.S., a representative state of democracy in terms of the public opinion's impact.<sup>34</sup> The North Korean authoritarian regime, however, is rarely espoused by the public. The North Korean public could ask for more food from the regime leader but rarely intervene in foreign affairs. In particular, in terms of decision making of military provocations, the North Korean regime behaves collectively as a single unitary actor. Even democracies attempt to respond to an enemy's provocations collectively because their action is a matter of national security. Thus, non-military foreign affairs decisions should be differentiated from kinetic-force-orientated national security decisions.

A unique characteristic of North Korea, centering on the Kim regime's survival, and a lack of functional public opinion under dictatorship, allow North Korea to be dealt with as a unitary actor in its action of the *Cheonan* attack. Meanwhile, the public, particularly democracies, can have impacts on creating and promoting discourses in time of peace or in the post-incident period on whether this warfare was just or not. What matters more is that North Korea is most likely to continue military provocations coherently as the state actor when the just war principles are downplayed on an international arena.

### **Just war principles**

How can warfare be justified? There are three axes in the just war theory: *jus ad bellum*, *jus in bello*, and *jus post bellum*. The first axis, *jus ad bellum*, attempts to answer the question to when the use of military force for war is justified. Thus, it is on the right to war that should be considered before going to a war with the following categories: right authority, open declaration, just cause, right intention, last resort, and reasonable hope.<sup>35</sup> *Right authority*, which is related to a sovereignty issue, is a principle designed to stress that a war is justified only when a legitimate authority, mostly a state, wages it.<sup>36</sup> When an improper authority kills opposing soldiers, it is not considered as an act of war but as murders or criminals. *Open declaration* suggests that the proper authority should declare a war publicly rather than wage secretly.

The notion of *just cause* shows when wars are approved legally and could be justified by international norms. The use of armed force for self-defense is legally justified, and humanitarian interventions could also be justified by the institutional norms. Article 51 in the UN Charter stipulates 'the inherent right of individual or collective self defence'.<sup>37</sup> The just war theory and the international community mostly acknowledge a preemptive attack as justified legally and strategically.<sup>38</sup>

A preemptive attack, however, is distinguished from a preventive strike in terms of two aspects: timing and motivation.<sup>39</sup> A preemptive attack is made to effectively strike first when an enemy's attack or war is imminent or already underway. The preemptor expects that striking first will be better to win an unavoidable war in a situation where an enemy is about to attack.<sup>40</sup> By contrast, a preventive strike is aimed at destroying possible threats in the distant future based on guesswork or politically driven judgment rather than careful calculation to deal with unavoidable imminent war. The preventor is motivated to use this strike when the balance of power between two opposing states is changing, or is likely to shift.<sup>41</sup> Thus, a preventive strike remains controversial legally as well as morally, unlike a preemptive attack.

The principle of *right intention* claims that when going to war, a state should be intended to restore and secure peace. Thus, it is not justified for a state to go to war aimed at seeking narrow self-interest. Likewise, any revenge is not allowed. *Last resort* suggests that the use of armed force should be the last option, not the first one. A state should first try to resolve disputes with non-violent options.<sup>42</sup> When all options besides the use of armed force are exhausted, but a dispute is not still resolved, going to war is justified. Finally, the principle of *reasonable hope of success* suggests when there already exists a reasonable chance of success before going to war, the use of armed force is justified. The rational calculation should be made carefully before going to war if the use of military force were to be recognised as a justified option to resolve differences.

The second axis, *jus in bello*, often referred to as the just conduct of the war, is on the rules of warfare that should be followed by all participants, particularly combatants, during a war, with the following categories: proportionality and discrimination.<sup>43</sup> The principle of *proportionality* stipulates that a state should use its military force proportionally to achieve the desired objectives.<sup>44</sup> When a military force attempts to overly destroy an enemy more than the desired objectives,



it is not justified. Thus, this principle is designed to restrain the over-use of military force and minimise destruction. Under this principle, collateral damage is justified. This ethical rule stresses that a military force should not punish an enemy, and to that end, the minimum use of force is required. Meanwhile, defining the minimum use of force is tricky. The use of military forces should be inherently defensive as opposed to total destruction and lethal powers should be constrained to protect civilians and wounded soldiers under the principle of the minimum use of force. The international society based on Track II needs to begin defining the minimum use of force with the prospect of evolving into Track I.

The principle of *discrimination* stresses the immunity of non-combatants from war. Thus, it is not just to kill or attack innocent civilians intentionally. Similarly, it is not justifiable to retaliate even against prisoners of war (POWs). In addition, according to this principle, a military force should not be used to target not only non-combatants, primarily civilians, but also combatants who do not pose a threat to it. Soldiers who are injured or shipwrecked are immune to warfare. In this sense, this principle is also linked with humanity. Both proportionality and discrimination are designed to minimise violence in war and reduce harm.

The final axis, the most recent one, *jus post bellum*, refers to justice after war, primarily focusing on post-war settlements.<sup>45</sup> The end of the war should be directed to ensure peace. War should be terminated with just cause to ensure peace, ranging from a formal apology to rehabilitation.<sup>46</sup> An enemy threat should be removed on the ground. The post-war status should not remain unstable if a war were to be prevented from resuming at any time. The victors should respect the losers' human rights and differentiate between combatants and non-combatants when dealing with post-war issues. How to make a state functionally normal and maintain a peace system should be considered seriously rather than be left unresolved. Finally, maintaining postwar peace should be prioritised over taking revenge or asking for excessive compensation.

### **What Happened in 2010: Sea battle provoked by North Korea**

In 2010, North Korea was under a lot of pressure from the international community due to its nuclear ambition. When Pyongyang conducted its first nuclear test in 2006, the UNSC passed Resolution 1718.<sup>47</sup> In

addition, after the second nuclear test in 2009, Resolution 1874 was passed in the UNSC.<sup>48</sup> These Resolutions were designed to compel Pyongyang to abandon its nuclear program through economic sanctions. Thus, North Korea was in serious economic difficulties. South Korea, as part of the international community, participated in these economic sanctions. In addition, South Korea's Sunshine Policy, which contributed to increasing economic assistance to North Korea, had been nullified in 2008 when a new administration took power. These situations made North Korea grumble.

One year before the *Cheonan* Incident, military tension stayed extremely high. In April 2009, North Korea launched a three-stage rocket over the Pacific, which was recognised as provocative by the international community.<sup>49</sup> Meanwhile, in November 2009, the Battle of *Daecheong* occurred as a North Korean boat crossed the NLL, and in response, South Korean ships fired warning shots. In this battle, North Korea was greatly defeated. There were no casualties on the South Korean side, whereas North Korean forces were seriously damaged.<sup>50</sup> North Korea was frustrated by South Korea's unilateral victory at sea. A few hours later, Pyongyang demanded an apology from Seoul.<sup>51</sup> On November 12, Pyongyang, through its party newspaper, *Rodong Sinmun*, revealed its intention to avenge this battle while mentioning "The South Korean forces will be forced to pay dearly for the grave armed provocation."<sup>52</sup> North Korea unilaterally declared a no-navigation zone near the NLL while conducting live-fire drills, which made military tensions higher.

The year 2010 was also a transitional period to North Korea itself domestically in terms of a political power change. Then, Kim Jong-un, was preparing to be designated as the successor of his father, Kim Jong-il. Thus, a big event was crucial for a young Kim to be recognised as a credible successor of the regime. Meanwhile, on 26 March 2010, the *Cheonan* was sunk by unknown shock, and 46 sailors were tragically killed in action. This navy ship was deployed for a routine patrolling mission around the NLL, the de facto sea demarcation line, in the West Sea.<sup>53</sup> The ROK Navy, which had already experienced several skirmishes, including the 2002 *Yeonpyeong* Sea Battle, responded to this incident with all possibilities on the table. Thus, when an unidentified object appeared on radar after the *Cheonan* Incident, the ROKS *Sokcho*, steaming nearby, fired hundreds of shots at the target, which reportedly turned out to be a flock of birds.<sup>54</sup> In this sense, this counteract, after

being damaged, could be regarded as one of the sea battles. On the day of the *Cheonan* Incident, the ROK Navy's Second Fleet Command recognised that a few North Korean vessels, including a submarine, had disappeared from its Nampo naval base.<sup>55</sup>

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On 31 March 2010, the JIG was organised to make the investigation credible, and 73 experts attended it from five different states.<sup>56</sup> On 15 May, the parts of a torpedo, CHT-02D, were recovered from the sinking seabed and served as smoking gun evidence.<sup>57</sup> The JIG concluded that the *Cheonan* was sunk due to 'shock wave and bubble effect' following the explosion of this torpedo manufactured by North Korea.<sup>58</sup> On 9 July, the UNSC condemned the attack on the *Cheonan* through a presidential statement, although it failed to criticise Pyongyang openly.<sup>59</sup> Unlike the international community, China stayed relatively calm and was reluctant to condemn Pyongyang.<sup>60</sup>

### **North Korea's attack on the ROKS *Cheonan*: Just or unjust?**

*The first axis (jus ad bellum): Unjustified in terms of the 'pre-battle' principles*

The *Cheonan* incident shows that North Korea failed to comply with the following 'pre-battle' principles: right authority, open declaration, just cause, right intention, last resort and reasonable hope. First, North Korea as a state, neither bandits nor non-state terrorists, planned to attack the *Cheonan*. In this sense, the attacker might be justified according to the principle of the right authority. However, North Korea did not preserve other principles. Thus, to be more precise, this action was unjust warfare led by a state, which meant the state with the right authority intentionally made unjustified acts. Second, North Korea did not declare its military plan to attack one of the South Korean ships. Rather, Pyongyang secretly deployed a midget submarine to the southern part of the NLL and fired a torpedo against the *Cheonan*. In particular, a submarine used the night time for a secret attack not to be detected by the South Korean military. The attacker, Pyongyang, rejected Seoul's call for an apology even after a smoking gun was found on the seabed while arguing this incident was 'fictitious'.<sup>61</sup>

Third, the attack was not justified in terms of the principle of just cause. North Korea's attack was far from self defence. The UN charter stipulates the use of military force for self defence. However, North Korea made a surprise attack on the *Cheonan* rather than defended itself against imminent threats. Thus, Seoul regarded the attack as a vio-

lation of the UN charter.<sup>62</sup> North Korea's action was a brutal attack on the ship which had no intention of using its weapons. How can North Korea's provocation to the *Cheonan* be explained: preemptive, preventive or neither? Its action is not assessed to be a preemptive attack because there was no imminent threat to North Korea by South Korea. North Korea's behaviour could be explained more as a preventive strike designed to win possible conflicts in the distant future politically as well as militarily. North Korea's asymmetric attack was chosen to offset the imbalance of naval forces between the two Koreas and to preventively obstruct South Korea's blue water navy strategy.<sup>63</sup> Considering that South Korea had always been defence-oriented, on the other side, North Korea's action could not be fully explained as a preventive strike alone.

Fourth, North Korea's attack had no right intentions in the sense that it sought narrow self-interest rather securing peace by successfully making a surprise attack. This provocation was intended to make the succession process from Kim Jong-il to Kim Jong-un more stable. Using military force served as a useful mechanism to deal with 'the potentially violent succession process' more effectively.<sup>64</sup> North Korea reportedly attacked the *Cheonan* to make the best of securing political power in the regime. Military victories under his belt could help Kim Jong-un guarantee succeeding his father, Kim Jong-il.<sup>65</sup> Kim Jong-un, who emerged as the heir apparent of the Hermit Kingdom, reportedly commanded this attack, similar to his father, who planned a series of provocations in the 1970s.<sup>66</sup> On 28 September 2010, following the *Cheonan* Incident, Kim Jong-un was appointed to two crucial posts, including vice-chairman of the Central Military Commission, which meant he was officially acknowledged as his father's successor.<sup>67</sup> On 17 December 2011, when Kim Jong-ill was dead, Kim Jong-un took full power without hindrance. It could not be justified if a state were to wage a battle for domestic politics.

In addition, this attack on the *Cheonan* was intended to maximise the negotiating power by increasing military tensions. In 2010, the international community failed to provide economic aid to North Korea due to its nuclear program. Meanwhile, the Military-First policy, prioritising the military, was at the centre of North Korea's policies, which were adopted by Kim Jong-il. Thus, by increasing tensions through the use of military force, Pyongyang aimed to maximise the negotiating power and contribute to the regime's survival at the end of the day.<sup>68</sup>

Furthermore, the principle of right intention strongly opposes military revenge. However, North Korea aimed to attack one of the ROKS ships asymmetrically to avenge its defeat in the 2009 *Daecheong* Battle.<sup>69</sup>

Fifth, North Korea failed to exhaust all non-violent options before taking the military option. Thus, North Korea violated the principle of last resort. In a sense, Pyongyang chose the attack as the first option, not the last, in the sense that North Korea had continued a series of provocations without engaging with the international community. Despite a series of provocations, the international community was then reluctant to militarily punish North Korea to look for an opportunity to resolve North Korea's nuclear issue peacefully. The Six-Party Talks were expected to resume, and the prospect of an inter-Korean summit appeared to be bright.<sup>70</sup> Even the U.S. administration under President Obama adopted Strategic Patience rather than rushing to a military option. However, North Korea rejected any diplomatic engagement while continuing provocations. Rather, North Korea expected to achieve both political and strategic interests by making a surprise attack asymmetrically. In this regard, its attack on the *Cheonan* was the first choice of North Korea, not the last resort.

Lastly, when it comes to the principle of reasonable hope, North Korea appears to have seriously examined how its attack on the *Cheonan* could succeed. In this sense, North Korea's use of armed force could be mistaken as justified. Its military plan to attack it underwater, however, might have been more guaranteed for success tactically, not politically. Its brutal attack was not the most optimal option to resolve differences, which serves as a key criterion to judge whether an action is justified or not. The attack was not intended to resolve key differences, its nuclear program and economic sanctions as punitive measures, but to increase military tensions for achieving other objectives, including domestic politics. North Korea's brutal use of armed force served as a tragic case to invalidate the East Asian community that seeks to resolve contested issues by a norm, not by violence.<sup>71</sup> Put it simply, the attack was far from the reasonable hope of resolving the issue.

*The second axis (jus in bello): Unjustified in terms of the 'in-battle' principles*

North Korea's attack on the *Cheonan* is also not justified from a viewpoint of the 'in-battle' doctrine with the following principles: proportionality and discrimination. First, the attack was not carried out

proportionally. As aforementioned earlier, North Korea attacked the *Cheonan* to revenge its defeat in the Battle of *Daecheong*. Any revenge is not permitted under the just war principles. Even if North Korea's behaviour is assumed to be a chain of action and reaction between two enemies, its military's attack was not proportional to its casualties in the Battle of *Daecheong*. In this previous battle, reportedly, one sailor was killed, and three others were injured on the North Korean side.<sup>72</sup> The North Korean military, however, killed 46 soldiers through this brutal revenge. Revenge could be seen as the most effective when the opponent is damaged hardest. With this in mind, North Korea is assumed to have attacked its opponent ship unproportionally.

Likewise, North Korea's asymmetrical tactics were not proportional to its desired objective. The Battle of *Daecheong* occurred as a North Korean ship crossed down through the NLL and posed a threat to South Korea's security. What Pyongyang sent another military vessel to the southern part of the NLL to achieve its desired object of revenge was neither proportional in terms of a just war principle nor achievable towards its objective when faced with condemnation from the international community. The North Korean military overly destroyed the opposing force by sinking the *Cheonan*, which was more than its desired objective. North Korea did not attempt to restrain the overuse of its military force but rather to maximise the effectiveness of its attack.

Second, the *Cheonan* sinking is also controversial even regarding the principle of discrimination. Obviously, North Korea did not attack civilians, such as fishermen, at sea but only killed sailors who were on a military ship. This outcome, however, was made not because it tried to discriminate between combatants and non-combatants but because there were no civilians onboard. The principle of discrimination becomes applied significantly when both combatants and non-combatants are located in the same area. On 23 November 2010, when North Korea bombed *Yeonpyeong* Island, it did not attempt to differentiate between marines and civilians. Two civilians, as well as two marines, were killed by its shelling. Thus, it cannot be evaluated that North Korea had had the principle of discrimination in mind when attacking the *Cheonan*.

Moreover, the principle of discrimination objects to attacking soldiers who are disabled or shipwrecked. The *Cheonan* was not conducting a routine patrolling duty but was staying off the coast of *Baekryeong* Island to remain safe from bad weather when it was attacked.<sup>73</sup> In

this sense, the *Cheonan* was in a status of navigational inability similar to the status of a shipwreck. Rather than taking discrimination into account, North Korea used this opportunity of bad weather to make its asymmetric attack secretly and successfully. Thus, North Korea's attack was mean and brutal without any justification.

*The third axis (jus post bellum): Unjustified in terms of the 'post-battle' principles*

pyongyang failed to follow the third axis of just war principles. North Korea was not interested in maintaining peace after this battle, but even more provocative, which made situations more aggravated. In the same year of the *Cheonan* sinking, North Korea even bombed South Korea's direct sovereign territory, *Yeonpyeong* Island. One more military provocation was required to consolidate Kim Jong-un's succession process, and thus, in November, Pyongyang shelled *Yeonpyeong* Island.<sup>74</sup>

In addition, the just war principle on the post-war lays out just cause after the warfare, including an apology. Despite the result of the JIG, Pyongyang did neither acknowledge its provocation nor make an apology. Even in the post-battle period, military threats have not been removed in the contested waters as North Korea continued to be provocative to achieve its nuclear program. In this sense, North Korea did not pay attention to post-battle settlements but to post-battle conflicts.

Both the *Cheonan* sinking and the *Yeonpyeong* shelling could be understood as the remnants of the unresolved Korean War in the sense that the NLL remains contested waters.<sup>75</sup> If North Korea were to assume that its attack was made as part of the Korean War, it could mean that Pyongyang had not complied for several decades with the just war principle on post-war, *jus post bellum*, where post-war settlements should be prioritised. Even if this attack were to be made independently of the Korean War, North Korea could not be said to be justified either because the end of a battle did not lead to ensuring peace but to aggravating security in the region. Such battles failed to resolve contested issues and, instead, made the contested waters be changed into a battleground.

Pound for pound, North Korea's provocation is not justified by all three axes of the just war principles. The in-depth examination, however, has rarely been made over whether North Korea's use of military force is justified in its attack of the *Cheonan*. This absence led to the

outbreak of another unjust warfare in the same year, the *Yeonpyeong* Island shelling, mentioned above, while playing no roles in restraining North Korea from taking another unjust provocation.

## Conclusion

North Korea's attack on the *Cheonan*, explored above, proves that it was not only brutal ethnically but also unjustified in terms of the just war principles. At first glance, the *Cheonan* Incident seems to be a provocation, made by North Korea locally, without international implications. However, this analysis clearly shows how important it is to restrain the overuse of military force even in a single battle. Accordingly, the just war theory should expand its scope from war to a single battle and a small scale of limited warfare. This examination offers policy and political implications.

First, the expansion of the just battle principles could contribute to preventing brutal provocations from repeating and restraining the brutal use of military force more widely, including provocations even at peacetime. In the post-*Cheonan* Incident period, the discourse of just battle principles has been rarely made domestically in South Korea as well as internationally. The lack of concern for the concept of just battle has encouraged Pyongyang to continue provocations such as the most recent incident in September 2020, the brutal shooting of a South Korean official at the West Sea.<sup>76</sup> The pressure from South Korea and international society could derail the North Korean regime's brutal actions by coercing it to perceive the function of justness. The public pressure, made under a raft of activities including publishing human rights reports against the Kim regime, can allow Pyongyang to recognise disadvantages for its regime's survival when making itself be seen as a brutal regime.<sup>77</sup> To that end, the role of the public matters particularly in peacetime because a state actor is forced to be unitary in times of war. The post-incident period and time with no imminent at the moment provides the domestic public with a window of opportunity to play as one of the multiple actors in a state. The international public has more leeway to create this discourse because it serves as a different actor from a state actor. This leeway allows the international actor to create and promote this discourse in times of war as well as in peacetime.

More importantly, the growing concern for unjust war by the public contributes to reconciling different stances of each state on which is just war. Downplaying the just war principle allows every state to



define just war in its own preferable way and even excuse its brutal actions as being just for national security. The discourse creation can serve as a good starting point for reducing these gaps. Who has the authority to judge 'just or not' is also another important agenda. The UNSC needs to seize the initiative of establishing a sub-committee in charge of these affairs while cooperating with Track II professionals as well as governments around the world.

The results of these criteria, no justification of North Korea's attack on the *Cheonan*, should be shared by the international community. If this type of attack were to be left behind because of its tactical characteristics, not war-level strategic ones, war escalation is more likely in the world. Even a single battle, not wars, should be restrained by adding limited warfare to the just war discourse. The expansion of just war principles will allow possible damages to be mitigated and even will prevent military provocations from being made at peacetime by restraining the possible aggressors institutionally rather than militarily. Asymmetrical attacks could be more effective in achieving tactical goals. When the just war theory is expanded, however, their attacks are unlikely to lead to the achievement of strategic goals. Similar to Walzer's emphasis, when military attacks like the *Cheonan* Incident are recognised as unjustified more collectively, military provocations are expected to be restrained.<sup>78</sup>

Second, expanded principles can help more audiences judge situations more fairly. The public's role is crucial to applying the just war principles to the real world. Although a multinational investigation revealed that North Korea was the attacker, some audiences, including journalists and professionals, are reluctant to believe the announcements of the South Korean government and the multinational investigation team.<sup>79</sup> Their reliance on conspiracy theories, not the official result of the investigation, encourages North Korea to evade its responsibilities. Meanwhile, the discourse of just battle has rarely been created or delivered over whether North Korea's brutal action could be justified or not. As a result, some audiences continue to be reliant more on conspiracy theories to this day. By providing a fair chance of thinking to such audiences, the expanded discourse of just war principles will help prevent the continuation of unjust situations like the *Cheonan* Incident.

Third, it contributes to the accumulation and even the evolution of the just war paradigm. Even a tactical provocation is most likely to link

to political or strategic intentions. Thus, when the scope of the just war theory expands a political outlook into a single conflict with a tactical characteristic, it is more likely to produce positive impacts synergistically by making the international community pay more attention to the importance of justness. Accordingly, it will be able to evolve into the military restraint theory simply beyond the justness of a war. In addition, the extant literature pays more attention to ethical or moral grounds when it comes to the just war theory. Thus, the realist school of International Relations (IR) has tended to neglect the importance of this discourse while regarding war as inevitable in the real world. When these principles are in the works even tactically, military experts and the realist school are more likely to rush to it, contributing to not only the richness of the just war theory but also further leading it to evolve into a grand theory of war.



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