

를 포기하는 한, 완벽한 투명성이 갖춰지는 한, 잠재적 무기 프로그램에 대해 진행되는 사항을 국제사회가 정확히 파악하는 능력이 있는 한 대북전력제공은 꽤 합리적으로 본다"고 말했다. 힐 차관보도 8월 11일 기자회견에서 북핵 6자회담이 타결되기 위해선 "북한이 일단은 경수로를 포함해 핵의 평화적 이용권을 주장하지 말고 기존의 모든 핵프로그램 해체에 응해야 한다"고 강조했다. 이처럼, 미국의 초기 반응은 최대 쟁점인 북한의 평화적 핵이용권과 관련해서 부정적인 반응인 것이다. 그러나 이러한 미국의 입장은 앞서 지적한 바와 같이 국제사회의 동의를 얻기 힘들 뿐더러 북한의 동의를 얻을 가능성은 더더욱 희박해 보인다. 관련하여, 러시아는 이미 북한의 평화적 핵이용권을 지지한 바 있다. 한국의 정동영 통일부장관도 8월 10일 취임 1주년 기자회견에서 "북한의 평화적 핵 이용 권리는 북한의 일반적인 권리로서 북한이 마땅히 가져야 한다는 것이 우리의 생각이다. 그런 점에서 우리와 미국의 시각에는 차이가 있다"고 밝혔다. 정동영 장관의 이 같은 발언은 미국의 주장이 얼마나 부당한지를 잘 보여준다.

- 힐 차관보는 위 기자회견(8.11.)에서 이 달 하순 휴회중인 제4차 6자회담이 속개되면 북핵 해결 '원칙 선언문'에 대한 합의에 이어 구체적 조치에 대한 합의도 이룸으로써 '이르면 9월, 늦어도 10월엔' 완전 타결되기를 희망했다. 그는 8월 9일 미국의 공영방송사인 PBS와 회견에서도 "구체적 조치들의 수순 문제는 다음 단계의 합의문에 포함될 수 있을 것"이라고 말해 1단계 원칙 선언, 2단계 실행 조치와 수순 합의, 3단계 행동 착수의 다단계 일정을 신속히 추진, 연내 마무리한다는 목표임을 시사한 바 있다. 이처럼, 미국은 올해 안에 핵문제를 해결해야 하고, 해결하기를 희망하고 있는 것으로 보인다. 미국이 올해 안에 '완전 타결'을 희망한다면 방법은 단 한 가지이다. 북한의 비핵화 제의를 수용하는 것 외에 다른 타결방법이 없어 보인다. 미국은 매우 다급한 상황에 놓여 있지만, 반면 북한은 전혀 급할 것이 없기 때문이다. 북한은 올해 안에 최소한 1기의 대용량 발전소를 완공하게 되며, 시간이 지날수록 협상의 지렛대는 커져가게 될 것이기 때문이다. 북한의 핵능력이 증대되면 될수록 협상은 더욱 복잡해지고 미국이 지불해야 할 대가는 커지게 된다. 시간은 북한의 편이며, 미국은 협상을 주도할 유용한 수단은 안보이기 때문이다. 북미간의 이견은 여전히 크지만 4차 6자회담이 아무런 결론 없이 결렬될 가능성은 그렇게 높아 보이지 않는다. 북미간의 이견을 좁혀 나가는 과정이 쉽지는 않겠지만, 현재 미국 주장의 궁색함을 놓고 볼 때 회담이 재개된다면 결국 북미간의 이견은 상당부분 해소될 수밖에 없을 것이다.

## 5. 한반도 핵문제의 해법

### -한반도 평화체제의 수립과 비핵화는 핵문제 해결의 유일한 해법

- 한반도의 핵문제는 한반도 평화체제의 수립과 동시비핵화가 이루어지지 않고서는 해결될 수 없다. 북한의 입장에서, 북미간 군사적 대치상태와 한미일동맹이 해소되지 않은 한 가장 실효성 있는 안보해결책인 핵무장의 유혹은 계속될 것이다. 동북아는 지구상에서 가장 위험한 핵무장지대이다. 미국과 러시아는 이미 1만여기의 핵무기를 보유하고 있고, 중국도 400여기 이상의 핵무기를 보유하고 있으며, 일본 역시 수개월 내 수천기의 핵무기를 보유할 수 있는 능력을 가지고 있다. 이 같은 핵 밀집지역에서 세계 최대의 핵보유국인 미국과 무려 60여년간 군사적으로 대치하고 있는 북한이 자국의 안보문제를 해결하기 위해 핵무장을 선택한 것은 어쩌면 당연한 일인지도 모른다. 따라서, 신뢰할 만한 안보상의 담보가 없는 조건에서 북한이 핵무장을 포기할 가능성은 높지 않다. 미국이 북한에 대한 핵위협을 제거하고 한반도 주변지역을

영구히 비핵화하지 않는다면 한반도 핵위기의 악순환 역시 결코 해소되지 않을 것이다. 미국은 일방적인 태도를 버리고 합리적인 국제적 기준에 따라 핵문제의 해결방법을 모색해야 한다.

- 북한의 핵폐기가 곧 한반도 비핵화는 아니다. 북한 뿐만 아니라 미국과 주변국들 역시 비핵화의 의무를 가지고 있으며, 일방적인 비핵화가 아니라 상호비핵화가 이뤄질 때 협상과 타결의 가능성이 열리게 될 것이다. 미국은 북한이 핵폐기 의사를 밝히는 대로 1991년 '전술핵무기 철수 선언'과 1992년 '한반도 비핵화선언'에 따라 한국 내에서 모든 핵무기를 철수해야 하며 이를 객관적인 검증 절차를 통해 보증해야 한다. 또한 한반도 주변국들의 추가적인 핵무장 가능성을 제도적으로 억제해야 하며 동북아에 신뢰할 수 있는 안보협력 틀을 구축하여 선핵보유국들이 비핵보유국의 안보상 우려를 해소해야 한다.
- "정전협정의 평화협정으로 전환"과 "한반도 평화체제 구축"은 한반도 핵문제의 해결을 위한 기본담보이다. 앞서 언급한 바와 같이 북미간 전쟁상태가 지속되는 한 누구도 핵무장의 유혹을 버릴 수 없다. 정전체제는 동북아 평화의 가장 큰 장애인 만큼 6자회담에 참가하고 있는 관련국들은 핵문제의 해결과정에서 '평화협정 체결'을 적극적으로 추진해야 하며, 한반도 핵위기를 항구적인 평화체제 수립을 위한 기회로 전환시켜야 한다. 참가국들이 합리적인 기준에 따라 성실하게 6자 회담을 이끌어 간다면 한반도 핵문제는 반드시 해결 될 수 있을 것이다. 핵문제의 해결은 동북아 뿐만 아니라 세계평화의 전환적 계기가 될 것이다. <끝>



## **NPT, North Korea Nuclear Crisis, and Nuclear-Free Northeast Asia**

**CHEONG WookSik**

Representative, Civil Network for a Peaceful Korea

### **1. Why the 7th NPT Review Conference Failed**

The 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), held from 2 to 27 May 2005 at the United Nations Headquarters in New York, produced no substantive agreement before coming to an end. Failing to bridge the gaps between nuclear-weapon states and non-nuclear-weapon states, the 35 year old treaty seems to be doomed to meet a fatal crisis just around the corner.

The Conference was held in the middle of the unprecedented nuclear crisis: the United States strategizing preemptive nuclear attacks and developing new nuclear weapons; North Korea's withdrawal from the NPT and acknowledgement of its possession of nuclear weapons; and the Iranian nuclear weapons development plan. The top priority of the delegations at the Review Conference, thus, was the consolidation of the Treaty regime, whatever motivations and objectives each had in mind. Expressing regrets to the failure of the Conference, Kofi Annan, Secretary General of the United Nations, concluded that the delegates had missed the opportunity to advance security against the dangers the international community face. He suggested the matter be brought again to the World Summit in September this year and the deadlock be broken. Sergio Duarte, former Foreign Minister of Brazil who chaired the Conference, said at the end of the Conference that one could write several books on the opinion gaps.

The Conference was a clear display of the huge gulf between the nuclear states represented by the US and their counterparts including Iran and Egypt. The US delegates attempted to come up with countermeasures against North Korea and Iran at the occasion and one of them was a resolution against North Korea on the country's withdrawal from the Treaty and nuclear weapons development. It failed without getting any support from China and non-nuclear states. The US further argued that even uranium enrichment and reprocessing should not be allowed to any states but to some including nuclear states, which aimed to hinder Iran's alleged nuclear weapons development plan.

Iran refuted the idea by arguing that their prime priority of nuclear program was generation of electricity and uranium enrichment and reprocessing could not be



compromised as "the inalienable right" to develop use of nuclear energy for peaceful purposes is guaranteed to all parties to the NPT. Javad Zarif, Iran's Ambassador to the United Nations, argued that the biggest threat to world peace comes from nuclear states such as the US. He highly denounced the US for developing new nuclear weapons, refusing to sign the Comprehensive Test Ban Treaty (CTBT), adopting preemptive nuclear attack strategy, and having a nuclear use agreement with Israel. Recalling the nightmare of Hiroshima and Nagasaki sixty years ago, he said "If history is any guide, nuclear weapons are in the most dangerous hands."

Egypt also joined the attempt to put Israel on the agenda, referring to the Middle East Resolution, which was adopted in a past review conference for a nuclear-free zone in the region. Israel, who has never signed the NPT, is estimated to have some 200 nuclear warheads. It escaped being on the agenda as the US objected the idea.

As shown above, the unbridged gap between the nuclear and non-nuclear states was the decisive factor for this Conference's failure. While the gap is not new to us, the Treaty has been successively extended indefinitely at the 5th Review Conference in 1995 with nuclear states' pledge of no use of their nuclear weapons against non-nuclear states and disarmament. In 2000, the 6th Conference further agreed on 13 steps to disarmament.

This year's Conference, however, had worried many even before it began. While it was North Korea and Iran that drew a dark shadow on the international efforts for non-proliferation with their respective withdrawal from the Treaty and development plans, the unilateralism of the Bush Administration is the decisive factor for the failure. It refused to reaffirm the 13 steps to disarmament that had been agreed on during the Clinton Administration and it also refused to discuss the Israeli nuclear issue. Above all, the Bush Administration submitted a draft budget for the development of nuclear bunker buster warhead while the Conference was in session, which prompted much criticism from the participating delegates.

The US was also criticized for denying the right to peaceful use of nuclear power that is endowed to every non-nuclear weapon states under the condition of not developing any nuclear weapons. While it is true that uranium enrichment and reprocessing facilities can be used for both ways, its use for weapons development programs should be regulated through proper procedures of monitoring and close inspection. Denying the whole access to the facilities was criticized for blocking rational approaches to the problem. The US also refused the 5 year fissile ban treaty proposed by the IAEA, arguing that it might restrict the country's nuclear use. This is another evidence of the US unilateralism that tries to fortify its own nuclear hegemony while controlling others' nuclear use. Joseph Cirincione, nonproliferation expert in the US, argued that the US

succeeded in blocking any substantive discussion of the disarmament issues regarding the country, but in so doing it ruined any substantive advances in the nonproliferation agenda on the countries such as Iran and North Korea.<sup>1</sup>

The failure of the Conference may trigger skepticism on the NPT regime as it is now clear to non-nuclear states that the US and other nuclear states have no will to disarm their nuclear weapons. To non-nuclear states' rage, the Conference did not induce from their counterparts the usual lip service of disarmament.

On the other hand, the US tries to take advantage of the failure to have its way with the nonproliferation regime. Pursuing its own Proliferation Security Initiative (PSI) against weapons of mass destruction, the country is trying to build a new nonproliferation regime centered on the Nuclear Suppliers Group (NSG) or the G8. Such initiatives do no good to bridge over the chasms and frictions in the international community but to rather increase the risk of nuclear wars. The terror of nuclear wars is ringing to the ears of humankind once again after the end of the Cold War.

In his writing to the International Herald Tribune, May 30, 2005, Kofi Annan, Secretary General of the United Nations, mentioned that "nearly two-thirds of the proceedings [at the 7th Review Conference] were consumed by debate about agenda and logistics, instead of substantive discussions on how to strengthen the nonproliferation regime," asking for the international community to put all their efforts together for a breakthrough in the coming World Summit. He also urged the international community to reinforce the regulation systems through the IAEA Additional Protocol to the NPT; to provide incentives to those countries voluntarily giving up nuclear fuel cycle facilities including enrichment and reprocessing plants; to promptly bring into effect the Fissile Material Cut-off Treaty (FMCT) and the Comprehensive Test Ban Treaty (CTBT) in order for the nuclear states' responsible disarmament.<sup>2</sup> Considering the different perspectives on the NPT between nuclear and non-nuclear states, however, an agreement for the reinforcement of the Treaty regime is not likely at the Summit in September.

This paper aims to discuss ways to reach peaceful resolutions to the North Korean nuclear issues and a nuclear-free Northeast Asia under the current context of the NPT crisis. Such an approach may not shed lights directly onto the issues that are discussed in the framework of the Six-Party Talks. However, it is worth researching as North Korea is someday expected to come back to the NPT regime and sign the IAEA

<sup>1</sup> Bernard Gwertzman, "Cirincione Outlines 'Deals' to Get North Korea and Iran to Forego Nuclear Weapons," Council on Foreign Relations, June 6, 2005.

<<http://www.cfr.org/publication.php?id=8162>>

<sup>2</sup> Kofi Annan, "Break the Nuclear Deadlock," International Herald Tribune, May 30, 2005.



Additional Protocol. Furthermore, discussions on Northeast Asia nuclear-free zone cannot be separable from the ultimate solutions to current problems including the North Korean nuclear issues, Japanese nuclear armament and peace and security of the Korean Peninsula.

## 2. NK Nuclear, US Nuclear and the NPT

NPT became well-known to the general public in Korea along with the development of the North Korean nuclear problems. North Korea had announced its withdrawal from the Treaty in March 1993, criticizing the US hostility against the country and the unfairness of the IAEA demands. It caused a vehement protest from the US and consequently, the biggest turmoil in the peninsula. The rip, which had been temporarily stitched thanks to the Agreed Framework in 1994, has opened again in 2003 when North Korea, disturbed by the US hard line policies since the Bush Administration, withdrew from the Treaty regime once again and acknowledged its possession of the nuclear weapons.

As a result, top on the NPT agenda during the last decade has been North Korean, the only country that has ever withdrawn from the Treaty of 188 signatories and developed nuclear weapons. This gave the US a good reason to blame North Korea for endangering the NPT regime. For the US that does not wish the North Korean nuclear problems to be viewed within the NK-US relations, the Treaty with the most signatories among international disarmament treaties is the most useful tool to make the issues international.

There is no doubt that the Treaty regime is threatened by the movements of North Korea. What should not be neglected by the international community is that the crisis is attributed to the US as well. It is unilateralism of the US to deny rights of member states of the Treaty and demand their fulfilment of duties. North Korea is to blame for ignoring procedural requirements in its withdrawal from the Treaty. However, all discussion but the causes for such withdrawal would be empty talks as every state is endowed by Article X of the Treaty the right to withdraw when their "supreme interests" are jeopardized.

Let us then turn to the nuclear threat from the alleged by North Korea. It is crucial to understand the reality of such threat and the consequent insecurity North Korea faces before starting anything to negotiate the problem. The NK nuclear crisis would remain the same unless any misconceptions are corrected and threats resolved.

The US nuclear threat is not manipulated by North Korea but real. After all, North Korea has never been excluded from the targets of the US preemptive attack until today. During the Korean War, the US had examined the use of nuclear weapons against North Korea and right after the armistice agreement was signed on July 27th, 1953, it announced a massive retaliation strategy. According to the strategy, the US was to use nuclear weapons when attacked by enemies with conventional weapons. In January 1955, Arthur Radford, Chairman of the Joint Chiefs of Staff visited Seoul and announced that the strategy also covered the peninsula, where the US Forces Korea started to forward deploy various tactical nuclear weapons since 1958.

The massive retaliation strategy against North Korea was concretized in the form of the Team Spirit military exercises. 1978, when the exercises started, was also the year the Carter Administration declared that the country would not use nuclear weapons against non-nuclear states. That is, the US started nuclear attack exercises against North Korea while pledging for the opposite to the rest of non-nuclear states. The exercises included F-16 fighters that can be loaded with nuclear weapons, B-1B fighter-bombers and nuclear missile submarines. Nuclear cannon exercises also frequently took place to fight against North Korea's field guns. Naturally North Korea reacted tensely and was under wartime mobilization everytime the exercises took place.

The US nuclear threat seemed to be gone as they pulled tactical nuclear weapons out of the peninsula in 1991 and discontinued the Team Spirit exercises after the Agreed Framework in October 1994. However, it turned out to be a deceit later on. At that time, the 1995 NPT Review Conference was drawing near and the promises of limited nuclear safe area through the Agreed Framework in 1994 and the following promises in 1995 and 1996 had been made in order to maintain the US-led nonproliferation regime.

Whether or not to give security assurance to North Korea was one of the major issues for discussion then within the Clinton Administration. It was thought that the promise might lead the country to believe that it had better chances to attach South Korea or Japan. In the end, the US did not keep the promise to North Korea for fear of gathering misconceptions that it withdrew its security assurance to South Korea and Japan.<sup>3</sup> It also turned out that the Clinton Administration continued its mock nuclear attack exercises against North Korea after reaching the Agreed Framework.

It is supported by the findings of the Nautilus Institute, a US security research institution, from the US government documents that became declassified under the Freedom of Information Act.<sup>4</sup> In place of the weapons pulled out of the peninsula in

<sup>3</sup> The Japan Times, March 6, 2005.

<sup>4</sup> Consult the Nautilus Institute webpage for more information at



1991, the US used long-range bombers such as F-15E and B-1 and Trident nuclear submarines equipped with nuclear missiles. The 4th Air Fighter Wing, based in the US, was placed in charge of American nuclear attacks on North Korea. Early in 1998, mock nuclear attacks on North Korea were staged several times at the Seymour Johnson Air base in North Carolina.<sup>5</sup>

As mentioned above, North Korea has always been one of the targets of the US preemptive nuclear attack. The massive retaliation strategy stationed nuclear weapons in South Korea as soon as the war ended and the Team Spirit exercises were under way when the US gave negative security assurance to non-nuclear states. Weapons and forces in the US replaced those in Korea when they had to pull them out of the peninsula and the Agreed Framework did not mean any security guarantee. The Nuclear Posture Review (NPR) of the Bush Administration defined North Korea as a country of chronic military concern and one of the primary targets for nuclear attack along with Iraq.

The US may argue that North Korea does not meet the conditions for negative security assurance. The US has pledged not to use nuclear weapons against non-nuclear-weapon states that are members of the nuclear Nonproliferation Treaty (NPT), except if attacked by such a state that is allied with a state possessing nuclear weapons. North Korea, which signed to the Treaty later in 1985 and was allied to the nuclear USSR and China, may not fall in the category in some sense. However, such conditions themselves reflect the US unilateralism in the first place and it cannot be overlooked that the US maintained its preemptive attack strategy regarding North Korea even after the latter became a member to the Treaty. Furthermore, secretly planning nuclear attacks under the cover of negative security assurance guaranteed from the Agreed Framework damaged the fundamental spirit of the agreement. It is especially so now that Bush has officially announced preemptive nuclear attack strategy as mentioned earlier.

To make matters worse, the Bush Administration does not limit the use of nuclear weapons to retaliation but also plans against North Korea's underground headquarters and military facilities if necessary. The Administration argues that these targets cannot be reached by conventional weapons and that the low-yield earth-penetrating nuclear weapon creates less radioactive fallout and nuclear contamination while not influencing its destructive power.

<<http://nautilus.org/archives/nukestrat/Korea/postcw.html>>

<sup>5</sup> For detailed information on the mock attacks, consult Hans M. Kristensen, "Preemptive Posturing," *Bulletin of the Atomic Scientists*, September/October, 2002, Volume 58. No. 5.

It has also planned 23 million dollar budget for the production of the Robust Nuclear Earth Penetrator in next seven to ten years and 97 million for the replacement or reform of bunker buster nuclear weapons.<sup>6</sup> Criticisms are growing as some Congressmen, some of whom are Republicans, warn nuclear arms race and proliferation and express their opposition to the development of new weapons.

With the US developing new weapons for practical use and North Korea being its primary target, a nuclear war in the Korean Peninsula is getting more and more likely. Still, the chances are low for the Bush Administration to wage war against North Korea by attacking it with nuclear weapons. Suppose, however, North Korea attacks South Korea. The US is very likely to retaliate with its nuclear weapons as stated in the NPR. It is the same with the case that North Korea attacks South Korea or Japan by using biochemical weapons. They all fall in the category of immediate and potential contingencies.

This is not the end. Even though North Korea does not pull the trigger first, the US by itself or with South Korea may attack North Korea with its nuclear weapons. An accidental war can always happen when tensions arise and a war in the peninsula is more likely to start by the US attacking North Korea rather than North Korea attacking South Korea. Let us once again suppose that the Bush Administration bombs with non-nuclear weapons North Korea's weapons of mass destruction (WMD) facilities. This is more than an assumption as it used to be on the agenda of the Clinton Administration and as the Bush Administration approaches the issues of WMD within the framework of war against terror. If the US attacks North Korea, it will probably retaliate by attacking the US Forces Korea and Japan, which will make the US consider the use of its nuclear weapons against North Korea regardless of North Korea's use of bio-chemicals.

The US nuclear attack on North Korea can be supposed as follows: the US uses nuclear weapons in retaliation to North Korea's use of WMD; or the US preemptively attempts precision bombing to North Korea's underground facilities regardless of North Korea's use of WMD. Finally, the US may try to contaminate North Korea's central military facilities and leaders' hideouts with radioactive fallouts in order to deteriorate the country's war-fighting capacity, which was under McArthur's contemplation during the Korean War.

The US plan of nuclear attack is well described in the plan "CONPLAN 8022," which outlines the country's preemptive attack to WMD countries including North Korea and Iran in time of conflict. The plan also suggests the use of nuclear arms against the enemies if necessary. According to William Arkin, US military analyst who disclosed

<sup>6</sup> *Chicago Tribune*, April 10, 2005.



the plan, it was designed based on the Bush doctrine of preemptive attack after the September 11 terrorist attack, finalized in November 2003, reported to President Bush and Defense Secretary Rumsfeld in January 2004 and approved in summer that year.<sup>7</sup> The Pentagon has changed the name of the U.S. strategic nuclear war plan SIOP (Single Integrated Operational Plan) into OPLAN (Operation Plan) 8044. It provides more flexible options to assure allies, and dissuade, deter compared to the previous one that targeted the USSR.<sup>8</sup> In his report to the US Congress in February 2005, Richard Myers, Chairman of the Joint Chiefs of Staff, stated that the Strategic Command had revised strategic deterrence and response plan that became effective in the fall of 2004 and that the "revised, detailed plan provides more flexible options to assure allies, and dissuade, deter, and if necessary, defeat adversaries in a wider range of contingencies."<sup>9</sup> It shows that the Bush Administration is utilizing the concept of strategic flexibility even for their nuclear war potentials.

Such strategy increases the possibility for a military conflict to develop into a nuclear war. Development plans for small warheads targeting North Korea's WMD and underground facilities imply that the Bush Administration is starting to consider nuclear weapons as something usable not the last stronghold any more. The description of low-yield nuclear weapons as having deep impact and less side-effects implies that the Bush Administration becomes more and more insensible to the impacts of nuclear weapons use. Again it is the myth of clean war that is believed to reduce civilian victims. Increasing nuclear threat from the US is one of the fundamental factors that hinder a peaceful resolution to the North Korean nuclear issues. North Korea is stimulated to further develop nuclear armament, arguing for the inclusion of the US nuclear problems to the agenda of the Six-Party Talks at the same time. The country is pulling itself into a confrontational stance against the US as the latter's CONPLAN 8022 is disclosed along with other new nuclear weapons development plans. It starts to argue that the objective of the Six-Party Talks should be nuclear disarmament including that of the US, which the US would never accept. The US' reckless nuclear strategies are dragging down the future of negotiation far deeper to the bottom.

### 3. Mutual Security Assurance and Nuclear-Free Northeast Asia

<sup>7</sup> William Arkin, "Not Just A Last Resort?: A Global Strike Plan, With a Nuclear Option," *The Washington Post*, May 15, 2005.

<sup>8</sup> "U.S. Changes Name of Nuclear War Plan," Nuclear Brief, December 21, 2004.  
<<http://www.nukestrat.com/us/stratcom/siopname.htm>>

<sup>9</sup> General Richard B. Myers, Written Posture Statement to SASC, HASC and HAC-D. <[http://www.nukestrat.com/us/jcs/Testimony\\_Myers0216-1705.pdf](http://www.nukestrat.com/us/jcs/Testimony_Myers0216-1705.pdf)>

The fundamental and stable solution to the nuclear crisis of the peninsula depends on mutually decreasing threats and bringing the issues within the sphere of workable systems. Clearly, North Korea wants decrease of the US nuclear threat and NSA as a condition to its abandoning nuclear weapons development. History hints that it will demand a legally binding assurance this time. This is too much of a demand to the Bush Administration, which wishes to continue to exploit its nuclear hegemony even in the face of biochemical weapons use. It is likely to be the most decisive factor that hinders the negotiation process when the Six-Party Talks resume.

South Korea can be a legitimate moderator in the problem solving process as it being the most threatened country by the environment either caused by North Korea or the US against North Korea. As the most potential victim in the neighborhood, South Korea has enough reasons and authority to raise its voice. Besides, South and North Korea are one people and the US is South Korea's closest ally.

Raising its voice against the US nuclear threat to North Korea can help develop the quality of relationship and confidence between South and North Korea. As the US sticks to its point of "no to North Korea's nuclear use," South Korea should have determination. Rather than stuck in the dilemma of nation or ally, South Korea is well advised to wisely make good use of the relationships.

A practical and thorough approach to the issues is crucial in sailing the boat of Six-Party Talks against heavy wind and waves. A roadmap is required that can link the near-term goal with the mid- and far-term goal. Our near-term goal is a legally binding NSA from the US to North Korea corresponding to its giving up the nuclear weapons and our mid- and far-term goal is to create a nuclear-free Northeast Asia.

First step of the process is North Korea promising dismantlement of all its nuclear weapons programs and making a joint declaration reaffirming no use or threat of nuclear weapons against non-nuclear states. Such a declaration not addressing the US directly can be acceptable for the US and may work as a stepping stone toward a nuclear-free zone in the region. As the second step, the US provides security assurance including the NSA to North Korea signed by President Bush, in response to which North Korea rejoins the NPT and signs the IAEA Additional Protocol. This will not only revitalize and reinforce the NPT regime but also resolve the nuclear crisis of the Korean Peninsula. Such possibilities were hinted at the interview with South Korea's Unification Minister Chung Dong-young on June 17th, where Chairman Kim Jong-il implied the chances to rejoin the Treaty and allow the IAEA inspection. Thirdly, Korea's truce agreement is replaced by a peace treaty that provides the NSA to North



Korea.<sup>10</sup> This would be the determining incentive to North Korea that finally leads the way to solve the nuclear crisis. The US giving a legally binding NSA in compensation to voluntary give-up of nuclear weapons can serve a good example to other countries developing nuclear programs. The final step is a systemic expansion of the procedure for a nuclear-free Northeast Asia.

The second North Korean nuclear crisis, which started with the beginning of the 21st century, can be an opportunity for us to have a scrutiny on the ultimate causes and characteristics of the problem. We need to ask our neighbouring countries and the international community how non-nuclear Korean Peninsula can be guaranteed security from nuclear states. The quest should be not limited to our case but extended to the search for the common goal of the region, a nuclear-free Northeast Asia. The Six-Party Talks, which concerned stakeholders participate in, can be the good start for the quest.

A nuclear-free Northeast Asia may sound idealistic but more than half of the globe is already covered by similar pledges: Latin America and the Caribbean by the Treaty of Tlatelolco in 1967, the South Pacific by the Treaty of Rarotonga in 1985, Southeast Asia by the Treaty of Bangkok in 1995, and Africa by the Treaty of Pelidaba in 1996.<sup>11</sup>

While Northeast Asian case may be somewhat different from the cases of the other regions, pessimistic realism and not attempting any efforts to achieve collective security would not help the situation. South Korea making initiatives for a Nuclear-free Northeast Asia can gain support from the international support and cooperation as the peninsula being on the spot of the global agenda for nonproliferation.

The proposal is also viable. Among the six nations participating at the Six-Party Talks, two Koreas and Japan are officially non-nuclear states. The three countries agreeing on a treaty for nuclear-free zone may prompt the rest three nuclear states to join the movement by promising no nuclear use or threat to non-nuclear states.<sup>12</sup> Six-Party Talks and the World Summit scheduled in September at the UN Headquarters are good opportunities to arouse public opinion on the matter.

<sup>10</sup> Christopher Hill, Assistant Secretary of State for East Asian and Pacific Affairs, who led the US delegation at the Six-Party Talks expressed that a peace treaty could also be reached in the context of the Six-Party Talks at an interview with the writer on May 6th, 2005.

<sup>11</sup> For more information on the significance and details of nuclear-free zones, consult LEE Samsung, Cheong Wook-sik et al., *Hanbando-ui Seontaek—Busi-ui Emdi Gusang, Mu-eoseul Norina* [Choice of the Korean Peninsula—What Bush MD Plans are targeted], Sam-in, 2001 and the menu Bihaekgidae (Nuclear-free zones) of the Civil Network for a Peaceful Korea webpage at <<http://www.peacekorea.org>>.

<sup>12</sup> Consult for detailed information UMEBAYASHI Hiromichi, "Hyeonjonhaneun Bihaekjidaewa Dongbuga Bihaekjidae [Existing nuclear-free zones and nuclear-free Northeast Asia]," pp.305-320 of the above-mentioned book.

#### 4. Anti-Nuclear Movement

One of the characteristics of the current nuclear crisis is that nuclear states represented by the US, China and Russia are very reluctant to nuclear disarmament and rather pursue further development of new weapons. The US is developing earth-penetrating nuclear weapons as a usable weapon rather than a deterrent while China and Russia make efforts to increase their nuclear capacity as a countermeasure to the US-led MD system. On the other hand, horizontal proliferation is also worrying the international community as the NPT regime gets weakened. North Korea and Iran are assumed to have already possessed nuclear weapons and non-NPT-signatories including Israel, India and Pakistan are fast growing to such a point.

Nuclear arms race is getting worse in the Northeast Asia, especially. The US is accelerating their nuclear programs in the Asia-Pacific region and China is developing countermeasures both quantitatively and qualitatively. Japan will be operating the Rokashomura reprocessing plant as of December 2005, leaving the international community with the dilemma of North Korean nuclear crisis.

Despite the unprecedented danger the humankind faces, the situation is not improving by no active role by the international organizations or the concerned states. Nuclear states and their counterparts are against each others, showing no efforts for cooperation and the United Nations and the IAEA are not sorting out the problem.

South Korea needs to understand the gravity of the matter and be actively involved in the problem solving. The danger of nuclear arms race in the region requires the civil society of South Korea and Japan to play an important role. However, anti-nuclear movement in South Korea is not strong enough and that of Japan is losing its momentum to do the job. The Korean civil society is advised to raise awareness on the nuclear issues and Japan needs to help itself by trying to solve internal conflicts and growing young activists. Movement from the two countries will pave the way toward an all-out anti-nuclear movement in the Asia-Pacific region.



## NPT와 북핵 문제, 그리고 동북아 비핵시대

정육식(평화네트워크 대표)

### 1. NPT 7차 회의, 왜 실패했나?

5월 2일부터 27일까지 뉴욕 유엔본부에서 열린 핵확산금지조약(NPT) 7차 검토회의가 핵보유국과 비핵국가의 첨예한 이견을 좁히지 못하고, 결국 아무런 성과 없이 끝나고 말았다. 이로써 35년째를 맞이한 NPT 체제는 중대한 위기를 피할 수 없을 것으로 보인다.

미국의 핵선제공격 채택 및 신형 핵무기 개발, 북한의 NPT 탈퇴 및 핵보유 선언, 이란의 핵무기 개발 의혹 등 전례없는 핵위기 속에서 열린 이번 NPT 회의는 각기 다른 동기와 목적을 가지고 NPT 강화를 추구하고자 했다. 그러나 회의가 참담한 실패로 끝나자 코피 아난 유엔 사무총장은 “국제사회의 집단 안보를 강화할 수 있는 중대한 기회를 놓쳤다”고 강한 유감을 표하면서, 9월 유엔 세계 정상회의에서 이 문제를 다시 논의하자고 제안했다. 이번 회의의 의장을 맡았던 브라질 외무장관 출신 세르지오 케이로즈 듀라테는 참가국의 이견을 모으면 “몇 권의 책을 쓸 수 있을 것”이라고 말하면서 짙막한 의장 성명을 발표했다.

이번 회의는 미국으로 대표되는 핵보유국과 이란 및 이집트로 상징되는 비핵국가 사이에 현격한 이견이 드러난 자리였다. 미국은 이번 NPT 회의를 북한과 이란을 제재할 수 있는 방안을 강구하는 기회로 삼고자 했다. NPT를 탈퇴해 핵무기 개발을 시도하고 있는 북한에 대해서는 비난 결의안을 추진했으나, 중국 및 비핵국가들의 동의를 받지 못해 결국 실패했다. 또한 미국은 핵보유국 등 일부 국가들을 제외하고 나머지 국가들에게는 아예 농축 및 재처리 자체를 불허해야 한다고 주장했다. 우라늄 농축 프로그램을 이용해 핵무기 개발 의혹을 받고 있는 이란을 겨냥한 것이다.

이에 대해 이란은 자신의 핵 프로그램은 전력 생산용이라고 주장하면서, NPT 제4조에 평화적 목적의 핵 이용은 “양도할 수 없는 권한”이라고 규정되어 있는 만큼, 우라늄 농축 및 재처리 이용은 보장되어야 한다고 맞섰다. 이와 관련해 주 유엔 이란 대사인 자바드 자리프는 세계평화의 가장 큰 위협은 미국 등 핵보유국으로부터 나오고 있다며, 미국이 새로운 핵무기를 개발



하고 포괄핵실험금지조약(CTBT) 서명을 거부하면서 비핵국가에 대한 핵 선제공격 전략을 채택했으며, 이스라엘과 핵이용 협정을 맺은 것 등을 거론하면서 미국을 강력 성토했다. 또한 60년 전 히로시마와 나가사키의 악몽을 재론하면서 “이러한 역사에 비춰볼 때, 핵무기는 가장 위험한 사람들의 손에 있다”고 말해, 미국을 궁지에 몰기도 했다.

이집트 역시 이전 NPT 검토회의에서 ‘중동 비핵지대’를 촉구하는 특별 결의안을 채택한 것을 근거로 이스라엘의 핵문제를 다뤄야 한다고 주장해 미국을 더욱 곤혹스럽게 했다. 이스라엘은 NPT 미가입국으로서, 미국의 묵인하에 수백개의 핵무기를 보유한 것으로 추정되고 있다. 그러나 미국은 이스라엘의 핵문제가 의제로 올라오는 것 자체를 거부했다.

이처럼 핵보유국과 비핵국가 사이의 이견은 이번 NPT 실패의 근본적인 요인이다. 그러나 양측의 이견은 예전부터 존재했다. 1995년 5차 검토회의에서는 핵보유국들이 비핵국가에 대한 핵무기 사용 및 위협을 하지 않고 핵무기 폐기를 약속함으로써 NPT의 무기한 연장을 이끌어냈다. 2000년 6차 회의에서도 이러한 입장은 거듭 확인되었고, 핵 폐기를 위한 13개 이행 조치에 합의하기도 했다.

그러나 이번 7차 검토회의는 회의 개막 이전부터 ‘실패’를 우려하는 목소리가 나왔었다. 2003년 1월에 북한이 NPT를 탈퇴해 핵무기 개발을 추진하고 이란의 핵 개발 의혹도 불거지면서 ‘비확산’에 대한 우려가 커진 것도 중요한 요인이다. 그러나 부시 행정부의 일방주의는 이번 회의의 실패를 가져온 가장 큰 요인으로 지적된다. 부시 행정부는 클린턴 행정부 때 합의된 핵 폐기 약속 및 이를 위한 13개 이행 조치의 재확인을 거부했고, 이스라엘 핵문제가 이번 회의에서 논의되는 것마저도 거부했다. 특히 부시 행정부는 NPT 회의 기간에 미국 의회에 ‘벙커 버스터’용 소형 핵탄두 개발 예산의 승인을 요청해 회의 참가국들로부터 빈축을 사기도 했다.

또한 비핵국가가 핵무기를 개발하지 않는 조건으로 보장받은 ‘평화적 핵 이용’ 권리를 미국이 아예 불허하는 방안을 관철시키려고 한 것 역시 문제점으로 지적된다. ‘이중용도’로 사용될 수 있는 우라늄 농축 및 재처리 시설에 대한 국제적 통제의 필요성은 높아지고 있지만, 이는 합리적인 통제 및 고강도의 검증 체제 마련을 통해 접근했어야 할 문제였다. 그러나 미국은 아예 불허해야 한다는 입장을 고수함에 따라 합리적인 토론조차도 어렵게 했다는 지적을 받았다. 더구나 미국은 IAEA가 제안한 ‘5년간 핵분열 물질 생산 중단’에 대해서도 자국의 핵 이용에 제한을 받을 수 있다는 이유로 반대했다. 자신의 핵 패권주의는 강화하면서 다른 나라의 핵 이용에는 제한을 가하려

고 했던 일방주의가 다시 한번 확인되는 대목이다. 이를 두고 미국의 저명한 비확산 전문가인 조셉 시리시온은 미국이 핵감축을 요구하는 목소리를 일축함으로써 북한, 이란 등 핵개발 국가들의 문제들을 적절하게 다루는데 실패했다고 평가하기도 했다.<sup>1)</sup> 미국이 자신의 핵문제가 의제가 되는 것을 거부하면서 다른 나라의 핵문제를 문제 삼겠다는 태도 자체에 문제가 있었다는 것이다.

우려되는 점은 이번 NPT에서 최소한의 합의 도출에도 실패함에 따라 각기 다른 이유로 NPT의 무용론이 확산될 가능성이 높아졌다는 것이다. 비핵국가들은 미국 등 핵보유국의 핵 군축 및 폐기 의지가 없다는 것을 새삼스럽게 확인하게 되었다. 이전 회의에서는 핵보유국들이 ‘립 서비스’ 차원에서라도 핵 군축 및 폐기 약속을 했지만, 이번 회의에서는 이조차도 거부함으로써 비핵국가들의 분노를 산 것이다.

반면 미국은 NPT가 핵확산을 방지하는데 그 한계를 드러냈다고 하며, 합의 도출 실패를 일방주의 강화의 구실로 삼고자 하고 있다. 대량살상무기 확산방지구상(PSSI)을 강화하는 한편, 핵공급그룹(NSG), G-8 등 강대국 중심 체제를 통해 핵확산 방지에 나서겠다는 것이다.

이렇게 될 경우 국제사회의 분열과 갈등은 더욱 커질 수밖에 없고, 이에 따라 핵확산 및 핵전쟁의 위험도 커지게 된다. 냉전의 해체와 함께 핵전쟁의 공포도 사라질 것으로 기대했던 인류 사회 앞에 경종이 울리기 시작한 것이다.

이를 우려하듯 코피 아난 사무총장은 5월 30일 인터네셔널 헤럴드 트리뷴에 기고문을 통해 “이번 회의는 NPT를 강화하고자 하는 실질적인 논의 대신에 의제와 절차를 정하는데 3분의 2의 시간을 허비했다”며, 170개 이상의 국가 정상들이 참가하는 9월 유엔 정상회의에서 돌파구를 마련해야 한다고 주장했다. 아난은 NPT 강화의 기본 방향으로 국제원자력기구(IAEA) 추가의 정서(Additional Protocol)를 통해 검증체제를 강화하고, 농축 및 재처리 시설 등 핵연료 주기 시설 개발을 자발적으로 포기한 나라들에 대해서 인센티브를 제공하며, 핵보유국이 핵군축 의무를 성실히 이행하기 위해 핵분열물질금지조약(FMCT) 및 포괄핵실험금지조약(CTBT)을 조속히 발표할 것을 제시했다.<sup>2)</sup> 그러나 핵보유국과 비핵국가 사이에 NPT에 대한 근본적인 시각 차이를 고려할 때, 유엔 정상회의에서 NPT 강화를 위한 실질적인 합의에 도달할 가능성은 낮다고 할 수 있다.

1) CFR Interview with Joshep Cirincion, June 6, 2005. <<http://www.cfr.org/publication.php?id=8162>>

2) *International Herald Tribune*, May 30, 2005.



이 글에서는 '중대한 도전에 직면한 NPT의 맥락 속에서 북핵 문제의 평화적 해결 방안 및 동북아 비핵지대 창설 방안을 논의하고자 한다. 북핵 문제의 접근들이 6자회담으로 짜여져 있어 NPT의 맥락에서 이 문제를 접근하는 것은 한계가 있을 수 있으나, 문제 해결의 창의적인 아이디어를 찾고 또한 북핵 문제가 해결되는 과정에서 북한의 NPT 복귀 및 IAEA 추가의정서 서명 등 NPT와 다시 조응할 수밖에 없다는 점에서 이와 같은 접근의 타당성을 찾을 수 있을 것이다. 아울러 북핵 문제의 근본적인 해결과 일본의 핵무장 움직임 방지, 그리고 미래 한반도의 안보를 굳건히 해야 한다는 차원에서 동북아 비핵지대의 논의도 필요하다고 여겨진다.

## 2. 北核과 美核, 그리고 NPT

우리에게 생소했던 NPT가 알려지게 된 계기는 역시 북한 핵문제와 깊은 연관이 있다. 북한은 1993년 3월 미국의 대북한 적대정책과 NPT의 이행기구인 국제원자력기구(IAEA)의 편파성을 문제삼으면서 NPT 탈퇴를 선언한 바 있다. 북한의 이러한 조치는 미국의 강력한 반발과 맞물려 1차 한반도 위기를 가져오기도 했다. 1차 위기는 1994년 제네바 합의를 통해 봉합되었다. 그러나 부시 행정부 출범이후 미국의 대북 강경책이 노골화되고 이에 맞서 북한이 2003년 1월 또 다시 NPT 탈퇴를 선언하고 핵 카드를 꺼내 들으로써 2차 한반도 위기가 조성되고 있는 실정이다.

북한이 두 차례에 걸쳐 NPT 탈퇴를 선언함에 따라 북핵 문제는 지난 10년간 NPT 회의의 최대 이슈가 되어왔다. 188개 회원국 가운데 북한이 유일하게 이 조약에서 탈퇴해 핵무기 개발을 시도하고 있기 때문이다. 이를 근거로 미국 등 일부국가들은 북한이 NPT를 위기에 빠뜨리고 있는 주범이라고 비난해왔다. 핵문제를 북미관계의 산물로 비취지기를 꺼려하는 미국으로서는 국제군비통제조약 가운데 최대 회원국을 확보하고 있는 NPT야말로 북핵 문제를 '국제화'시킬 수 있는 유력한 근거로 여기고 있는 것이다.

북한이 NPT에서 탈퇴해 핵무기 개발을 시도하고 있는 것은 분명 NPT 체제를 위협하고 있는 중대한 요인이다. 그러나 북한이 이러한 조치를 취하는데 미국이 중대한 원인을 제공했다는 점 역시 간과해서는 안 된다. NPT를 포함한 국제기구 회원국으로서의 권리는 제한·위협하면서 의무만을 강조하는 것은 또 다른 형태의 일방주의라고 할 수 있기 때문이다. 이는 반대로 절차상의 문제가 있다 하더라도 북한이 "최고의 국가이익"이 침해될 경우 NPT에서 탈퇴할 수 있다는 10조에 따라 이 조약에서 탈퇴한 '원인'을 해

결하지 않는 한, 북한의 NPT 복귀도, NPT의 강화도 공염불이 될 것이라는 점을 의미한다.

그렇다면 북한이 줄곧 주장해온 미국의 핵 위협은 어느 정도의 타당성을 갖고 있을까? 협상을 통해 안보 문제를 해소하기 위해서는 역지사지(易地思之)의 자세로 상대방의 안보 불안을 이해할 필요가 있다는 점에서 북한이 말하는 '미국 핵 위협'의 실체를 객관적으로 분석하는 것은 문제 해결의 중요한 출발점이다. 오해가 있다면 오해를 줄여주고 실제로 위협이 있다면 그 위협을 해결하겠다는 접근을 하지 않는 한 북핵 문제의 해결은 요원할 수밖에 없다.

문제는 북한에 대한 미국의 핵 위협은 북한이 핵 개발 구실로 삼기 위해 꾸며낸 것이 아니라 실제로 존재한다는 점이다. 북한은 오늘날에는 물론이고 역사상 단 한번도 미국의 핵 선제공격 대상에서 제외된 적이 없다는 것은 이를 뒷받침해준다.

한국전쟁 당시 핵무기 사용을 검토했던 미국은 1953년 7월 27일 정전협정이 체결된 직후 '대규모 보복 전략'을 천명했다. 이는 적이 재래식 군사력을 동원해 침공할 경우 핵무기로 대량 보복하겠다는 전략이었고, 1955년 1월 서울을 방문한 레드포드 합참의장은 이 전략에 한반도도 포함된다고 선언했다. 그리고 1958년부터는 주한미군이 다양한 전술 핵무기를 전진배치하기 시작했다.

북한의 재래식 공격에 대해 핵 공격을 포함한 대량 보복전략이 구체화된 것이 바로 팀스피리트 훈련이다. 여기에서 주목해야 할 것은 이 훈련을 시작한 1978년이 바로 카터 행정부가 비핵국가에 대해 소극적 안전보장을 선언했던 때라는 점이다. 당시 미국은 다른 비핵국가에 대해서는 핵무기 불사용을 약속하면서 북한을 상정한 핵공격 훈련에 돌입했던 것이다. 미국은 이 훈련에 핵무기 탑재가 가능한 F-16 전투기를 비롯해, B-1B 전폭기 등을 동원했고 핵미사일을 탑재한 잠수함도 참여시켰다. 또한 북한의 야포 전략을 초토화시킨다는 명분으로 핵대포 훈련도 수시로 했다. 북한이 팀스피리트 훈련이 실시될 때마다 극도의 긴장 상태를 유지하면서 전시동원체제를 가동했던 속사정도 바로 여기에 있는 것이다.

더욱이 미국의 핵 위협은 냉전이 해체되고 제네바 합의가 체결된 이후에도 계속되었다. 미국이 1991년에 한반도에 전술 핵무기를 철수하고, 1994년 10월 제네바 합의 이후 팀스피리트 훈련의 중단 및 소극적 안전보장을 약속함으로써 미국의 대북 핵위협도 해소되는 듯 했다. 그러나 이마저도 '기만'이었다는 것이 한참 지난 뒤에야 드러났다. 1995년 NPT 검토회의를 앞두고 미



국 주도의 핵비확산체제를 유지시키는 방안에 골몰했던 클린턴 행정부는 1994년 제네바 합의를 통해 북한에 소극적 안전보장을 약속했고, 1995년과 96년에는 비핵국가들을 상대로 소극적 안전보장을 약속했다. 그러나 미국은 북한에게 이 약속을 지키지 않았다.

클린턴 행정부 1기 때 핵정책을 다루는 특별보좌관을 지낸 스티브 페터는 “만약 미국이 핵 선제공격을 하지 않겠다고 약속하면, 북한은 남한이나 일본을 더 쉽게 공격할 수 있게 되었다고 믿을 것”이라며, 이로 인해 북한에 소극적 안전보장을 해줄 것인가의 문제는 중요한 토론 주제였다고 밝혔다. 그러나 결국 클린턴 행정부는 북한에 대한 소극적 안전보장이 남한과 일본에 대한 미국의 안보공약의 후퇴로 비취질 것을 우려해 북한을 제외시키기로 했다.<sup>3)</sup> 이를 뒷받침하듯 클린턴 행정부는 제네바 합의 이후에도 대북한 모의 핵공격 훈련을 계속한 것으로 드러났다.

2002년 9월 미국의 안보전문연구기관인 노틸러스 연구소가 정보자유법(Freedom of Information Act)에 따라 미국 정부로부터 입수한 미군의 대북 핵공격 계획 비밀해제 문서는 이를 뒷받침해준다.<sup>4)</sup> 91년 한반도에서 핵무기를 철수한 이후 미국은 ‘대안들’을 마련했다. 북한에 대한 핵 공격 계획을 계속 유지하기 위해 원거리 작전이 가능한 F-15E, B-1 등 장거리 폭격기와 트라이던트 잠수함 발사 핵미사일 등을 이용하기로 한 것이다. 그리고 대북한 핵공격을 담당하는 미군 부대도 미 본토에 있는 제4 전투비행단으로 바꾸었다. 1998년 상반기 노스 캐롤라이나에 있는 세이머 존슨 미 공군기지에서 실시된 수차례의 대북한 핵무기 사용 모의 훈련은 이러한 미국의 계획을 잘 보여주었다.<sup>5)</sup>

이처럼 미국은 단 한번도 북한을 핵 선제공격에서 제외시키지 않았다. 정전협정서의 잉크가 채 마르기도 전에 ‘대량보복전략’을 채택해 남한에 핵무기를 배치하기 시작했고, 카터 행정부가 소극적 안전보장을 천명한 순간부터 팀스피리트 훈련을 시작했다. 남한에서 핵무기를 철수한 이후에는 미국 본토의 공군력과 핵잠수함을 이용한 핵공격 계획을 유지했고, 제네바 합의 체결 때 걸으로는 소극적 안전보장을 약속했지만 이 역시 공수포였다. 더구나 부시 행정부 출범이후에는 핵태세검토보고서(NPR)에서 북한을 이라크와 함께 “고질적인 군사적 우려”(chronic military concern)으로 명시하면서 우선적인

3) *The Japan Times*, March 6, 2005.

4) 이 문서의 원본은 노틸러스 연구소 홈페이지 <<http://www.nautilus.org/nukestrat/korea/postcw.html>>에서 볼 수 있다.

5) 이 훈련에 대한 상세한 내용은 Hans M. Kristensen, "Preemptive Posturing," *Bulletin of the Atomic Scientists*, September/October, 2002, Volume 58, No. 5. 참조

핵공격 대상으로 명시했다. 미국 핵정책의 이중성을 여실히 보여주는 대목들이다.

물론 미국은 북한이 소극적 안전보장을 받을 수 있는 자격이 없다고 강변할 수도 있다. 미국은 비핵국가에 대한 소극적 안전보장의 조건으로 NPT 회원국이면서 핵보유국가와 연합해서 공격하지 않는다는 것을 제시했기 때문이다. 이에 따라 북한은 1985년에 NPT에 가입했고 핵보유국인 소련 및 중국과 동맹관계에 있었기 때문에 소극적 안전보장의 대상이 아닐 수 있다는 해석이 가능하다. 그러나 이러한 조건 자체가 일방주의적인 성격이 강할 뿐만 아니라, 미국은 북한이 NPT에 가입하고 냉전이 해체된 이후에도 대북 선제공격 전략을 유지했다. 특히 제네바 합의문에서는 소극적 안전보장을 약속하고 내부적으로는 핵공격 계획을 유지하기로 한 것은 제네바 합의의 근본정신을 훼손한 것이라고 할 수 있다. 그리고 앞서 설명한 것처럼 부시 행정부는 선제공격 전략을 공식 채택한 상황이다.

더욱 심각한 문제는 부시 행정부가 핵무기 사용을 단순히 ‘보복’에 한정하고 있는 것이 아니라, 유사시 북한의 지하시설에 있는 군사시설 및 지도부를 제거할 수 있는 무기로도 이용할 계획을 갖고 있다는 데 있다. 부시 행정부는 기존의 지하시설 파괴무기로는 지하 깊숙이 숨어 있는 대량살상무기와 미사일, 그리고 지도부를 파괴하는 데 한계가 있다고 강조하고, 지표-침투형 핵무기(earth-penetrating nuclear weapon)는 “저강도(low-yield) 핵무기이기 때문에 기존의 핵무기보다 낙진과 핵 오염을 줄이는 반면, 동일한 효과를 가져 올 수 있다”며 새로운 핵무기 계획을 분명히 하고 있다.

부시 행정부의 이러한 계획은 ‘지표관통형 고강도 핵무기’(Robust Nuclear Earth Penetrator) 프로그램으로 구체화되고 있다. 부시 행정부는 기존의 핵무기로는 새로운 위협에 대처하기 어렵다며, 7-10년 이내에 이 무기를 생산한다는 목표로 연구개발비로 약 2천3백만 달러를 책정해놓고 있다. 또한 기존의 벙커 버스터용 핵무기를 대체·개선하는 데에도 9천 7백만 달러를 책정했다.<sup>6)</sup> 그러나 일부 공화당 의원들을 비롯한 의회 내 비판자들은 핵군비경쟁과 핵확산을 경고하면서 새로운 핵무기 개발에 부정적인 입장을 피력하고 있어 미국 내에서 논란이 커지고 있다.

이처럼 부시 행정부가 핵무기를 ‘사용가능한 무기’로 인식하면서 북한을 최우선적인 공격 대상으로 삼고 이에 맞서 북한도 ‘핵 억제력’ 강화를 공언하고 나서면서, 한반도에서의 무력 충돌은 핵전쟁으로까지 비화될 수 있는 위험성이 커지고 있다. 물론 부시 행정부가 핵무기를 이용해 북한을 먼저 공격

6) *Chicago Tribune*, April 10, 2005.



할 가능성은 희박하다. 그러나 북한이 남한을 공격하면, NPR에서 밝힌 '즉각적 분쟁'에 해당됨으로 미국은 핵무기로 보복할 가능성은 있다. 또한 북한이 남한이나 일본을 생화학무기를 이용해 공격할 경우에도 부시 행정부는 핵무기를 사용할 수 있다고 밝혀왔다. 이는 NPR에서 말하는 '즉각적, 잠재적' 범주에 해당된다.

한반도 핵전쟁 위험은 여기서 끝나지 않는다. 북한이 먼저 방아쇠를 당기지 않았더라도 미국이 독자적으로, 혹은 남한과 함께 북한을 공격할 경우에도 핵무기 사용 옵션이 채택될 수 있기 때문이다. 이는 특히 군사적 긴장이 높아지면 우발적 충돌의 가능성이 있고, 한반도 전쟁이 북한의 남침보다는 미국의 북쪽에 의해 발생할 가능성이 더 높다는 점에서 각별한 주목이 필요하다.

가령 이런 것이다. 부시 행정부가 북한의 대량살상무기 위협 제거를 명분으로 '비핵'무기를 이용해 북한의 대량살상무기 시설을 폭격한다고 가정해보자. 이는 94년 당시 클린턴 행정부가 유력하게 검토한 방안이자, 부시 행정부가 북한의 대량살상무기 문제를 '테러와의 전쟁'의 관점에서 다루겠다고 공언하고 있다는 점에서 단순한 '가정' 이상의 의미를 갖고 있다. 미국이 북한을 '비핵'무기로 공격할 경우, 북한은 주한미군은 물론 일본의 주일미군에도 보복공격을 감행할 가능성이 높다. 이렇게 될 경우 북한의 생화학무기 사용 여부와 관계없이 미국은 북한에 대해 핵무기 사용을 고려하게 될 것이다.

이 과정에서 미국의 대북한 핵공격은 크게 세 가지로 나타날 수 있다. 하나는 북한이 생화학무기와 미사일 등 이른바 대량살상무기를 이용할 경우, 미국은 핵보복 전략에 핵무기를 사용할 가능성이 있고, 다른 하나는 북한이 대량살상무기를 사용하지 않더라도, 위에서 언급한 지하시설 파괴 핵무기를 통해 북한이 대량살상무기를 사용하기 전에 예방적 차원에서 정밀 핵 타격을 가할 수도 있다. 또한 한국전쟁 당시 맥아더가 유력하게 고려했던 것처럼 북한의 군사 시설이 밀집된 지역이나 지도부의 은신처로 추정되는 지역 일대를 방사능 오염 지대로 만들어 북한의 전쟁 수행 능력을 마비시키고자 핵무기를 사용할 수도 있다.

이와 같은 부시 행정부의 핵 공격 계획은 미국의 군사전문가 윌리엄 아킨이 폭로한 '콘플랜(CONPLAN) 8022'에서 잘 드러난다. 이 계획에는 북한이나 이란과 같이 대량살상무기를 개발하는 적대 국가들에 대해 선제공격을 할 수 있다는 내용이 포함되어 있다. 특히 유사시 적국이 미국에게 핵 공격을 가할 위협이 임박했다고 판단할 경우 핵무기 사용도 가능하다는 내용이 포함되어 있다. 아킨에 따르면 '콘플랜 8022'는 9.11테러공격 경험과 부시 대

통령의 선제공격 독트린 등이 결합돼 만들어진 것으로, 2003년 11월 완성됐으며, 2004년 1월 도널드 럼스펠드 국방장관과 부시 대통령에게 보고되고 그해 여름 승인받았다고 한다.<sup>7)</sup>

아울러 펜타곤은 2003년에 전략 핵전쟁 계획의 명칭도 '단일통합작전계획(SIOP, Single Integrated Operational Plan)에서 '작전계획(OPLAN) 8044'로 바꾸었다. 펜타곤이 핵전쟁 계획의 명칭을 바꾼 이유는 소련과의 핵전쟁을 상정한 냉전 시대와는 달리 핵무기 사용 옵션이 유연해질 필요가 있다는 판단 때문이다.<sup>8)</sup> 이와 관련해 리처드 마이어스 합참 의장은 2005년 2월 중순 미국 의회에 제출한 서면 보고를 통해 전략사령부가 2004년 가을에 새로운 핵전쟁 계획 작성을 끝냈다는 점을 확인하면서, 이를 통해 "동맹국을 안심시키고 적을 단념시키며, 필요할 경우 적을 분쇄시킬 수 있는 유연성을 확보하게 되었다"고 강조했다.<sup>9)</sup> 부시 행정부가 핵전력에 있어서까지 전략적 유연성의 개념을 적용하고 있다는 것을 확인할 수 있는 대목이다.

이러한 부시 행정부의 대북한 핵전략은 한반도에서의 무력충돌이 핵전쟁으로까지 비화될 가능성이 높다는 것을 의미한다. 특히 부시 행정부가 북한의 대량살상무기 및 지하시설 파괴용으로 소형핵무기를 개발하고 있는 것은 핵무기를 '최후의 보루'에서 사용가능한 무기로 성격 변화를 추구하고 있다는 것을 의미한다. NPR에서 지하시설 등을 파괴하는 데 사용되는 저강도(low-yield) 핵무기는 효과는 크면서 부작용은 작다고 설명하고 있는 것은 그만큼 부시 행정부가 핵무기 사용에 둔감해지고 있다는 것을 의미한다. 여기에는 핵무기에도 다른 재래식 무기와 마찬가지로 민간인과 전투원을 구분해 민간인 피해를 최소화할 수 있다는 '깨끗한 전쟁'의 신화가 깔려 있다.

가중되고 있는 미국의 핵위협은 북핵 문제의 평화적 해결을 어렵게 하는 근본적인 요인이기도 하다. 미국의 핵위협은 북한의 핵무장을 부채질하면서, 북한으로 하여금 미국 핵문제도 6자회담의 의제가 되어야 한다는 주장을 낳고 있기 때문이다. 미국의 핵위협을 '핵 억제력' 확보의 근거로 삼아온 북한은 최근 미국의 신형 핵무기 개발 계획이 발표되고 '콘플랜 8022'가 폭로되면서 대결적인 자세를 강화하고 있다. 아울러 6자회담이 재개되면 이러한 미국 핵문제도 다루야 하며, 협상의 목표는 핵군축이 되어야 한다고 주장하고 있다. 그러나 미국이 자신의 핵문제가 6자회담의 도마 위에 오르는 것을 수

7) William Arkin, "Not Just A Last Resort?: A Global Strike Plan, With a Nuclear Option," *The Washington Post*, May 15, 2005

8) "U.S. Changes Name of Nuclear War Plan", Nuclear Brief December 21, 2004. <<http://www.nukestrat.com/us/stratcom/siopname.htm>>

9) 전문은 <[http://www.nukestrat.com/us/jcs/Testimony\\_Myers0216-1705.pdf](http://www.nukestrat.com/us/jcs/Testimony_Myers0216-1705.pdf)>에서 볼 수 있다.



용할 가능성은 거의 없다. 안 그래도 합의가 쉽지 않은 상황에서 미국의 무분별한 핵전략이 6자회담의 전망을 더욱 어렵게 하고 있는 것이다.

### 3. 상호위협감소와 동북아 비핵지대

미국의 점증하는 대북한 핵 위협과 북한의 핵무기 개발을 두 축으로 하는 한반도의 핵문제를 근본적이고 안정적으로 해결하기 위해서는 상호간의 위협감소 및 이를 제도적인 틀로 묶어두는 창의적인 접근이 요구된다. 북한은 핵 포기 조건의 하나로 소극적 안전보장(NSA)을 비롯한 미국의 핵 위협 해소를 요구할 것이 확실하다. 특히 과거에 미국에게 기만을 당했던 사례를 들면서 '법적 구속력'(legally binding) 있는 안전보장을 요구할 것이다. 그러나 핵 패권주의를 강화하면서 생화학무기 사용에 대해서도 핵무기로 보복할 수 있다는 입장을 고수하고 있는 부시 행정부는 이와 같은 북한의 요구를 수용하려고 하지 않을 것이다. 이는 6자회담이 재개되더라도 북한의 선(先) 핵포기를 요구하는 미국의 주장과 핵포기의 상응조치의 하나로 미국의 핵 위협 해소를 요구하는 북한의 주장이 부딪치면서 합의 도출을 어렵게 하는 핵심적인 요인이 될 것이다.

한국은 이와 같은 문제를 해결하는데 주도적인 역할을 할 수 있는 정당한 이유와 조건을 갖고 있다. 북한의 핵개발로 가장 큰 위협을 받을 나라는 한국이다. 또한 미국이 북한에 대해 핵무기를 사용할 경우에도 한국은 그 피해로부터 벗어날 수 없다. '잠재적 최대 피해자'는 그 문제를 제기할 정당한 근거를 갖기 마련이다. 아울러 한국은 북한과 같은 민족이고, 미국과는 동맹 관계에 있다. 양자의 핵문제를 모두 제기할 수 있는 조건을 갖고 있다는 것이다. '북핵 불용'이라는 확고한 입장을 갖는 것이 대미 발언권을 높이는 요소이듯이, 미국의 대북한 핵 위협 해소에 적극 나서는 것은 북핵 문제의 평화적 해결 및 남북관계의 질적 발전과 신뢰 강화에 있어서 대단히 중요한 요소이다. 민족과 동맹 사이에서 야기되는 딜레마에 얽매일 것이 아니라, 오히려 이를 역이용할 수 있는 지혜가 필요한 것이다.

'美核 문제'로 인해 6자회담이 좌초되는 것을 방지하기 위해서는 현실적이면서도 근본적인 문제 해결을 추구할 필요가 있다. 이는 단기적 목표와 중장기적 목표를 연계시켜 로드맵을 짜야 한다는 것을 의미한다. 단기적 목표는 북한의 핵 포기를 유도할 수 있는 상응조치의 하나로 '높은 신뢰도'를 갖는 대북한 소극적 안전보장의 제공을 미국에게 요구하는 것이고, 중장기적 목표는 동북아 비핵지대를 창설하는 것이다.

먼저 대북한 NSA는 단계적으로 접근할 필요가 있다. 1단계로는 북한이 모든 핵무기 프로그램을 포기하는 것을 공약하는 것과 동시에 "핵보유국은 비핵국가에 대해 핵무기 사용 및 사용 위협을 하지 않겠다는 점을 확인한다"는 내용을 공동발표문에 담는 것이다. 이는 미국을 특정하지 않았다는 점에서 미국의 수용 가능성을 높일 수 있을 뿐만 아니라, 중장기적 목표인 동북아 비핵지대의 중요한 기초를 놓을 수 있다. 2단계는 북한의 핵 포기의 구체적인 조치로 NPT에 복귀하고 IAEA 추가의정서에 서명하는 것을 조건으로 부시 대통령의 서명이 담긴 안전보장을 북한에게 제공하는 것이다. 서면 안전보장에는 물론 NSA도 포함되어야 할 것이다. 이는 NPT 체제에 활력을 불어넣어 NPT 강화에 기여할 뿐만 아니라, 한반도의 핵 위협을 해소하는데 상당한 도움이 될 것이다. 특히 검증이 필요하겠지만, 김정일 국방위원장이 6월 17일 정동영 통일부 장관과의 면담에서 NPT에 복귀하고 IAEA 사찰을 받을 수 있다는 의사를 피력한 것은 이러한 접근을 가능케 하는 요소라고 할 수 있다.

3단계는 북한의 핵무기 프로그램 해체가 가시권에 들어왔을 때, 정전협정을 평화협정으로 대체하면서<sup>10)</sup> 여기에 대북한 NSA를 포함시키는 것이다. 이는 북핵 문제를 완전히 해결하는데 확실한 인센티브가 될 것이며, 미국이 핵 포기 국가에 대해 법적 구속력을 갖춘 NSA를 제공한 사례를 만듦으로써 이란 등 다른 국가들의 핵문제를 해결하는데 모범 사례가 될 수 있을 것이다. 마지막 단계는 이를 제도적으로 확대하는 동북아 비핵지대의 창설이다.

기실 21세기 초입에 불거진 이른바 '제2의 북핵 위기'는 우리가 핵무기 문제를 본질적인 차원에서 이해하고 문제를 제기할 수 있는 기회이기도 하다. '한반도 비핵화'를 요구하고 있는 주변국가들을 비롯한 국제사회에, '비핵화된 한반도'는 어떻게 핵보유국으로부터 안전을 확보할 수 있을 것인가를 되물을 필요가 있다는 것이다. 이는 단순히 한반도 특수성에 머무는 것이 아니라, 동북아와 세계를 핵무기의 위협으로부터 해방시키기 위한 보편적 가치의 실현과도 직결된 것이다. 그리고 동북아 6개국이 참여한 6자회담은 이를 제기할 수 있는 중요한 공간이기도 하다.

동북아 비핵지대가 이상론처럼 들릴 수도 있지만, 이미 라틴아메리카와 카리브 지역(틀라텔로코 조약, 1967년), 남태평양(라로통가 조약, 1985년), 동남아시아(방콕 조약, 1995년), 아프리카(펠린다바 조약, 1996년) 등 지구의 절반 이상이 비핵지대로서의 지위를 획득했다.<sup>11)</sup> 물론 이들 지역과 동북아 지역을

10) 참고로 미국측 6자회담 수석대표인 크리스토퍼 힐 국무부 동아태 담당 차관보는 2005년 5월 6일 필자와의 면담에서 6자회담이 재개되면 평화협정 체결 문제도 논의할 수 있다는 입장을 밝힌 바 있다.



단순비교할 수는 없지만, '비관적 현실주의'에 매몰돼 한반도의 핵 딜레마 해소와 동북아 공동안보 증진을 위한 중요한 주춧돌을 놓으려는 시도조차 하지 않는 것은 분명 문제가 있다. 특히 21세기 들어 전세계적으로 핵비확산 문제가 중요한 이슈로 제기되고 있고, 그 중심에 한반도가 있는 상황에서 우리가 적극적으로 동북아 비핵지대를 제안하는 것은 한반도 평화의 국제적 지지와 협력을 확보할 수 있는 유력한 근거이기도 하다.

또한 동북아 비핵지대에 대한 현실적인 방안이 없는 것도 아니다. 현재 동북아 6개국 가운데, 공식적으로는 남북한과 일본이 비핵국가이다. 따라서 이들 세 나라가 핵보유를 하지 않겠다는 비핵지대화 조약을 체결하고, 미국, 중국, 러시아 등 핵보유국이 비핵국가에 대해 핵무기 사용 및 사용 위협을 하지 않겠다는 보장을 받아내는 방식<sup>12)</sup>으로 동북아 비핵지대화를 향한 의미 있는 첫발을 내딛을 수 있도록 노력해야 할 것이다. 6자회담과 2005년 9월에 유엔본부에서 열리는 세계 정상회의는 동북아 비핵지대를 공론화할 수 있는 좋은 기회이기도 하다.

#### 4. 반핵운동의 활성화를 위하여

21세기 들어 핵문제는 크게 두 가지의 특징을 보이고 있다. 첫째는 미국, 중국, 러시아 등 핵보유국들이 핵무기 감축 및 폐기에는 대단히 미온적인 반면에 핵무기의 질적 증강을 꾀하고 있다는 것이다. 미국은 핵무기를 유사시 '사용가능한 무기'(usable weapon)로 상정하고 지하시설 파괴용 핵무기 등 신형 핵무기 개발에 박차를 가하고 있고, 중국과 러시아는 미국 주도의 미사일방어체제(MD)를 무력화시키기 위해 핵전력 증강에 나서고 있다. 둘째는 NPT를 중심으로 한 비확산체제가 위기에 처하면서 이른바 '수평적인 확산'에 대한 우려가 커지고 있다. 북한은 이미 핵무기를 보유한 것으로 추정되고 있고, 이란도 그 뒤를 따르고 있다. NPT 비회원국인 이스라엘, 인도, 파키스탄은 점차 핵무기 보유국으로서의 지위를 확보하고 있다.

특히 지역적인 맥락에서 볼 때, 동북아의 핵군비경쟁이 가속화되고 있다. 미국은 아시아-태평양 지역에 핵전력 증강에 박차를 가하고 있고, MD를 최

11) 비핵지대의 의미와 의의, 그리고 현황에 대해서는 이삼성·정육식 외 지음, 한반도의 선택-부시의 MD 구상, 무엇을 노리나, 도서출판 삼인, 2001년; 평화네트워크 홈페이지(www.peacekorea.org) [비핵지대]란 참조.

12) 이에 대한 구체적인 내용은 우메바야시 히로미치, 현존하는 비핵지대와 동북아 비핵지대, 위의 책 305-320쪽 참조.

대 안보위협 요소로 간주하고 있는 중국은 이에 맞서 핵무기의 양과 질을 늘리고 있다. 북핵 문제의 해결 가능성은 여전히 미지수인 반면에, 일본은 2005년 12월부터 로카쇼무라 재처리 시설 가동에 들어갈 예정이어서 핵확산에 대한 우려를 고조시키고 있다.

이처럼 인류사회가 전례없는 핵위협에 직면하고 있음에도 불구하고 관련 국가들과 국제기구는 이렇다할 역할을 못하고 있다. 핵보유국과 비핵국가들은 상호 비방에 여념이 없을 뿐, 문제 해결을 위한 공동의 노력을 보여주지 못하고 있다. 국가간의 이해관계를 조정하고 지도력을 발휘해야 할 유엔과 IAEA 등도 제 역할을 못하고 있다.

이는 세계 시민사회 수준에서 문제의 심각성을 깨닫고 적극적인 역할을 모색해야 할 시점이라는 것을 의미한다. 특히 동북아에서 꿈틀거리고 있는 핵군비경쟁의 위험성을 고려할 때, 한국과 일본의 시민사회 역할이 대단히 중요해지고 있다고 할 수 있다. 그러나 냉정하게 볼 때, 한국의 반핵운동의 경험과 역량은 부족한 상황이고, 일본의 반핵운동은 과거만큼 활발하지 못하다고 할 수 있다. 이러한 상황을 타개하기 위해서는 한국 시민사회가 핵무기 문제에 대한 관심을 높이고, 일본 시민사회도 핵문제를 둘러싼 정파간의 갈등을 해소하고 젊은 활동가를 육성하는 등의 자구 노력이 필요하다고 여겨진다. 이러한 양측의 노력은 최근 활성화되고 있는 한일간의 연대 분위기와 맞물려 아시아-태평양 지역에서의 반핵운동의 발전과 확산의 중요한 기초가 될 수 있을 것이다.



Abolishing and criminalizing nuclear weapons:  
Implementing the 1996 International Court of Justice case  
on the legality of the threat or use of nuclear weapons

Paper for the 4th Conference of Lawyers in Asia and the Pacific  
Konkuk University, Seoul, Korea

Alyn Ware

*Consultant, International Association of Lawyers Against Nuclear Arms*

**Summary**

Despite the end of the Cold War, there are over 20,000 nuclear weapons in the world's arsenals with an explosive force 200,000 times that of the atom bomb which destroyed Hiroshima 60 years ago. With the number of States possessing nuclear weapons increasing, and new policies being developed for the use of nuclear weapons, experts like former US President Jimmy Carter<sup>1</sup> and former US Defence Secretary of Defense Robert McNamara<sup>2</sup>, believe that the possible use of nuclear weapons now is as likely, if not more likely, than during the Cold War.

In 1996 the International Court of Justice (ICJ) delivered an advisory opinion on the case requested by the United Nations General Assembly on the legality of the threat or use of nuclear weapons. The ICJ affirmed a global norm that the threat or use of nuclear weapons would generally be illegal. The ICJ also concluded that there exists an obligation to pursue and bring to a conclusion negotiations for complete nuclear disarmament.

The Nuclear Weapon States have failed to change their nuclear doctrines in light of the ICJ decision, and have also failed to implement their disarmament obligations.

On the other hand, the ICJ decision has assisted anti-nuclear activists in subsequent court cases challenging State possession and deployment of nuclear weapons, and stimulated anti-nuclear countries to take stronger steps in international fora for nuclear disarmament including proposals for a

<sup>1</sup> "Both America and Russia remain on hair trigger alert status. This is a serious threat to global security and drastically increases the chances of an accidental or unprovoked launch. We must remember that a global holocaust is just as possible now, through mistakes or misjudgments, as it was during the depths of the Cold War." Former US President Jimmy Carter, Remarks at "Atlanta Consultation II on the Future of the NPT" The Carter Center, Atlanta, GA January 26-28, 2005. [http://www.gsinsitute.org/mpi/pubs/atlanta\\_carter.pdf](http://www.gsinsitute.org/mpi/pubs/atlanta_carter.pdf)

<sup>2</sup> Despite the end of the Cold War fifteen years ago, US nuclear weapon policies are today essentially what they were when I was Secretary of Defense 40 years ago. If I were to characterize US and NATO nuclear policies in one sentence, I would say they are: immoral; illegal; militarily unnecessary; very, very dangerous in terms of the risk of inadvertent or accidental launch; and destructive of the non-proliferation regime that has served us so well over the 40 years. Statement by Robert McNamara to 2005 Nuclear Non-proliferation Treaty Review Conference, May 24, 2005, United Nations. [http://www.gsinsitute.org/docs/5\\_24\\_05\\_McNamaraSpeech.pdf](http://www.gsinsitute.org/docs/5_24_05_McNamaraSpeech.pdf)



nuclear weapons abolition treaty. It has given rise to new initiatives by mayors, parliamentarians, lawyers and civil society to achieve nuclear disarmament, including a proposal to return to the Court for a follow-up case on specific nuclear policies and practices.

In addition, the ICJ's decision and more recently UN Security Council Resolution 1540 has provided a legal authority and a political opportunity to criminalise nuclear weapons through domestic and international law.

### International Court of Justice Advisory Opinion

*"The destructive power of nuclear weapons cannot be contained in either space or time"*  
International Court of Justice, July 8, 1996.

On July 8, 1996, the International Court of Justice (ICJ), otherwise known as the World Court, delivered an historical opinion on the legality of the threat or use of nuclear weapons.<sup>3</sup> Citing international laws of warfare and specific treaties the 14 judges declared that the threat or use of nuclear weapons would generally be illegal, and *"that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."*

The Court's opinion prompted a flurry of claims and counter claims by nuclear weapon states on the one hand who said that their policies were in accordance with the decision, and most others who claimed the opposite. The confusion arose because the judges, a majority of whom were from nuclear weapon states or their military allies, failed to condemn nuclear weapons absolutely. While stating that the threat or use of nuclear weapons would generally be illegal, the Court said that it could not be absolutely sure that such illegality would hold *"in the extreme circumstance of self defense when the very survival of a state is at stake."*

The nuclear weapons states argue that they only intend to use nuclear weapons in an extreme circumstance. However the extent of their nuclear doctrines indicates that the NWS have a totally different idea of the meaning of 'extreme circumstance' to that of the Court. US nuclear policy, for example, states that nuclear weapons could be used *"against targets able to withstand non-nuclear attack, in retaliation for attacks by nuclear, biological or chemical weapons, or in the event of surprising military developments."*<sup>4</sup> These circumstances are clearly beyond the extreme circumstance in which the very survival of a State is at stake.

Just as important is that the nuclear weapon states were conveniently ignoring another unanimous decision from the ICJ that even in the extreme circumstance a threat or use of nuclear weapons must *"also be compatible with the requirements of international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law..."*

These principles and rules of humanitarian law include a prohibition on using weapons which are indiscriminate, violate neutral territory, cause long-term and severe damage to the environment, cause

<sup>3</sup> Advisory Opinion, Legality of the Threat or Use of Nuclear Weapons, ICJ 1996. www.icj-cij.org

<sup>4</sup> National Security Strategy of the United States, September 2002. Joint Chiefs of Staff

unnecessary suffering or are disproportionate to the act of provocation.<sup>5</sup> Nuclear warheads currently deployed by the NWS are mostly 10 – 100 times the explosive power of the nuclear bomb which destroyed Hiroshima.<sup>6</sup> Experience from nuclear testing in the Marshall Islands indicates that even when these weapons are detonated hundreds of miles from populated areas, the radioactive fallout has a serious impact on human health and the environment.<sup>7</sup> Ann Ginger thus argues that any nuclear weapon currently in existence, if used, would violate some or all of the rules of humanitarian law.<sup>8</sup>

The Court itself appeared to agree when it said it did not have enough evidence to conclude that the use of "clean" smaller nuclear weapons would possibly be legal in the extreme circumstance. Ginger argues therefore that the "hole" presumably opened by the Court's indecision on the extreme circumstance situation, actually leads to *"an impenetrable wall of steel"* covered by the unyielding prohibition on the threat or use of weapons which would violate humanitarian laws of warfare.

Japanese lawyer Terumi Furukawa likens the court's decision to that of Portia in *The Merchant of Venice*. After finally accepting the shylock's persistent claim to cut off a pound of flesh nearest the heart, Portia declares that such an act is allowed but only if *"This bond doth give thee no jot of blood,"* making such an act practically impossible.<sup>9</sup>

### Nuclear disarmament initiatives – follow-up to the ICJ decision

Regardless of whether or not there may possibly be a legal use of a small nuclear weapon in an extreme circumstance, the duty, as unanimously declared by the court, is for states to negotiate for their elimination.

Following the Court's decision the United Nations<sup>10</sup> and the European Parliament<sup>11</sup> adopted resolutions calling for the implementation of the decision through the immediate commencement of negotiations leading to the conclusion of a nuclear weapons convention (treaty) which would prohibit the development, testing, production, stockpiling, transfer, use and threat of use of nuclear weapons and provide for their elimination. India, Pakistan and China supported the UN resolution, but the other nuclear weapon states opposed it and have blocked any attempts to start such negotiations in the Conference on Disarmament, the negotiating body for such treaties.

A number of initiatives have thus arisen in order to move the NWS to implement their disarmament obligations, including Abolition 2000, Citizens Weapons Inspections and Ploughshares direct disarmament actions, drafting of a Model Nuclear Weapons Convention, Mayors for Peace, the Parliamentary Network for Nuclear Disarmament and a proposal from the International Association of Lawyers Against Nuclear Arms to return to the ICJ for a case on non-compliance.

<sup>5</sup> See C.G. Weeramantry, *What principles of international law render the use of nuclear weapons illegal*, in *Nuclear Weapons and Scientific Responsibility*, Vishva Lekha & Kluwer Law International 1999, pp 83-96.

<sup>6</sup> Information on the numbers, types and yields of nuclear weapons deployed by the nuclear weapon States is available at Nuclear Notebook, Bulletin of Atomic Scientists, www.thebulletin.org.

<sup>7</sup> See Oral submission of the Marshall Islands to the International Court of Justice, www.icj-cij.org. See also *Poisoned Lives, Contaminated Lands*, Zohr de Ishtar, *Seattle Journal for Social Justice*, Volume 2, Issue 1, Fall/winter 2003.

<sup>8</sup> Ann Fagan Ginger, *Nuclear Weapons are Illegal: The historic opinion of the World Court and how it will be enforced*

<sup>9</sup> Terumi Furukawa, *International Court of Justice: Hamlet and Portia - Some Aspects of the Discussion Regarding the Court's Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons.* 40 *The Japanese Annals of International Law* (1997) p32.

<sup>10</sup> UN General Assembly Resolution 51/45 M of 10 December 1996. Similar resolutions have been adopted by the UN General Assembly every year since then.

<sup>11</sup> Resolution on the Non-Proliferation Treaty, adopted 13 March 1997, European Parliament



a) *Abolition 2000*

Formed in 1995 during the ICJ hearings, Abolition 2000<sup>12</sup> is a network of over 2000 organisations calling for negotiations on a nuclear weapons abolition treaty and collaborating on initiatives towards a nuclear weapons free world.

b) *Citizens weapons inspections and Ploughshares direct disarmament actions*

Citizens in nuclear weapon states and in the states where nuclear weapons are deployed, have been inspired by the World Court opinion to take direct action against nuclear weapons at their sites of production, testing, deployment and control.

Modeled on the United Nations Special Committee on Iraq's weapons of mass destruction (UNSCOM), groups of "citizen weapons inspectors" have attempted to inspect nuclear weapons facilities in order to determine whether or not they are in compliance with international law as determined by the International Court of Justice. Some weapons inspectors have been arrested for breaking into nuclear facilities after access has been denied.<sup>13</sup>

Some calling themselves "Ploughshares activists" have gone further and committed direct acts of "disarmament" on nuclear weapons and their systems and then been arrested and charged with crimes such as conspiracy and damage of government property.<sup>14</sup> In the court cases, the defendants argue that they had a duty to conduct such acts to uphold international law even if they had to break domestic law to do so. They cite the Nuremberg Principles, which state that, with respect to war crimes and crimes against humanity, an individual is required to refuse superior orders or domestic regulations if they are in opposition to international law. Such defense has had varying degrees of success in the Courts. On successful case was in Scotland where three Ploughshares activists who had damaged Trident nuclear submarine equipment, were acquitted on the judge's conclusion that the deployment of the Trident system itself was illegal and the defendants had a right to attempt to prevent such an illegal act.<sup>15</sup>

c) *Model NWC*

In 1997 the United Nations circulated a Model Nuclear Weapons Convention<sup>16</sup> which had been drafted by a group of lawyers, scientists and disarmament experts, and which outlines the legal, technical and political elements required for a verifiable and enforceable regime to eliminate nuclear weapons. The Model NWC has been instrumental in demonstrating that nuclear disarmament is practical and achievable.

d) *Mayors for Peace*

In 2004 Hiroshima Mayor Tadatashi Akiba and Nagasaki Mayor Ichoh Itoh launch an emergency campaign of mayors calling for negotiations on a nuclear weapons treaty to be agreed by 2010 with all

<sup>12</sup> [www.abolition2000.org](http://www.abolition2000.org)

<sup>13</sup> Citizens Weapons Inspections Working Group, [http://www.motherearth.org/inspection/index\\_en.php](http://www.motherearth.org/inspection/index_en.php)

<sup>14</sup> See [www.tridentploughshares.org](http://www.tridentploughshares.org)

<sup>15</sup> *Women Cleared as court rules nuclear arms illegal*, *The Guardian*, 22 October 1999,

<http://www.lcnp.org/wcourt/Guardian.htm>

<sup>16</sup> UN Doc A/C.1/52/7. Accessible in six UN languages at [http://www.inesap.org/publ\\_nwc.htm](http://www.inesap.org/publ_nwc.htm)

nuclear weapons eliminated by 2020. Over 1000 mayors from cities all over the world are now participating in this initiative.<sup>17</sup>

e) *Parliamentary Network for Nuclear Disarmament*

The Parliamentary Network for Nuclear Disarmament (PNND)<sup>18</sup> was formed in 2000 and brings together parliamentarians in 50 countries to collaborate and share initiatives on nuclear disarmament. At the 2005 NPT Review Conference, PNND and Mayors for Peace released a joint appeal calling for the commencement of negotiations that would lead to the abolition of nuclear weapons.

f) *Return to the Court*

The International Association of Lawyers Against Nuclear Arms, one of the organisations which launched the project to achieve the 1996 ICJ case, is now working on a proposal to return to the ICJ on the issue of compliance with disarmament and non-use obligations.<sup>19</sup> This value of such a case is that it would look at specific nuclear doctrines and deployment practices. It is expected that the Court would affirm that such policies and practices are inconsistent with their 1996 determination and that they are thus illegal.

### Criminality

A key point to note with the ICJ decision is that it is relevant to both States and to individuals. The ICJ affirmed that the threat or use of nuclear weapons *would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law*. These rules apply to both States and non-State actors, as affirmed in the Nuremberg and Tokyo tribunals, the Rwanda Tribunal, the Tribunal for the former Yugoslavia and the Statute for the International Criminal Court.

Thus, in implementing the ICJ decision, we should look to codifying a prohibition against nuclear weapons applicable to both States and to individuals.

### The International Criminal Court: A failed attempt?

In 1997, during the preparatory negotiations for the Statute for the International Criminal Court, a proposal was made by the Philippines, that the Statute include, as crimes under its jurisdiction, any employment of landmines and nuclear, biological and chemical weapons. The proposal found support from NGOs and some other countries, but failed to make it into the final Statute due to opposition by the NWS and some of their allies. Some authors see this as a failure to affirm the criminality of threat or use of nuclear weapons.<sup>20</sup> An alternative viewpoint is that the blocking of the inclusion of nuclear weapons by a small group of States indicates that it was politics not law that prevented such inclusion,

<sup>17</sup> [www.mayorsforpeace.org](http://www.mayorsforpeace.org)

<sup>18</sup> [www.pnnd.org](http://www.pnnd.org)

<sup>19</sup> See *Time to Return to the World Court?* IALANA News, March 2005

<http://www.lcnp.org/pubs/IALANA2005/IALANAnews-06.htm>

<sup>20</sup> See for example, Glasius, Marlies. 'Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court.' In *Global Civil Society 2002*. Edited by Glasius, Marlies; Kaldor, M.; Anheier, H. K. Oxford University Press, 2002. Also Glasius, Marlies. 'How Activists Shaped the Court' Crimes of War Project. The Magazine December. <http://www.crimesofwar.org/> (2003)



that the omission thus does not legitimize nuclear weapons employment, and that an actual threat or use could still be prosecuted by the ICC because it would violate prohibitions on indiscriminate destruction in a conflict.

This viewpoint was demonstrated after the conclusion of the Statute when France, on ratifying the treaty, attempted to remove nuclear weapons use totally from ICC jurisdiction.<sup>21</sup> New Zealand however noted that the ICJ affirmed that the humanitarian laws of warfare applied to any threat or use of nuclear weapons and so it is not possible for any State to remove nuclear weapons use from the constraints of international law.<sup>22</sup>

So while there is not a blanket prohibition in the ICC on the threat or use of nuclear weapons, any actual use would likely violate the humanitarian laws affirmed in the Statute leading to the possibility of an ICC case against the perpetrators if not dealt with adequately in a national court.

In addition, the ICC Statute provides for the possibility of adding jurisdiction over the use of specific weapons through amendment. Until key NWS parties to the ICC abandon their nuclear policies it will be very difficult to adopt an amendment specifically criminalizing the employment of nuclear weapons. However, the next ICC Review Conference in 2009 provides an opportunity to at least propose such an amendment and build international support for it.

#### UN Security Council Resolution 1540

On April 28, 2004, the United Nations Security Council adopted Resolution 1540<sup>23</sup> relating to the proliferation of nuclear, chemical and biological weapons. The resolution requires all States to take measures to prevent non-State actors (including businesses, unauthorized state officials and terrorists) from acquiring or trafficking in nuclear, chemical and biological weapons, and to prevent the proliferation of nuclear, chemical and biological weapons in general.

There has been some criticism that the resolution is an attempt by the NWS – particularly the US - to build support for stronger counter proliferation activities while not requiring those already possessing nuclear weapons to take any disarmament steps. While there may be some justification in this criticism, the reality is that UNSC 1540 strengthens a global norm against nuclear weapons (and other WMD) and opens the door for States to take effective domestic and international actions to further both non-proliferation and disarmament. In particular, the resolution provides opportunities for States to comprehensively prohibit nuclear weapons, regardless of who currently possesses or is attempting to possess them, and adopt criminal laws applying to both non-State and State actors.

New Zealand in its report to the UNSC Resolution 1540 Committee<sup>24</sup> recognized this and reported on its Nuclear Free Zone, Disarmament, and Arms Control Act (1987) which prohibits nuclear weapons within NZ territory and makes it criminal for either agents of the State (military, government

<sup>21</sup> In its declaration made on June 9, 2000 on depositing its instrument of ratification France stated that *The provisions of article 8 of the Statute, in particular paragraph 2 (b) thereof, relate solely to conventional weapons and can neither regulate nor prohibit the possible use of nuclear weapons nor impair the other rules of international law applicable to other weapons necessary to the exercise by France of its inherent right of self-defence* (unofficial translation from French).

<sup>22</sup> Interpretative declaration made by the Government of New Zealand on ratification of the Rome Statute of the International Criminal Court

<sup>23</sup> <http://www.reachingcriticalwill.org/political/SC/1540.pdf>

<sup>24</sup> UN Document S/AC.44/2004/(02)/54

officials...) or for citizens (non-State actors) to engage in activities relating to nuclear weapons production, possession, threat or use. For agents of the State, this prohibition extends extra-territorially, i.e. it is illegal for them to undertake such activities anywhere in the world.

In implementing UNSC Resolution 1540, other States could adopt legislation similar to New Zealand's. In fact, in light of the ICJ decision affirming the general illegality of nuclear weapons threat or use, and UNSC Resolution 1540 which affirms nuclear proliferation as a threat to international peace and security, States could extend extra-territoriality to all its citizens, i.e. make it criminal for any citizen regardless of whether or not they are an employee of the government to participate in activities relating to nuclear weapons production, possession, threat or use. Many countries, including the United States, have enacted extra-territorial jurisdiction for crimes relating to the possession, production or use of chemical weapons. It would be consistent to also do this for nuclear weapons.

In addition, the principle of universal jurisdiction could be applied to nuclear weapons meaning that States could exercise criminal jurisdiction over non-residents engaged in nuclear weapons production, possession, threat or use. Universal jurisdiction is increasingly being recognized for serious international crimes such as genocide, torture and crimes against humanity. It would not be much of a jump to add the threat or use of nuclear weapons to this list, especially as the ICJ affirmed that the threat or use would be generally incompatible with international humanitarian laws of warfare.<sup>25</sup>

#### Conclusion

International law and international legal mechanisms have developed so that now those who commit torture or genocide are finding it increasingly difficult to hide behind notions of sovereignty, State security or military necessity. The same should be true for those threatening or actually using the ultimate weapon of genocide and terror – the nuclear weapon.

Despite resistance from the NWS, we now have opportunities to advance the comprehensive abolition and criminalization of the possession, production, threat or use of nuclear weapons. The development of a globalised world removes further any remaining vestiges of false security ascribed to nuclear weapons - suicidal defenders of isolationist States. As New Zealand Prime Minister Helen Clark has said:

*In the 21<sup>st</sup> Century, as the ever-expanding exchange of peoples, cultures and trade across nations helps to ease nationalistic prejudices, and as the shibboleths of the Cold War subside, it is time to abolish nuclear weapons and make the world a safer place for all peoples.*<sup>26</sup>

<sup>25</sup> See *International Ju-Jitsu: Using United Nations Security Council Resolution 1540 to advance nuclear disarmament* Alyn Ware, July 2004, <http://www.disarmsecure.org/publications/papers/Ju-Jitsu.html>

<sup>26</sup> Rt Hon Helen Clark, Foreword to *The Naked Nuclear Emperor: Debunking Nuclear Deterrence*, Robert Green, The Raven Press, Disarmament and Security Centre, Christchurch, New Zealand, 2000.



핵무기의 불법성:  
핵무기에 의한 위협 및 그 사용의 불법성에 대한 1996  
국제사법재판소 판례 적용

앨린 웨어

반핵변호사국제연합 (International Association of Lawyers  
Against Nuclear Arms) 고문

개요

1996 년 국제사법재판소(ICJ)는 UN 총회가 제기한 핵무기에 의한 위협 및 핵무기 사용 문제에 대해 권고의견을 전달했다. ICJ는 핵무기에 의한 위협 및 사용이 극단적인 상황을 제외한 일반적인 경우 불법이며, 핵군축을 이루기 위한 협상을 지속, 타결할 의무가 있다고 판결을 내렸다.

ICJ 의 이러한 판결은 이후 연이은 재판에서 반핵운동가들에게 힘을 실어주었고 핵무기를 완전 폐기하자는 제안으로 이어졌다. 또한 핵군축을 위한 각종 국제 회의에서 반핵국가들의 입지를 더욱 넓혀주었다.

그러나 이 같은 ICJ 의 권고의견에 핵 보유국들은 별다른 움직임을 보이지 않고 있다. 중국과 인도가 몇 마디 말치레를 했을 뿐이며, 권고에 따라 실제적인 정책적 변화를 보인 국가는 영국뿐이다. 이에 따라 ICJ 에 다시 문제제기를 하여 핵군축 달성 및 핵무기에 의한 위협의 자제라는 2 가지 의무를 따르도록 하는 후속판결을 얻어내자는 제안이 나오고 있다.

이 자리에서는 먼저 1996 ICJ 권고의견이 국제 핵군축에 어떠한 영향을 미쳤는지 알아보고 후속판결의 가능성에 대해서도 알아보도록 하겠다.

발표자 프로필:

앨린 웨어는 반핵변호사국제연합(International Association of Lawyers Against Nuclear Arms) 고문이자 국제평화국(International Peace Bureau) 부국장, 핵군축의회네트워크(Parliamentary Network for Nuclear Disarmament) 국제 코디네이터를 맡고 있다. UN 군축교육자문위원회(United Nations Disarmament Education Advisory Board) 위원이기도 하며 2000 NPT 검토회의(NPT Review Conference) 및 2002 유네스코/교육각료회의국제국(UNESCO/International Bureau of Education Ministerial Conference)에 뉴질랜드 정부 대표단으로 참석했다.



앨런 웨어가 이끈 UN 국제재판프로젝트 팀의 노력 덕분에 1994년 UN 총회가 핵무기 문제를 국제사법재판소에 제기하게 되었다. 그는 수많은 회원국을 도와 ICJ에 문제를 제기했고, 1996년 ICJ의 판결이 내려진 이래 해마다 채택되고 있는 UN 총회 결의안을 작성하는데도 큰 몫을 담당했다. 또한 말레이시아와 코스타리카가 2000년과 2005년 핵확산방지조약(NPT)검토회의에 제출한 핵 보유국의 ICJ 권고의견 이행 실태 관련 보고서 작성을 돕기도 했다.

핵군축을 주제로 한 앨런 웨어의 논문으로는 다음이 있다:

- NGO AND GOVERNMENT COOPERATION IN SETTING THE DISARMAMENT AGENDA: THE IMPACT OF THE 1996 INTERNATIONAL COURT OF JUSTICE ADVISORY OPINION  
Published in *Reframing the Agenda: The impact of NGO and Middle Power Cooperation in International Security*, Edited by Kenneth Rutherford, Stefan Brem and Richard Matthew, Praeger, Westport CT, 2003.  
[http://www.disarmsecure.org/publications/papers/ngo\\_government.html](http://www.disarmsecure.org/publications/papers/ngo_government.html)
- Bombs Away? The World Court Decision on Nuclear Weapons", *Disarmament Diplomacy*, No.8, September (1996).  
<http://www.lcnp.org/wcourt/Bombs%20away.htm>
- Time to Return to the Court, in IALANA News Mar/Apr 2005.  
<http://www.lcnp.org/pubs/IALANA2005/IALANAnews-06.htm>

## Rightward Shift and Citizen Resistance in Japanese Education

Yukio Sugishima, Attorney (Japan)

### 1. Introduction

Recently in Japan more people are calling for a constitutional revision of Article 9, a pacifist article that says Japan is to have no military force. As that trend intensifies, an increasingly marked drift toward the political right is underway in the nation's school classrooms.

In this report I will describe the rightward shift in Japan's schools, primarily the compulsory observance of the flag and national anthem, and the citizen resistance against them.

### 2. Establishment of the flag and anthem

In August 1999 Japan enacted the "Law Concerning the National Flag and National Anthem" (Flag and Anthem Law) which establishes the "Hinomaru" ("Rising-Sun Flag") as the national flag representing Japan, and "Kimigayo" ("The Imperial Reign") as Japan's national anthem. Until this law's enactment, the Hinomaru and Kimigayo were not legally Japan's national flag and anthem.

The reason that the Hinomaru was not legally the national flag until then was because, due to its use by Japan's imperialistic military from the Russo-Japanese War (1904) to the end of World War II (1945), there was consideration for the many Asians who saw the flag as a symbol of Japanese aggression, and Japanese public opinion ran strongly against making it Japan's national flag due to a sense of contrition among many Japanese for aggression against Asia.

Kimigayo, which was composed about 1869, is a prayer that the world ruled by the emperor will last forever. Until the end of WWII, the emperor was the Japanese Empire's supreme commander and was deeply involved in the war of aggression that the empire launched. As such, public opinion was strongly against having this be the national anthem because its lyrics glorify the emperor's reign, and other Asians object strongly to this song as they do to the Hinomaru. For these reasons, Kimigayo was not legally the national anthem.

In view of this background, when the Flag and Anthem Law was enacted many Japanese wondered if feelings of contrition for Japan's past war of aggression would be lost through making the Hinomaru the national flag and Kimigayo the national anthem, and if this would spur the domestic trend toward militarism. Even the then prime minister was obliged in Diet hearings to say that passing a law on the flag and anthem does not mean that the Hinomaru and Kimigayo are forced on the citizens.

Yet, in violation of a supplementary resolution, there have recently been many instances in public schools in which flying the Hinomaru and salutations thereto, and the singing of Kimigayo or instrumental accompaniment by the music teacher are compelled.

### 3. Compulsory flag and anthem observance in schools throughout Japan

Until now the controversy over the Hinomaru and Kimigayo has been savagely fought mainly in education because it is definitely education which is the venue that fosters the young people who will carry society on their shoulders, and it has become the focus of those who are faithful to the ideal of Japan's pacifist constitution and who wish to part with Japan's imperialist past, and those who wish to find the distinctive characteristics of modern Japanese



society in continuity with the past.

Currently there is a strengthening political trend in Japan toward amending Article 9 of the constitution, which bans the use of force and maintaining a military, and toward legally organizing the Japanese military, and making its overseas deployment possible.

As this political trend builds, schools throughout the nation now display the Hinomaru at graduation and entrance ceremonies, have teachers, students, and those in attendance salute the flag, and have everyone sing Kimigayo, with music teachers providing an instrumental accompaniment.

Compelling people to salute the flag, and to sing and accompany the anthem is now an everyday occurrence because, for example, local board of education members who attend school ceremonies will investigate teachers who, feeling that the flag and anthem are symbols of militarism, refuse to salute the flag or sing the anthem for reasons of conscience and thought.

The image that people have of the Hinomaru and Kimigayo is a matter deeply rooted in each person's thought and conscience. To people who feel that saluting the Hinomaru and singing or accompanying Kimigayo are symbols of militarism, doing these things is hard to endure, and this creates much friction in the schools.

#### 4. Unusually heavy coercion to observe the flag and anthem in Tokyo

Compelling teachers, students, and parents to observe the Hinomaru and Kimigayo in schools happens in all Japan's public schools, but this coercion is unusually heavy in Japan's capital of Tokyo.

On October 23, 2003 the Metropolitan Tokyo Board of Education issued a notification titled "On Displaying the Flag and Singing the National Anthem at Entrance Ceremonies, Graduation Ceremonies, and on Other Occasions" to all the public schools under its direction. This notification required all Metropolitan Tokyo high schools and schools for the mentally and physically handicapped to display the flag at the front of the auditorium above the stage, and to have everyone sing the anthem with a piano accompaniment during the program, at entrance and graduation ceremonies and other occasions, and stated that if any teachers thus ordered to display the flag and sing the anthem refused to do so, their responsibility as teachers would be subject to inquiry.

By June 2004, a total of 248 teachers were punished for reasons such as not facing the flag and standing at attention when Kimigayo was sung at school functions, and in April 2005 an additional 53 teachers received disciplinary punishment.

To implement its notification, Tokyo sends several board of education members to school entrance and graduation ceremonies to monitor the teachers. For that reason school functions in Tokyo schools are not autonomously and creatively planned through collaboration by teachers and students, but carried out under monitoring by the Metropolitan Tokyo Board of Education.

Further, Tokyo's board of education not only compels teachers to salute the flag, but also makes reference to the possibility that if students also do not stand, the teachers responsible for their guidance could be punished on the grounds that they gave their students "inappropriate guidance." If this should come to pass, teachers will have to force students to salute the flag and sing the anthem in order to avoid their own punishment, while students will have to violate their own thought and conscience by facing the flag and standing at attention and singing the anthem in order to protect their teachers from punishment.

Currently in Tokyo public schools the teachers, students, and parents are forced to

salute the Hinomaru, which was once a symbol of the Japanese military, and to sing Kimigayo, which expresses a wish for the reign of the emperor, who was the Japanese military's supreme commander.

#### 5. Intimidation of opposition citizens using criminal procedure

This coerced observance of the flag and anthem produced many people who believe that it represents the revival of Japan's tendency toward militarism. At the same time there is growing political repression against them.

For example, Mr. Katsuhisa Fujita, a former teacher at the Metropolitan Tokyo Itabashi School went there to attend a graduation ceremony as a guest on March 11, 2004. Before the ceremony began he handed out several copies of a weekly magazine feature article on the "Hinomaru Kimigayo Question" to parents, and gave a short explanation on the graduation ceremony about to take place. At that time the assistant principal and principal told him, respectively, to "Stop it" and "Get out," so he followed the principal's instructions and left the auditorium.

On December 3 the Public Security Department of the Tokyo District Public Prosecutors Office, whose job it is to control thought criminals, indicted Mr. Fujita on the charge that he used force to interfere with the graduation ceremony (forcible obstruction of business: under three years imprisonment with labor or a fine of under ¥500,000).

On the occasion of the 2005 spring graduation ceremony, many citizen organizations carried out an opposition campaign involving, for example, handing out leaflets in front of Tokyo public schools opposing the forced observance of the Hinomaru and Kimigayo. In response, Tokyo's board of education sent an unofficial notification to school principals saying that they should request the intervention of law enforcement in the event that such a public information campaign is conducted, and in fact there actually was police interference against these citizen activities.

One citizen activist was arrested on the charge that he entered a school's grounds without permission (subsequently he was released on the order of the court which had been asked for the detention warrant, for the reason that it did not constitute a crime).

#### 6. Citizen resistance against forced observance of national flag and anthem

Many of the Tokyo teachers punished for refusing to salute the Hinomaru and sing Kimigayo at school functions claim that their punishments are unjustified and demand their revocation. To that end appeals have been filed with the Metropolitan Tokyo Personnel Commission by a total of about 237 teachers.

About 137 teachers have taken the fight to court, for example filing preventive lawsuits to obtain confirmation that saluting the Hinomaru and singing Kimigayo are not work-related obligations.

In various places throughout Japan, many citizen groups oppose the compulsory observation of the flag and anthem in schools, and are carrying out actions to ask their local boards of education not to require these observances.

Many of these people do not claim only that compelling the observance of the flag and anthem violates their personal thought and beliefs, but also keenly feel the responsibility of Japan's government for the past war of aggression, and especially fear that compelling observance of the flag and anthem in schools might lead to a revival of militarism, as happened in the past.

Japanese citizens with an awareness are conducting initiatives throughout the nation



in opposition of this rightward shift in the schools.

#### 7. The battle over textbooks

In April 2004 the government approved history and civics textbooks edited by members of the Japanese Society for History Textbook Reform and published by Fusosha Publishing, Inc.

The history textbook affirms the 1889 Constitution of the Empire of Japan and the 1890 Imperial Rescript on Education, and its approvingly claims the annexation of Korea was necessary for security, the 15-year war against China was needed to protect Japan's interests in Manchuria and to resist the anti-Japanese movement, and the Pacific War to give Southeast Asia hope for independence, while the civics textbook affirms Japanese culture centered around the emperor as the tradition of Japan.

The international criticism of this history textbook is still fresh in one's memory, and such criticism is rising in Japan, too. Just because a textbook has been approved does not mean that it will be used in all schools, but that it may be used. After the approval process, local boards of education decide which of the approved textbooks their schools will use.

Citizen groups concerned about the rightward shift in Japanese education are lobbying their local boards of education and campaigning to keep them from adopting these history and civics textbooks.

#### 8. Conclusion

Unfortunately Japan's current political situation is admittedly shifting rapidly to the right in response to demands that Article 9 be changed for the worst, but the citizen campaign to counter this is also broadening nationally.

Japan brought great harm to the people of Asia through the Pacific War. Historically aware Japanese are strongly contrite over this fact, and they must also stop this rightward shift to build solidarity with the people of Asia. Japan's democratic lawyers are working hard for that purpose.

## 教育現場における日本の右傾化と市民的抵抗

報告者 弁護士 杉島幸生 (日本)

### 一、はじめに

最近、日本国内においては、非武装主義を内容とする憲法の平和主義条項（日本国憲法第9条）の改憲の声が高かまっている。そして、そうした動きが強まるにつれ、教育の現場における右傾化が著しく進められようとしている。

本報告では、そのもっとも顕著な例として、いわゆる「日の丸」「君が代」の強制を中心に、教育の現場における日本の右傾化とそれに対する市民的抵抗について報告したい。

### 二、国旗・国歌法の制定

1999年8月、日章旗（「日の丸」）が日本国を象徴する国旗であり、「君が代」が日本国の国歌であるとする「国旗及び国歌に関する法律」（国旗・国歌法）が制定された。この法律が制定されるまで、日の丸、君が代は、法的には日本の国旗、国歌ではなかった。

それまで、日本国において法的な意味で「日の丸」が国旗であるとされてこなかったのは、日露戦争（1904年）から第二次大戦（1945年）に至るまで、日章旗が日本帝国主義軍隊の掲げる旗であって、日章旗を日本国による侵略のシンボルとしてイメージするアジア民衆が多く存在していることに対する配慮と日本国内においても多くの国民がアジア侵略に対する反省から侵略軍のシンボルであった日章旗を日本国の旗とすることに反対する世論が多数存在していたからである。

また、「君が代」は、1869年ころ作曲され、天皇の支配する世界が未来永劫続くことを祈念することを内容とする曲である。日本国の天皇は、第二次世界大戦終了まで日本帝国の統帥権者であり日本帝国がおこした侵略戦争に深くかかわっていたことから、天皇の世を礼賛する歌詞を日本国の国歌とすることに反対する世論が強く存在し、かつ、日章旗と同様にアジア民衆からの反発が強く存在している。このため「君が代」についても法的には国歌とはされてこなかった。

こうした背景から、国旗・国歌法の制定に際しては、多くの国民から「日の丸」を国旗とし、「君が代」を国歌とすることで、過去の侵略戦争への反省が失われるのではないかと、日本国内の軍国主義的傾向を助長するのではないかと意見が出され、当時の日本国首相も国会審議において、国旗・国歌の法定が、国民に「日の丸」、「君が代」の強制を意味するものではないことを表明さざるを得なかった。

ところが、最近、公教育の現場において、先の附帯決議にも反して、日章旗の



掲揚とそれへの敬礼や、「君が代」の斉唱あるいは音楽教師に対する「君が代」の伴奏を強要するという事案が多く発生しているのである。

### 三、全国の教育・現場における国旗・国歌の強要

これまで、「日の丸」、「君が代」をめぐる論争は、とりわけ教育の場で激しく闘わされてきた。それは教育こそが時代をになう若者を育てる場であり、平和主義をかかげる日本国憲法の理念に忠実に日本帝国主義時代の過去からの決別を図ろうとするものと、過去からの連続性に現在の日本社会の特質を見ようとする者との焦点となってきたからである。

現在、日本国内においては武力及び軍隊の保持を禁じた日本国憲法第九条を改正し、合法的に日本軍を組織し、その海外派兵を可能とすることを求める政治的傾向が強まっている。

こうした政治的傾向が強まるにともない、全国各地の学校で、卒業式や入学式に日章旗を掲揚して、教師、生徒及び式典の参列者に日章旗に対する敬礼や「君が代」の斉唱（音楽教師には君が代の伴奏）を求めるといふことが行われるようになってきた。

また、「日の丸」、「君が代」を軍国主義のシンボルと感じ、自らの思想と良心にかけて「日の丸」に対する敬礼や、「君が代」の斉唱を拒否する教職員を式典に向いた自治体の教育委員会の職員が調査するなど、日章旗への敬礼と「君が代」の斉唱や伴奏を事実上強要するという事態が日常化している。

「日の丸」、「君が代」に対していかなるイメージを有するかは、深く各自の「思想及び良心」にかかわる問題である。掲揚された日章旗に対する敬礼や「君が代」の斉唱、伴奏は、それを軍国主義のシンボルと考える者にとっては、耐え難い苦痛となっており、教育の現場に大きな軋轢を生じさせている。

### 四、東京都における日章旗、君が代の異常な強要

教育現場における「日の丸」、「君が代」の教師、生徒及び保護者に対する強要は全国各地の公立学校で行われているが、とりわけ日本国の首都である東京都におけるこれらの強要は、異常としか言いようのない状態となっている。

2003年10月23日、東京都の教育委員会は、その指揮下にある各公立学校に対して、「入学指揮、卒業式等における国旗掲揚及び国歌斉唱の実施について」という通達を発した。この通達は、すべての東京都立高等学校及び都立盲・ろう・養護学校において、その入学式、卒業式等の式典に際しては国旗を式典会場の舞台壇上正面に掲揚すること、式次第に君が代のピアノ伴奏による斉唱を義務づけ、こうした日章旗の掲揚、君が代の斉唱を行うことを命じられた教職員がこれに従わないときには、服務上の責任が問われるとするものである。

同通達以後、2004年6月までに、学校行事における「君が代」斉唱時に「日の丸」にむかって起立しなかったことなどを理由に合計248名の教職員が処分

され、それに続き2005年4月にもあらたに53名の教職員が懲戒処分が付されている。

東京都は、この通達を実施するために各学校の入学式や卒業式のたびごとに東京都教育委員会から数名の職員を派遣して、教職員の監視にあたらせている。そのため東京都立学校においては、学校行事は、教職員や生徒らの共同の取組により自主的創造的に企画されるものではなく、東京都教育委員会の監視のもとに行われるものとなっている。

さらに東京都教育委員会は、教職員に対して「日の丸」への敬礼を強要するのみならず、生徒が起立しなかった場合にも生徒に対する「不適切な指導」がなされたものとして指導にあたった教職員が処分される可能性のあることに言及している。これが現実化すれば、教職員は自らの処分を免れるために生徒らに対して「日の丸」への敬礼と「君が代」の斉唱を強要しなければならず、生徒は指導教員を処分から守るために、自らの「思想及び良心」に反して、日章旗にむかって起立し、「君が代」を斉唱しなければならない。

現在、東京都の公立学校においては、かつての日本軍のシンボルであった「日の丸」への敬礼と、日本軍の統帥権者であった天皇の世を願う「君が代」を斉唱することが、教職員、生徒、保護者に強制されているのである。

### 五、反対派市民に対する刑事手続上の威嚇

こうした「日の丸」、「君が代」の強制は、それを日本の軍国主義的傾向の復活と考える人々を多く生み出し、それとともにそれに対する政治的弾圧も強まっている。

例えば、東京都立板橋高校の卒業式に来賓として出席した同校元教諭である藤田勝久氏は、2004年3月11日、同校の卒業式の開始前に「日の丸君が代問題」を特集した週刊誌の記事を保護者に数枚、配布して、これから行われる卒業式の状況を簡単に説明した際、学校の教頭、校長からそれぞれ「止めろ」「退去せよ」と言われたことから校長の指示に従い卒業式会場から退出した。

こうした藤田氏の行為に対して、思想犯の取締を役割とする東京地方検察庁公安部は、同年12月3日になって、同氏を式典の進行を實力でもって妨害したものの（威力業務妨害罪：3年以下の懲役又は50万円以下の罰金）として起訴したのである。

また、2005年春の卒業式に際して、多くの市民団体が東京都立の公立学校の門前で、「日の丸」、「君が代」の強制に反対する内容のチラシを配るなどの反対運動を展開した。これに対して、東京都教育委員会は、各学校の学校長に、そうした宣伝活動が実施された場合には、警察権力の介入を要請すべきとの非公式の通達を出し、実際に市民の宣伝活動に対する警察官に妨害が実施された。

そのなかで、一名の市民活動家が、学校の敷地内に無断で立ち入ったとして、逮捕される事態まで発生している（これは後に、勾留状請求があった裁判所によ



って犯罪を構成しないものとして釈放を命じられている)。

#### 六、国旗・国歌の強制に対する市民的抵抗

現在、学校行事に際して、「日の丸」への敬礼や、「君が代」の斉唱を拒否したことで処分された東京都の教職員の多くが、そうした処分の不当性を訴え、処分の撤回を求めてのべ約237名の教職員が東京都人事委員会に不服申立を行っている。

また、約137名が、「日の丸」への敬礼や「君が代」の斉唱をすべき職務上の義務のないことの確認をもとめた予防訴訟を提起するなどの裁判闘争を行っている。

また、全国各地で、多くの市民団体が学校現場への国旗・国歌の強制に反対して、各自治体の教育委員会に、「日の丸」、「君が代」の強制を行わないことをもつめる要請行動などを展開している。

そうした人々の多くは、単に「日の丸」、「君が代」の強制が、個人の「思想・信条」を侵害するものであるというにとどまらず、過去の侵略戦争に対する日本政府の責任を痛感し、とりわけ教育の現場で、「日の丸」、「君が代」を強制することが、かつての日本国がそうであったように、軍国主義復活につながるのではないかを危惧しているからである。

日本の自覚的市民は、こうした教育現場における右傾化に対して、それに反対する取組を全国でおこなっている。

#### 七、教科書をめぐるたたかい

2004年4月、「あたらしい歴史教科書をつくる会」のメンバーが編纂した扶桑社の歴史教科書、公民教科書が検定を通過した。

この歴史教科書は、大日本帝国憲法と教育勅語を肯定し、韓国併合を安全保障のために必要であった、日中15年戦争を日本国の満州権益の保護と排日運動への対抗による戦争である、太平洋戦争を、東南アジアに独立の希望をあたえたものと評価するものであり、公民教科書は、天皇を中心とした日本文化を日本国の伝統として肯定している。

この歴史教科書に対して、国際的批判がまきおこったことは記憶にあたらしいが、そうした批判は、日本国内においても高まっている。日本国においては、検定に合格しただけでは各学校に使用せず、それは教科書として使用することが可能であるといことを意味するにとどまる。検定合格後、各地の教育委員会において複数ある教科書のどれを学校現場で使用するのかが決定されることとなる。

日本国における教育の右傾化を憂う市民団体は、各地の教育委員会にはたらきかけ、この歴史・公民教科書を採用させない運動に取り組んでいる。

#### 八、おわりに

残念ながら、現在、日本国の政治状況は、日本国憲法第9条の改悪を求める動きに呼応して、急速に右傾化していると言わなければならない。しかし、それに対抗する市民運動も全国的に広がっている。

日本国は、先の戦争でアジアの人民に多大な被害を与えた。日本の自覚的市民は、そのことに対する強い反省を有しており、アジア人民との連帯をすすめるためにも日本の右傾化を阻止しなければならない。日本の民主的法律家は、そのために力を尽している。

以上



Extraordinary movement of Japanese government, ruling parties,  
and the financial world that attacks their own Constitution

~Over textbook issue~

Kuniaki Fujiki, Lawyer

1 I think everyone from each country has heard that the ruling Liberal Democratic Party of the Japanese government and the financial world are going to change the Constitution of Japan, authorize armaments, and establish a system that gives priority to military affairs within the country. I report that cabinet members and leaders of the ruling parties, like the minister of Education, Culture, Sports, Science and Technology of the Japanese government, make it their business to attack the Constitution and recommend a textbook that stipulates that Japanese responsibility for the war of aggression as victimizer cannot be claimed and want to ask for criticism in this regard from thinking people of each of the Asian countries.

2 The Liberal Democratic Party is promoting junior high school textbooks for civics and history published by Fuso Publishing, Inc., which is the affiliated publishing company of *Sankei Shimbun*, one of four largest newspapers in Japan. Why do I regard the textbooks from Fuso Publishing, Inc. as extraordinary? In the first place, they baldly express hostility toward the Constitution of Japan and appreciation of the Meiji Constitution. The "history" textbook, for instance, shows that the Meiji Constitution was especially honored as a "constitution that is much better than we had heard," "very estimable constitution." Meanwhile the textbook describes the Constitution of Japan as "GHQ presented the draft constitution prepared on its own only in a week to the Japanese government and strongly forced fundamental revision of the Constitution. Although the government was shocked at the content of the draft constitution presented by GHQ, the government had no choice but to accept it because the Chrysanthemum Throne was threatened and jeopardized if the government refused it" etc. The "civics" textbook assesses the Meiji Constitution as follows: "It included people's rights and freedom as much as possible and at the same time, it was a constitution into which efforts to reflect traditional Japanese culture were put." Meanwhile the textbook states concerning the Constitution of Japan: "The Constitution of this country is 'the oldest constitution in the world,' which means that verbatim ac literatim of it has not been changed at all since it was established." "It is necessary for people as sovereign to



differentiate the part that must correspond to the reality of the international community, changes of the times, transition of the society etc., and the part that must continue to be surely defended beyond the times and just argument," as much as to say that early revision is necessary.

The second problem is the Japanese attitude toward a war of aggression. The description, which assesses the colonization of Korea and Taiwan positively, stands out in the "history" textbook, such as "Japan helped the modernization of Korea," "It was also important for the security of Japan that Korea became a country that was not invaded by other countries," "The Korean Council established after the annexation of Korea conducted development such as the maintenance of railroad and irrigation facilities, started landownership investigations, and made an effort for modernization." With respect to the Manchurian Incident and the foundation of Manchukuo, the textbook admits that Japan occupied cities along the Manchuria Railroad line after the bombing incident caused by the Kwantung army. However, the textbook says, "Many people supported the actions of the Kwantung army among people who prompted complaints about the government's diplomatic policy that could not resolve damages from illegal activities Japanese were suffering in Manchuria. And a large amount of money for support was contributed to the army," and the "Lytton Commission advised the withdrawal of Japanese troops and international control of Manchuria although it admitted the fact in the report that the security and interest of Japan were threatened." As mentioned above, the textbook describes the international community and the Japanese people as accepting the military actions in Manchuria without introducing the protest and clamor of the Chinese government. The textbook refers the Nanjing Massacre in the process of invading China only in the margin and takes the stance of denying the existence of the incident saying, "Questions are presented in materials concerning the actual condition of the incident, and the argument still continues." It is understood that these positive attitudes toward a war of aggression will draw criticism from China and South Korea, and those textbooks take the view of history that affirms the war of aggression and can never be accepted as Japanese.

The third problem is the stance that emphasizes the admiration of the Emperor system. The "history" textbook deals largely with Prince Shotoku and Emperor Showa and positions the Founding Myth, A Record of Ancient Matters, and Nihon Shoki as books that pass down some sort of historic fact at the time. Some people among those who support the revision of the Constitution say frankly, "History and the traditional culture of our country means the Emperor system." The "civics" textbook, however, adopts the frontispiece drawing that emphasizes history, tradition, and culture of Japan

and recognizes a "grove of a village shrine" as the symbol of them. It cannot be found in textbooks published by other companies that the Imperial Rescript on Education, which was issued by Emperor Meiji and was a pillar of education that admired the Emperor system before the war, formed the backbone of the Japanese.

4 The fourth problem is that these extraordinary textbooks are forcibly chosen under political and organized pressures. In Japan, the educational board is supposed to determine the choice of textbooks in a unit called the adoption zone, which is formed by the combination of the wards of Tokyo and each city or some municipalities. At the same time, a local assembly member made a speech in the Diet to ask that textbooks from Fuso Publishing, Inc. be chosen, and the group, asking that textbooks from Fuso Publishing, Inc. should be chosen, organized a movement in which written requests recommending those textbooks were systematically submitted. The free legal circles we belong to, labor unions, and women's groups requested educational boards throughout the nation not to give those extraordinary textbooks to children, and only a small number of educational boards in Japan chose textbooks from Fuso Publishing, Inc. Those textbooks were chosen in some schools directly controlled by the Tokyo Metropolitan Board of Education, Otahara City in Tochigi Prefecture; however, the number of copies chosen increased compared to the previous time when those textbooks were not chosen by general public schools. The Liberal Democratic Party and financial world secondly set out to make the Fundamental Law of Education worse in order to place the entire education of Japan under the control and domination of nationalist ideas. Many people of Japan support the Constitution of Japan and think that education, which implants militarism into children and grooms them as soldiers, should not be provided. We lawyers also commit ourselves to struggle in order to hamper the revival of militaristic education joining together with common-sense teachers, parents, and the younger generation.



자국의 헌법을 공격하는 일본 정부 여당 및 재계의 이상한 움직임 - 교과서문제를 둘러싸고 -

오오사카 변호사

藤木邦顯

- 1, 일본 정부인 여당 자유민주당과 재계가 일본국헌법을 바꿔서 군비를 공인하거나 국내에서 군사 우선으로 한 체제를 확립하려고 하는 움직임은 각국 여러분들도 잘 아시는 사실이라고 생각합니다. 본고에서는 일본정부 문부과학대신(文部科学大臣)을 비롯한 각료·여당 간부가 자국의 헌법을 공격하여 침략 전쟁의 가해 책임을 인정하지 않는 교과서를 출간해서 추천하는 사실을 보고하겠습니다. 또 이에 대하여 아시아를 비롯한 각국의 성의 있는 인사분들께 비판을 부탁드립니다.
- 2, 자민당 등이 추진하는 것은 일본 사대 신문의 하나인 산케이(産經) 신문 계열 출판사 「후소샤(扶桑社)」가 발행한 중학 「공민」과 「역사」 교과서입니다. 왜 후소샤의 교과서를 이상하다고 비평하는 것일까. 그 첫 번째 이유는 일본국헌법에 대한 적의와 메이지(明治)헌법에 대한 호의적 평가를 노골적으로 나타낸 점에 있습니다. 예를 들자면 「역사」 교과서에서 메이지헌법에 대해서는 「들었던 좋은 소문보다 훨씬 좋은 헌법」 「실로 칭찬할 만한 헌법」 등 소개하고 일본국헌법에 대해서는 「GHQ는 불과 1주일만에 스스로 작성한 헌법 초안을 일본 정부에게 보여주고 헌법의 근본적인 개정을 강요하였다, 정부는 헌법의 초안 내용에 충격을 받았으나 그것을 거부한 경우 천황의 지위가 위태로워질 위험이 있어서 어쩔 수 없이 받아들였다」 등 기술하였습니다. 또 「공민」 교과서에서는 메이지헌법에 대해서 「가능한 한 국민의 권리나 자유를 담는 동시에 일본 전통문화를 반영하게 하는 노력을 준 헌법이었다」고 평가하고 일본국헌법에 대해서는 「우리나라 헌법은 제정 이래 한 글자도 바뀌지 않았다는 뜻으로 『세계에서 가장 오래된 헌법』이다.」 「국제사회의 현실이나 시대의 변화, 사회의 변천 등에 응해야 하는 부분과 시대나 정론을 넘어서 확실히 지켜야 하는 부분을 주권자인 국민이 구별해가는 필요가 있다.」 등 마치 빨리 개정이 필요하다고 하려는 듯합니다.



두 번째로 문제가 되는 것은 침략 전쟁에 대한 일본의 태도입니다. 「역사」 교과서 속에서는 「조선의 근대화를 도와준 일본」 「조선이 타국에서 침공되지 않는 나라가 되는 것은 일본의 안전보장을 위해서 중요한 것이었다.」 「한국 병합 후 설치된 조선총독부는 철도·관개시설을 정비한다든지 개발을 하거나 토지조사를 시작하여 (조선의) 근대화에 힘을 주었다.」 등 조선·대만의 식민지화를 긍정적으로 평가하는 기술이 두드러집니다. 만주사변·만주국 건국에 대해서는 관동군이 행한 폭파사건으로 인하여 만주철도 연선도시를 점령한 것은 인정하였으나 「정부의 외교 방침은 당시 만주에서 불법 행위를 당한 일본인들의 피해를 해결하지 못하였다. 그러므로 불만이 쌓인 국민 속에서는 관동군의 행동을 지지하는 사람들도 많고 육군에는 다액의 지원금이 들어왔다」 고 하거나 「릿톤조사단의 보고서에는 일본의 안전과 권익이 위태로워진 사실은 인정하면서 일본의 철병과 만주의 국제 관리를 권고하였다」 고 하며 중국 정부의 항의나 민중의 목소리는 소개하지 않고 마치 국제사회와 일본 국민들이 만주에서의 군사 행동을 승인했던 것 처럼 쓰여 있습니다. 중국 침략 내용 속의 남경대학살(南京大屠殺)은 난외 밖에 취하지 않았습다. 게다가 「그 사건의 실태에 대해서는 자료 상에도 의문점이 있어서 오늘날도 계속 논쟁이 되고 있다.」 고 사건의 존재 자체를 부정한 입장을 보여줍니다. 이렇게 침략전쟁에 대한 긍정적 태도를 보면 중국·한국의 비판을 초래하는 것도 당연한 일입니다. 이것은 일본인으로서도 도저히 용서할 수 없는 침략전쟁 긍정사관에서 있는 것입니다.

세 번째는 천황제에 대한 찬미를 강조하는 자세입니다. 「역사」 교과서에서는 쇼토쿠타이시(聖德太子)와 쇼와(昭和)천황이 크게 취급되는 이외에 건국 신화나 코지키(古事記)·니혼쇼키(日本書紀)에 대해서도 당시 어떠한 역사적 사실을 전해주는 것으로 의미를 부여합니다. 개헌과 속에 「우리나라의 역사 전통문화는 천황제이다」 라고 노골적으로 하는 사람이 있는데 「공민」 교과서에는 일본의 역사·전통·문화를 강조하여 그 상징을 「진수의 숲(鎮守の森)」에 찾는 권두화가 채용되어 있습니다. 또 메이지(明治)천황이 내려 전쟁 전에 천황제 찬미 교육의 기둥이 된 교육칙어(教育勅語)에 대하여 일본인의 정신적 지주를 만들었다고 쓴 것도 타사 교과서에서는 볼 수 없는 점입니다.

3, 이러한 이상한 교과서가 정치적·조직적 압력 밑에 채택됩니다. 일본의 교과서 채택은 도쿄도(東京都)의 구 또는 각 시 아니면 몇 개의 동이나 마을을 합쳐서 만든 채택구를 단위로 교육위원회가 결정합니다. 이에 대하여 지방 의원이 의회에서 후소샤 교과서 채택을 요구하는 연설을 하거나 어떤 단체는 조직적으로 후소샤 교과서를 채택하라는 추천

의견서를 제출하는 운동을 전개하였습니다. 우리가 소속한 자유법조단(自由法曹團)이나 노동조합·여성단체는 이러한 이상한 교과서를 아이들에게 줄 수 없다고 전국 각지에서 교육위원회에 요청한 결과 전국적으로 보았을 때 후소샤의 교과서를 채택한 곳은 소수로 끝났습니다. 그러나 이 교과서는 도쿄도 교육위원회의 직할교나 토치기현(栃木県) 오오타와라시(大田原市) 등에서 채택되고 또 전회에는 채택되지 않았던 공립의 일반교에서도 채택 부수가 증가하였습니다. 자민당과 재계는 다음은 일본의 교육 전체를 국가 주의와 통제 밑으로 놓자는 교육기본법의 개악에 착수하고 있습니다. 일본의 많은 국민들은 일본국헌법을 지지하고 있으며 아이들에게 군국주의를 주입하여 병사를 만든 교육이 있으면 안 된다고 생각합니다. 우리 법률가들도 양식이 있는 교원·부모·청소년과 손을 잡아서 군국주의 교육의 부활을 조지하기에 분투할 결의를 하겠습니다.



## 自国の憲法を攻撃する日本政府与党および財界の異様な動き

### 一教科書問題をめぐって一

大阪 弁護士 藤 木 邦 顕

- 1, 日本政府の与党自由民主党と財界が、日本国憲法を変え軍備を公認し、国内では軍事優先の体制を確立しようとしていることは各国のみなさんもお承知の事と思います。私は日本政府の文部科学大臣をはじめとして、閣僚・与党幹部が率先して自国の憲法を攻撃し日本の侵略戦争の加害責任を認めない立場の教科書を推薦していることを報告し、これに対してアジアをはじめ各国の心ある人士からの批判をお願いしたいと思います。
- 2, 自民党などが推進しているのは、日本の四大紙のひとつ産経新聞の系列出版社「扶桑社」の発行する中学「公民」と「歴史」の教科書です。なぜ扶桑社の教科書を異様と評するのか。その第一の理由は日本国憲法に対する敵意と明治憲法に対する好意的評価を露骨に表していることです。たとえば「歴史」教科書では、明治憲法についてことさらに「聞きしにまさる良憲法」「実に称賛すべき憲法」などとたたえたと紹介し、日本国憲法については、「GHQがわずか1週間で自ら作成した憲法草案を日本政府に示して憲法の根本的な改正を強く迫った、政府はGHQが示した憲法の草案の内容に衝撃を受けたが、それを拒否した場合、天皇の地位がおびやかされるおそれがあるのでやむを得ず受け入れた」などと記述しています。「公民」教科書では明治憲法について「できるだけ国民の権利や自由を盛り込み、同時に日本の伝統文化を反映させようとする努力が注がれた憲法であった。」と評価し、日本国憲法については、「わが国の憲法は制定以来一字一句まったく変わっていないと言う意味で『世界最古の憲法』なのである。」「国際社会の現実や時代の変化、社会の移り変わりなどに応じなくてはならない部分と時代や正論を越えてしっかり守って行かなくてはならない部分を主権者である国民が区別していく必要がある。」などとして早く改正が必要だといわんばかりです。

第二に問題なのは、日本の侵略戦争に対する態度です。「歴史」教科書のなかでは、「朝鮮の近代化を助けた日本」「朝鮮が他国に侵されない国になることは、日本の安全保障にとっても重要だった。」「韓国併合のあと置かれた朝鮮総督府は、鉄道・灌漑の施設を整えるなどの開発を行い、土地調査を開始し近代化に努めた。」など朝鮮・台湾の植民地化を肯定的に評



価する記述がめだちます。満州事変・満州国の建国については、関東軍による爆破事件から満鉄沿線都市を占領したことは認めています。「満州で日本人が受けていた不法行為の被害を解決できない政府の外交方針に不満をつのらせていた国民の中には関東軍の行動を支持する者が多く、陸軍には多額の支援金が寄せられた。」とし、「リットン調査団の報告書は日本の安全と権益がおびやかされていた事実はみとめつつも日本の撤兵と満州の国際管理を勧告した。」と中国政府の抗議や民衆の声は紹介せず、あたかも国際社会と日本国民が満州での軍事行動を承認していたかのような書き方をしています。中国侵略の中での南京大虐殺は欄外でしかとりあげず、しかも「事件の実態については資料の上でも疑問点が出され、今日でも論争が続いている。」と事件の存在自身を否定する立場です。このような侵略戦争に対する肯定的態度が中国・韓国の批判を招くのは当然であり、日本人としても到底許すことのできない侵略戦争肯定史観に立つものです。

第三には天皇制に対する賛美を強調する姿勢です。「歴史」教科書では、聖徳太子と昭和天皇が大きく取り上げられているほか、建国神話についても古事記・日本書紀についても当時の何らかの歴史的事実を伝えるものという位置づけがされています。改憲派のなかで「わが国の歴史伝統文化とは天皇制である」とあからさまに言う人がいますが、「公民」教科書では日本の歴史・伝統・文化を強調しその象徴を「鎮守の森」に求める口絵が採用されています。明治天皇が下し、戦前の天皇制賛美教育の柱となった教育勅語について、日本人のバックボーンをつくったなどとするのも他社ではみられないものでしょう。

3. このような異常な教科書が政治的・組織的圧力のもとに採択させられようとしていることです。日本の教科書採択は、東京都の区または各市あるいはいくつかの市町村を組み合わせでつくられた採択区とよばれる単位で教育委員会が決定することになっています。これに対し、地方議員が扶桑社の教科書採択を議会で求める演説をしたり、扶桑社の教科書を採択せよという団体が組織的に推薦の意見書を提出する運動を組織したりしました。私たちの所属する自由法曹団や労働組合・女性団体などがこのような異常な教科書を子どもたちに渡すわけにはいかないと全国各地で教育委員会に要請し、全国的にみれば扶桑社の教科書を採択したところは少数にとどまりました。しかし、東京都教育委員会の直轄校や栃木県大田原市などで採択され、公立の一般校では採択されなかった前回に比べて採択部数は増加しました。自民党と財界は次には日本の教育全体を国家主義と統制のもとに置こうとする教育基本法の改悪に乗り出しています。日本の

多くの国民は日本国憲法を支持し、子ども達に軍国主義を注入して兵士に仕立てるような教育があってはならないと考えています。私たち法律家も良識ある教員・父母・青年と手をつないで軍国主義教育の復活を阻止するために奮闘する決意です。



## Korea-Japan Relation and Solidarity<sup>1)</sup>

Kwon, Heok-Tae (SungKongHoe Univ.)

Even to me, who had been in Japan for more than a decade, recent visits to Japan have brought a shock. That is because of the drastically changed atmosphere in Japan. The country is bent on bashing its neighbors including China and the two Koreas, and uttering provocative words such as an imminent war. Crying out for Nippon(Japan) and Nipponjin(Japanese) are permeated into every hole and corner. With debates over the revision of the pacifist constitution, voices for going nuclear are nothing new. 'Patriotism' is rampant among the Japanese, and the word of 'Post-war Democracy' has become what they have to deny, not to overcome. In addition, 'Human Right' and 'Democracy' have been reduced to dubious words that they should doubt before using them. According to Nishibe Susumu, a leading politician on the right who wrote Husosha textbooks in 2001, the word of 'peace' shows well that the speaker's mentality is very immature and it is nothing more than 'hypocrisy' and 'deception.'<sup>2)</sup> It seems to go too far, but without it how could we explain completely rapid changes surrounding the law concerning the national flag and anthem, the war contingency law system, Yasukuni Shrine visits, historic textbook revision, territorial disputes, and the designation of Showa day. Meanwhile, is pacifist constitution amendment the last in a series of drastic changes in Japan?

Paul Giarra, the former director of the Japanese division in the US State Department, described the recent changes in Japan as a 'slow motion innovation', a rhetoric that shows well how impatiently US neo-conservatives want Japan to push for reform. But, from my point of view, the recent situation in Japan is nothing more than a runaway train without brakes.

1) The following article is based on Kwon, Heok-Tae, "Japan's constitution revision and the dissymmetrical relation between Korea and Japan," *Changjakgwabipyung* (fall 2005) and 權赫泰, 「日韓関係と'連帯'の問題」 『現代思想』 (青土社) 2005年 6月号.

2) 西部邁, 「戦争論」, 角川文庫



Witnessing the Japanese domestic changes, on one hand, I'm very embarrassed with the extent to which Japan has changed within less than a decade. On the other, I have regrettably come to realize that I failed to predict the changes as a social scientist. Today's Japan is completely in contrast to what it looked like 20 years ago. At then, though the country seemed to lag behind, it was still soaked in the mood of post-war democracy including peace, democracy and human rights. Even though the atmosphere might be resulted from economic development, it could be felt easily enough to overwhelm me who was in Japan as a student from Korea, a country that was poor and anti-communist at that time. The word 'Heiwaboke(平和ぼけ)' presented for the anxieties on youngsters who did not know themselves as security free riders and their lives among fruits in peace, but it also contained the pride of Japanese who could enjoy the fruits with the Japanese successful story built on the ruins of the war. In fact, since World War II, only a few countries such as Japan have economically prospered freeing from the fear of war. Striking an awkward balance with relative poverty and insecurity of South Korea, Japan's prosperity and the peaceful mood looked ever-larger to me taking outsider's position. To speak exaggeratingly, it is similar to the feeling of a person who was impotent when he escaped from '4.3 massacre' in Jeju Island to Japan and encountered a impressive facade of the Japanese communist party at Yoyoki station, as described in the novel 『Hwasando』 written by Lee, Seok-Beom. In other words, it is like the desperation of Koreans who came to Japan for their living or education and experienced the gap between 'a developed country, Japan' and 'a colony, Korea.' These feelings would be common in Koreans who have stayed in or visited to Japan. However, it took me a short time to recognize that peace in one side is closely connected with insecurity in the other side.

In fact, especially after the 19th century, the value of peace has not been simultaneously shared among Northeastern Asian countries, between Korean-Japanese relationship as well. From the late 19th to the early 20th century, Japan had been at the top of the hierarchy, a power structure that was common during the time. Even after the war, the power structure passing from the cold-war era had been maintained in a broader picture in which a triangle of the Soviet Union, China and North Korea took place in the north, and a triangle of the US, Japan and South Korea in the South. In short, it can be said that

Northeast Asian countries had maintained such "dissymmetrical relationship for more than a century. Given the past Korean-Japanese relations, while Japan had moved forward freedom, democracy, and peace, Korea had followed the opposite path under the anti-communist and authoritarian regime.

#### **Japan's right-wing drift, and its condition and direction**

Dividing the Japan's right-wing drift phenomenon into rules, campaigns, and thoughts, the recent drift is remarkably achieving legal outputs more than before. After 1999, the first year of the right-wing era, the series of movements for the law concerning the national flag and anthem, the war contingency law system, and the constitution revision have been conducted.

Japan's post-war democracy is maintained by three factors; high economic growth, parliamentary democracy based on cooperation and confrontation between conservatives and progressives, and its Self-Defense Forces(SDF) armed with light weapons as stated in the Japanese pacifist constitution. All these are propped by its alliance with the US. That seems the extension of the Cold War in Japanese style. Therefore, it is significant for Japan to seat itself in the Cold War order which stands for the US-Japan relation. The arrangement was started to set its fundamentals with the Treaty of Peace with Japan and the US-Japan Mutual Defense Agreement. Afterward, the US and Japan have split up the roles of each other; the US has bore Japan's military risk while Japan has provided the US military base, so that Japan could keep justifying its 'peace line' after the war. Along the US-Japan role division, the US assigned additional roles to Japan as a supply base and to Korea and other neighboring countries as combat bases. Japan and others, therefore, needed stable political governments to satisfy the roles received, and those needs created the Liberal Democratic Party(LDP)'s government in Japan and anticommunist and dictatorial systems in neighbors. The US provided aids and product markets in exchange for material fundamentals of the governments. These governmental systems stimulate economic developments, which expand stabilize government fundamentals again. That is the completion of the virtuous circle for the so-called 'cold war development.' In addition, there was an inner structure in Japan, consisting of opposition and support between the LDP and the Socialist Party which stand for conservatism and progressivism respectively. The Socialist Party controlled more



than 1/3 seats and played a role in hindering the wave of the revision of constitution. The party was successful in blocking the reformative action and playing a role as a bulwark for the post-war democracy, though it failed to come to power. Therefore, Japan's long-term peaceful and high living standard are the outcome of post-war democracy established on the war ruins.

However, as both inside and outside conditions of the post-war democracy change, Japan's right-side drift take place in the Japanese politics. One of the inside changes came from the rapid decline of the Socialist Party, the party which supported the constitution protection and peace movement and played a role in defending the value of post-war democracy. The Socialist Party changed its name to the Socialist Democratic Party(SDP), but is taking only 6 parliamentary seats. Comparing to 166 seats in 1958 and 139 seats in 1990, the 6 indicates severe wane of the party. However, it does not mean the overwhelming victory or political stabilization of the LDP. Though the popularity of Prime Minister Koizumi helps the LDP's polling rate rise to some degree, the rate plummeted from 34.6% in 1986 to 20.3% in 2000. The two axes of the post-war democracy is being cracked.

Outside condition changes elements for accelerating the post-war democracy transition. One of the exterior changes is the US claim that Japan share military burden. The US wants to militarize Japan's Self Defense Forces and split some parts of its military burden to Japan, which finally leads to the revision of Japanese Constitution Article 9.

In terms of Korea-Japan relations, it should not be ignored that Japan's post-war democracy has been supported by neighboring countries' military sacrifices. Peace in Japan has been maintained without their own military forces, because Japan has supported the US military strategies in Asia with 75% of the US troops stationed in Japan stationing in the Okinawa base and also Korea's role of battle field in place of Japanese role. In other words, Japan's post-war peace line could have been sustained at the cost of neighbors sharing military risks. It can be explained more simply that the strict conscription system in Korea has a been closely connected with the right for the Japanese young not to serve in the army. According to the novel 『Death like a flame』<sup>3)</sup> about the Mun, Se-Gwang case in 1974, written by Yang, Seok-II, the

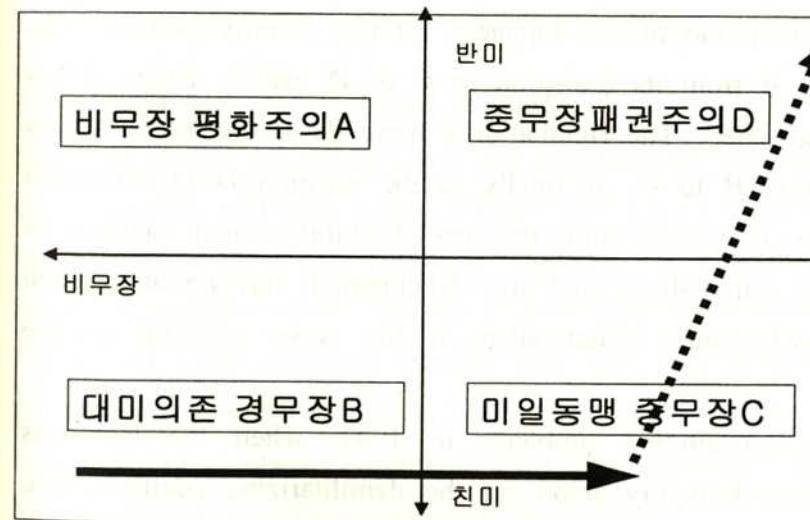
3) 梁石日、『死は炎のごとく』毎日新聞社

main character Song, Eui-Cheol(Mun, Se-Gwang) says, "Japan is very in peace. If peace sacrifices something to maintain it, then the peace is not it," which might intend to point out the Japan's own limited capacity to maintain peace.

After the 1990s, however, democratization in neighbors including Korea has led them to deny their former role as battle fields, and the military burden has turned back to Japan, stimulating Japan's right-wing drift. Ironically, the anticommunist dictatorship in Korea has backed the pacifism in Japan, and the democratization in Korea is now threatening the pacifism and triggering the rightist wave in Japan. It is well brought out the dissymmetrical relation between the two nations.<sup>4)</sup>

So then, what does the new trend in the Japanese society, especially the constitution reform, head for? How has the current constitution been engaged to democratic security policies and developed in Japanese historical view?

<figure1> The concept map of Japanese diplomacy and security lines in the rightist drift



- A: Demilitarized Pacifism
- B: Heavily-armed Hegemonism
- C: US-dependent light-armament
- D: US-allied heavy-armament

4) I have mentioned about it when Mr. Kimigima Akihiko(君島東彦), a Japanese constitution expert, presented his report at the seminar, 'Peace in the Northeast Asia and Japanese Constitution' held in Korea in November, 2003. Mr. Kimigima answered, "it is necessary to view military bases in Okinawa and Korea and military regimes in Southeast Asia not superficially but in the aspect of the constitutional pacifism in Japan."(君島東彦「NGO平和構築が憲法の平和主義を具体化する」『論座』2004년 12월호, 朝日新聞社).



Note: Kwon, Heok-Tae, "Japanese liquidation of the past and the rightist drift," in *Democratic Societies and Policy Studies* vol.8, (fall 2005), p.154

Japan's foreign security policies can be divided into four categories in theory; (A) Demilitarized pacifism, saying discard of the SDF and the US-Japan Mutual Defense Agreement; (B) US-dependent light-armament, standing for continuing the forces and the agreement; (C) US-allied heavy-armament, arguing new forces establishment and consolidation of the agreement with the US; (D) US-independent heavily-armed unilateralism, meaning abolition of the agreement, revision of the constitution, and the emperor-president system. A is the leftist position representing the Socialist and the Communist Parties, while B is the moderate right-sided view of the LDP. C is the heavily-armed nationalism based on the pro-US nationalism, and D is the heavily-armed unilateralism founded on the imperialistic nationalism in the past. The recent rightist drift shows the switch-over from the position B to C, which has a possibility of jumping out to the position D. The position B, established around the mid-1950s, has led the main line of the Japanese foreign security policy. The position A has defended B from its transition to C or D, which means A has made B secure its ground safe. The rightist drift these days, therefore, implies the progress of the position B to C, or finally to the position D in extreme.<sup>5)</sup> In other words, it is now in a way from the pro-US lightly-armed pacifism to the pro-US heavily-armed nationalism, and the development has possibly reach out to the anti-US heavily-armed unilateralism if the wave connects to the imperialistic nationalism.

In terms of the constitution problem, in 1947, when the law was established, the constitution throughly stood on the demilitarizing pacifism, but, after the Korean war, Japan was remilitarized, occurring a problem of its constitutionality. Therefore, Japanese government at the time solved the problem not by amendment but by construction of the law. From the point, the peace constitution, objecting possession and operation of military forces, and the SDF, troops which are not the ones, were placed side by side under the same roof. In a way, the recent demand for the constitution revision is a result of the

5) See Kwon, Heok-Tae, "Japanese liquidation of the past and the rightist drift," in *Democratic Societies and Policy Studies* vol.8, (fall 2005), p.154

consistent effort for the constitution incapacitation and the continuous expansion of the SDF. It calls for the termination of the strange cohabitation.

<figure 2> Inter-relation between the diplomacy and security lines and the constitutional theory

	Constitutional Theory	Subject	Content
Demilitarized Pacifism	Observance of the peace constitution	Pro-constitutionalists, such as socialists and communists	Abolition of the SDF and the defense treaty with the US
Light-armed Pacifism	Constructive amendment of the law	Pro-constitutionalists in the LDP	Preservation of the SDF and the defense treaty with the US
Heavy-armed Nationalism	Partial revision of the constitution	Pro-US Nationalists	Remilitarization of the SDF Admitting the right of massive self-defense
Heavy-armed Hegemonism	Total revision of the constitution	Imperialistic Nationalists	Remilitarization of SDF Admitting the right of massive self-defense The emperor-president system

#### The characteristics of problems in 2005

However, it can not be said that the transition of the pacifism is the sole reason of the 2005 problems even though the cracked pacifism is beared in the background of the recent rightist movement. It is necessary to think of why the historical disputes with neighbors give rise to territorial problems in 2005. Japan and other countries around has had several difficulties about historical understandings, but disputes in 2005 are new in that the history textbook or the territorial arguments are combined with the right-wing drift accompanied with the SDF expansion and the constitution destruction.

It is not true that the transition of historical understandings is a necessary condition for the rightist wave including the constitution revision movement. In practice, it seems that Japanese government made an effort to separate the historical problem and the rightist movement. The method for the separation was like, " We apologize the colonization and the war, but we would reform our constitution and remilitarize our forces." The repetitive apologies made by the Japanese Prime Minister until the 1990s represents Japanese method for the separation.



If considering political and public sentiment in and outside these days, however, it is not simple to achieve the ultimate goal of the rightists, the constitution revision, because of a fierce opposition opinions. For the revision, the supportive parties and people should concentrate their all efforts. But there is wariness rampant in Japanese society against the series of the right-sided movement. Therefore, if the constitution revision take on concrete shape in politics, it could trigger a domestic political confrontation, probably extending to a social disorder. In the process, the rightists worries that they are regarded as warmongers contrary to the opposites as peace mongers and are isolated in their society. Accordingly, for avoiding the isolation and attracting floaters to their side, they might concludes that it is worthy of replacing the domestic confrontation to the inter-state disputes with neighboring countries. The territorial issue might be the most appropriate material for stirring up the international opposition from the existing historical problems. While the disputes from different historical understandings cause arguments on universal values and matter harmonious relations with neighboring countries, territorial issues are good materials for exposing national interests to citizens and integrating them easily. In addition, the territorial issue is proper to excite a critical sentiment on Japanese sovereignty. For example, the kidnapping to North Korea, which become an issue in 2002, was recognized as a violation of sovereignty, not a human rights problem. The event isolated realists in the LDP and the government, while politicians, governments, elites, media, and NGOs in the rightest network were united. Afterwards, the rightist network has successfully cooperated to cope with the situations such as issues about history, territory, North Korea, and the constitution revision. The rightists insists that surrounding countries are not their neighbors living together but enemies threatening their sovereignty and human rights. To secure Japan from the enemies, they argue that it is necessary to revise their constitution and reform their forces. They claim strong powers to defend their sovereign authority.

#### **Korea's diplomatic policy toward Japan - the failure of the 'quiet diplomacy'**

Traditionally, Korea's diplomacy toward Japan, under the US influence, takes security and economy prior to other issues. The two countries have been placed in the hierarchy putting the US at the top. Therefore, Korea could not make a

independent decision by itself, but has accepted the US decisions for security or the profitable decisions by capitalists. On the other hand, the Korean governments has used the anti-Japan sentiment inherent in Korean people as a tool for economic development and national integration. When the governments could not deal with people's demand towards Japan, they claimed Japan made an apology without any compensation. In the process, historical conflicts between the two countries has partially dissolved through the negotiations for settling the degree of the apology. The Korean governments, therefore, are not free from the blames for partly covering up, reducing and suppressing the damage inflicted on Koreans under the Japanese colonial rule. After the 1990s, Korean society has demanded compensations for its colonial sufferings, which means, as Korean society has become democratic, security issue or strategic interest do not take part in Korea's diplomatic policies towards Japan. The democratization movement, therefore, is a domestic issue in Korea on one hand, and suggests a partnership between Korean and Japanese governments in the historical crime. Furthermore, in the aspect of the world history, the movement shows an anti-thesis against imperialism passing from the colonial era.

Nevertheless, Korea's diplomatic policies towards Japan especially in terms of democratization and transparency bring risk to both Korea and Japan as Korean society has become democratic. That is because if historical problems lurked under the dictatorship suddenly erupt, it would make the two countries estrange from each other and then, compromise the tripartite relationship of Korea, Japan and the US. In practice, just after the presidential election of Roh, Moo-Hyun, the Japanese media expressed 'embarrassment' or regarded his election as 'a primary factor in political unrest in Northeast Asia because Mr. Roh's coming to power would serve as a turning point in raising question with the historical issues between the two countries, and it would further shake the hierarchical system under the auspices of the US as well as threatening Japan's vested interests groups. It seems like reactions against the possible crisis on its vested right. It suggests Japanese tendency to stay in the past orders and also to fear for making new orders.

Under the circumstance, the Korean government begins the so-called 'calm diplomacy', which separates historical disputes from Japanese military expansion and consitution revision. It means that if there isn't any absurd



remark from Japan on historical issues, Korea would not raise issue about the Japanese Constitution revision and the remilitarization of the SDF. At the meeting with Japanese Foreign Minister Kawaguchi, held on March 16, 2002, President Roh mentioned, "historical issues are important, but cooperative efforts for the future in Northeast Asia are necessary." It implies, in other words, cooperation for peace in the region is prior to historical issues. Additionally, on March 23, 2005, when Korea-Japan relation was somewhat uncomfortable with a territorial issue, President Roh clarified what the 'quiet diplomacy' is in 'a letter to the nation' as follows.

Japan has laid a legal foundation for dispatching the SDF abroad, and now prepares remilitarization of its forces. Such behaviors remind us of painful memories of the past and threaten our lives in the future. However, now that Japan already made apology and we accepted it and declared partnership with Japan, the Japanese could be offended if only Japan is denied the state authority shared by all common countries across the world. In this vein, we have kept back our worries and what we want to talk to Japan for the better future of the Korea-Japan relationship.

The Roh government, which sent troops to Iraq, might be unable to take issue with the SDF dispatch to Iraq, even though the dispatch was in conflict with the constitution. Furthermore, the government could not ignore the cooperation with Japan and other neighbors in the North Korean issue, so that the separation of the history and the rearmament would be the best bet to make a soft landing for the Korea-Japan relation.

Therefore the territorial dispute this year served as a medium between historical problems and the remilitarization. With the territorial issue, Korean government recognized that it is impossible to keep the calm diplomacy in place any more. The two governments' intentions come out around troubles with territory, and the territorial problems are spreading to others such as a textbook argument. Korea-Japan relation seems like a kind of a chicken game.

#### Settling an 'international solidarity'

Until now, inter-state relation was formed in the process of governments

pursuing their countries' development. They monopolized almost all the international movements of product, capital, labor, and information, and regulated the distribution and adjustment of resources. The trend is especially significant in the Northeast Asian countries in which national development was driven by governments. They have controlled the movement of product and capital with protectionist policies or foreign exchange regulation, the mass media and the public opinions with inspections, and the movement of labor with overseas travels regulations and identity checks.

Therefore, the Korean's views on Japan would have been manufactured with fragmentary information in the form of the national development plans or remanufactured by accepting the already manufactured information. In the same manner, information about the Korean society has flown into Japan in a very limited content, and the views on Korea have been manipulated according to the course of the Japanese society. For that reason, even though there have been civil societies are free from governments and capitals in the two nations, it has been hard to establish an international coalition of citizens which are free from governments' monopolization and manipulation. In other words, a civil society found in one nation did not necessarily develop to create an international network of civil societies. So, the civil societies' networks under state monopoly were inevitable in relying on 'universal ideologies.' For instance, the social solidarities of radical reformers including Kim, Ock-Kyun in Kapshinjeongbyun(1884) and of socialists in the colonial period were based on the ideologies of 'modernization' and 'socialism' respectively.

These 'ideological solidarities' were common in reinterpretation of regional realities through the universal ideologies like 'modernization' or 'socialism' and in assumption of the international solidarities as channels towards realization of the normative values. For example, according to Karatani Kojin, socialism, which would primarily stand for 'sublation of a nation,'<sup>6)</sup> was suck into the mould of a nation or a people through socialist movement in many cases. That is because the ideologies presupposed themselves to be based not on their textual principles but on a nation or a people. Therefore, it would be natural that ideologies for solidarity, after the war, were not free from a nation and a people.

After the war, modernization was absorbed into the inter-governmental

6) 柄谷行人「インタビュー「一九四五年」と「二〇〇〇年」」「世界」January 2005.



relation, and socialism into the people's coalition between Korea and Japan. The admission of the ideologies were in the process of nations formation, and the problems eliminated, excluded, or newly created in the process were recognized around the 1960s. Especially in Japan, with the Vietnam war in the 1960s, people started to realize that Japan was the offender in the past and its violence had supported its prosperity at the time. Japanese people came to understand that their prosperity was founded on the sacrifices of Korea and other Asian countries. In the sense, they formed a supportive solidarity for Korea's modernization movement, which indicates the critical perception of Japanese society about the past and the present. The new recognition got to cross the borders in overcoming the form of nations and peoples, because the frame of nations or peoples in socialism could not protect the idea of the international solidarity any more in reality. Consequently, the socialistic international solidarity came to be criticized with a new recognition of solidarity.

On the contrary, in Korea, after its independence, the ideology of modernization was excluded from people by the government. Therefore, the spirit of the international solidarity especially based on socialism, which had existed before the independence, collapsed when the Korean peninsula was divided and the anticommunist government appeared in the north. So social movement in the south should choose whether to raise objection to excluding people from modernization in favor of realization of democracy or leaning towards the ideology, socialism, 'another lost world'. For that reason, the spirit of the international solidarity was considered as one of factors in completing a nationalistic state, in the frame of the nation, Korea. Particularly, Korean social movement had a distance from the inner-split and the self-examination around socialism in the international society and had no chance to experience the deterioration of socialism from the international proletarian movement to the socialistic hegemonism.

In short, while Japanese social movement recognized the international solidarity out of a nation and a people, Korean movement set the solidarity in the way of the nation completion.

#### **New conditions towards new construction of the solidarity**

After the Cold war, two different, somewhat contradictory, trends are accelerated.

One is the development of globalization, and another is the strengthening of nationalism.

The development of globalization is problematic in that it has inclined to the neo-liberal orders, while it also weakens the borders between nations in modern times and expands relations beyond governments to private sectors and further to individuals. That is, relatively freer interchanges turn to possible in the international society. Moreover, the advance of the IT industry reduces the cost of international exchanges. Those exchanges spread to all the various fields of society, posing a crisis of government-controlled restrictions.

Such a trend is quite obvious in Northeast Asia. The number of unofficial interchanges is rocketing in terms of travel, overseas education, scholar exchanges, joint researches, etc. For example, in Korea, the number of people studying Japanese language is almost 1 million, and Japan-related courses are opened in about 100 schools and China-related courses are in 50 schools. A quantitative basis for interchanges among the three Northeast Asian countries is already established in Korea.

Nowadays it is easy to take other countries' information instantly with a low cost, which was exclusively possessed by governments, media conglomerates, etc. Such a change means that individuals can place their national system at a distance and choose and take any information whatever they want. It, again, means the leading roles in the Korea-Japan relation shift from the generation of colonial or ideological period to that beyond history and ideology. Therefore, the coalition or interchange mechanism based on information monopolization or imperfection get to the time for stopping its function. The new phenomena, a informative pattern of livelihood or individual, makes it possible to take detailed information through practical experiences, and the information comes to correct and supplement the existing information gained before.

Hence, a unilateral world view cultivated by given information under the Cold war structure is undoubtedly expected to change to some degree. Such a change would make an individual perceive himself as a member of Northeast Asia, not an accessories of a certain nation. And, the change supports regionalism exceeding nation borders in the area. The arguments for 'the history beyond nations'<sup>7)</sup> which predicts globalization weakening nation-centered historical

7) 入江昭「一国中心の歴史をこえるために」『世界』January 1994.



description and 'Northeast Asian common house' are concerning as representative examples towards Northeast Asia as one unit.

However, after the 1990s, the reality in Northeast Asia has been in the opposite direction. Despite the economic and cultural exchanges expanded among the three nations in Northeast Asia, antagonism is getting strengthened in the frame of a nation, which is appeared in the form of a 'nation-building' or a 'nation identity.' For now, it seems just an illusion if expecting individual exchanges to weakening nation borders. Especially, inter-state disputes about historical memories and territories awaken people to the that economic and cultural exchanges do not necessarily bring peace in Northeast Asia. In fact, the disputes between states remind the civil societies, which instantly seemed free from each nation, of their own national frames.<sup>8)</sup> Therefore, the recent Korea-Japan relation should not only monitor international exchanges led by governments and capitals, but also create a new model of interchangeable solidarity. The international solidarity cannot be tied up with a normative ideology, and the individual meetings are no more expected to bring borders down between nations. In such a world, all the gatherings in every place and should get out of simple information or friendship exchanges and turn to practical meetings with common goals in different issues. For instance, there are the Korea-China-Japan civil cooperation for solving history textbook problem or for creating the model of disarmament in Northeast Asia. In this way, specific experiences and achievements of solidarity would finally guarantee the new spirit of solidarity.

8) For example, the dispute between Korea and China on the Koguryo history make us to realize that the historical troubles are not limited in the relation with Japan but possibly extended to the Asian problem. (Kwon, Heok-Tae, "The Koguryo history troubles and Japanese perception on Northeast Asia," *Hwanghaemunhwa*, winter 2005)

## 한일 관계와 '연대'의 문제 1)

권혁태(성공회대학교 일본학과 교수)

Kwon, Heok-Tae(SungKongHoe Univ.)

사적인 일이긴 하지만, 결코 짧다고는 할 수 없는 10년 이상의 '체일' 경험을 갖고 있는 나는 최근 일본을 방문할 때마다 적지 않은 충격을 받는다. 너무나도 변해버린 일본 사회의 '공기' 탓이다. 북한·중국·한국 때리기가 전쟁 위기의 선동과 더불어 온 나라를 뒤덮고, 닛뽀(일본)·닛뽀진(일본인)이라는 부르짖음이 나라 구석구석까지 침투해 있다. 오랜 기간 금기시되어 왔던 '헌법개정'은 말할 것도 없고, 심지어는 '일본 핵무장론'조차도 이제는 또한 그다지 새삼스럽지 않다. '애국심'이라는 말이 횡행하고 '전후 민주주의'라는 말은 오로지 부정(극복이 아니다)의 대상으로서만 언급되어, 마치 골동품 취급을 받는다. '인권'이나 '민주주의'는 오직 '의심'의 대상일 뿐이며, '평화'는 2001년 후소야 공민교과서를 집필한 우과의 대표적 인사인 니시베 스스무(西部邁)의 말을 빌리자면, "정신의 발달 상태가 유형(幼形)임의 확연한 증거"이며, 따라서 '위선과 기만'의 말에 다름 아니다<sup>2)</sup>. 이것은 극단적인 예일지도 모르겠다. 그러나 국가·국가법(國歌法), 주변사태법, 유사법제, 야스쿠니 신사 참배, 교과서 문제, '영토' 분쟁, '쇼와(昭和)의 날' 제정 등 어지러울 정도로 잇달아 발생하는 변화를 어떻게 설명할 수 있을까? 최후 마무리는 '헌법개정'으로 장식될 것인가?

최근 일본사회의 변화를 미국 국무성의 전 일본부장인 폴 지아라(Paul Giarra)는 '슬로모션 혁명'이라 표현했는데, 이것은 일본의 신속한 개혁을 바라고 있는 미국 네오콘의 초조함을 부각시키는 레토릭일 뿐이다. 내가 보기에는 최근 일본의 변화는 '브레이크 없는 폭주기관차'에 다름 아니다.

불과 10년도 채 안 되는 기간에 이만큼 사회가 변할 수 있는 것인지, 놀라움과 함께 이러한 상황을 예견하지 못한 사회과학자로서의 무력감에 빠질 수밖에 없었다. 약 20년 전에 반공독재의 '가난한' 나라 한국에서 일본으로 유학을 갔던 내가 목격·체험한 당시의 일본사회와는 마치 정반대의 방향으로 달려가고 있는 듯이 보인다. 당시의 일본사회는 다소 쇠퇴하는 기색은 있

1) 이하 원고는 권혁태, 「일본의 헌법개정과 한일관계의 비대칭성」, 「창작과 비평」, 2005년 가을호 및 權赫泰, 「日韓關係と'連帯'の問題」, 「現代思想」(青土社) 2005년 6月号를 발체 구성한 것임.

2) 西部邁, 「戦争論」, 角川文庫



었지만, 여전히 평화·민주주의·인권이라는 '전후민주주의'의 공기로 둘러싸여 있었다. 경제성장의 과실에 의해 지탱된 '통합'의 여유라고 말할 수밖에 없을 지도 모르겠지만, 여하튼 그러한 '공기'는 높은 생활수준과 더불어 나를 압도하기에 충분했다. '헤이와 보케(평화병)'라는 말에는 '안보 프리라이더(free rider)'를 알아차리지 못하고, 그저 평화라는 '과실' 속에서만 살아가고 있는 젊은이에 대한 초조함의 시선과 함께, 전쟁의 '폐허'에서 일어나 '평화'라는 달콤한 '과실'을 자유롭게 향수하고 있는 일본사회의 '성공 이야기'에 대한 자랑스러움과도 같은 것이 은근히 비치고 있었다. 실제로 제2차 세계대전 후, 전쟁의 공포에서 벗어나 경제적으로 풍요롭게 살 수 있는 지극히 당연한 '일상의 권리'를 획득한 나라는 그리 많지 않다. 그것을 일본 속의 '타자'로서 바라볼 수밖에 없는 나로서는 일본의 풍요로움이나 '평화'가 한국의 상대적인 '빈곤함'이나 '불평화'와 기묘한 대칭을 이루면서 더욱 더 증폭되어갈 뿐이었다. 그것은 좀 과장된 표현을 하자면, 김석범(金石範)이 『화산도(火山島)』라는 대하소설에서 그린 것과 같이, 제주도의 '4.3 학살사건'을 피해 일본에 건너온 사람이 요요기(代々木)역에 내려 일본공산당의 당당한 간판을 보고 빠져든 '무력감'과 닮은 것인지도 모르겠다. 더 나아가 전전에 많은 식민지 출신의 조선인이 돈벌이로 혹은 유학으로 일본에 건너와서 '세련된 선진 일본'과 '식민지 조선' 간의 격차로 인해 느낄 수밖에 없었던 '절망'과 비슷한 것인지도 모른다. 이러한 경험은 나뿐만이 아니라 일본에 체재한 경험을 지닌 많은 '한국인'에게 공통된 것이리라. 그러나 한편의 '평화'가 다른 한편의 '불평화'와 서로간에 밀접한 형태로 연결되어 있다는 점을 알아차리기까지는 그다지 많은 시간이 필요하지 않았다.

실제로 한일 관계뿐만이 아니라 동북아시아에서는 특히 19세기 이후, 평화라는 가치를 동시에 공유한 경험이 거의 없다. 19세기 말부터 20세기 전반기까지는 일본을 '맹주'로 한 '서열화된 국가·민족' 관계가 동북아시아를 지배하고 있었다. 전후에도 전전의 유산을 간직한 채, 큰 틀에서는 북방의 '소련·중국·북한'과 남방의 '미국·일본·한국'이라는 각각의 삼각체제에 의해 '냉전적 평화' 구조가 유지되었다. 한마디로 말하자면, 동북아시아에서는 적어도 100년 이상 동안 '비대칭적 관계'를 반복해온 셈이 된다. 한일 관계에 한정해서 말하자면, 한국이 반공독재체제 아래에서 반자유·반민주주의·반인권·반평화의 길을 걷고 있었던 시기에, 일본은 자유·민주주의·인권·평화라는 가치에 뒤떨어져 있었다. 그러나 거꾸로 한국이 민주화를 획득하여 겨우 인권·민주주의·평화라는 가치에 주목하려고 하자, 이제 일본은 역방향으로 기울어지고 있는 것이다.

### 일본의 '우경화'의 조건과 방향

일본의 우경화를 제도·운동·사상의 영역으로 나누어서 살펴보면, 최근의 우경화는 과거와는 달리 제도적 성과를 잇달아 달성하고 있다는 데에 그 특징이 있다. 우경화 원년이라 부를만한 1999년 이후 국기·국가법, 주변사태법, 유사법제, 헌법개정을 향한 움직임 등이 그에 해당한다.

일본의 전후민주주의는 주지하는 바와 같이 높은 경제성장, 보수와 혁신의 대립 및 공존에 기초한 의회민주주의, 평화헌법에 기초한 경무장 평화주의가 미일동맹에 의해 지탱되는 체제이다. '냉전'의 일본적 전개인 셈이다. 따라서 미일 관계로 대표되는 냉전질서에 '안주'하는 것이 무엇보다 중요하다. 이것은 샌프란시스코강화조약(반쪽 강화)과 미일안보조약을 한 묶음으로 하는 대외 관계를 기초로 하여 그 기반이 만들어졌다. 이후 미국이 군사적 리스크를 부담하고 일본이 군사기지를 제공하는 미일 간의 '역할분담'이 자리를 잡게 되고, 이 덕분에 전후 일본 사회에는 명분으로서의 '평화노선'이 유지되었다. 이러한 미국과 일본의 역할분담 속에서 일본에는 병참기지, 한국을 비롯한 주변국에는 전투기지로서의 역할이 각각 미국에 의해 주어졌다. 일본을 포함한 주변국에는 미국이 부여한 역할에 상응하는 안정된 정치체제가 필요했고, 이런 필요가 일본에서는 자민당 정권, 한국 등 주변국에는 반공독재체제를 만들어냈다. 그 대가로서 미국은 원조 및 시장을 제공함으로써 정치체제의 물질 기반을 정비하였다. 정치체제가 경제성장을 촉진하고 경제성장이 정치적 기반의 외연을 확대하면서 정치체제의 안정성을 유지하는 이른바 '냉전적 발전'의 호순환(好循環) 구조의 완성인 것이다. 또한 내부적으로는 자민당과 사회당으로 대표되는 보수와 혁신의 대립 및 공존이라는 구도가 존재했다. 사회당은 개헌을 저지할 수 있는 3분의 1의 의석을 유지함으로써 개헌의 흐름을 막는 역할을 담당했다. 사회당은 정권 획득에는 실패했지만, 개헌 저지선을 유지함으로써 전후민주주의의 '방파제'의 역할을 했다는 것이다. 따라서 현재 일본사회가 향유하고 있는 장기간의 평화 상태와 높은 생활수준은 전쟁의 폐허에서 쌓아올린 '전후민주주의'의 결과라고 볼 수 있다.

그러나 이러한 전후민주주의체제를 지탱해온 내외의 조건이 변화함에 따라 일본의 우경화가 하나의 현실노선으로서 나타난다. 우선 내부조건인 변화로는 전후민주주의의 '방파제' 역할을 맡고 있던 사회당 등의 호헌평화주의 세력이 급속하게 쇠퇴한 점을 들 수 있다. 사회당은 사민당으로 외양을 바꾸긴 했지만, 현재 의석은 6석에 지나지 않는다. 1958년의 166석, 1990년의 139석에 비하면 몰락의 심각성을 실감할 수 있다. 하지만, 그렇다고 해서 자민당