**Maritime Law Enforcement by the Republic of Korea Concerning**

**Proliferation of Weapons of Mass Destruction:**

**Search and Interdiction**

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*The purpose of this article is to review the practices of South Korea concerning interdiction, especially on the seas, in response to the various sanctions placed on the DPRK by the UN Security Council (UNSC). This article examines the UNSC’s resolutions along with Korean statutes and practices. The UN resolutions that are touched on in this article seem to mollify concerns of a breach of international law, and all member states owe a legal obligation to implement them. The primary institutions in charge of maritime law enforcement of South Korea are the Korea Coast Guard and the Korea Customs Service. The Korea Coast Guard is in charge of maritime law enforcement of coastal waters, adjacent waters, and pelagic waters in accordance with the Coast Guard Act. However, there is no statutory provision that provides for the measures, such as attachment and/or disposal of the seizures during search and inspection on the sea, and there is no provision concerning compensation and/or liability due to such measures. Therefore, there needs to be secure legal grounds for direct enforcement measures on seizures in line with the Coast Guard Act.*

***Key words:*** *Republic of Korea, maritime law enforcement, weapons of mass destruction, UN Security Council sanctions, search and interdiction.*

**Introduction**

The tensions over repetitive nuclear tests and the continuous launching of intercontinental ballistic missiles (ICBMs) by the DPRK hit its peak on the Korean Peninsula in recent months. Centered around the UN Security Council (UNSC), international society has imposed various non-military sanctions on the DPRK. The United States regards the DPRK’s nuclear tests and ICBM tests as substantial threats against its mainland and is intensifying its pressure on the DPRK raising the possibility of exercising military options. Nevertheless, the DPRK has made the bold response of threatening missile launches around the waters of American Guam. The current situation of the DPRK and the sanctions by the UNSC in response are certainly heightening the pressure on the DPRK, which in the past has put special stress on the nonproliferation of weapons of mass destruction (WMD). Despite recent political developments between the two Koreas, maritime security threats concerned with the proliferation of WMD remain unchanged in waters off the Korean peninsula. The nonproliferation of WMD will play a major role for restrictive options against the DPRK with the exception of military action.

The purpose of this article is to review the practices of South Korea concerning interdiction, especially on the seas, in response to the various sanctions placed on the DPRK by the UNSC. This article examines the UNSC’s resolutions along with Korean statutes and practices. The Proliferation Security Initiative (PSI), which is germane to the subject that aims to prevent the DPRK’s flow of WMD via the seas, accordingly, is not covered in this article.[[1]](#footnote-1) The interdiction of WMD is a primary activity of PSI, in which 105 states, including the ROK, have participated in up to now.[[2]](#footnote-2)

**Analysis of the UNSC Resolutions**

The UNSC has imposed sanctions on the DPRK to condemn and cope with its tests of nuclear weapons and missiles. Many resolutions of the UNSC include the member states’ obligation to report in order to secure their implementation of the resolutions. During the 3 years leading up to October 2018, nine UNSC resolutions were adopted against the DPRK: three in 2016, five in 2017, and one in 2018. All the resolutions concern non-proliferation.[[3]](#footnote-3) Two previous critical resolutions are Resolution 1540 from 2004 and Resolution 1718 from 2006; the former generally covers the proliferation of WMD without targeting the DPRK; and the latter targets the flow of the DPRK’s WMD.

**Korean Legislation Relating to Maritime Law Enforcement**

Below is a review of the implementation report by the ROK based on the UNSC resolutions. UNSC Resolution 1540 addresses international regulations that endorse normativity to the export control for purposes of non-proliferation of WMD. The ROK’s 2013 implementation report[[4]](#footnote-4) concerning the resolution to the 1540 Committee[[5]](#footnote-5) consists of a description of: export controls, controls of intermediation, transfers, trans-shipment, and transfer of intangible technology based on the Foreign Trade Act; customs controls based on the Customs Act; controls of funding concerning proliferation based on the Act on the Prohibition of Financing for Offences of Public Intimidation; and export and import controls of defense articles based on the Defense Acquisition Programme Act. Resolution 1540 focuses on supply chain controls as a means to sustain non-proliferation, but it does not handle search and interdiction. This is the reason why the ROK implementation report does not include its search and interdiction activities, which are left to the discretion of member states.

*Act on the Arrival, Departure, Etc., of Ships*

The Act on the Arrival, Departure, etc., of Ships, administered by the Port Management Division of the Ministry of Ocean and Fisheries, aims to prescribe matters necessary to support the arrival and departure of ships in the maritime zone of trade ports and to maintain the safety and order of ship operation.[[6]](#footnote-6) This Act applies to the arrival and departure of ships in the maritime zone of a trade port, except as otherwise expressly provided for in other Acts.[[7]](#footnote-7)

*Inter-Korean Exchange and Cooperation Act*

The Inter-Korean Exchange and Cooperation Act, administered by the Exchange and Cooperation Planning Division of the Ministry of Unification, is a special law applied to mutual exchange and cooperation between the two divided countries, South Korea and the DPRK. The Act intends “to contribute to the peace and unification of the Korean Peninsula by prescribing matters necessary to promote reciprocal exchange and cooperation between the south and north of the Military Demarcation Line.”[[8]](#footnote-8) With respect to reciprocal exchange and cooperation between South Korea and the DPRK, the Act prevails over other Acts, to the extent of the purposes of the Act.[[9]](#footnote-9) To contact a resident of the DPRK, a report needs to be made to the Minister of Unification in advance,[[10]](#footnote-10) and the minister may refuse to accept the report only if it is likely to undermine inter-Korean exchange and cooperation or if it is likely to harm national security, maintenance of order, or public welfare.[[11]](#footnote-11)

**South Korean Practices on Maritime Law Enforcement by Patterns of the UNSC Sanctions on the DPRK**

*Blockades to Port Entry of Vessels Designated*

The Security Council Committee pursuant to resolution 1718 (2006) may require any or all of the following measures against the vessels which are or have been related to nuclear or ballistic missile-related programmes or activities prohibited by the UNSC resolutions on the DPRK: the Flag State of a designated vessel shall de-flag the vessel; the Flag State shall direct the vessel to a port identified by the Committee; all member states shall prohibit a designated vessel from entering their ports; a vessel designated by the Committee shall be subject to the freezing of assets.[[12]](#footnote-12) In cases necessary for national security, the government of South Korea makes a captain of a ship obtain permission from the Minister of Oceans and Fisheries in accordance with the Act on the Arrival, Departure, etc. of Ships.

*Inspection of Checked Baggage of Individuals Entering into or Departing from the DPRK*

To prevent checked baggage of individuals from entering into or departing from the DPRK for the purpose of supply, sale, or transfer that is prohibited by resolutions on the DPRK,66 a customs officer will inspect or seal goods, means of transportation, places of storage, and other related books and documents, or will take other necessary measures.[[13]](#footnote-13) The Article requires a condition if necessary to prevent the violations of obligations under any treaty concluded by the ROK and generally approved international rules, therefore it shall be applied to implementation of a resolution adopted by the UNSC.

**Conclusion**

The primary institutions in charge of maritime law enforcement of South Korea are the Korea Coast Guard and the Korea Customs Service. The Korea Coast Guard is in charge of maritime law enforcement of coastal waters, adjacent waters, and pelagic waters in accordance with the Coast Guard Act. The Act stipulates the legal grounds upon which the Korea Coast Guard may inspect, pursue, and seize suspected vessels which may be used to transport WMD or items relating to them, or suspected vessels which have violated or are about to violate Korean law and/or the treaties which Korea has concluded and ratified. However, there is no statutory provision that provides for the measures, such as attachment and/or disposal of the seizures during search and inspection on the sea, and there is no provision concerning compensation and/or liability due to such measures. Therefore, there needs to be secure legal grounds for direct enforcement measures on the seizures in line with the Coast Guard Act, and to introduce provisions should be considered for legal disclaimer relating to the compensation and/or liability that might happen during administrative enforcement on the items. The Territorial Sea and Contiguous Zone Act provides that the authorities concerned may stop, search, or seize ships, or issue other necessary orders or take other necessary measures if a foreign-flag ship violates innocent passage and may confiscate vessels and/or items when necessary. The measures proscribed by the Act seem more specific and clearer than the Coast Guard Act in light of maritime law enforcement. An issue, however, is raised as to whether a broader interpretation that may make it a violation of innocent passage to ship WMD, or items relating to them, or to ship designated items in the resolutions on the DPRK.

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1. For a review of the PSI in terms of international law and the practice of Korea, see Chan Ho Park, “A Study on the Navigation in the International Law of the Sea,” *Law Review of Pusan National University*, 57 (May 2016), pp. 363–386; Eun Seok Jang, “Meaning of South Korean Participating in Proliferation Security Initiative (PSI) and Guidelines for Future PSI Cooperation,” *Korean Journal of International Studies*, 50 (March 2010), pp. 191–215; Suh-Yong Chung, “Legal Issues in PSI in the Context of Inter Korean Relations,” *Seoul International Law Journal*, 15 (June 2008), pp. 1–22; Suh-Yong Chung, “Limitations of International Law Order and PSI,” *Seoul International Law Journal*, 14 (June 2007), pp. 1–20. [↑](#footnote-ref-1)
2. For basic information on the PSI, see US State Department, “Proliferation Security Initiative,” (2018) at (searched date: 8 November 2018). 3. The UN Convention of the Law of the Sea provides for innocent passage of foreign-flag vessels in territorial waters (Articles 38, 39, and 42), and the right to visit (Article 110) and the right to pursue (Article 111) on international waters. However, limited application of such articles makes it hard to search all the vessels that go in and out of the DPRK and to interdict transportation and movement of WMD, “UN Convention of the Law of the Sea” (1994), at (searched date: 8 November 2018). [↑](#footnote-ref-2)
3. UN Security Council Resolution 2270 (2 March 2016), Resolution 2276 (23 March 2016), Resolution 2321 (30 November 2016), Resolution 2345 (23 March 2017), Resolution 2356 (2 June 2017), Resolution 2371 (5 August 2017), Resolution 2375 (11 September 2017), Resolution 2397 (22 December 2017), Resolution 2407 (21 March 2018). See UN Security Council, “Security Council Resolutions,” at (searched date: 8 November 2018). [↑](#footnote-ref-3)
4. UN Security Council, “Note Verbale Dated 12 November 2013 From the Permanent Mission of the Republic of Korea to the United Nations Addressed to the Committee” (12 November 2013), at (searched date: 8 November 2018). [↑](#footnote-ref-4)
5. Concerning the activities of the 1540 Committee, see UN Security Council, “1540 Committee, Security Council Committee Established Pursuant to Resolution 1540 (2004),” at (searched date: 8 November 2018). [↑](#footnote-ref-5)
6. Act on the Arrival, Departure, etc., of Ships, Article 1. [↑](#footnote-ref-6)
7. Ibid., Article 3. [↑](#footnote-ref-7)
8. Inter-Korean Exchange and Cooperation Act, Article 1. [↑](#footnote-ref-8)
9. Ibid., Article 3. [↑](#footnote-ref-9)
10. Ibid., Article 9–2(3). [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. UN Security Council, “Resolution 2321,” op. cit., Article 12. [↑](#footnote-ref-12)
13. Customs Act, Article 265. [↑](#footnote-ref-13)