

# War and Justice: *Just Cause of the Korean War*

Hee Kyung SUH

## Abstract

*This paper explores the question of just war theory as it applies to the Korean War by relying on the work of Michael Walzer. In the first section, I discuss this issue with regards to the initiation of and intervention in the Korean War. North Korea violated the principles of just war by fabricating its invasion as a response to South Korean aggression. The U.S. intervention in the Korean War was a defensive war for the United States and the free world rather than a war defending South Korea alone. The U.S.S.R. violated legitimate procedures of just war, by covering up its involvement through deception. China's intervention was based on presumptive assumptions that the war in North Korea was a threat to China's state security and that the United States could attack China. In the second section, I examine the issue of justice in war conduct. Walzer emphasizes that the engaged states should seriously consider the means used to win a battle no less than the victory itself. This paper examines this issue by considering civilian casualties from U.S. air bombing and the execution of members of the National Guidance League (Gungmin Bodo Yeonmaeng). This paper concludes, based on the discussion of the above two issues, with a judgment on the responsibilities for the intervention in and the waging of the Korean War.*

**Keywords:** war and justice, Korean War, just war theory, Michael Walzer, intervention in the Korean War, civilian casualties

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## Introduction: Is There a Just War?

Is it possible to find the justice of going to war? This paper explores the question of just war theory as it applies to the Korean War (1950-1953). It might sound pointless to discuss justice in the face of the urgent and desperate conditions such as war where nothing else matters but survival and victory. As the saying goes, *inter arma silent leges* (“In time of war, the laws are silent.”). Nonetheless, just war theorists set themselves in arguing the moral standing of warfare as a human activity. The argument is twofold: that war is sometimes justifiable and that the conduct of war is always subject to moral criticism (Walzer 2004, ix).

Especially, Michael Walzer proposed just war theory in his book *Just and Unjust Wars* (1977),<sup>1</sup> which was motivated by the U.S. intervention in the Vietnam War. Vietnam was the first war in which the practical value of *jus in bello* (justice in war conduct) became apparent. The experience of the war pressed him and his colleague toward moral argument. Once the war was over, just war became an academic subject. They debated these following words: just cause, intervention, self-defense, noncombatant immunity, proportionality, civilians, double effect, and war crimes. These required not only a code and a useful indication but also a theory. They came to understand that these words had meanings (Walzer 2004, 7). Incidentally, these words are keywords in understanding the Korean War. This paper will attempt to deliberate on the important questions of the Korean War by relying on the work of Walzer, who has been one of the most important contributors to the revival of just war theory and a “respected judge” on the matter of actions in war.

Walzer proposes four criteria in assessing the justness of war. First, he believes that the initiation of war or involvement in war should be open to moral judgment and criticism as it results from a decision made by human will (Walzer 1977, 15). Accordingly, the

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1. Walzer's inquiry into the just war theory in *Just and Unjust Wars* is further developed and applied in his *Arguing about War* (2004).

people of a nation at war should be able to either agree or disagree, in public or in their own moral judgment, with the justness of the war (Walzer 1977, 300).

Second, he maintains that there should be a just cause in initiating or involvement in war. According to Walzer, an aggressive war that violates another nation's political sovereignty, territory, and human lives is not just. Thus, it is justifiable for a country to wage a war "to defend itself against an aggressor" or "to punish an aggressor who is responsible for invasion" (Walzer 1977, 51-52). Walzer also believes that preemptive strikes (legitimate anticipation) form a legitimate response to aggression and hence are justifiable.

Third, he thinks that responsibility for war crimes lies not only with the political and military leadership of the nation that initiated the war, but also with officers and soldiers who undermined justice in waging the war (Walzer 1977, 127, 291, 305; 2004, 25-26, 31). Also, the citizens of the nation that initiated the unjust war should be held responsible for failing to meet the moral obligation to prevent it (Walzer 1977, 301). It was in this vein that Walzer finds justice in the Nuremberg trials, which punished as war criminals those who were responsible for the decision to enter into the aggressive war (Walzer 1977, 294). Walzer also argues that officers and soldiers should be punished as war criminals if they perpetrate excessive acts of aggression under no significant threat even if those acts are spurred by the heat of war and orders from superiors. Fourth, just war theory excludes noncombatants from the scope of war. Walzer further seeks to remedy "the principle of dual effect" which justifies collateral damage done to noncombatants.

This paper examines the issue of justness in the Korean War. First, in order to examine the issue of justness in intervention in the war, this paper investigates how the United States and the United Nations or the U.S.S.R. and China recognized the war and intervened in it—namely, the intentions, processes, and procedures of intervention. Second, this paper examines the issue of justifiable actions in the war, especially with regard to civilian casualties from U.S. air bombings and the execution of members of the National Guidance League

(Gungmin Bodo Yeonmaeng) at the onset of the war.

### **Justness of the Intervention in the Korean War**

Let us now take a look at the processes and procedures of intervention by the United States, the United Nations, the U.S.S.R., and China to answer the question of whether their intervention in the Korean War was justifiable. Walzer makes exceptions to the just cause rule if the intervention is in favor of a weak nation, which cannot protect itself against acts of aggression, and whose political sovereignty, territory, etc., are violated. He divides justifiable intervention into the following three categories: first, the case of counterintervention, which refers to an intervention to assist one party in a civil war in order to strike a balance against the other party that has been assisted by another powerful state's unjustifiable intervention; second, the case in which a nation may support secessionist or national liberation movements in a multiethnic nation; and third, the case of humanitarian intervention against atrocious human rights violations (Walzer 1977, 90, 101, 108; 2004, 70). As interventions in the Korean War made by the United States, the U.S.S.R., and China, however, hardly belong to any of these categories, we need to carefully follow the steps of their interventions.

#### *Intervention by the United States and the United Nations*

How did the United States see the war and what was the intention of its military intervention? Did the United Nations, led by the United States, illegally intervene in the war, as the U.S.S.R. and North Korea claimed, when it was simply a matter to be resolved within the boundary of the Korean peninsula? Was it illegitimate to set up the UN forces without any clear rules or principles in place? Or did the U.S. military intervention have such a just intention as the ones described by Walzer?

North Korea asserted that the dispatch of the UN forces was ille-

gal. Based on the principle of non-intervention in Article 2(7) of the UN Charter concerning matters that are essentially within the domestic jurisdiction of any state, North Korea insisted that the Korean War be viewed as a domestic concern for the reunification of South and North Korea, and not an issue to be treated by the United Nations. But Walzer sees the intervention in the Korean War by the United States as the aid of a state defending itself against the North Korean invasion (Walzer 1977, 117).

Even though the intervention by the UN forces took the official form of “intervention in aid of self-defense,” in reality, it was much closer to counterintervention. By and large, the U.S. leadership viewed the Korean War from four main perspectives: (1) the war represented a confrontation between the United States and the U.S.S.R.; (2) it was a conflict between the liberal and communist blocs; (3) it was a confrontation between the United Nations and anti-UN nations; and (4) it was a conflict that could jeopardize the destiny of all humankind. This means that the U.S. leadership never recognized the Korean War as a civil war fought simply by the Korean people. In this context, the U.S. intervention in the war was, in effect, a war of self-defense against worldwide communist aggression rather than a war “to simply protect South Korea.” Let me further elaborate on this point below.

The U.S. Ambassador to South Korea, John J. Muccio, was informed by the Korean Army and the Korean Military Advisory Group (KMAG) of the outbreak of the Korean War and reported it to the U.S. State Department on June 25, around 10:00 a.m. Korean time (or on June 24 at 9:26 p.m. Eastern Standard Time in Washington, D.C.), stating that the “North Korean infantry commenced crossing parallel in Ongjin area, Kaesong area, Chunchon area and amphibious landing was reportedly made south of Kangnung on east coast. Kaesong was reportedly captured at 9 a.m., with some 10 North Korean tanks participating in operation. North Korean forces, spearheaded by tanks, reportedly closing in on Chunchon’ [sic] Details of fighting in Kangnung area unclear, . . .”<sup>2</sup> A couple of hours later, Secretary of State

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2. *Foreign Relations of the United States (FRUS)*, 1950, vol. VII, pp. 125-126.

Acheson placed a phone call to President Truman, while at the same time making a decision to convene the UN Security Council based on consultations with Deputy Under Secretary of State Dean Rusk, Secretary of the Army Frank Pace, Ambassador-at-Large Philip Jessup, and others.

At 10:00 a.m. on June 25 (EST), U.S. Ambassador to U.S.S.R. Alan G. Kirk sent a telegram to Secretary Acheson, saying, "This aggressive NK military move against ROK [Republic of Korea] represents clear-cut Soviet challenge which in our considered opinion US should answer firmly and swiftly as it constitutes direct threat our leadership of free world against Soviet Communists imperialism." He added, "ROK is a creation of US policy and of US-led UN action. Its destruction would have calculably grave unfavorable repercussions for US in Japan, S[outh] E[ast] A[sia] and in other areas as well."<sup>3</sup> By doing so, Ambassador Kirk made it clear that he considered the Korean War not only a conflict between the United States and the U.S.S.R. manifested in the form of a civil war, but also a duel between the liberal and communist blocs.

It was in his residence located in Independence, Missouri, that President Truman received a report on the outbreak of the Korean War. The President recalled that, while flying to Washington upon hearing the news of war, he mulled over the following thoughts (Truman 1956, 333). Truman's view went further than Kirk's, as he understood the North Korean invasion as (1) a war between ideological blocks, (2) a destruction of the principles upheld by the United States, and (3) a sign of an imminent Third World war. In Truman's view, the destiny of the entire humankind depended on the Korean War.

As such, top U.S. officials had a very similar view of the significance of the Korean War and shared a firm will to confront their enemy. This was why the United States instantly turned the war into its own problem.<sup>4</sup> The United States was concerned not only about

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3. *FRUS*, 1950, vol. VII, p. 139.

4. The makeup of the UN alliance was as follows: regarding the ground forces, the United States troops accounted for 50.32%, the Korean Army 40.10%, and other 16 countries 9.58% (S. Kim 1991, 31).

the destruction of South Korea, but also about this war hindering its pursuit of an ideal international system in the wake of the Second World War. Therefore, the United States lost no time in deciding to defend South Korea.<sup>5</sup> Soon after the war's outbreak, the United States obtained the UN consensus through three resolutions by the Security Council. Though the U.S. intervention took procedurally justifiable processes, this does not necessarily justify the act of intervention itself. Still, the process of intervention can be an important yardstick in determining whether the intervention was justifiable or not.

The UN Security Council announced on June 26 that the North Korean invasion into South Korea constituted a breach of the peace and decided to ask the North Korean authorities to “withdraw North Korean forces north of the 38 parallel” (The First Resolution on the Korean War). This can be seen as a timely resolution by a legitimate authority. In the absence of any representatives from the U.S.S.R. on June 28, the UN Security Council passed another resolution that “recommends that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area” (The Second Resolution).<sup>6</sup> Regarding the second resolution, 53 nations out of the total 59 member states of the United Nations at that time expressed their support, with 16 nations signing up to dispatch their own troops. But five nations including the U.S.S.R., China, and

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5. Contrary to what North Korea and the U.S.S.R. anticipated from the United States, President Truman confirmed at 12:00 p.m. (EST) on June 27, 1950, that:

- (1) General MacArthur was to send the suggested supplies to the Koreans.
- (2) General MacArthur was to send a survey group to Korea.
- (3) The indicated elements of the fleet were to be sent to Japan.
- (4) The Air force should prepare plans to wipe out all Soviet air bases in the Far East (*FRUS*, 1950, vol. VII, p. 160).

Thus, the U.S. Far East Asia Air Force shot down North Korean Air Force's Yak-9Ps and Il-2s on June 27, just three days after the outbreak of the war, and as many as eighteen B-26 fighters when the United States bombed the Pyongyang airfield at dusk on June 29, 1950.

6. See United Nations, Document S/1511. The United States resolution was adopted with seven fors, one against (Yugoslavia), one absence (U.S.S.R.), and two no participants (Egypt and India).

North Korea insisted on the illegitimacy of this resolution on the grounds that the U.S.S.R. and China were absent at the Security Council meeting (M. Kim 1983, 165). The ballot result of the resolution, however, clearly indicated the defeat of the communist bloc in the international diplomatic war.

The Third Draft Resolution adopted on July 7, 1950, by the UN Security Council served as the basis of establishing the UN Command along with the Second Resolution made on June 28.<sup>7</sup> Based on this resolution, President Truman appointed Douglas MacArthur as Supreme Commander of the Allied Forces on July 8.

In short, three UN resolutions allowed the United States to intervene in the Korean War under the aegis of the United Nations: the first called for the ceasefire and withdrawal of the North Korean troops; the second stipulated military and other aids to South Korea; and the third established the UN Command. As for the line of command of the UN Forces, the Commander of the UN Forces reported directly to, and received orders from, the U.S. President (via the U.S. Chairman of the Joint Chiefs of Staff and the U.S. Secretary of Defense). The Korean War, therefore, practically turned into “a war waged by the United States.” Moreover, the South Korean government handed over its wartime operation command to General MacArthur on July 15. The transfer was not made by any written treaty or agreement ratified by the Korean National Assembly, but simply by South Korean President Rhee Syngman’s notification and Commander MacArthur’s approval.

On September 1, President Truman expressed the position of the U.S. Government in a radio speech, saying that “the Koreans have the right to establish a unified, independent nation as they wish, and the only goal of the United States for Korea is to do its part in helping the Koreans enjoy such a right.” At the same time, there is no doubt that another goal of the United States was to unite the free world against the communist bloc. And by implementing these dual goals under the auspices of the United Nations, the United States turned its own

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7. United Nations, 1950, Document S/1588; *FRUS*, 1950, vol. VII, p. 255.

national interests into the world's interests. All in all, however, the U.S. intervention in the Korean War may be considered appropriate and justifiable based on the Walzerian criteria of just war.

### *Intervention by the U.S.S.R. and China*

Let us now turn to the intervention by the U.S.S.R. and China. How did the two nations perceive the Korean War? How did they intervene and what was the intention behind the intervention? How did the U.S.S.R. respond to the U.S. immediate intervention? How can we assess the unofficial intervention by the U.S.S.R.?

When the United States announced its immediate intervention in the Korean War, the U.S.S.R. objected to it on the ground that the war was a matter of internal affairs. In a telegram dated June 29, 1950, and entitled "The Ambassador in the Soviet Union (Kirk) to the Secretary of State," the U.S.S.R. government maintained that "as the Korean War was provoked by an attack by forces of the South Korean authorities, the responsibility for this event rests upon the South Korean authorities and upon those who stand behind their back." It went on to declare that "the U.S.S.R. Government [*sic*] adheres to the traditional principle of the impermissibility of interference by foreign powers in the internal affairs of Korea."<sup>8</sup> This statement was the U.S.S.R.'s first official response to the U.S. announcement of participation in the Korean War on June 28.

The U.S.S.R.'s arguments were as follows. First, the UN Security Council adopted a resolution to aid South Korea by relying solely on the U.S. reports and without any further investigation. Second, all resolutions regarding the Korean War were illegal because they failed to acquire the consent of all permanent members including the U.S.S.R. itself. In such a resolution, which concerned the important issue of intervention in Korea's domestic affairs, Article 27(3) of the Charter of the United Nations prescribed that the "Decisions of the Security Council shall be made by an affirmative vote of seven members

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8. *FRUS*, 1950, vol. VII, pp. 229-230.

including the concurring votes of the permanent members” (S. Kim 1991, 27). In short, the U.S.S.R. claimed that the United States was abusing the authority of the United Nations and tried to justify its intervention in a nation’s internal affairs by having the United Nations approve the position of the United States.

Despite its protests against the U.S. involvement in Korea, currently available sources illuminate that the U.S.S.R. decisively assisted the opening of the Korean War (Weathersby 1995, 1-9). On March 30, 1950, Kim Il-sung and Pak Heon-young traveled to Moscow for discussions with Stalin and remained there until April 25. Stalin agreed with Kim’s idea of engaging the adversary in the Ongin peninsula as it helped to disguise who initiated the combat activities. And Stalin added that Koreans should not count on direct Soviet participation in the war (Weathersby 2002, 9-10). Although the U.S.S.R. provided all critical weapons to North Korea, Stalin withdrew most of the Soviet advisers stationed in North Korea right after the outbreak of the Korean War in an attempt to avoid a direct Soviet-American confrontation. Later, Nikita Khrushchev testified that “this measure was taken for fear that the US should criticize our intervention in the war by capturing even a single Soviet military officer alive” (Khrushchev 1990, 146; Weathersby 2002, 11-12). Ju Yeong-bok, a training officer of the engineering battalion of the National Defense Department of North Korea and deputy chief of the 2nd engineering corps at the time of the war, said that the U.S.S.R. was manipulating or controlling military operations under the table from the beginning (Ju 1990, 268).

The U.S.S.R. intervened in the Korean War in the form of providing weapons and sending advisors. In addition, the U.S.S.R. participated in the war without officially declaring its intentions. It concealed its involvement, while blaming the United States and the United Nations for their intervention. In this sense, the U.S.S.R. violated the due process of intervention. And the nature of the U.S.S.R.’s intervention was more determined by its relationship with the United States than by its intention to support the North Korean troops for the unification of the Korean peninsula. Stalin was worried about the possibility of an all-out war with the United States. According to Hong Xuezhong, the

deputy commander of the Chinese People's Volunteers (CPV) and commander of the Rear Command of the CPV, "Stalin was concerned that supporting the North Korean troops with the Soviet's fighter planes might, in case the North Korean troops were defeated, lead the U.S.S.R. to be involved in an all-out war with the United States and possibly a third world war" (Hong 1992, 60). For this reason, Stalin wanted China to dispatch its troops. And the U.S.S.R. sent its fighter planes to North Korea instead.<sup>9</sup> In other words, it was attempting to wage a limited war for fear of a potential outbreak of a third world war.

Let us now consider how China intervened in the war. How did it see the Korean War and what was China's intention in intervening? And was the process through which China intervened unavoidable? China's participation in the war was the result of a range of complex factors such as the threat from the United States, Stalin's suggestion, North Korea's plea for military support, China's sense of loyalty to North Korea, and so on.<sup>10</sup> From the beginning of the war, the U.S.S.R. and China were exchanging their thoughts in order to prepare for possible northward advances of the U.S. and ROK Armies.

China prepared to intervene in the Korean War in two ways. Foremost, China warned explicitly and repeatedly that "the Chinese Army would intervene in the war if the UN troops should start to move northward." Meanwhile, the Chinese Army secretly prepared for its intervention by moving its troops to the vicinity of the frontline. Unlike the U.S.S.R., which did not attend the UN Security Council, China made a more open and aggressive kind of response. The open warnings from China stemmed exclusively from an attempt to avoid war. Still, the invasion of the U.S. Air Force into the Chinese airspace between August and September spurred the movement in China for anti-American support of North Korea.

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9. According to Jon Holliday's research, Soviet aircrafts were painted in the same color as Chinese ones. Pilots, in Chinese uniform, were trained to speak Chinese.

10. Mao decided that his eldest son Mao Anying 毛岸英 join the Korean War. He died during the U.S. air strike on the Support Command on November 25, 1950 (M. Park 2002, 496).

China also intervened quietly. On May 14, Stalin ordered the Soviet Ambassador to China, N. V. Roshchin, to relay to Mao the conversation Stalin had with Kim Il-sung during their April meeting (Torkunov 2002, 99). And on May 15, Kim Il-sung traveled to Beijing for discussions with Mao. By early July, Mao and Stalin had practically agreed to dispatch their infantry and air force, respectively, should the U.S. Army march across the 38th parallel (Park 2002, 465). As the U.S. troops succeeded in a counterattack after September 15, Stalin ordered Roshchin on October 1 to talk to two Chinese leaders, Mao Zedong and Zhou Enlai, into setting foot in the Korean War (Torkunov 2002, 163; Park 2002, 469). This was the day when the ROK Army marched north across the 38th parallel and MacArthur sent the final ultimatum to North Korea, calling for an unconditional surrender.

In response, Mao convened the standing committee of the central politburo under the Chinese Communist Party, where he appointed Peng Dehuai as Commander-in-Chief and set the date of troop dispatch for October 15, 1950.<sup>11</sup> Mao informed Stalin of his plan to send the troops as follows:

We decided to help our Korean comrades by dispatching some of our troops in the name of reinforcement into the North Korean border and waging a war with the United States and Rhee Syngman troops. Should the entire Korea fall into the hands of the United States and the efforts at a workers' revolution in Korea turn out to be a fundamental failure, the U.S. invaders would be elated and do harm to the whole Asian region (Hong 1992, 59).

Mao believed: (1) South Korea was a puppet of the United States; (2) the U.S. intervention was an invasion by nature; and (3) the U.S. expansion was a grave threat to the communist bloc. Despite Mao's perceptions, most participants in the meeting of the central politburo held on October 4 objected to participating in the war, stating that "the issue of sending our troops should be considered in a careful

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11. The actual date when the Chinese troops were dispatched was October 19, 1950 (Yang 2001, 303, 309).

manner, especially when China is suffering difficulties in the early days of national foundation.” Nevertheless, Mao said to Peng, “If we just abandon the North Korean leader Kim Il-sung in such a desperate situation, Stalin won’t make any intervention when we the Chinese people fall into such an adversity.” He added, “the communist bloc would be nothing but an empty shell if all of us acted like that” (Park 2002, 468). China’s intervention in the war, therefore, was probably due to its instabilities in the initial days of national foundation, its weaker economic and military powers, and its lower status within the communist bloc.

China’s intervention, however, was primarily based on the presumptive assumptions that the war in North Korea was really a threat to China’s security and that the United States could potentially attack China. In fact, the U.S. Consul General to Hong Kong James, Wilkinson, worried about China’s misperception and reported to the U.S. State Department on November 9 that “[t]he U.S. President needs to declare a policy of non-aggression so as to reduce concerns about protection of Chinese interests in the border areas and potential attack on Manchuria.”<sup>12</sup> Therefore, instead of relying on presumptive assumptions, China should first have sought to resolve the crisis by resorting to international meetings.<sup>13</sup> But instead, China made a military intervention without an official declaration in the war. It was a violation of a principle of just war.

## **Legitimacy of Waging the Korean War**

### *The Principle of Double Effect and the Case of the U.S. Air Strikes*

Justice in war conduct is concerned with the rules that guide actions by engaged states and soldiers. Walzer has established the criteria of justice in war conduct based on war conventions. He proposes to

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12. *FRUS*, 1950, vol. VII, p. 1123.

13. *FRUS*, 1950, vol. VII, p. 1123.

define war conventions as “the set of articulated norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgments of military conduct” (Walzer 1977, 44). One of the principles of justice in war that Walzer has emphasized the most is that political and military leaders or field soldiers should seriously consider the means used to win a battle no less than the victory itself. In other words, war should be waged in the ways in which civilian casualties are minimized. The following section discusses the issue of the U.S. air strikes in this light.

Walzer also argues that “the right to life and freedom” is the “fundamental principle” of justice in war conduct (1977, 135, 137). The first principle of the war convention is that “once war has begun, soldiers are subject to attack at any time (unless they are wounded or captured)” (Walzer 1977, 138). The second principle of the war states that noncombatants cannot be attacked at any time (1977, 151). In other words, just war conducts include discrimination between combatants and noncombatants as well as noncombatant immunity (Suh 2012, 216). However, these principles are frequently violated in real wars. Collateral damage to civilians is also unavoidable. Regarding this issue, Walzer (1977, 154) proposes “the principle of double effect.” This means that military actions causing harm to civilians can be justified on the condition that the consequence is not originally intended. However, Walzer (1977, 153) points out that the principle of double effect has the potential to give “blanket justification” to all war actions.

Double effect is defensible, he argues, only when the two outcomes are the product of a double intention: first, that the “good” be achieved; second, that the foreseeable evil be reduced as far as possible. Hence, the third of the conditions can be restated (Walzer 1977, 155). This statement is followed by his emphasis that if saving civilian lives means risking soldier’s lives, soldiers need to run the risk of losing their lives. He further notes that “[T]here is a limit to the risks that we require. These are, after all, unintended civilian deaths and legitimate military operations and the absolute rule against attacking civilians do not apply” (Walzer 1977, 156; 2004, 95).

Walzer (2004, 17) compares a case in which the military ran their risk to minimize civilian casualty with another in which the military did not consider civilian damage. The first case he discusses is the one in which a special force operation was undertaken instead of an air strike in World War II (Suh 2012, 217). In 1943, a Norwegian special force destroyed a heavy water factory in Vermonk, Norway, which had been occupied by the enemy at that time. The special force was affiliated with the British Special Missions Unit. It assumed a critical mission to terminate the production of heavy water in order to impede the development of nuclear bombs by German scientists. Two options presented themselves: air strike and land operation. Eventually, they decided to approach the factory via land, because this was expected to cause less damage to civilians (Walzer 1977, 157-159).

The second case is exemplified by the U.S. air strikes during the Korean War (Walzer 1977, 154-156). Walzer insisted that the U.S. military operation caused heavy civilian casualties by focusing mainly on air strikes.<sup>14</sup> The United States launched its tank attacks and air strikes even though it should have made a reconnaissance prior to the actual military operations. This military action contrasted with Walzer's position that "the patrol must be sent out, the risk accepted, before the big guns are brought to bear" (Walzer 1977, 155), in order to minimize civilian casualties. The Truth and Reconciliation Commission's investigation have also identified such cases in which the U.S. military did not follow this recommended pattern (TRCK 2009, 473; Suh 2012, 218-219).

From the initial stage of war, the U.S. Air Force secured the command of the air based on its superior fighting power, aiming to deter

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14. Walzer describes that direct civilian casualties were kept fairly low in the Gulf War. His studies of the bombing reveal that the pilots of the Gulf War were instructed to return to base with their bombs and missiles intact whenever they were unable to get a clear *fix* on their assigned targets. He also contends that the pilots were instructed "not to drop their bombs in the general vicinity of the targets, nor were they to aim freely at 'targets of opportunity'" (Walzer 2004, 95). In sum, in contrast to the Korean War, pilots of the Gulf War were to accept risks for themselves in order to reduce the potential collateral damage to civilians.

North Korea's air strike advance into the South. Also, as the war became protracted, the United States launched air strikes to support other military operations. According to a U.S. Air Force record, the U.S. air strike targets were dramatically altered around one month after the outbreak of the war. The scope of air strikes was extended, in addition to military facilities, to civilian residences and cities where the North Korean People's Army combatants and guerillas were suspected to be hiding. General Ridgway, then the U.S. 8th Army Commander, set the policy for selecting bombing targets in a directive titled "Demolition Policy in South Korea." This directive limited legitimate striking targets to military facilities as well as telegraph, telephone, and harbor facilities that supported military actions, and banned indiscriminate bombing on civilian facilities and buildings, even if they could be used potentially for enemy hideouts.<sup>15</sup> However, it seems that the Ridgway policy was not properly followed. In particular, indiscriminate bombings intensified around the January 4 retreat in 1951. Furthermore, the U.S. Air Force applied a scorched earth policy to regions where the North Korean People's Army or the Chinese Army units were stationed, without considering whether or not they were civilian residences (Goulden 1982, 170-171).<sup>16</sup>

Walzer believes that the engaged parties should be prohibited from taking actions not relevant to their objective of winning the war. Even if relevant, they should not pursue disproportionate military actions whose benefits are only meager compared to their costs, because this can lessen unnecessary pains by establishing the minimum rational criteria for waging war (Suh 2012, 221).

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15. Correspondence official, Box 9, Matthew B. Ridgway Papers Series 2, USAMHI.

16. 32nd Infantry Regiment Command Report for January 8, Box 3252, RG 407, Army-AG Command Report 1949-54, NARA (National Archives and Records Administration).

### *Supreme Emergency and Execution of the National Guidance League Members*

This section discusses a dilemma between collective survival and human rights. Walzer argues that the attacked state, when faced with a critical situation where its survival as a nation state is threatened, has the right to take emergency procedures for self-defense without being restrained by war conventions. Walzer describes this situation as “supreme emergency” or “reflecting the deeper complexity of our moral realism” (Walzer 1977, 251, 325-326; 2004, 33).

Walzer offers the case of England cornered by Nazi Germany as an example of supreme emergency (Walzer 1977, 261, 323). British Prime Minister Stanley Baldwin claimed that if necessary, people would adopt extreme measures to escape death or to avoid military defeat (Walzer 1977, 252). But Walzer notes that although the dirty hands, which infringed on human rights for the survival of the country, cannot be legally punished, they are not completely free from moral criticism and guilt (Walzer 1977, 323; 2004, 46). That is why Arthur Harris, who directed the strategic bombing of Germany from February 1942 until the end of the war, was not treated as an honorable and great leader after the war, though, of course, criminal charges were never brought against him (Walzer 1977, 324). Walzer also notes that, “. . . in supreme emergencies our judgments are doubled, reflecting the dualist character of the theory of war and the deeper complexity of our moral realism” (Walzer 1977, 326).<sup>17</sup>

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17. In *Arguing about War*, Walzer (2004, 46-47) writes:

My claim that the British bombing of German cities might have been defensible in 1940 and '41 extends no further than those years. The bulk of the bombing that actually took place is certainly not defensible, for it took place after it had become clear that Germany could not win the war. The triumph of Nazism was no longer an imminent danger. Nor was the continued bombing designed (as it might have been) to deter or defeat the Nazi war against the Jews. The Holocaust might have constituted a new supreme emergency, but it did not figure in the minds of the men who decided on bombing policy; they did not conceive themselves to be acting on behalf of the community of European Jewry.

With Walzer's notions of supreme emergency in mind, let us examine the executions of the members of the National Guidance League (hereafter, NGL). The case can be viewed as a dilemma between national security (survival) and the protection of citizens (human rights). This is also related to the question of the extent to which a nation state in wartime should protect the regime's political opponents and dissenters. According to the principles of free democracy, a country should protect its opponents who take peaceful procedures for taking opposing actions. If they take violent means to achieve their end, however, it has the right to use corresponding violence against them, based on the principle of self-defense. This is because the failure to respond to its opponents in a violent manner can cause its self-destruction.

As the Korean War developed fast into a furious turmoil, the ROK government committed an organized killing of leftist political prisoners and held people under preventive custody. Jang Seok-yun, then director of the Bureau of Security, ordered the Provincial Police Bureau to imprison all the people on the custody list. Under this order, the area of Cheongdo, Gyeongsangbuk-do province, witnessed its population subjected to preventive custody. The police and the military as well as the right-wing youth groups incarcerated the NGL members in the Cheongdo police station jails, farming warehouses, and other neighboring storages. These arrests occurred right after June 25, 1950, and in late September of the same year. After the declaration of martial law on July 8, 1950, the martial law forces, the Counter Intelligence Corps (CIC), the military police, and the police jointly held people in preventive custody and executed some of them. In the case of Ulsan, those in custody were all executed. Similar mass executions took place near Daeunsan mountain, located in Onyang-myeon, Ulsan-gun (TRCK 2008a, 951).

Can the execution of the NGL members be considered an unavoidable measure to protect national security in wartime? The answer to this question is divided.<sup>18</sup> Some argue that the execution was unavoid-

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18. For an argument that the National Guidance League killing is a political massacre

able. Jang Jae-gap, then ideologue prosecutor and advisor to the NGL, argued that “the fear of the possibility of leftist inmates to join the North Korean People’s Army and the urgent progress of war forced the government to execute them” and that consequently the execution “saved the Republic of Korea from its crisis” (Jeong 1999, 217-229). The ROK government had decided upon the execution of leftists such as the NGL members because it predicted that they would potentially “collaborate with the enemy” under the communist occupation. In extreme situations, such as when more than 170 inmates in the Incheon Juvenile Facility broke out at the initial stage of the war or when the circumstances at the Daejeon Prison almost reached the level of a riot,<sup>19</sup> it may not have been feasible to punish the offenders through legal procedures.

Others have put forward a contrasting view. They argue that the ROK government made a hasty execution of the political and ideological dissidents because “the North Korean occupation of some Southern areas would likely involve these people’s alignment with the People’s Army” (D. Kim 2006, 307). The executions were “based not on legal and institutional ground but on the ROK government’s unprincipled and illegal judgment.”

How should we evaluate these two contrasting arguments about the legitimacy of these premeditated executions by the ROK government? Overall, the legitimacy of the legal justice is limited by the con-

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in that it was committed by the same race and at the same time partial and limited in its scope, see D. Kim (2000, 241-242).

19. As a matter of fact, there were intelligences from the U.S. Army that reported the NGL’s cooperation with the North Korean Army. A report made by Donald S. Macdonald reads, “Members of the National Guidance League form local people’s assemblies made up of left-wing groups inside Seoul.” Another report (made after an interview with Minister of Social Welfare Lee Tae-jeong in Daejeon on July 11) says, “In Seoul under the control of the North Korean army, the communist police composed of volunteers from the National Guidance League sat still inside guard posts or police offices, instead of patrolling the streets, without making particularly outstanding activities” (United States Department of State, Records of the U.S. Department of State Relating to the Internal Affairs of Korea, July 11, 1950, RG 59, NARA; TRCK 2008a, 964).

sideration of a given situation. That is, it is difficult to evaluate the whole case of the NGL with uniform criteria. I suggest that the question of legitimacy of the event can be illuminated by considering the following five vantage points. First, let us examine whether the procedures for selecting and punishing groups of people to be held in preventive custody was legitimate as well as proper (TCRK 2008, 456-457; Suh 2010, 568-569). Second, let us examine whether the situation was so urgent and extraordinary as to justify the executions. Each incidence of the mass execution of NGL members should be differently evaluated depending on the point in time of the execution as well as the region in which it took place. Third, let us move on to the issue of the observance of execution procedures and laws.<sup>20</sup> Fourth, let us examine who is responsible for the execution of alliance members. The mass executions were overseen by a very systematic chain of command, led by military intelligence agencies. Lastly, let us consider from the historical perspective whether it is possible to clarify responsibilities for the executions of the NGL members.

These mass executions took place in the context of war. And since North Korea was responsible for initiating the war, does it not also bear some responsibility for the executions of the NGL members? At the same time, however, the historical origins of the war went back to the long-standing political fissure since Japanese colonization and were linked to social issues, such as unequal land allocation. They were also linked to the lack of punishment of the pro-Japanese faction after liberation, the division of the peninsula as well as the international cold war. In sum, it seems often impossible to clarify responsibilities for a certain political, historical event.

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20. Laws concerning the punishment of suspected communists, spies, and rebels right after the outbreak of the war included the Special Decree on the Punishment of Crimes Committed in Emergency, National Security Act, National Policing Act, and Criminal Act (old version) (Suh 2010, 573).

## Conclusion

The current study has examined the issue of justice in war with a specific regard to the Korean War. Most of the preceding studies on the Korean War have tried to explain the causes of the war or its historical origins. There are opposing views on the issues of who initiated the Korean War and how to evaluate the process of the declaration of war. Walzer argues that North Korea's aggression was preceded by no formal declaration of war and that South Korea and its counterattack falls into the category of "legitimate defense by military force." Historical sources at hand clearly show that North Korea launched a full-scale invasion of the South on June 25, 1950, after a careful and long preparation. Moreover, North Korea violated the principles of just war by fabricating its invasion as a response to South Korean aggression. According to the just war theory, North Korea's actions were unjust.

This study attempted to examine the following issues regarding the Korean War.

First, I have discussed the issue of intervention of the Korean War. According to Walzer, the United States and the United Nations intervened as a defensive war, rather than "a supportive counter-intervention for one party against a superpower's unjust interference with the other party involved in a civil war." In other words, the U.S. intervention in the Korean War was a defensive war for the United States, the United Nations, and the free world, rather than a war defending South Korea alone. The United States considered the Korean War as a challenge to the free world by the Soviet expansionism, and to which the United States was forced to respond.

However, such a claim is highly controversial. Some have argued that the main purpose of the U.S. military intervention in Korea was to solidify its national interest and its status in the free world. Meanwhile, it is considered to be relevant as well as legitimate that the United States secured the agreement of the international community through three sessions of the UN Security Council to intervene in Korea. On the other hand, the U.S.S.R. defined the Korean War as

Korea's domestic concern and objected to any intervention from outsiders. It argued that the United States abused the power of the United Nations and attempted to justify its intervention in a country's domestic affairs by having the United Nations endorse the U.S. position. However, all available evidence reveals that the U.S.S.R. had been directly involved in the Korean War. The U.S.S.R. withdrew its advisors stationed in North Korea right after the outbreak of the Korean War lest it should give the impression that it was actually intervening in the war. Moreover, the U.S.S.R., unlike the United States, joined the war without making an official declaration of war. In this regard, the U.S.S.R. violated legitimate procedures of just war by covering up its involvement through deception. This runs counter to the cause of universal justice. China's intervention was primarily based on the presumptive assumptions that the war in North Korea was a threat to China's state security and that the United States could potentially attack China. Moreover, China intervened militarily without publicizing it in an official manner, which was a violation of a just war principle.

Second, I touched upon the issue of justice in war conduct (*jus in bello*). Walzer emphasizes that the engaged states should seriously consider the means used to win a battle no less than the victory itself. That is, they should have the intention and purpose of minimizing civilian casualty in waging war. The issue of justice in war conduct brings to mind the following questions regarding the Korean War. First, can a state ignore the sovereignty and human rights of its people in an emergency? Is it acceptable to kill its citizens in an emergency for the purpose of securing the nation's safety? According to modern theories of social contract, a state is meant to protect the lives, properties, and freedom of individuals. "The political sovereign of the national community and the rights to protect its territory derives ultimately from the rights of individuals, and the individuals' rights to life and freedom lie in the most important basis of judgment made on a war," writes Walzer (1977, 91). In relation to this argument, any action taken by the state that poses a threat to its people's life, property, or freedom is unacceptable. Walzer, however, also argues that the

state may limit or impair some of its constituents' rights or require the constituents' lives, property or obedience for the state's own survival under unavoidable circumstances (Suh 2010, 586).

We must consider both of these two factors in evaluating justice in war conduct. If a state is unable to protect its citizens' rights to life and freedom, then that state's self-defense against intrusive forces can never be justified morally (Walzer 1977, 54, 58). The ROK had difficulty protecting its citizens' "mutual way of life called free democracy." This issue directly relates to the responsibility of state actors for war crimes. The Korean army's and the police's killings of civilians during the Korean War might be acknowledged as activities conducted under unavoidable circumstances. Even in this case, however, any acts that hurt "the mutual way of life called free democracy" undermine the purpose of the state's existence (Suh 2010, 587). Public officials and soldiers, who are obligated to follow the orders of the state, should always reflect on whether their actions are compatible with the state's primary purpose. In particular, highest-ranking officials and military officers must take political responsibility for their actions.

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