

Exercising the Rights of Self-Defense and Using Force in Response to North Korean Provocations

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I. Introduction

Since the end of the Korean War in 1953, there have been numerous maritime confrontations between the two Koreas in the vicinity of the Northern Limit Line (NLL). In these skirmishes the Republic of Korea (ROK) Navy (ROKN) has exercised its right of *self-defense* and the *use of force* in response to persistent North Korean military provocations. This paper will examine the context in which self-defense and the use of force are exercised, analyzing various pertinent legal and technical and political issues and questions: the nature of the NLL; the reinterpretation of the ROKN's rights of self-defense and the operational and functional use of force; how the ROKN applies these rights in countering or deterring North Korean military provocations, especially near the NLL; how the ROKN responds to North Korean maritime provocations; and how the recently promulgated Counter-Provocation Plan-agreed between the Republic of Korea Joint Chiefs of Staff (ROK JCS), the United Nations Command (UNC), the ROK-US Combined Forces Command (CFC ROK/US), and United States Forces Korea (USFK) - should be understood. Underlying all these general issues about how the ROKN responds to North Korean military provocations, there is the principle of *deterrence*, with self-defense and the use of force only being used as a *last resort*, in order to maintain the status quo.

II. The Maritime Domain and Protecting the Northern Limit Line (NLL)

The maritime domain comprises those seas where a nation-state can exercise its sovereignty and jurisdictional rights. The use of this term is usually, but not invariably, connected with the military, and with

the use of force. Thus, the maritime domain defines where and how a naval force can legally use its power, or can use coercion interpretable as a physical manifestation of naval power. In the Korean Peninsula, the maritime domain has waxed and waned, due to historical legacies, the aftermath of the Korean War 1950–53, and great power politics.

The NLL is the de facto delimitation of the maritime boundary between the two Koreas in the West Sea (a.k.a. the Yellow Sea). Of course, ideally the two Koreas would reach a negotiated agreement on how to delimit their maritime domains, but since they are technically still in a state of war, the NLL was actually imposed as a military maritime boundary between the two Koreas, and cannot be regarded as established according to international law. Illicit fishing occurs in the vicinity of the NLL, including by Chinese and other actors, and since these are unarmed civilians they are dealt with by constabulary missions, but this also requires the involvement of the naval forces to support these maritime law enforcement operations.¹⁾

There are also non-traditional threats in the maritime domain, and this affects how the naval force exercises its power and capability to secure national security and stability. Due to the complexity of the Korean maritime domains, there are frequent naval skirmishes and also counter-measures to control illegal fishing activities. When the underwater space is taken into consideration, the situation becomes even more complicated, and this problem was demonstrated most clearly by the sinking of the Republic of Korea Ship (ROKS) *Cheonan* in 2010.²⁾ Since this incident, there has been a vigorous debate about how the underwater maritime domain should be managed, but the current status of the

1) Sukjoon Yoon, 'Some Current Issues in Korean Maritime Security and Maritime Strategy,' Geoffrey Till and Yoon Sukjoon, ed., *Korean Maritime Strategy: Issues and Challenges* (Seoul: Korea Institute for Maritime Strategy, 2011), pp.151–186.

2) Kim Jong-min, 'North Korea's New Level of Threat Improvement in the Republic of Korea Navy's Capabilities,' Geoffrey Till and Yoon Sukjoon, ed., *Korean Maritime Strategy: Issues and Challenges* (Seoul: Korea Institute for Maritime Strategy, 2011), pp.259–288.

Korean Peninsula is far from clear-cut: there have been decades of peace, following the 1953 Armistice Agreement which ended the Korean War, and yet technically a state of war still persists: this is overseen by the UNC, led by US Forces in Korea (USFK) and by the CFC ROK/US established in 1978. This strange situation gives rise to many contradictions.

In the 1953 Armistice Agreement signed by the UNC and North Korea, five islands northwest of the agreed territorial boundary were explicitly identified as being under South Korean control. Sometime after the end of the Korean War a de facto maritime boundary passing north of the five islands, the NLL, was established by the UNC though North Korea has never accepted the legality of this line.

There is some opaqueness about the requirement to protect the NLL through the exercise of self-defense authority, when this is understood as including not only the indirect show of force but also the direct use of force, because the various entities involved apply different perspectives. From the UNC's position, the NLL must be maintained until a new maritime military demarcation line can be established through the Joint Military Commission on the armistice agreement. From South Korea's point of view, however, this issue has already been settled by the 1992 South-North Basic Agreement, and so the NLL already is the effective maritime demarcation line. Unless and until a new line is established, South Korea is committed to resolutely maintaining the NLL, just like the terrestrial military demarcation line, and insists that all North Korean intrusions will be met by a decisive response. By contrast, North Korea's position is that the NLL violates the Korean armistice agreement, and it is seeking negotiations with the US on this issue. Over the years, many incidents have occurred in the vicinity of the NLL, which South Korea characterizes as territorial incursions. The most serious of these occurred in 2010, with the artillery bombardment of Yeonpyeong Island and the sinking of the ROKS *Cheonan*. The latter is believed to have resulted from a North Korean submarine attack,

and since 2014 there have also been multiple infiltrations by North Korean UAVs, so the security challenge in this area has now become fully three-dimensional.³⁾

Ⅲ. Understanding the Rights of “Unit Self-Defense” and “National Self-Defense”

In peacetime, defense involves protecting personnel, territory and resources from attack, and accordingly, self-defense is primarily a way for states and alliances to resist external physical assault by raising the costs to the attacker, so as to discourage continuing the initiative. Thus, self-defense is regarded as the most basic manifestation and requirement of the institution of deterrence, which can also include restoration and reprisals. Historically, attempts have been made to curtail the use of force in self-defense, but overturning such a fundamental behavioral principle would mean a radical transformation of the status quo, and this is, at present, extremely unlikely. In practice, both international law and the United Nations Charter are founded on the premise that the right to use force in self-defense is not unrestricted, and such restrictions on the use of force have always been implemented as part of the status quo of the Korean Peninsula, since the Korean War. Under international law, moreover, self-defense must support some recognizable purpose of national defense, and the use of force is only legal on such a basis.

In theoretical terms, the right of self-defense can be divided into two categories: the right of *unit* self-defense; and right of *national* self-defense.⁴⁾ The latter can be understood as being an essentially

3) Sukjoon Yoon, ‘Some Current Issues in Korean Maritime Security and Maritime Strategy,’ pp.151-186.

defensive posture, but the former can encompass more offensive attitudes because, although it is motivated defensively, its operational and functional realization may entail the use of force or other coercion by on-scene commanders, as they deem appropriate to complete the missions and roles which they have been assigned by high-level commanders. The universal right of self-defense is acknowledged as an inherent and independent right to defend oneself against hostile attack or the imminent threat of hostile attack.

Academic opinion varies on how the rights of “unit self-defense” and “national self-defense” should be interpreted, but this study is based on the understanding that commanders at sea have been trained that they have a right to use force to defend themselves, their crews and their property (i.e. their naval platforms) against attack or imminent attack, and that this is one of their most important responsibilities, so in order to accomplish their allocated missions, it is therefore appropriate for them to be armed with various lethal weapons. This right is called “unit self-defense” to distinguish it from “national self-defense”.⁵⁾ The right of unit self-defense is generally recognized worldwide, being understood by customary international law as an inherent and independent right. Indeed, this is not only a right but also an obligation for commanders on the scene. It extends to the entire unit, regardless of its nature (whether ground, naval or airborne forces) including other allied forces operating in the area and also civilians. The right of unit self-defense is referred to in the Rules of Engagement (ROE) promulgated by CFC ROK/US in their operational orders by using very similar language to article 51 of the UN Charter.⁶⁾ For instance, “no rule of engagement may ever limit this inherent right and obligation”, or “no directions in this OPORDER should impair the commander’s sound

4) Robert E. Osgood and Robert W. Tucker, ed., *Force, Order and Justice* (Baltimore: Johns Hopkins University Press, 1967), chapter 3.

5) For general discussion, see Paul Christopher, *The Ethics of War and Peace: An Introduction to Legal and Moral Issues* (New Jersey: Prentice Hall, Englewood Cliffs, 1994).

6) See www.unitednations.org/charter/information/officer/1967revised.

judgment about the right of self-defense”.

Force used in exercising the right of unit self-defense must comply with the principles of *necessity, proportionality, and immediacy*, and it should only be exercised as a unit commander’s last resort: the right to self-defense is therefore not absolute.⁷⁾ Deadly force is to be used only when all lesser means have failed or cannot reasonably be employed. Unit self-defense cannot authorize a unit to attack an entity other than that responsible for the attack or threatened attack, nor to take action to prevent future attacks.

For national self-defense, as distinct from unit self-defense, there are some differences.⁸⁾ Thus, this right is not generally considered an inherent right and obligation but is instead a sovereign right, so that the decision to exercise it is normally made at the highest levels of government, taking into account foreign policy, national security, and perhaps also constitutional requirements. Importantly, there is no requirement to act instantly following an armed attack, without the necessary deliberation. Instead, time is allowed to determine whether the use of force for self-defense is necessary, and to exhaust reasonably available alternatives to the use of force in an offensive posture, before deciding the appropriate response. States are also obliged to report all actions taken in national self-defense to the UN Security Council under Article 51 of the UN Charter. In addition, national self-defense is only permitted when the UN Security Council is unable to provide protection against an illegal attack. Thus, unit self-defense is an operational and functional concept, whereas national self-defense is essentially a geopolitical concept.

7) Mark A. Drumbl, ‘Self-Defense and the Use of Force: Breaking the Rules, Making the Rules, or Both?’ Wiley Online Library, 15 October 2003. See <http://OnlineLibrary.wiley.com/doi/10.1111/1528-3577/404006/abstract> (accessed by October 10, 2016).

8) Ibid.

IV. Implementing the Rights of Unit and National Self-Defense in Response to North Korean Military Provocations: Effective Deterrence

The use of force to exercise the right of self-defense

Unit commanders always retain the inherent right and obligation to exercise unit self-defense in response to any hostile act or demonstrated hostile intent. Here, “hostile act” refers to an attack, while “hostile intent” means the threat of imminent attack.⁹⁾ However, use of force should be a unit commander’s last resort when all other means of persuasion have failed or cannot be reasonably employed. In advance of using deadly forces to exercise the Right of Self-Defense, unit commanders must estimate hostile intent and whether an attack is imminent or not, based on the assessment of all facts and circumstances.¹⁰⁾ If the situation permits, potentially hostile forces should be warned and given the opportunity to withdraw before deadly force is employed. Finally, the use of force in exercising unit self-defense is required to comply with the principles of necessity, proportionality, and immediacy. And the forcible actions should be conducted promptly, rather than days after the hostile act occurred. On the other hand, a state has much more flexibility to use of force in exercising its right of national self-defense. Following an armed attack, states are not required to act instantly (principle of immediacy) without deliberation. Instead, they must first determine whether the use of force is necessary (principle of necessity), then exhaust

9) Department of the Defence, ‘Declared are offence,’ in Department of the Defence, *Australian National Security* (Canberra: DoD, 2013).

10) Mark A. Drumbl, ‘Self-Defense and the Use of Force: Breaking the Rules, Making the Rules, or Both?’ Wiley Online Library, 15 October 2003. See <http://OnlineLibrary.wiley.com/doi/10.1111/1528-3577/404006/abstract> (accessed by October 10, 2016).

reasonably available alternatives to the use of force, before deciding the appropriate response (principle of proportionality).

Unit self-defense as an inherent right of the unit commander

For some years, until after the Second Battle of Yeonpyeong Island in 2002, a unit commander's inherent right to use force in exercising the right of self-defense was seriously constrained by the existing ROE: these were determined by political considerations intended to prevent war on the Korean peninsula. It is said that there were four clear directions for the unit commanders operating in the vicinity of the NLL: first, guard the NLL; second, no preemptive attacks; third, repel North Korean attacks according to the ROE; fourth, avoid escalation.¹¹⁾

There were also detailed directions for the commanders at sea to take actions in response to violation of the NLL, the so-called five-step counteraction process: radio warning - intercept maneuver - warning shots - threatening shots - destructive shots. In practice, these directions (i.e. ROE) impaired the unit commander's inherent right of self-defense through the use of force, and even his obligation to defend his crews and units against attack or imminent attack. Thus, in both in the First (1998) and Second (2002) Battles of Yeonpyeong Island the commanders' inherent rights and obligations were effectively disregarded.

Deterrence as balancing unit self-defense and national self-defense

For the ROK, deterrence is implemented by exercising the right of unit self-defense against North Korean military provocations, while protecting the NLL; this can be then expanded to encompass the deliberate use of force for national self-defense. Thus, effective

11) Sukjoon Yoon, 'Some Current Issues in Korean Maritime Security and Maritime Strategy,' pp.151-186.

deterrence requires balancing operational and diplomatic requirements through the rights of unit self-defense and national self-defense, which means that it relies upon the interactions between individual on-scene commanders and policy-makers at the national level.

The two Battles of Yeonpyeong Island demonstrate how deterrence must balance political requirements, in this case pursuing national self-defense by preventing all-out war, against operational imperatives, in which the unit commanders exercise the right of unit self-defense. Because, as already described, the prevailing operational directions were very complicated and cumbersome, the unit commanders had insufficient time to use force to effectively exercise the right of self-defense. This resulted in a revision of the directions pertaining to operational unit self-defense, with the ROE for responding to North Korean NLL intrusions being simplified. The new procedure was: radio warning - threatening shots - destructive shots, to be based explicitly upon the location of North Korean ships with respect to the NLL. Thus the balance of self-defense was shifted toward the operational level of authority, and these new ROE were shown to be effective at the Battle of Daecheong (2009), when a North Korean military intrusion across the NLL was repelled without risk to the ROKN.

With the sinking of the ROKS *Cheonan*, however, in March 2010, it became clear that the existing application of the rights of self-defense was inadequate to counter asymmetric attacks from North Korea. As a result, the South Korean military began to consider the concept of proactive deterrence, as a last resort to counter the North Korean military provocations, which means relying on the authority of national self-defense rather than unit self-defense.

Some months later, there was another disturbing incident: the North Korean artillery bombardment of Yeonpyeong Islands in November 2010, for which there was no counter-action taken at the level of national self-defense. This led to the development of a combined counter-provocation plan by the ROK and US: in March 2013, the ROK Chairman of the JCS

and the Commander of UNC/CFC/USFK agreed on the “ROK JCS and UNC/CFC/USFK Counter-Provocation Plan”, which includes the principles of anticipatory deterrence and anticipatory self-defense rights. The initial counteractions supposed to be taken by the ROK Military entail a “Prompt, Sufficient, Strike at Source”.¹²⁾ Subsequent mobilizations of US military forces are specified as an option to exercise the right of national self-defense against North Korean provocations, this would be intended to deter future provocations and to prevent escalation of the situation.

The ROK's counter-provocation plan and unit self-defense

In the strong counteraction plan which the ROK military has now established against North Korean provocations, the concept of a source strike extends to any supporting facilities and also to command and control facilities which are all within the scope of unit self-defense. However, this rule still presents difficulties for a commander at sea, and relies upon their judgment, since in battles between warships, catastrophic damage can occur in a very short space of time, leaving a vessel unable to respond once it has been attacked; it is therefore very challenging for a field commander to determine whether he can and should attack, based on the right of self-defense. This was the problem the ROKN encountered during the second Battle of Yeonpyeong Island, which, as already mentioned, led to simpler ROE, reducing the opportunity for a surprise attack by North Korean warships and allowing a longer time to evaluate hostile intent in advance of any use of force in self-defense.

During the subsequent Battle of Daecheong, these changed ROE were effective, and the ROKN unit commander was able to determine

12) Mark A. Drumbl, ‘Self-Defense and the Use of Force: Breaking the Rules, Making the Rules, or Both?’ Wiley Online Library, 15 October 2003. See <http://OnlineLibrary.wiley.com/doi/10.1111/1528-3577/404006/abstract> (accessed by October 10, 2016).

hostile intent during the earlier phases of the response procedure, while transmitting a radio warning and firing warning shots, so as to be ready to fire destructive shots in response to the hostile actions of the North Korean warship. There was some criticism of the ROKN, suggesting that their attacks had breached the principle of proportionality, but after unit self-defense has been triggered, the use of force may be exercised for as long as the hostile actions or hostile intent continues.¹³⁾ Since the ultimate purpose of the use of force is to neutralize these hostile actions and hostile intent, then it may sometimes occur that the unit commander's use of force unintentionally breaches the principle of proportionality.

The ROK's counter-provocation plan and national self-defense

Following the ROKS *Cheonan* sinking in 2010, the ROK government changed its peacetime military strategy from a defensive posture to more offensive stance of 'Proactive Deterrence', which has three aspects: first, maintaining readiness to react preemptively to any indications of North Korean provocations or threatening activities; second, exercising self-defense rights through the use of force more offensively; third, relating economic cooperation and support to political and military confidence-building. Under this concept, there will be a firm response to preliminary North Korean military activities, based on the principles of 'Anticipatory Deterrence' and 'Anticipatory Self-Defense Rights'.

A few months after this new strategy was announced, however, and despite warnings of 'definite countermeasures' from the ROK government, North Korea attacked Yeonpyeong Island with artillery. This was a clear military attack on national sovereignty, and fulfilled the

13) Donald Kirk, 'South Korea: shifting rules of engagement,' *Global Post*, December 07, 2010. See <http://www.pri.org/stories/2010-12-07/south-korea-shifting-rules-engagement> (accessed by October 12, 2016).

conditions required to justify mounting a counterattack, but no such use of force at the level of national self-defense was forthcoming. Instead, the ROK and US Militaries spent three years developing the ROK JCS and UNC/CFC/USFK Counter-Provocation Plan, released in March 2013.¹⁴⁾ The following October, at the 45th ROK-US Security Committee Meeting and Military Committee Meeting, both parties approved this plan as the cornerstone of their strategy to deter North Korean provocations, and reaffirmed that the role of the Armistice Agreement and UNC in maintaining the peace and security of Korean peninsula. It has been reported that the plan was developed through a detailed examination of dozens of patterns which North Korean provocations might follow. The plan includes the successive mobilization of air forces and artillery from USFK, an aircraft carrier from the US Navy's Seventh fleet at Yokosuka naval base, marine forces from Okinawa, and other forces available to the US Pacific Command. Despite the highly specific analysis which informed this plan, no detailed confrontation directives are described by its top-level guidelines beyond the initial counteractions to be taken by the ROK military, though any counteractions which are performed together with US forces will be based on the Armistice Agreement and the ROK-US Mutual Defense Agreement. Hopefully, this plan will be effective in deterring North Korean military adventurism, and in preventing escalation in real world situations for such future provocations as may still occur.

Recent North Korean provocations and the ROK's military responses

North Korea is always looking for new ways to provoke South Korea,

14) Statement of General Curtis Scaparroti, Commander, United Nations Command; Commander, United States–Republic of Korea Combined Force Command; And Commander, United States Forces Korea Before the Senate and Services Committee, March 25, 2014. See http://www.armed-services.senate.gov/imo/media/doc/scaparrotti_03-25-14.pdf (accessed by October 12, 2016).

with its stated aim being to force bilateral negotiations with the US. The following table shows how the ROK has responded to recent North Korean military provocations, in accordance with the presumably newly revised ROE, and with the Combined Plan as a last resort.¹⁵⁾

Date	NK Provocations	ROK Counter-Actions
	Frequent intrusions by NK Warships near the NLL since 2013.	New ROE implemented by IAW
March 24, 2014	Unknown number of drones intruded over five northwest islands and Seoul	Undetected
October 19, 2015	Group of soldiers intruded into DMZ	Warning shots fired
August 4, 2015	Mines laid in Southern area of DMZ: two ROK Army soldiers maimed	Loudspeaker broadcasts resumed
August 20, 2015	Rockets and shells fired over DMZ	Source targeted by artillery
January 3, 2016	NK drone intruded over DMZ	Attempts made to shoot down

The political situation can influence a unit commander's decision to exercise the right of self-defense, but since the ROK counter-attacks exercise the right of self-defense against North Korean provocations in incremental stages, there is effectively a feedback loop between on-scene commanders and national policy makers. The ROK JCS and UNC/CFC/USFK Counter-Provocation Plan is intended as a last resort against North Korean military provocations.¹⁶⁾ Any initial counter-attack will be conducted under the unit commander's right of self-defense; then, if necessary, a subsequent combined attack will be conducted at the collective level of national self-defense. This latter will include

15) Andrew Forbes and Sukjoon Yoon, 'Old and New Maritime Threat from North Korea,' Geoffrey Till and Yoon Sukjoon, ed., *Korean Maritime Strategy: Issues and Challenges* (Seoul: Korea Institute for Maritime Strategy, 2011), pp.54-76.

16) Statement of General Curtis Scaparroti, Commander, United Nations Command; Commander, United States-Republic of Korea Combined Force Command; And Commander, United States Forces Korea Before the Senate and Services Committee, March 25, 2014. See http://www.armed-services.senate.gov/imo/media/doc/scaparrotti_03-25-14.pdf (accessed by November 12, 2016).

exercising the right of “anticipatory or preemptive self-defense” intended to address emerging threats before they are fully realized, and also potential future threats.

V. Conclusion

Since the right of unit self-defense is recognized as an inherent and independent duty and obligation of the unit commander under customary international law, no political directives can restrict the unit commander’s right of self-defense. Following the sinking of the ROKS Cheonan, ROK counter-attacks exercising the right of self-defense against North Korean provocations have been implemented incrementally. The ROK’s primary response remains the use of force at the level of unit self-defense, and any armed actions by the ROK for national self-defense must be discussed with the UNC, if the situation permits. The purpose of the ROK JCS and UNC/CFC/USFK Counter-Provocation Plan is thus to articulate the relationships between unit self-defense and national self-defense, and in practice it covers an extremely broad set response which, as a last resort, can be brought to bear against North Korean military provocations.

Deterrence is based upon a balanced and conditional commitment to retaliate or to exact retribution if an initial counter-attack has occurred, and is conducted under the unit commander’s right of self-defense. Thus the exercise of the right of self-defense and the use of force in response to North Korean military provocations in the vicinity of the NLL is normally aimed at preventing undesirable and behaviors and the consequences therefrom, and also at avoiding any escalation of the situation, to which end US forces can also be mobilized; and if the hostile actions continue, appropriate levels of deadly force will be employed in the collective exercise of the right of national self-defense. North

Korea continues to seek new ways to provoke South Korea, for example through the use of submarines, so it is essential for the ROK and its US ally to continue to adapt to the changing situation by finding legitimate measures whereby the use of force can be exercised under the right of unit self-defense.

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요 약

북한의 군사도발에 대응한 군사력 사용과 자위권 행사

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본 논문은 자위권 사용과 군사력 사용 간의 관계를 분석하고 이를 한반도 서해에서의 한국과 북한 간 해상간장 상황에 적용시킨 이슈를 다룬다. 국가가 행사하는 자위권(self-defense: 自衛權)은 기본적으로 전쟁 방지를 위한 기본적 원칙이다. 그러나 이는 군사력 사용(Use of Forces: 軍事力 使用) 또는 무력행사(武力行事)이라는 측면에서 칼의 양날과 같은 결과를 낳는다. 즉 자위권 행사로 전쟁의 확산을 방지하는 반면에 자위권 행사로 상대방에 대한 적성(敵性)을 인정해 주는 경우이다. 반면 북한의 군사도발은 전방향적이며, 1953년 한반도 정전협정 위반이다.

1953년 정전협정 체결 이후 양국은 서해 북방한계선(NLL)에서의 군사적 충돌을 거쳤으며, 이는 과연 한국이 자위권 차원에서의 방어태세와 군사력 사용 측면에서의 대응태세 간에 괴리가 존재하고 있다는 것으로 나타나고 있다. 당연히 피해를 받는 곳은 한국이며, 이는 서해 북방한계선에서의 남북한 해군 간 대결국면에서 나타나고 있다. 이에 본 논문은 자위권을 국가 차원 행사하는 수준과 작전에 투입된 현장 작전 지휘관 차원에서 행사하는 수준으로 구분하여 다룬다.

서해 북방한계선 부근 수역에서의 북한의 해상 군사도발에 대해 현장 작전 지휘관이 행사하는 자위권은 대한민국 정부 차원에서의 자위권 행사와는 다르며, 이 문제를 국제법을 중심으로 분석하기에는 너무나 많은 제한점이 있다. 현행 국제법상 국가 자위권 문제는 군사력을 동반하는 문제로서 그 행사요건이 매우 애매모호하고 까다롭다. 그러나 현장 작전지휘관의 자위권 행사는 단호해야 하며, 이는 군사력 운용으로 나타나야 한다. 실제 서해에서의

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남북한 대결국면에서의 대한민국 해군의 자위권 행사는 정전협정에 의거 제한되고 있으며, 이는 2010년 북한의 천안함 침몰과 연평도 폭격도발 시 대한민국 해군과 해병대의 대응에서 증명되었다.

현재 대한민국 국방부는 현장 작전 지휘관에서 소위 ‘선제적 자위권 행사’ 부여 필요성에 대한 논의를 진행 중으로 알려져 있다. 이에 따라 선제적 자위권 행사를 위한 조치들을 제도화하는 움직임을 보이고 있다. 예를 들면 2013년 발표된 대한민국 합참과 유엔사령부/한미 연합사령부/주한미군사령부 북한 군사도발에 대한 대응계획(ROK JCS and UNC/CFC/USFK Counter-Provocation Plan)이 이를 간접적으로 증명하고 있다. 선제적 자위권은 행사에 있어 몇 가지 원칙을 요구하고 있으며, 이에 대한 합법성 문제는 아직 해결되고 있지 않다. 따라서 이 문제와 북한 군사도발 시에 대한 대한민국의 선제적 자위권 행사 간 연관성 문제를 어떻게 해석할 수 있는가에 대한 연구가 필요한 실정이다. 평소 군사력 사용에 따른 무력행사의 적법성은 그 인정이 대단히 어려운 것이 현실이며, 이에 따라 북한의 군사도발에 대한 가장 효율적 방안이 선제적 자위권이라면, 이에 대한 법적 대응이 무엇인가에 대한 제도적 근거를 필요로 할 것이다.

핵심어: 군사전략, 국제법, 공격, 자위권, 선제적 자위권 행사, 서해, 북한 군사도발, 해군