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NUCLEAR WEAPONS LAW AND KOREA'S CONUNDRUM

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Ultimately, war is politics by other means, and international law is the codification of the practices and legal doctrines of great powers that define the limits on the use of “other means” by states pursuing political ends in endless, ruthless competition. Nowhere is this more apparent than on the Korean Peninsula, where a war suspended by the 1953 Korean Armistice Agreement has never formally ended, and where the forces and treaty commitments of four nuclear-armed states — the United States, China, Russia and North Korea — converge.

“Other means” in today’s world refers above all to nuclear weapons, the ultimate form of coercive force due to the absolute, annihilative ability they confer on a possessor to project an existential threat against an adversary. In Korea, the adversaries now describe their deterrence in precisely these terms. North Korea’s 2022 law on its nuclear forces policy declares that their mission is to make hostile forces understand that military confrontation with the North “brings about ruin.” The United States’ 2022 Nuclear Posture Review states that “there is no scenario in which the Kim regime could employ nuclear weapons and survive.”

Each of these states declares that it observes international law, especially the customary laws of armed conflict, which apply directly to nuclear weapons. At the same time, international law is conflicted when it comes to the threat or use of nuclear weapons if and when a state is threatened existentially. In its 1996 advisory opinion, the International Court of Justice could not “conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.” North Korea’s nuclear law occupies exactly this space: its catch-all condition for nuclear use is a “catastrophic crisis to the existence of the state and safety of the people.”

Each of these words is critically important in Korea. What exactly is a threat? When is a threat illegal under international law, and when do nuclear threats cross that line? Do the North's drills simulating tactical nuclear strikes on South Korean military targets constitute unlawful threats? Conversely, are allied exercises that Pyongyang denounces as rehearsals for invasion and "decapitation," or the visible deployment of U.S. nuclear-capable bombers and ballistic missile submarines to the peninsula, lawful signals of deterrence — or illegal threats in their own right? When exactly is a state threatened "existentially," and who decides? Is a threat to the leadership of a state sufficient to constitute an existential threat?

On the Korean Peninsula, these questions are not academic. The laws of war apply to all parties to the Korean conflict in complicated and often counter-intuitive ways. The United States military and the U.N. Command, in particular, invoke the laws of armed conflict in their preparations to wage war in the cause of deterrence against the North's nuclear force.

North Koreans likewise study international law and craft their doctrines with great care, emulating the legal maneuvers and evasions of the nuclear-armed great powers to justify their own nuclear weapons doctrine and practices. The North's 2022 law, for example, mirrors the negative security assurances of the recognized nuclear-weapon states, pledging not to threaten or use nuclear weapons against non-nuclear-weapon states unless they join aggression against Pyongyang "in collusion with other nuclear weapons states" — a clear reference to South Korea and Japan.

It therefore behoves nuclear weaponeers, nuclear decision-makers, parliamentarians and their aides, journalists, scholars, civil society organizations and interested individual citizens — in Seoul, Pyongyang, Washington, Tokyo, Beijing and Moscow — to understand how international law applies to and constrains the use of nuclear weapons.

This is especially the case now that inter-Korean relations are in transition. North Korea has declared reunification a dead issue, framing the two Koreas as separate, "normal" states bound by international law and, by implication, no longer constrained by prior inter-Korean "political" agreements that are not international legal instruments. This shift strips away what remains of the 1992 Joint Declaration on the Denuclearization of the Korean Peninsula. If denuclearization is to be revived, it must rest on legally binding, verifiable and reciprocal international instruments rather than on inter-Korean political pledges.

In September, the University of Sydney launched a self-paced [short on-line course on nuclear weapons law](#), the only such course in the world open to all comers. The course uses the open-access textbook developed in tandem with it, [*The Law on Nuclear Weapons: An International Commentary*](#) (Edward Elgar, 2025), and students can work through it in their own time.

The opinions articulated above represent the views of the author(s) and do not necessarily reflect the position of the Asia-Pacific Leadership Network.

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ABOUT APLN

The **Asia-Pacific Leadership Network (APLN)** is a Seoul-based organisation and network of political, military, diplomatic leaders, and experts from across the Asia-Pacific region, working to address global security challenges, with a particular focus on reducing and eliminating nuclear weapons risks. The mission of APLN is to inform and stimulate debate, influence action, and propose policy recommendations designed to address regional security threats, with an emphasis on nuclear and other WMD (weapon of mass destruction) threats, and to do everything possible to achieve a world in which nuclear weapons and other WMDs are contained, diminished, and eventually eliminated.



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