

**Security Council**

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Letter dated 19 December 2010 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General

On behalf of the unified command established pursuant to Security Council resolution 84 (1950) of 7 July 1950, I have the honour to submit a special report to the Security Council prepared by the United Nations Command on the special investigation into the exchange of artillery fire between Korean People's Army at Mu-Do and Gaemeori and Republic of Korea Marine Corps forces at Yeonpyeong-Do on 23 November 2010 (see annex).

I should be grateful if the present letter, together with its annex, could be circulated as a document of the Security Council.

(Signed) Susan E. Rice



**Annex to the letter dated 19 December 2010 from the
Permanent Representative of the United States of America
to the United Nations addressed to the Secretary-General**

**Special investigation into the Korean People's Army attack on
Yeonpyeong-Do and the Republic of Korea Marine Corps'
response on 23 November 2010**

1. General

On 23 November 2010, the Korean People's Army (KPA) of the Democratic People's Republic of Korea attacked the North-west Island of Yeonpyeong-Do with multiple artillery and rocket strikes, and Republic of Korea forces responded to the attack with artillery fire. On 6 December 2010, acting under article II, paragraph 27, of the Korean War Armistice Agreement of 1953 (AA), and section VII, paragraph 51, of UNC Regulation 551-4 (Compliance with the Armistice Agreement), the United Nations Command (UNC) Senior Member of the Military Armistice Commission (MAC) directed the UNCMAC Secretary to establish a Special Investigation Team (SIT) to ascertain all facts concerning the incident leading up to and ending with the KPA's attack on Yeonpyeong-Do, including the Republic of Korea military response to the attack, and to assess whether the AA had been violated (enclosure 1).¹ Per UNC Senior Member request, the Neutral Nations Supervisory Commission (NNSC), composed of three nations, observed the conduct of the SIT during its investigation (enclosure 2).¹ The multinational composition of the SIT, composed of nine nations, and its Mission and Task Organization is reflected at enclosure 3.¹ Information contained in the report on the investigation was obtained from a series of classified and unclassified reports and interviews provided by the Republic of Korea Joint Chiefs of Staff (JCS) and the Republic of Korea-United States of America Combined Forces Command (CFC), and from an on-site visit to Yeonpyeong-Do. A listing of the reference material and applicable portions thereof are at enclosure 4.¹

2. Findings of fact

Evidence supports beyond a reasonable doubt² each of the following:

a. Framework understandings

1) The Korean People's Army (KPA) agreed on 27 July 1953 to "accept and to be bound and governed by the conditions and terms of" the AA. [Preamble, Ref (a)]

¹ Not included in the present document. The enclosure contains the report of the Neutral Nations Supervisory Commission on its observation of the investigation.

² See paragraph 2-5-12, DA Pamphlet 27-9 ("A 'reasonable doubt' is not a fanciful or ingenuous doubt or conjecture, but an honest, conscientious doubt suggested by the material evidence or lack of it in the case. It is an honest misgiving generated by insufficiency of proof of guilt. 'Proof beyond a reasonable doubt' means proof to an evidentiary certainty, although not necessarily to an absolute or mathematical certainty. The proof must be such as to exclude not every hypothesis or possibility of innocence, but every fair and rational hypothesis except that of guilt").

2) The AA's stated objective is to establish "an armistice which will ensure a complete cessation of hostilities and of all acts of armed force in Korea until a final peaceful settlement is achieved".³ [Preamble, Ref (a)]

3) The AA obligates the opposing sides to "order and enforce a complete cessation of all hostilities in Korea by all armed forces under their control, including all units and personnel of the ground, naval, and air forces". [Paras. 12 and 17, Ref (a)]

4) The AA reflected the intent of the parties that the island of "Yonpyong-Do" and four other islands (collectively "the North-west Islands" (NWI)) "shall remain under the military control of the Commander-in-Chief (now Commander), United Nations Command" upon the separation of forces.⁴ [Para. 13b, Ref (a)]

5) The AA applies to "all opposing ground forces under the military control of either side" and requires such ground forces to "respect the Demilitarized Zone and the area of Korea under the military control of the opposing side". [Para. 14, Ref (a)]

6) The AA applies to "all opposing naval forces, which naval forces shall respect the waters contiguous to the Demilitarized Zone and to the land area of Korea under the military control of the opposing side". [Para. 15, Ref (a)]⁵

7) The AA requires the opposing sides to observe "both the letter and the spirit of all the provisions of" the AA. [Para. 17, Ref (a)]

8) The AA "shall remain in effect until ... by provision in an appropriate agreement for a peaceful settlement at a political level between both sides". [Para. 62, Ref (a)]⁶

³ The AA does not define or otherwise elaborate on the meaning of the "hostilities" or "acts of armed force"; however, the terms were meant to preclude one party from taking military action(s) against another party or the forces under the parties' control. "Hostile act" is customarily defined as an attack or other use of force against a nation, its forces, or other designated persons or property. It also includes the force used directly to preclude or impede the mission and/or duties of that nation's forces, including the recovery of that nation's personnel or vital governmental property. See, e.g., United States Chairman Joint Chiefs of Staff, Standing Rules of Engagement, effective 13 June 2005. See also Sanremo Handbook on Rules of Engagement (International Institute of Humanitarian Law, 2009).

⁴ This was a reflection of the lack of KPA military control over Yeonpyeong-Do and the NWI at the signing of the AA and was consistent with Republic of Korea control and jurisdiction over Yeonpyeong-Do and the NWI.

⁵ The AA does not define or otherwise elaborate on the meaning of "waters contiguous to" a land area. Any evaluation of such has historically relied upon a totality of the circumstances.

⁶ This provision is supported by United Nations Security Council action in 1996 when the Council made its most definitive statement on the status of UNC since its original resolutions of the 1950s. The President of the Council made a statement on behalf of the Council regarding an incident in which a north Korean submarine had foundered on the Republic of Korea coast, "urg[ing] that the Korean Armistice Agreement should be fully observed" and "stress[ed] that the Armistice Agreement shall remain in force until it is replaced by a new peace mechanism" (S/PRST/1996/42, dated 15 October 1996). In the aftermath of the sinking of the Republic of Korea Navy ship *Cheonan* on 26 March 2010, the President of the Council issued a statement on 9 July 2010, indicating the intent of the Council: "The Security Council calls for full adherence to the Korean Armistice Agreement and encourages the settlement of outstanding issues on the Korean peninsula by peaceful means to resume direct dialogue and negotiation through appropriate channels as early as possible, with a view to avoiding conflicts and averting escalation" (S/PRST/2010/13).

9) Chapter 51 of the Charter of the United Nations⁷ and customary international law recognize the inherent right of self-defence.

a) Inherent in self-defence are the customary requirements for necessity, proportionality, and an element of timeliness.

b) No provision of the AA prohibits a party or forces under its control from taking action in self-defence after suffering an armed attack.

10) Customary international law recognizes that “any serious violation of [an] armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately”.⁸

11) The Republic of Korea and the Democratic People’s Republic of Korea have entered into bilateral agreements regarding the continued effectiveness of the AA and their posture towards each other in the West Sea (e.g., the Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation between the South and the North, dated 13 December 1991 (hereafter “Basic Agreement”) and the Protocol on the Compliance with and Implementation of Chapter 11 of the South-North Basic Agreement, dated 17 September, 1992 (hereafter “Protocol on Ch. 11 of Basic Agreement”). [Ref (b)]

a) The Republic of Korea and the Democratic People’s Republic of Korea have agreed to “abide by the present Military Armistice Agreement (of 27 July 1953) until such time as such a state of peace has taken hold” and to “not use armed force against each other”. [Arts. 5 and 9, Basic Agreement; see also Art. 1, Protocol on Ch. 11 of Basic Agreement, Ref (b)]

b) The Republic of Korea and the Democratic People’s Republic of Korea have agreed that “the South-North demarcation line and areas for non-aggression shall be identical with ... the areas that have been under the jurisdiction of each side until the present time” [Art. 11, Basic Agreement, Ref (b)] and that “until the sea non-aggression demarcation line has been finalized, the non-aggression areas of the sea shall be those that have been under the jurisdiction of each side until the present time”. [Art. 10, Protocol on Ch. 11 of Basic Agreement, Ref (b)]

b. Events surrounding the KPA attack on Yeonpyeong-Do and the ROKMC’s response on 23 November 2010

1) Republic of Korea customary training in vicinity of NWI:

a) Republic of Korea and UNC forces have customarily patrolled and administered the waters⁹ in the vicinity of Yeonpyeong-Do and the four other islands since the NWI were delineated in the AA to remain under UNC control upon the separation of forces in 1953. [Ref (c), (d), (e) and (f)]

⁷ Article 51 provides, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security.”

⁸ See, e.g., annex, Hague Convention (IV) (1907), article 40; see also United States Department of the Army FM 27-10 (1956), paragraph 492.

⁹ The nature of these waters is described at DoD 2005.1-M, Maritime Claims Reference Manual. In addition, military force control lines have been claimed or identified in these waters. See Reference (c).

b) The Republic of Korea military has conducted live fire training exercises at Yeonpyeong-Do since 1974, and during the past four years alone, the ROK military has previously announced and conducted 65 live fire exercises on and in the vicinity of Yeonpyeong-Do, to include three previous such live fire exercises this year alone (on 5 August, 8 August and 28 September 2010). [Ref (d) and (e)]

c) The island of Yeonpyeong-Do (37° 38' N, 125° 40' E) is approximately 6.8 square kilometres in size and is inhabited by various Republic of Korea Marine Corps (ROKMC) units, totalling approximately 1,200, and approximately 400 civilians — who largely conduct fishing in the waters adjacent to the south-south-west of the island. [Ref (e)]

d) The Republic of Korea military conduct live fire exercises on and in the vicinity of Yeonpyeong-Do as a means of ensuring the readiness and operability of ROKMC units stationed on the island, and ultimately the protection of the Republic of Korea. The live fire zones are adjacent to, and not into, the fishing areas surrounding the island. [Ref (e), (f) and (g)]

e) The KPA has never before responded to Republic of Korea military live fire exercises on or in the vicinity of Yeonpyeong-Do with any hostile act or act of armed force against Republic of Korea forces or the Republic of Korea. [Ref (e) and (f)]

f) The Republic of Korea military did not respond to KPA live fire exercises in January 2010 in the vicinity of the NWI with any hostile act or act of armed force against KPA forces or the Democratic People's Republic of Korea, although the KPA followed the incident with a formal written statement to the Republic of Korea Army (ROKA) through North-South (N-S) General Officer (GO)-level military talks channels, indicating that any Republic of Korea actions that the KPA interpret as even "provocative" would be "followed by [KPA] unpredictable and tangible action". [Ref (e), (f), (h) and (i)]

2) Republic of Korea live fire exercise:

a) On 16 November, the Republic of Korea Ministry of Land Transport and Maritime Affairs published a Korean Navigation Warning (No. 10-346) to the international community, which was equivalent to a Notice to Mariners, of a future live fire exercise to be held on 23 November, in the vicinity of the NWI. The warning also announced live fire exercise areas located due west and south-east of Paengnyong-Do and to the south-west of Yeonpyeong-Do. [Ref (d) and (j)]

b) Between 16 November and 23 November 2010, the KPA made a number of military capability improvements and military preparations in the vicinity of Mu-Do and Gaemeori, Democratic People's Republic of Korea. [Ref (f), (k) and (r)]

1. Preparations included, but were not limited to, a heightened readiness posture by KPA coastal artillery and long-range artillery units; KPA air units conducted patrol flights and repositioned themselves on standby, and KPA naval forces and ground-to-ship missiles were made ready for combat and fire. [Ref (r)]

c) Democratic People's Republic of Korea senior leadership, to include the Supreme Commander, KPA, Marshal Kim Jong Il, visited KPA units at Gaemeori on the morning of 23 November, just before the KPA units fired upon Yeonpyeong-Do. [Ref (f), (k) and (l)]

d) The KPA issued a “grave warning” to the ROKA in N-S GO-level military talks channels on the morning of 23 November, stating that it would take “immediate tangible measures” against the Republic of Korea if the Republic of Korea conducted live fire exercises “in the vicinity of Yeonpyeong-Do in the West Sea of Chosun”. [Ref (m)]

e) On 23 November, from 1015 hours to 1330 hours, the Republic of Korea 6th Marine Brigade, located on Paengnyong-Do, conducted its published live fire exercise engaging pre-planned and previously utilized targets located in the waters contiguous to Paengnyong-Do, and the waters customarily patrolled and administered by Republic of Korea and UNC forces. [Ref (c), (d), (n) and (p)]

f) None of the Republic of Korea 6th Marine Brigade located on Paengnyong-Do pre-planned targets was within waters customarily patrolled or administered by the KPA. [Ref (c), (d), (n) and (p)]

g) On 23 November, from 1357 hours to 1434 hours, the ROKMC unit located on Yeonpyeong-Do conducted its published live fire exercise engaging pre-planned and previously utilized targets in waters contiguous to Yeonpyeong-Do and the waters customarily patrolled and administered by Republic of Korea and UNC forces. [Ref (c), (d), (e), (o) and (p)]

h) None of the ROKMC Yeonpyeong-Do unit pre-planned targets was within the waters customarily patrolled or administered by the KPA. [Ref (c), (d), (e), (o) and (p)]

i) All ROKMC artillery shells fired from Yeonpyeong-Do and Paengnyong-Do during the live fire exercise were observed impacting their intended pre-planned targets on the water, which were located to the west and south-west of the NWI, i.e., not towards the land area of the Democratic People’s Republic of Korea controlled by the KPA or waters contiguous to such area. Additionally, no KPA forces were in the vicinity of the pre-planned targets. [Ref (c), (d), (e), (n), (o) and (p)]

3) KPA attack:

a) On 23 November, at 1433 hours, a Republic of Korea Navy (ROKN) radar station, located on Yeonpyeong-Do, indicated with a high-resolution camera system artillery fire originating from the vicinity of Gaemeori, Democratic People’s Republic of Korea, an area with known KPA gun-line positions. [Ref (d), (e), (f), (k), (q), (r) and (s)]

b) After the initial artillery fire originating from the vicinity of Gaemeori was indicated on imagery, ROKMC Weapon Locating Radar (WLR) was activated on Yeonpyeong-Do and detected the point of origin for the incoming artillery fire to be in the vicinity of Gaemeori, Democratic People’s Republic of Korea. [Ref (d), (e), (q), (r) and (s)]

c) From 1434 to 1446 hours, approximately 60 KPA artillery shells and 122mm rockets directly impacted Yeonpyeong-Do, causing damage to military targets, the civilian village and other areas of the island, with approximately 90 KPA shells/rockets impacting the surrounding contiguous waters of Yeonpyeong-Do. [Ref (d), (e), (q), (r) and (s)]

d) At 1447 hours, in response to impacting rounds from the North and after having received authorization, ROKMC units on Yeonpyeong-Do responded to the KPA attack on Yeonpyeong-Do by engaging the Democratic People's Republic of Korea island of Mu-Do with artillery counter-fire of 30 K-9 howitzer 155mm rounds. [Ref (d), (e), (q), (r) and (s)]

1. The ROKMC units were hampered in immediately responding with defensive counter-fire because they were attacked during the conduct of a live fire exercise. Their forces were caught in the open, which required the forces to take cover and adjust positions, transition and restock rounds and obtain targeting data, reorient their guns, and confirm fire authorization before engaging. [Ref (d), (e), (q), (r) and (s)]

2. The ROKMC units initiating counter-fire did not know of the ROKN radar station information indicating artillery fire from the vicinity of Gaemeori, Democratic People's Republic of Korea, when they initiated their defensive counter-fire. [Ref (d), (e), (q), (r) and (s)]

3. The ROKMC engaged Mu-Do with counter-fire because the unit had pre-planned and preset target information available on Mu-Do, the closest and most imminent known threat to Yeonpyeong-Do. [Ref (d), (e), (f), (q), (r) and (s)]

e) At 1506 hours, with no new target data, the ROKMC continued with additional artillery counter-fire of 20 K-9 howitzer 155mm rounds against Mu-Do. [Ref (d), (e), (q), (r) and (s)]

f) From 1511 hours to 1529 hours, KPA guns on Mu-Do and at Gaemeori fired approximately 20 additional rounds of artillery and Multiple Rocket Launcher (MRL) rockets impacting Yeonpyeong-Do. [Ref (d), (e), (q), (r) and (s)]

g) At 1525 hours, ROKMC responded to the continued KPA attack by engaging Gaemeori with 30 additional K-9 howitzer 155mm artillery rounds. [Ref (d), (e), (q), (r) and (s)]

h) At 1548 hours, the Republic of Korea Chief Delegate N-S GO-level military talks issued a message to the KPA Senior Representative to N-S GO-level military talks requesting that the KPA cease firing into Republic of Korea territorial waters and land in the vicinity of Yeonpyeong-Do and stating, "If your side stops firing, our side will also stop the counter-fire." [Ref (t)]

i) As a result of the KPA military attack on Yeonpyeong-Do, there were two ROKMC personnel and two Republic of Korea civilians killed. Additionally, 16 ROKMC and 52 civilians were injured as a result of KPA artillery and MRL fire, and considerable damage was suffered by military facilities and destruction of civilian homes. [Ref (d), (e), (r), (s), (u)]

j) While it appears that ROKMC counter-fires struck targets in the Democratic People's Republic of Korea in the vicinity of Mu-Do and Gaemeori, it is not known whether any KPA or civilians were killed or injured. [Ref (d), (e), (f), (r), (s) and (v)]

c. Follow-on events

1) On 23 November, UNCMAC passed a formal message to the KPA stating, “Your side fired artillery rounds that impacted Yeonpyeong-Do. I remind you that, according to paragraph 13 (b) of the Armistice Agreement, Yeonpyeong-Do was placed under the control of the Commander, United Nations Command. The action by your side constitutes an extremely provocative action endangering the lives of all Korean people in the West Sea area [Yellow Sea]. Furthermore, your actions violate the Armistice Agreement, were perpetrated against an area under the military control of our side, and constitute an international incident which is gaining worldwide visibility. I propose to meet you in our conference room (Building T-3) at 1000 hours on Wednesday, 24 November 2010 to arrange UNC-KPA General Officer talks to discuss ceasing all hostile activities immediately.” [Ref (v)]

2) On 23 November, the KPA Supreme Command put out a communiqué through Democratic People’s Republic of Korea State media admitting firing on Republic of Korea forces in stating, “the country took such decisive military steps as reacting to the military provocation of the puppet [Republic of Korea] group with a prompt powerful strike”, and stating that if “the South Korean puppet group dare intrude into the territorial waters of the Democratic People’s Republic of Korea even 0.001 mm, the revolutionary armed forces of the Democratic People’s Republic of Korea will unhesitatingly continue taking merciless military counter-actions against it” and that the Republic of Korea “should bear in mind the solemn warning of the revolutionary armed forces of the Democratic People’s Republic of Korea that they do not make empty talk”. [Ref (w)]

3) On 25 November, KPA provided a response to UNCMAC’s formal message stating, “Your message ... is nothing but a ridiculous message of protection for South Korean puppet military war hawks ... the South Korean puppet army forcibly carried out reckless military provocation by firing artillery shells that targeted our territorial waters ... thus it was severely punished by the self-defensive measures of our army ... “The KPA also stated that it had “warned” the ROKA on the morning of 23 November to “discontinue at once [the planned ‘fire plan’] and if they neglect our request we would react with tough retaliation”. To date, KPA has not specifically accepted or rejected UNC’s offer to immediately commence General Officer Talks. [Ref (x)]

4) Post-incident analysis of the expended 122mm MRL rockets and artillery fragments, debris and craters indicate KPA origin: fragments are consistent with KPA weapons systems. [Ref (d), (e) and (f)]

3. Opinions

The findings of fact and the underlying evidence support beyond a reasonable doubt each of the following:

a. The Democratic People’s Republic of Korea has repeatedly utilized threats of force against the Republic of Korea in their international relations.¹⁰ [FF b.1)f); b.2)d); c.2); and c.3)]

¹⁰ Article 2(4) of the United Nations Charter states, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”.

b. The Republic of Korea live fire exercise of 23 November was not a hostile act or an act of armed force in Korea against the KPA or the Democratic People's Republic of Korea. [FF a.1)--11); b.1)a)--f); b.2)a); and b.2)e)--i)]

c. The Republic of Korea live fire exercise was conducted into the waters contiguous to Yeonpyeong-Do and the NWI or waters customarily patrolled and administered by Republic of Korea and UNC forces. [FF b.1)--b.2)]

d. The Republic of Korea live fire exercise did not constitute a violation of the letter or the spirit of the AA. [FF a.1)--11); b.1)a)--f); b.2)a); and b.2)e)--i)]

e. The KPA attack of Yeonpyeong-Do on 23 November was a hostile act and an act of armed force in Korea against Republic of Korea forces and the Republic of Korea. [FF a.1)--11); b.1)f); b.2)a)--d); b.3)a)--c); b.3)f); b.3)i); and c.2)--4)]

f. The KPA attack against Yeonpyeong-Do occurred on land and in sea areas of Korea identified by the AA as being under the military control of the Commander, UNC. [FF a.1); a.4)--7); a.11); b.1)a)--f); b.3)a)--c); and c.2)--4)]

g. The KPA attack against Yeonpyeong-Do was a deliberate and premeditated¹¹ action. [FF a.1)--11); b.1)f); b.2)b)--d); b.3)a)--c); b.3)f); and c.2)--3)]

h. The KPA attack against Yeonpyeong-Do was not an action that can be justified under the right of self-defence given the lack of necessity. [FF a.9); a.11); b.1)--f); b.2)a); b.2)e)--j); and c.2)--3)]

i. The KPA's failure to order or enforce a complete cessation of all hostilities in Korea by all armed forces under their control, specifically their artillery forces, constitutes a violation of the AA. [FF a.1)--3); a.5); b.3)a)--c); b.3)f); and c.2)--4)]

j. The KPA's execution of an armed attack against land and sea areas of Korea identified by the AA to be under the military control of the Commander, UNC, constitutes a serious violation of the AA. [FF a.1)--11); b.1)a)--f); b.3)a)--c); b.3)f); b.3)i); and c.2)--4)]

k. The KPA's deliberate and premeditated armed attack, resulting in the death of two ROKMC personnel and two Republic of Korea civilians; and causing injury to 16 ROKMC and 52 Republic of Korea civilians, as well as causing considerable damage to military facilities and destruction of civilian homes and property, constitutes a serious violation of the AA. [FF a.1)--11); b.1)f); b.2)b)--d); b.3)a)--c); b.3)f); b.3)i)--); and c.2)--4)]

l. The ROKMC counter-fire to Mu-Do and Gaemeori can be justified under the right of self-defence given the necessary, proportional and timely response given. [FF a.9); and b.3)a)--j)]

¹¹ An act is not premeditated unless the thought of acting was consciously conceived and the act or omission by which it was taken was intended. A premeditated act is an act committed after the formation of a specific intent to act and consideration of the act intended. It is not necessary that the intention to act has been entertained for any particular or considerable length of time. When a fixed purpose to act has been deliberately formed, it is immaterial how soon afterwards it is put into execution. The existence of premeditation may be inferred from the circumstances. Cf. article 118.b(2)(a), Manual for Courts-Martial (2008 ed.).

m. The ROKMC's actions in self-defence to the KPA's armed attack and in response to the KPA's serious violation of the AA were consistent with the principles of an armistice, the United Nations Charter and customary international law. [FF a.9)--10); and b.3)a)--j)]

n. The ROKMC's actions in self-defence against the KPA's armed attack and in response to the KPA's serious violation of the AA are not a violation of the letter or the spirit of any provision of the AA. [FF a.7); a.9)--10); and b.3)a)--j)]

4. Recommendations

a. No further UNC investigation warranted.

b. Report SIT findings to the United Nations Security Council.¹²

c. Request General Officer-level talks with the KPA in order to open dialogue with the KPA relative to preventing any further attacks on Yeonpyeong-Do.¹³

d. Request that the United Nations Command Sending State and Neutral Nations Supervisory Commission Ambassadors convene in Seoul in coordination with the Republic of Korea in order to discuss these serious violations of the AA and measures to ensure that a complete cessation of hostilities and of all acts of armed force in Korea is maintained.

e. Consistent with paragraph 60 of the AA, recommend to the governments of the countries concerned that an appropriate agreement for a peaceful settlement at a political level be reached.

5. Point of contact

Point of contact is Major Sean Miller, UNCMAC ASEC-O (sean.d.miller2@korea.army.mil), at 724-7309.

(Signed) LAWRENCE L. WELLS
Major General, US Air Force
US Member, MAC
Chief of Staff, UNC

¹² Security Council resolution 84 (1950) "requests the United States to provide the Security Council with reports as appropriate", and resolution 85 (1950) "requests the Unified Command to provide the Security Council with reports, as appropriate".

¹³ General Officer-level talks are a means of dialogue between the UNC and the KPA outside the context of the Military Armistice Commission (MAC) described in the AA, as the KPA has refused to participate in the MAC since the Commander, UNC, appointed a Republic of Korea officer as the UNC Senior Member in April 1994.

(Signed) D. J. GREENWOOD
Brigadier, British Army
Senior Commonwealth Member
UNCMAC LNO

(Signed) STEPHEN R. MERRILL
Captain, US Navy
UNCMAC LNO

(Signed) S. BEAUMONT
Colonel, Australian Army
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(Signed) LERTRIT CHONGWARIN
Senior Colonel, Royal Thai Army
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(Signed) SEAN MILLER
Major, US Marine Corps
Assist. Secretary-Operations, UNCMAC

(Signed) KURT L. TAYLOR
Colonel, US Army
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As observed by:

(Signed) ULF PERSSON
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(Signed) B. PIDANTY
Lieutenant Colonel, Polish Army
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(Signed) M. EHRENSPERGER
Major, Swiss Army
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Enclosure

To:

Major General Yoon Young Bum
Senior Member
UNCMAC

Neutral Nations Supervisory Commission report on the special investigation into the exchange of artillery fire between the Korean People's Army at Mu-Do and Gaemeori and Republic of Korea Marine Corps forces at Yeonpyeong-Do on 23 November 2010

References

This NNSC report is based on the following documents:

- Ref (a): Armistice Agreement, 27 July 1953
- Ref (b): NNSC Expanded Tasks 2010
- Ref (c): Letter of request to NNSC by Senior Member UNCMAC, 3 December 2010
- Ref (d): Commander UNC Report 13 December 2010, Special investigation into the exchange of artillery fire between Korean People's Army at Mu-Do and Gaemeori and Republic of Korea Marine Corps forces at Yeonpyeong-Do on 23 November 2010
- Ref (e): US Department of the Army, pamphlet 27-9, paragraph 2-5-12, 1 January 2010^a

Orientation

In accordance with paragraph 28 of the Armistice Agreement (AA; ref a) and the decision on Neutral Nations Supervisory Commission (NNSC) Expanded Tasks 2010 (ref b), the NNSC Delegates accompanied the United Nations Command Military Armistice Commission (UNCMAC) Special Investigation Team (SIT) in order to observe the investigation. The NNSC is requested to provide a separate report to the Senior Member (ref c). The NNSC will also submit this report to their respective national authorities.

The purpose of the UNCMAC investigation was to ascertain all facts concerning the exchange of artillery fire between the Korean People's Army (KPA) at Mu-Do and Gaemeori and Republic of Korea Marine Corps (ROKMC) forces at

^a The SIT has used different US Armed Forces standards of proof. These levels are, from the lowest to the highest:

- (1) "Findings of facts only if supported by a *preponderance of the evidence*, ie., more likely than not".
- (2) "Facts asserted as highly probably and to be *clear and convincing*: evidence must leave no serious or substantial doubt"; "it is a higher degree than a preponderance of the evidence standard, but it does not require proof beyond a reasonable doubt".
- (3) "Proof *beyond a reasonable doubt*, means proof to an evidentiary certainty, although not necessarily to an absolute or mathematical certainty".

Yeonpyeong-Do in order to determine if the Armistice Agreement was violated and report the results to the Commander UNC. The SIT team consisted of UNC representatives from Australia, Canada, Denmark, France, New Zealand, Thailand, the Philippines, the United Kingdom and the United States. The United States Member of UNCMAC supervised the execution of this SIT.

As a result of the exchange of artillery fire between KPA and ROKMC, two Republic of Korea civilians and two ROKMC personnel were killed. No information about any casualties on the KPA side is available. NNSC deeply regrets the loss of lives.

A comprehensive, unclassified official report has been submitted to the Commander UNC (ref d). UNCMAC's key opinions are — beyond a reasonable doubt — that the artillery fire from the KPA against Yeonpyeong-Do was a hostile act against the Republic of Korea. The KPA attack was a deliberate and premeditated action, which cannot be justified under the right of self-defence given the lack of necessity. It constitutes a serious violation of the AA. The ROKMC counter-fire to Mu-Do and Gaemeori can be justified under the right of self-defence given the necessary proportional and timely response. The ROKMC's actions are not a violation of the AA.

NNSC Mission

NNSC was requested by the UNCMAC Senior Member to observe this special investigation and to provide a separate report.

SIT set up and NNSC involvement

Three NNSC Delegates, Colonel Ulf Persson from Sweden, Lieutenant Colonel Bogdan Pidanty from Poland and Major Marc Ehrensperger from Switzerland, accompanied UNCMAC on the SIT, which was conducted from 6 until 10 December 2010.

The NNSC Delegates observed all steps of the investigation conducted by UNCMAC. NNSC was given the opportunity to participate in all sessions, briefings, interviews and on-site visits, except for the intelligence briefing of the UNC's intelligence cell.^b

During the observation the NNSC has, among other things, examined transparency and consistency regarding sources, facts, figures and execution. The applied NNSC observation criteria were handed out to all participants at the beginning of the SIT on 6 December 2010 (see Appendix).

The SIT was divided into two working groups; one group, with the Polish and Swiss NNSC Delegates, handled operational issues, providing answers to the three following questions:

^b Sessions, briefings, interviews and on-site visits included the following: daily SIT Team Leader briefings; meetings in full session with all SIT participants; visit to Yeonpyeong-Do along with interviews with the Yeonpyeong-Do radar station officer, with the Yeonpyeong-Do Artillery Battery Captain and the Yeonpyeong-Do Deputy Unit Commander; summarized intelligence briefing by the SIT Leader. The NNSC Delegates were not allowed to participate during the intelligence briefing of the UNC's intelligence cell. The NNSC Representatives were provided with a scrubbed version of the UNC's intelligence briefing.

1: Was the attack on Yeonpyeong-Do a result of a hostile act or act of armed force in Korea?

2: If there was such an act, did the act occur on the land area and in waters contiguous to a land area of Korea under the military control of the Commander UNC?

3: Was the ROKMC Yeonpyeong-Do Unit engaged in conduct that would lead an opposing force to act in self-defence?

The other group handled intelligence issues, providing answers to the two following questions:

4: If there was such an act, was it the result of KPA forces? (Yes, No, Undetermined, Probable).

5: Was the subsequent responding fires of the ROKMC Yeonpyeong-Do Unit a violation of the AA?

The Swedish representative participated in the intelligence group, since a higher disclosure arrangement is in place.

NNSC observations

The NNSC Delegates observed that the SIT was:

- conducted with a high level of transparency, except for parts of the intelligence information;
- conducted in a professional manner using relevant facts;
- objective, fact-oriented and accurate;
- based on reliable sources.

NNSC conclusions

Based on the information made available, the NNSC concludes that:

- the KPA's artillery shelling against the Republic of Korea's Island Yeonpyeong-Do was a violation of the AA;
- the Republic of Korea counter-fire actions were justified by the legitimate right of using self-defence measures, although NNSC took note that the Republic of Korea's first and second counter-fire was directed to Mu-Do and not to the first KPA incoming fire from Gaemeori;
- the NNSC supports the recommendations of the SIT (ref d);
- the SIT was executed in a comprehensive and professional manner;
- the SIT has been executed in a sufficiently transparent manner; however, improvements could be made regarding access to classified information as agreed in the *Cheonan* special investigation.

NNSC recommendations

The NNSC recommends that:

- the SIT report and this NNSC report should be submitted to the United Nations Security Council;

- the Commander UNC should invite the KPA and the Chinese People's Liberation Army (CPLA), as a successor to the Chinese People's Volunteers (CPV), to discuss the exchange of artillery fire that occurred in the West Sea on 23 November 2010;
- the Commander UNC should request the KPA and the CPLA to return to the Military Armistice Commission (MAC) in order to facilitate the MAC's settlement, through negotiations, of violations of the AA;
- the Commander UNC should recommend to the Governments of the countries concerned to negotiate a peaceful settlement of the conflict at the political level;
- the KPA and UNC should facilitate the development of a supplemental Agreement to the AA concerning the establishment of a military demarcation line in the West Sea consistent with the spirit and intent of the AA to separate the forces and ensure a complete cessation of hostilities and of all acts of armed forces in Korea;
- the parties should consider the necessity to carry out live fire exercises in disputed areas when the overall political situation is tensed;
- in order to reach an increased level of transparency, a system should be put in place ensuring that the NNSC has access to classified information at the same level as the troop-sending nations, as required.

(Signed) Christer **Lidstrom**
Major General
Swedish Member
to the NNSC

(Signed) Alex **Neukomm**
Colonel
Swiss Alternate Member
to the NNSC

(Signed) Bogdan **Pidanty**
Lieutenant Colonel
Polish Alternate Member
to the NNSC

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- Polish Ambassador to the Republic of Korea
- Swedish Armed Forces HQ
- Acting Chief of Staff UNC (Major General Lawrence Wells)
- Secretary UNCMAC (Colonel Kurt Taylor)
- Swedish Delegation to NNSC
- Swiss Delegation to NNSC
- Polish Delegation to NNSC

Appendix: NNSC SIT observation criteria

<i>Criteria</i>	<i>Selection of key words</i>
Objectiveness	<ul style="list-style-type: none"> – Independence – Fact-based (respectively clear distinctions between facts, opinions and conclusions) – Consequent logical drawing of conclusions
Accuracy and reliability	<ul style="list-style-type: none"> – Credibility of evidence and sources (multiple source references; standard of proof) – Precision – Accuracy of applied investigation methods
Transparency	<ul style="list-style-type: none"> – Access to all relevant information – Transparency regarding sources, facts and figures – Transparent working methods
Professional standards	<ul style="list-style-type: none"> – Set-up, structure and procedures – Efficiency – Execution in a comprehensive and professional manner
