



## **A Call for Justice and the US-ROK Alliance**

by Scott Snyder

The acquittal in U.S. military court last month of two soldiers charged for the accidental death of two South Korean middle school girls in June has sparked large peaceful public demonstrations among tens of thousands frustrated Korean citizens who perceive that justice has not been done. The relationship with the United States has become a focal point of campaigning in South Korean elections to be held this week. The existence of such widespread protests itself shows that the situation has been badly mishandled. These protests have been distorted and sensationalized as an expression of "anti-American" sentiment, with potentially corrosive effects for a blood alliance that has stood firm for over 50 years.

Although there have been violent protests against U.S. bases in Korea in recent months by a small core group of radical "anti-American" activists, the peaceful candle light memorial demonstration last weekend involving tens of thousands of people from all parts of Korean society provides an eloquent and powerful message befitting the respect that exists between Koreans and Americans despite misunderstandings. Americans respect peaceful Korean efforts to memorialize this loss. Who does not grieve for the loss of innocent life or expect those responsible will be held accountable? These are "pro-justice" - not necessarily "anti-American" - demonstrations.

For Koreans, the message sent by the U.S. Forces Korea (USFK) in its handling of the case is simple: acquittal means impunity and a failure to take responsibility for actions that did not protect but rather endangered the well-being of Korean citizens. This perceived mission failure indirectly challenges the rationale for a continued U.S. troop presence in Korea, in light of changed South Korean threat perceptions in recent years. The Status of Forces Agreement (SOFA), designed to protect and ensure that U.S. soldiers receive just judicial treatment while overseas, is widely viewed as an instrument by which Americans receive immunity from Korean legal sanction despite being engaged in criminal acts.

The American public would never accept local jurisdiction for on-duty offenses as just, and neither will the Korean government or public tolerate such a precedent in the SOFA agreements it is now making with host countries such as Kyrgyzstan. There, Korean soldiers serve in peacekeeping operations with full protection from local jurisdiction for both on-duty and off-duty crimes. Korean activists have sensationalized U.S. refusals to hand over the soldiers to local jurisdiction as unfair by making false comparisons with off-duty soldiers in Japan who have been charged with committing serious crimes and were turned over to local authorities. In truth, had the driver of the vehicle in this tragic accident been a Korean soldier, he

also would not have been subject to civil justice but would have been tried, if at all, in a (ROK) military court.

The Korean government and incomplete media reporting have created false expectations among the Korean people about provisions for Korean jurisdiction under the SOFA. The Ministry of Justice surely knew last July that its call for the U.S. military to waive jurisdiction in a case involving on-duty officers carrying out their responsibilities with no evidence of criminal intent was unprecedented and would be rejected - yet it proceeded anyway. USFK efforts to provide compensation - including an offer to build a sidewalk on the road where the accident occurred - were reportedly refused by the Korean Ministry of Construction. Korean media coverage has disregarded U.S. efforts to take responsibility for the incident, leaving the Korean public with incomplete information.

Ongoing challenges to bilateral SOFA agreements for the protection of the rights of U.S. soldiers in a number of countries create the need for a consistent set of global non-negotiable provisions for U.S. soldiers operating overseas. This need is particularly challenging in light of the radical differences in legal systems of countries where U.S. forces are stationed. Thus, it will take time to respond adequately to revisions now being called for by the Korean government. As discussions proceed, a transparent process that fully explains differences among various SOFAs and their rules of implementation is necessary to win the understanding of the Korean public.

Another Korean public demand is for a direct apology by President Bush, but any apology itself will be deemed insincere unless a new verdict is delivered that attributes responsibility and punishes someone for the accident. Koreans have interpreted the acquittals as a failure to take responsibility for what happened because Korean judicial process considers expressions of remorse; Americans feel that a failure to consider the intent of the accused is unjust. In other words, fundamentally different cultural conceptions of justice have contributed to this misunderstanding.

South Korean and American public support are essential prerequisites for continuing the U.S.-ROK relationship. In light of recent events, both governments would do well to conduct a comprehensive and fundamental review and readjustment of all aspects of the security relationship. If South Korean public sentiment against the U.S. military presence persists, the American public will surely withdraw U.S. troops and adjust its overall relationship with South Korea accordingly. Despite recent talk among some American pundits of an "American empire," Americans do not seek to impose an imperial order on the world, as demonstrated by U.S. withdrawals a decade ago from the Philippines.

The United States will ultimately succeed only to the extent that its system, despite its manifest flaws, is seen as sufficiently irresistible to convince the world to emulate American ideals and

best practices based on inclusiveness, morality, and justice. In this case, Korean sentiment is hardly “anti-American;” rather the United States stands accused of not living up to its own ideals.

*Scott Snyder is the Representative of The Asia Foundation in Korea and a Senior Associate at Pacific Forum CSIS. The views expressed above are his personal views, and do not necessarily represent those of The Asia Foundation.*