

# ISSUE BRIEF

## Executive Summary

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## Legal Analysis of North Korean Prisoners of War in Ukraine: Status, Treatment, and Repatriation Issues

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Given that deployed combat forces may become casualties or prisoners of war (POWs) on the battlefield, it is anticipated that a considerable number of North Korean military prisoners of war will emerge, though precise figures cannot yet be determined.

### Legal Status and Treatment of North Korean Prisoners of War

Once armed conflict has commenced, international humanitarian law (IHL, *jus in bello*) applies regardless of any debate over the legality of resort to war (*jus ad bellum*). North Korean forces must comply with IHL in all military operations, including hostilities conducted during the Russia-Ukraine war. Combatants must clearly distinguish themselves from civilians on the battlefield. Combatants who fail to maintain this distinction may lose their POW status. To ensure distinction, combatants wear uniforms and insignia and openly carry their arms.

In the early phase of their participation, some North Korean soldiers reportedly wore Russian uniforms and carried Russian identification documents, thereby creating ambiguity about their legal status. Whether engaging in hostilities while disguised as Russian troops violates IHL may be debated. However, because they did not wear the uniforms of the enemy (Ukraine) or of a neutral state, this conduct does not lead to the deprivation of POW status (1907 Hague Regulations, Article 23(f); Additional Protocol I, Articles 39(1) and (2)). Accordingly, even if captured by Ukraine while disguised as Russian soldiers, their POW status would be retained. After North Korea's official acknowledgment of participation in the armed conflict, its forces must continue to observe the principle of distinction.

Ukraine is a party to the Third Geneva Convention and Additional Protocol I. Ukrainian authorities must therefore provide North Korean POWs with humane treatment and protection under IHL. However, Ukraine has released interrogation videos of North Korean POWs without protective measures such as facial blurring and voice alteration to prevent identity disclosure. Article 13 of the Third Geneva Convention stipulates humane treatment and general protection for POWs, with the latter part stating: ... “Likewise, POWs must all ties be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Measures of reprisal against POWs are prohibited.”

The obligation not to expose POWs to “public curiosity” encompasses the prohibition of disclosing photographic and video images, recordings of interrogations, private conversations or personal correspondence, or any other private data, irrespective of which public communication channel is used, including the Internet. While this provision was originally codified to address situations in classical warfare where POWs faced collective insults or abuse from enemy civilians during transportation, its spirit applies to modern armed conflicts in contemporary forms. Even if North Korean soldiers consented to the disclosure of their faces, given their extremely vulnerable status as prisoners, Ukraine should have provided maximum protection to prevent the exposure of their identities. Indeed, when Ukraine and Russia exchanged approximately 1,000 prisoners in May 2025, considerable attention was paid to whether the two North Korean prisoner interviewees were included.

### **Possibility of Repatriation of North Korean POWs to South Korea**

Not all prisoners should necessarily be repatriated to their home country (sending state). Some POWs may, for reasons of conscience, wish to sever ties with the state that deployed them to war; others may face a reasonable risk to life or bodily integrity if repatriated. In practice, exchanges, repatriations, and related procedures are implemented through special agreements or negotiations among the concerned states. Ukraine and Russia have already conducted multiple prisoner exchanges on a limited scale. There has been no release or repatriation of North Korean POWs to date, and the South Korean government has stated its willingness to accept all North Korean prisoners who wish to come to South Korea. Since President Zelensky first mentioned the possibility of prisoner exchange with North Korea in January 2025, a senior Ukrainian defense intelligence official has stated that the possibility of repatriation to South Korea could also be considered.

Internationally, South Korea and North Korea are separate sovereign states that simultaneously joined the United Nations. However, domestically, under the South Korean Constitution, the two Koreas maintain a special relationship oriented toward unification (Articles 3 and 4). While the South Korean government cannot claim that North Korean POWs detained in Ukrainian camps are South Korean nationals in international relations, they are simultaneously “potential nationals” of South Korea, because once they present themselves within South Korean domestic jurisdiction, they become South Korean. Therefore, the South Korean government should take available measures to realize humanity

for North Korean POWs who preserve potential nationality under the South Korean Constitution.

### **Recommendations for the South Korean Government**

POWs cannot renounce their rights under any circumstances (including under special agreements) (Third Geneva Convention, Article 7), and the principle of non-refoulement is recognized as a peremptory norm under international human rights law (IHRL) and international refugee law. The system of voluntary repatriation adopted in the Korean War Armistice Agreement influenced subsequent state practice and became a generally accepted approach (Armistice Agreement, Article 3, Paragraph 59). Accordingly, South Korea should invoke violations of international law regarding collective exchange or forced repatriation of North Korean POWs and urge compliance with the voluntary repatriation principle during negotiation phases, based on IHL and IHRL.

It is necessary to establish safe pathways and raise international awareness to enable third-country repatriation options for North Korean POWs, such as to the United States. Through cooperation with Ukraine and other partner states, as well as collaboration with international organizations such as the ICRC and the Independent International Commission of Inquiry on Ukraine established by the UN Human Rights Council, South Korea should promote legitimate procedures that can guarantee the rights of North Korean POWs.

The South Korean government can play a crucial role in establishing protective procedures that respect each North Korean POW's genuine free choice. In the process of confirming prisoners' free and well-informed intentions, South Korea should actively communicate with the Ukrainian government regarding the provision of necessary information and interpretation assistance, and whether South Korean intelligence authorities can provide information about potential inhumane or unfair treatment that prisoners might face if repatriated to North Korea—particularly regarding possible persecution of their families or the prisoners themselves. In addition, South Korea should seek cooperation with international human rights organizations and relief agencies, including the ICRC, to provide psychological support and legal counseling for POWs.

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