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## Nuclear Diplomacy: Negotiating Peace on the Korean Peninsula

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# NUCLEAR DIPLOMACY: NEGOTIATING PEACE ON THE KOREAN PENINSULA

by Peter Sokgu Yuh†

## Introduction

North Korea's admission in the fall of 2002 that it has an active nuclear program, in direct violation of the 1994 Agreed Framework Between the United States of America and the Democratic People's Republic of Korea<sup>1</sup> and the 1992 North-South Declaration on the Denuclearization of Korean Peninsula Agreement,<sup>2</sup> stunned the world. North Korea's open pursuit of nuclear weapons has the potential to quickly and permanently destabilize the security situation in East Asia and beyond. North Korea's bald admission that it is seeking nuclear weapons requires the United States, its allies and the entire world to quickly develop ways to work with North Korea towards a peaceful agreement. Although North Korea's admission looked like an obvious violation on its face, the United States' actions prior to the admission may have first violated the terms of the treaties between the two countries, thus releasing North Korea from the treaties. As accusations fly between the United States and North Korea as to who violated the agreements first, it is clear that this crisis on the Korean peninsula must be resolved through constructive negotiation rather than military action.

This paper asserts that had the United States lived up to its promises in the 1994 Agreed Framework, the present nuclear crisis could have been avoided altogether. Furthermore, North Korea's actions must be viewed objectively and recognized as rational under the circumstances. Considering the real threat of attack by the United States, North Korea's decision to develop nuclear weapons is logical. Initially, the 1994 Agreed Framework defused an impending nuclear crisis and was seen by many as a masterful work of diplomacy in action. A decade later, the same problems linger. This nuclear crisis is another opportunity to bring a lasting diplomatic solution to the problems on the Korean peninsula.

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<sup>1</sup> See Agreed Framework Between the United States of America and the Democratic People's Republic of Korea, October 24, 1994, N. Korea – US, 34 I.L.M. 603 [hereinafter 1994 Agreed Framework].

<sup>2</sup> See Joint North-South Declaration on the Denuclearization of the Korean Peninsula, January 20, 1992, N. Korea – S. Korea, 33 I.L.M. 569 [hereinafter Joint North-South Declaration].

**United States' Introduction of Nuclear Weapons to the Korean Peninsula**

Soon after the Korean War ended, the United States introduced nuclear weapons to the Korean peninsula in spite of an armistice agreement, which prohibited the introduction of qualitatively new weaponry into the Korean theater.<sup>3</sup> United States policy makers, such as Secretary of State John Foster Dulles, rationalized that both North and South Korea would think twice before starting a war that would “rain nuclear destruction.”<sup>4</sup> Thus, by the mid-1960s, the United States introduced nuclear weapons to the Korean peninsula—an action it justified under a deterrence theory.<sup>5</sup> This action directly violated the Military Armistice in Korea and Temporary Supplemental Agreement of 1953, which clearly prohibited both parties from introducing new weaponry into the Korean theater.<sup>6</sup> The United States defense strategy in the Korean peninsula centered on routine plans to use nuclear weapons very early in any new war.<sup>7</sup> In fact, in 1991, a high-level former commander of United States' forces in Korea gave an off-the-record presentation of United States strategy as it had developed by the 1980s, stating that the United States planned to use tactical nuclear weapons in the very early stages of a new Korean conflict.<sup>8</sup> He further stated that enhanced radiation weapons might also be used to kill the enemy but save the buildings if North Korean forces occupied Seoul.<sup>9</sup> In light of these actions by the United States, North Korea's desire to develop nuclear weapons may be seen as a reaction to mounting pressures from the United States.<sup>10</sup> Indeed, in its talks with the United States, North Korea has expressed a profound fear of United States aggression.<sup>11</sup>

The Bush administration presently faces many of the same problems that confronted the Clinton administration in 1993 and 1994. In May 1994, facing a huge energy crisis and economic insolvency, North Korea removed some 8,000 fuel rods from a key reactor and placed them in a cooling pond without the presence of inspectors from the International Atomic Energy Agency

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<sup>3</sup> See Military Armistice in Korea and Temporary Supplemental Agreement, July 27, 1953, 4 U.S.T. 234 [hereinafter Armistice Agreement].

<sup>4</sup> BRUCE CUMINGS, *KOREA'S PLACE IN THE SUN: A MODERN HISTORY* 479 (1997).

<sup>5</sup> *Id.* Deterrence theory is the prevention of another's unwanted actions by wielding the threat of undesirable consequences if he decides to proceed. The basis of deterrence theory is the idea that a potential aggressor would suffer too many losses to make the initiation of hostilities worthwhile. For example, during the Cold War, the build up of weapons of mass destruction on both sides was part of each actors' policy choices based on deterrence theory. For any deterrence theory to work, the consequences must be credible and assumes that both parties are rational actors.

<sup>6</sup> *Id.* at 477.

<sup>7</sup> *Id.* at 480.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

(hereinafter “IAEA”).<sup>12</sup> North Korea argued that it had to reprocess the fuel into plutonium, a key element in a nuclear weapon, or risk a serious accident.<sup>13</sup> Meanwhile, Washington insisted that the rods be disposed of in such a way that would not enhance the country’s ability to build a nuclear bomb.<sup>14</sup> Others believed North Korea was again returning to old bargaining tactics to leverage more economic aid for its struggling economy.<sup>15</sup> The United States and its allies feared that North Korea was diverting materials from the reactor to a weapons program, and they threatened to impose economic sanctions.<sup>16</sup> They even considered military action to force North Korea to readmit international inspectors.<sup>17</sup>

Instead of using military action, the United States successfully negotiated a treaty to defuse a crisis and to help bring stability to the region.<sup>18</sup> When North Korea agreed to the 1994 Agreed Framework, it was hailed by the Clinton Administration as a major diplomatic breakthrough.<sup>19</sup> For once, “the United States used deft diplomacy to defuse a Korean crisis, instead of sending a hailstorm of B-52s, F-4 Phantoms, aircraft carriers, and troop alerts to face down Kim Il Sung, as all previous presidents had done.”<sup>20</sup> As a result of this agreement, the policy of the United States towards North Korea shifted from one of containment and isolation to engagement and reconciliation.<sup>21</sup> Indeed, President Clinton lessened the longstanding United States economic embargo by June of 2000, which was followed by Secretary of State Madeleine Albright’s historic visit in late October of 2000.<sup>22</sup>

### The 1994 Agreed Framework

The United States and North Korea signed the 1994 Agreed Framework on October 21, 1994 in Geneva, Switzerland.<sup>23</sup> The treaty was designed to end

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<sup>12</sup> Jim Lobe, *US – North Korea: US Sets Date for Talks on Diplomatic Ties*, (October 17, 2002) Inter Press Global Information Network.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Northern Exposure: Pyongyang’s Nuclear Effort Challenges US Policy Makers, but What Prompted It?* The Seattle Times, Oct. 24, 2002 at A3 [hereinafter *Northern Exposure*].

<sup>16</sup> James Dao, *The Pact the Koreans Flouted*, N.Y. Times, October 17, 2002.

<sup>17</sup> *Id.*

<sup>18</sup> CUMINGS, *supra* note 4, at 485.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 484.

<sup>21</sup> *Id.*

<sup>22</sup> Bruce Cumings, *Stay the Course in Asia*, Bulletin of the Atomic Scientists Vol. 57, Issue 1 (Jan. 1, 2001).

<sup>23</sup> 1994 Agreed Framework, *supra* note 1. Robert L. Gallucci, who at the time was Head of the Delegation to North Korea and Ambassador at Large for the United States, signed the 1994 Agreed Framework. Gallucci is now Dean of Georgetown University’s Edmund A. Walsh School of

nuclear proliferation in the Korean peninsula and open the door to investments in impoverished North Korea through a consortium of nations (including the United States, South Korea, and Japan) called the Korean Peninsula Energy Development Organization (KEDO).<sup>24</sup> Under the 1994 bilateral accord, North Korea agreed to suspend operation of nuclear reactors capable of producing weapons-grade material and to place plutonium already produced under international safeguards.<sup>25</sup> In return, the United States agreed, among other things, to supply North Korea with regular shipments of fuel oil to serve as an alternative to nuclear power.<sup>26</sup>

The main provisions of the 1994 Agreed Framework stipulate that North Korea's graphite-moderated reactors would be replaced with light-water reactors (LWR), both parties would move towards full normalization of political and economic relations, and both parties would work together for peace and security on a nuclear-free Korean peninsula.<sup>27</sup> The 1994 Agreed Framework also provided that, in addition to light water reactors, regular deliveries of heavy oil would be made to offset the effects of North Korea's energy crisis.<sup>28</sup> Pursuant to the 1994 Agreed Framework, the United States promised to end hostile relations and normalize diplomatic and economic ties.<sup>29</sup> Economic and political normalization were key provisions for the cash strapped North Koreans, who were dependent on foreign aid.<sup>30</sup> Thus, the main provisions of the 1994 Agreed Framework were meant to satisfy North Korea's need for foreign aid while maintaining peace and security in the region by removing North Korea's ability

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Foreign Service. See <http://data.georgetown.edu/sfs/bsfs/index.cfm?Target=UAP&Action=View&Source=Deans&UNum=7> (last visited Oct. 15, 2003).

<sup>24</sup> Karen DeYoung, *US Might Try to Salvage Part of N. Korean Accord*, WASH. POST, October 25, 2002 at A26.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> 1994 Agreed Framework, *supra* note 1. Specifically, the treaty provides: 1) Both sides will cooperate to replace the DPRK's graphite-moderated reactors and related facilities with light-water reactor (LWR) power plants; 2) The two sides will move toward full normalization of political and economic relations; 3) Both sides will work together for peace and security on a nuclear-free Korean peninsula; and 4) Both sides will work together to strengthen the international non-proliferation regime.

<sup>28</sup> 1994 Agreed Framework, *supra* note 1. Specifically, the 1994 Agreed Framework clearly stipulates: "In accordance with the October 20, 1994 letter of assurance from the US President, the US, representing the consortium, will make arrangements to offset the energy foregone due to the freeze of the DPRK's (Democratic People's Republic of Korea) graphite-moderated reactors and related facilities, pending completion of the first light water reactor unit. Alternative energy will be provided in the form of heavy oil for heating and electricity production. Deliveries of heavy oil will begin within three months of the date of this Document and will reach a rate of 500,000 tons annually, in accordance with an agreed schedule of deliveries."

<sup>29</sup> 1994 Agreed Framework, *supra* note 1, states, "The two sides will move towards full normalization of political and economic relations."

<sup>30</sup> DeYoung, *supra* note 24.

to produce nuclear weapons.<sup>31</sup>

### Broken Promises

North Korea's recent admission of an active nuclear weapons program on its face suggests a violation of international agreements.<sup>32</sup> Richard Boucher, spokesman for the United States Department of State, recently stated in a press release, "North Korea's secret nuclear weapons program is a serious violation of North Korea's commitments under the Agreed Framework, as well as under the Nonproliferation Treaty, its International Atomic Energy Agency safeguards agreement, and the Joint North-South Declaration on the Denuclearization of the Korean Peninsula."<sup>33</sup> Pursuant to the Joint North-South Declaration on the Denuclearization of the Korean Peninsula signed January 20, 1992 by both North and South Korea, North Korea's development of a uranium enrichment facility would constitute a violation of this agreement.<sup>34</sup>

If the newly disclosed program includes a nuclear facility, it would constitute a violation pursuant to the Safeguards Agreement between the International Atomic Energy Agency and the Democratic People's Republic of Korea (DPKR, a.k.a. North Korea). This agreement, signed January 30, 1992 in Vienna, Austria, states that North Korea must disclose any nuclear activity to IAEA inspectors.<sup>35</sup> In particular, Article 42 states:

"Design information in respect of existing facilities shall be provided to the Agency during the discussion of the Subsidiary Arrangements. The time limits for the provision of design information in respect of the new facilities shall be specified in the Subsidiary Arrangements and such information shall be provided as early as possible before nuclear material is introduced into a new facility."<sup>36</sup>

North Korea violated Article 42 of this treaty by not disclosing its nuclear activities.<sup>37</sup> Additionally, it failed to place them under IAEA safeguards, which is a violation because, pursuant to Sections 71-82 of the Safeguards Treaty, North Korea has an obligation to allow the IAEA to inspect all nuclear

<sup>31</sup> *Id.*

<sup>32</sup> *Northern Exposure*, *supra* note 15.

<sup>33</sup> Richard Boucher, US Department of State, Press Statement, North Korean Nuclear Program, Oct. 16, 2002, available at <http://www.state.gov/r/pa/prs/ps/2002/14432.htm> (last visited Oct. 15, 2003).

<sup>34</sup> Joint North-South Declaration, *supra* note 2. See Clause 2, which states, "The South and the North shall not possess nuclear reprocessing and uranium enrichment facilities."

<sup>35</sup> Agreement for the Application of Safeguards in Connection with the Non-proliferation of Nuclear Weapons, January 30, 1992, N. Korea – I.A.E.A., 33 I.L.M. 315 [hereinafter Safeguards Agreement].

<sup>36</sup> *Id.*, see Article 42 of the Safeguards Agreement.

<sup>37</sup> *Id.*

facilities.<sup>38</sup> As the director of the International Atomic Energy Agency stated on October 17, 2002, “the existence of any nuclear facility should be declared by the Democratic People’s Republic of Korea and placed under IAEA safeguards.”<sup>39</sup> As the international regulatory agency responsible for the monitoring of nuclear energy usage, the IAEA has a responsibility to make certain that North Korea is using its nuclear resources strictly for energy purposes and not weapons production.<sup>40</sup>

North Korea also violated the Treaty on Non-Proliferation of Nuclear Weapons, which, in part, prohibits the development and transfer of nuclear weapons and devices.<sup>41</sup> North Korea’s declaration that it is developing nuclear weapons is in direct violation of Article II of this treaty, which provides that North Korea shall not manufacture nuclear weapons.<sup>42</sup> Furthermore, United States intelligence reports indicate that North Korea received critical nuclear technology from Pakistan, although Pakistan Embassy officials deny this claim.<sup>43</sup> The United States alleges that “the equipment, which may include gas centrifuges used to create weapons-grade uranium, appears to have been part of a barter deal beginning in the late 1990s in which North Korea supplied Pakistan with missiles it could use to counter India’s nuclear arsenal.”<sup>44</sup> Trading missiles for technology that would in any way aid the development of a nuclear program is in direct violation of Article II of the Non-Proliferation Treaty.<sup>45</sup> In part, it states that:

“Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the

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<sup>38</sup> *Id.*, see Articles 71-81 of the Safeguards Agreement. In particular, Article 71 states: “The Agency may make ad hoc inspections in order to: (a) verify the information contained in the initial report on the nuclear material subject to safeguards under this Agreement; (b) identify and verify changes in the situation which have occurred since the date of the initial report; and (c) identify, and if possible verify the quantity and composition of, nuclear material in accordance with Articles 93 and 96, before its transfer out of or upon its transfer into the Democratic People’s Republic of Korea.”

<sup>39</sup> Michael Adler, “IAEA Concerned About Report on North Korea Nuclear Program,” *Agence France-Presse*, Oct. 17, 2002.

<sup>40</sup> See generally Safeguards Agreement, *supra* note 35.

<sup>41</sup> Treaty on the Non-Proliferation of Nuclear Weapons, signed July 1, 1968, 7 I.L.M. 809. North Korea acceded on April 19, 1985 [hereinafter Non-Proliferation Treaty].

<sup>42</sup> *Id.*

<sup>43</sup> David E. Sanger and James Dao, *U.S. Says Pakistan Gave Technology to North Korea*, N.Y. TIMES, October 18, 2002, available at <http://www.nytimes.com/2002/10/18/international/asia/18KORE.html> (last visited Oct. 15, 2003).

<sup>44</sup> *Id.*

<sup>45</sup> See Safeguards Agreement, *supra* note 35.

manufacture of nuclear weapons or other nuclear explosive devices.”<sup>46</sup>

North Korea’s failure to declare the existence of a nuclear weapons program to the IAEA constitutes a violation of its Safeguards Agreement.<sup>47</sup> Additionally, North Korea is also in violation of Article III, Section 1 of the Treaty on Non-Proliferation of Nuclear Weapons, which prohibits the diversion of nuclear energy from peaceful uses to nuclear weapons and requires that all parties be in compliance with the IAEA.<sup>48</sup> However, although a nuclear weapons program that employs uranium enrichment constitutes a violation of the Non-Proliferation Treaty,<sup>49</sup> as long as North Korea remains a party to this treaty, uranium enrichment is not in violation of Article IV, Section 1 of the 1994 Agreed Framework.<sup>50</sup> Article IV, Section I of the 1994 Agreed Framework requires North Korea to remain a party to the Non-Proliferation Treaty and pursuant to which all safeguards shall be implemented, but does not specifically state that North Korea may not pursue uranium enrichment *per se*.<sup>51</sup> No clause in the 1994 Agreed Framework considers the production of highly enriched uranium in North Korea a violation pursuant to the 1994 Agreed Framework.<sup>52</sup> However, the failure to have this facility under IAEA inspection constitutes a violation of Article IV, Section 2, which requires the inspection of all nuclear facilities by the IAEA.<sup>53</sup>

### The View from North Korea

From the perspective of North Korea, “the United States has repeatedly broken agreements, harbor[ed] ideas of attacking it and inexplicably refuse[d] to even talk to a government desperate for better ties.”<sup>54</sup> Even KEDO officials (the international consortium created as part of this agreement) concede that Washington failed to deliver on its promises.<sup>55</sup> Charles Kartman, executive

<sup>46</sup> Non-Proliferation Treaty, *supra* note 41.

<sup>47</sup> *Id.*

<sup>48</sup> Non-Proliferation Treaty, *supra* note 41.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> 1994 Agreed Framework, *supra* note 1. Article IV, Section 1 of the 1994 Agreed Framework specifically states, “The Democratic People’s Republic of Korea will remain a party to the Treaty on the Non-Proliferation of Nuclear Weapons and will allow implementation of its safeguards under the Treaty.”

<sup>52</sup> 1994 Agreed Framework, *supra* note 1.

<sup>53</sup> *Id.* Article IV, Section 2 of the 1994 Agreed Framework states, “Upon conclusion of the supply contract for the provision of the LWR (light-water reactor) project, ad hoc and routine inspections will resume under the DPRK’s safeguards agreement with the IAEA with respect to the facilities not subject to the freeze. Pending conclusion of the supply contract, inspections required by the IAEA for the continuity of safeguards will continue at the facilities not subject to the freeze.”

<sup>54</sup> *Northern Exposure*, *supra* note 15.

<sup>55</sup> Doug Struck, *For North Korea, US is Violator of Accords; Mind-Set Helps Explain*

director of KEDO, admits “the internal logic of the agreement was that there had to be progress in terms of improved relations.”<sup>56</sup> Indeed, United States State Department envoy James Kelly’s October 2002 trip to Pyongyang, whereby North Korea announced to the world that they were manufacturing weapons grade nuclear material, marked the first high-level talks between the United States and North Korean officials since President Bush took office.<sup>57</sup> Adding to the tensions, North Korea contends that George Bush’s inclusion of North Korea with Iran and Iraq in an “axis of evil”<sup>58</sup> effectively nullified the 1994 Agreed Framework, and, therefore, North Korea had the right to build a weapon “more powerful than a nuclear weapon based on enriched uranium.”<sup>59</sup>

Professor Bruce Cumings of the University of Chicago, opines that in the case of nuclear weapons, the law is on the side of North Korea.<sup>60</sup> The Non-Proliferation Treaty that North Korea adhered to in 1987 gives to nations threatened by nuclear weapons the sovereign right to possess their own.<sup>61</sup> In accordance with the 1994 Framework, the United States was obligated to extend formal assurances to North Korea against the threat or use of nuclear weapons.<sup>62</sup> The treaty clearly states “the US will provide formal assurances to the DPRK, against the threat or use of nuclear weapons by the US.”<sup>63</sup> From the perspective of North Korea, the “axis of evil” language used by George Bush coupled with United States’ willingness to send its troops to far away places such as Iraq and Afghanistan, evidences a hostile and threatening tenor that is in contradiction with the terms of the 1994 Framework.<sup>64</sup> Moving beyond the rhetoric, the United States fought a war against North Korea from 1950 to 1953, and maintains one of its largest military contingents of troops assembled and ready for war on the Korean Demilitarized Zone.<sup>65</sup> Additionally, because the North Koreans captured a United States spy ship in 1968, the United States still positions its spy satellites so that North Korea is constantly in focus.<sup>66</sup> These actions by the United States

*Pyongyang’s Actions*, WASH. POST, Oct. 21, 2002, at A18.

<sup>56</sup> *Id.*

<sup>57</sup> David Sands, *N. Korea Breaks Its Promises on Nukes; White House Says It Was Told of Work*, WASH. TIMES, Oct. 17, 2002, at A1.

<sup>58</sup> Julia Preston and David Sanger, *North Korea Makes Demand*, DESERET NEWS, Oct. 26, 2002, at A1.

<sup>59</sup> *Id.*

<sup>60</sup> See generally CUMINGS *supra* notes 4 and 22.

<sup>61</sup> *Id.*

<sup>62</sup> *Pyongyang Cannot Expect Any Favours*, STRAITS TIMES, Oct. 25, 2002.

<sup>63</sup> 1994 Agreed Framework, *supra* note 1.

<sup>64</sup> *Id.*; *Northern Exposure*, *supra* note 15.

<sup>65</sup> See generally CUMINGS *supra* notes 4 and 22.

<sup>66</sup> *Id.*

support North Korea's fear of imminent attack.<sup>67</sup>

Furthermore, North Korea maintains that the United States has failed to follow through with promised economic benefits that were supposed to be the compensation for North Korea's agreement to halt its nuclear research.<sup>68</sup> KEDO is obligated under the pact to construct two new light water reactor power plants, from which weapons-grade uranium is difficult to extract, in return for North Korea's suspension of plutonium production.<sup>69</sup> The first plant was to be delivered sometime in 2003, but the United States' opposition to the project has experts predicting that the project is at least six years from completion.<sup>70</sup>

North Korea also charges that the United States has failed to deliver the 500,000 tons of heavy fuel oil that it agreed to deliver annually under the pact.<sup>71</sup> In fact, as of 1996, the United States Congress had only agreed to pay \$19 million of the estimated \$50 million required to fulfill the terms of the agreement.<sup>72</sup> The United States admitted to shipping problems and looked to South Korea and Japan for additional assistance.<sup>73</sup> In response to the oil shipment problems, Masao Okonogi, a professor and expert on Korean affairs at Tokyo's Keio University, said, "There is no option but for someone to pay for the oil. If the shipments are disrupted, it would be a breach of promise and North Korea would react harshly."<sup>74</sup> According to North Korean officials, United States' breaches of the promises have helped create a drastic energy crisis in the country.<sup>75</sup> The failure by the United States to deliver on its promises in accordance with the terms of the 1994 Treaty has put tremendous economic and political pressure on North Korea.<sup>76</sup>

Despite the United States' opening of telephone lines with Pyongyang in 1995, and permitting North Korea to export magnetite to the United States, North Korea still suffers under economic sanctions.<sup>77</sup> The 1994 Agreed Framework clearly provides specific language calling for the normalization of

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<sup>67</sup> *Northern Exposure*, *supra* note 15.

<sup>68</sup> Cameron W. Barr, *US Rattle a Tin Cup at Allies to Pay for Oil Due N. Korea: Federal Shutdown Set Back Plan to Wean Pyongyang off Nuclear Project*, CHRISTIAN SCI. MONITOR, Feb. 8, 1996, at 6.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Struck*, *supra* note 55.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

political and economic sanctions within certain time limits.<sup>78</sup> In spite of United States' promises, tangible measures, such as removing the freeze on North Korean assets in the United States have not materialized.<sup>79</sup> Furthermore, US banks still do not allow credit card transactions in North Korea.<sup>80</sup> For these reasons, North Korea maintains that the United States' failure to lift economic sanctions and work towards full normalization violates Article II, Section 1 of the 1994 Agreed Framework, which calls for movement towards normalization of relations.<sup>81</sup>

From this perspective, one can understand why North Korea is tired of waiting for the United States to honor its promises and instead has resumed its nuclear program in apparent violation of the 1994 Agreement.<sup>82</sup> Presumably, North Korea admitted to its nuclear weapons program with the assumption that the United States had already breached their agreement. Article 60 of the Vienna Convention, which deals with "the rules of release" from treaties, states that a "material breach of a bilateral treaty is both necessary and sufficient to give the victim of that breach the option to release itself from all of its obligations under the breached treaty."<sup>83</sup> Thus, it can be said that North Korea breached the treaty with the assumption that because the United States failed to deliver on its promises in accordance with the terms of the 1994 Agreed Framework, North Korea was discharged of its obligations. This failure by the United States has been construed by North Korea as an unequivocal manifestation of an unwillingness to perform in accordance with the terms of the 1994 Agreed Framework.<sup>84</sup> For these reasons, North Korea believes that the United States committed material breaches of the 1994 Agreed Framework, thus releasing them from their obligations under the treaty and justifying their admission of a nuclear weapons program.

### Negotiating Peace

Considering North Korea's history of negotiating for foreign aid supplements to bolster its failing domestic economy, North Korea's admission may be

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<sup>78</sup> 1994 Agreed Framework, *supra* note 1. Article II, Section 1, stipulates, "Both sides will work towards normalization of political and economic relations and within three months of the date of this Document. Both sides will reduce barriers to trade and investment, including restrictions on telecommunications services and financial transactions."

<sup>79</sup> *Full Implementation of the US-NK Nuclear Pact Uncertain*, KOREA TIMES, July 20, 1998.

<sup>80</sup> *Id.*

<sup>81</sup> 1994 Agreed Framework, *supra* note 1.

<sup>82</sup> *Northern Exposure*, *supra* note 15.

<sup>83</sup> John K. Setear, *Response to Breach of a Treaty and Rationalist International Relations Theory: The Rules of Release and Remediation in the Law of Treaties and the Law of State Responsibility*, 83 Va. L. Rev. 1, 15 (1997).

<sup>84</sup> *Northern Exposure*, *supra* note 15.

interpreted as a demand for the Bush Administration to take it more seriously.<sup>85</sup> Toshimitsu Shegemura, a professor of international relations at Takushoku University, is of the opinion that “North Korea admitted to the program because it wants the United States to come to the negotiating table and set a path to improve relations.”<sup>86</sup> Ironically, North Korea may actually be trying to improve relations with the United States by raising the issue of nuclear weapons after being neglected for two years by the United States. Although crude in its strategy, North Korea’s development of nuclear weapons may be seen in the context of a country frantically hoping for the resumption of dialogue. Desperate for continued economic aid, North Korea can be seen as using its nuclear program to leverage foreign aid to stabilize its economy and also initiate some much needed reforms.<sup>87</sup> In fact, during Secretary of State Madeleine Albright’s visit to North Korea at the end of the Clinton Administration, Kim Jong Il, the leader of North Korea, confided that he had been looking at Sweden as an economic model for reforms to North Korea’s economy.<sup>88</sup> North Korea’s methods leave much to be desired, but its past examples of quid pro quo negotiations for foreign aid lead observers to believe that it simply wants economic aid to stabilize its ailing economy.<sup>89</sup>

The North Koreans have repeatedly expressed their willingness to negotiate with the United States.<sup>90</sup> Ambassador Han Song Ryol of the Mission to the United Nations, the country’s sole diplomatic post in the United States, said in a statement, “Everything will be negotiable. Our government will resolve all United States security concerns through the talks, if your government has a will to end its hostile policy.”<sup>91</sup> There seems to be a strong willingness on the part of North Korea to negotiate with the United States. Han, when asked if North Korea is willing to shut down its uranium enrichment program, replied, “Yes, I believe our government will resolve all US security concerns.”<sup>92</sup> Furthermore, in a press conference regarding North Korea’s admission of nuclear weapons capabilities, Kelly, US State Department envoy to North Korea, reported that North Korea is willing to shut down its nuclear reactors.<sup>93</sup> He said:

“The conditions North Korea offered included a guarantee of no US pre-emptive attack, recognition of the North Korean government and the signing of a US-North

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *North Nuclear Admission Puts Bush in Tight Spot*, INTER PRESS SERV., Oct. 17, 2002.

<sup>88</sup> *Id.*

<sup>89</sup> Struck, *supra* note 55.

<sup>90</sup> Philip Shenon, *North Korea Says Nuclear Program Can Be Negotiated*, N.Y. TIMES, Nov. 2, 2002, at A1.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Struck, *supra* note 55. James Kelly is also the Assistant Secretary for East Asian and Pacific Affairs for the US State Department.

## Nuclear Diplomacy

Korean peace treaty. The third condition was the signing of a peace treaty with North Korea, a long-held goal of North Korea's founder, Kim Il Sung, and his son, the current leader, Kim Jong Il."<sup>94</sup>

However, the United States continues to refuse to negotiate with North Korea and is instead stepping up pressures to further isolate North Korea with economic sanctions through its allies.<sup>95</sup> Indeed, the recent decision to suspend all further oil shipments to North Korea is consistent with United States foreign policy of applying economic pressure to North Korea.<sup>96</sup> The United States also continues to demand that North Korea first dismantle its nuclear weapons program before any negotiations commence rather than simply opening a channel for negotiations.<sup>97</sup>

According to Anthony Lake and Robert Gallucci, this leaves the United States with essentially the same four options it had in 1994.<sup>98</sup> The United States could "launch a military strike against the identified nuclear facilities; refuse negotiations and go to the United Nations for sanctions to isolate and contain the North's nuclear program; essentially accept the new nuclear weapons status of North Korea and try to contain the damage to international nonproliferation efforts, as well as to our alliances with South Korea and Japan; or could negotiate with the North to stop the nuclear weapons program that creates the crisis."<sup>99</sup> Considering North Korea's admitted willingness to negotiate a hard line approach (i.e. military action) by the United States may prove disastrous.<sup>100</sup> Kangdon Oh, a specialist on North Korea affairs, speculates that if the United States preemptively attacked suspected North Korean nuclear facilities, North Korea would respond by "shooting artillery toward South Korea and missiles toward Japan."<sup>101</sup> Therefore, immediate negotiation and diplomacy by the United States would be a far better option than the use of military force to resolve this brewing crisis.

### Conclusion

The policy of constructive engagement might have successfully ended North Korea's plans to develop nuclear weapons if the United States had lived up to its

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<sup>94</sup> *Id.*

<sup>95</sup> Don Kirk, *Korea Leader Backs Plan to Block Oil to the North*, N.Y. TIMES, November 16, 2002, at A11.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Anthony Lake and Robert Gallucci, *Negotiating with Nuclear North Korea*, WASH. POST, Nov. 6, 2002, at A21.

<sup>99</sup> *Id.*

<sup>100</sup> Nicholas D. Kristof, *Hold Your Nose and Negotiate*, N.Y. TIMES, Dec. 20, 2002, at A39.

<sup>101</sup> *Id.* Kangdon Oh is an Asian analyst at the Institute for Defense Analysis in Alexandria, VA.

## Nuclear Diplomacy

promises under the 1994 Agreed Framework Agreement.<sup>102</sup> The opportunity for diplomacy has presented itself in the form of a brewing nuclear crisis. Rather than resort to isolationist techniques that increase the stress levels in North Korea, now is the time for the United States to pursue meaningful dialogue in pursuit of an end to this crisis. The United States should work with North Korea to reaffirm the 1994 Agreed Framework and promptly begin dialogue without prerequisites or contingencies. Hard line measures such as cutting oil supply shipments will only exacerbate an already serious economic situation in North Korea, which will lead to further instability. South Korea, Japan, the United States, and other countries should cooperate for humanitarian support and exchange, rather than pursue policies of isolation. Through successful diplomacy, this crisis may be resolved and lay the groundwork for future peaceful reforms in the region. The United States, as a world leader, has a responsibility to manage its global power with sensible diplomacy. This latest nuclear crisis is an opportunity for the United States to show leadership through initiatives that may ultimately help heal the wounds of a peninsula divided for far too long.<sup>103</sup>

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<sup>102</sup> See Lake and Gallucci, *supra* note 98.

<sup>103</sup> CUMINGS *supra* note 4 at 487.