

2006

## The North Korean Nuclear Crisis: Past Failures, Present Solutions

Morse Tan

*The University of Texas at Austin School of Law*

Follow this and additional works at: <https://scholarship.law.slu.edu/lj>



Part of the [Law Commons](#)

---

### Recommended Citation

Morse Tan, *The North Korean Nuclear Crisis: Past Failures, Present Solutions*, 50 St. Louis U. L.J. (2006).  
Available at: <https://scholarship.law.slu.edu/lj/vol50/iss2/16>

This Article is brought to you for free and open access by Scholarship Commons. It has been accepted for inclusion in Saint Louis University Law Journal by an authorized editor of Scholarship Commons. For more information, please contact [Susie Lee](#).

**THE NORTH KOREAN NUCLEAR CRISIS: PAST FAILURES,  
PRESENT SOLUTIONS**

MORSE TAN\*

ABSTRACT

*North Korea has recently announced that it has developed nuclear weapons and has pulled out of the six-party talks. These events do not emerge out of a vacuum, and this Article lends perspective through an interdisciplinary lens that seeks to grapple with the complexities and provide constructive approaches based on this well-researched understanding. This Article analyzes political, military, historical, legal and other angles of this international crisis.*

*Past dealings with North Korea have been unfruitful because other nations do not recognize the ties between North Korean acts and its ideology and objectives. For a satisfactory resolution to the current crisis, South Korea and the United States must maintain sufficient deterrence, focus on multi-lateral and international avenues, and increase the negative and later positive incentives for North Korean compliance with its international obligations.*

*From an international legal and international organizations perspective, the multilateral talks can be bolstered by inclusion of the U.N. Secretary General as a proactive mediator. The Secretary General can call for, if necessary and after the failure of other means, U.N. Security Council action and the reinstatement of the International Atomic Energy Agency (IAEA) to do its duly constituted work of preventing proliferation. If these approaches succeed, the peninsula, region, and world will become better places.*

---

\* Morse Tan, Senior Research Fellow, the University of Texas School of Law. Thanks to faculty members of the University of Texas (Profs. Karen Engle, Derek Jinks, and Larry Sager), Pepperdine Catholic, and Texas Southern for their comments and questions during presentations of these materials. Thanks as well to Dr. Jeff Todd, Anna Sabayrac, Jeff Heiderscheid, and Jessica Ho. My gratitude also to the students in my International Organizations class, in which we contemplated the North Korean situation as a case study. Finally, thanks to Assistant Secretary of State Christopher Hill for his interest in this article and his efforts to resolve the real-life crisis.

## I. INTRODUCTION

Nuclear physicists Otto Hahn and Fritz Strassmann changed the course of history through the small but stupendous act of splitting a uranium atom.<sup>1</sup> The devastating power of an atomic bomb itself came about through the efforts of American nuclear scientists through the Manhattan Project.<sup>2</sup> A particular isotope of uranium, U235, accounts for nuclear possibilities.<sup>3</sup> This atom, when hit by a neutron, emits one or more neutrons along with energy as it breaks apart into two pieces. This process is known as fission.<sup>4</sup> A successive chain reaction can take place under the proper parameters.<sup>5</sup> When one controls this chain reaction so that the rate of fission remains constant, nuclear energy results.<sup>6</sup>

Many nations, including North Korea, make use of nuclear fission to generate electricity.<sup>7</sup> In 1993, contrary to the terms of the Nuclear Non-Proliferation Treaty (NPT), which it had signed, North Korea refused to allow inspections of one of its nuclear facilities, which the United States, Japan, and South Korea suspected of processing nuclear materials for weapons.<sup>8</sup> For the next eighteen months, North Korea played a game of nuclear brinkmanship—keeping inspectors at arm's length, threatening to withdraw totally from the NPT, agreeing to and withdrawing from talks, and increasing the vehemence of its propaganda to threaten war in the face of proposed sanctions—to try to secure more economic aid and political leverage against the United States.<sup>9</sup> B. K. Gills writes that the nuclear crisis was on a “trajectory toward war” until Jimmy Carter, of his own accord, brokered a deal that removed the sanction threat if North Korea agreed to inspections, thus averting the crisis.<sup>10</sup>

Ten years later, however, not only has North Korea violated its pledge not to develop nuclear weapons, it has brazenly declared to the world that it

---

1. HARALAMBOS ATHANASOPOULOS, NUCLEAR DISARMAMENT IN INTERNATIONAL LAW 1 (2000).

2. *Id.*; Geoffrey P. Hammond, *Nuclear Energy into the Twenty-first Century*, 54 APPLIED ENERGY 327, 328 (1996).

3. Richard L. Williamson, Jr., *Law and the H-Bomb: Strengthening the Nonproliferation Regime To Impede Advanced Proliferation*, 28 CORNELL INT'L L.J. 71, 77 (1995).

4. *Id.* at 77–78.

5. *Id.* at 78.

6. *Id.* at 77–78.

7. B. K. GILLS, KOREA VERSUS KOREA: A CASE OF CONTESTED LEGITIMACY 235–36 (Michale Liefer, ed., 1996); *see also* Hammond, *supra* note 2.

8. GILLS, *supra* note 7, at 236.

9. *Id.* at 236–39.

10. *Id.* at 240–43; William M. Drennan, *Nuclear Weapons and North Korea: Who's Coercing Whom?*, in THE UNITED STATES AND COERCIVE DIPLOMACY 157, 159 (Robert J. Art & Patrick M. Cronin eds., 2003).

already possesses such weapons.<sup>11</sup> Analysts attribute North Korea's desire for weapons to several factors, such as deterrence against a perceived Western threat,<sup>12</sup> a bargaining chip to gain political and economic advantages,<sup>13</sup> or as a natural extension of the national ideology.<sup>14</sup> No matter the reason, atomic weapons in the hands of a nation with a stated goal to reunite the Korean Peninsula by force, a nation that has violated all of its major international agreements, a nation with missile systems capable of reaching South Korea, Japan, and possibly even the United States, are greatly opposed by these nations.<sup>15</sup>

This situation is worsened by North Korea's refusal to engage in multi-nation talks that include South Korea, the United States, and Japan, plus North Korea's own traditional allies China and Russia.<sup>16</sup> Many analysts view these talks as the best prospect for lasting solutions.<sup>17</sup> Instead, North Korea wants to bypass South Korea, the nation with the most at stake, and deal with the United States directly.<sup>18</sup> Although the United States currently opposes bilateral talks, an effective strategy to address the complexities of the current crisis has yet to emerge.<sup>19</sup>

For the past fifty years, North Korea has lied, broken its word, and pushed tensions to the brink of war, and negotiations with this country have routinely been unproductive, if not outright failures.<sup>20</sup> With nuclear weapons in the equation, though, the need for effective solutions has never been greater. At the same time, one scholar has called nuclear diplomacy with North Korea "a dead-end street."<sup>21</sup> With these risks in the background, this Paper presents the history of North Korean relations with other countries, explores current actions

---

11. See Michael Duffy, *What Does North Korea Want?*, TIME, Feb. 21, 2005, at 23 (reporting that "[d]ays before his 63rd birthday," Kim Jong-Il's government announced that, "as has long been suspected by U.S. intelligence, North Korea has indeed built nuclear weapons 'for self-defense'"); *Timeline: N. Korea Nuclear Dispute*, CNN.COM, Sept. 28, 2005, <http://www.cnn.com/2005/WORLD/asiapcf/02/10/nkorea.timeline/> [hereinafter *Timeline*]; Paul Kerr, *North Korea Chronology*, ARMS CONTROL TODAY, June 2003, [http://www.armscontrol.org/act/2003\\_06/nkoreachron\\_june03.asp](http://www.armscontrol.org/act/2003_06/nkoreachron_june03.asp).

12. See, e.g., DANIEL A. PINKSTON ET AL., CTR. FOR NONPROLIFERATION STUDIES, MONTEREY INST. OF INT'L STUDIES, SPECIAL REPORT ON THE NORTH KOREAN NUCLEAR WEAPONS STATEMENT (2005), available at <http://cns.miis.edu/pubs/week/050211.htm>.

13. *North Korea's Threat*, WASH. POST, Feb. 12, 2005, at A18.

14. See Sung-Yoon Lee, *Global Pressure Point: Nuclear Diplomacy vis-à-vis the DPRK: A Dead-End Street*, 27 FLETCHER F. WORLD AFF. 151, 155-58 (2003).

15. See, e.g., PINKSTON ET AL., *supra* note 12.

16. *Id.*; *North Korea's Threat*, *supra* note 13.

17. See, e.g., Lee, *supra* note 14, at 158, 160-65; *North Korea's Threat*, *supra* note 13.

18. See *North Korea's Threat*, *supra* note 13.

19. *Id.*

20. See Lee, *supra* note 14, at 155-57.

21. *Id.* at 152.

and international responses, and offers solutions, with a focus on the application of international legal instruments and organizations.

## II. BACKGROUND: KOREA DIVIDED AND NORTH KOREA AS ROGUE STATE

### A. *History of the Division*

#### 1. Korean Conflict

After finding itself no longer under the ignominy of the Japanese colonial period (which lasted from 1905 to the end of World War II),<sup>22</sup> Korea moved into a different sort of problem. The Soviet Union, after a period of relative inaction, decided to actively pursue military efforts at the end of World War II in order to strengthen its hand during post-war settlements.<sup>23</sup> The Soviets poured south into Manchuria.<sup>24</sup> The resulting U.S.–Soviet agreement, contrary to the will of the Korean people, split this small peninsula into the U.S.-aligned South Korea and the Soviet-aligned North Korea, with the Soviets agreeing to push no further south than the 38th parallel.<sup>25</sup>

Border skirmishes ensued over the next few years until, on the early morning of June 25th, 1950, North Korean forces embarked on a full-scale war by launching out over the 38th parallel.<sup>26</sup> Premier Kim Il Sung had eight full divisions (135,000 troops) at his disposal; many of these soldiers fought previously in World War II.<sup>27</sup> By contrast, South Korea counted only 95,000 generally less-seasoned soldiers.<sup>28</sup>

The North Korean divisions drove deep into South Korea, overmatching the smaller South Korean forces, who were pushed down to the Pusan Perimeter, a relatively small swath of land at the southernmost tip of the

---

22. See MAX HASTINGS, *THE KOREAN WAR* 25–26 (1987); see also Michael Hickey, *The Korean War: An Overview*, BBC ONLINE, [http://www.bbc.co.uk/history/war/coldwar/korea\\_hickey\\_01.shtml](http://www.bbc.co.uk/history/war/coldwar/korea_hickey_01.shtml) (last visited Oct. 4, 2005); HENRY CHUNG, *KOREA AND THE UNITED STATES THROUGH WAR AND PEACE* 43–85 (2000).

23. ROBERT J. MYERS, *KOREA IN THE CROSS CURRENTS* 78–79 (2001); CHUNG, *supra* note 22, at 97–108.

24. CHUNG, *supra* note 22, at 103–05; MYERS, *supra* note 23, at 78.

25. CHUNG, *supra* note 22, at 109–24; MYERS, *supra* note 23, at 78–79; M.P. SRIVASTAVA, *THE KOREAN CONFLICT: SEARCH FOR UNIFICATION* 23–33 (1982).

26. CHUNG, *supra* note 22, at 155; BRUCE CUMINGS, *KOREA'S PLACE IN THE SUN: A MODERN HISTORY* 260 (1997).

27. UNITED STATES ARMY, OFFICE OF THE CHIEF MILITARY HISTORY, *AMERICAN MILITARY HISTORY* 545 (1973).

28. *Id.* at 546.

peninsula.<sup>29</sup> The North Korean troops made full use of their advantages of surprise and initiative.<sup>30</sup>

As the North steamrolled the South, the United States called upon the U.N. Security Council to take action against North Korean aggression.<sup>31</sup> The Security Council, with the approbation of support of forty-four out of forty-nine U.N. member states, called upon its members to send military and other assistance: sixteen states sent soldiers and twenty-five total countries provided materials and other assistance.<sup>32</sup> General Douglas MacArthur stepped forward as the U.N. commander of the combined forces.<sup>33</sup>

MacArthur lead a key counter-initiative known as the Inchon Landing, a tricky military maneuver due to the tides.<sup>34</sup> By the middle of September 1950, MacArthur's forces not only plowed back to the 38th parallel, they continued on north.<sup>35</sup> As the U.N. forces proceeded closer to the North Korean–Chinese border, Chinese soldiers poured into North Korea, driving the U.N. forces back.<sup>36</sup> After two more pushes, one northward by the U.N. troops and one southward by the Chinese, the battle lines hardened for two more years back where they started—the 38th parallel.<sup>37</sup>

## 2. Armistice Agreement

With a military draw by mid-1951, the two sides negotiated for the next two years, resulting in the Korean Armistice Agreement (“Armistice Agreement”), signed on July 27, 1953.<sup>38</sup> The head of the North Korean military and the Commander-in-Chief of the U.N. Command signed this Armistice Agreement.<sup>39</sup>

---

29. CHUNG, *supra* note 22, at 169.

30. *But see* CUMINGS, *supra* note 26, at 261–63. South Korean intelligence expected an attack on the Ongjin peninsula, which was repulsed—the surprise may have been that the attack continued and was more widespread than the Ongjin peninsula. *See id.*

31. CHUNG, *supra* note 22, at 158–59; SRIVASTAVA, *supra* note 25, at 37–45.

32. Hickey, *supra* note 22; CHUNG, *supra* note 22, at 160–62; CHI YOUNG PAK, *KOREA AND THE UNITED NATIONS* 78 (2000).

33. CHUNG, *supra* note 22, at 165–66.

34. *Id.* at 170–77.

35. CUMINGS, *supra* note 26, at 275–78.

36. *See* Hickey, *supra* note 22; CUMINGS, *supra* note 26, at 284–86.

37. *See* Hickey, *supra* note 22; CUMINGS, *supra* note 26, at 289.

38. CHUNG, *supra* note 22, at 300–02. Note that South Korea had no desire to sign an armistice and had to be persuaded to sign by President Eisenhower, largely through repeated assurances that the United States was committed to unifying Korea. *Id.* at 290, 296–98.

39. *See* MYERS, *supra* note 23, at 93. The Armistice Agreement is a purely military document with no national signatories. Military Armistice in Korea and Temporary Supplementary Agreement, U.S.–N. Korea–P.R.C., July 27, 1953, 4 U.S.T. 235 [hereinafter Armistice Agreement].

While this Armistice Agreement called for a cease-fire, it was not a peace treaty.<sup>40</sup> The Armistice Agreement established the military line of demarcation, and the demilitarized zone (DMZ).<sup>41</sup> The Military Armistice Commission oversees this agreement.<sup>42</sup>

The Armistice Agreement, intended as a temporary measure by its own terms, was supposed to be replaced by a peace treaty through a conference convening within three months after the Armistice Agreement.<sup>43</sup> While a treaty emerging from the conference was supposed to settle the remaining issues, such as withdrawal of foreign forces from Korea and a new peace for the Land of the Morning Calm, this anticipated peace treaty did not come about as planned. Due to this failure, the two Koreas instead signed the Agreement of Reconciliation, Non-Aggression and Exchanges and Cooperation between North and South towards the end of 1991, and the Joint Declaration by South and North Korea of the Denuclearization of the Korean Peninsula in 1992.<sup>44</sup>

#### B. North Korea as Rogue State<sup>45</sup>

##### 1. History of Hostile Actions

Notwithstanding the Armistice, the U.S. Congressional Research Service has documented some 124 provocations by North Korea against the United States, South Korea, and/or Japan from June 1950 to March 2003.<sup>46</sup> They have ranged from multiple assassination attempts on South Korean presidents,<sup>47</sup> to

---

40. Cecilia Y. Oh, Comment, *The Effect of Reunification of North and South Korea on Treaty Status*, 16 EMORY INT'L L. REV. 311, 311–12 (2002).

41. *Id.*

42. Armistice Agreement, *supra* note 39, at art. II(A)–(B).

43. *See id.* at art. IV; CHUNG, *supra* note 22, at 300.

44. *See* Agreement on Reconciliation, Non-Aggression and Exchanges and Cooperation Between the South and the North, available at <http://www.state.gov/t/ac/rls/or/2004/31012.htm> (entered into force Feb. 19, 1992); Joint Declaration of the Denuclearization of the Korean Peninsula, N. Korea–S. Korea, Jan. 20, 1992, 33 I.L.M. 569, available at <http://www.state.gov/t/ac/rls/or/2004/31011.htm>.

45. “Rogue state” is the actual designation that the Clinton administration placed on the North Korean regime. *Analysis: The New Boogeymen*, BBC NEWS ONLINE, Dec. 12, 2001, <http://news.bbc.co.uk/1/hi/world/1376425.stm>.

46. DICK K. NANTO, REPORT FOR CONGRESS, CONGRESSIONAL RESEARCH SERVICE, NORTH KOREA: CHRONOLOGY OF PROVOCATIONS, 1950–2003 (2003), available at <http://www.fas.org/man/crs/RL30004.pdf>. *See generally* THE INST. FOR EAST ASIAN STUDIES, FOREIGN POLICY FOR PEACE AND UNIFICATION (1975) (tracking the South Korean–Japanese relationship during the early 1970s); KOREAN UNIFICATION: PROBLEMS AND PROSPECTS (C.I. Eugene Kim ed., 1973).

47. NANTO, *supra* note 46, at 8–9. One assassination plot succeeded in killing the wife of President Park Chung-hee only two days before the capture of the U.S.S. Pueblo. *Id.* at 6; *see*

the infiltration of thousands of armed agents involved in kidnapping and terrorism,<sup>48</sup> from the mid-air bombing of a South Korean Boeing 707 passenger plane in 1987<sup>49</sup> to the capture of the U.S.S. Pueblo, a surveillance ship.<sup>50</sup>

There have been various air and naval encounters over the years. In April 1969, North Korean MiG jet fighters destroyed a U.S. EC-121 reconnaissance plane over the Sea of Japan, taking thirty-one lives.<sup>51</sup> This unarmed plane was flying about ninety miles off the North Korean coast.<sup>52</sup> As recently as March 2003, four North Korean fighters intercepted an American Air Force reconnaissance plane in international airspace above the Sea of Japan.<sup>53</sup> “The North Korean Navy has captured and detained numerous South Korean merchant ships that have entered North Korea’s territorial sea.”<sup>54</sup>

## 2. Military Sales

North Korea has aggressively exported ballistic missile technology during the course of several decades.<sup>55</sup> North Korea has sold this technology to countries such as Libya,<sup>56</sup> Pakistan, Syria, Egypt, Iran, and the United Arab Emirates,<sup>57</sup> grossing hundreds of millions of dollars per year, its largest source

---

also ROBERT S. LITWAK, *ROGUE STATES AND U.S. FOREIGN POLICY: CONTAINMENT AFTER THE COLD WAR* 202 (2000).

48. “From 1954 to 1992, North Korea is reported to have infiltrated a total of 3,693 armed agents into South Korea . . . .” NANTO, *supra* note 46, at Summary. See Richard P. Cronin, *The North Korean Nuclear Threat and the U.S.–Japan Security Alliance: Perceived Interests, Approaches, and Prospects*, 29 FLETCHER F. WORLD AFF. 51, 52 (2005), for more on the kidnapping of Japanese nationals by North Korea.

49. NANTO, *supra* note 46, at 10. The plane was traveling from Baghdad to Seoul. Twenty crew members and ninety-five passengers died. This egregious act sought to discourage participation in the Seoul Olympics. *Id.*

50. *Id.* at 4. The North Koreans held the crew of eighty-three prisoners for eleven months. *Id.*; see also LITWAK, *supra* note 47, at 202.

51. NANTO, *supra* note 46, at 5.

52. *Id.*; see also LITWAK, *supra* note 47, at 202.

53. NANTO, *supra* note 46, at 25.

54. Stephen Kong, Comment, *The Right of Innocent Passage: A Case Study on Two Koreas*, 11 MINN. J. GLOBAL TRADE 373, 375–76 (2002).

55. See JOSEPH S. BERMUDEZ, JR., MONTEREY INST. OF INT’L STUDIES, CTR. FOR NONPROLIFERATION STUDIES, *A HISTORY OF BALLISTIC MISSILE DEVELOPMENT IN THE DPRK* 18–19 (1999), <http://cns.miis.edu/pubs/opapers/op2/op2.pdf>.

56. Libya recently relinquished tons of uranium likely supplied to it by North Korea. See William J. Broad & David E. Sanger, *After Ending Arms Program, Libya Receives a Surprise*, N.Y. TIMES, May 22, 2004, at A6.

57. BERMUDEZ, *supra* note 55, at 1. According to the U.S. Weapons Inspector David Kay, in an interesting twist of events, Kim Jong-Il defrauded Saddam Hussein out of \$10 million in a deal that Kim failed to fulfill. The contract included ballistic missile technology and other *verboden* missile equipment before the Second Gulf War. Bob Drogin, *Botched Iraqi Arms Deal Is Detailed*, L.A. TIMES, Oct. 4, 2003, at A1.



of hard currency.<sup>58</sup> North Korea's financial stake in the development and sale of missile technology drives its economy.<sup>59</sup>

In October of 2002, North Korea threatened to resume long-range missile tests and a higher level of weapons proliferation to other countries.<sup>60</sup> This activity falls in line with the intermediate range ballistic missiles supplied to Pakistan in the 1990s.<sup>61</sup> It is thought that in the late 1990s North Korea furnished Pakistan with twelve to twenty-five complete No-Dong medium range missiles.<sup>62</sup> Ominously, North Korea gained from Pakistan uranium enrichment technology, which it can use (and may have already used) for producing nuclear weapons.<sup>63</sup>

Such proliferation efforts have continued. For example, a North Korean vessel transported Scud missiles to Yemen in December of 2002.<sup>64</sup> A spokesman for the Nigerian government indicated that a North Korean delegation showed the Nigerian government a catalogue of weapons—but that Nigeria had not made a definite commitment to purchase them yet.<sup>65</sup>

### 3. Biological and Chemical Weapons in North Korea

North Korea joined the Biological Weapons Convention, an international treaty that for the most part does not even permit possession of biological weapons.<sup>66</sup> However, it appears that North Korea has developed biological weapons such as anthrax, yellow fever, and the plague.<sup>67</sup>

---

58. See Andrew Ward, *Trade Ties Grow Between the Two Koreas*, FIN. TIMES (London), Dec. 10, 2003, at 2; see also Douglas Frantz, *N. Korea's Nuclear Success Is Doubted*, L.A. TIMES, Dec. 9, 2003, at A1.

59. See, e.g., Bertil Lintner, *North Korea's Missile Trade Helps Fund Its Nuclear Program*, YALEGLOBAL ONLINE, May 5, 2003, <http://yaleglobal.yale.edu/display.article?id=1546>.

60. See LARRY A. NIKSCH, CRS ISSUE BRIEF FOR CONGRESS, NORTH KOREA'S NUCLEAR WEAPONS PROGRAM 2 (2003), available at <http://www.fas.org/spp/starwars/crs/IB91141.pdf>.

61. See *id.* at 1.

62. BERMUDEZ, *supra* note 55, at 24.

63. See *Nuclear Duplicity from Pakistan*, N.Y. TIMES, Dec. 2, 2002, at A20.

64. Lintner, *supra* note 59.

65. Editorial, *Missiles for Sale: North Korea Spreading Weapons Technology to Largest African Nation*, COLUMBUS DISPATCH (Ohio), Jan. 30, 2004, at 10A.

66. See Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Apr. 10, 1972, 26 U.S.T. 585 [hereinafter Biological Warfare Convention]. North Korea joined on March 13, 1987. See *id.*

67. Federation of American Scientists, *North Korea Special Weapons Guide: Biological Weapons Program*, <http://www.fas.org/nuke/guide/dprk/bw/index.html> (last visited Oct. 12, 2005).

Unlike the Biological Weapons Convention, North Korea did not sign the Chemical Weapons Convention.<sup>68</sup> Consistent with its refusal to sign, North Korea has a formidable assemblage of such weapons.<sup>69</sup> North Korean military doctrine asserts the use of chemical weapons as standard weaponry, which makes the use of chemical weapons in a fashion akin to conventional weapons a looming concern.<sup>70</sup> The choice not to sign the Chemical Weapons Convention involved conflict within the regime and illustrates the dominance of military considerations in the country.<sup>71</sup>

### III. THE PRESENT SITUATION WITH NORTH KOREA

#### A. *Projections Regarding Another Korean War*

Military planners project that in the event of a North Korean full-scale invasion, the first several months of conflict could see some 300,000 to half a million casualties in the South Korean and U.S. militaries, as well as additional “hundreds of thousands of” civilian casualties.<sup>72</sup> According to Doug Bandow

---

68. *Convention on Chemical Weapons: Hearing on Treaty Doc. 103-21 Before the S. Comm. on Foreign Relations*, 104th Cong. 2 (1996) (statement of Sen. Jesse Helms, Chairman, S. Comm. on Foreign Relations).

69. North Korea is purported to possess the technology to produce nerve, blister, choking, and blood agents in large quantities. It already has copious stockpiles of sarin and mustard gas, as well as blood agents, choking gases, VX, and riot control agents in unknown amounts. In all, U.S. intelligence reports—as a low figure—some 180–250 tons of chemical weapons. High estimates place the figure at between 2,500 to 5,000 tons. DIRECTOR OF CENTRAL INTELLIGENCE, U.S. CENTRAL INTELLIGENCE AGENCY, UNCLASSIFIED REPORT TO CONGRESS ON THE ACQUISITION OF TECHNOLOGY RELATING TO WEAPONS OF MASS DESTRUCTION AND ADVANCED CONVENTIONAL MUNITIONS, Jan. 1 through June 30, 2001, *available at* [http://www.cia.gov/cia/reports/721\\_reports/jan\\_jun2001.htm](http://www.cia.gov/cia/reports/721_reports/jan_jun2001.htm); Federation of American Scientists, North Korea Special Weapons Guide: Chemical Weapons Program, <http://www.fas.org/nuke/guide/dprk/cw/> (last visited Mar. 1, 2006); U.S. DEP’T OF DEFENSE, PROLIFERATION: THREAT AND RESPONSE (1996), *available at* [http://www.defenselink.mil/pubs/prolif/ne\\_asia.html](http://www.defenselink.mil/pubs/prolif/ne_asia.html); Nuclear Threat Initiative, *North Korea Profile Chemical Overview*, [http://www.nti.org/e\\_research/profiles/NK/Chemical/index.html](http://www.nti.org/e_research/profiles/NK/Chemical/index.html).

70. *See generally Attack Across the DMZ Special Report*, JANE’S INTELLIGENCE REV., Apr. 1, 1994, at 22 [hereinafter *DMZ Special Report*].

71. This confrontation took place between the Ministry of Foreign Affairs (MFA) and the Ministry of the People’s Armed Forces (MPAF). SUNG CHULL KIM ET AL., NORTH KOREA IN CRISIS: AN ASSESSMENT OF REGIME SUSTAINABILITY 58 (1997). The MFA briefed Kim Jong-Il on the tactical value of signing the Chemical Weapons Convention. *Id.* However, rather than take the MFA’s advice, the Deputy Minister of the MFA had to complete a full year “revolutionization course” before he could resume his post. *Id.* The reason for this punishment was the violation of reporting rules. *Id.*

72. R. Jeffrey Smith, *North Korea Deal Urged by State Dept.*, WASH. POST, Nov. 15, 1993, at A15; Drennan, *supra* note 10, at 191; PHILLIP C. SAUNDERS, CTR. FOR NONPROLIFERATION STUDIES, MILITARY OPTIONS FOR DEALING WITH NORTH KOREA’S NUCLEAR PROGRAM (Jan. 27, 2003), <http://cns.miis.edu/research/korea/dprkmil.htm>.

of the Cato Institute, total casualties for such a war could exceed one million.<sup>73</sup> Oplan 5027, the U.S. military's plan for the region, anticipates massive attacks on Seoul with artillery and rockets, possibly turning Seoul into a "sea of fire" through launching up to half a million shells per hour.<sup>74</sup> A pre-emptive strike on North Korea could result in a counter-attack by North Korea that would inflict huge levels of casualties and damage before the South Korean and U.S. military could do much to block such attacks<sup>75</sup> or pre-emptively defang the North Korean military by military force.<sup>76</sup> While analysts typically project an eventual South Korean/American victory, this victory would come at a great price;<sup>77</sup> some might call it a Pyrrhic victory.

There exists a more devious possibility that North Korea has hinted at by firing missiles over Japan, kidnapping Japanese citizens, and other hostile actions: North Korea could attack U.S. bases in Japan.<sup>78</sup> In this scenario, North Korea would probably seek to fray or split the alliance between the U.S. and South Korea, and possibly move towards uniting the two Koreas.<sup>79</sup> Given the rising anti-U.S. sentiment, especially among the younger generations of South Koreans, the tilt in the South Korean government towards socialism, the friendly overtures of South Korea (both governmental and private) to North Korea, the prevalent pro-North Korean and anti-American media bias, North Korean infiltrations in South Korea, and the strong desire of the Korean populace to unite, such a scheme takes on increased credibility.<sup>80</sup>

Regardless of whether or not North Korea attacks U.S. military bases in Japan, it can still attack, or threaten to attack, Japanese targets. In one

---

73. Doug Bandow, *N. Korea Is No Place to Apply Iraq 'Lessons,'* L.A. TIMES, Apr. 22, 2003, at B13.

74. Paul Richter, *Two-War Strategy Faces Test,* L.A. TIMES, Feb. 13, 2003, at A1.

75. SAUNDERS, *supra* note 72 ("The biggest military concern in striking North Korean nuclear facilities is the threat of North Korean counter-attacks.").

76. North Korea's military assets are very numerous. *Id.* To make it even more difficult, these arms often have mobile capabilities or find shelter in caves or underground. *Id.* Although a number of nuclear sites are known, some of the sites are heavily reinforced and armored, and other sites, such as nuclear reactors and reprocessing plants (especially for uranium) could be functional in small, underground facilities. *Id.*; see also *North Korean Missile Proliferation: Hearing Before the Subcomm. on Int'l Security, Proliferation, and Fed. Services of the S. Comm. on Governmental Affairs*, 105th Cong. 6-7 (1997) (statement of Choi Ju-Hwal, Former Official, Ministry of the People's Army, stating that "since the North uses mostly mobile rocket launchers, not fixed ones, it is assumed that the North does not have fixed rocket launchers").

77. See *DMZ Special Report*, *supra* note 70; see also Linda D. Kozaryn, *Despite Progress, North Korea Poses Major Threat*, AM. FORCES INFO. SERVICE NEWS ARTICLES, Apr. 3, 2001, [http://www.defenselink.mil/news/Apr2001/n04032001\\_200104031.html](http://www.defenselink.mil/news/Apr2001/n04032001_200104031.html); Eleanor Hall, *North Korea a Greater Threat than Iraq: Analyst* (ABC Local Radio Broadcast, Australia, Feb. 13, 2003), available at <http://www.abc.net.au/worldtoday/s783676.htm>.

78. See Hall, *supra* note 77.

79. *Id.*

80. See *infra* discussion at "Ethnic and Nationalistic Propaganda," Part V.D.

conceivable scenario, North Korea can blitzkrieg the South, and then threaten to destroy major Japanese cities if the United States sends reinforcements. North Korea seeks to weaken America's will to defend South Korea, foment favorable political conditions in South Korea, and then wage war to distract its own populace from its extensive woes.<sup>81</sup> Official North Korean policy maintains the objective of re-unifying Korea by force; it considers a violent Communist revolution of the South to be its manifest destiny.<sup>82</sup>

South Korea, for many reasons—including economic, political, historical and humanitarian—has strong incentives to avoid the outbreak of another war on the Korean peninsula.<sup>83</sup> In one form or another, war does not present itself as an attractive option.

## B. Resources

### 1. North Korean Military

The North Korean situation requires a delicate balance. At one extreme, the risk of war, which would prove disastrous for the entire peninsula; and at the other extreme, the risk of blackmail and exploitation, in which North Korea would receive benefits that it would divert for its own devious ends. It is advisable to explore both extremes in order to find the parameters for the best solutions. This section of the Article focuses on the extreme of potential war.

The devastating capabilities North Korea possesses must be kept in mind. In conventional weapons alone, it is one of the leading countries in the world in total number of military units.<sup>84</sup> While it may be accurately stated that some of these units are not the most state-of-the-art weapons available, the sheer overwhelming numbers nonetheless make North Korea appear a menacing foe indeed. North Korea has many artillery, mortars, rockets, and missiles pointed and ready to turn the city of Seoul into rubble.<sup>85</sup> North Korea boasts the ability to field approximately five to seven million troops; it already has about 1,000,000 soldiers in its standing forces, 120,000 special operation forces,

---

81. See Lee, *supra* note 14, at 154–55 (describing the North's power with respect to the South, Japan, and the United States).

82. See *id.* at 156–58.

83. See, e.g., SAUNDERS, *supra* note 72 (speculating on the negative consequences to South Korea, both physical and political, should war break out).

84. See generally Kathleen T. Rhem, *North Korean Military 'Very Credible Conventional Force,'* AM. FORCES INFO. SERVICE NEWS ARTICLES, Nov. 18, 2003, <http://www.defenselink.mil/news/Nov2003/n11182003200311181.html>.

85. Seoul, one of the most populous cities in the world, contains about a quarter of South Korea's population. See Wikipedia, Seoul, <http://en.wikipedia.org/wiki/seoul> (last visited Oct. 16, 2005); THE WORLD ALMANAC AND BOOK OF FACTS 793 (2005). It sits not more than 30 miles away from the DMZ. Denis Warner, *A Village Thrives Near the DMZ*, INT'L HERALD TRIB., Apr. 11, 1996, at 9.

11,000 forward deployed artillery pieces, 1,700 aircraft, 800 ships, 500 170-millimeter guns, 200 multiple-launch rocket systems, 62 submarines, cave and underground bases, air defense weapons, mobile missile launchers, and other potential causes of military mayhem.<sup>86</sup>

One of the questions that remains is what sort of missile delivery technology does North Korea possess, and is that technology sufficient to deliver a nuclear warhead to the United States of America? It is safe to say that North Korea presently has the missile delivery technology to strike South Korea and Japan, and, if they so foolishly desired, to strike various parts of China as well.<sup>87</sup> The huge population densities of both South Korea and Japan would make such weapons, especially nuclear weapons, particularly destructive as they would take more lives per square mile than other locales—due to the greater number of people per unit of area.

While the might of the U.S. military would likely be able to eventually win or at least maintain or return to the status quo in a fight against North Korea alone, it would probably do so at great cost. The cost of human lives and property on the Korean peninsula could dwarf the casualties suffered during the first Korean War.

Additionally, and more alarming, is the possibility for another Korean war to draw in China.<sup>88</sup> After all, during the Korean War, it was the Chinese forces that turned back the U.N. forces as they were approaching the Yalu River near the Chinese border.<sup>89</sup> China would want to maintain North Korea as a buffer between it and South Korea, both geographically and ideologically.<sup>90</sup>

## 2. The U.S. Military Presence on the Korean Peninsula

### a. Nuclear

The U.S. nuclear presence in Korea has steadily dwindled to none. In 1967, the United States had 2,600 nuclear weapons in Korea and Okinawa.<sup>91</sup>

---

86. See Hall, *supra* note 77; Kozaryn, *supra* note 77 (North Korea has six million reservists); Rhem, *supra* note 84 (citing Gen. Leon LaPorte, commander of U.S. forces in South Korea); SAUNDERS, *supra* note 72.

87. See generally PINKSTON ET AL., *supra* note 12.

88. But see CHARLES M. PERRY & TOSHI YOSHIHARA, THE U.S.–JAPAN ALLIANCE 78 (2003) (China told Pyongyang in the mid-1990s that China will not participate in any future Korean conflict).

89. JAMES E. HOARE & SUSAN PARES, CONFLICT IN KOREA: AN ENCYCLOPEDIA 145 (1999).

90. See *id.*

91. Robert S. Norris et al., *Where They Were*, 55 BULL. ATOMIC SCIENTISTS 26, 26–35 (1999), available at [http://www.thebulletin.org/print.php?art\\_ofn=nd99norris\\_024](http://www.thebulletin.org/print.php?art_ofn=nd99norris_024). See generally The Nuclear Information Project: A History of U.S. Nuclear Weapons in South Korea, Sept. 28, 2005, <http://www.nukestrat.com/korea/koreahistory.htm>.

The number of nuclear weapons in Korea decreased to 151 by 1985,<sup>92</sup> and in 1991, the United States removed all of its nuclear weapons from Korea.<sup>93</sup> However, because the United States has long-range delivery systems, the presence of nuclear weapons in Korea—or even Asia—carries less significance than if the United States had only mid-range or short-range delivery abilities.<sup>94</sup>

b. Conventional

The U.S. Army has about 37,000 troops stationed in South Korea.<sup>95</sup> These troops have ample equipment, such as Apache helicopters and Patriot missile batteries.<sup>96</sup> The largest forward-deployed fleet of the Navy, the 7th Fleet, rests not far from the shores of North Korea.<sup>97</sup> Around 200 aircraft, forty to fifty ships,<sup>98</sup> and some 20,000 Navy and Marine personnel constitute the 7th Fleet.<sup>99</sup> Air Force deployment in the Pacific numbers 45,000 military and civilian personnel—with about 300 fighter and attack aircraft under its control.<sup>100</sup> The Seventh Air Force perches in Korea with the Fifth in Japan.<sup>101</sup>

These forces in the Pacific, some in and around Korea and Japan, can respond rapidly to an outbreak of hostilities. At the same time, the ability to quickly deploy additional military resources enables rapid reinforcement of the present numbers.

92. Robert S. Norris & William M. Arkin, *Nuclear Notebook: U.S. Nuclear Weapons Locations, 1995*, 51 BULL. ATOMIC SCIENTISTS 74, 74–75 (1995), available at <http://www.thebulletin.org/issues/nukenotes/nd95nukenote.html>.

93. See Benjamin Friedman, Fact Sheet: North Korea's Nuclear Weapons Program, Jan. 23, 2003, <http://www.cdi.org/nuclear/nk-fact-sheet-pr.cfm>. South Korea was the last forward nuclear base for the United States in the Pacific. See Norris et al., *supra* note 91.

94. See CHARLES J. MOXLEY, JR., NUCLEAR WEAPONS AND INTERNATIONAL LAW IN THE POST COLD WAR WORLD 501–14 (2000).

95. Friedman, *supra* note 93.

96. U.S. Forces Order of Battle, <http://www.globalsecurity.org/military/ops/korea-orbat.htm> (last visited Nov. 1, 2005).

97. Seventh Fleet—Forward Presence, <http://www.c7f.navy.mil/New/Pages/Forward%20presence.html> (last visited Oct. 3, 2005).

98. *Id.* The ships typically include three to five Aegis guided-missile cruisers, five to ten destroyers and frigates, and one to two aircraft carriers. *Id.*

99. *Id.* Eighteen of these ships use Japan and Guam as their bases. *Id.*

100. United States Air Force Factsheet: Pacific Air Forces, <http://www.osan.af.mil/Facts/Pacific%20Air%20Forces.htm> (last visited Oct. 3, 2005).

101. U.S. Embassy in Thailand, The United States Security Strategy for the East Asia-Pacific Region, <http://bangkok.usembassy.gov/services/docs/reports/ussec1.htm> (last visited Oct. 14, 2005). The Seventh Air Force includes the Fifty-first and Eighth Fighter Wings, with a combined 117 planes and 8,300 air force personnel. See 7th Air Force, <http://www.osan.af.mil/7th%20Air%20Force.htm> (April 2003). The Fifty-first uses A-10 aircraft as well as squadrons of F-16 fighter aircraft. See 51st Fighter Wing Osan AB, Korea, <http://www.osan.af.mil/> (last visited Nov. 12, 2005).

### 3. South Korean Resources

#### a. Military

With mandatory military service for male citizens, South Korea can mobilize approximately 4,500,000 well-equipped soldiers with newer armaments than their North Korean counterparts, such as more than 3,000 tanks and 1,500 strike aircraft.<sup>102</sup> Approximately 5,300 mortars and two surface-to-surface battalions add to the South Korean military resources.<sup>103</sup>

#### b. Economic

The robust South Korean economy, once the second to poorest at the end of the Korean War, now stands as the 11th largest economy in the world, with a per capita G.N.P. of U.S. \$14,000.<sup>104</sup> It would have large capabilities to sustain a war effort, if those capabilities would not already find themselves devastated by a North Korean attack. However, after another war with North Korea, the South Korean economy might end up flattened even more than after the first Korean War<sup>105</sup> because there exists more to destroy—whether infrastructure, industry, edifices, or people.

#### C. *Kim Jong-Il*<sup>106</sup>

At the other extreme from full-out warfare are the problems that result from deceit and blackmail in the political arena. In the case of North Korea, politics flow from the top—North Korean dictator Kim Jong-Il.<sup>107</sup> Early intelligence wrongfully assessed Kim Jong-Il as unintelligent. Later intelligence corrected this earlier assessment, and concluded instead that Kim possesses a high-powered intellect. Estimates of his I.Q. have placed it at around 150.<sup>108</sup>

---

102. Kozaryn, *supra* note 77.

103. Orders of Battle and Major Equipment South Korea and North Korea, <http://www.fas.org/irp/world/rok/orbat-comp.htm> (last visited Oct. 4, 2005).

104. U.S. DEP'T OF STATE BUREAU OF EAST ASIAN & PACIFIC AFFAIRS, BACKGROUND NOTE: SOUTH KOREA, <http://www.state.gov/t/pa/ei/bgn/2800.htm> (last visited Oct. 4, 2005).

105. Bruce Howard, Professor of Economics, Wheaton College, Economics Lecture (1996) (asserting that war in a country devastates a country's economy more than anything else).

106. For a recent narrative on Kim Jong-Il and the country he dominates, see MICHAEL BREEN, *KIM JONG-IL: NORTH KOREA'S DEAR LEADER* (2004). Breen's anecdotes and observations based on actual visits offer insight into this closed country and its reclusive ruler.

107. See Peter Carlson, *Sins of the Son: Kim Jong Il's North Korea Is in Ruins, But Why Should That Spoil His Fun?*, WASH. POST, May 11, 2003, at D1.

108. See *id.*

Kim Il Sung groomed his son Kim Jong-Il to take the reins of power from him starting in the early 1970s.<sup>109</sup> As Korean Workers Party Secretary, Kim Jong-Il ran the organization, including its propaganda function.<sup>110</sup> In 1980, the Sixth Party Congress named him the official successor.<sup>111</sup> In 1991, Kim Jong-Il ascended to the position of Supreme Commander of the People's Army, and in 1993, he rose to Chairman of the National Defense Committee.<sup>112</sup> Throughout this time, propaganda deifying Kim Jong-Il drummed its way into the day-to-day life of North Korea.<sup>113</sup>

According to defectors from North Korea itself, the North Korean populace, in spite of the propaganda, is aware of Kim Jong-Il's immoral behavior, the failure of his economic policies, and the politicized nature of his inner circle.<sup>114</sup> The deterioration of the country on many fronts would tend to diminish the glorified image of this totalitarian dictator.<sup>115</sup>

#### IV. THE PRESENT CRISIS

##### A. *History of the Geneva Protocol*

The 1994 Agreed Framework<sup>116</sup> resulted from intensive negotiations, and marked a departure from the otherwise relatively uniform policy of the Clinton administration toward what it termed "rogue states."<sup>117</sup> U.S. policy towards North Korea, dubbed "limited engagement by necessity," emerged out of heated discussion and debate, both within the Clinton administration and also within the Republican-led Congress.<sup>118</sup> During this debate, policymakers considered a range of options, including preemptive strikes against the known nuclear facilities, proposed sanctions, and a negotiated agreement with North Korea.<sup>119</sup> Nothing more than a focused preemptive attack solely on the nuclear facilities carried with it, even according to the military leaders at the time, too much risk of a full-blown war.<sup>120</sup> The Clinton administration had actually

---

109. KIM ET AL., *supra* note 71, at 35; SANG-WOO RHEE, SECURITY AND UNIFICATION OF KOREA 7 (1983).

110. KIM ET AL., *supra* note 71, at 35.

111. *Id.*

112. *Id.* at 35–36.

113. *Id.* at 36.

114. *Id.* at 36, 38.

115. *See* KIM ET AL., *supra* note 71, at 38.

116. Agreed Framework to Negotiate Resolution of the Nuclear Issue on the Korean Peninsula, U.S.–N. Korea, Oct. 21, 1994, 34 I.L.M. 603 [hereinafter Agreed Framework].

117. LITWAK, *supra* note 47, at 198.

118. *Id.* at 199.

119. *Id.* at 214–16.

120. *Id.* at 214.



started pursuing the sanctions option when a visit to Pyongyang by former president Jimmy Carter renewed negotiation efforts.<sup>121</sup>

With the reluctant permission of President Clinton (permission that President George H.W. Bush had previously refused to give), Jimmy Carter went on a peacemaking mission to Pyongyang.<sup>122</sup> Upon Carter's return, he pronounced the end of the crisis, with Kim Il Sung agreeing to freeze North Korea's nuclear program under International Atomic Energy Agency (IAEA) inspections, and his willingness to come back to the bargaining table with the then-current U.S. administration.<sup>123</sup> This trip served as a catalyst for the negotiations that led to the Geneva Protocol, also known as the Agreed Framework.<sup>124</sup>

The planned initial meeting between the DPRK and the United States in Geneva found itself suspended due to the demise of Kim Il Sung, the self-styled "Great Leader" who had ruled North Korea from its inception until July 9, 1994.<sup>125</sup> After a one-month delay, the negotiation resumed. A joint statement emerged on August 12, which announced the core of the agreement.<sup>126</sup> U.S. Ambassador Gallucci and North Korea's First Vice Foreign Minister concluded the agreement on October 17, and signed it on October 21.<sup>127</sup> The four-page document was a carefully crafted agreement implementing the DPRK's transition from graphite-moderated nuclear reactors to light water reactors.<sup>128</sup> This transition was scheduled to take place over a decade, buttressed by substantial commitments from the U.S. to replace lost generating capacity through shipments of heavy oil.<sup>129</sup> The agreement met resistance from some quarters as a "sellout and an act of appeasement."<sup>130</sup> Others hailed it as a major achievement for peace on the peninsula.<sup>131</sup>

#### B. Breach of the Agreement and the Current Situation

As events have unfolded afterwards, it has become obvious that North Korea has materially breached the Agreed Framework. In 1998, U.S.

---

121. *Id.* at 214–16; Drennan, *supra* note 10, at 158–59.

122. LITWAK, *supra* note 47, at 216.

123. GILLS, *supra* note 7, at 243; LITWAK, *supra* note 47, at 216; Drennan, *supra* note 10, at 177.

124. LITWAK, *supra* note 47, at 218; *see* Agreed Framework, *supra* note 116.

125. LITWAK, *supra* note 47, at 218.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.* at 218–19.

130. LITWAK, *supra* note 47, at 220.

131. *See id.* Of course, the Clinton administration was under the misapprehension that the North Korean regime was not going to last long. *Id.* at 227. They felt that "the Agreed Framework is almost certainly a sufficient period of time for [the North Korean] regime to have collapsed." *Id.*

intelligence discovered a large underground facility that could support nuclear weapon development.<sup>132</sup> In a 2002 meeting with Ambassador Kelly, a North Korean official disclosed North Korea's possession of nuclear weaponry, a statement later denied by Pyongyang.<sup>133</sup>

Given the breach of contract, in November 2002, the Korean Peninsula Energy Development Organization (KEDO) suspended shipment of heavy oil and scrapped the Light Water Reactor (LWR) project.<sup>134</sup> North Korea claimed the U.S. breached the agreement and stated that it must develop and produce nuclear weapons as a deterrent against potential American aggression, which it claimed to genuinely fear.<sup>135</sup> North Korea then withdrew from the ongoing six-party talks—formerly involving itself, South Korea, the U.S., Japan, China, and Russia.<sup>136</sup> The Bush administration has refused to engage in bilateral negotiations thus far with Pyongyang in an effort to avoid what it sees as blackmail.<sup>137</sup>

#### V. VARIOUS RESPONSES TO NORTH KOREA

North Korea's behavior regarding nuclear weapons has led many American sources—ranging from scholars and politicians to comedians and talk show hosts—to suggest that North Korea acts and speaks in a crazy and irrational manner.<sup>138</sup> While it may be correct to speak about North Korea in this fashion if one incorporates a moral dimension to those statements, it is inaccurate in terms of whether or not North Korea's behavior and speech is logically connected with its own goals and objectives.

North Korean officials have the objectives of holding on to power, removing American involvement in the peninsula, reunifying Korea by force, and wresting benefits from other countries through the use of threats and coercion due to the deteriorated condition of their own country.<sup>139</sup> Understanding these goals will help one to make sense of North Korea's actions—as insidious as many of these resulting activities have been. Though

---

132. *Id.* at 222, 225; see also *No Nukes Warning from Clinton to N. Korea*, CNN.COM, Nov. 21, 1998, <http://www.cnn.com/WORLD/asiapcf/9811/21/korea.01/index.html>.

133. See Kerr, *supra* note 11. In 2005, North Korea publicly announced that it had already developed nuclear weapons. *Timeline*, *supra* note 11.

134. Kerr, *supra* note 11.

135. See PINKSTON ET AL., *supra* note 12.

136. *Timeline*, *supra* note 11.

137. See PINKSTON ET AL., *supra* note 12.

138. See, e.g., Lee, *supra* note 14, at 155–58. David Letterman, host of *The Late Show*, when discussing North Korea, frequently refers to Kim Jong-Il and his son “Menta Lee II (Mentally Ill).” James Brooke, *Pop Culture Takes Aim at North Korea's Kim*, INT'L HERALD TRIB., June 1, 2005, at 2. The recent movie *Team America: World Police* portrayed an ego-maniacal Kim Jong-Il as the primary villain. *Id.*

139. See Lee, *supra* note 14, at 154–57.

dangerous and seemingly desperate, the actions of North Korea are not irrational or illogical. Perhaps the single biggest mistake made by the United States and South Korea in past dealings with North Korea has been to ignore or misinterpret this logic. This section analyzes past dealings in four major areas—military, political, economic, and ethnic—to show that past responses to North Korea have been inadequate or wrong-headed. Then, it recommends better solutions for dealing in each of these four areas. The Article concludes by focusing on potential solutions relating to international legal theory.

#### A. *Military*

##### 1. Background

As the preceding sections make clear, North Korea's most obvious—and, for the world, dangerous—goals are militaristic: holding on to power in its totalitarian dictatorship, reunifying Korea by force, and extracting benefits from other countries through the use of threats and coercion.<sup>140</sup> It should be no surprise that North Korea has doggedly continued with its belligerent and hostile actions toward the United States and South Korea since the cease-fire—whether through naval battles with South Korea, frequent border skirmishes, or intentional incursions into South Korea with thousands of armed agents.<sup>141</sup> These actions have extended to Japan as well.<sup>142</sup> Time after time, North Korea has persistently sought these aforementioned objectives, often in overtly hostile ways.

##### 2. Past Military Responses

As noted above, the response by key countries such as South Korea, the United States, and Japan has been to reduce their military force relative to North Korea.<sup>143</sup> Because North Korea's goal is to unify Korea, by force if necessary, then such a response moves in the wrong direction. For example, one devious way in which North Korea may seek to start a war is by having its own soldiers dress in South Korean military uniforms and pretend to invade North Korea; in response to this phony incursion, North Korea would then attack South Korea with the justification of having been “attacked” first.

---

140. *Id.*

141. See JOSEPH S. BERMUDEZ, JR., TERRORISM: THE NORTH KOREAN CONNECTION 24–54 (1990); RHEE, *supra* note 109, at 210.

142. See BERMUDEZ, *supra* note 141, at 146–154. North Korean agents kidnapped at least thirteen Japanese nationals, forcing them to teach Japanese language and culture while using their identities to infiltrate South Korea and Japan. Robert J. Lundin III, Note, *International Justice: Who Should be Held Responsible for the Kidnapping of Thirteen Japanese Citizens?*, 13 TRANSNAT'L L. & CONTEMP. PROBS. 699, 700–01 (2003).

143. See *supra* text accompanying notes 91–103.

Indeed, North Korea has actually engaged in military exercises practicing such a subterfuge.<sup>144</sup>

### 3. Recommended Military Solutions

A better solution would be for these nations to increase the defensive capabilities of their military. The South Korean military should ready itself because the belligerent rhetoric of North Korea has sometimes spilled into combat. Importantly, South Korea needs to have enough of a deterrent—especially in terms of defensive measures—readily at hand.<sup>145</sup> Such measures should discourage the outbreak of war and send a clear message to North Korea that they would meet vigorous resistance and ultimately find defeat if they instigate another war.

Another option is for Japan to indicate that it will bolster its military in order to defend against the North Korean threat, which perhaps could motivate China to persuade North Korea to disarm.<sup>146</sup> In recent years, Japan has taken a harder line towards North Korea, but so far has increased only its defensive and not offensive capabilities.<sup>147</sup> If it looks like the United States is behind that effort though (as in the efforts of U.S. Rep. Tom Lantos),<sup>148</sup> then perhaps it would not achieve the desired effect.

Finally, the U.S. should at least send greater defensive reinforcements, such as more Patriot missile batteries.<sup>149</sup> The emphasis on defense forecloses reasonable pretexts for North Korea to attack preemptively by considering buildup of offensive capabilities as an indicator of imminent U.S. attack. North Korea might try to claim that America is building up its military forces in and around the peninsula in order to attack North Korea: Pyongyang could, for example, draw analogies to the military buildup in Iraq prior to the first

---

144. See Barry A. Feinstein & Justus Reid Weiner, *Israel's Security Barrier: An International Comparative Analysis and Legal Evaluation*, 37 GEO. WASH. INT'L. L. REV. 309, 331 (2005).

145. See BERMUDEZ, *supra* note 141, at 24–54 (describing extensive North Korean acts of terrorism and violence); HOARE & PARES, *supra* note 89, at xxiii (same).

146. See PERRY & YOSHIHARA, *supra* note 88, at 47, 81, 130.

147. Cronin, *supra* note 48, at 53–54; see also Christopher W. Hughes, *Japan–North Korea Relations: Obstacles to a Breakthrough*, in COOPERATION AND REFORM ON THE KOREAN PENINSULA 28, 35–36 (James M. Lister et al. eds., 2002).

148. California Congressman Tam Lantos visited North Korea two times in 2005 seeking a “normalization of relations” between North Korea and the United States. Christian Caryl, *Tom Lantos: A ‘Promising Promise,’* NEWSWEEK INT’L, Sept. 19, 2005, at 64.

149. Cf. JONG CHUL PARK, KOREA’S ENGAGEMENT POLICY TOWARDS NORTH KOREA AND ITS IMPLICATIONS TO THE U.S. 14–16 (2001) (suggesting that the United States simultaneously pursue missile defense and negotiations); PERRY & YOSHIHARA, *supra* note 88, at 138–46 (suggesting that the United States pursue missile defense).

Gulf war.<sup>150</sup> However, primarily defensive reinforcements would at once take away such an excuse while preparing for a possible attack by North Korea.

## B. Political

### 1. Background

The North Korean pattern of brinkmanship or “negotiating on the edge”—as Scott Snyder has put it in his book by that title,<sup>151</sup> and as shown in a recent book on North Korean negotiation strategy—is in five steps: (1) escalate the crisis; (2) use it to gain bargaining leverage to get the desired parties (most particularly the United States) to the table, such as the Clinton administration for bilateral negotiations; (3) as a result of the crisis, to come to an agreement, which (4) gives North Korea benefits, which it swallows; and then (5) not abide by its promises, break the agreement, and create another crisis—thus starting this cycle again.<sup>152</sup>

What must also be recognized is that deception and the breaking of its word have been the norm, not the exception, for North Korea. In addition to deceiving the international community, North Korea pumps a steady stream of lies to its own populace. Its propaganda states ridiculous things: that South Korea is in much worse economic condition than North Korea; the outlandish deification of the dictator Kim Jong-Il; the ever present threat of attack from South Korea and the United States; and the false promises that a communist utopia will come about if the populace just perseveres a little bit longer.<sup>153</sup> Also, North Korea levels a steady stream of wild accusations against South Korea and the United States that probably would better describe North Korea’s

---

150. See Drennan, *supra* note 10, at 190. The U.S.–South Korean alliance has been and will continue to be a primary deterrent against North Korean aggression, so these two nations must not only continue but also must strengthen their ties. Stephen W. Bosworth, *U.S.–Korean Relations After the Summit*, 25 FLETCHER F. WORLD AFF. 25, 27 (2001).

151. SCOTT SNYDER, *NEGOTIATING ON THE EDGE: NORTH KOREAN NEGOTIATING BEHAVIOR* (1999).

152. See *id.* at 68–96; Hyun Joon Chon, *Characteristics of North Korea’s South Korean Policy*, in KINU RESEARCH ABSTRACTS ‘02, at 39, 40–41 (2003); see also LITWAK, *supra* note 47, at 226 (quoting a former North Korean theoretician: “[North Korean officials] understand that there is no alternative to brinkmanship.”).

153. See, e.g., KIM IL SUNG, *FOR THE INDEPENDENT PEACEFUL REUNIFICATION OF KOREA* (1975); Li Jong Mok, *Speeches to the United Nations* (Oct. 21, 27, 29, 1975), in *ON THE QUESTION OF KOREA: SPEECHES OF REPRESENTATIVES AT THE 30TH SESSION OF THE U.N. GENERAL ASSEMBLY 1*, 1–25 (1976); Park Chung Hee, *Speech, North Korean Communists’ Deceptive Double Tactics* (January 14, 1975), in *TOWARD PEACEFUL UNIFICATION 110* (1976); Park Chung Hee, *Speech, Peace Propaganda and Warlike Provocations* (July 4, 1975), in *TOWARD PEACEFUL UNIFICATION*, *supra*, at 116.

actions and position than what either South Korea or the United States have done against North Korea.<sup>154</sup>

One recurring problem involves North Korean efforts to negotiate directly with the U.S. while sidelining South Korea.<sup>155</sup> Given the continuing North Korean policy that fails to officially recognize or engage in official diplomacy with South Korea,<sup>156</sup> and continues on the path of seeking forceful reunification,<sup>157</sup> there exist continuing tensions about how to conduct multilateral negotiations.<sup>158</sup>

## 2. Responses to North Korean Deceit and Brinkmanship

Secretary of State Condoleezza Rice recently responded to North Korean accusations that the United States is hostile toward North Korea and is about to wage war and attack North Korea. Secretary Rice called such rhetoric ridiculous—that the United States has no war plans against North Korea presently.<sup>159</sup> These recent accusations amount to nothing more than the continued spewing of the North Korean propaganda machine and the lineup of lies that it regularly puts forth to its populace.<sup>160</sup>

154. See SONG, *supra* note 153; Kim Il Sung, Speech at Pyongyang Mass Meeting (June 23, 1973), in KOREAN UNIFICATION: SOURCE MATERIALS WITH AN INTRODUCTION 340 (Se-Jin Kim ed., 1976). Kim Il Sung refers to “the U.S. imperialist occupation of south Korea,” *id.* at 341, and accuses the United States of engaging in “machinations,” and “double-dealing tactics.” *Id.* at 342.

155. Lee, *supra* note 14, at 151–52.

156. The 2000 Summit remains an insubstantial anomaly that achieved greater support from South Korea to North Korea while ultimately giving South Korea very little; North Korea lost next to nothing by agreeing to the reunion of families, its largest “concession.” See generally MARK E. MANYIN, NORTH–SOUTH KOREAN RELATIONS: A CHRONOLOGY OF THE “NEW” DIALOGUE 1–2 (2001), <http://www.fas.org/man/crs/RL30811.pdf>.

157. See Lee, *supra* note 14, at 155–58.

158. For a more thorough discussion of the need for all six nations to be involved, and why no single nation should predominate, see Ilpyong J. Kim, *The Major Powers and the Korean Triangle*, in TWO KOREAS—ONE FUTURE?: A REPORT PREPARED FOR THE AMERICAN FRIENDS SERVICE COMMITTEE 119 (John Sullivan & Roberta Foss eds., 1987) [hereinafter TWO KOREAS—ONE FUTURE?].

159. Joel Brinkley & Steven R. Weisman, *Visiting Korea Base, Rice Sends Forceful Reminder to the North*, N.Y. TIMES, Mar. 20, 2005, at 11.

160. See PINKSTON ET AL., *supra* note 12.

For years, Pyongyang has expressed its desire to improve relations with the United States, while paradoxically issuing belligerent statements towards Washington. For example, on February 2, 2005, the North Korean media broadcast a statement by a North Korean Air Force officer declaring that the North Korean military would turn U.S. military bases into a “sea of fire” if the United State attacked the DPRK.

*Id.*; see also Glenn Kessler, *Three Little Words Matter to N. Korea: Bush Has Avoided ‘No Hostile Intent,’* WASH. POST, Feb. 22, 2005, at A10 (reporting that the Bush administration repeatedly states that it has no intention to invade North Korea, but backs away from the Clinton-era phrase “no hostile intent”).

Although these actions by Rice indicate an awareness of North Korean tactics, other parts of our government do not seem to appreciate fully how North Korea operates. Pronouncements by U.S. Representative Curt Weldon, who was part of a recent Congressional delegation to North Korea, appear overly optimistic. Shortly after his return, Weldon claimed that North Korea anticipated denuclearizing.<sup>161</sup> Not long after that press conference—within a matter of weeks—North Korea announced unabashedly to the world that it possessed nuclear weapons.<sup>162</sup> Thereafter, U.S. Rep. Tom Lantos, the ranking democratic foreign relations committee member, in a speech at John Hopkins' School of Advanced International Studies, drew a parallel to the example of Libya's reaping economic and political benefits after it voluntarily disarmed its arsenal of weapons of mass destruction.<sup>163</sup> Such a prospect does not reflect North Korea's past patterns of behavior.<sup>164</sup>

### 3. Recommended Political Solutions

While U.S. Representative Lantos acknowledged that it is a "long shot" that North Korea would follow the path of Libya,<sup>165</sup> his words nonetheless indicate that members of Congress want to take a softer approach than the Bush administration.<sup>166</sup> The present administration's insistence on six-party talks, rather than bilateral negotiations directly with North Korea, helps to counter North Korea's attempt to go over the head of South Korea—and for that matter, over the heads of its regional neighbors—to directly negotiate with the United States.<sup>167</sup> Such bilateral talks, which led to the 1994 Agreed Framework, not only failed, but also gave additional time for North Korea to

---

161. Glenn Kessler, *N. Korea Talks May Hinge on Bush: Lawmaker Advises Bush to Choose His Words Carefully*, WASH. POST, Jan. 28, 2005, at A23; Jason Motlagh, *North Korea: Denuclearization is Final Goal*, THE WASH. TIMES ONLINE, Jan. 19, 2005, <http://www.washtimes.com/upi-breaking/20050119-102012-8082r.htm>.

162. Motlagh, *supra* note 161; *see also* Duffy, *supra* note 11 (reporting the North Korea's February 2005 announcement).

163. Congressman Tom Lantos, Speech at the Paul H. Nitze School of Advanced International Studies, *Is Libya the Future of North Korea?* (Feb. 14, 2005), [http://www.sais-jhu.edu/pubaffairs/SAISarticles05/Lantos\\_Speech.pdf](http://www.sais-jhu.edu/pubaffairs/SAISarticles05/Lantos_Speech.pdf) [hereinafter Lantos Speech].

164. *See id.*; *see also* Henry Sokolski, *The Qaddafi Precedent*, WKLY. STANDARD, Jan. 26, 2004, at 12, available at <http://www.npec-web.org/Frameset.asp?PageType=Writings>; Adam Wolfe, *U.S. Attempts to Make an Example Out of Libya Will Fail*, PINR.COM, Apr. 24, 2004, [http://www.pinr.com/report.php?ac=view\\_report&report\\_id=163&language\\_id=1](http://www.pinr.com/report.php?ac=view_report&report_id=163&language_id=1).

165. Lantos Speech, *supra* note 163.

166. With a new Secretary of State, it is possible there may be some variations from the prior Secretary in terms of how such matters are approached.

167. Lantos Speech, *supra* note 163. U.S. Ambassador to the Republic of Korea Stephen W. Bosworth notes the advantage of multi-party talks over bilateral negotiations because the former build broad regional consensus that supports dialogue and cooperation between North and South Korea. *See* Bosworth, *supra* note 150, at 25.

become more dangerous and to reap benefits without meeting its obligations.<sup>168</sup> The present administration's approach, whatever its overall merits, at least avoids such blackmail.

Lantos did parlay a tactic that might help the United States politically, although it may have helped even more had the speaker come from outside the United States. Lantos had spoken to leaders in China and indicated that it was in China's interest to see that North Korea disarm its weapons of mass destruction because of the possibility of Japan's rearming to defend and deter North Korean potential aggression with such weapons.<sup>169</sup> Given the history of hostilities that historically had transpired between China and Japan, China would not want Japan to rearm. Thus, Lantos used the approach that former Secretary of State George Schultz had suggested would be an effective way to motivate China to step in to help disarm North Korea.<sup>170</sup>

### C. *Economic*

#### 1. Background

If North Korea merely diminished its military spending by approximately five to ten percent, then it could potentially feed its starving populace; yet, it refuses to do so.<sup>171</sup> It has preferred artillery, tanks, and fighter planes to rice, kimchi (Korean pickled vegetables), and kalbi (Korean style marinated short ribs)—thus deciding to be armed to the teeth while turning their populace into ragged skeletons.

The Korea Institute for National Unification (KINU) published an interesting empirical study that takes the factors used by Zbigniew Brezizinski, formerly prominent in the Carter administration and now a scholar in the field of international relations. Brezizinski examined various factors to measure the degree of crisis within regimes in Eastern Europe to help to predict whether they would be experiencing impending collapse, transformation, regime change, and other similar events.<sup>172</sup> KINU took the Brezizinski factors, added some of its own that it deemed appropriate to the North Korean context, and measured to what extent the North Korean regime is in crisis and the probability that it would implode.<sup>173</sup> KINU's conclusion, after analysis of

---

168. See Erik Raines, Note, *North Korea: Analyzing the "New" Nuclear Threat*, 12 CARDOZO J. INT'L & COMP. L. 349, 359–62 (2004).

169. Lantos Speech, *supra* note 163.

170. See Steven Kamara, *Schultz '42 Discusses Solutions to Nuclear Threat from North Korea*, DAILY PRINCETONIAN ONLINE, Apr. 14, 2003, <http://www.dailyprincetonian.com/archives/2003/04/14/news/7921.shtml>.

171. See *N. Korea: Starving for Missiles*, CBSNEWS.COM, Aug. 13, 1999, <http://www.cbsnews.com/stories/1999/08/13/eveningnews/main58131.shtml>.

172. KIM ET AL., *supra* note 71, at iii.

173. *Id.* at 9.



political, social, economic, cultural, and other factors, was that even through 1995—when the measurements ended—North Korea had already entered a crisis level.<sup>174</sup> Many of those factors were on a downward trend, meaning that North Korea was degenerating, potentially leading to regime transformation or regime change if the trends were not reversed.<sup>175</sup>

## 2. Incentives, Trade, and Humanitarian Aid in Response

Ten years later, if one presumes that at least the majority of those factors have grown worse, then North Korea has grown closer and closer to imploding from within. The initial implementation of economic free-enterprise zones may have helped to start to reverse its economic woes, but more likely, a greater factor in helping sustain North Korea, as was mentioned earlier, is increased trade and aid, most particularly from South Korea. Two-way trade between South and North Korea had risen to \$697 million by 2004.<sup>176</sup> Predominantly, the amount flowing from North Korea to South Korea was miniscule, but the numbers have been increasing since that time.<sup>177</sup>

The head of Hyundai, one of the two giant conglomerates in Korea, has been funding various projects, including the Mount Kumgang tourism, as well as an entire industrial zone, various donations, and funds for infrastructure.<sup>178</sup> That type of aid from various South Korean sources has been increasing, and increasing dramatically.<sup>179</sup> China is another major source of aid and trade, but Russia has diminished its aid to North Korea due to its own economic woes.<sup>180</sup> What must be realized is that North Korea only engages the international community to the extent that it thinks it can benefit from such interaction while continuing to pursue its own inimical goals. While North Korea may have taken certain steps to increase its diplomatic relationships,<sup>181</sup> the depth of those

174. *Id.* at 124.

175. *Id.* at 126.

176. U.S. DEP'T OF STATE BUREAU OF EAST ASIAN & PACIFIC AFFAIRS, *supra* note 104.

177. See Sung Chul Yang, *South Korea's Sunshine Policy: Progress and Predicaments*, 25 FLETCHER F. WORLD AFF. 31, 33 (2001) ("The policy of separating politics from economic activities greatly increased inter-Korean trade and investment."). In a historic move, North Korea actually shipped shirts to South Korea in 2005. B. J. Lee, *An Oasis of Capitalism: South Korea Companies Explore the Possibilities of Outsourcing to the North, in a New Economic Zone*, NEWSWEEK INT'L, Sept. 19, 2005, at 51.

178. Young Whan Kihl, *The DPRK and its Relations with the ROK*, in KOREA BRIEFING 1997-1999, at 123, 139 (Kongdan Oh ed., 2000); James Brooke, *An Industrial Park in North Korea Nears a Growth Spurt*, N.Y. TIMES, Feb. 28, 2006, at C5.

179. See Yang, *supra* note 177, at 33-34.

180. PERRY & YOSHIHARA, *supra* note 88, at 78-87.

181. See U.S. DEP'T OF STATE, BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, BACKGROUND NOTE: NORTH KOREA (2005), <http://www.state.gov/t/pa/ei/bgn/2792.htm>.

North Korea has sought to broaden its formal diplomatic relationships. In July 2000, North Korea began participating in the ASEAN Regional Forum (ARF), with Foreign

relationships extends no further than the instrumental pursuit of its own interests at best.

North Korea claims that if it just gets sufficient humanitarian aid, then it would be sustained thereby.<sup>182</sup> The root problem is more foundational, though: its economic system has failed.<sup>183</sup> North Korea is, however, experimenting with economic free enterprise zones, which seem to be a step in the right direction as far as increasing production.<sup>184</sup> It has remained, though, unwilling to cut military spending, which would free the necessary resources to be able to feed their country.<sup>185</sup> The means to help its citizens, and the people inside North Korea, is within North Korea's own grasp, but rather than increasing overall production, it has even cut food rations to a portion of its populace during the latter part of the 1990s.<sup>186</sup>

Obviously, to help open up the society and the economy, North Korea should implement reforms that move towards a more free-market, capitalistic system that rewards industriousness, productivity, and enterprise. It has made slight steps in that direction as mentioned, and trade, especially with South Korea, has increased dramatically<sup>187</sup>—even as it has evaporated with almost the entire rest of the world. But North Korean so-called “trade” is more charity than anything else, where South Korea is helping North Korea, and getting little to nothing in return, except the continued animosity and hostility of the Pyongyang regime.<sup>188</sup>

---

Minister Paek Nam Sun attending the ARF ministerial meeting in Bangkok. The D.P.R.K. also expanded its bilateral diplomatic ties in that year, establishing diplomatic relations with Italy, Australia, and the Philippines. The U.K., Germany, and many other European countries have established diplomatic relations with the North, as have Australia and Canada.

*Id.*

182. See Joseph Kahn, *North Korea Says It Will Abandon Nuclear Efforts*, N.Y. TIMES, Sept. 19, 2005, at A1.

183. See Yang, *supra* 177, at 32 (comparing the 1999 per capita incomes and total trade of the two nations, when North Korea was at \$714 per person and \$1.48 billion in trade, while South Korea stood at \$8,581 and \$263.5 billion respectively).

184. See Brooke, *supra* note 178.

185. See *N. Korea: Starving for Missiles*, *supra* note 171.

186. See James Brooke, *Threats and Responses: Asian Arena; Defectors Want to Pry Open North Korea*, N.Y. TIMES, Jan. 9, 2003, at A12. “In the mid-1990’s, during a famine, [a North Korean defector] recalled, ‘they had this slogan: “without the candy bowls, you can still live; but without bullets, you cannot survive.’”” *Id.*

187. Yang, *supra* note 177, at 33.

188. *Id.*; Bosworth, *supra* note 150, at 28 (arguing that the large cost of reconstructing north Korea’s collapsed economic infrastructure “will have to be carried, in effect, on the balance sheets of South Korea’s government, South Korea’s corporations, and, ultimately, South Korea’s households”).

Representative Lantos indicated that sanctions against North Korea already exist.<sup>189</sup> One scholar suggests that U.S. economic sanctions against North Korea have not worked to force North Korea to change.<sup>190</sup> However, these sanctions provide a bargaining chip that allows the U.S. to maintain a policy of containment and appeasement that at least keeps the crisis on the Korean peninsula from worsening.<sup>191</sup>

### 3. A More Hands-Off Solution to Economic Development

To promote change, however, a better approach would be, at the very least, continued containment and deterrence, where nations such as Japan and the United States—and especially South Korea—take the path of patiently waiting, and perhaps in some ways accelerating, an internal implosion: the demise of North Korea from within. This would require nothing more than ceasing, or at least dramatically reducing, trade and humanitarian aid so that North Korea would be forced to negotiate more broadly—and more honestly.<sup>192</sup> Current trade and humanitarian efforts are undoubtedly paved with good intentions and compassion. However, they also help to reinforce a terrible regime, one that has miserably failed its people, so that such aid may be delaying the internal collapse of North Korea. The one drawback is that North Korea may respond to economic reductions with military force; thus, South Korea and her allies must maintain a substantial military deterrent as outlined above.<sup>193</sup>

One can argue that even if North Korea will collapse, it is better for them to collapse with better economic conditions in order to alleviate the burden of South Korea, as well as other nations and organizations that would help. However, it seems that given the determination of Kim Jong-Il and his regime to hold on to power at all costs, and to orient the whole regime to maintaining a grip on power rather than serving the common good of the populace, it is highly likely that aid to North Korea would only tend to increase the grip that Kim Jong-Il and his cronies have on the country, especially given the diversion of aid to government and military personnel rather than the peasants who need it most.<sup>194</sup>

---

189. Lantos Speech, *supra* note 163.

190. See Drennan, *supra* note 10, at 159.

191. Paul VanWagenen, Note, *U.S. Economic Sanctions—Non-Traditional Success against North Korea*, 32 *LAW & POL'Y INT'L BUS.* 239, 239–40 (2000); see also Harold Hongju Koh, *On American Exceptionalism*, 55 *STAN. L. REV.* 1479, 1494 (2003) (arguing that phasing down sanctions and increasing food aid would improve U.S.–North Korean talks).

192. International organizations and other nations provide North Korea with hundreds of thousands of tons of food aid, and South Korea provides over 35 percent of the humanitarian assistance. Yang, *supra* note 177, at 32.

193. See discussion *supra* Part V.A.3.

194. Kongdan Oh calls those who favor trade, “the engagement school,” while those who think that economic aid to North Korea is not a good idea, “the confrontation school.” Kongdan

#### D. *Ethnic and Nationalistic Propaganda*

##### 1. Background

Hwang Jang Yop<sup>195</sup> indicated that North Korea is seeking to foment favorable political conditions within South Korea.<sup>196</sup> These efforts seem to be working on various different fronts. For example, the current president and his predecessor, as well as many members of the South Korean legislature, have socialist tendencies,<sup>197</sup> leading South Korea in the direction *towards* the failed communism that has been happening in North Korea. From the government, there increasingly have been elements that have been favorable towards North Korea and its system—which is strange, given the domestic disaster that is North Korea, and the relative paradise by comparison that South Korea has become.<sup>198</sup>

Additionally, according to the Seoul bureau chief of Time Magazine,<sup>199</sup> the South Korean media is reluctant to report North Korean abuse and aggression, whether to Japan or to South Korea itself, but it is quick to trumpet stories that

---

Oh, *The Problem and Promise of Economic Cooperation*, in KOREA BRIEFING: TOWARD REUNIFICATION (David R. McCann ed., 1997). Oh suggests that economic dealing with North Korea will help only North Korea in the short term, but that eventually South Korea will need to expand and integrate to sustain its growth. *Id.* at 46–47.

195. Hwang Jang Yop, the highest-level defector from North Korea, has dedicated the remainder of his life to try to find the path of peace for the Korean peninsula. James Brooke, *North Korean Defector Plans Talks in U.S.*, N.Y. TIMES, Oct. 27, 2003, at A5. No better or higher insider view exists of the reclusive North Korean regime. Previously, he had served as president of the most prestigious university in North Korea, Kim Il Sung University. *Id.* Also, he had headed up the now-defunct legislature. Rebecca Ward, *Defector Believes Pyongyang Would Not Use Weapons of Mass Destruction*, INFORMATION WARFARE SITE, <http://www.iwar.org.uk/news-archive/2003/11-04-7.htm>. Overall, he held the 24th highest position in the North Korean hierarchy. Lee Wha Rang, *North Korea's Hwang Jang Yop Saga Continues*, KOREA WEB WEEKLY, <http://www.kimsoft.com/korea/nk-whang.htm#how> (last visited Mar. 17, 2006). Hwang also formulated the *Juche* philosophy, the primary propaganda framework for North Korea. Brooke, *supra*, at A5. After defecting, he considered himself a criminal for his complicity with such a regime: he deeply regrets his involvement at the highest levels of the North Korean government. See Hwang Jang Yop, Speech to the People of the Republic of Korea at the R.O.K. Agency for the National Security Planning (July 10, 1997), available at <http://www.fas.org/news/dprk/1997/bg152.html#2> [hereinafter Yop Speech]. One of my law students translated for him when he addressed the U.S. Congress in 2004.

196. See Rang, *supra* note 195 (“Hwang’s main theme is that he came over to Seoul to warn of the ‘impending’ invasion from North.”)

197. See B.J. Lee, *Is South Korea Socialist?*, NEWSWEEK, July 14, 2003, at 44; Owen Rathbone, *South Korea's Socialist Face*, THE AMERICAN DAILY, July 17, 2003, <http://americandaily.com/article/3092> (“[Current president Roh Moo-hyun] has consistently . . . shown himself be pro-labor or quasi-socialist.”).

198. Lee, *supra* note 14, at 159–61.

199. Donald Macintyre, Time Magazine Seoul Bureau Chief, Speech delivered at Handong International Law School (July 11, 2003).

magnify any real or perceived transgression of a soldier or any one else from the United States.<sup>200</sup> There has emerged a naiveté combined with wishful thinking about the intentions of North Korea, and a willful disbelief of the bellicose intentions of North Korea on the part of a good number of South Korean youth, who never experienced the Korean War. The Time Magazine bureau chief said when he visited the law school, at which I served as a founding professor, that the South Korean media tends to downplay or even ignore a lot of North Korean acts of aggression, whether it be sending submarines down to South Korea where spies emerge and infiltrate, or naval skirmishes between North and South Korea near the borderline, or North Korea's wrongful actions against Japan, such as the kidnapping of innocent Japanese civilians conscripted into teaching North Korean officials Japanese.<sup>201</sup> These stories receive relatively low or little press, whereas when anything seems even remotely like a U.S. soldier doing wrong, the headlines magnify disproportionately.<sup>202</sup> Such reporting tends to drive a wedge between South Korea and the United States. North Korea actively has sought to take advantage of, and deepen, any rifts or disagreements between these allies, as well as with other involved countries (such as Japan, Russia, and China).<sup>203</sup>

In addition, South Korean media and other sources, such as books, have tended to demonize the U.S. while indicating attractive points of North Korea.<sup>204</sup> These sources have helped to inculcate in the younger generations a sizable degree of anti-Americanism as well as pro-North Korean sentiments.<sup>205</sup> North Korea regularly seeks to implant anti-American and pro-North Korean propaganda in South Korea, and it seems that they have done so successfully to a large extent.<sup>206</sup> As an example, North Korea likes to say that it has to liberate South Korea from U.S. imperialism and domination, and thus damages the pride of South Korea by, in essence, speaking of South Korea as if it were a colony under the thumb of the United States.<sup>207</sup>

Recently, a professor at Seoul National University (considered the leading university in South Korea) who had taught sociology at the University for more than thirty years was discovered to be a North Korean spy after two

---

200. *Id.*

201. *Id.*

202. See Yoon-Ho Alex Lee, *Criminal Jurisdiction Under the U.S.-Korea Status of Forces Agreement: Problems to Proposals*, 13 J. TRANSNAT'L L. & POL'Y 213, 215-16 (2003) (providing the example of large demonstrations that followed the trial of two U.S. soldiers who were acquitted by U.S. tribunals, as opposed to South Korean tribunals, of negligent homicide for running over two South Korean girls in 2002).

203. Lee, *supra* note 14, at 156-58.

204. See *id.* at 159.

205. *Id.* at 158.

206. *Id.* at 156-58.

207. See *id.*

fellow spies were linked to him.<sup>208</sup> These spies confessed that this professor emeritus had been a North Korean spy all along.<sup>209</sup> North Korea has thus been able to infiltrate influential centers of South Korean culture, and the culture, sadly enough, seems to be swallowing more of the North Korean propaganda and other reinforcing messages.<sup>210</sup> Ironically enough, such devious communication exists in South Korea because as a developing democracy, it allows incomparably more freedom of speech than North Korea.

There are also appeals to Korean nationalism, such that the common bond of Korean ethnicity is touted as being more important than other pieces of common ground, such as the extensive common ground that the United States and South Korea share, both in terms of their inner relationship, but also the common ground in terms of their political systems. North Korea is an entirely different sort of society economically, politically, religiously, and socially; there exists much more common ground, and much more of a relationship, between South Korea and the United States than between South Korea and North Korea.<sup>211</sup> The South Korean media, a significant portion of university students, and now many government officials in South Korea who are sympathetic with the North Korean regime, see the United States as a big bully against North Korea and an exploiter of South Korea.<sup>212</sup> These South Koreans say they see North Korea as one of us, “our people,” as fellow ethnic Koreans. For many, especially in the generations in South Korea who did not experience the Korean War, it is possible that affinities with the U.S. politically, socially, economically, and legally can be overshadowed by the common ethnic blood that is shared between North and South Korea.

Playing into this misguided identity politics is the strong nationalism of Koreans as *Koreans* (not North and South Koreans) and a strong sense of ethnic identity that has not only survived many invasions, many attacks, and many attempts to dominate or even colonize it, but has grown stronger in resistance against outside attacks. That being the case, they are susceptible to this sort of propaganda and rhetoric. There are many in Korea, especially among the younger generations and the media, who want the United States out.

---

208. Nicholas D. Kristof, *Seoul Said to Foil Spy Ring for North That Included Top Scholar*, N.Y. TIMES, Nov. 21, 1997, at A7.

209. *Id.*

210. See Gregory Henderson, *The Politics of Korea*, in TWO KOREAS—ONE FUTURE?, *supra* note 158, at 95, 108 (stating that North Korea “rules through exceedingly concerted and consistent propaganda and socialization programs in an isolated polity”).

211. See Oh, *supra* note 40, at 312–15 (explaining that since the Armistice, the political and economic interests of the two nations have diverged considerably); see also Charles K. Armstrong, *The Politics of Transition in North and South Korea*, in KOREA BRIEFING: TOWARD REUNIFICATION, *supra* note 194, at 5 (“Beyond the state of transition . . . North and South Korea can hardly be more different.”).

212. See Lee, *supra* note 14, at 155–59.

Indeed, that plays into the hands of North Korean propaganda, which says South Korea is not free and must be liberated by North Korea from under the imperialist fist of the U.S.<sup>213</sup> This way of thinking and feeling plays right into the hands of North Korea, and if it was not for the deterrent of American military might, South Korea might have already been overrun by North Korea, and there would be a unified Korea under Kim Jong-Il and the totalitarian dictatorship thereof.

The North Korean regime puts the entire society in a straitjacket. It has at least ten known concentration camps, where political dissidents are tortured and executed,<sup>214</sup> and a regime that has had many people literally starve to death or suffer greatly from malnutrition and starvation.<sup>215</sup> North Koreans do not have the ability to socialize freely. They have no freedom of association, no freedom of press, no freedom of expression, no freedom of speech, and no freedom of religion.<sup>216</sup> The rights, freedoms, and privileges that Americans, and even South Koreans, can at times take for granted are non-existent in North Korea. Since there is no freedom of movement either, a North Korean citizen cannot travel freely out of the country.<sup>217</sup> It is an iron cage of a society with the canary inside wasting away—and certainly not singing.

## 2. Responses, or a Lack Thereof

Deep historic ties exist between South Korea and the U.S., given that South Korea and the U.S. have been close allies over the past half-century. In fact, the development of the two Koreas is intimately linked to the influence of other nations. Just as North Korea is an exaggerated version of Maoist China and Stalinist Soviet Union, through U.S. protection and investment, South Korea has developed into a much more free-enterprise, democratic, and open society than its northern counterpart.<sup>218</sup> So there are extensive social, economic, political, religious, educational, and cultural ties.

These ties ought not be taken for granted or subsumed under the anti-U.S. rhetoric barrage tilting the culture. A solution would be for those in power in South Korea, and those in the media sympathetic to U.S.–South Korean ties, to promote the affinities between the two nations. South Korea must learn that all it has received back from North Korea after it has provided extensive aid and economic investments has been continued hostility and an unrelenting

---

213. *Id.* at 156–58.

214. See Robert Windrem, *Death, Terror in N. Korea Gulag*, NBCNEWS.COM, Jan. 15, 2003, <http://msnbc.msn.com/id/3071466>.

215. Amnesty Int'l, *Starved of Rights: Human Rights and the Food Crisis in the Democratic People's Republic of Korea (North Korea)*, <http://web.amnesty.org/library/print/ENGASA240032004> (last visited Mar. 17, 2006).

216. *Id.*

217. *Id.*

218. See Henderson, *supra* note 210, at 108–12.

aggressive stance against it. South Koreans need to know that they may be helping to sustain a failed regime, stoking the dying embers of that society. Whereas if South Korea were not subsidizing North Korea to the extent that it has, perhaps North Korea would have collapsed already. South Korea may be unwittingly delaying the peaceful unification of the Korean peninsula by virtue of their propping up of a malignant, totalitarian dictatorship.

## VI. LEGAL AND DIPLOMATIC SOLUTIONS TO NORTH KOREA

Although the above sections point to facets of an overall approach to dealing with North Korea, this Essay climaxes with international legal and international relations applications, which would do well to consider the above context.

### A. *Multi-party, Not Bilateral, Negotiations*

#### 1. The Problem with Bilateral

China and Russia, among others, have urged appeasement of North Korea's repeated demands for a bilateral security agreement with the United States.<sup>219</sup> Such a move would be inadvisable. Hwang Jang Yop, the highest-level defector from North Korea,<sup>220</sup> indicated that North Korea still is intent on taking over South Korea and the whole peninsula (unification by force is the official North Korean policy still), and in order to do so, it seeks to take the U.S. out of the picture.<sup>221</sup> The U.S. commitment to defend South Korea is the principal impediment for North Korea not to take over the peninsula<sup>222</sup>—after all, it was the U.S. forces, along with the United Nations and South Korean forces, which pushed back North Korean aggression during the Korean War. Thus, it would be a mistake to take Pyongyang's insistence upon the security agreement with the United States as simply the paranoid delusions of a regime that anticipates U.S. aggression to dismantle the regime. Rather, if Hwang Jang Yop's diagnosis is correct, and he has the best and highest inside view of the regime available, it is a very calculated effort for the North Koreans to take

---

219. Tatiana Zakaurtseva, *North Korean Nuclear Issue and Some Ways of Its Settlement from the Russian Point of View*, International Symposium on Peace and Prosperity in Northeast Asia 123, 130–34 (Jan. 13, 2005) (on file with author); Yunling Zhang, *Ending Confrontation in the Korean Peninsula: The Way Out*, International Symposium on Peace and Prosperity in Northeast Asia 145 (Jan. 13, 2005) (on file with author).

220. See *supra* note 195.

221. See Rang, *supra* note 195; Hwang Jang Yop, *Letter to Intellectuals of the World: The Mankind Must Head to Democracy*, Daily NK, June 5, 2005, <http://www.dailynk.com/english/read.php?cataID=nk02200&num=166>.

222. See Yop, *supra* note 221 (“Provided that the South Korea-US alliance remains strong, we can say that South Korea is superior to North Korea militarily.”).



the United States out of the picture as far as defending South Korea on the peninsula.<sup>223</sup>

A recent U.S. bipartisan congressional delegation claimed some success in speaking with the North Korean government.<sup>224</sup> Apparently, in an attempt to defuse the North Korean nuclear deterrent reasoning for its nuclear weapons program, the U.S. delegation indicated that Washington did not seek regime change nor plan a preemptive attack.<sup>225</sup> During this visit, the beleaguered North Korea reportedly offered to become a “friend” of the United States if Washington did not make inflammatory remarks about Kim Jong-Il’s regime.<sup>226</sup> The North Korean government also stated its desire to resume “substantive discussions” according to Rep. Curt Weldon (R-PA) with no option “off the table,” including an end result of “giving up their nuclear capability.”<sup>227</sup>

One should view this claim in light of North Korea’s history of mendacity, its obsessive effort to keep a grip on power, its past reaping of benefits without corresponding adherence to the obligations that it agrees to, and its continued goal to remove the United States from the picture on the peninsula. Even the day after this meeting, the official, government-controlled newspaper (*Nodohng Shinmuhn*) continued its usual anti-American tirades, calling the U.S. a “nuclear criminal.”<sup>228</sup> The North Korean newspaper, given the history of what has transpired thus far, appears more representative of Pyongyang’s actual stance. While speaking against the “inflammatory” language of the U.S., it frequently resorts to inflammatory anti-American language itself.

## 2. Multi-lateral the Preferred Course

Although there have been multi-lateral talks in Beijing, they have largely consisted of recitations of each country’s positions, with no real progress toward an agreement. The United States, North and South Korea, China, Japan, and Russia have attempted for months to set up a fourth meeting to pressure Pyongyang to abandon its nuclear weapons, a development that all the other countries *sans* North Korea claim to seek.<sup>229</sup> The Six-Party Talks have thus far failed to make much substantive progress in resolving the current crisis on the peninsula. For the most part, the delegates from each country have

---

223. *See id.*

224. *See* Sang-Hun Choe, *North Korea Back to Usual Line, Calls U.S. a ‘Nuclear Criminal,’* CHICAGO SUN-TIMES, Jan. 16, 2005, at 30.

225. Andrew Salmon, *N. Korea Will Return to Nuclear Discussions Six-Party Talks May Resume Within Weeks, U.S. Says*, INT’L HERALD TRIBUNE, Jan. 15, 2005, at 1.

226. Choe, *supra* note 224, at 30.

227. *Id.*

228. *Id.*

229. *Id.*

reiterated their positions and stood their ground.<sup>230</sup> There have been minor agreements as to the setting up of sub-committees that would address issues; however, no breakthroughs have yet emerged.<sup>231</sup> North Korea indefinitely suspended the Six-Party Talks this year (2005) while giving conditions for it to return to these multilateral talks.<sup>232</sup>

The effort to encourage North Korea to continue in the multi-lateral talks, however, is still a favorable one because it takes North Korea's regional neighbors and applies international pressure upon North Korea to disarm. However, Russia and China have thus far taken a less than tenacious stance towards North Korea and its nuclear weapons.<sup>233</sup> Yet the United States has let each country know that applying such pressure to North Korea would be desirable.<sup>234</sup>

Notwithstanding its shortcomings, indefinite suspension by North Korea, and the absence of a breakthrough, this approach is better than the United States appearing to engage in unilateral efforts. Accordingly, the present administration is doing a fine job of resisting the brinkmanship blackmail that North Korea again attempts to perpetrate. Allowing North Korea to go straight to the United States, over the head of South Korea, seriously undermines South Korea. If there is any bilateral action, it should first and foremost be between South Korea and North Korea, who after all live on the same peninsula in question, not North Korea and the U.S.

China's role could prove critical in resolving the crisis. As North Korea's best ally in the world, China's strong insistence that North Korea denuclearize the peninsula would carry the most weight. Whether China would do so remains in considerable doubt.

Russia, which has recently renewed its ties with North Korea, while not as influential as China, might have some sway with North Korea. North Korea still owes a sizable monetary debt to Russia.<sup>235</sup> Russia could offer a measure of debt forgiveness as an incentive for North Korea to relinquish its nuclear weapons and program.

Japan has aligned itself with South Korea and the United States. It takes a firm stance that North Korea must get rid of its nuclear arms.<sup>236</sup> Given North Korea's abduction of Japanese citizens and the sending of fraudulent bones of

---

230. See James Brooke & David E. Sanger, *North Koreans Say They Hold Nuclear Arms*, N.Y. TIMES, Feb. 11, 2005, at A1.

231. *Id.*

232. *See id.*

233. *See id.*

234. Zakaurtseva, *supra* note 219.

235. *Id.*

236. Akio Miyajima, *Some Thoughts and Comments on [the] North Korean Nuclear Issue*, International Symposium on Peace and Prosperity in Northeast Asia 165, 165 (Jan. 13, 2005) (on file with author).

one of them when the issue arose, some seventy percent of the Japanese public supports the levying of sanctions against North Korea.<sup>237</sup>

*B. A Role for the U.N. Secretary General*

These multi-party talks might benefit from outside assistance. The U.N. Secretary General, currently Kofi Annan, could use his office as a mediator for multi-party talks.<sup>238</sup> Passive attempts to make the Secretary General office available, as well as attempts to diminish tensions by visiting the respective countries, South and North Korea, have not helped in the past.<sup>239</sup> Yet, when all U.S. attempts failed, the Secretary General used his office to negotiate the release of captured U.S. airmen after the Korean War.<sup>240</sup> A role as mediator for an existing multi-party framework may help drive the talks.

North Korea has stated, however, that it does not consider the U.N. a neutral party.<sup>241</sup> The argument stems from the U.N.'s condemnation, and subsequent military action against, the North Korean aggression that started the Korean War.<sup>242</sup> It conveniently ignores the aid that U.N. organizations have rendered to North Korea.<sup>243</sup>

*C. Implementing This Strategy*

Hwang Jang Yop also indicated that Kim Jong-Il is a coward, and capriciously changes his decisions based on his mood.<sup>244</sup> If that is so, it is possible that a course of diplomacy that is incrementally increased to the point of actively going in and disarming North Korea at the last stage of this process might be the best thing—to call North Korea's bluff and see whether or not Kim Jong-Il proves to be as courageous as Saddam Hussein was—darting from spider hole to spider hole and offering very little resistance to U.S. forces notwithstanding his inflated rhetoric.

However, this would not be the first or even most desirable step in the process—it should come only if prior efforts fail. A call for continued multi-lateral pressure from other countries and international organizations, with resort as much as possible to international law, should continue—whether or not North Korea returns to the Six-Party Talks. Additionally, invitations to

---

237. *Id.* at 168.

238. CHI YOUNG PAK, *KOREA AND THE UNITED NATIONS* 99 (2000).

239. *Id.* at 106–07.

240. *Id.* at 103.

241. *See id.* at 101–02 (describing the justification of Secretary General Trygve Lie's "bold action" in response to the Korean crisis).

242. *See id.* at 102.

243. *See, e.g.,* Maggie Farley, *U.N. Rejects North Korea's Assertion That It Can Do Without Food Aid*, L.A. TIMES, Sept. 24, 2005, at A6 (describing U.N. efforts to increase humanitarian aid to North Korea).

244. *See* Yop Speech, *supra* note 195.

North Korea to engage in negotiations either through the good offices of the U.N. Secretary General and/or to the multi-lateral Six-Party Talks can be extended to Pyongyang again.

Step by step, the heat can be raised on North Korea, and as the heat is being raised, the drive for accountable ways (also known as CVID: Complete, Verifiable, and Irreversible Dismantlement)<sup>245</sup> in which North Korea could indeed be disarmed can be pursued. After the heat increases sufficiently, giving some positive incentives for North Korea to comply could increase the likelihood of a peaceful resolution.<sup>246</sup> Both sticks and carrots (but sticks first<sup>247</sup>) can be incrementally ratcheted up, step by step, stage by stage, to the point where if none of these things work, only then would it be time for a very proactive international effort to disarm North Korea. Such an approach seems to be the best means of dealing with the North Korean crisis because softer approaches have clearly failed repeatedly in the past.

Giving positive incentives and a soft landing or a soft way out after turning up the heat and pressure might be much more persuasive to a regime that operates on the basis of fear and intimidation of its own people, as well as its regional neighbors, and indeed, the world.<sup>248</sup> Along the lines of this incremental ratcheting up, it could include an agreement with specific resort upon noncompliance to the U.N. Security Council and the International Court of Justice (ICJ), and whatever is maximally possible through the International Atomic Energy Agency (IAEA).<sup>249</sup>

Along these lines, it could then help to have U.N. Security Council resolutions (for example, through Article VI of the U.N. Charter)<sup>250</sup> or other assertive action.<sup>251</sup> The basis for such resolutions and possible sanctions can

---

245. Zakaurtseva, *supra* note 219, at 126.

246. See Robert J. Art, *Coercive Diplomacy: What Do We Know?*, in *THE UNITED STATES AND COERCIVE DIPLOMACY*, *supra* note 10, at 359, 402.

247. *THE UNITED STATES AND COERCIVE DIPLOMACY*, *supra* note 10, culls several lessons from the history of U.S. coercive diplomacy. It seems that in this incremental ratcheting up, the stakes can be made more and more serious for North Korea, and as that pressure is being applied, perhaps a way out, including positive incentives for verifiable disarmament could look increasingly attractive.

248. *But see* Drennan, *supra* note 10, at 193–96 (suggesting that the Clinton administration's reliance on incentives encouraged Kim Il Sung's brinkmanship tactics almost to the point that he finally crossed the only real limit the U.S. had—the development of nuclear weapons).

249. A weakness of the IAEA is that it does not provide for resort to the ICJ. See Drennan, *supra* note 10, at 164 (“The IAEA . . . lacks both the mandate and the means to enforce compliance with the terms of IAEA and [Non-Proliferation Treaty] membership.”).

250. Zakaurtseva, *supra* note 219, at 142–43, recommends an *in camera* meeting of the Security Council.

251. A reason to think that U.N. Security Council action could help is that during the early 1990s, North Korea backed down from its initial threats to withdraw from the Non-Proliferation Treaty following an IAEA appeal to the U.N. Security Council. PAK, *supra* note 238, at 135.

lie squarely on the multiple instruments of international law that North Korea has violated. Consider that it has broken every single major agreement that it has made, whether with other countries or international organizations, including the biological weapons convention,<sup>252</sup> the cease-fire agreement after the initial Korean War,<sup>253</sup> the 1991–92 agreements with South Korea,<sup>254</sup> the 2000 agreement after the summit between the leaders of South and North Korea,<sup>255</sup> the 1994 Agreed Framework,<sup>256</sup> the IAEA dictates,<sup>257</sup> and the Non-Proliferation Treaty (NPT) that it belonged to since 2003.<sup>258</sup> Hwang Jang Yop explains how North Korea only enters into such agreements for tactical gain—not with any intention to restrict itself based on legal instruments.<sup>259</sup>

There is an interesting secondary role that the General Assembly can play if the U.N. Security Council is paralyzed by the abuse of a veto by, for example, China, who would be the most likely to veto actions, including resolutions or sanctions against North Korea.<sup>260</sup> It can take the initiative to recommend action by the U.N. Security Council in such situations while passing resolutions of its own.<sup>261</sup>

There should be international, not just U.S. verification of North Korea's disarmament. Furthermore, there should be international assurance that North Korea complies with international organizations such as the IAEA, rather than ejecting the IAEA inspectors, as they did in the past.<sup>262</sup> Otherwise, the acceptability and impunity of nuclear proliferation would be a message learned by other potentially dangerous regimes. Ideally, it would be best if North Korea returns to the NPT—given that it was the first country in history to withdraw from it and disavow it in 2003.<sup>263</sup> Regardless of North Korean

---

252. See Anna Fifield, *Asia-Pacific: Pyongyang is Stepping Up its Nuclear Might*, *Seoul Claims*, FIN. TIMES, USA, Feb. 5, 2005, at 2.

253. PAK, *supra* note 238, at 84.

254. GILLS, *supra* note 7, at 233–34.

255. See Oh, *supra* note 40, at 314–15 (describing the deterioration of the likelihood of Korean reunification despite the 2000 summit).

256. Koh, *supra* note 191, at 1492–93.

257. PAK, *supra* note 238, at 145.

258. *Id.*

259. *Defector Warns of North Korea War Plans, Despite Economic Plight, No Near-Term Collapse*, KOREAUPDATE, July 21, 1997, at 1–2.

260. PAK, *supra* note 238, at 141–42. This role for the General Assembly emerged out of the Uniting for Peace resolution precedent. *Id.* at 110–11.

261. *Id.* at 110. See *id.* at 109–14 for a fine delineation of the Uniting for Peace resolution in the context of the U.N. Charter Articles 10, 11, 12, and 24, and their historic interpretation.

262. See GILLS, *supra* note 7, at 236.

263. See Koh, *supra* note 191, at 1493.

withdrawal from the NPT, there remains little doubt that they breached it while still a party to it.<sup>264</sup>

Again, it is worth stressing that South Korean and U.S. military forces ought to put in place as many defensive measures as possible to deter North Korean aggression. The United States must reaffirm a strong determination to defend South Korea. What North Korea would perceive as U.S. weakness or anticipated non-involvement could prove catastrophic for the peninsula.

In this whole process of external pressure, North Korea could come closer and closer to an internal collapse,<sup>265</sup> in which case the possibility for reunification exists. On the other hand, the threat of China perhaps stepping in and grabbing North Korea would then be a distinct possibility. China, however, denies a desire in this direction.<sup>266</sup>

There are various factors that have been correlated to increase the likelihood of success for the course of coercive diplomacy, and each of these can be applied to the North Korean context.<sup>267</sup> Although each context is not identical to other contexts, certain analogies may be drawn.

## VII. CONCLUSION

A situation as complex as the current North Korean crisis<sup>268</sup> requires an understanding of history<sup>269</sup> and context, a consideration of options and ideas from various angles (including legal), and courageous yet not foolhardy implementation. The stakes could rise as high as not only another Korean War, but at its worst, even World War III, if countries such as China, Russia, Japan, and the United States all enter the fray.

On the other hand, a successful resolution can build a bridge towards peaceful reunification, which could help considerably in stabilizing the region, stimulating growth and cooperation, and averting a horrendous cataclysm. If the thoughts in this Article help move the situation towards greater understanding and resolution through implementation in even a small way, it will have fulfilled its primary *raison d'être*. If it at least gives more clarity to

---

264. See, e.g., Drennan, *supra* note 10, at 165 (documenting U.S. intelligence indicating North Korea secretly developed nuclear military capabilities in 1989).

265. See KIM ET AL., *supra* note 71, at 7.

266. Yunling Zhang, *Ending Confrontation in the Korean Peninsula: The Way Out*, International Symposium on Peace and Prosperity in Northeast Asia 145, 151–52 (Jan. 13, 2005) (on file with author).

267. See Drennan, *supra* note 10, at 193 (calling the Korean nuclear crisis a “textbook example of coercive diplomacy”).

268. The conflict between the two Koreas has its own encyclopedia. HOARE & PARES, *supra* note 89.

269. For more about how the two Koreas developed during their first thirty years as separate nations, see JOUNGWON ALEXANDER KIM, *DIVIDED KOREA: THE POLITICS OF DEVELOPMENT, 1945–1972* (1975). For a more far-ranging historical perspective, see GILLS, *supra* note 7.

the issues involved so that all concerned may see more sharply, then it was not written in vain. While at best a work in progress as the actual situation continues to unfold, it aims to provide constructive insight into a very precarious, real life situation that cries out to be understood and addressed—rather than ignored.