

The Exception that Makes the Rule

North Korea & the NPT

By Wade L. Huntley | May 2005

The problems for international security posed by North Korea's nuclear ambitions receive abundant attention and analysis. On the eve of the 2005 Review Conference for the Nuclear Non-Proliferation Treaty (NPT), the effect of North Korean actions on the treaty deserves specific attention, particularly because mitigating the impact of those actions and solving the larger nuclear crisis are not necessarily convergent goals.

Only through a comprehensive negotiated settlement can the Korean Peninsula be kept non-nuclear peacefully. However, if a negotiated settlement provides unique inducements to North Korea to return to compliance with NPT obligations as a non-nuclear state, other states might be tempted to resist compliance in hopes of wresting similar concessions for themselves. Should treating North Korea as an exceptional case be resisted in the interest of protecting the overall credibility of the NPT, even if this constrains the scope of a potential "grand bargain" in Korea?

North Korea Now

North Korea's nuclear aspirations have been problematic since it first joined the NPT in 1985. By the time the country accepted a safeguards agreement in 1992, it was already suspected of having extracted enough plutonium from its research reactor at Yongbyong to produce one or two nuclear weapons. Escalating confrontation over the inability of the International Atomic Energy Agency (IAEA) to verify North Korea's non-nuclear status was resolved only by direct U.S. intervention, culminating in the 1994 U.S.-North Korea Agreed Framework, which froze North Korea's plutonium-based nuclear power program.

The Agreed Framework held, more or less, until October 2002, when the Bush administration confronted North Korea with charges that it was undertaking a second, uranium-based nuclear program. Escalating iterated reactions led eventually to North Korea ending cooperation with IAEA safeguards,

commencing reprocessing of plutonium stored at the Yongbyong site, and withdrawing from the NPT.¹ By early 2005, just months before the 2005 NPT Review Conference, North Korea stated explicitly for the first time that it possessed nuclear weapons.²

Several elements of these developments deserve highlighting.

- The collapse of the Agreed Framework in 2002 was a critical watershed. Many analysts, whether supporting greater confrontation or greater engagement, fail to recognize that the status quo shifted fundamentally when the agreement disintegrated.

Until 2002, North Korea's nuclear ambitions were mainly contained. The worrisome spent fuel stockpiles, though still in the country, were under IAEA safeguards, and the research reactor was shut down. By most public accounts, the suspected uranium-based program was (and remains) not nearly as close to producing usable fissile material.

- Today, there are no direct restraints on North Korea's plutonium-based program. Moreover, by withdrawing from the Agreed Framework and the NPT without being meaningfully sanctioned (in part due to lack of viable options), North Korea has successfully moved the "line in the sand" considerably in its favor. Hence, return to a 1990s-style engagement of North Korea is no longer enough. Not only does North Korea's strengthened position make a new deal harder to reach, but even if Pyongyang wanted an agreement, the



advancement of its nuclear program will make verification of its compliance much more difficult and now makes reaching an accord harder as well.

North Korea is probably pursuing its nuclear programs as zealously as it can. Although fabrication of a nuclear explosive device is well within North Korea's technical competence, the rate of expansion of its fissile material stocks and its ability to produce a warhead light and durable enough to ride a missile to a target are more open questions.³

In advancing its nuclear game plan, North Korea now faces only two meaningful restraints. The first is simply technological limitations: time, competence, and resources. The second is China: Beijing holds several powerful coercive instruments, if it chooses to wield them. But there are limits to North Korea's sensitivity to Chinese coercion. There are also limits to China's willingness to utilize its influence on behalf of Washington's priority to deny Pyongyang a nuclear explosive, when Beijing's own priority is probably to prevent North Korea from exploding.

- The central question bedeviling many policymakers today is whether North Korea is prepared to reach an agreement entailing surrender of its nuclear capability. Engagement advocates tend to think it is and feel that North Korean belligerence is mainly maneuvering for a better bargaining position. Confrontation advocates usually think it is not and contend that North Korean accommodation is merely a tactic to assuage neighbors and buy time.

But this is the wrong question, because its answer is essentially unknowable. Given Pyongyang's opacity, both camps base their assertions more on conjecture than evidence. It may actually be the case (as is true for any government facing a complex decision) that North Korea's leadership has not made up its mind. Indeed, Kim Jong Il himself may not have decided exactly what agreement terms he would accept, and he may not come to decide unless and until, like Reagan at Reykjavik, the choice is at hand.

Hence, assumptions of any specificity concerning the inclinations of Pyongyang officials are a poor basis for making crucial policy decisions. Instead, policy should be premised on shaping the international environmental conditions within which North Korea must promulgate its actions.

Engagement (or confrontation, for that matter) should be supported not with the expectation that North Korea will respond predictably but rather with the aim of producing the best (or least worst) outcome regardless of Pyongyang's disposition of the day.

The importance of generating policy on the basis of prospective outcomes rather than conjectured mind reading brings the issue of North Korea's impact on the NPT squarely to the forefront.

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North Korea's ongoing intractability underscores the limits of the NPT's existing verification and compliance mechanisms (technically and politically). At the same time, a political accommodation absolving past NPT noncompliance in order to gain North Korean re-accession would also undermine those mechanisms—i.e., letting North Korea off the hook may encourage other NPT states to flout their obligations. This diplomacy tension pits resolving North Korea's nuclear challenges against preserving and strengthening the credibility of the NPT.

But this Gordian knot should be reckoned in its broadest context. North Korea's proliferation activities also threaten the NPT treaty in a number of less direct ways. The problem of North Korean exceptionalism bears on the wider issue of norms and expectations surrounding the treaty, which has become as important to global arms control and non-proliferation as the treaty itself.

Broadly, there are three areas of consequence to consider.

Consequence 1: Regional Repercussions

North Korea's nuclear ambitions already fuel palpable regional dangers and uncertainties. A steadily (if

slowly) growing arsenal of nuclear weapons in North Korea would aggravate these tensions, in some cases potentially past breaking points. If North Korea's actions trigger a nuclear proliferation domino effect in East Asia, the viability of the NPT would be shaken at its foundation.

The weightiest concern is that North Korea's ambitions would spur Japan to produce nuclear weapons. Japan has a peaceful nuclear power program that generates enriched plutonium, a space launch capacity sustaining advanced ballistic missile capabilities, and the technical expertise to reorient these activities into a sophisticated nuclear weapons development effort, if it chose to do so.

In reality, Japan is less likely to pursue nuclear weapons acquisition than many assert. Although Japan would perceive North Korea's development of an overt nuclear weapons capability as specifically threatening, it is not at all clear how, strategically, a Japanese nuclear capability would counter this threat. So long as U.S. nuclear-girded security guarantees to Japan are considered credible, a Japanese nuclear capability would add little to deter a North Korean nuclear attack. Moreover, nuclear acquisition by Japan would not only fuel North Korea's nuclear motivations, making any future nonproliferation accord that much harder to reach, but would also aggravate Japan's relations with South Korea, China, and other states that have not forgotten World War II.

This logic is apparent to many Japanese strategists. Hence, it is easy to envision that even a North Korean nuclear test might not push Japan over the proliferation edge. On the other hand, a collapse of confidence in U.S. security guarantees, especially if consequential to developments in Korea, might prove to be the crucial tipping point convincing key Japanese defense planners to take the nuclear plunge.

In South Korea and Taiwan, nuclear programs are less advanced than in Japan. However, both Seoul and Taipei have demonstrated nuclear ambitions in the past, and both might be more directly

motivated than Japan to respond to North Korean achievements.

In sum, although there are impediments to the nuclear proliferation domino effect that North Korea might trigger in the region, the impending threat of proliferation is bad news for the NPT. And if the arms race impediments weaken, and East Asian nuclear dominos begin falling, that's even worse news for the NPT.

Luckily, this very black cloud has a small silver lining. Today, the North Korea situation is spurring greater cooperation on nonproliferation in the region, especially between the United States and China. If this collaboration were linked more tangibly to the NPT rather than emerging as an independent alternative process, it could serve to strengthen the NPT globally. This could occur even if the collaborative effort fails to restore a non-nuclear North Korea, if it is at least successful in strengthening the regional commitment and mechanisms to suppress the nuclear contagion.

Conversely, a regional multilateral nonproliferation process constituted on a more ad hoc basis and increasingly independent of the NPT will tend to marginalize the treaty. This could occur (and might even be precipitated) if such an ad hoc process, against current odds, successfully produces a peaceful nonproliferation outcome on the Korean Peninsula.

Thus, the future relevance of the NPT is linked to the *manner* in which the current North Korea crisis is ultimately handled. However, this linkage is secondary to the *outcome* of the crisis. The worst case—an accelerating nuclear arms race eroding all semblances of regional security cooperation—could spark nuclear proliferation worldwide, completely undermining the NPT.⁴ The only sure way to prevent that outcome is to somehow achieve a non-nuclear North Korea.

Consequence 2: Proliferation

North Korea's reinvigorated nuclear program provides Pyongyang with the capability to fuel proliferation fires worldwide by exporting fissile materials,

nuclear weapons development technologies and expertise, or even completed operational weapons. This potential, highlighted by recent questions as to whether uranium discovered in Libya might have originated in North Korea,⁵ constitutes probably the greatest direct threat that a nuclear North Korea poses to the NPT and to global nuclear stability.

This proliferation potential is also the consequence of a nuclear North Korea that the Bush administration takes most seriously. In response, the White House launched the Proliferation Security Initiative (PSI), a coalition of countries aiming to combat weapons of mass destruction (WMD) proliferation through preventive interdiction of suspicious shipments traveling by land, sea, or air.⁶

The PSI can impede, but cannot with certainty prevent, North Korea from smuggling small containers of fissile materials onto the global black market if it is determined to do so. Because Pyongyang perceives the PSI as unnecessary, coercive, and illegal, this effort to prevent North Korean direct proliferation may actually aggravate the overarching problem.

As an ad hoc “coalition of the willing,” the PSI also lacks international accountability and legitimacy. Here is where an association with the NPT could enhance PSI’s arms control effectiveness. If initiatives such as the PSI can be linked to the NPT and to other efforts to curb WMDs, such linkage could provide those initiatives with both the oversight and the authority that they need to be genuinely effective and generally accepted. A linkage like this could and should be a two-way street, tapping the responsiveness and flexibility of ad hoc initiatives to prioritize substantive achievement over procedural details in multilateral compliance mechanisms.

Such synergistic linkage would have two positive impacts. Practically, it would strengthen the world’s available tools to keep proliferation problems from growing. Politically, it would enhance the NPT’s role as the locus for international nuclear nonproliferation cooperation.

Absent such a linkage, different prospects follow. If the PSI gains widespread participation and

effectiveness independent of the NPT, it could marginalize the NPT as the collaborative venue for nonproliferation compliance. If, on the other hand, horizontal nuclear transfers accelerate regardless of the PSI and other efforts, the credibility of all compliance mechanisms could be blemished, including pressure points employed by the NPT. So the stakes for the NPT are very high not only in stemming the proliferation activities that North Korea is now primed to undertake but also regarding *how* the regional and world communities choose to address this problem.

Consequence 3: NPT Withdrawal

North Korea is the first state to withdraw from the NPT. Pyongyang also reneged on both the 1992 agreement with South Korea to keep the Korean Peninsula nuclear free and on the 1994 Agreed Framework. Thus, there currently exist no formal international legal constraints on North Korea’s nuclear activities.

Interestingly, the Bush administration rarely expresses worries over the impact of North Korea’s NPT withdrawal on the viability of the treaty. This is hardly surprising, given the administration’s lack of faith in either nonproliferation or international treaties and its discomfort with U.S. obligations under the NPT’s Article VI—Washington’s only international legal commitment to complete nuclear disarmament. Both the indifference of the Bush administration toward North Korea’s NPT withdrawal and its antipathy for the NPT in general underscore the significance of North Korea’s NPT withdrawal for those concerned about the vitality of the NPT.

North Korea is fully within its international legal rights to leave the treaty, which stipulates that any party may withdraw on 90 days notice in the event that “extraordinary events... have jeopardized the supreme interests of its country.”⁷ Some NPT countries refuse to acknowledge North Korea’s withdrawal, and thus far NPT meetings have “sidestepped” the issue—presiding officials have diplomatically “placed in their pockets” the placard in front of North Korea’s empty chair—in order not to interfere with the

“six-party talks.” Whether the 2005 NPT Review Conference will similarly avoid the withdrawal problem, in light of the apparent stalling of the six-party talks, is an open question.⁸

A more complex matter is whether North Korea remains responsible for NPT noncompliance prior to its withdrawal. The NPT itself contains no provisions addressing this issue. The UN Security Council could take up the question of North Korea’s NPT noncompliance as a “threat to the peace,”⁹ but it could have done so just as easily before North Korea’s NPT withdrawal. The UN Secretary General’s recent high-level report on global security recommends that any state’s notification of NPT withdrawal prompt “immediate verification of its compliance” with the treaty; but it recommends no sanctions other than cessation of IAEA support.¹⁰ Even if it was not too late for “immediate” application of this provision to North Korea, the sanction would have been irrelevant insofar as North Korea ejected the IAEA when it withdrew from the NPT.

While North Korea’s withdrawal was within the legal stipulations of the NPT, its prior NPT noncompliance leaves its withdrawal far short of the “good faith” criterion that is a general principle of international law.¹¹ But ultimately, this issue is also something of a red herring; as a practical matter, whether or not North Korea will be pressed on its prior NPT noncompliance through formal mechanisms such as the UN Security Council will be a political rather than a legal determination.

Hence, the significance of North Korea’s NPT withdrawal is more political and symbolic. Perhaps the greatest concern is that, if North Korea’s withdrawal is not reversed and the country suffers no significant detrimental consequences, Pyongyang’s action will set a precedent eroding current NPT compliance norms. Other NPT non-nuclear states in similar situations may calculate that the political costs of their own potential withdrawal have been reduced by North Korea’s precedent. And unless some multilateral body challenges the viewpoint that North Korea’s NPT withdrawal has rendered its prior NPT

noncompliance moot (*de facto* if not *de jure*), NPT compliance norms will be even further compromised.

Iran is currently the top concern in this regard. North Korea’s NPT withdrawal is unlikely to *induce* Iran to act in kind. However, if North Korea continues to elude significant penalties for its withdrawal and prior noncompliance, Iranian leaders will learn important lessons about what consequences Iran might (or might not) incur by following suit, and how the repercussions might be managed.

At the same time, there is a real concern that making major allowances to gain North Korea’s re-accession to the NPT, especially if they entail any form of amnesty for past noncompliance, would also set a precedent that could induce other non-nuclear NPT parties to similarly try to bend the rules in their favor. Hence, concerning the NPT’s effectiveness as an international legal instrument, each potential course of action—whether accepting compromises to elicit North Korean re-accession to the NPT or accepting that North Korea’s NPT withdrawal may eventually render its past noncompliance moot—poses risks.

However, the notion of North Korea’s exceptionalism takes on a different significance when considering the NPT as the symbolic centerpiece of a now-much wider global effort oriented toward stemming proliferation and advancing disarmament. Although North Korea was formally a signatory to the NPT just like other non-nuclear parties, on a less formal but more real level, North Korea has *always* been an exception.

The NPT entered into force in 1970, but North Korea did not accede to the treaty until 1985. Although required to reach a safeguards agreement with the IAEA within 18 months, North Korea did not do so until 1992. The IAEA inspections that then commenced quickly produced evidence that North Korea had reprocessed much more plutonium than the tiny amount it had acknowledged, most likely in a series of activities dating from 1989. Ongoing interaction failed to resolve the discrepancies, and in February 1993 the IAEA, for the first

time ever, officially requested a “special inspection” of two key nuclear waste sites. North Korea refused the inspection and submitted its withdrawal from the NPT. Although it agreed to “suspend” this withdrawal one day short of the 90-day notice period, it did so asserting that it was no longer a full NPT party and denying the IAEA’s right to conduct even routine safeguards inspections. The crisis continued to escalate into mid-1994, by which time the United States circulated a plan for sanctions at the UN Security Council and began considering military action. Tensions began to ease only after former-President Jimmy Carter met with North Korean President Kim Il Sung in June, initiating the negotiations that produced the U.S.-North Korea Agreed Framework in August of that year.¹²

The 1994 Agreed Framework, though designed to eventually bring North Korea back into full compliance with IAEA safeguards, was a bilateral arrangement (not a formal treaty) reached outside of the NPT’s established verification and compliance processes. Although the Korean Energy Development Organization (KEDO), devised to implement many of the Agreed Framework’s provisions, incorporated South Korean, Japanese, and eventually European Union participation, ongoing progress regarding Pyongyang’s defiance remained primarily a function of the U.S.-North Korea bilateral relationship. From 1994 until the collapse of the Agreed Framework at the end of 2002, progress was fitful. In the end, the Agreed Framework did successfully freeze North Korea’s plutonium-based nuclear program, but it never succeeded in resolving discrepancies regarding past North Korean activities.

Thus, North Korea’s relationship to the NPT has always been exceptional. The country has never been in full compliance with its NPT obligations; its nuclear ambitions have been a known and persistent challenge. Treating North Korea uniquely in the current impasse hardly diverges from practices prevailing for the last 20 years.

Conclusion: North Korea and the NPT

A de facto nuclear North Korea increases pressures and prospects for other East Asian states to acquire

nuclear weapons as well. Growing North Korean nuclear weapons resources could also directly fuel proliferation ambitions elsewhere in the world. And North Korean success in avoiding meaningful repercussions for either its NPT noncompliance or its subsequent NPT withdrawal would set a negative example (if not a precedent) for other nations and would erode future arms control compliance.

These three consequences, taken together, suggest that North Korea’s nuclear weapons acquisition poses a far greater threat to the NPT than the legal and symbolic precedents that might be set by making exceptions for Pyongyang in order to reverse that acquisition. However unseemly those precedents might be, the priority is to find a way to a peaceful nonproliferation solution in Korea.

North Korea’s nuclear activities would pose these problems to global peace and security whether it had signed the NPT or not. If the world community allows complications from the fact that North Korea did sign the NPT to interfere with solving the basic problems of North Korea’s nuclear ambitions, it would be cutting off its nose to spite its face.

This conclusion does not justify exceptionalism willy-nilly. The concern over setting legal and symbolic precedents that could weaken prospects for future NPT compliance is real. Any unique treatment of North Korea should stem from a shared global goal of curbing nuclear proliferation. If this goal is kept paramount, and because the North Korean case has always been exceptional, detrimental precedent-setting can be mitigated.

The NPT has successfully prevented proliferation around the world and provides the strongest legal mechanism to compel disarmament by its five nuclear weapons signatories. However, it is under pressure today for not achieving enough on both counts. The stakes on keeping the NPT viable, if not vibrant, are very high.

In certain ways, the nuclear crisis on the Korean Peninsula offers opportunities for enhancing global nonproliferation and disarmament efforts, as well as challenges. Some of those opportunities can be realized even without a near-term or complete cessation of North Korea’s nuclear weapons ambitions. These

opportunities should be the focus of all those concerned about the long-term survival and vitality of the NPT. Sometimes, it is the exception that makes the rule.

Wade L. Huntley <wade.huntley@ubc.ca> is the director of the Simons Centre for Disarmament and Non-Proliferation Research and is a frequent contributor to Foreign Policy In Focus.

END NOTES

- ¹ For this author's own assessment of the breakdown of the Agreed Framework, see "Ostrich Engagement: The Bush Administration and the North Korea Nuclear Crisis," *The Nonproliferation Review*, vol. 11, no. 2, Summer 2004.
- ² James Brooke, "North Korea Says It Has Nuclear Weapons and Rejects Talks," *New York Times*, February 10, 2005.
- ³ Jon Brook Wolfsthal, "No Good Choices—The Implications of a Nuclear North Korea," Testimony before the U.S. House of Representatives International Relations Committee Subcommittees on Asia and the Pacific and on International Terrorism and Nonproliferation, February 17, 2005, at http://www.house.gov/international_relations/109/wol021705.htm.
- ⁴ Although specific national nuclear ambitions may be driven principally by immediate regional concerns, global-level factors (e.g., treaty and superpower circumspection) can induce restraint; the absence of these factors then becomes a permissive cause of proliferation.
- ⁵ Following initial reports, controversy emerged concerning how honestly U.S. officials had informed allies that the uranium had come to Libya through Pakistan, and whether North Korea was aware of its final destination. Moreover, the evidence was circumstantial that the uranium had originated in North Korea in the first place. See Dafna Linzer, "U.S. Mised Allies About Nuclear Export," *Washington Post*, March 20, 2005; David E. Sanger and William J. Broad, "Using Clues from Libya to Study a Nuclear Mystery," *New York Times*, March 31, 2005.
- ⁶ "Proliferation Security Initiative: Statement of Interdiction Principles," Fact Sheet, Office of the Press Secretary, The White House, Washington, September 4, 2003, at: <http://www.state.gov/t/np/rls/fs/23764.htm>.
- ⁷ The Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Article X, Paragraph 1, at <http://disarmament2.un.org/wmd/npt/npttext.html>.
- ⁸ "Walking the Nonproliferation Tightrope: An Interview with Ambassador Sérgio de Queiroz Duarte, President of the 2005 Nuclear Nonproliferation Treaty Review Conference," *Arms Control Today*, December 2004, at http://www.armscontrol.org/act/2004_12/Duarte_ACTversion.asp; Shinya Ajima, "Plan to Check Pullout of Nuclear Nonproliferation Pact Eyed," *Kyodo News*, February 7, 2005, at <http://home.kyodo.co.jp/all/display.jsp?an=20050207193>.

- ⁹ Charter of the United Nations, Article VII, at <http://www.un.org/aboutun/charter/index.html>.
- ¹⁰ *A More Secure World: Our Shared Responsibility*, Report of the High-level Panel on Threats, Challenges and Change, United Nations, 2004, p.45.
- ¹¹ Christer Ahlström, "Withdrawal from Arms Control Treaties," *SIPRI Yearbook 2004: Armaments, Disarmament and International Security* (Oxford: Oxford University Press, 2004), chapter 19.
- ¹² Joseph Cirincione, Jon Wolfsthal, and Miriam Rajkumar, *Deadly Arsenal: Tracking Weapons of Mass Destruction* (Washington: Carnegie Endowment for International Peace, 2002), pp.244-9.

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