

DOCUMENTI IAI

NORTH KOREA: A NON-PROLIFERATION TEST CASE

by Darryl Howlett

Paper presented at the international conference on “Transatlantic Security and
Nuclear Proliferation”
Rome, 10-11 June

IAI0505

ISTITUTO AFFARI INTERNAZIONALI

NORTH KOREA: A NON-PROLIFERATION TEST CASE

by Darryl Howlett

*“The dogs bark, but the caravan moves on”*¹

In January 2003, North Korea withdrew from the NPT, removed the monitoring devices installed by the International Atomic Energy Agency (IAEA) on the Yongbyon nuclear complex and ejected the IAEA’s safeguards inspectors.²

On 27 September 2004 North Korea claimed to have weaponized. This claim was repeated on 10 February 2005 at the time North Korea announced it was suspending for an indefinite period its participation in the six party talks involving China, Japan, Russia, North Korea, South Korea and the United States. More recently, reports have indicated that North Korea is preparing for an underground nuclear test.

If weaponization continues, this will represent a serious challenge to regional security in Northeast Asia and to the Treaty on the Non-proliferation of Nuclear Weapons (NPT). A pessimistic outlook, if the de facto nuclear proliferation by North Korea continues, could see further ‘proliferation chains’ in the region and beyond, the possibility of conflict on the Korea Peninsula, and spell further erosion or even collapse of the NPT.³ An alternative conclusion, based on a resolution of the current crisis leading to the dismantlement of North Korea’s nuclear programme, would serve not only to re-invigorate the denuclearization process for the Korean Peninsula that began fifteen years ago but also global efforts to stem proliferation. It is the latter of these two scenarios that forms the guiding beacon for this analysis, although it is the former that casts a foreboding shadow if a favourable outcome is not achieved.

International law is based on the expectation that any state entering an international legal treaty will fulfil its obligations. North Korea has disclosed its intent to abrogate the NPT and pursue a nuclear weapons capability as a result of its 2003 notification of withdrawal: this must be the interpretation to be drawn from North Korea’s statements and activities. This is in violation of both the spirit and the letter of the obligations North Korea has assumed. The possibility that some states might use international agreements as a cover for clandestine activities to pursue weapons procurement and development was highlighted in the 2004 UN ‘Report of the High-Level Panel on Threats, Challenges and Change’.⁴ If ways are not found to respond to such situations, then the credibility of global non-proliferation and disarmament efforts

¹ This is a quote taken from *Gone with the Wind* by Kang Sok Ju, Chief North Korean negotiator to the Agreed Framework talks on his insistence ‘that rejoining the NPT was impossible, stubbornly reiterating Pyongyang’s willingness to brave all consequences, even economic sanctions’, quoted in Joel S. Wit, Daniel B. Poneman, and Robert L. Gallucci, *Going Critical. The First North Korean Nuclear Crisis*, Washington D.C: The Brookings Institution, 2004, p. 56.

² Braun and Chyba, ‘Proliferation Rings. New Challenges to the Nuclear Nonproliferation regime’, *International Security*, vol. 29, No. 2, (Fall 2004), p. 10 quoting ‘Fact Sheet on DPRK Nuclear Safeguards’, Vienna: IAEA, May 2003

³ The notion of ‘proliferation chains’ comes from Lewis A. Dunn and William H. Overholt, ‘The Next Phase in Nuclear Proliferation Research’, research note, *Orbis*, Summer 1976, pp. 497-523.

⁴ ‘Report of the UN High-Level Panel on Threats, Challenges and Change’, (New York: United Nations, 2004)

would be severely compromised and other states might decide that this is an appropriate course of action.

Related to the issue of North Korea's withdrawal from the NPT is what the objective(s) of non-compliance procedures should be in this case: to ensure a return to the *status quo ante* without any apparent reward for non-compliance; to achieve the same objective but at the cost of undermining global non-proliferation efforts by offering positive benefits for a return to compliance; or to punish the non-compliance in order to deter others by acts such as the forced dismantlement of all nuclear facilities. Finally, what should be the objective when a return to the *status quo ante* appears impossible, with or without rewards?⁵

North Korea's activities over the past decade and a half also highlight shortcomings in the global treaty-based approach to dealing with proliferation. In response to this, additional measures have been introduced through the G8, the Proliferation Security Initiative and Cooperative Threat Reduction efforts. More will be required if the current dynamics of nuclear proliferation are to be addressed. As one policy paper has concluded, there is a need to develop a spectrum of incentives to dissuade those attempting to develop a nuclear weapons capability and establish more robust responses should dissuasion fail.⁶ Thus, in the case of North Korea, it will also be necessary to prepare, 'for the possibility that North Korea is unwilling to abandon its nuclear capabilities by reinforcing the diplomatic and military capabilities in the region with a view to enhancing deterrence and stability on the Korean peninsula and reducing incentives for other countries to follow North Korea's nuclear lead'.⁷

North Korea's withdrawal from the NPT

Article X.1 requires that for a state to withdraw legally it must: give notice of withdrawal to all parties to the NPT; give notice of withdrawal to the United Nations Security Council; provide a statement of the extraordinary events which it considers to have jeopardized its supreme interests; and, provide 90 days notice of withdrawal. This Article became the focus of attention when North Korea first announced in 1993 it was withdrawing from the NPT but later rescinded its action, and in 2003 when it withdrew again. Is this a unique situation or a precedent that other states will follow?

North Korea withdrew from the NPT while non-compliant with its safeguards obligations. North Korea 'suspended' its earlier withdrawal and claimed it was in a 'special status' under the Treaty. When, on 10 January 2003, North Korea again issued notice of withdrawal it fulfilled the 90-day notice required to enact this obligation but

⁵ For a discussion of compliance issues see: Serge Sur, ed., *Disarmament and Arms Limitation Obligations: Problems of Compliance and Enforcement*, (Geneva: UNIDIR/Dartmouth Publishers, 1994); Brad Roberts, 'Revisiting Fred Ikle's 1961 Question, "After detection—What?"', *The Nonproliferation Review*, Spring 2001

⁶ *The New Partnership: Building Russia-West Cooperation on Strategic Challenges*, Frances G. Burwell, rapporteur, Policy Paper, April 2005, Atlantic Council of the United States, p. 11.

⁷ George Perkovich, Jessica T. Mathews, Joseph Cirincione, Rose Gottemoeller and Jon B. Wolfsthal, *Universal Compliance. A Strategy for Nuclear Security*, Carnegie Endowment for International Peace, 2005, p. 188. See also, Gary Samore, 'The Korean Nuclear Crisis', *Survival*, vol. 45, no. 1, Spring 2003, pp. 7-8.

did not offer an explanation of what extraordinary event(s) had led it to take this action. The question of what happens in situations where a state withdraws from the NPT without any proven non-compliance by other parties was not considered at the time of the drafting of the Treaty but has become central since North Korea's recent actions.⁸

At the 2005 NPT Review Conference, Luxembourg, on behalf of the European Union, tabled a Working Paper designed to clarify the consequences of withdrawal.⁹ The EU paper was divided into four parts. Part I dealt with the wording of Article X and stated that although it was a states' sovereign right to withdraw from the Treaty, there was a need for the Conference to consider what the consequences of this were. Part II called for the Conference to 'reiterate' the legal obligations of Article X. These included that a "notice of withdrawal" (to be provided three months in advanced of intended withdrawal and containing details of the extraordinary events that have prompted it), must be given in writing to all parties to the Treaty and to the President of the UN Security Council. Additionally, the start date for such a withdrawal would be the 'date of transmission' to all relevant parties.

In Part III, further measures were suggested. These included that: on receipt of a notice of withdrawal, the Depositary States should initiate 'a consultation process of interested parties to explore ways and means to address the issues raised by the notification of intent, **taking also into account the state of compliance of the notifying party with its safeguards undertakings by IAEA**'; the UN Security Council was the final arbiter in cases of withdrawal and for that body to assess the causes of withdrawal, which under Article X have to be "related to the subject matter of the Treaty"; and, the deliberations of the Security Council should involve the possibility of requesting a 'special inspection of the notifying party'.

Finally, Part IV dealt with measures associated with the 'effects of withdrawal'. This section called on the Review Conference, among other things, to: reiterate 'the principle whereby a State will remain internationally liable for violations of the Treaty committed prior to withdrawal'; affirm 'that a withdrawal from the Treaty could in a given case constitute a threat to international peace and security'; and that 'any nuclear materials, facilities, equipment and technologies acquired from third countries' should be frozen, dismantled, not transferred and remain subject to IAEA safeguards.

Other papers and statements also referred to the issue of withdrawal from the Treaty. The statement by the United States referred to the central role of the UN Security Council in cases of withdrawal. It also called for the Council to examine the "extraordinary events" that prompted the action and for that body to consider: 'the possibility of alternative measures short of withdrawal to address and resolve the circumstances cited by the party'; and, 'the full range of options provided by the Charter

⁸ Darryl Howlett & John Simpson, Harald Muller and Bruno Tertrais, edited by Burkard Schmitt, *Effective non-proliferation. The European Union and the 2005 NPT Review Conference, Chaillot Paper*, No. 77, Institute for Security Studies, Paris, April 2005.

⁹ 'Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons', European Union common approach, Working Paper submitted by Luxembourg on behalf of the European Union. *NPT/CONF.2005/WP.32*, 10 May 2005

and warranted by the circumstances of the case'.¹⁰ The statement included proposals for the IAEA to continue its safeguarding role in the withdrawing state, the suspension of technical assistance, and 'prompt reporting' of 'any outstanding safeguards or other compliance concerns'.

The Working Paper submitted by Australia and New Zealand on Article X contained direct reference to action by the UN Security Council in the event of withdrawal.¹¹ This Paper proposed that the Council should have an automatic and immediate right to consider the circumstances surrounding withdrawal and for that body to deal with it appropriately.

Discussion of Article X at the Review Conference occurred in a Subsidiary Body to Main Committee III. The Statement by Japan referred to withdrawal as 'extremely serious', with the most serious case being 'a State's withdrawal from the Treaty after having developed nuclear weapon capabilities under false pretenses'.¹² In reference to the papers tabled by the EU, and by Australia and New Zealand, Japan expressed reservations in the proposals contained in them and called for measures that would serve both as a deterrent to withdrawal and for a rapid response in the case of such an event. Japan considered that measures requiring amendment to the Treaty would, 'not be realistic'. Instead, effort should be directed towards 'raising the cost of withdrawal rather than elaborating procedural steps before the withdrawal'.

The Statement by the Republic of South Africa on withdrawal made reference to the EU working paper submitted on the issue.¹³ South Africa was concerned that parts of the working paper would require amendment to the NPT:

South Africa views the first Parts I and II of this Working Paper as dealing with procedural aspects of withdrawal and in our view does not constitute an amendment of the NPT. However, Parts III and IV are more substantive, and if endorsed could be regarded as constituting an amendment to the Treaty.

Additionally, South Africa considered that it was not the intention of the drafters of the Treaty to discourage withdrawal and penalise such an action if this occurred. Rather, the Treaty expressly allows a state to withdraw as an 'exercise of its sovereign authority in certain defined circumstances'. Thus, to seek additional measures penalising withdrawal would require an amendment as allowed under the procedures in Article VIII of the Treaty.

¹⁰ Statement by Sally Horn, The Delegation of the United States of America to the 2005 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons, Main Committee III, Article X, New York, May 2005,

¹¹ Working paper on article X (NPT withdrawal) submitted by Australia and New Zealand, *NPT/CONF.2005/WP.16*, New York, May 2005.

¹² Statement by Mr. Takashi Nakane, Deputy Director-General, Non-Proliferation and Science Department, Ministry of Foreign Affairs, Representative of Japan to the NPT Review Conference in 2005 At the Subsidiary Body of Main Committee III, 20 May 2005.

¹³ Statement by The Republic of South Africa on The Issue of Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons in the Subsidiary Body Established in Main Committee III, New York, 20 May 2005.

Other parties expressed concerns about the impact that focusing discussion solely on Article X, and those states considering withdrawal, would have on Article IX relating to the commitment to attain universality of the Treaty. Thus, the issue of withdrawal also gave vent to the tensions in the NPT community between maintaining the integrity and cohesion within the Treaty and attempts to ensure its universality by encouraging India, Israel and Pakistan to become a party.

Because there was no final document at the 2005 Review Conference and little time was spent at the Conference discussing the initiatives proposed to clarify withdrawal, uncertainty remains on this issue. The EU has developed a common position, although the EU proposals for withdrawal have been subject to different interpretations. Other working papers and statements also referred to the serious nature of withdrawal, so the question of how to respond to notification in such instances and what might be done to deter it remains a vital issue for international peace and security.

Understanding North Korea's strategic culture and security concerns

What has also been suggested in the context of North Korea is for efforts to determine 'whether and under what conditions North Korea is willing to relinquish its nuclear capabilities'.¹⁴ Gaining an understanding of North Korea's strategic culture may be a guide to its negotiating behaviour and nuclear intentions, but due to the nature of the country it is not an easy task. The question it also raises is whether there is any real prospect for a change to North Korea's position on NPT withdrawal and nuclear weapons development?

Perceived threats to North Korea's existence are regarded as a key element of its strategic consciousness and as a rationale for the nuclear programme. These threats may emanate from military, cultural or economic sources. North Korea's sense of international isolation and uncertain security relationship with Russia and China, compared to the Cold War period, are linked to this. Leadership continuity and regime survival have equally been viewed as a principal motive force guiding strategic policy in North Korea.¹⁵

Finally, at the heart of North Korea's outlook is the *juche* philosophy, which seeks self-reliance from all outside influence. This philosophy also has implications for the nuclear programme. During the 1993-1994 crisis, for example the issue of 'self-reliance versus dependence on the outside world' was at the heart of a debate within North Korea between "conservatives" and "realists".¹⁶ Consequently, it has been suggested that the principal driving force stemming from this is the determination of the North Korean leadership to obtain a security assurance from the United States that it 'will not launch a preemptive or preventive military attack' against it.¹⁷

¹⁴ Perkovich, Mathews, Cirincione, Gottemoeller and Wolfstal, p. 187)

¹⁵ refs here

¹⁶ Wit, Poneman and Gallucci, *op.cit.*, pp. 75-6

¹⁷ Michael Horowitz, 'Who's Behind That Curtain? Unveiling Potential Leverage over Pyongyang', *The Washington Quarterly*, vol. 28, No. 1, p. 25.

Another factor could be the relationship between North Korea's conventional forces and the nuclear programme. North Korea is considered to have more than a million personnel under arms and additional numbers in reserve forces. This is thought to have a sizable impact on the state's economy, with estimates of the cost ranging from 20-30 per cent of the GNP. Reports have suggested that the conventional forces may be subject to cuts. Thus, one factor to consider is that the nuclear weapons programmes is to compensate for reductions in conventional forces.¹⁸

In what ways does this strategic culture influence North Korea's negotiating behaviour? It has been suggested that North Korea has a 'distorted worldview and warped expectations about how other countries will respond to its actions'.¹⁹ During the negotiations of the 1994 Agreed Framework the US delegation developed the following template for understanding North Korea's negotiating behaviour:

First, "impossible demands" frequently became possible to meet after the North Koreans suddenly took, in their words, a "bold step" to resolve problems they themselves may have created. Sometimes they simply stopped raising an issue; silence often meant consent. Second, positive suggestions early on or accepting language from Pyongyang's proposals kept the North Koreans focused on solutions, short-circuiting their inclination to engage in endless arguments. They rarely raised the ante when the Americans pursued this approach. Third, as in most negotiations, the real work was done in small informal meetings where possible solutions could be explored without the awkwardness of onlookers. Finally, Kang had a variety of ways to signal he was in negotiating mode, by emphasizing common points, presenting differences in a neutral fashion and speaking "frankly", and often ending meetings on an upbeat note.²⁰

Subsequent observations of North Korea's negotiating behaviour indicate a possible tactic of using false alarms to garner concessions. In 1998 there was concern that North Korea had embarked on a clandestine nuclear programme at Kumch'angri in violation of the Agreed Framework. The United States was granted access to the site in May 1999 and May 2000 in return for food aid and an easing of economic sanctions.²¹ Consequently, because 'no evidence was found of the suspected constructions...North Korea may have played up the Kumch'angri scare to exact concessions from the United States'.²²

The 1993-4 crisis was resolved by diplomacy but a military solution was considered seriously by the United States. The plan was to destroy the Yongbyon facility and end the plutonium programme; but the dilemma confronting military leaders was that if the fissile material had been moved to unknown locations, possibly

¹⁸ David Sanger, 'North Korea Says It Seeks to Develop Nuclear Arms', *New York Times*, June 10, 2003, p. A9, quoted in Michael O'Hanlon and Mike Mochizuki, 'Toward a Grand Bargain with North Korea', *The Washington Quarterly*, vol. 26, no. 4, 2003, p. 14 and endnote 18

¹⁹ Daniel A. Pinkston and Phillip C. Saunders, 'Seeing North Korea Clearly', *Survival*, vol. 45, no. 3, Autumn 2003, p. 80.

²⁰ Wit, Poneman and Gallucci, *op.cit.*, p. 61

²¹ Jung-Hoon Lee and Chun-In Moon, "The North Korean Nuclear Crisis Revisited: The Case for a Negotiated Settlement", *Security Dialogue*, vol.34, no 2, p. 142.

²² Lee and Moon, p. 143.

underground, the problem would not be resolved - although the option would buy time.²³

The role of the Six Party talks

Solving evolving nuclear situations by developing regional initiatives was also a feature of papers at the 2005 NPT Review Conference. Attention is therefore likely to focus on the possibilities for restarting these talks. Additionally, it has been proposed that this medium for potentially ending the North Korean nuclear crisis could serve as a vehicle for long-term stability in the region.²⁴ At the same time, it has been observed that the six parties have not always shared the same objectives or the means to attain them. Others consider that the three rounds of talks held so far in August 2003, February 2004 and June 2004 have yielded little real benefit and may have encouraged North Korea towards greater use of brinkmanship and intransigence on its nuclear programme.

What the talks may have accomplished is an understanding of the points of agreement and disagreement between the parties.²⁵ The key aspect is whether there is sufficient agreement between China, Japan, Russia, South Korea and the United States on the means to achieve the complete, verifiable, and irreversible dismantlement of the North Korean nuclear programme.²⁶

Coordination between the United States, Japan and South Korea has been viewed as a central element of a trilateral approach to the talks. It is reported they have agreed that in addition to eliminating North Korea's nuclear programme humanitarian aid to assist the people of that country is an important aspect of overall policy. Where the three parties have expressed differences is over whether the issue of North Korea's nuclear programme should be taken before the Security Council if it does not return to the talks and also engages in nuclear dismantlement. South Korea is said to oppose such a move while Japan and the United States are in favour.²⁷

At the talks, the United States has offered provisional multilateral security assurances, non-nuclear energy programmes, heavy fuel oil, progressive removal of economic sanctions, economic, humanitarian and technical assistance, and ultimately, the normalization of relations.²⁸ These would be concomitant on a clear commitment by North Korea to the verified dismantlement of its' nuclear programme. Former negotiator at the talks, Mitchell Reiss, has commented that:

²³ Wit, Poneman and Gallucci, pp. 102-107.

²⁴ The suggestion is that this forum could eventually become 'a permanent five power organization that would meet regularly to discuss various security issues in the region...', Francis Fukuyama, 'Re-envisioning Asia', *Foreign Affairs*, January/February 2005, p. 75.

²⁵ ref here

²⁶ ref

²⁷ *The Japan Times*, 8 May 2005. See also, Working Paper of Japan, *NPT/Conf.2005/WP.22*, para. 69, 4 May 2005

²⁸ 'U.S. Will Accept "Nothing Less" than Total Nuclear Dismantlement in North Korea, Kelly Says', US Department of State, *Washington File*, July 15, 2004.

North Korea has been chasing two irreconcilable goals. One appears to be some modest economic revitalization and acceptance by the international community. The other is nuclear weapons and missile delivery systems. It must recognize...that it cannot have both.²⁹

South Korea's approach to the six party talks emphasizes a process of reciprocal moves beginning with a six month freeze on North Korea's nuclear programme.³⁰ During the initial six-month period, the country would 'declare all of its nuclear programs, cease operation of these programs, seal nuclear materials and facilities and put them under international verification'. The dismantlement would begin 'within the six months of the freeze'. 'At the beginning of the freeze, the other parties would give North Korea security assurances, affirming that they "have no intention to attack, invade or seek regime change," and that they would provide "more enduring" assurances once the dismantlement is complete.

China is both the host of the six-party talks and regarded as a key player in determining the outcome of the North Korean nuclear situation.³¹ One analysis of China's more recent position is that it has departed from traditional policy by stressing to North Korea that the nuclear weapons programme must be terminated. The key to this change is considered to be concerns about regional instability and by the country's 'desire to cement economic and strategic linkages with its regional neighbours'.³²

Forging broader global responses

At the 2005 NPT Review Conference, the EU and other states tabled working papers and statements addressing withdrawal under Article X. The issue was not resolved in New York but the initiatives contained in these documents deserve further attention. The working paper by Australia and New Zealand stated that the intention was to 'support better use of existing provisions and structures' related to the process of withdrawal. The EU proposed a broad-based approach to deal with both the procedures for withdrawal and the consequences for the state in question if withdrawal went ahead.

Among the proposals at the 2005 Review Conference for clarifying withdrawal was that the role of the UN Security Council should be enhanced in dealing with such cases and in non-proliferation generally. Additionally, while IAEA safeguards have performed well in the case of North Korea by alerting the international community to violations of obligations, the potential for further development remains. This might be accomplished through the creation of an IAEA Special Committee on Safeguards and Verification and by making the existing Comprehensive Safeguards Agreements

²⁹ Mitchell Reiss, 'North Korea's Legacy of Missed Opportunities' Remarks to The Heritage Foundation, Washington D.C. March 12, 2004.

³⁰ The following is derived from the outline provided in *Ending the North Korean Nuclear Crisis. A Proposal by the Task Force on U.S. Korea Policy*, Cosponsored by The Center for International Policy and The Center for East Asian Studies, University of Chicago.

³¹ Anne Wu, 'What China Whispers to North Korea', *The Washington Quarterly*, vol. 28, No. 2

³² Wu, p. 36.

(INFCIRC 153) plus the Additional Protocol (INFCIRC 540) recognized as the new safeguards standard for all NPT parties.

Another challenge is the potential for 'second-tier nuclear proliferation' as a result of trading in nuclear and other strategic items among developing states and transnational networks.³³ This will require efforts to strengthen existing export control arrangements and for responses to new and emerging suppliers.³⁴

Thus, the challenges raised by North Korea's nuclear activities require that a multi-pronged approach to addressing nuclear proliferation be developed. As noted at the 2005 NPT Review Conference in the papers related to withdrawal, there is a continuing need to address the factors that lead states to acquire nuclear weapons and improve regional security. Much has been accomplished, but the task for the 21st century is to consider the requirements for global nuclear governance across the spectrum of technologies and actors. This might involve both treaty-based and non-treaty-based approaches, including both supply-side and demand-side responses. It will also be important to maintain international norms of behaviour related to compliance and non-compliance, and to forge 'an international consensus through the UN Security Council that North Korea's actions are a threat to international peace and security'.³⁵

³³ Braun and Chyba, "Proliferation Rings. New Challenges to the Nuclear Nonproliferation Regime", pp. 5-6.

³⁴ Braun and Chyba, pp. 32-3

³⁵ *Universal Compliance*, p. 188