

Make or Break?  
Relations between the United States and North Korea  
after Pyongyang's admission of a secret nuclear weapons program

MANUSCRIPT FOR THE  
JOURNAL "ASIEN-AFRIKA-LATEINAMERIKA"

Dr. Sebastian Harnisch  
Center for East Asian and Pacific Studies  
FB III/Dept. of Political Science, Trier University  
54286 Trier, Tel: 0651-201-2129/2164, Fax: 201-3821  
E-Mail: [Harnisch@uni-trier.de](mailto:Harnisch@uni-trier.de)

## I. Introduction

The Korean peninsula is heading for another crisis. It will involve one of the most militarized and tense areas in the world as well as one of the critical states for the global arms-control regime and the regional order in East Asia. The origins of this crisis lie in the failure of the North Korean state and its subsequent quest for weapons of mass destruction. Although it has been in the making for several years, several developments after the September 11<sup>th</sup> attacks have coalesced in recent months so that a downward spiral in the relationship between the United States and Democratic People's Republic (DPRK) in the coming months threatens peace and stability on the Korean Peninsula.<sup>1</sup> Thus, Pyongyang's recent admission to pursue a secret nuclear weapons-program,<sup>2</sup> that is based on uranium enrichment rather than, as the

---

<sup>1</sup> This does not mean that other hot spots such as Afghanistan, India/Pakistan, Iraq, the Israeli-Palestinian conflict or another terror attack could interfere and distract the Bush administration from focussing on North Korea. At the same time a status-quo in some of these conflicts may well "spill over" to the Korean peninsula by providing an opportunity to broaden Bush administrations's campaign against terrorism.

<sup>2</sup> As of this writing the nature and extent of the new North Korean uranium enrichment program is unclear. There are several reasons though, to conclude, at this time that it is not very enhanced: first, it has been known for some time that Pyongyang has been building large scale underground tunnel systems for suspicious purposes, e.g. the underground facility in Kumchang-ri for which the DPRK and the US negotiated a bilateral inspection scheme in May 1999, cf. "Uncovering the Truth about North Korea's Alleged Underground Facility: the Kumchang-ri Controversy", <http://www.cns.miis.edu/research/korea/uncover.htm> [29.10.2002]. In fact, the Kumchang-ri agreement may have convinced the North Korean leadership that it may get benefits when pursuing suspected excavations; cf. for a quick overview of the suspected sites: "North Korea: Suspected Uranium Enrichment Sites", [http://www.nti.org/e\\_research/dprk\\_pdf/heu\\_locked.pdf](http://www.nti.org/e_research/dprk_pdf/heu_locked.pdf) [29.10. 2002]; second, the uranium enrichment technique is slow and relatively inefficient, requiring energy intensive devices that mechanically or electromagnetically separate lighter U-235 from the heavier U-238. The U-235 component must be enriched from the 0.7 percent level found in natural uranium to 80% to be useful for a nuclear chain reaction. The separation process can use various devices, most notably gas centrifuges. Current news reports state that North Korea was still trying to acquire the specialized steel/aluminum this summer; other reports note that an effort to acquire so called "frequency converters" (to run the gas centrifuges) was blocked in 1999 by Japanese export authorities, cf. Bill Gertz, "U.S. saw North Korea's work to enrich fuel for nukes", in: *Washington Times (WT)*, October 18, 2002; Daniel Pinkston, "When Did WMD Deals between Pyongyang and Islamabad Begin?", <http://cns.miis.edu/pubs/week/pdf/nkpaki2.pdf> [29.10. 2002]; "North Korea said to have centrifuges", in: *Japan Times (JT)*, October 21, 2002; David E. Sanger/James Dao, "U.S. Says Pakistan Gave Technology to North Korea", in: *New York Times (NYT)*, October 18, 2002; Joby Warrick, "U.S. Followed the Aluminum", in: *Washington Post (WP)*, October 18, 2002; third, given the technical complexity of the gas centrifuges based enrichment process it is safe to say, that the DPRK could not have mastered this process without outside help, most likely from Pakistan. Taking into consideration that the US intelligence community has had knowledge of the construction efforts since 1998 as well as of the DPRK's pursuit of centrifuge technology since (at least) 1999 and acknowledging that the US has strengthened its intelligence cooperation with the most likely proliferator, Pakistan, since the September 11 attacks, it is safe to say, that the program must be in an early stage, because otherwise the Bush administration would have addressed this issue much earlier than September 2002 with the DPRK and its allies in the region, cf. Doug Struck/Glenn Kessler, "Korea Atom effort: U.S. knew early on", in: *International Herald Tribune (IHT)*, October 19-20, 2002.

program frozen under the Geneva Agreed Framework, on plutonium, is only the last stage in an drama that has been in the making for several years now.

First, since the Agreed Framework of October 1994, which provides North Korea a package of benefits in return for a freeze and final dismantlement of its (old) nuclear weapons program,<sup>3</sup> pressure has been building on the US executive branch to withhold and even withdraw further positive sanctions in the absence of a credible overall improvement of US-DPRK relations.

Second, as the domestic pressure grew, the US executive branch increasingly pursued a linkage strategy (binding the nuclear issues with most notably the proliferation of North Korean missiles) to hold together domestic support and to forestall further DPRK blackmailing on other issues.<sup>4</sup> Therefore, the US has consistently raised the bar for further diplomatic contacts with Pyongyang by pressing for an overall “package deal” that leaves no room for further DPRK “brinkmanship” and “extortion” tactics.<sup>5</sup>

As a result, a vicious mechanism evolved between the two countries since the mid-1990s: the more the Clinton administration felt compelled to stress that positive sanctions would weaken the DPRK regime vis-à-vis its Republican critics in Congress, the more reasons the North had to believe that positive sanctions were really a tool for subversion and dominance. Hence, although both parties cooperated through various channels during the Clinton administrations, mistrust nevertheless kept on piling up. Unsurprisingly, this mistrust has stalled the bilateral talks when the incoming Bush administration – under the guidance of Republican skeptics of the engagement policy vis-à-vis Pyongyang – announced that it would first have to review its DPRK policy before entering in a dialogue with the Kim Jong-Il regime.

Third, and more recently, the bilateral relations further deteriorated after the Bush administration’s approach vis-à-vis Pyongyang turned from “go slow” to “no go” under heavy bureaucratic infighting within the administration before the September 11 attacks.<sup>6</sup> In June 2001, the administrations’s DPRK policy review showed that opposing factions within the administrations could only agree on a more demanding negotiation agenda with Pyonyang.

---

<sup>3</sup> Cf. Sebastian Harnisch/Hanns W. Maull: *Kernwaffen in Nordkorea. Regionale Stabilität und Krisenmanagement durch das Genfer Rahmenabkommen*, Bonn: Europa Union Verlag 2000; Mazarr, Michael J., *North Korea and the Bomb. A Case Study in Nonproliferation*, Houndsmill: MacMillan 1995; Leon V. Sigal, *Disarming Strangers. Nuclear Diplomacy with North Korea* Princeton, NJ: Princeton UP 1998.

<sup>4</sup> Cf. Curtis H. Martin: Rewarding North Korea: Theoretical Perspectives on the 1994 Agreed Framework, In: *Journal of Peace Research* 39(2002), pp. 51-68.

<sup>5</sup> On the DPRK negotiation strategy: Scott Snyder, *Negotiating on the Edge. North Korean Negotiating Behavior*, Washington, DC: US Institute for Peace Press 1999; Chuck Downs, *Over the Line. North Korea’s Negotiating Strategy*, Washington, DC: American Enterprise Institute Press 1999.

<sup>6</sup> Cf. Sebastian Harnisch, US-North Korean relations under the Bush administration: from “go slow” to “no go”, In: *Asian Survey* 42(2002) 6.

The review did, however, not spell out what the US may be prepared to offer in exchange for this wide-ranging agenda.

Fourthly, and (again) unsurprisingly, conservative North Korea critics in the Pentagon and the White House have gained ground against moderate Asia specialists in the State Department in the wake of the September 11<sup>th</sup> attacks. As a consequence, Washington has tried to tighten its grip on the DPRK in recent months both by words and means: in December 2001 a National Intelligence Council Estimate revised the earlier finding that the DPRK had produced enough plutonium for one, possibly two nuclear weapons (leaving open whether the North had weaponized this material) into “North Korea has produced one, possibly two, nuclear weapons”;<sup>7</sup> in late January 2002, the President declared in his State of the Union Address that North Korea was part of an “axis of evil” group of states that produced and proliferated weapons of mass destruction. On March 8<sup>th</sup>, through a leak, the new US Nuclear Force planning became known which specifically targets North Korea. On March 20<sup>th</sup> the Bush administration denied to certify that the DPRK did not violate the Agreed Framework thereby putting in danger US funds to the Korean Peninsula Energy Development Organization (KEDO), the Organization which is responsible for the implementation of the Agreed Framework. Although the executive branch waived the certification requirement, the incident signified a material change in US policy on the implementation of the Agreed Framework.

In sum, the United States considerably shifted its basic analysis of the DPRK from a (more or less) intention based analysis – the DPRK is an authoritarian regime but it may be willing to forego some of its WMD programs in exchange for benefits – to a capability based analysis – the DPRK is part of the axis-of-evil but different from Iraq and Iran because it already possesses nuclear weapons. As a consequence of this shift, the Bush administration attaches less importance on the regime type and domestic setting of an adversary and more importance to his or her capabilities as perceived by the US. This new and important development is also reflected in the National Security Strategy 2002, that postulates US supremacy vis-à-vis any country – even if that is a fellow democratic regime – in a global concert of great powers.<sup>8</sup>

Finally, after more than twenty month of diplomatic gridlock Washington and Pyongyang did arrange a first high-level meeting during a brief meeting between US Secretary of State Colin Powell and his counterpart, Paek Nam Sun, at the Asean Regional Forum (ARF) meeting in

---

<sup>7</sup> Cf. National Intelligence Council, *Foreign Missile Developments and Ballistic Missile Threat Through 2015* (Unclassified Version), Washington, DC December 2001, [http://www.cia.gov/nic/pubs/other\\_products/Unclassifiedballisticmissilefinal.htm](http://www.cia.gov/nic/pubs/other_products/Unclassifiedballisticmissilefinal.htm) [29.10. 2002].

<sup>8</sup> Cf. The White House, *National Security Strategy of the United States of America*, September 2002, Washington, DC: The White House.

Brunei in July 2002. Amidst a flurry of North Korean diplomatic activity in autumn – the North restarted both the Inter-Korean dialogue and the normalization talks with Japan in following month – Undersecretary of State James Kelly then visited Pyongyang in early October. During these talks, the North Korean Delegation admitted – after Kerry had confronted them with evidence –that they were indeed pursuing a secret nuclear weapons program.<sup>9</sup> In addition, the North Koreans claimed, that they had “things even stronger than that” – most likely a reference to past statements of the North suggesting that the “undivided unity of the North Korean people behind the “honorable General Kim Jong Il” constitutes such a force.<sup>10</sup> Thus, from its point of view, Pyongyang has reciprocated the Bush administration’s toughening stand, by raising the bar itself for a peaceful settlement. Of course, from Washington’s (and its allies) point of view, this act of brinkmanship constitutes a serious breach of North Korea’s nonproliferation commitments under the Nonproliferation Treaty (NPT) (April 18, 1985)<sup>11</sup>, the “Joint North-South Declaration on the Denuclearization of the Korean Peninsula” (January 20, 1992), the International Atomic Energy Agency (IAEA) Safeguards Agreement (April 9, 1992) and Geneva Agreed Framework (October 21, 1994).<sup>12</sup>

As a consequence of these trends and recent developments, the Korean Peninsula may well be heading for another crisis situation (with military implications). At this time, the Bush administration appears to try to slow down this process, because it probably wants to avert “a second front against the axis-of-evil” in Asia and because it may hope that a conservative South Korean President will support a tougher line vis-à-vis the North after the Presidential elections in December 2002. If the above outlined argument is correct, the North Korean side, however, may want to accelerate the downward spiral in US-DPRK relations, because it may believe that its bargaining position improves under a crisis situation, especially, if this occurs before the December elections in the South.

Amidst this fluid situation, the following account traces two dynamic and important elements of the evolving crisis on the Korean peninsula: the North Korean ballistic missile program and the KEDO process to end the North Korean nuclear weapons program. It specifically deals

---

<sup>9</sup> Cf. Carl Giacomo, “U.S. Says N. Korea acknowledges nuclear arms programme”, In: *Reuters* (London), October 17, 2002; David Sanger, “Shock from North Korea”, In: *IHT*, October 18, 2002.

<sup>10</sup> Cf. Daniel Pinkston, “Collapse of the Agreed Framework?”, <http://www.cns.miis.edu/pubs/week/pdf/nkpaki.pdf> [29.10. 2002], p. 2.

<sup>11</sup> The date in brackets indicates the date North Korea signed or ratified the respective obligation.

<sup>12</sup> The extent to which the secret program violates these obligations is of course dependent on the nature and status of the secret program, cf. Dipali Mukhopadhyay/Jon Wolfsthal, “North Korea’s Secret Nuclear Weapons Program: A Serious Violation of North Korea’s International Commitments?” (Carnegie Analysis, October 25, 2002), <http://www.ceip.org/files/nonprolif/templates/article.asp?NewsID=3877> [30.10. 2002].

with the Bush administration's policy vis-à-vis Pyongyang after the September 11<sup>th</sup> attacks and its subsequent decision not to certify DPRK compliance with the requirements of the Foreign Operations Appropriations Act of 2002 administering the US KEDO funding. Finally, I consider some policy implications as to how the crisis may be prevented.

## *II. The North Korean ballistic missile program*

The North Korean ballistic missile program has been a key concern for the United States for several years, because it has fueled strategic tensions in the Northeast Asian region through deployment and in the South Asia and the Middle East through export.<sup>13</sup> After the DPRK launched a three-stage solid fuel intermediate-range missile over the Japanese islands in August 1998, Tokyo revamped its security outlook considerably: Tokyo started to collaborate in earnest with Washington on Theater Missile Defense at the same time hedging its security reliance on the United States by acquiring its own surveillance satellites.<sup>14</sup> In South Asia, North Korean missile exports and extensive technical support have been at the heart of the Pakistani ballistic missile program,<sup>15</sup> notably the Ghauri medium range missiles.<sup>16</sup> In the Middle East, in exchange for Iranian financial support North Korea helped to develop the Iranian Shahab missile program which is based on the North Korean No Dong design.<sup>17</sup> Both programs have fueled regional arms races, namely Iraq's quest for ballistic missiles as well as the Indian Shaheen program that in turn has been a major concern for years of the Chinese Peoples Liberation Army. Hence, North Korean technology has added considerable "fuel" to the impending military conflict between Pakistan and India.<sup>18</sup>

---

<sup>13</sup> Cf. "On a Collision Course: N. Korea's Missile Development Program", [www.stratfor.com](http://www.stratfor.com) [14.02. 2002].

<sup>14</sup> Cf. Chris Hughes, The North Korean Nuclear Crisis and Japanese Security, In: *Survival* 38(1996) 2, pp. 79-103; Bhupindar Singh, The 1998 North Korean Missile Launch and the "Normalization" of Japanese Statehood, In: *Issues and Studies* 37(2001) 3, pp. 142-162.

<sup>15</sup> It appears, that Pakistani government paid for the missile cooperation in kind by providing HEU technology, cf. for earlier reports: Joseph Bermudez, "A silent partner", In: *Jane's Defense Weekly*, 20.05. 1998, pp. 16-17; Wade Huntley, "The Proliferation Network", *NAPSNET Special Report- Policy Forum Online* No.17/1998, p. 6; „Japan Worries Pakistan Will Give North Korea Nuclear Aid“, in: *Reuters*, Tokyo, 29.05. 1998; for recent more detailed reports: Mark Magnier/Sonni Efron, "E. Asian Strategic Balance Remains", In: *Los Angeles Times (LAT)*, October 19, 2002; B. Raman, "Pakistan and the North Korea connection", In: *Asia Times (AT)*, October 22, 2002.

<sup>16</sup> Cf. Joseph Bermudez, A History of Ballistic Missile Development in the DPRK (CNS Occasional Paper No. 2), <http://www.cns.miis.edu/pubs/opapers/op2/op2.pdf> [17.05. 2002], pp. 23-24.

<sup>17</sup> Cf. CIA, *Foreign Missile Developments and the Ballistic Missile Threat Through 2015*, Unclassified Summary of a National Intelligence Estimate, December 2001, [http://www.cia.gov/nic/pubs/other\\_products/Unclassifiedballisticmissilefinal.htm](http://www.cia.gov/nic/pubs/other_products/Unclassifiedballisticmissilefinal.htm) [14.01. 2002].

<sup>18</sup> Cf. Howard D. French, North Korea sired most of Pakistan's nuclear missile capability, In: *IHT*, 27.05. 2002.

As the Bush administration's security outlook shifted after the September 11<sup>th</sup> attacks, Pyongyang's missile capabilities to strike US forces in Asia, especially in South Korean and Japan, and its quest for long range missiles that could reach US homeland (Guam, Hawaii) or even the continental United States ensure that DPRK missile production, testing and export rank very high on the agenda for (possible future) negotiations with the Kim regime.<sup>19</sup>

The Clinton administration had been engaged in bilateral missile talks with Pyongyang since 1996. But even though the North Koreans consistently offered to end its ballistic missile program, i.e. the production, testing and export of medium and long range ballistic missiles.<sup>20</sup> But the Clinton team was unable to secure an agreement that ends or at least contains the DPRK program before it left office.<sup>21</sup> It did, however, negotiate a framework that may well contain the basis for a future agreement. Under the draft proposal considered in the aftermath of the historic trips of DPRK Vice Marshall Cho in early October 2000 to Washington and US Secretary of State Madeleine Albright to Pyongyang a few weeks later, the agreement foresaw the following: North Korea would stop the production, testing, deployment and export of ballistic missile with a range beyond 300 km. Hence, DPRK would come into compliance with standards of the Missile Technology Control Regime (MTCR). The proposal, which was put forward during the bilateral missile talks in Kuala Lumpur (November 1.-3., 2000), consisted of a public document which outlined the MTCR standards and the political framework with regard to further normalization of bilateral relations and a secret document which spelled out the specific terms of the bilateral inspection regime and the in-kind assistance.<sup>22</sup>

When compared to the DPRK's former position, the scope of its acceptance was unprecedented.<sup>23</sup> DPRK negotiators obviously accepted non-monetary compensation such as regular satellite launches or in-kind transfers such as food aid for ending all missile related exports. And Pyongyang agreed to freeze current missile deployments, including up to hundred No Dong missiles that can hit Japan and U.S. bases there.<sup>24</sup> Nevertheless, as the

---

<sup>19</sup> Cf. Nicksch, Larry: *North Korea's Nuclear Weapons Program* (Updated October 21, 2002) (IB91141), Washington, DC: CRS for Congress, <http://fpc.state.gov/documents/organization/14823.pdf> [29.10.2002], p. 14.

<sup>20</sup> Cf. Harnisch, Sebastian: *Erst Verhandeln, dann rüsten? Die nordkoreanische Bedrohung in der amerikanischen Raketenabwehrdebatte* (HSFK-Raketenbulletin Nr. 14), Frankfurt/Main: HSFK 2000, <http://www.hsfk.de/abm/bulletin/pdfs/harnis1.pdf> [31.01.2002].

<sup>21</sup> In contrast to the Nuclear Weapons Program, the DPRK's long range missile program does not involve violations of international agreements, e.g. the DPRK is not party to the Missile Technology Control Regime (MTCR).

<sup>22</sup> Cf. Michael R. Gordon, "How Politics Sank Accord on Missiles With North Korea", In: *NYT*, 06. 03. 2001.

<sup>23</sup> Cf. Samore, Gary: U.S.-DPRK Missile Negotiations, In: *Nonproliferation Review* 9(2002), pp. 16-20.

<sup>24</sup> Cf. Wendy Sherman, Presentation at the Workshop, *Perspectives on President Kim Dae-jung's visit to Washington, United States Institute for Peace*, March 6, 2001, <http://www.usip.org/oc/cibriefing/sherman030601.html> [12.03.2001].

domestic situation during the Florida ballot seemed unclear and the incoming administration signalling concern, the Clinton team did not send Ambassador Sherman to Pyongyang to settle the remaining issues of verification (i.e. on-site-inspection), destruction of operational missiles and the exact terms of non-monetary compensation.<sup>25</sup>

As Pyongyang's unilateral moratorium for missile tests had been extended indefinitely on September 17 to facilitate the first high-level visit by Undersecretary James Kelly in October,<sup>26</sup> the Kim regime may well use the breach of that commitment to put pressure on the US to come to the negotiation table. Specifically, if the Kim regime faces increased diplomatic and economic pressure (possibly under the guidance of the IAEA and/or the UN Security Council) in a coming month, because of rejecting to seize its secret nuclear program, it may feel that another provocation, a test launch of the more advanced Taepo Dong II long range missile, may improve its bargaining position. Even if such a step would be less serious than to decant the 8.000 used fuel rods and reprocessing them for the possible use in 4-5 nuclear war heads, another missile test could very well spark off another crisis in conjunction with rising concerns about the stalling effort to end the North Korean Nuclear Weapons program.

### *III. The North Korean nuclear weapons program(s)*

Since March 1995, the Korean Peninsula Energy Development Organization (KEDO) has proved to be a valuable tool to implement the Geneva Agreed Framework and to freeze the up to now known plutonium based North Korean nuclear weapons program.<sup>27</sup> If North Korea had continued this program in 1994, it could have produced enough separated plutonium for 60-80 nuclear weapons by now. In addition, if all three reactors (the one operational at Yongbyon in 1994 plus the two under construction) had been dedicated to making weapons-grade plutonium, then North Korea would have been able to produce and export 40 to 50

---

<sup>25</sup> Cf. Transcript: Background Briefing on Bush-Kim Meeting, in: *Washington File*, 8 March 2001, <http://www.usinfo.state.gov/cgi-bin/wa..lt&t=/products/washfile/newsitem.shtml> [09.03. 2001].

<sup>26</sup> Cf. Paul Kerr, North Korea Extends Missile Test Moratorium; U.S. to Send Kelly, In: *Arms Control Today Online* (October Issue 2002), [http://www.armscontrol.org/act/2002\\_10/nkoreaoct02.asp?print](http://www.armscontrol.org/act/2002_10/nkoreaoct02.asp?print) [22.10. 2002].

<sup>27</sup> Cf. Sebastian Harnisch, Die Korean Peninsula Energy Development Organization (KEDO): Genese - Struktur - Perspektiven für 1999, in: Köllner, Patrick (Ed.): *Korea 1999: Politik, Wirtschaft, Gesellschaft*, Hamburg: Institut für Asienkunde 1999, pp. 205-245; Scott Snyder, *The Korean Peninsula Energy Development Organization: Implications for Northeast Asian Regional Security Co-operation?* (North Pacific Policy Papers No. 3), <http://www.pcaps.iar.ubc.ca/pubs/snyder.pdf> [20.05. 2002].

nuclear weapons per year.<sup>28</sup> However impressive this record is, the implementation of the Agreed Framework and therefore KEDO's future is by no means assured. Several technical and political issues remain unresolved in order to end the threat emanating from this program, not to speak of ending the new-detected program.

In the past few years the KEDO project has met serious political obstacles, such as erratic North Korean policies and Congressional intransigence in Washington, delaying the original delivery schedule for at least six years.<sup>29</sup> From the North Korean perspective, Washington is to blame for the delay. Pyongyang has therefore tried to use this situation to extract compensation, e.g. through higher wages for its workers.<sup>30</sup> From the US perspective, the delay has been caused by North Korean military provocations such as the submarine crisis (1996) or the naval incident offshore the demarcation line in 1999. In addition, higher crude oil prices inflated Washington's share in the project considerably and congressional critics have consistently tried to torpedo the whole undertaking.<sup>31</sup>

As a consequence, as I pointed out earlier, the Clinton administration was pressed to increasingly link the implementation of the nuclear aspects of the Agreed Framework with other issues, such as progress in North-South dialogue, the DPRK's ballistic missile program and terrorism. In early 1995 - under pressure from the Republican majority in Congress - the Clinton State Department linked the removal of US sanctions, provided for in Article 2 of the Geneva Agreement, to progress in other areas of interest to the US, i.e. DPRK support for terrorism and human rights. In October 1999, the Perry Report - reviewing US policy vis-à-vis Pyongyang upon the request by Congressional Republicans - abandoned the nuclear focus of the Agreed Framework and asked for a "comprehensive and integrated approach" that explicitly linked the lifting of sanctions to both the termination of the DPRK nuclear weapons program and the complete and verifiable cessation of testing, production and deployment of missiles exceeding the parameters of the MTCR.<sup>32</sup> In June 2001, the Bush administration

---

<sup>28</sup> Cf. Albright, David: Secretary of State Madeleine Albright's Visit to North Korea, ACA Press Briefing October 20, 2000, In: *Arms Control Today Online* (November Issue), <http://www.armscontrol.org/ACTnov00/pressconnk.html> [02.03. 2001].

<sup>29</sup> Originally the first LWR was to be completed in 2003; current estimates are that it will not become operational before 2010.

<sup>30</sup> The latest North Korean claim involves the loss of power generation - due to the delay in the construction of the two LWR - and the demand for additional compensation by the US, cf. "N. Korea wants U.S. compensation for lost electricity", In: *Reuters* (Seoul) 18.08. 2002.

<sup>31</sup> Cf. Harnisch, Sebastian (2001): Die Nordkoreapolitik der USA im letzten Amtsjahr der Clinton-Administration, in: Köllner, Patrick (Hg.) (2001): *Korea 2001 - Politik, Wirtschaft, Gesellschaft*, Hamburg: Institut für Asienkunde, pp. 235-254.

<sup>32</sup> Cf. Martin, op. cit., p. 59; Harnisch, Sebastian: *Wieviel ist genug? Zur Normalisierung der US-amerikanischen Nordkoreapolitik* [How much is enough? The Normalization of the US-DPRK policy] (ZOPS Occasional Paper Nr. 13), Trier: Trier University/Center for East Asian and Pacific Studies 1999, <http://www.uni-trier.de/uni/fb2/zops/op/OccasionalPapersNr13.pdf> [13.09. 2001].

announced in its DPRK Policy Review that the DPRK must meet nuclear, ballistic missile, and conventional arms control concerns so as to qualify for further progress in bilateral relations.<sup>33</sup> More recently, on March 20<sup>th</sup>, 2002, the executive branch denied to certify that Pyongyang is abiding by the requirements of the Foreign Operation Appropriations Act 2002 (FOAA 2002) so that US contributions to the KEDO could be paid for the year 2002.<sup>34</sup> Although the administration waived this certification requirement for “national security reasons”,<sup>35</sup> it is obvious that the administration not only accepts the congressional linkage policy, as spelled out in Section 565 of the FOAA 2002, but also uses this linkage to maximize the pressure put on the DPRK.<sup>36</sup>

Moreover, as the recent admission of a secret program constitutes a serious breach of several clauses of the Agreed Framework,<sup>37</sup> the Bush administration will have a hard time, if it wanted, to convince members of congress to further approve funds for the implementation of the Geneva Agreement when the North Korean side has, reportedly,<sup>38</sup> called the agreement “nullified”.<sup>39</sup> It is, however, noteworthy, that the North has (so far) not demanded that IAEA inspectors, that verify the freeze of the old program, leave the country, a step that would certainly trigger an immediate response by the US.

As a consequence, technical issues involving the ending of new as well as the old nuclear weapons program have become very important for the overall relationship between Washington and Pyongyang. With the extend and nature of the new program is still unclear, so are possible solution for the verified cessation of the program. These will most likely

---

<sup>33</sup> Cf. Statement of the President, June 6, 2001, The White House, <http://usinfo.state.gov/topical/pol/arms/stories/01060700.htm> [20.07. 2001]; Ralph A. Cossa, Bush’s ‘Comprehensive Approach’ to Dialogue with Pyongyang (PacNet Newsletter No 28a July 13, 2001), <http://www.csis.org/pacfor/pac0128A.htm> [20.07. 2001].

<sup>34</sup> Cf. P.L. 107-115, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ115.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ115.107.pdf) [14.05. 2002].

<sup>35</sup> White House, Office of the Press Secretary, Presidential Determination N. 2002-12, April 1, 2002, <http://usinfo.state.gov/regional/ea/easec/kedo0403.htm> [18.08. 2002].

<sup>36</sup> Cf. Alex Wagner, Bush Challenges North Korean Adherence to Nuclear Freeze, In: *Arms Control Today Online*, April 2002, [http://www.armscontrol.org/act/2002\\_04/nkapr102.asp](http://www.armscontrol.org/act/2002_04/nkapr102.asp) [14.03. 2002].

<sup>37</sup> First, if this violation of the NPT leads to a North Korean withdrawal from the Treaty; this would violate th AF obligation (Art. 4,1) to remain party to the NPT. Secondly, clause 4,2 (AF) forseees that the DPRK will give notice to the IAEA of any new facility and include it in its safeguards inspections process.

<sup>38</sup> There is a controversy, however, as to what the North Korean official, Kang Sok ju, actually said. Whereas Undersecretary Kelly stated, that the North called the Agreed Framework “nullified”, the South Korean Unification Minister, Jeong Se-hyun, suggested that the North put conditions on the possible nullification, cf. U.S. State Department, Statement on North Korean Nuclear Program, October 16, 2002, <http://www.state.gov/r/pa/prs/ps/2002/14432.htm> [29.10. 2002]; Sohn Suk-joo, “Unification Minister Alleges US Exaggeration of NK Nuke Plan”, In: *Korea Times (KT)*, October 24, 2002.

<sup>39</sup> Cf. Joo Young-jung, “US Senators Urge Aid Freeze to North Korea, In: *Chosun Ilbo* (Engl. Ed.), October 31, 2002, <http://english.chosun.com/w21data/html/news/200210/200210310019.html> [31.10. 2002].

include on-site (IAEA) inspections as well as the installation of surveillance equipment at critical sites. The new enrichment program however, poses a more challenging inspection problem. Enrichment technology is much smaller and less detectable than plutonium based programs. Additionally, with the (possibly) expertise already acquired, another secret program is easy to replicate. Thus, negotiating a verified end to the new program is a challenging task by itself. In addition, ending the new program will also require to solve the most important unresolved issues concerning the old, frozen nuclear program.

The most important are nuclear liability issues, nuclear safety requirements and the crucial question of verification.<sup>40</sup> On nuclear liability, KEDO and North Korea will have to negotiate several additional protocols to keep the implementation process for the light-water reactor (LWR) exchange procedure on track, some of these may prove to be real stumbling blocks. In a nuclear liability protocol North Korea must accept an indemnity agreement with KEDO, which secures nuclear liability insurance for KEDO and its contractors and subcontractors in connection with any third-party claims in the event of a nuclear accident. Furthermore, North Korea and KEDO have to conclude a repayment protocol and two other protocols: one on nuclear safety and regulation of the LWRs and the other on operation and maintenance arrangements for transferring the spent fuel out of North Korea.

On nuclear safety requirements, it is still unclear whether Pyongyang can meet international requirements for a transparent, independent and technically elaborate nuclear safety process.<sup>41</sup> KEDO and the DPRK are still discussing a lengthy “Preliminary Safety Analysis Report” (PSAR) which North Korea currently discusses with KEDO and which it finally must approve. The PSAR will give KEDO confidence that North Korea is indeed able to operate the reactors safely.<sup>42</sup> Further down the implementation road, the United States and North Korea will have to negotiate an Agreement for Peaceful Nuclear Co-operation which requires under US domestic law, among other things, the continuous and full implementation of IAEA safeguards. Also, this agreement includes a provision that North Korea must provide adequate back-up power in the case of an accident. As most international experts would agree, so far

---

<sup>40</sup> Cf. David Albright/Marry Higgins: North Korea: It’s taking too long, in: *Bulletin of Atomic Scientists Online* 58(January-February 2002) 1, <http://www.thebulletin.org/issues/2002/JF02/jfhiggins.html> [19.02. 2002].

<sup>41</sup> Cf. Henry Sokolski: Implementing the Korean Nuclear Deal: What U.S. Law Requires, Paper presented before the international forum, “Prompting International Scientific, Technological and Economic Cooperation in the Korean Peninsula: Enhancing Stability and Dialogue, Rome, July 1-2, 2000, <http://www.wizard-net/~npec/papers/6-4-00-DPRK-Sokolski.htm> [02.02. 2001];

<sup>42</sup> Cf. Milioti, Stephen/ Young-Chul Kang/ Brian Kremer: KEDO’s Nuclear Safety Approach, <http://www.kedo.org/article.htm> [02.03. 2001].

North Korea has no viable electrical transmission system, and it certainly has no reliable back-up system to prevent a reactor melt-down through a back-up cooling system.<sup>43</sup>

*The crucial question of verifying DPRK past nuclear behavior*

The most important of the technical and political issues, however, is the verification question. If left unresolved, it will block and eventually break up the whole KEDO process. Indeed, the verification issue may be looked at as the crucial question of making or breaking the whole US engagement policy vis-à-vis Pyongyang in the coming month. The verification of the DPRK's nuclear past is central to the implementation of both the Agreed Framework (US-DPRK) and the subsequent legally binding Supply Agreement (DPRK-KEDO). In accordance with these documents KEDO and Pyongyang must agree on a delivery schedule protocol which specifies dates for the completion of the light-water reactors. This protocol will also contain dates when the North is to perform its commitments under the Agreed Framework vis-à-vis the IAEA. In May 2002, KEDO officials presented Pyongyang with a project schedule for completing the first reactor in 2008 (sic!),<sup>44</sup> but so far neither have KEDO and North Korea agreed on this crucial delivery schedule protocol nor have the IAEA and Pyongyang made significant progress on the issue of IAEA safeguards requirements with respect to past activities.<sup>45</sup>

In October 2000, the Clinton administration and the Kim regime agreed on greater transparency and the carrying out of their respectful obligations under the Agreed Framework,<sup>46</sup> but there has been very limited progress on this issue between the DPRK and KEDO as well as between the DPRK and the IAEA since then.

*North Korea and the IAEA*

On October 17<sup>th</sup> 2001, IAEA Director General El Baradei stated that there had been no progress at all on the verification of past North Korean nuclear activities for years. The regime then "offered" in early November 2001 that it would allow IAEA inspectors to visit (not to inspect) the Isotope Production Laboratory (IPL) in Yongbyon. However, one official of the Vienna-based agency subsequently called this offer "a red herring" because other facilities, which had been suspected by the IAEA of being involved in the separation of

---

<sup>43</sup> Cf. Albright/ Higgins/ O'Neill (op.cit.) p. 8.

<sup>44</sup> Cf. Mark Hibbs, KEDO Gives DPRK Project Schedule for Completing the First LWR by 2008, In: Nucleonics Week, May 16, 2002, p. 7.

<sup>45</sup> Cf. Shin Yong-Bae, N.K., KEDO talks on nuke parts expected this year, In: *Korea Herald*, 04.10. 2001; Tetsuya Hakoda, KEDO tells North to allow IAEA inspections, in: *Asahi Shinbun*, 8.08. 2002, <http://www.asahi.com/english/international/K2002080800413.html> [09.08. 2002].

<sup>46</sup> Cf. "US-DPRK Joint Communiqué", Washington, DC, 12 October, 2000, <http://www.fas.org/news/dprk/2000/dprk-001012a.htm> [20.03. 2001.].

plutonium in early 1990s,<sup>47</sup> could (again) not be “visited” by the International Atomic Energy Agency.<sup>48</sup>

In the first three months of 2002, the regime, while insisting in principle on its special status under the IAEA safeguards agreement, has become slightly more forthcoming. With US-DPRK contacts still frozen and inter-Korean talks in an on-and-off mode, Pyongyang took two additional (rather small) steps in the field of verification: first, the IAEA inspectors' visit to the IPL in Yongbyon took place on January 16<sup>th</sup>; second, three DPRK officials observed an IAEA calibration of a spent fuel counter in the United Kingdom in mid-February - a counter that would be used for verification of the spent fuel at the DPRK's 5 MW(e) reactor facility.<sup>49</sup> Finally, on September 29, after the DPRK-Japan summit meeting but before the crucial high-level talks with Undersecretary Kelly, Pyongyang resumed its talks with the IAEA on the scope and time frame of the necessary inspections.<sup>50</sup> Whether these steps indicate that the DPRK will allow IAEA inspectors to investigate all contentious verification issues is at least unclear.<sup>51</sup> A more balanced reading of these activities suggests that the North Korean leadership still follows the strategy of mixing confrontational tactics and cooperative efforts to gain leverage vis-à-vis Washington and Seoul. As argued below, this strategy may well prove ineffective, if not dangerous with the Bush administration post September 11.

#### *The impact of the September 11 attacks*

Since the September attacks on the United States conservative skeptics of the engagement policy in the Pentagon and White House (as well as some hawk dissidents in the State Department such as John Bolton) have gained ground within the policy process on the implementation of the light-water reactor project.<sup>52</sup> The argument of this group can be summarized as follows: First, in the light of the terror attacks and the revelations that Al Qaeda terrorists sought to both sabotage nuclear power stations and acquire sensitive nuclear technology the Bush administration must stop the KEDO process of transferring two advanced

---

<sup>47</sup> Personal communication with the author.

<sup>48</sup> Cf. Daniel Pinkston, The Status of North Korea's Nuclear Inspections, February 26, 2002, <http://www.cns.miis.edu/pubs/week/020226.htm> [20.05. 2002].

<sup>49</sup> Cf. Excerpts from the Introductory Statement to the IAEA Board of Governors by IAEA Director General Dr. Mohamed ElBaradei, March 18<sup>th</sup>, 2002, <http://www.iaea.org/worldatom/Press/Statements/2002/ebsp2002n001.shtml> [24.05. 2002].

<sup>50</sup> Cf. Kwon Kyeong bok, North Resumes Negotiations with IAEA, In: Chosun Ilbo (Engl. Ed.), September 29, 2002.

<sup>51</sup> For a good summary of the crucial verification issues: David Albright, Ensuring Transparency on the Korean Peninsula: What is the Adequate Approach?, in: Holly Higgins (Ed.): *Building Nuclear Confidence on the Korean Peninsula* (Proceedings of the July 23-24, July Workshop sponsored by the Technology Center for Nuclear Control and the Korean Institute for National Unification), <http://www.isis-online.org/publications/dprk/albright.pdf> [22.05. 2002].

<sup>52</sup> Cf. Alex Wagner, Bush Challenges North Korean Adherence to Nuclear Freeze, in: Arms Control Today Online, April 2002, [http://www.armscontrol.org/act/2002\\_04/nkapril02.asp](http://www.armscontrol.org/act/2002_04/nkapril02.asp) [20.05. 2002].

LWR reactors to North Korea, because this “axis of evil“ country might use the transferred technology to threaten the United States or help terrorist organizations to do so.<sup>53</sup> Second, as a significant part of the first LWR will completed in early 2005 and as the Vienna based agency has stated that it will need three to four years to conclude the necessary inspections in the DPRK, the argument goes that the DPRK must now allow IAEA inspectors to fully investigate its nuclear past.<sup>54</sup> Furthermore and based on this peculiar reading of the inspection requirements (as set forth in the Agreed Framework and the Supply Contract between the Organization and the DPRK),<sup>55</sup> this group of officials argues that the North is already in an “anticipatory breach” of its verification requirements, because of the lack of its cooperation with the IAEA, the agency will not be able to conclude its inspections by early 2005.<sup>56</sup>

*Raising the bar - the concept of anticipatory breach*

Acting on this premise on March 20, 2002, the Bush administration denied to certify North Korean compliance with the domestic law, Foreign Operations Appropriations Act 2002, Sect. 565, that appropriates the American funds for KEDO’s implementation of the Agreed Framework. While the White House subsequently waived the certification requirement, US State Department Spokesperson Richard Boucher stated that the Department’s recommendation not to certify was based on the assessment that there was “insufficient information” about the status of the nuclear freeze *and* on Pyongyang’s resistance to permit comprehensive inspections. As Boucher made clear, the State Department now thinks that the IAEA inspection “should be under way” because of the prolonged time needed for the conclusion of the inspections.<sup>57</sup>

This State Department’s representation of the verification problem is at least problematic if not misleading. The US chief negotiator, Robert Gallucci recently pointed out, that the concept of “anticipatory breach” does neither stand up to the wording of the Geneva

---

<sup>53</sup> The thinking of this group is reflected in the writings of the conservative Think Tanks such as the “Project for the New American Century”, cf. Dan McKivergan, Memorandum to Opinion Leaders on North Korea, August 6, 2002, <http://www.newamericancentury.org/northkorea-080602.htm> [09.08.200] and the “Nonproliferation Education Center” led by the former U.S. Nuclear Regulatory Commission Official, Henry Sokolsky, cf. Letter to the Honorable Specner Abraham, Secretary of Engery, 18 April, 2002, [http://www.npec-web.org/pages/4\\_18letter.htm](http://www.npec-web.org/pages/4_18letter.htm) [20.05. 2002].

<sup>54</sup> Beginning in July 2001, the Bush administration has insisted that North Korea must accept early IAEA inspection in order to comply with its obligations under the Geneva Agreed Framework, cf. Nicksch, op. cit, p. 3.

<sup>55</sup> Cf. *IAEA Annual Report 2000*, Vienna: IAEA, p. 99.

<sup>56</sup> Cf. Exchange between Henry Sokolsky/Victor Gilinsky, NPEC, and Marc Vogelaar, KEDO Deputy Director, “Holding North Korea Accountable”, *National Review Online*, December 19, 2001, [http://www.npec-web.org/pages/12\\_19korean.htm](http://www.npec-web.org/pages/12_19korean.htm) [20. 05. 2002].

<sup>57</sup> Cf. State Department Noon Briefing, March 20, 2002, <http://usinfo.state.gov/regional/nea/sasia/text/0320state.htm> [20.05.2002].

Agreement nor the negotiation history.<sup>58</sup> With regard to the wording Gallucci rightly states that the specific section of the Agreed Framework does not mean that the completion of a significant portion of the light-water reactor must *coincide* with the delivery of key nuclear components. Art. 4 (3) reads:

“When a significant portion of the LWR is completed, but before delivering of key nuclear components, the DPRK will come into full compliance with its safeguards agreement with the IAEA, including all steps that may be deemed necessary by the IAEA (INFCIRC/403), following consultations with the Agency with regard to verifying the accuracy and the completeness of the DPRK’s initial report on all nuclear material in the DPRK.”<sup>59</sup>

In fact, the wording suggests that there may be a period in between “the completion of a significant portion” *and* “before delivering of key nuclear components”. This interpretation of the Agreed Framework is also supported by the negotiation history of the agreement. During the negotiation process DPRK Chief negotiator Kang Sok Hu made clear to his counterpart that the DPRK regarded the transparency [which the DPRK creates through the compliance with full-scope IAEA safeguards], as “an incentive for the [US, S.H.] to deliver that first part of the reactor project. And when you do, you will get the transparency; that will be your reward”.<sup>60</sup>

Thirdly, from a legal point of view, the unilateral application of the concept of “anticipatory breach” on the verification issue by the United States was not justified at that point.<sup>61</sup> To begin with, the Supply Agreement between KEDO (which is legally binding for the US, South Korea, Japan, the European Union/EURATOM and other KEDO members) stipulates in Art. 15 that any dispute arising out of the interpretation and implementation of the Agreed Framework should be settled through consultations between the Organization and Pyongyang. So far, the United States may have consulted with other KEDO partners before deciding not to certify but KEDO has certainly not yet held consultations with North Korea on this specific point of verifying its nuclear past. While it may seem odd when considering that North Korea at the same time pursued a secret program – the extent and nature of which is still uncertain – one might wonder if the US acted in good faith vis-à-vis Pyongyang and other KEDO

---

<sup>58</sup> Cf. Robert Gallucci, Statement on April 10<sup>th</sup>, 2002, “Progress and Challenges Toward Denuclearizing the Korean Peninsula: A ACA Press Conference”, printed in: *Arms Control Today Online*, Mai 2002, [http://www.armscontrol.org/act/2002\\_05/pressmay02.asp](http://www.armscontrol.org/act/2002_05/pressmay02.asp) [25.02. 2002].

<sup>59</sup> Agreed Framework between the United States of America and the Democratic People’s Republic of Korea, Geneva, 21 October, 1994, <http://www.kedo.org/agreedframework.htm> [22.05. 2002].

<sup>60</sup> As cited in Robert Gallucci, Statement on April 10<sup>th</sup>, 2002, “Progress and Challenges Toward Denuclearizing the Korean Peninsula: A ACA Press Conference”, printed in: *Arms Control Today Online*, Mai 2002, [http://www.armscontrol.org/act/2002\\_05/pressmay02.asp](http://www.armscontrol.org/act/2002_05/pressmay02.asp) [25.02. 2002].

<sup>61</sup> It is noteworthy in this respect, that the Bush administration, despite the fact that it reportedly already had knowledge of the secret pursuit for a uranium enrichment program by the North Koreans, did not mention this when arguing about North Korean compliance with the Geneva Agreement.

member states by challenging the hitherto consensual interpretation of the Geneva Agreement verification requirements as recently restated by the Marc Vogelaar, Deputy Director of KEDO:

“Halting construction at this point would not only be unfounded, it may well prove counterproductive. Under the U.S.-DPRK Supply Agreement, the DPRK needs to come into "full compliance with its IAEA safeguards agreement ... before delivery of key nuclear components" for the two reactors. This means that the reactors cannot be completed unless the IAEA will have gained full access to North Korea's nuclear program. Stopping the construction of the reactors at this point would remove the incentive for North Korea to accept — even if reluctantly — the very inspections that are meant to allow completion of the reactor project. Failure by the DPRK to cooperate with the IAEA would indeed delay the construction of the reactors, but we are not that point yet. Thus the KEDO project, which is supported by no fewer than 30 countries that are also IAEA members, remains an effective tool for bringing the DPRK into the international non-proliferation fold.”<sup>62</sup>

Even if US unilateral actions on the verification issue did not imply a breach of its legally binding commitments within KEDO, the application of the concept of anticipatory breach in this specific case appears to be legally dubious. As set forth in several Supreme Court rulings in the United States, the concept of anticipatory breach cannot simply be enacted if one party to a contract “feels” that the other party “might” not be willing to fulfil its future obligations under a contract.<sup>63</sup> In fact the party in question has to refuse to be bound and to communicate such repudiation to the other party. In *Samel vs. Super* (US Supreme Court 1913) the court referred to an early ruling in *O'Neill v. Supreme Council* (1904) restating that:

"Where a contract embodies mutual and interdependent conditions and obligations, and one party either disables himself/herself from performing, or repudiates in advance his/her obligations under the contract and refuses to be longer bound thereby, communicating such repudiation to the other party, the latter party is not only excused from further performance on his/her part, but may, at his/her option, treat the contract as terminated for all purposes of performance, and maintain an action at once for the damages occasioned by such repudiation, without awaiting the time fixed by the contract for performance by the defendant."<sup>64</sup>

Therefore, as North Korea so far has not disabled herself from performing or repudiated in advance its verification requirements under the KEDO Supply Agreement nor communicated such repudiation to KEDO or the US. It is noteworthy in this respect, that the Bush administration, after some contradictory statements in the beginning, is still weighing whether to withdraw from the Geneva Agreement or not.<sup>65</sup> Thus, Pyongyang may still put the new

---

<sup>62</sup> Letter of Marc Vogelaar, Deputy Director of KEDO, in response to Henry Sokolsky/Victor Gilinsky, [http://www.npec-web.org/opeds/12\\_19korean2.htm#letter](http://www.npec-web.org/opeds/12_19korean2.htm#letter) [20.05. 2002].

<sup>63</sup> Of course, this condition has changed, since Pyongyang has publicly stated vis-à-vis Tokyo that it will not end its secret program changed unless the

<sup>64</sup> Cf. Anticipatory Breach of Contract, <http://www.judiciary.state.nj.us/charges/civil/419.htm> [25.05. 2002].

<sup>65</sup> Cf. “Kelly: Nuclear accord with North Korea still alive”, In: *Asahi Shimbun* (Engl. Ed.), October 22, 2002.

suspected facilities under IAEA safeguards, thereby fulfilling its legal obligation under the KEDO Supply Agreement. Of course, the North has called the Agreed Framework reportedly “nullified” and this may indeed already constitute a repudiation of the terms of the Supply Agreement – which is in contrast to the Agreed Framework legally binding – but as the North claims that the United States does not abide the Geneva Agreement itself –<sup>66</sup> these outstanding issues should be discussed through the mechanisms stipulated in Art. 15 of the KEDO Supply Agreement.

Let there be no mistake, the DPRK has to come into full compliance with all its safeguards requirements as soon as possible including those for the new secret uranium enrichment facilities. It is clear that if the North does not notify the IAEA of its new facilities and allows regular inspections there, the North then will be immediately in non-compliance with the KEDO Supply Agreement (as well as the Geneva Agreement). In a nutshell, early inspections of the new program must occur if the KEDO process shall be upheld. However, when it comes to the IAEA inspections of the old, frozen program, the question is, however, when and how this should happen. The argument here is that the US should refrain from unilaterally redefining the terms of both the political binding Agreed Framework with the DPRK and the legally binding Supply Contract with both the DPRK and its KEDO partner countries. The reason is simple: in order to pursue an effective and legitimate nonproliferation policy on the Korean Peninsula which is supported by its allies and other parties concerned, Beijing and Moscow, Washington needs to play by the rules that have been agreed upon. If the US administration presses the verification issue with dubious legal arguments, as outlined above, it may well encounter opposition when it most needs support or at least acquiescents.

#### *IV. Policy Implications*

What are the immediate policy implications of this analysis?

First, let there be no illusion as to the willingness of the DPRK to open up its nuclear past or to forego programs for weapons of mass destruction. These programs are very precious to the regime, because they can be used for extracting foreign support. The bankruptcy of the North

---

<sup>66</sup> Cf. “North Korea’s Response”, In: *NYT*, 26, 2002. There is a host of arguments put forward by Pyongyang why Washington does not comply with the Geneva Agreement, most of which would certainly not survive any legal scrutiny. However, it could be argued that recent policy statements by the Bush administration – the axis-of-evil speech by President Bush on January 29, the revised Nuclear Posture Review foreseeing pre-emptive (nuclear) strikes against hardened targets of nations that seek weapons of mass destruction and the National Security Strategy 2002 that stipulates a doctrine of pre-emptive strikes against hostile nations – may constitute a violation of the Geneva Agreement. For example, the Agreement refers to the June 11, 1993 Joint Statement of the two parties that a nuclear-free Korean Peninsula should be achieved through negotiations without threatening the use of force and the Geneva Agreement stipulates in Art. 3,1 that the United States will provide formal assurances to the DPRK against the threat or the use of nuclear first strikes.

Korean regime is *the* driving force for the conflict and the arising crisis situation on the Korean Peninsula. Hence, compliance with full scope IAEA safeguards will not be an easy task for Pyongyang. It may well be that a negotiated end to North Korea programs for weapons of mass destruction will never be achieved, because the regime proves unable to reform and thus to achieve revenues and legitimacy by civilized means.

In the meantime, even if the DPRK does not provide nuclear transparency on its old and its new, still primitive uranium enrichment program, the international community may well be better off to continue the freeze of the known DPRK facilities. Thus, accepting the possibility of a limited but frozen North Korea Nuclear Weapons capacity rather than going to war over with a country that has now been effectively deterred for almost fifty years, should be the way to proceed.

Second, internal dynamics in the United States have exacerbated the negative conflict dynamic emanating from the North Korean systemic failure.<sup>67</sup> Under the Clinton administration gridlock between the executive branch and the conservative critics in Congress led to a significant change in the policy vis-à-vis Pyongyang, considerably raising the bar for further normalization between the two countries. In contrast, under the Bush administration the conflict between the administration and Congress subsided while a conflict between different factions within the administration drove the significant toughening of the position. Raising the bar for negotiations with North Korea became the most important mechanism to uphold a consensus within the administration. With Pyongyang resorting to its traditional brinkmanship tactics, the conflict within the administration is bound to continue and even escalate. Thus, the prognosis for a negotiated settlement is not good. It improves, however cynically, with the North Korean issue moving up to the highest decision making level, because here the sway of bureaucratic infighting can be broken.

Third, as the Bush Administration lumped together Iran, North Korea and Iraq in the axis-of-evil, Washington's course vis-à-vis Bagdad will considerably impact upon Pyongyang. Now that the Bush administration already backpedales, after the admission of the new North Korean nuclear program, from its tough rhetoric vis-à-vis Pyongyang, suggesting that North Korea is different from Iraq, because it has not used WMD in anger and because it has not started war with its neighbors recently,<sup>68</sup> this rhetoric may well come to haunt the US administration in the near future. Despite Washington's recent insistence that its threat

---

<sup>67</sup> The same could be argued for European nations DPRK, because they, except for France, have normalized relations with Pyongyang in 2001 without achieving any meaningful progress in the nonproliferation area.

<sup>68</sup> Cf. Suzanne Goldenberg/John Gittings, "US opts for diplomacy in North Korea arms crisis", In: *Guardian*, October 18, 2002;

analysis vis-à-vis Pyongyang is intention-based, its has been basically driven by the “realistic assessment of Pyongyang’s capabilities” by hardliners in the Pentagon. In a little noticed Press Briefing on September 16, Secretary of Defense Donald Rumsfeld pointed out, that the administration has come to view the three states of the “axis of evil” differently when it comes to pre-emptive strikes. Rumsfeld indicated that the U.S. military may take pre-emptive military action *only* to prevent countries from getting nuclear weapons, but will not attack them if they already have them.<sup>69</sup> As the Bush administration has concluded in its December 2001 National Intelligence Council estimate that Pyongyang already possesses one or two nuclear weapons, Pyongyang will – if this reading of the Bush administration’s position is correct – not be attacked pre-emptively as long as it is presumed to have nuclear weapons. In addition to Pyongyang’s inclination for brinkmanship when put under pressure, this position induces a powerful incentive for Pyongyang to keep nuclear weapons – if it had them – or to feed Washington’s perception that they may have them – if they had not. If this line of reasoning is correct, than we should expect Pyongyang to resort to brinkmanship when put under pressure by Washington. As the crisis escalates Pyongyang may feel that it has to reveal some of its nuclear capabilities in order to deter pre-emptive strikes by the United States. Once Pyongyang introduces this high-risk brinkmanship with a nuclear component, it will be very hard for the Bush administration to uphold its – even now not very convincing – distinction between Iraq and North Korea.<sup>70</sup>

Finally, as can be derived from the above, the state of US-DPRK relations is reaching a crucial juncture. There is no automatism leading to military conflict between Washington and Pyongyang: moderate forces within the administration (e.g. with the the support of the traditionally cautious Commander of the US 8<sup>th</sup> Army in Korea) and as well as concerned allies, Japan and South Korea, and states (PR China and Russia) may be able to win the day and bring the negotiations between the two back on track. Thus there is a new diplomatic pattern here, when looking at Washington’s new hegemonic non-poliferation policy: with long- and short-term trends coalescing, the US-DPRK bilateral negotiation agenda has become ever more demanding. With the domestic support for the improvement of the bilateral relationship dwindling in the US, the demand for multilateral assistance and support in this crucial dyad in Northeast Asia is growing fast.

---

<sup>69</sup> Cf. *DoD News Briefing – Secretary Rumsfeld and Gen. Pace*, September 9, 2002, <[http://www.defenselink.mil/news/Sep2002/t09162002\\_t0916sd.html](http://www.defenselink.mil/news/Sep2002/t09162002_t0916sd.html)>; *Rumsfeld Indicates Nuclear Status Key to Pre-Emption Policy*, September 19, 2002, <[http://www.stratfor.com/fib/fib\\_view.php?ID=206276](http://www.stratfor.com/fib/fib_view.php?ID=206276)>.

<sup>70</sup> Cf. Nicholas D. Kristof, “The Greatest Threat”, In: *NYT*, October 19, 2002.