

Raketenabwehrforschung International

Koordinationsgruppe: Dr. Bernd W. Kubbig, Martina Glebocki, Alexander Wicker und Rachel Adam

Ein Projekt der

Forschungsgruppe Rüstungskontrolle und Abrüstung (Leiter: Professor Dr. Harald Müller)
der Hessischen Stiftung Friedens- und Konfliktforschung

In Zusammenarbeit mit der Arbeitsstelle Friedensforschung Bonn (Leiterin: Dr. Regine Mehl)
Mit freundlicher Unterstützung der Deutschen Stiftung Friedensforschung

Bulletin No 29 – Winter 2002/03

Sebastian Harnisch

US-DPRK Relations under the Bush Administration after Pyongyang's Admission of a Secret Nuclear Weapons Program

1. 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 states which is critical to 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 the present situation has been in the making for several years, several developments since the September 11 attacks have coalesced in recent months, leading to a downward spiral in the relationship between the United States and Democratic People's Republic (DPRK) which, in the coming months, threatens the peace and stability of the Korean Peninsula.¹ Thus, Pyongyang's recent admission that it is pursuing a secret nuclear weapons-program² that is

Please quote as: Sebastian Harnisch, US-DPRK Relations under the Bush Administration after Pyongyang's Admission of a Secret Nuclear Weapons Program, Raketenabwehrforschung International, Bulletin No. 29 (Winter 2002/03), Frankfurt am Main 2003.

¹ 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 focusing 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 the Bush administration's campaign against terrorism.

² At the moment of 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

based on uranium enrichment rather than on plutonium, as the program frozen under the Geneva Agreed Framework was, is only the latest stage in a drama that has been in the making for several years now.

First, since the Agreed Framework of October 1994, which provided North Korea with a package of benefits in return for a freeze on, and final dismantlement of its (old) nuclear weapons program,³ 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 in 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) in order to hold together domestic support, and to forestall further DPRK blackmail on other issues.⁴ 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.⁵

As a result, a vicious circle mechanism has 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 building up. Unsurprisingly, this mistrust has stalled the bilateral talks at a time when the incoming Bush administration – under the guidance of Republican sceptics of the engagement policy vis-à-vis Pyongyang – an-

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 [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. Various devices can be used during the separation process, most notably gas centrifuges. Current news reports state that North Korea was still trying to acquire the specialized steel/aluminium 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, Washington Times, 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, Japan Times, October 21, 2002; David E. Sanger/James Dao, U.S. Says Pakistan Gave Technology to North Korea, New York Times, October 18, 2002; Joby Warrick, U.S. Followed the Aluminium, Washington Post, October 18, 2002; third, given the technical complexity of the gas centrifuge 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, International Herald Tribune, October 19-20, 2002.

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

⁴ Cf. Curtis H. Martin: *Rewarding North Korea: Theoretical Perspectives on the 1994 Agreed Framework*. In: Journal of Peace Research, Vol. 39, No. 1, 2002, pp. 51-68.

⁵ On the DPRK negotiation strategy: Scott Snyder, *Negotiating on the Edge. North Korean Negotiating Behavior*, Washington, D.C. 1999; Chuck Downs, *Over the Line. North Korea's Negotiating Strategy*, Washington, D.C. 1999.

nounced that it would first have to review its DPRK policy before entering into a dialogue with the Kim Jong-il regime.

Third, and more recently, the bilateral relations deteriorated further after the Bush administration's approach vis-à-vis Pyongyang changed from "go slow" to "no go" under the pressure of heavy bureaucratic infighting within the administration before the September 11 attacks.⁶ In June 2001, the administration's DPRK policy review showed that opposing factions within the administrations could only agree on a more demanding negotiation agenda with Pyongyang. The review did not, however, spell out what the US might be prepared to offer in exchange for this wide-ranging agenda.

Fourthly, and (again) unsurprisingly, conservative critics of North Korea 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 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 the question of whether the North had weaponized this material) into "North Korea has produced one, possibly two, nuclear weapons";⁷ 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, through a leak, the new US Nuclear Force planning, which specifically targets North Korea, became known. On March 20 the Bush administration refused 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 summary, the United States has shifted its basic analysis of the DPRK considerably, 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 to the regime type and domestic setting of an adversary, and more importance to their 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 it is a fellow democratic regime – in a global concert of great powers.⁸

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 meeting in Brunei in July 2002. Amidst a flurry of North Korean diplomatic activity in the autumn – the North restarted both the Inter-Korean dialogue and the normalization talks with Japan in the following month – Undersecretary of State James Kelly then visited Pyongyang in early October.

⁶ Cf. Sebastian Harnisch, US-North Korean relations under the Bush administration: from "go slow" to "no go". In: *Asian Survey*, Vol.. 42, No. 6, 2002.

⁷ National Intelligence Council, Foreign Missile Developments and Ballistic Missile Threat Through 2015 (Unclassified Version), Washington, D.C. December 2001, http://www.cia.gov/nic/pubs/other_products/Unclassifiedballisticmissilefinal.htm [29. 10. 2002].

⁸ Cf. The White House, National Security Strategy of the United States of America, September 2002, Washington, D.C. 2002.

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.⁹ In addition, the North Koreans claimed, that they had “things even stronger than that” – most likely a reference to past statements from the North suggesting that the “undivided unity of the North Korean people behind the “honorable General Kim Jong-il” constitutes such a force.¹⁰ Thus, from its own point of view, Pyongyang has reciprocated the Bush administration’s tougher stand, by itself raising the bar 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)¹¹, 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).¹²

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 be trying 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 during 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 with the Bush administration’s policy vis-à-vis Pyongyang after the September 11 attacks, and its subsequent decision not to certify DPRK compliance with the requirements of the Foreign Operations Appropriations Act of 2002, which administers the US KEDO funding. Finally, I will consider some policy implications as to how the crisis may be prevented.

2. 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 South Asia and the Middle East through export.¹³ After the DPRK launched a three-stage solid fuel intermediate-range missile over the Japanese islands in August 1998, Tokyo revised its security outlook considerably: Tokyo started to collaborate in earnest with Washington on Theater Missile Defense, while at the same time hedging its

⁹ Cf. Carl Giacomo, U.S. Says N. Korea acknowledges nuclear arms programme, [Reuters London](#), October 17, 2002; David Sanger, Shock from North Korea, [International Herald Tribune](#), October 18, 2002.

¹⁰ Daniel Pinkston, Collapse of the Agreed Framework?, <http://www.cns.miis.edu/pubs/week/pdf/nkpaki.pdf> [29. 10. 2002].

¹¹ The date in brackets indicates the date North Korea signed or ratified the respective obligation.

¹² 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].

¹³ Cf. On a Collision Course: N. Korea’s Missile Development Program, <http://www.stratfor.com> [14. 2. 2002].

security reliance on the United States by acquiring its own surveillance satellites.¹⁴ In South Asia, North Korean missile exports and extensive technical support have been at the heart of the Pakistani ballistic missile program,¹⁵ notably the Ghauri medium-range missiles.¹⁶ 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.¹⁷ Both programs have fueled regional arms races, in particular Iraq's quest for ballistic missiles, as well as the Indian Shaheen program which, in turn, has been a major concern of the Chinese Peoples Liberation Army for many years. Hence, North Korean technology has added considerable "fuel" to the impending military conflict between Pakistan and India.¹⁸

As the Bush administration's security outlook shifted after the September 11 attacks, Pyongyang's missile capabilities, and their ability 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.¹⁹ As the Bush administration's security outlook shifted after the September 11 attacks, Pyongyang's missile capabilities, production, testing and export rank very high on the agenda for (possible future) negotiations with the Kim regime.²⁰ This is especially true in view of their ability to strike US forces in Asia, particularly in South Korean and Japan, and the quest for long-range missiles that could reach the US homeland (Guam, Hawaii), or even the continental United States.

The Clinton administration had been engaged in bilateral missile talks with Pyongyang from 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,²¹ the Clinton team was unable to secure an agreement that ended or at least contained the DPRK program before it left office.²² It did, however, negotiate a framework that may well

¹⁴ Cf. Chris Hughes, The North Korean Nuclear Crisis and Japanese Security. In: Survival, Vol. 38, No. 2, 1996, pp. 79-103; Bhupindar Singh, The 1998 North Korean Missile Launch and the "Normalization" of Japanese Statehood. In: Issues and Studies, Vol. 37, No. 3, 2001, pp. 142-162.

¹⁵ 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, Jane's Defence Weekly, May 5, 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, Reuters Tokyo, May 29, 1998; for recent, more detailed reports: Mark Magnier/Sonni Efron, E. Asian Strategic Balance Remains, Los Angeles Times, October 19, 2002; B. Raman, Pakistan and the North Korea connection, Asia Times, October 22, 2002.

¹⁶ 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. 5. 2002], pp. 23-24.

¹⁷ Cf. CIA, Foreign Missile Developments.

¹⁸ Cf. Howard D. French, North Korea sired most of Pakistan's nuclear missile capability, International Herald Tribune, May 27, 2002.

¹⁹ Cf. Larry Niksch, North Korea's Nuclear Weapons Program, CRS Report, Updated October 21, 2002, Washington, D.C., <http://fpc.state.gov/documents/organization/14823.pdf> [29. 10. 2002], p. 14.

²⁰ Cf. Larry Niksch, North Korea's Nuclear Weapons Program, CRS Report, Updated October 21, 2002, Washington, D.C., <http://fpc.state.gov/documents/organization/14823.pdf> [29. 10. 2002], p. 14.

²¹ Cf. Sebastian Harnisch, Erst verhandeln, dann rüsten? Die nordkoreanische Bedrohung in der amerikanischen Raketenabwehrdebatte, Raketenabwehrforschung International, Bulletin No. 14, Frankfurt am Main 2000, <http://www.hsfk.de/abm/bulletin/pdfs/harnis1.pdf> [31. 1. 2002].

²² 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).

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 of 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 greater than 300 km. Hence, DPRK would come into compliance with the 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.²³

When compared to the DPRK's former position, the scope of its acceptance was unprecedented.²⁴ DPRK negotiators had obviously accepted non-monetary compensation, such as regular satellite launches or in-kind transfers such as food aid in return for ending all missile related exports. Pyongyang also agreed to freeze current missile deployments, including up to one hundred No Dong missiles, capable of hitting Japan, and the US bases there.²⁵ Nevertheless, as the domestic situation during the Florida ballot crisis seemed unclear, and the incoming administration signalled 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.²⁶

As Pyongyang's unilateral moratorium on missile tests was extended indefinitely on September 17 to facilitate the first high-level visit by Undersecretary James Kelly in October,²⁷ the Kim regime may well use a breach of that commitment to put pressure on the US to come to the negotiating 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 the coming months, as a result of any refusal to halt its secret nuclear program, it may feel that a further provocation, in the form of a test launch of the more advanced Taepo Dong II long-range missile, might improve its bargaining position. Even if such a step were seen as less serious than decanting the 8.000 used fuel rods which they have, and reprocessing them for possible use in 4-5 nuclear warheads, another missile test could very well spark off another crisis when taken in conjunction with rising concerns about the stalling efforts to end the North Korean Nuclear Weapons program.

3. The North Korean nuclear weapons program(s)

Since March 1995, the Korean Peninsula Energy Development Organization has proved to be a valuable tool with which to implement the Geneva Agreed Framework, and to freeze the

²³ Cf. Michael R. Gordon, How Politics Sank Accord on Missiles With North Korea, New York Times, March 6, 2001.

²⁴ Cf. Gary Samore, U.S.-DPRK Missile Negotiations. In: Nonproliferation Review, Vol. 9, Nr. 2, 2002, pp. 16-20.

²⁵ 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. 3. 2001].

²⁶ Cf. Background Briefing on Bush-Kim Meeting, Transcript, Washington File, March 8, 2001, <http://www.usinfo.state.gov/cgi-bin/wa..lt&t=/products/washfile/newsitem.shtml> [9. 3. 2001].

²⁷ Cf. Paul Kerr, North Korea Extends Missile Test Moratorium; U.S. to Send Kelly. In: Arms Control Today Online, October 2002, http://www.armscontrol.org/act/2002_10/nkoreaact02.asp?print [22. 10. 2002].

hitherto acknowledged plutonium-based North Korean nuclear weapons program.²⁸ 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 put into operation 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 nuclear weapons per year.²⁹ 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 the moves to end the threat emanating from this program, not to speak of ending the newly-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, which have delayed the original delivery schedule by at least six years.³⁰ 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.³¹ 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.³²

As a consequence, as I pointed out earlier, the Clinton administration was under pressure 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 at the request of 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.³³ In June 2001, the Bush administration 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

²⁸ Cf. Sebastian Harnisch, Die Korean Peninsula Energy Development Organization (KEDO): Genese – Struktur – Perspektiven für 1999. In: Patrick Köllner (Hg.), Korea 1999: Politik, Wirtschaft, Gesellschaft, Hamburg 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. 5. 2002].

²⁹ Cf. David Albright, Secretary of State Madeleine Albright's Visit to North Korea, ACA Press Briefing, October 20, 2000. In: Arms Control Today Online, November 2000, <http://www.armscontrol.org/ACTnov00/pressconnk.html> [2. 3. 2001].

³⁰ Originally the first LWR was to be completed in 2003; current estimates are that it will not become operational before 2010.

³¹ 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, Reuters Seoul, August 8, 2002.

³² Cf. Sebastian Harnisch, Die Nordkoreapolitik der USA im letzten Amtsjahr der Clinton-Administration. In: Patrick Köllner (Hg.), Korea 2001 – Politik, Wirtschaft, Gesellschaft, Hamburg 2001, pp. 235-254.

³³ Cf. Martin, Rewarding, p. 59; Sebastian Harnisch, Wieviel ist genug? Zur Normalisierung der US-amerikanischen Nordkoreapolitik, ZOPS Occasional Paper, No. 13, Trier 1999, <http://www.uni-trier.de/uni/fb2/zops/op/OccasionalPapersNr13.pdf> [13. 9. 2001].

progress in bilateral relations.³⁴ More recently, on March 20, 2002, the executive branch refused to certify that Pyongyang was abiding by the requirements of the Foreign Operation Appropriations Act 2002 (FOAA 2002), needed so that US contributions to the KEDO could be paid for the year 2002.³⁵ Although the administration waived this certification requirement for “national security reasons”,³⁶ it is obvious that the administration not only accepts the congressional linkage policy, as spelled out in Section 565 of the FOAA 2002, but is also using this linkage to maximize the pressure put on the DPRK.³⁷

Moreover, because the recently disclosed secret program constitutes a serious breach of several clauses of the Agreed Framework,³⁸ the Bush administration will have a hard time if it wants to convince members of congress to further approve funds for the implementation of the Geneva Agreement, when the North Korean side has, reportedly,³⁹ called the agreement “nullified”.⁴⁰ It is, however, noteworthy, that the North has (so far) not demanded that IAEA inspectors, who are there to verify the freezing 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 nuclear weapons program, as well as the old one, have become very important for the overall relationship between Washington and Pyongyang. Just as the extent and nature of the new program is still unclear, so are any possible solutions leading to the verified cessation of the program. These will most likely 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 (possible) expertise already acquired, it would be easy to initiate yet another secret program. Thus, negotiating a verified end to the new program is a challenging task in itself. In addition, ending the new program will also require a solution to the most important unresolved issues concerning the old, frozen nuclear program.

The most important issues are those of nuclear liability, nuclear safety requirements, and the crucial question of verification.⁴¹ On nuclear liability, KEDO and North Korea will have to negotiate several additional protocols to keep the implementation process for the light-water

³⁴ Cf. The White House, Statement of the President, June 6, 2001, <http://usinfo.state.gov/topical/pol/arms/stories/01060700.htm> [20. 7. 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. 7. 2001].

³⁵ Cf. P.L. 107-115, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002.

³⁶ The White House, Office of the Press Secretary, Presidential Determination No. 2002-12, April 1, 2002, <http://usinfo.state.gov/regional/ea/easec/keo0403.htm> [18. 8. 2002].

³⁷ 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 [14. 3. 2002].

³⁸ First, if this violation of the NPT leads to a North Korean withdrawal from the Treaty; this would violate the AF obligation (Art. 4,1) to remain party to the NPT. Secondly, clause 4,2 (AF) foresees that the DPRK will give notice to the IAEA of any new facility and include it in its safeguards inspections process.

³⁹ 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, Korea Times, October 24, 2002.

⁴⁰ Joo Young-jung, US Senators Urge Aid Freeze to North Korea, Chosun Ilbo (Engl. Ed.), October 31, 2002, <http://english.chosun.com/w21data/html/news/200210/200210310019.html> [31. 10. 2002].

⁴¹ Cf. David Albright/Mary Higgins: North Korea: It's taking too long. In: Bulletin of the Atomic Scientists Online, Vol. 58, No. 1, 2002, <http://www.thebulletin.org/issues/2002/JF02/jfhiggins.html> [19. 2. 2002].

reactor (LWR) exchange procedure on track, and 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 sub-contractors in connection with any third-party claims in the event of a nuclear accident. Furthermore, North Korea and KEDO must 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 the transfer of 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.⁴² KEDO and the DPRK are still discussing a lengthy "Preliminary Safety Analysis Report" (PSAR) which will require final approval. The PSAR will give KEDO confidence that North Korea is indeed able to operate the reactors safely.⁴³ 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 case of an accident. As most international experts would agree, so far North Korea has no viable electrical distribution system, and it certainly has no reliable back-up system to prevent a reactor melt-down through a back-up cooling system.

3.1 The crucial question of verifying past DPRK 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 seen as the crucial question which can make or break the whole US engagement policy vis-à-vis Pyongyang in the coming months. 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 meet its commitments under the Agreed Framework vis-à-vis the IAEA. In May 2002, KEDO officials presented Pyongyang with a project schedule for the completion of the first reactor in 2008 (sic!),⁴⁴ but so far neither KEDO nor North Korea have 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.⁴⁵

In October 2000, the Clinton administration and the Kim regime agreed on greater transparency, and to carry out of their respective obligations under the Agreed Framework,⁴⁶ but

⁴² 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> [2. 2. 2001].

⁴³ Cf. Stephen Milioti/Kang Young-chul/Brian Kremer, KEDO's Nuclear Safety Approach, <http://www.kedo.org/article.htm> [2. 3. 2001].

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

⁴⁵ Cf. Shin Yong-Bae, N.K., KEDO talks on nuke parts expected this year, Korea Herald, October 4, 2001; Tetsuya Hakoda, KEDO tells North to allow IAEA inspections, Asahi Shinbun, August 8, 2002, <http://www.asahi.com/english/international/K2002080800413.html> [9. 8. 2002].

⁴⁶ Cf. US-DPRK Joint Communiqué, Washington, D.C., October 12, 2000, <http://www.fas.org/news/dprk/2000/dprk-001012a.htm> [20. 3. 2001].

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.

3.2 North Korea and the IAEA

On October 17, 2001, IAEA Director General El Baradei stated that there had been no progress at all on the verification of past North Korean nuclear activities over a period of many years. The regime then “offered” in early November 2001 to 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 plutonium in early 1990s,⁴⁷ could (again) not be “visited” by the International Atomic Energy Agency.⁴⁸

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, a visit by IAEA inspectors to the IPL in Yongbyon took place on January 16; 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 the verification of the spent fuel at the DPRK’s 5 MW(e) reactor facility.⁴⁹ 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.⁵⁰ Whether these steps indicate that the DPRK will allow IAEA inspectors to investigate all contentious verification issues is, at the very least, unclear.⁵¹ 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 in relation to the Bush administration post September 11.

3.3 The impact of the September 11 attacks

Since the September attacks on the United States, conservative sceptics 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.⁵² The argument of this group can be summarized as follows: First, in the light of the terror attacks and the revelations that Al Qaeda terrorist

⁴⁷ Personal communication with the author.

⁴⁸ Cf. Daniel Pinkston, The Status of North Korea’s Nuclear Inspections, February 26, 2002, <http://www.cns.miis.edu/pubs/week/020226.htm> [20. 5. 2002].

⁴⁹ Cf. Excerpts from the Introductory Statement to the IAEA Board of Governors by IAEA Director General Dr. Mohamed El-Baradei, March 18, 2002, <http://www.iaea.org/worldatom/Press/Statements/2002/ebsp2002n001.shtml> [24. 5. 2002].

⁵⁰ Cf. Kwon Kyeong-bok, North Resumes Negotiations with IAEA, *Chosun Ilbo* (Engl. Ed.), September 29, 2002.

⁵¹ 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, 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. 5. 2002].

⁵² Cf. Wagner, Bush Challenges.

sought to both sabotage nuclear power stations and acquire sensitive nuclear technology, the Bush administration must stop the KEDO process which was transferring two advanced LWRs 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.⁵³ Second, since a significant part of the first LWR will be 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.⁵⁴ 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),⁵⁵ this group of officials argues that the North is already in “anticipatory breach” of its verification requirements. Because of the lack of DPRK cooperation with the IAEA, the agency will not be able to conclude its inspections by early 2005.⁵⁶

3.4 Raising the bar – the concept of anticipatory breach

Acting on this premise on March 20, 2002, the Bush administration refused to certify North Korean compliance with the domestic law, Foreign Operations Appropriations Act 2002, Sect. 565, which 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 reluctance 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.⁵⁷

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” neither stands up to the wording of the Geneva Agreement nor the negotiation history.⁵⁸ 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:

⁵³ The thinking of this group is reflected in the writings of 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> [9. 8. 2002] and the “Nonproliferation Education Center” led by the former U.S. Nuclear Regulatory Commission Official, Henry Sokolsky, cf. Letter to the Honorable Spencer Abraham, Secretary of Energy, April 18, 2002, http://www.npec-web.org/pages/4_18letter.htm [20. 5. 2002].

⁵⁴ Beginning in July 2001, the Bush administration has insisted that North Korea must accept early IAEA inspections in order to comply with its obligations under the Geneva Agreed Framework, cf. Niksch, Weapons Program, p. 3.

⁵⁵ Cf. IAEA Annual Report 2000, Vienna 2000, p. 99.

⁵⁶ 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 [20. 5. 2002].

⁵⁷ Cf. U.S. State Department, Noon Briefing, March 20, 2002, <http://usinfo.state.gov/regional/nea/sasia/text/0320state.htm> [20. 5. 2002].

⁵⁸ Cf. Robert Gallucci, Progress and Challenges Toward Denuclearizing the Korean Peninsula, ACA Press Conference, Statement on April 10, 2002, Arms Control Today Online, May 2002, http://www.armscontrol.org/act/2002_05/pressmay02.asp [25. 2. 2002].

When a significant portion of the LWR is completed, but before delivery 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.⁵⁹

In fact, the wording suggests that there may be a period in between “the completion of a significant portion” *and* “before delivery 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 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”.⁶⁰

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.⁶¹ To begin with, the Supply Agreement between KEDO (which is legally binding on 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 this may seem odd when considering that North Korea was at the same time pursuing 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 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 [...], S.H.] 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.⁶²

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

⁵⁹ Agreed Framework between the United States of America and the Democratic People's Republic of Korea, Geneva, October 21, 1994, <http://www.kedo.org/agreedframework.htm> [22. 5. 2002].

⁶⁰ As cited in Gallucci, Statement.

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

⁶² 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 [20. 5. 2002].

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 fulfill its future obligations under a contract.⁶³ In fact the party in question has to refuse to be bound, and to communicate such an intention to the other party. In *Samel vs. Super* (US Supreme Court 1913) the court referred to an early ruling in *O’Neill vs. 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.⁶⁴

North Korea so far has not disabled itself from performing, or repudiated in advance its verification obligations 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 initial contradictory statements, is still weighing up whether to withdraw from the Geneva Agreement or not.⁶⁵ Thus, Pyongyang may still put the new suspected facilities under IAEA safeguards, thereby fulfilling its legal obligation under the KEDO Supply Agreement. Of course, the North is reported to have called the Agreed Framework “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 the North claims that the United States does not abide by the Geneva Agreement itself⁶⁶ – 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 an obligation 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 is to be upheld. However, when it comes to the IAEA inspections of the old, frozen program, the question is 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

⁶³ Of course, this condition has changed, since Pyongyang has publicly stated vis-à-vis Tokyo that it will not end its secret program unless the United States fulfills several conditions, among others signing a formal declaration of non-aggression and non-first-use of nuclear weapons against North Korea. Cf. North Korea’s Response, *New York Times*, October 26, 2002.

⁶⁴ Cf. *Anticipatory Breach of Contract*, <http://www.judiciary.state.nj.us/charges/civil/419.htm> [25. 5. 2002].

⁶⁵ Cf. Kelly, Nuclear accord with North Korea still alive, *Asahi Shimbun* (Engl. Ed.), October 22, 2002.

⁶⁶ Cf. North Korea’s Response. 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.

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 the 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 acquiescence.

4. Policy Implications

4.1 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 the development of weapons of mass destruction. These programs are very precious to the regime, because they can be used to extract foreign support. The bankruptcy of the North Korean regime is *the* driving force for the conflict, and the crisis situation arising 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 will prove itself unable to reform, and thus achieve revenues and legitimacy by civilized means.

In the meantime, even if the DPRK does not provide nuclear transparency on both its old and new, still primitive, uranium enrichment program, the international community may well be better off if it continues the freeze on the known DPRK facilities. Thus, accepting the possibility of a limited but frozen North Korea Nuclear Weapons capacity, rather than going to war 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.⁶⁷ 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 forward a 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 US 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 stranglehold 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 Baghdad will have a considerable impact upon Pyongyang. Now that the Bush administration is already back-peddalling from its tough rhetoric vis-à-vis Pyongyang after the disclosure of the new North Korean nuclear program, suggesting that North Korea is different from Iraq because it has not used WMD in anger, and because it

⁶⁷ 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.

has not started a war with its neighbors recently,⁶⁸ this rhetoric may well come to haunt the US administration in the near future. Despite Washington's recent insistence that its threat 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 US 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.⁶⁹ Since 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 preemptively 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.⁷⁰

Finally, as can be derived from the above, the state of US-DPRK relations is reaching a crucial juncture. There is no automatic course leading to military conflict between Washington and Pyongyang: moderate forces within the administration (e.g. with the support of the traditionally cautious Commander of the US 8th Army in Korea), as well as concerned allies, Japan and South Korea, and other 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 nonproliferation policy: with long- and short-term trends coalescing, the US-DPRK bilateral negotiation agenda has become ever more demanding. With domestic support for the improvement in the bilateral relationship dwindling in the US, the demand for multilateral assistance and support in this crucial dyad in Northeast Asia is growing fast.

⁶⁸ Cf. Suzanne Goldenberg/John Gittings, US opts for diplomacy in North Korea arms crisis, [The Guardian](#), October 18, 2002.

⁶⁹ Cf. U.S. Department of Defense, News Briefing – Secretary Rumsfeld and Gen. Pace, September 9, 2002, http://www.defenselink.mil/news/Sep2002/t09162002_t0916sd.html [10. 9. 2002]; Rumsfeld Indicates Nuclear Status Key to Pre-Emption Policy, September 19, 2002, http://www.stratfor.com/fib/fib_view.php?ID=206276 [20. 9. 2002].

⁷⁰ Cf. Nicholas D. Kristof, The Greatest Threat, [New York Times](#), October 19, 2002.