

Dealing with North Korean Nuclear problems
- Negotiations better than any alternative measures

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Introduction

North Korea tested nuclear explosive devices in 2006, 2009, and 2013 and deploys short and medium-range ballistic missiles and successfully launched a long-range rocket in 2012.¹ Also, North Korea proclaimed itself a "nuclear state" following a revision of its constitution in 2012.²

North Korea's pursuit of nuclear weapons is not only one of the most serious threats to the security of Korean peninsula, but also to that of East Asia and to the whole world. To deter the nuclear proliferation in North Korea, international community including the United States as well as South Korea has tried various measures leading to some valuable outcomes such as the Declaration on the Denuclearization of the Korean Peninsula(hereinafter "Joint Declaration")³ between two Koreas in 1992, the Geneva Agreed Framework(hereinafter "Agreed Framework") between North Korea and the United States in 1994,⁴ and the joint statement(hereinafter "September Statement")⁵ of principles to guide future negotiations of the Six-Party Talks in September 2005 and the joint statement(hereinafter "October Statement")⁶ of 2007 provided to implement the September Statement.

However, all of those painstaking efforts of negotiating with North Korea and the products of them seem to be unsuccessful until now. In this situation, where all the past measures and efforts have failed, whether North Korea's nuclear weapons program is still subject to

¹ NTI, "North Korea," available at <http://www.nti.org/country-profiles/north-korea/>

² See detailed news report on North Korea proclaims itself a nuclear state in new constitution, K.J. Kwon, CNN, May 31, 2012, available at <http://www.cnn.com/2012/05/31/world/asia/north-korea-nuclear-constitution/index.html>

³ Joint Declaration on the Denuclearization of the Korean Peninsula, N.Korea-S. Korea, Jan. 20, 1992, <http://www.fas.org/news/dprk/1992/920219-D4129.htm>

⁴ Arms Control Ass'n, Chronology of U.S.-North Korean Nuclear and Missile Diplomacy, June 2003, available at <http://www.armscontrol.org/>, See also Agreed Framework to Negotiate Resolution of the Nuclear Issue on the Korean Peninsula, S. Korea-U.S., Oct. 21, 1994, 34 I.L.M. 603 (1995)

⁵ Text of the joint statement in September 2005(hereinafter "September Statement") is available at <http://www.state.gov/p/eap/regional/c15455.htm>

⁶ Text of the joint statement in October 2007(hereinafter "October Statement") is available at http://www.ncnk.org/resources/briefing-papers/publications/Second_Phase_Actions_Oct_07.doc/file_view

negotiation in exchange for a better relationship? Can we derive possible terms of agreement that might be acceptable to and enforceable against North Korea in this regard? To answer this question and to find possible solution to this problem, I think we first understand North Korean Nuclear Regime or Nuclear Weapons Intention and the possible reasons why all those efforts of North Korean denuclearization have failed so far.

In this regards, this Article will examine the past measures dealing with the North Korean nuclear problems and answer the questions to solve the problems.

Part 1 introduces International Nuclear regulation under the NPT regime and chronological backgrounds of North Korean nuclear weapons policy and international efforts to deal with North Korean nuclear proliferation. The chronological backgrounds demonstrates how North Korea challenged the international nuclear framework under NPT regime, how all the disputes developed and progressed into nuclear crises, how the relevant parties acted or reacted respectively. Careful analysis of the past North Korean nuclear crises is a basis of understanding North Korean nuclear weapons intention and developing possible terms of future agreement acceptable to North Korea.

Part 2 provides lessons learned from past failures. It states possible explanation of North Korean nuclear weapons intention or its character and suggests various reasons why all those past efforts of international community have failed to resolve North Korean proliferation. Assessment of the past measures, evaluation of the terms of the agreements and lessons from past failure will likely to guide international community to deal with North Korean Nuclear problems since similar patterns of failure had occurred repeatedly.

Part 3 argues that North Korean nuclear weapons program is still subject to negotiation in light of international law and human rights concerns.

This Article suggests possible terms need to be included in the future agreements and concludes that the better relationship with North Korea combined with humanitarian support and aid, rather than isolating it from the international community, may induce it to comply with its obligations under the international law.

1. Backgrounds

(1) International Nuclear Legal Regime - NPT

The most important international legal framework to deter nuclear proliferation is the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter “NPT”)⁷. The NPT entered into force in 1970, and has been widely accepted since then. Currently, 190 states have subscribed.⁸

The NPT categorizes states into Nuclear Weapon States (China, the United States, Russia, France, and the United Kingdom) and Non-Nuclear Weapon States and assigns them different obligations based on their classification.

Article I⁹ of the NPT prohibits all Nuclear Weapon States from transferring nuclear weapons or weapons-related technologies to Non-Nuclear Weapon States. The NPT also imposes a duty on the Nuclear Weapons States not to assist, encourage, or induce any Non-Nuclear Weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices¹⁰.

Likewise, Article II¹¹ requires Non-Nuclear Weapon States to refrain from acquiring or manufacturing nuclear weapons or other nuclear explosive devices on their own and not to receive foreign assistance for developing them.

Article III also requires Non-Nuclear Weapon States to enter into a safeguard agreement with the International Atomic Energy Association (hereinafter “IAEA”), which ideally will prevent peaceful use of nuclear energy from becoming to be abused as military purposes.¹²

Finally, Article VI provides that all member states are obligated to pursue negotiation in good faith toward the cessation of the nuclear arms race and nuclear disarmament. Thus, the basic two goals of the NPT is disarmament of Nuclear Weapon States and cessation of the nuclear arms race.¹³

⁷ Text of the NPT, available at <http://www.un.org/en/conf/npt/2005/npttreaty.html>

⁸ NPT overview available at <http://www.state.gov/t/isn/npt/>

⁹ Id. Article I.

¹⁰ Id.

¹¹ Id. Article II.

¹² Kyle Mathis, The Nuclear Supplier Group: Problems and Solutions, 4 Ala. C.R. & C.L.L. Rev. 172 (2013)

¹³ See NPT supra note 5, Article VI.

On the other side, the other equally important purpose of the NPT is to oversee peaceful use of nuclear energy by all member states.¹⁴ In Article IV, the NPT recognizes “the inalienable right of member states to develop research, production and use of nuclear energy for peaceful purposes without discrimination” and in conformity with the NPT.¹⁵

Although the NPT is most important international legal framework to deter nuclear proliferation, it has been subject to criticism for following reasons.

First, it is unsuccessful to include all States within its framework.¹⁶ Full membership is very important in the NPT regime because it pursues eventual disarmament of Nuclear Weapon States and cessation of the nuclear arms race.¹⁷ Outside of system, nuclear proliferation of any one state will increase chances that any other state might also seek to acquire nuclear weapons in response.¹⁸

Second, those five Nuclear Weapon States identified in the Treaty do not represent the full range of states that have significant nuclear weapons capability.¹⁹ Since states did not signed the NPT are not bound by its provisions, those states with significant nuclear weapons capability remaining outside of the NPT clearly affects the security of all the other states and weakens the system's ability to limit proliferation and achieve disarmament.²⁰

Third, the NPT allows Parties to withdraw from the treaty under extraordinary events.²¹ Leaving the determination about whether “extraordinary event” occurred to the Party to withdraw, and

¹⁴ Ja Young Elizabeth Kim, *The Agreement After the Six-Party Talks: Are There No Alternatives to the "Modified" Version of the 1994 Geneva Agreed Framework? - an Analysis of the Newly-Adopted Framework and Its Significance for the Nuclear Proliferation Issues Relation to North Korea*, 21 *Temp. Int'l & Comp. L.J.* 177, 182 (2007)

¹⁵ See NPT *supra* note 5, Article IV.

¹⁶ Arsalan M. Suleman, *Bargaining in the Shadow of Violence: The Npt, Iaea, and Nuclear Non-Proliferation Negotiations*, 26 *Berkeley J. Int'l L.* 206, 220-21 (2008)

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Kyle Mathis, *The Nuclear Supplier Group: Problems and Solutions*, 4 *Ala. C.R. & C.L.L. Rev.* 169, 172 (2013)

²⁰ *Bargaining in the Shadow of Violence: The Npt, Iaea, and Nuclear Non-Proliferation Negotiations*, *supra* note 16, at 206.

²¹ See NPT *supra* note 5, Article X.

not defining what an “extraordinary event” is, the NPT provides no clear way to deter the withdrawal.²²

Finally, the NPT thus far works ineffectively especially in its disarmament pillar. Since the NPT originally had been given a twenty-five year life span with an option for permanent, incremental or no extension thereafter, the signatories approved the treaty’s permanent renew in 1995.²³ However, because many of those Non-Nuclear States members were dissatisfied with the progress made by the Nuclear Weapon States in fulfilling their Article VI obligation of negotiation in good faith toward the cessation of the nuclear arms race and nuclear disarmament, they were reluctant to accept the permanent NPT for fear of being locked into what they saw as an inherently discriminatory regime.²⁴ Considering the number of the nuclear weapons in the world, approximately 39,000 nuclear weapons when the NPT was signed, growing to over 70,000 by 1986 and following shrinkage since then is more likely attributed to the end of the Cold War, than through pressure from obligations under the NPT,²⁵ Non-Nuclear States members’ reluctance to accept the permanent NPT seems to be fully understandable.

(2) Chronology of Nuclear diplomacy of North Korea and Various efforts to resolve North Korean Nuclear Proliferation²⁶

In 1985, North Korea acceded to the NPT but did not complete a safeguards agreement with the IAEA.²⁷ Under Article III of the NPT, North Korea has 18 months to conclude such an

²² Chris Peloso, *Crafting an Updated Nuclear Non-Proliferation Treaty: Applying the Lessons Learned from the Success of Similar International Treaties to the Nuclear Arms Problem*, 9 *Santa Clara J. Int'l L.* 309, 315 (2011)

²³ Ambassador Thomas Graham, Jr., *International Law and the Proliferation of Nuclear Weapons*, 33 *Geo. Wash. Int'l L. Rev.* 55 (2000)

²⁴ *Id.*

²⁵ Chris Peloso, *Crafting an Updated Nuclear Non-Proliferation Treaty: Applying the Lessons Learned from the Success of Similar International Treaties to the Nuclear Arms Problem*, 9 *Santa Clara J. Int'l L.* 309, 315-16 (2011)

²⁶ This whole section is basically based on the report of Arms Control Association on “Chronology of U.S.-North Korean Nuclear and Missile Diplomacy,” available at <http://www.armscontrol.org/factsheets/dprkchron>

²⁷ *Id.*

arrangement after the date of initiation of negotiations.²⁸ However, North Korea had conditioned to complete the agreement to the withdrawal of the United States nuclear weapons from South Korea.²⁹ In 1991, the United States then President George Bush announced the unilateral withdrawal of all naval and land-based tactical nuclear weapons deployed abroad. In response, South Korean then President Roh Tae Woo announced the Declaration on the Denuclearization of the Korean Peninsula.³⁰ And following December, the two Koreas signed the “Joint Declaration”, under which both countries agreed not to “test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons” or to “possess nuclear reprocessing and uranium enrichment facilities.”³¹

In 1992, North Korea concluded a safeguards agreement with the IAEA and submitted its nuclear material declarations to the IAEA.³² However, upon finding discrepancies in North Korea’s initial report, the IAEA demanded special inspections. North Korea refused the IAEA’s request and announced its intention to withdraw from the NPT in three months citing Article X provisions.³³ The United States started to negotiate with North Korea and in October 1994, the United States and North Korea adopted the “Agreed Framework” in Geneva.³⁴ The agreement calls for North Korea to freeze and eventually eliminate its nuclear facilities and to allow the IAEA to verify compliance through special inspections.³⁵ In exchange, North Korea will receive two Light Water Reactors(herein after “LWRs”) and annual shipments of heavy fuel oil during construction of the reactors.³⁶ The LWRs will be financed and constructed through the Korean Peninsula Energy Development Organization(hereinafter “KEDO”), a multinational consortium.³⁷

²⁸ See NPT supra note 5, Article III.4.

²⁹ See Chronology of U.S.-North Korean Nuclear and Missile Diplomacy supra note 18.

³⁰ Id.

³¹ See Joint Declaration on the Denuclearization of the Korean Peninsula supra note 3.

³² See Chronology of U.S.-North Korean Nuclear and Missile Diplomacy supra note 18.

³³ See Id.

³⁴ See Chronology of U.S.-North Korean Nuclear and Missile Diplomacy supra note 18.

³⁵ See Agreed Framework supra note 4.

³⁶ Id. Article I.

³⁷ See Chronology of U.S.-North Korean Nuclear and Missile Diplomacy supra note 18.

The agreement also contains commitments of the two sides to move forward normalization of political and economic relations by: 1) reducing barriers to trade and investment, including restrictions of telecommunications services and financial transactions, 2) opening liaison offices in each other's capital, and 3) eventually upgrading bilateral relations to the ambassadorial level.³⁸ It also provides that the United States and North Korea will work together for creating peace, security and a nuclear-free Korean Peninsula.³⁹

These active efforts seemed to progress forward for the following years.

In February 1998, South Korean then President Kim Dae-jung announced his “Sunshine Policy,” which strived to improve inter-Korean relations through peace, reconciliation, and cooperation.⁴⁰ Further, North Korean policy coordinator Perry released his review of the United States policy toward North Korea, recommending to Congress “a new, comprehensive and integrated approach to...negotiations” with North Korea, which would involve a coordinated reduction in isolation by the the United States and its allies in a “step-by-step and reciprocal fashion” in October 1999.⁴¹ The United States-North Korean talks had resumed and the two countries issued a joint statements on terrorism and resolution of the missile issue, indicating progress toward improved relations and reiterating the two countries’ commitment to implementation of the Agreed Framework by October 2000.⁴² Also, in June 15, 2000, following the historic summit conference, North and South Korea signed the joint declaration stating they have “agreed to resolve” the question of reunification of the Korean Peninsula.⁴³ Even the Declaration did not contain any commitment regarding nuclear weapons or missile programs, it would be a significant and symbolic step towards denuclearization of North Korea, because peaceful reunification of Korea would eventually solve the North Korean nuclear proliferation problem.⁴⁴

³⁸ See Agreed Framework supra note 4. Article II.

³⁹ See Id, Article III.

⁴⁰ See Chronology of U.S.-North Korean Nuclear and Missile Diplomacy supra note 18.

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ Eunice Lee, Operation 'Denucleunification': A Proposal for the Reunification and Denuclearization of the Korean Peninsula, 33 *Hastings Int'l & Comp. L. Rev.* 245, 271 (2010)

However, change in the United States administration In 2001, cooled down those peaceful mood of Korean Peninsula and deterred furthering this progress toward improved relations.

After his inauguration in 2001, President Bush promulgated a new, more confrontational and hostile policy towards North Korea that was different from the Clinton Administration's policy that had focused on engagement tactics and employed diplomacy in negotiating with North Korea.⁴⁵ And after the terrorist attacks on September 11, 2001, the President criticized North Korea as constituting an "axis of evil, arming to threaten the peace of the world."⁴⁶ North Korea, apparently reacting to Washington's new tone, canceled ministerial-level talks with Seoul and threatened to revenge on the United States⁴⁷

In October 2002, the United States announced that North Korea admitted to having a clandestine program to enrich uranium for nuclear weapons even though North Korea denied several times that it had admitted to having this program.⁴⁸ In response to it, KEDO announced that it was suspending heavy-fuel oil deliveries to North Korea.⁴⁹ In the result, North Korea announced that it was restarting its one functional reactor and was reopening the other nuclear facilities frozen under the Agreed Framework, blaming the United States for violating the Agreed Framework and asserting that the purpose of restarting the reactor was to generate electricity.⁵⁰ Further, in January 2003, North Korea announced its withdrawal from the NPT arguing that it had satisfied Article X requirement of three months' of notice because it had originally announced its decision to withdraw March 12, 1993.⁵¹

⁴⁵ See, The Agreement After the Six-Party Talks: Are There No Alternatives to the "Modified" Version of the 1994 Geneva Agreed Framework? - an Analysis of the Newly-Adopted Framework and Its Significance for the Nuclear Proliferation Issues Relating to North Korea, supra note 12, at 179.

⁴⁶ Id.

⁴⁷ See Chronology of U.S.-North Korean Nuclear and Missile Diplomacy supra note 18.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

In order to solve the North Korean nuclear problem, the first round of Six-Party Talks was held in Beijing in August, 2003.⁵² Starting on 2003, Six nations, China, the United States, Russia, Japan, South and North Korea had met in Beijing for several rounds of talks. During the first negotiations, North Korea proposed a step-by-step solution, calling for the the United States to conclude a non-aggression treaty, normalize bilateral diplomatic relations, refrain from hindering North Korea's economic cooperation with other countries, complete the LWRs promised under the Agreed Framework, resume suspended fuel oil shipments, and increase food aid.⁵³ In return, it would dismantle its nuclear facility, as well as end missile testing and export of missiles and related components.⁵⁴ In short, North Korea wanted the United States to agree to abandon its hostile policy toward North Korea and guarantee not to attack North Korea. However, the United States had different proposals. It called for a two-phase process, in which North Korea would receive fuel oil from China, South Korea, and Russia "after" agreeing to first freeze, then dismantle its nuclear programs.⁵⁵

Even though the first several talks achieved no significant breakthroughs because of the differences in the positions held by the United States and North Korea, the talks in September 2005, resulted in the "September Statement".⁵⁶ According to the September Statement, North Korea committed to abandon all nuclear weapons and existing nuclear programs and the United States affirmed that it has no intention to attack or invade North Korea.⁵⁷

However, the following Six-Party Talks in 2006 and 2007 made no progress towards implementing the September Statement. From the North Korean perspectives it was in part due to continued hostility of the United States including the freeze of North Korean funds by the

⁵² Id.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ See September Statement supra note 5, cl. I.

United States⁵⁸ and in part due to the KEDO Executive Board' announcement in June 2006, that it had formally terminated its project to build LWRs in North Korea.⁵⁹

Painstaking negotiations again brought the parties to agree on an “action plan” for the initial steps to implement the September Statement, and in 2007, the parties issued October Statement⁶⁰ providing that North Korea agrees that, by December 31, 2007, it would provide a complete and correct declaration of all its nuclear programs and disable its Yongbyon nuclear facilities,⁶¹ in return for shipment of heavy-fuel oil.⁶² The United States also agreed to begin the process of removing North Korea from its list of state sponsors of terrorism and advance the process of terminating the application of the Trading with the Enemy Act with respect to North Korea.⁶³

In October 2007, the second time of Korean history, the Summit Conference between two Korea was held.⁶⁴ The Summits discussed prospects for reconciliation and economic cooperation and agreed to take steps toward reunification, ease military tensions, expand meetings of separated families, and engage in social and cultural exchanges.⁶⁵ However, following the administration change in South Korea in 2008, which new administration pledged to review the “Sunshine policy” adopted by its two predecessors and to favor the application of greater pressure on North Korea to denuclearize, South and North Korean relations has deteriorated and the tension on the Korean peninsula increased. Finally, Six-party's talk ended in a deadlock due to a failure to reach agreement on verification measures.⁶⁶

⁵⁸ Chronology of U.S.-North Korean Nuclear and Missile Diplomacy supra note 18.

⁵⁹ Id.

⁶⁰ See October Statement, supra note 6.

⁶¹ Id. cl I.

⁶² Id. cl III.

⁶³ Id. cl II.

⁶⁴ Chronology of U.S.-North Korean Nuclear and Missile Diplomacy supra note 18.

⁶⁵ Id.

⁶⁶ Id.

In April 2009, North Korea launched the three-stage Unha-2 rocket, claiming it was for placing communication satellite into a orbit.⁶⁷ In response to the condemnation by the UN Security Council, North Korea stated that it was withdrawing from the Six-Party Talks and would no longer be bound by any of its agreements.

Throughout the following years, tension on the Korean peninsula has continued and the Six-Party Talks has not resumed yet.

2. Lessons learned from the past failures

(1) North Korean Nuclear Intention

Various rationales may explain why North Korea has gained interest in obtaining a nuclear weapons program.⁶⁸ First, because the United States had considered the possibility of using nuclear weapons during the Korean War, North Korea may expect its own nuclear weapons system to help it to deter and counterbalance the United States' nuclear umbrella over South Korea⁶⁹. And its interest in acquiring a nuclear weapons may have increased as the Cold War tension intensified.⁷⁰ Also, because North Korea has long been eager to unite Korea on its term, nuclear armament may be viewed as a easier route to gain armament superiority over South Korea reducing its dependence on its allies.⁷¹ At the same time, in economic and political regards, North Korea may consider the possession of nuclear weapons as a means of gaining diplomatic leverage to obtain economic concessions in negotiations with the international community.⁷² Thus, those rationales can be categorized into broader two prongs of North Korean nuclear intention, nuclear armament and obtaining bargaining power.

⁶⁷ Id.

⁶⁸ Operation 'Denuclearization': A Proposal for the Reunification and Denuclearization of the Korean Peninsula, *supra* note 44, at 245.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

There has been heated debates in South Korea, whether North Korean nuclear weapons program is for the purpose of negotiation for foreign aid supplements to bolster its failing domestic economy or for the nuclear armament to secure itself from its enemy states. These debates mostly originated from misunderstanding of North Korea's inconsistent and conflicting attitudes or explanations about its nuclear weapons program.

On the one hand, North Korea has shown us that it keeps the nuclear weapons program for the purpose of nuclear armament. North Korea has announced that it "transferred the country into an undefeated country with strong political ideology, a nuclear power state, and invincible military power," according to the updated constitution posted on its portal website Naenara.⁷³ Kim Jong-un also declared that "Our nuclear weapons are a precious asset common to the nation forever guaranteeing the thriving prosperity of a reunified fatherland. Our nuclear armed forces serve as a reliable war deterrent and as a guarantee for defending the sovereignty of the nation. Peace, and wealth and prosperity, as well as the people's happy lives, rest upon powerful nuclear armed forces."⁷⁴ North Korea also asserted that under circumstances in which the United States does not show any political will or intent to abandon hostile policy toward North Korea, the issue of its equipping itself with own physical deterrent forces is an urgent demand for preventing a nuclear war from breaking out on the Korean Peninsula and guaranteeing peace and security in the work.⁷⁵

However, on the other hand, North Korea has repeatedly expressed its willingness to negotiate with international community especially with the United States,⁷⁶ giving up its nuclear weapons program in exchange for something. And this position seems to be continued until now, even its offers contains quite burdensome conditions to both South Korea and United States to fulfill.

⁷³ North Korea proclaims itself a nuclear state in new constitution, By K.J. Kwon, CNN, <http://www.cnn.com/2012/05/31/world/asia/north-korea-nuclear-constitution/>

⁷⁴ Bruce Klingner, Respond Cautiously to North Korean Engagement Offers, Heritage Foundation report BACKGROUNDER No. 3011, at 4 (2015) available at http://thf_media.s3.amazonaws.com/2015/pdf/BG3011.pdf

⁷⁵ Charles J. Moxley, Jr., The Sword in the Mirror - the Lawfulness of North Korea's Use and Threat of Use of Nuclear Weapons Based on the United States' Legitimization of Nuclear Weapons, 27 Fordham Int'l L.J. 1379, 1393-94 (2004)

⁷⁶ Philip Shenon, North Korea Says Nuclear Program Can Be Negotiated, N.Y. TIMES, at 1 (2002)

For instances, in 2002, responding to a previous speech by Undersecretary of State for Arms Control and International Security John Bolton, North Korea said "everything will be negotiable," including the dismantling of the enrichment program and "Our government will resolve all the United States security concerns through the talks, if your government has a will to end its hostile policy."⁷⁷ Also, North Korea announced its offer to impose a temporarily suspend nuclear tests if the United States canceled its annual joint-military exercises with South Korea in 2015.⁷⁸ Further, the North Korean leader, Kim Jong-un, in his first public comments on the recent deal struck with South Korea to defuse border tensions, said that it was able to achieve the deal because of the "tremendous military muscle,"⁷⁹ suggesting that he is considering the nuclear weapons power as a measure to securing its bargaining power on the negotiating table.

Namely, North Korea has shown dual attitudes and intention about its nuclear weapons program toward the international society. In one side, North Korea argues that it has nuclear weapons and is building up nuclear power as a guarantee for defending the sovereignty of the nation resting upon powerful nuclear armed forces.⁸⁰ On the other side, it suggests that it is willing to give up the nuclear weapons program while using its nuclear weapons power to enforce its bargaining force in negotiations and offering to have dialogues on the condition of its terms. Both of those seem to be North Korea's true nuclear intent. And it seems that this dualism of North Korean attitude and intent will continue to exist. As long as North Korea concerns the security of maintaining its own regime, it will continue to build up nuclear power for the purpose of nuclear armament. And unless the circumstances are changed as North Korea wants them to be, it would hardly give up its nuclear weapons power, because it would still want to use nuclear weapons program as bargaining chips to gain what it might want. And from the North Korean perspectives, to maximize its bargain power on negotiating table, North Korea may think that it need to show its capability of building nuclear weapons and launching missiles. It may explain why North Korea has tested nuclear or launched missiles quite openly while continuing to negotiate its nuclear disarmament on the table.

⁷⁷ Chronology of U.S.-North Korean Nuclear and Missile Diplomacy supra note 18.

⁷⁸ Respond Cautiously to North Korean Engagement Offers, supra note 71 at 2.

⁷⁹ See, the detailed news report available at <http://www.nytimes.com/2015/08/29/world/asia/kim-jong-un-says-norths-military-muscle-made-korean-deal-possible.html>

⁸⁰ Respond Cautiously to North Korean Engagement Offers, supra note 71, at 4.

Those dualism seems to be the most difficult part to be considered and overcome, when international community deals with North Korean nuclear weapons problem. If we underestimate its intention as it pursues nuclear program only for the purpose of gaining international aid in exchange for giving it up, North Korea will keep dragging international society into endless rewards for doing what it is already obligated to do. However, if we consider its intention as it is building up the nuclear power for the purpose of nuclear armament only and criticize it with hostile policies and push it with harder sanctions to give up its nuclear weapons, North Korea may build up more nuclear weapons power, justifying itself as that program is for equipping itself with its own physical deterrent forces to secure its sovereignty.

The characteristics and intention of North Korean nuclear weapons program has been still fluid and complex and also, would be continuously changed depending on the domestic and international political, economical and diplomatic situations of North Korea. Considering this, to solve the North Korean nuclear problem peacefully, it would be the better option for international community to induce North Korea to choose the nuclear weapons' usage as for gaining the bargaining power rather than using it as nuclear armament at least until it will finally give up its nuclear weapons program.

(2) The repeated patterns in reaching to the agreement on the North Korean nuclear issue

To find a better solution to the North Korean nuclear weapons problem, we must analyze past negotiations, agreements and results of those agreements which aimed to solve the North Korean nuclear crises. Especially, we must focus on and find out the reasons why all the past measures have failed, why the promises were broken, why those agreements were ineffective and those nuclear crises recurred again and again.

As observing the past history of making those agreements, we can recognize similar patterns or cycles have been repeated generally, and arguably there are some common features.

First, those repeating cycles are composed of; (1) North Korean Nuclear provocation, (2) Nuclear Crisis, (3) sloppy agreements, (4) failure in abiding by the agreements and deterioration of the situations. The table below shows this cycles.

Provocation	Nuclear Crisis	Agreements	Failure
February 1993, North Korea refusal to the IAEA's request for special inspection	March 1993, North Korea's announcement to withdraw from the NPT	October 1994, "Agreed Framework" between the United States and North Korea	October 2002, The United States announcement of North Korean admittance to have a nuclear weapons program November 2002, North Korean threat to end its moratorium on ballistic missile tests November 2002, KEDO announcement of its suspension of oil deliveries to North Korea
December 2002, North Korea cut IAEA seals and restarted moving fresh fuel rods into the reactor and ordered IAEA inspectors out of the country.	January 2003, North Korea's announcement to withdraw from the NPT	Six party talks From 2003 to 2009 : In 2005, September Statement In 2007, October Statement	no progress towards implementing the September Statement. In 2009, Failure in verification agreement, North Korean withdrawal from the six-party talks

Second, the negotiations tend to begin by the opposing party to North Korea, especially by the United States, as a "reaction" against what North Korea already did.

Third, the negotiation processes with North Korea are quite different from other normal diplomatic negotiations in a way that they were settled after many extreme twists and turns. It may be one of the North Korean tactics to maximize its bargain power to drive other parties to the dead-end alley by creating small or big crises and to take threatening attitudes during the negotiations.

Forth, those settled agreements, improvised under crisis-situations and produced in a hurried mood, sometimes lacked clarity in terms or lacked implementation plans and compliance mechanism. As a result, they necessarily accompanied the conflicts of interpretation and

resulted in noncompliances or violations of either party. For instance, the Joint Declaration does not provide for a means of adjudication, enforcement, or penalties.⁸¹ The Agreed Framework not only contains some ambiguous terms, but also lacks implementation plans for financing agreed LWRs projects.⁸² The Six-Party Talks joint statements lacks formality as finally settled agreements even it contained commitments of parties.

Below, I will discuss the third and forth features further.

(3) Differences in negotiation processes with North Korea

As stated above, negotiation processes with North Korea are quite different from usual international diplomatic negotiation processes. Why have been there those abnormal processes of negotiations? And why have been there recurring violations of agreements even those agreements are final outcomes of tough negotiations?

First, it seems basically due to the extreme mistrusts and deeply rooted hostility between the parties. During the Korean War, North Korea had fought with South Korea and its supporting ally, the United States. Following the war, despite the armistice of Korean War, the tension continued to exist on the Korean peninsula while the United States maintained to support South Korea with providing nuclear umbrella. That is to say, North and South Korea with its ally, the United States, have continued and hardened hostilities with each other rather than building trust based relationship.

Compared to their trust level upon each other, the United States, South and North Korea pursue too much higher negotiating goals. During the past negotiations, the United States had almost always sought complete and ultimate denuclearization of North Korea at its first attempt on the negotiating table, and North Korea had called for the United States first to give up hostile policy against it, to sign a nonaggression treaty, and to give economical assistance before it gives up nuclear weapons. For instance, as stated above, during the first round of Six-Party Talks, North Korea proposed a solution calling for the the United States to conclude a non-aggression treaty, normalize bilateral diplomatic relations in return for dismantling its nuclear facility. On the contrary, the United States called for North Korea to agree to freeze and dismantle its nuclear

⁸¹ Jade Palomino, DIPLOMACY AS A MEANS TO SUCCESSFULLY DISARM NORTH KOREA, 32 U. Pa. J. Int'l L. 937, 945 (2011)

⁸² Id, at 944.

programs first. Taking into account their past relationships, those demands were impossible goals to attain without building up the foundation of trust relation by step by step approach. Since they were related as enemy states during the Korean War and there has been deeply rooted mistrusts between them, each party still does not have any room to accommodate either party's demand or promise. Further, from the North Korean perspectives, having experienced severe economical depressions, feeling its political regime is on the verge of collapse and believing that the ultimate goal of South Korea and the United States is to break down its regime, to give up the nuclear weapons power first is an option hard to chose in negotiating table unless it has absolute confidence in its security.

For the second reason, it seems that both the governments of South Korea and the United States lack concrete and systematic roadmaps to solve the North Korean nuclear problem. As stated above, North Korea has tested nuclear or launched missiles while continuing to negotiate its nuclear disarmament and it seems to be one of the North Korean tactics to maximize its bargaining power. Lacking firm and clear roadmaps, both the United States and South Korean governments acted just reactively or counteractively against those North Korean nuclear provocations without well organized strategies. These "reactive" measures necessarily resulted in incomplete and sloppy agreements, followed by noncompliances and repetition of similar patterns of crises, and ultimately aggravated relations of each other further. Also, lacking roadmaps, the United States and South Korea, which have to play major roles in North Korean denuclearization, have acted incoherently. For instances, in year of 1998 and following years, it appeared that North and South Korea had been progressing towards reconciliation, under then-President Kim Dae Jung's Sunshine Policy, which called for promoting economic, cultural, and social relationships with North Korea, rather than using aggressive and hostile gestures.⁸³ That policy eventually led to the historic joint declaration of two summits, agreeing to "resolve the question of reunification on their own initiative and through the joint efforts of the Korean people."⁸⁴ However, after his inauguration in 2001, the United States president Bush promulgated a new, more confrontational and hostile policy towards North Korea that differed from the Clinton Administration's policy which focused on engagement tactics and

⁸³ OPERATION 'DENUCLEUNIFICATION': A PROPOSAL FOR THE REUNIFICATION AND DENUCLEARIZATION OF THE KOREAN PENINSULA, *supra* note 77, at 269.

⁸⁴ *Id.*

employed diplomacy in negotiating with North Korea.⁸⁵ Especially, after the terrorist attack on September 11., the President stated that North Korea was one of the rogue states suspected of making weapons of mass destruction and declared North Korea as part of an “axis of evil.”⁸⁶ Without doubt, the increased tension between the United States and North Korea affected negatively on the newly settled amicable relationship between South and North Korea.

Third and most important reason in legal regards is both of South Korea and the United States seem to have too much concerned about reaching the final agreement itself during each time of negotiation with North Korea. Having too much focused on reaching final settlement itself, the United States and South Korea were careless about putting effective devices in the final agreements to induce North Korea into compliance. They have succeeded in those games with North Korea on the negotiating table for formality’s sake, but failed to maintain the agreements in compliance.

(4) Weakness of previous agreements with North Korea

1) The Joint Declaration

Even though the Joint Declaration was the very first step of two Koreas towards denuclearization of Korean peninsula, it has fundamental weakness to induce North Korea into compliance.

The Declaration provides that North and South Korea “shall not test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons,” “shall use nuclear energy solely for peaceful purposes,” “shall not possess nuclear reprocessing and uranium enrichment facilities.” and “shall conduct inspections” “to verify the denuclearization of the Korean peninsula”.⁸⁷

⁸⁵ THE AGREEMENT AFTER THE SIX-PARTY TALKS: ARE THERE NO ALTERNATIVES TO THE “MODIFIED” VERSION OF THE 1994 GENEVA AGREED FRAMEWORK? — AN ANALYSIS OF THE NEWLY-ADOPTED FRAMEWORK AND ITS SIGNIFICANCE FOR THE NUCLEAR PROLIFERATION ISSUES RELATING TO NORTH KOREA, *supra* note 13, at 179.

⁸⁶ *Id.*

⁸⁷ Joint Declaration, *supra* note 3. cl I, II, III, IV.

Further, for the implement mechanism, it provides that the two Koreas “shall establish and operate a South-North Joint Nuclear Control Commission(hereinafter “JNCC”).”⁸⁸

However, little progress was made toward full implementation of the agreement, even the JNCC was established in March 1992 to implement the Joint Declaration.⁸⁹ It is due to the weakness of the agreement itself. Under the Joint Declaration clause IV, the two Koreas shall conduct inspections of particular subjects “chosen by the other side” and “agreed upon between the two sides,”⁹⁰ namely, the side being examined not only has a veto power to disapprove inspection but also be able to limit the subjects of inspections. North Korea inevitably had objected to allow inspections which might be permissible under this agreement.⁹¹ Further, because it does not provide for means of adjudication, enforcement, or penalties as stated above,⁹² there was no clear remedy it provides for the repeated refusals of North Korea for inspections.⁹³

2) The Agreed Framework

Clause I of the Agreed Framework sets forth the underlying plan and provides that both sides will cooperate to replace the North Korea's graphite-moderated reactors and related facilities with LWR power plants.”⁹⁴ To fulfill this plan, the United States will “organize under its leadership an international consortium to finance and supply the LWR project to be provided” to North Korea.⁹⁵ Also, the United States, representing the consortium will “make best efforts to

⁸⁸ *Id.*, cl IV.

⁸⁹ OPERATION 'DENUCLEUNIFICATION': A PROPOSAL FOR THE REUNIFICATION AND DENUCLEARIZATION OF THE KOREAN PENINSULA, *supra* note 77, at 255.

⁹⁰ Joint Declaration, *supra* note 3. cl IV.

⁹¹ OPERATION 'DENUCLEUNIFICATION': A PROPOSAL FOR THE REUNIFICATION AND DENUCLEARIZATION OF THE KOREAN PENINSULA, *supra* note 77, at 255.

⁹² Jade Palomino, DIPLOMACY AS A MEANS TO SUCCESSFULLY DISARM NORTH KOREA, 32 U. Pa. J. Int'l L. 937, 945 (2011)

⁹³ Matthew Liles, DID KIM JONG-IL BREAK THE LAW? A CASE STUDY ON HOW NORTH KOREA HIGHLIGHTS THE FLAWS OF THE NON-PROLIFERATION REGIME, 33 N.C. J. Int'l L. & Com. Reg. 103, 116 (2007)

⁹⁴ Agreed Framework, *supra* note 4, cl. I.

⁹⁵ Agreed Framework, *supra* note 4, cl. I.

secure the conclusion of a supply contract with North Korea within six months of the date of this Document.”⁹⁶ The deliveries of heavy oil for the alternative energy sources “will begin within three months of the date of this Document and will reach a rate of 500,000 tons annually.”⁹⁷ In return, North Korea “upon receipt of U.S. assurances for the provision of LWR's and for arrangements for interim energy alternatives, will freeze its graphite-moderated reactors and related facilities.”⁹⁸

Clause II of the Agreed Framework states that the United States and North Korea will “move toward full normalization of political and economic relations,” by 1) reducing barriers to trade and investment within three months, 2) opening a liaison office in the other's capital, 3) eventually upgrading bilateral relations to the Ambassadorial level.⁹⁹

Clause III stipulates that “both sides will work together for peace and security on a nuclear-free Korean peninsula.”¹⁰⁰ Most importantly from the North Korean perspectives, the United States “will provide formal assurances against the threat or use of nuclear weapons” to North Korea.¹⁰¹ Clause IV declares “both sides will work together to strengthen the international nuclear non-proliferation regime.” Under this clause, North Korea “will remain a party to the NPT” and “will allow implementation of its safeguards agreement under the Treaty.”¹⁰² North Korea will “come into full compliance with its safeguards agreement with the IAEA, . . . when a significant portion of the LWR project is completed.”¹⁰³

The Agreed Framework contains ambiguous terms that might result in conflicts of interpretation. For instance, Clause IV which provides that the North Korea would come into full compliance with the IAEA safeguards when a “significant portion” of the LWR project is completed, not only contains ambiguous term “significant portion”, but also the agreement itself lacks the specified

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ Agreed Framework, *supra* note 4, cl. II.

¹⁰⁰ Agreed Framework, *supra* note 4, cl. III.

¹⁰¹ Id.

¹⁰² Agreed Framework, *supra* note 4, cl. IV.

¹⁰³ Id.

implementation plan for the LWR project. From the perspectives of North Korea, the LWR project and heavy oil supply from the United States were one of the most important basis to enter into this agreement.¹⁰⁴ However, the agreement provides that “the United States will organize..an international consortium to finance and supply the LWR project”¹⁰⁵ without stating specified criteria or time frame for financing and implementing steps for the Project. Also, the parties did not agreed upon a delivery schedule of heavy oil fuels to “reach a rate of 500,000 tons annually” under Clause I.

Pursuant to Clause I, international monitors verified North Korea's nuclear freeze, and on January 21, 1995, the United States delivered 50,000 metric tons of heavy fuel oil.¹⁰⁶ Further, on March 9, 1995, South Korea, Japan and the United States formed the KEDO to finance and supply the LWRs.¹⁰⁷ Nevertheless, without specified criteria or time frame for financing of KEDO and oil supply, the problems and delays in KEDO combined with the conflicting interpretation of ambiguous “significant portion of the Project is completed” substantially contributed to the eventual collapse of the agreement.¹⁰⁸

Further, the Agreed Framework failed to delineate the time for formal assurances against the threat or use of nuclear weapons by the United States under Clause III. The United States never gave security assurance pursuant to the agreement. And from the North Korean perspectives, coupled with the “axis of evil” language used by President Bush, the lack of assurance evidences the hostile policy which contracted the term of Agreed Framework.

3) Six-Party Talks’ Joint Statement

Although the Six-Party Talks’ September Statement in 2005 is considered to be the breakthrough that all parties had reached an agreement and North Korea had committed to

¹⁰⁴ Jade Palomino, DIPLOMACY AS A MEANS TO SUCCESSFULLY DISARM NORTH KOREA, 32 U. Pa. J. Int'l L. 937, 940 (2011)

¹⁰⁵ Id. cl I 1).

¹⁰⁶ Paul E. Boehm, Decennial déjà Vu: Reassessing A Nuclear North Korea on the 1995 Supply Agreement's Ten-Year Anniversary, 14 Tul. J. Int'l & Comp. L. 81, 98-99 (2005)

¹⁰⁷ Chronology of U.S.-North Korean Nuclear and Missile Diplomacy supra note 18.

¹⁰⁸ OPERATION 'DENUCLEUNIFICATION': A PROPOSAL FOR THE REUNIFICATION AND DENUCLEARIZATION OF THE KOREAN PENINSULA, supra note 77, at 252.

abandon its nuclear weapons program, it is not a finally settled agreement in its form.¹⁰⁹ Because it is not the final agreement between parties, it only outlines general objects and goals in very broad and vague terms. For instances, the Statement provides that China, Russia, South Korea, the United States, and Japan agreed to discuss giving North Korea the desired LWRs “at an appropriate time” in the future.¹¹⁰ Also, it calls for North Korea “at an early date” to abandon nuclear weapons and existing nuclear programs and return to the NPT and the IAEA safeguards.

October Statement seems to be apparent progress with regard to its more definite terms of timeframe and its specified obligations of parties. North Korea agreed to disable its nuclear facilities and declare its nuclear programs by the end of 2007, and the United States agreed to fulfill its commitments to the North Korea in parallel with the North Korea's actions.¹¹¹ Nevertheless, it is not a finally settled agreement in its form.

3. Negotiation in exchange for a better relationship

The biggest question and threshold question with regard to North Korean nuclear proliferation is whether the international community should negotiate with North Korea at all, even having witnessed North Korea's unpredictable conducts and aggressive threats demonstrating its unwillingness to return to the international denuclearization legal regime.

First of all, it is because the basic approach to gain the goal of nuclear disarmament under the NPT regime is through pursuing negotiation. Even though it is not verified, according to its argument, North Korea already possesses nuclear weapons. So it is necessary for North Korea to return to the NPT regime for its denuclearization as early as possible, because the NPT is the most important international non-proliferation legal framework so far. And under the NPT, all

¹⁰⁹ THE AGREEMENT AFTER THE SIX-PARTY TALKS: ARE THERE NO ALTERNATIVES TO THE “MODIFIED” VERSION OF THE 1994 GENEVA AGREED FRAMEWORK? — AN ANALYSIS OF THE NEWLY-ADOPTED FRAMEWORK AND ITS SIGNIFICANCE FOR THE NUCLEAR PROLIFERATION ISSUES RELATING TO NORTH KOREA, *supra* note 13, at 194.

¹¹⁰ *Id.*

¹¹¹ See October Statement, *supra* note 6.

member states are obligated to pursue negotiation in good faith toward the cessation of the nuclear arms race and nuclear disarmament.¹¹²

Second, the possible alternative means, such as the use of force against North Korea or to impose economic sanctions on it cannot be a justifiable or successful solutions to stop nuclear proliferation in North Korea.¹¹³

With regard to the use of force, it will conflict with the majority view of the international community that the use of force is only justified if it is used as a self-defense in an armed attack based on Article 2(4) and Article 51 of the U.N. Charter.¹¹⁴ Thus, any military action against North Korea without initial attack by it will likely be viewed as disproportionate, unjustified use of force.¹¹⁵

Also, with regard to the sanctions on North Korea to achieve compliance, it may cause humanitarian-related problem impacting negatively on local population.¹¹⁶ North Korea functions as a single-party state under a family dictatorship, described even as an absolute monarchy.¹¹⁷ While the North Korean constitution formally guarantees protection of human rights,¹¹⁸ in practice the Supreme Leader, Kim Jong-un exercises absolute control over the government and whole country. Since he is a leader that values its regime maintenance highly over anything else, has made decisions that focus purely on the gain of the government to the extreme detriment of its citizens,¹¹⁹ as a result of isolating North Korea, imposing a ban on

¹¹² See NPT supra note 5, Article IV

¹¹³ THE AGREEMENT AFTER THE SIX-PARTY TALKS: ARE THERE NO ALTERNATIVES TO THE “MODIFIED” VERSION OF THE 1994 GENEVA AGREED FRAMEWORK? — AN ANALYSIS OF THE NEWLY-ADOPTED FRAMEWORK AND ITS SIGNIFICANCE FOR THE NUCLEAR PROLIFERATION ISSUES RELATING TO NORTH KOREA, supra note 13, at 190.

¹¹⁴ Id.

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ Young W. Kihl, Hong Nack Kim. *North Korea: The Politics of Regime Survival*. Armonk, New York, USA: M. E. Sharpe, Inc., 2006. Pp 56.

¹¹⁸ Dae-Kyu Yoon, The Constitution of North Korea: Its Changes and Implications, 27 Fordham Int'l L.J. 1289, 1294 (2004)

¹¹⁹ Morse H. Tan, A State of Rightlessness: The Egregious Case of North Korea, 80 Miss. L.J. 681 (2010)

economic trade activities, suffering of its citizens rather than its government would be more likely to occur by shortages of food, medicine and other humanitarian essentials.¹²⁰

Third, North Korea has continuously shown its willingness to negotiate its denuclearization or cessation of nuclear weapons program with international community even assuming it has dual intention on its nuclear weapons program. In September 2010, former President of the United States, Jimmy Carter wrote that during his August visit he received “clear, strong signals” that North Korea wanted to restart negotiations in an op-ed published in the New York Times.¹²¹ Also in March 2011, North Korea told a visiting Russian official that it was willing to return to six-party talks and to talk about its uranium-enrichment activities.¹²² In January 2015, North Korea announced it offered to suspend nuclear testing in exchange for the United States and South Korea calling off annual joint-military exercises slated for spring 2015.¹²³ As long as North Korea is willing to negotiate its denuclearization, negotiation would be the best possible way to denuclearize North Korea with minimal accompanying side effects of catastrophic inhuman results.

Even the Six-Party Talks does not resumed yet, signs of possible resumption can be found, granting it is so deem. In January 2014, the official Chinese Xinhua News Agency announced on Twitter that the North Korean ambassador to China had received North Korean agreement on resumption of the Six-Party Talks and called on the United States to fulfill its related obligations.¹²⁴ In November, Russian Foreign Minister announced that a North Korean special envoy had told Russian President Vladimir Putin that North Korea was ready to resume the Six-Party Talks.¹²⁵

¹²⁰ Id.

¹²¹ See Chronology of U.S.-North Korean Nuclear and Missile Diplomacy supra note 16.

¹²² Id.

¹²³ Id.

¹²⁴ The announcement is available at <https://twitter.com/XHNews/statuses/428431591141298177>

¹²⁵ Chronology of U.S.-North Korean Nuclear and Missile Diplomacy supra note 18.

4. Conclusion - Suggestion of possible terms of agreement

After answering the threshold question, whether the international community should negotiate with North Korea at all, the last possible question would be whether there are possible terms of agreement that might be acceptable to and enforceable against North Korea.

North Korea's chief request against the United States is the assurance of its security and this is not a significant concession when weighed against the collateral damages of military conflict.¹²⁶ Thus, it is desirable for the parties of Six-Party Talks, including both South and North Korea jointly and officially guarantee the security of the entire of Korean Peninsula. And this terms should be unconditional to the breach of either party unless there is termination of the treaty or withdrawal of North Korea from the treaty.

With regard to supply of alternative energy or foreign energy, it should be conditioned on the compliance of North Korea with its obligation under the treaty. There should be definite timeframe for North Korea to allow implementation of its safeguards agreement with the IAEA including routine annual inspections. Also, there should be definite timeframe for the delivery of foreign aid in return. It would be possible North Korea to receive annual foreign aid on the condition that it allows annual inspections of nuclear activity.

With regard to the breach of the obligation of either party, it is necessary to put explicit suspension provisions in the treaty. For instance, the foreign aid supplying party can suspend its aid delivery of the year, if North Korea rejects its annual inspection. Even treaties without explicit suspension provision can be legally suspended in accordance with the Vienna Convention which provides ; "A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part" in Article 60(1)¹²⁷, however, considering the trust level upon each other, the treaty is better to contain explicit and exclusive suspension provision rather than relying on the "material breach" term which possibly may bring about conflicts of interpretation.

¹²⁶ Paul E. Boehm, Decennial déjà Vu: Reassessing A Nuclear North Korea on the 1995 Supply Agreement's Ten-Year Anniversary, 14 Tul. J. Int'l & Comp. L. 81, 105 (2005)

¹²⁷ The text of Vienna Convention on the law of treaties are available at legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

Even having witnessed North Korea's unpredictable conducts and aggressive threats, the North Korea's nuclear weapons program is still subject to negotiation in exchange for a better relationship, in light of international law and human rights concerns. However, the compliance of the obligation has been the most serious problem with regard to North Korean nuclear weapons program. Some scholars argue that North Korea is willing to enter into binding agreements despite an intention not to fully comply because it has a poor reputation which it does not value.¹²⁸ Even that theory cannot fully explain North Korea's violation and illegal exit from its international obligation, it ironically suggests that the better relationship with North Korea combined with humanitarian support and aid, rather than isolating it from the international community, may increase the reputational costs of possible violations and induce it to comply with its obligations under the international law.

¹²⁸ Timothy Meyer, Power, Exit Costs, and Renegotiation in International Law, 51 Harv. Int'l L.J. 379, 417 (2010)