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Challenges of North Korean Nuclear Negotiation

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Arguably the most important lesson to draw today from the difficult history of nuclear negotiations between the United States and the Democratic People's Republic of Korea ("DPRK," or "North Korea") may be about what *isn't* possible – namely, a continuation, in anything like its present form, of the negotiating process begun in the early 1990s and continued, in fits and starts, over the ensuing two decades. The structural and political foundations of this process have changed too much, from the U.S. perspective, for any such continuation to be possible or advisable. If there is a future for engagement with the DPRK on nuclear issues, it will have to await a fundamental change in approach by Pyongyang.

I. *The Baggage of History*

American perspectives upon the advisability of negotiating with North Korea over nuclear issues are, not surprisingly, strongly conditioned by U.S. assessments of (a) the likelihood that a negotiated resolution is possible, and (b) whether any denuclearization agreement reached will in fact be honored by Pyongyang. And here lies the first major problem for the prospect of continued U.S.-DPRK nuclear talks. As seen from Washington, the history of the talks to date indicates that both of these questions should be answered in the negative.

Scholars of negotiations with the DPRK since 1950 have frequently remarked upon the contrast between U.S. approaches to negotiations – in which agreements are regarded as, and intended to be, end points or destinations – and what is said to be a North Korean negotiating style in which formal talks are only *part* of a broader relationship, and even the most solemnly formalized agreements may be subject to renegotiation on an ongoing basis even after their details have officially been settled.¹ If this contrast is indeed apt, it would clearly help explain some of the challenges of negotiation over the years. It would probably also bode ill for the prospect of future nuclear talks, however, though not because U.S. officials do not see negotiations as part of a broader relationship. The DPRK's predilection for *post hoc* renegotiation frustrates the United States, making it less interested in negotiating a deal in the first place because U.S. officials see the point of agreements being precisely that their content remains officially *agreed*. As U.S. President Barack Obama declared of nuclear treaties in April 2009, "[r]ules must be binding. Violations must be punished. Words must mean something."

But the history of U.S.-DPRK nuclear talks suggests that the problem may involve more than simply a difference in negotiating "style." The U.S. policy community today is increasingly of the view that North Korea is *not* serious about denuclearizing the Korean Peninsula – defined here, much as the DPRK and the Republic of Korea ("ROK" or "South Korea") did by agreement in 1991, as the absence of nuclear weapons, nuclear weapons development or acquisition programs, and fissile material production capabilities – and that

¹ See, e.g., Michael J. Mazarr, *North Korea and the Bomb: A Case Study in Nonproliferation* (New York: St. Martin's Press, 1995), at 236; Scott Snyder, *Negotiating on the Edge: North Korean Negotiating Behavior* (Washington, D.C.: U.S. Institute of Peace, 2002), at 61-63; Chuck Downs, *Over the Line* (Washington, D.C.: AEI Press, 1999), at 12.

Pyongyang could not be relied upon to keep its word in a denuclearization deal anyway. After two decades of fruitless nuclear negotiations, it is not too hard to see why this should be the case.

The history of the nuclear negotiations is replete with emphatic North Korean claims that have later turned out to be patently false. In 1989, for instance, DPRK officials pronounced it “an utterly groundless lie” that North Korea had a nuclear weapons program,² notwithstanding the fact that Pyongyang’s interest in such weapons apparently began as early as the 1950s, and is said to have involved explicit requests for nuclear weapons assistance from the People’s Republic of China (the “PRC,” or “China”) on at least two (and perhaps three) separate occasions. Russian Federation (“Russian”) intelligence sources date the first serious start of a weapons program to the late 1970s, and by 1981 records in the German Democratic Republic (“GDR” or “East Germany”) recounted North Korean officials declaring to a Communist Party delegation from the GDR that “[w]e need the atom bomb.” Around 1980, the DPRK began a major program to build a plutonium production capability, based around gas-cooled, graphite-moderated reactors running on natural uranium fuel, and soon the North’s pursuit of nuclear weaponry came to raise such concerns even in Beijing that China reportedly began to withdraw its nuclear technology cooperation around 1987. By the early or mid-1980s, the DPRK’s program included a campaign of testing high-explosive units for the implosion of a plutonium core, evidence of which was visible to U.S. reconnaissance satellites.³

DPRK leader Kim Il Sung similarly pledged to various American visitors in 1994 that “we don’t have any nuclear weapons or any intention of making them,” and that “[w]e have neither the need to make nuclear weapons nor the will and ability to do so. . . . We will never have nuclear weapons, I promise you.”⁴ In fact, however, it appears that the DPRK nuclear weapons program was actually accelerating at the time, having been stepped up after Moscow extended diplomatic recognition to the ROK in 1990 – a move which officials in Pyongyang reportedly threatened Soviet Foreign Minister Eduard Shevardnadze would lead directly to their development of nuclear weaponry, and which presumably gained new urgency as the USSR collapsed in 1991 and after Moscow in 1993 repudiated the military aspects of its Treaty of Friendship and Cooperation with the DPRK.⁵ Indeed, U.S. intelligence believed that the DPRK’s temporary shutdown of its plutonium production reactor at Yongbyon in 1989 yielded enough plutonium for one or two atomic bombs.⁶ This conclusion was not inconsistent with some claims made by DPRK defectors in the early

² Don Oberdorfer, *The Two Koreas: A Contemporary History* (London: Little, Brown & Co., 1997), at 256.

³ See generally, e.g., Mazarr, *supra*, at 17, 24, 28-29, 44-45, & 62; Downs, *supra*, at 211-13; Oberdorfer, *supra*, at 250 & 253; International Institute for Strategic Studies, *North Korea’s Nuclear Weapons Program* (2006).

⁴ Quoted in Mazarr, *supra*, at 2 & 154.

⁵ Mazarr, *supra*, at 17, 55, & 96.

⁶ See, e.g., U.S. Central Intelligence Agency, declassified and redacted memorandum (November 2002), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB87/nk22.pdf> (noting that “The US has been concerned about North Korea’s desire for nuclear weapons and has assessed since the early 1990s that the North has one or possibly two nuclear weapons using plutonium it reprocessed prior to 1992.”)

1990s.⁷ It later emerged that the American assessment was also consistent with intelligence received by the Soviet KGB at the time, which reported, in a document signed by KGB chief Vladimir Kryuchkov himself and released after the collapse of the USSR, that Pyongyang had already completed development of its “first atomic explosive device” by 1990.⁸

When confronted about U.S. satellite photographs showing what appeared to be a large-scale plutonium reprocessing plant under construction from the late 1980s, moreover, DPRK officials strenuously denied having any such thing. In 1991, for instance, Kim Il Sung himself told a visiting American Congressman that “[w]e have no nuclear reprocessing facilities.”⁹ A reprocessing facility, however, was precisely what it turned out to be when IAEA inspectors subsequently visited. (It has subsequently been used to separate plutonium for DPRK nuclear weapons.)

Pyongyang also denied IAEA suggestions that it must have had a reprocessing pilot plant before constructing the huge new facility. (Beginning with such a pilot project would have been simple engineering good sense, but in the DPRK context doing so was essentially obligatory. Kim Il Sung had ordained in 1963 that it would be an “intolerable adventure” to move any significant enterprise from basic research to full-scale production without it having been “fully tested at a pilot plant.”¹⁰) Nevertheless, the DPRK subsequently admitted to the IAEA having reprocessed small quantities of plutonium – though IAEA analysis determined the specifics of claim to be inaccurate as well. Instead of the single reprocessing run claimed by the DPRK, IAEA laboratory tests showed that North Korea had reprocessed plutonium on at least three prior occasions dating back to 1989. (DPRK officials are said later to have claimed that they actually did some small-scale reprocessing in 1975 as well as in 1990, though the IAEA disbelieved this.)¹¹

In 1991, the DPRK negotiated an agreement with the ROK, pursuant to which both countries would use nuclear technology solely for peaceful purposes, and neither would “test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons,” nor “possess nuclear reprocessing and uranium enrichment facilities.” This pledge was also incorporated by reference into the 1994 “Agreed Framework” deal between North Korea and the United States – which provided that the DPRK would “implement the North-South Joint Declaration

⁷ See Mazarr, *supra* at 101-02 & 167. They may have exaggerated the numbers of weapons, however.

⁸ See, e.g., Mike Chinoy, *Meltdown: The Inside Story of the North Korean Nuclear Crisis* (New York: St. Martin’s Press, 2009), at 172; Joseph Cirincione, Jon B. Wolfsthal, & Miriam Rajkumar, *Deadly Arsenals* (Washington, D.C.: Carnegie Endowment for International Peace, 2005), at 284-86; Oberdorfer, *supra*, at 306-07; Mazarr, *supra*, at 56.

⁹ See Oberdorfer, *supra*, at 250-51 & 264.

¹⁰ Kim Il Sung, “The Duty of Scientists and Technicians in the carrying Out of the Technical Revolution,” speech to a Conference of Scientists and Technicians (March 22, 1963), in *Kim Il Sung, Selected Works* (Pyongyang: Foreign Languages Publishing House, 1971), at 526, 531.

¹¹ See generally Mazarr, *supra*, at 94, 97; Oberdorfer, *supra*, at 264, 269-70; Downs, *supra*, at 220, 223, 225, 227-28 & 230; David Fischer, “The DPRK’s Violation of its NPT Safeguards Agreement with the IAEA,” excerpt from Fischer’s *History of the International Atomic Energy Agency* (Vienna: IAEA, 1997), available at <http://www.iaea.org/newscenter/focus/iaeadprk/dprk.pdf>.

on the Denuclearization of the Korean Peninsula” – thus making non-pursuit of enrichment a core plank of Pyongyang’s agreements with both the ROK and the United States.¹²

Even *before* that point, however, DPRK defectors had claimed that Pyongyang was beginning work on a uranium enrichment program.¹³ During the course of the 1990s, U.S. officials began to detect DPRK procurement efforts consistent with a centrifuge enrichment effort¹⁴ – evidence which in the year 2000 forced President Clinton to waive a Congressionally-required certification that North Korea was “not seeking to develop or acquire the capability to enrich uranium.” (The waiver was necessary because by that point U.S. intelligence were becoming concerned that Pyongyang may well have been trying to do so.) By 2002, U.S. intelligence had reached the conclusion that a DPRK uranium program had begun “about two years ago” and that in 2001 Pyongyang had accelerated its efforts to construct a centrifuge plant.¹⁵

In fact, however, the program was longer-lived than that. What appears to have happened – as indeed U.S. officials came to learn from various sources, including the Pakistani government itself – is that the DPRK developed a relationship with Pakistan pursuant to which Pyongyang eventually received significant help with uranium centrifuge enrichment and the technology for uranium-based nuclear weapons. This relationship began with Pakistani Prime Minister Benazir Bhutto’s visit to North Korea in the autumn of 1993. On this trip, she brought with her what she is reported to have referred to later as “installments of computer disks” containing sensitive centrifuge data,¹⁶ a technology transfer which marks the DPRK uranium program as having begun even before the 1994 Agreed Framework with the United States. (IAEA inspectors reported North Korea to have been interested in gas centrifuges for uranium enrichment in the 1980s, but they believed Pyongyang had then given up on the effort because of technical limitations.¹⁷) According to the highest-ranking defector ever to leave the DPRK, Pakistan and the DPRK expressly agreed in 1996 to exchange uranium enrichment assistance for aid with long-range ballistic missiles.¹⁸

¹² Downs, *supra*, at 216; Oberdorfer, *supra*, at 264; *see also* Agreed Framework Between the United States of America and the Democratic People’s Republic of Korea (October 21, 1994), at III(2), available at <http://www.kedo.org/pdfs/AgreedFramework.pdf>.

¹³ Mazarr, *supra*, at 42 & 258 n.15 (*citing* defectors).

¹⁴ CIA, November 2002 memorandum, *supra* (“The United States has been suspicious that North Korea has been working on uranium enrichment for several years.”); Larry A. Niksch, *North Korea’s Nuclear Weapons Program*, Congressional Research Service report IB91141 (November 5, 2003), at CRS-7 (noting that a 1999 U.S. Department of Energy report made reference to such evidence), available at http://www.nautilus.org/publications/books/dprkbb/nuclearweapons/CRS-IB91141_NKsNuclearWeaponsProgram.pdf.

¹⁵ CIA, November 2002 memorandum, *supra*.

¹⁶ Albright, *supra*, at 160.

¹⁷ *Id.* The Pakistani connection seems to have help possible real DPRK movement on uranium enrichment. As these reported IAEA conclusions suggest, before Pakistani assistance came to light, observers seemed to feel that “the technical challenges of uranium enrichment” were “beyond the capabilities of indigenous North Korean science and industry.” Mazarr, *supra*, at 44.

¹⁸ Niksch, *supra*, at CRS-7.

Much flowed from these beginnings. Pakistani scientist Abdul Qadeer Khan reportedly visited Pyongyang 13 times between 1993 and 2003, DPRK officials attended Pakistan's 1998 nuclear test, and Pakistani sources provided North Korea with dozens of P-1 and P-2 centrifuges, warhead designs, and uranium hexafluoride ("UF₆") centrifuge feedstock. In return, pursuant to their agreement, Pakistan got North Korean help with ballistic missiles. As noted, U.S. intelligence detected accelerating clandestine DPRK procurement efforts in the late 1990s, and by the middle of 2002 felt that a major, production-scale uranium enrichment effort was underway – one aimed at “constructing a plant that could produce enough weapons-grade uranium for two or more nuclear weapons per year.”¹⁹

According to U.S. officials present, DPRK officials initially clearly admitted uranium enrichment work when first confronted about this in late 2002, but DPRK officials thereafter spent several years denying that anything of the sort was going on. Even in their “complete” nuclear declaration pursuant to an agreement made in October 2007 as part of the Six Party Talks process, DPRK officials denied receiving any nuclear aid from Pakistan, and alleged that their purchases of thousands of centrifuge-grade high-strength aluminum tubes were instead intended to support rocketry work. The DPRK would do no more than to “acknowledge” that the United States had “concerns” about uranium – and proved willing take even that substantively empty step only in a confidential side letter hammered out in extensive negotiations in both Geneva and Singapore, and after U.S. officials had told their DPRK counterparts, in detail, what they understood Pyongyang to have acquired.²⁰

In June 2009, the DPRK Foreign Ministry admitted that the DPRK had indeed been working on uranium enrichment, and declared that enough progress had now been made in this effort that “[t]he process of uranium enrichment will be commenced.” Later that year, a DPRK statement informed the United Nations Security Council that “[e]xperimental uranium enrichment has successfully been conducted to enter into completion phase.”²¹

In 2010, the DPRK demonstrated that its years of uranium denials had been quite false. In November of that year, it revealed to visiting U.S. scientists an extensive – and apparently operational – uranium enrichment cascade containing some 2,000 centrifuges. According to these scientists, the DPRK had “an industrial-scale uranium enrichment facility” of remarkable “scale and sophistication,” including “a few dozen first-generation centrifuges” and “rows of advanced centrifuges” supported by an “ultramodern” control facility. On the basis of what they were shown, the U.S. scientists concluded that “North

¹⁹ Quoted by Cirincione et al., *supra*, at 288. Except where otherwise noted, the foregoing account is based upon: Larry A. Niksh, *North Korea's Nuclear Weapons Development and Diplomacy*, Congressional Research Service (January 5, 2010), at 17, available at <http://www.fas.org/sgp/crs/nuke/RL33590.pdf>; Chinoy, *supra*, at 82-88, 90-91, IISS, *supra*, and Victor D. Cha & David C. Kang, *Nuclear North Korea: A Debate on Engagement Strategies* (New York: Columbia University Press, 2003), at 132.

²⁰ See generally, e.g., Chinoy, *supra*, at 358, 364-65 & 368.

²¹ Niksh, *North Korea's Nuclear Weapons Development and Diplomacy*, *supra*.

Korea has run both plutonium and uranium programs in a dual-use mode – that is, for bombs and electricity – from the beginning.”²²

Another basis for the increasingly widespread U.S. conclusion of the DPRK’s unseriousness and fundamental untrustworthiness as a nuclear negotiating partner concerns nuclear technology proliferation. The first publicly known indication of DPRK involvement in transferring nuclear materials or technology to others arose out of Libya’s momentous decision in 2003 to relinquish its own weapons of mass destruction programs. After an unprecedented cooperative effort there in 2004 between U.S., British, and Libyan officials had removed a range of information, equipment, and material that had been supplied by the A.Q. Khan network – including 1.6 tonnes of UF₆, a complete disassembled uranium conversion facility (“UCF”) for producing centrifuge feedstock, a collection of Pakistani-origin centrifuges of both the P-1 and P-2 variety, and apparently even nuclear weapons designs that had originated in China²³ – analysis of the UF₆ containers apparently indicated that this material had come from the DPRK.²⁴

The DPRK, it became clear, had acquired a role in the Khan network, which “shuttle[ed] gas cylinders made (and stamped with serial numbers) in Pakistan, filled [them] with uranium hexafluoride in North Korea, then delivered [these filled cylinders] to Libya.”²⁵ This transfer from the DPRK allegedly occurred in 2001,²⁶ clearly suggesting that the DPRK by that point already had a functioning UCF – presumably as part of its own ongoing uranium enrichment program. According to IAEA sources, using Libyan funds, the Khan network helped Pyongyang develop or improve its hexafluoride production, in the hope that the DPRK would be able to supply *both* countries’ uranium bomb programs with UF₆.²⁷

²² Sigfried S. Hecker, “What I Found in North Korea,” *Foreign Affairs* (December 9, 2010), available at <http://www.foreignaffairs.com/articles/67023/siegfried-s-hecker/what-i-found-in-north-korea?page=show>.

²³ Joby Warrick & Peter Slevin, “Libyan Arms Designs Traced Back to China,” *Washington Post* (February 15, 2004), at A15. This design that ended up in Libya was apparently of a uranium-based device that American analysts called the “CHIC-4,” which Beijing had given Pakistan in the early 1980s and which Chinese sources have said that the DPRK itself possesses. (Pyongyang may have used a plutonium variant of this design in its 2006 nuclear test.) See Thomas C. Reed & Danny B. Stillman, *The Nuclear Express* (Minneapolis: Zenith Press, 2009), 249-50 & 261-62; David Albright, *Peddling Peril* (New York: Free Press, 2010), at 47 & 150.

²⁴ Glenn Kessler, “North Korea May Have Sent Libya Nuclear Materials, U.S. Tells Allies,” *Washington Post* (February 2, 2005), at A01; Albright, *supra*, at 163.

²⁵ Reed & Stillman, *supra*, at 277.

²⁶ Michael Laufer, “A.Q. Khan Nuclear Chronology,” *Proliferation Brief*, vol.8, no.8 (Carnegie Endowment for International Peace, undated), available at <http://carnegieendowment.org/publications/index.cfm?fa=view&id=17420>.

²⁷ A shipment of “centrifuge-related equipment,” for instance, is said to have been sent from the Khan network to North Korea in 2002, at Libya’s expense. Albright, *supra*, at 165.

The DPRK has plentiful supplies of uranium, with sizeable deposits having been found by Soviet prospectors there at least as early as 1964. (Ironically, the IAEA at one point helped the DPRK with uranium mining at Pyongsan.) A large factory was built at Yongbyon in the early 1980s to refine uranium “yellowcake” and produce natural (*i.e.*, non-enriched) uranium metal fuel for the DPRK’s graphite-moderated reactors. In 1992, the DPRK declared two uranium mines and two uranium concentration plants to the IAEA. See, *e.g.*, Mazarr, *supra*, at 25; IISS, *supra*.

In 2008, further indications of DPRK nuclear proliferation problems emerged when U.S. officials released information – including aerial and other photographs – about a Syrian nuclear reactor project that had been destroyed in an Israeli aerial attack in September 2007. According to these reports, the demolished Syrian facility was a reactor modeled upon the DPRK’s plutonium production design at Yongbyon, and indeed United States officials also released a photograph said to be of the head of the Yongbyon fuel fabrication facility meeting, in Syria, with the director of the Syrian nuclear agency, Ibrahim Othman.²⁸ Construction of the Syrian reactor allegedly began in 2001, and representatives from North Korea’s Namchongang Trading Company (NCG) were reportedly procuring components for it in Europe at least as early as 2002.²⁹

(As if this weren’t enough worries about proliferation, in May 2010, a Burmese dissident group released a report co-authored by a former IAEA inspector – one of the two Agency officials, in fact, who had done work in Libya during the dismantlement of the nuclear program there – suggesting that DPRK officials was “probably” assisting a crude and embryonic nuclear weapons program in Burma.³⁰ Persons affiliated with NCG were reportedly involved in dealings with the Burmese military junta too.³¹)

In the wake of the Libyan and Syrian revelations, U.S. officials in the Six Party Talks process pressed North Korea for a full accounting of its nuclear proliferation activity, but to no avail: the DPRK denied everything. Even under its October 2007 agreement to provide complete disclosure of its nuclear activity, Pyongyang would go no further than merely to “acknowledge” noncommittally, in a confidential side letter, that the United States had “concerns” about this too.³²

To many U.S. eyes, this history of repeated nuclear deceptions has tended to confirm Pyongyang’s essential unsuitability as a nuclear negotiating partner. It has combined with longstanding U.S. anger and exasperation with what scholars of DPRK negotiating over the last half century have identified as a dangerous taste for brinkmanship and “crisis diplomacy.” In this depiction, officials in Pyongyang try periodically to provoke crises by engaging in grave provocations – sometimes involving military force – and using such incidents to gain attention, seize control of the negotiating agenda, scare diplomatic counterparts back to the table, and elicit new concessions in return for the “resolution” of the very problems they have themselves created.³³ This approach is felt to have been powerfully influenced by the history of the DPRK’s founding generation of Communist leaders as

²⁸ David E. Sanger, “Bush Administration Releases Images to Bolster Its Claims About Syrian Reactor,” *New York Times* (April 25, 2008).

²⁹ Albright, *supra*, at 154 & 166-67.

³⁰ See Robert E. Kelley & Ali Fowle, *Nuclear Activities in Burma* (May 25, 2010).

³¹ Albright, *supra*, at 159.

³² See, e.g., Chinoy, *supra*, at 355, 364-65.

³³ See, e.g., Downs, *supra*, at 101, 117-19, & 129; Snyder, *supra*, at 144; Cha & Kang, *supra*, at 29-33 (argument of Victor Cha).

guerrilla fighters seeking leverage against more powerful adversaries, prizing unconventional tactics, and unconcerned with the rules of regular warfare.³⁴

This tendency to engage in “crisis diplomacy” has been noted for years,³⁵ being visible in the DPRK’s repeated cross-border commando infiltrations (*e.g.*, the 1996 submarine incursion) as well, perhaps, as in incidents that Americans regard as nothing more than state-sponsored terrorism (*e.g.*, the 1972 raid on the presidential mansion in Seoul, the bombing attack on the South Korean president in Rangoon in 1983, and the bombing of Korean Air Lines Flight 858 in 1987).³⁶ It is more recently felt to have manifested itself in the torpedo attack that sunk the South Korean warship *Cheonan* in March 2010, and in the DPRK’s artillery attack upon Yeonpyeong island that November.

Such provocations have also roiled nuclear diplomacy between the United States and the DPRK, notably with Pyongyang’s periodic spasms of ballistic missile tests – banned by the United Nations Security Council Resolution 1718 – its 2006 and 2009 nuclear test explosions, and its 2010 centrifuge cascade revelations. Such tactics have contributed to American impressions that the DPRK is too dangerous and erratic to be a feasible negotiating partner, and to the growing feeling that to engage in diplomacy under such pressures is to *reward* such destabilizing tactics and to encourage additional such problems in the future.

These problems have been exacerbated by Pyongyang’s penchant for boldly attempting simply to *commoditize* restraint – *selling* its willingness to *refrain* from dangerous and provocative behavior by asking concessions in return for it from the United States or other negotiating partners. Just as the DPRK suggested in late 1996 that it would express “regret” for its deadly submarine-borne special forces incursion that year only in return for a particular package of benefits, so also Pyongyang publicly offered in June 1998 to come to the table to discuss ballistic missile testing and transfers only if the United States offered it the right “price.”³⁷ The DPRK also appears to have been willing to agree to the Nobel Peace Prize-winning June 2000 summit with South Korean President Kim Dae Jung only in return for a secret \$200 million payment arranged by a subsidiary of the Hyundai conglomerate.³⁸

³⁴ Snyder, *supra*, at 66, 69, & 72-73.

³⁵ Downs, for example, walks through many episodes from the Korean War armistice negotiations to provocations across the inter-Korean DMZ. *See* Downs, *supra*, at 101, 117-19, & 129.

³⁶ Allegations of DPRK involvement in international drug trafficking and counterfeiting, if accurate, would seem to represent a different phenomenon because such activity is presumably intended to remain unknown. These issues too, however, affect America’s willingness to trust Pyongyang to engage in serious negotiations. *Cf.* U.S. Central Intelligence Agency, “Field Listing: Illicit Drugs,” *World Factbook* (undated), available at <https://www.cia.gov/library/publications/the-world-factbook/fields/2086.html>; Todd Bullock, “Narcotics, Counterfeiting Help Fund North Korea, U.S. Says,” *Washington File* (April 26, 2006), available at <http://www.america.gov/st/washfile-english/2006/April/20060426135925tjkcollub0.8716699.html> (discussing Congressional testimony by U.S. State Department and Secret Service officials).

³⁷ Snyder, *supra*, at 74; Oberdorfer, *supra*, at 390.

³⁸ *See, e.g.*, Barbara Demick, “Claim Bolstered that N. Korea Took Summit Bribe,” *Los Angeles Times* (January 31, 2003) (citing financial records released in South Korea).

Such commoditization also occurs in the nuclear realm, and tends further to pollute already gloomy U.S. assessments of Pyongyang's sincerity and good intentions. DPRK officials proposed in early 1994, for example, to fulfill their IAEA safeguards obligations only in return for various concessions from the ROK. In 2004, they also explicitly proposed to return to the Yongbyon plutonium "freeze" – a move which was already required by the 1994 Agreed Framework – in return for "compensation" or other "reward[s]" from the United States and its Six-Party partners.³⁹

II. *A Process Which Has Run Its Course?*

The accumulated weight of this historical baggage of nuclear deception, proliferation, and concession-seeking provocation has soured the U.S. policy community on the idea of negotiating much of *anything* in the nuclear arena with North Korea. Even before the 1994 Agreed Framework, U.S. officials were becoming increasingly convinced that it was simply pointless to engage in nuclear diplomacy with the DPRK. Indeed, the "package deal" approach that U.S. officials began to explore around that time – and which ultimately bore fruit in the Agreed Framework itself – was largely formulated on the basis that it would be something of a "last chance" for the DPRK to prove that it was indeed a country with which there was *any* meaningful chance of a constructive agreement. By late 1993, U.S. officials were coming to think that "North Korea might simply be unwilling to trade away its nuclear weapons program for any price," and that denuclearization negotiations were therefore pointless and likely to be counterproductive. The "package" approach was intended to test DPRK sincerity, on the understanding that if it were rejected or violated, no conclusion would be left other than that Pyongyang was not serious about negotiations – and therefore should only be isolated, pressured, and perhaps even worse.⁴⁰

Today, the DPRK stands revealed as having pursued a nuclear weapons program based upon uranium enrichment in parallel to its now no longer "frozen" plutonium program – an effort in contravention of the 1991 North-South denuclearization agreement, the 1994 Agreed Framework, and the basic conceptual underpinnings of the very "package" approach that had been intended to be a definitive test of DPRK sincerity. As a result, the entire negotiating enterprise seems to have come somewhat unglued. From a U.S. perspective, there seems to be increasing agreement, across the breadth of the U.S. policy community, that there is little to be gained from further engagement – or at least from engagement of the concessionary sort hitherto practiced in the Agreed Framework and Six-Party Talks era.

The political Right in the United States, never particularly comfortable negotiating with North Korea in the first place, now inclines more than ever toward the conclusion that

³⁹ See Mazarr, *supra*, at 149; Chinoy, *supra*, at 202 & 217.

⁴⁰ Mazarr, *supra*, at 145-46. The contemplated "worse" might have been very bad indeed. When former U.S. President Jimmy Carter announced the breakthrough he said he had achieved in a meeting with Kim Jong-il in 1994, Clinton administration officials were just finalizing their plans for *attacking* the DPRK in order to solve the nuclear problem by force of arms. Senior officials reportedly watched Carter's announcement on television at the White House after concluding a meeting on that very subject. See, e.g., Chinoy, *supra*, at 6.

the long U.S. effort to engage with the DPRK in seeking a negotiated solution to the nuclear crisis “amounted essentially to appeasement.”⁴¹ “Appeasement,” of course, is a powerfully loaded term that evokes Western leaders’ failure to resist Adolf Hitler before it was too late to avoid a truly catastrophic war. (The word, one must assume, is used neither casually nor accidentally in the DPRK context.)

The collapse of the Agreed Framework upon revelations of North Korea’s uranium enrichment program – and the subsequent unraveling of the Bush Administration’s desperate second-term attempts to salvage something from the diplomatic process – seem to have been taken, by hawkish U.S. thinkers, as a profound vindication. They believe that the 1994 deal – and indeed the entire *process* of negotiating with the DPRK – has now been shown to be, in one former official’s words, “exactly what any of us had thought it was at first”: a DPRK fraud.⁴² By this interpretation, “engagement has been tried and it has demonstrably failed,” leaving “aggressive isolation” of the DPRK regime as the United States’ only viable approach to the nuclear issue because “North Korea will not abandon or dismantle its nuclear programs absent regime change.”⁴³

DPRK pronouncements on the subject, it must be said, have tended to reinforce such pessimistic conclusions. As early as 2002, for example, DPRK officials told U.S. diplomats that Pyongyang was “entitled” to possess nuclear weapons – and one participant recalls the Americans being told that because the *United States* has nuclear weapons, “we have to do the same.” At an informal “Track II” meeting in November 2008, DPRK official Li Gun also reportedly told U.S. counterparts that “everything has changed now,” and that the DPRK would retain nuclear weapons as long as the United States remained an ally of either the ROK *or* Japan. A Foreign Ministry spokesman in Pyongyang also declared, after the DPRK’s second nuclear test in 2009, that it was now “absolutely impossible” to “even think about” denuclearization.⁴⁴

It has also been reported that at a recent Korean Workers Party conference – as well as in remarks by DPRK leader Kim Jong-il himself to Chinese Premier Wen Jiabao – denuclearization was described as having been one of the “dying wishes” of the late Kim Il Sung. Descriptions of such “denuclearization,” however, seem to underline the point that North Korea actually has little intention of relinquishing its weapons: denuclearization of the Korean Peninsula seems now to be linked, rhetorically and substantively, to *world* denuclearization – that is, to complete nuclear disarmament.⁴⁵ Pyongyang, in other words, seems committed to retaining its weapons as long as anyone else has any.

⁴¹ Mark A. Groombridge, “In Search of a North Korea Policy: Time to Pursue ‘Aggressive Isolation,’” *National Security Policy Proceedings*, vol.3 (Fall 2010), at 53, 57.

⁴² *Quoted by Chinoy, supra*, at 113.

⁴³ Groombridge, *supra*, at 54.

⁴⁴ *Quoted by Chinoy, supra*, at 121-22, 372, & 380.

⁴⁵ “Talk Between Kim Jong-Il and Chinese Premier Wen,” *Tongil News* (October 5, 2010) [translation courtesy of U.S. Committee for Human Rights in North Korea]; *see also, e.g.*, “Peaceful Offensive Following Kim Il-Sung’s Three Wishes,” *Tongil News* (October 30, 2010) [translation courtesy of U.S. Committee for Human Rights in North Korea].

Critically, as a result of a cascade of DPRK provocations – withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), two nuclear tests, resumption of ballistic missile testing, the *Cheonan* sinking, the Yeonpyeong attack, the Libyan UF6, the Syrian reactor, the centrifuge revelations, and reports that Pyongyang may be preparing for yet *another* nuclear weapons test⁴⁶ – a functionally anti-engagement, pro-isolation attitude is no longer monopolized by American conservatives. Indeed, it seems to be emerging as something of a new U.S. consensus.

If anything, the Obama administration seems to have taken a tougher position in this regard than did U.S. officials during the second term of President George W. Bush. Soon after taking office, Obama reaffirmed the missile proliferation sanctions Bush had imposed upon the DPRK, and suspended energy aid. After an internal review that was surely influenced by Pyongyang’s decision to conduct its second nuclear test in May 2009 – Obama officials appear to have adopted a basic position not entirely unlike that of their hawkish counterparts. Under this new view, which has been described as an administration “consensus,”⁴⁷ it is nothing short of foolishness to engage in yet more negotiations in which international interlocutors try to “buy” good behavior by the Pyongyang, thus rewarding DPRK provocations and encouraging more. If there are to be any future negotiations, it is felt, they will have to be on very different terms.

At his June 2009 summit with ROK President Lee Myong-bak, President Obama put it quite clearly:

“There’s been a pattern in the past where North Korea behaves in a belligerent fashion, and if it waits long enough is then rewarded with foodstuffs and fuel and concessionary loans and a whole range of benefits. And I think that’s the pattern that they’ve come to expect. The message we’re sending – and when I say ‘we,’ not simply the United States and the Republic of Korea, but I think the international community – is we are going to break that pattern. We are more than willing to engage in negotiations to get North Korea on a path of peaceful coexistence with its neighbors, and we want to encourage their prosperity. But belligerent, provocative behavior that threatens neighbors will be met with significant, serious enforcement of sanctions”⁴⁸

Significantly, there also appears today have developed a near-consensus within the U.S. policy community that the DPRK is not *open* to the possibility of abandoning its nuclear weapons and taking the steps that would be necessary to implement and verify any genuine nuclear accord. This emerging conclusion obviously has dramatic implications in America’s ongoing “engagement debate” over DPRK policy. Short of actually *recognizing* the DPRK as some kind of nuclear weapons power – an approach which U.S. officials have ruled out, and which broader considerations of nonproliferation policy and Pyongyang’s own ongoing

⁴⁶ See, e.g., “North Korea digging tunnels for likely nuclear test,” Reuters, (February 20, 2011).

⁴⁷ Chinoy, *supra*, at 379-80.

⁴⁸ Joint Remarks by President Obama and President Lee Myong-bak (June 16, 2009), *available at* <http://www.cfr.org/proliferation/joint-remarks-president-obama-president-lee-myung-bak-june-2009/p19646>.

provocations would seem to preclude⁴⁹ – there would simply seem now to be very little to negotiate *about*.

To be sure, these themes have to some extent been around for years. Some U.S. officials involved in negotiating with Pyongyang and the Chinese during the 1950s, for example, concluded on the basis of their efforts that the best way to negotiate with the DPRK was *not* to do so at all.⁵⁰ Such experiences have led some scholars of North Korean negotiating behavior to warn that Pyongyang sometimes enters negotiations with no intention of seeking a deal or keeping one if it were reached, but instead simply to wring benefits merely out of participating in talks. For some issues, it has been suggested, *disengagement* – and, implicitly, a policy of pressure unless and until Pyongyang evidences a sincere change of heart – is the best available approach. “[N]ot every issue,” we are warned, “lends itself to negotiation with North Korea.”⁵¹

An indeed, nonproliferation scholars have long understood that while *some* proliferators can be (and have been) talked out of their nuclear weapons programs, *others* “may simply refuse” to abandon such work.⁵² As noted earlier, Clinton administration officials had begun to suspect in the early 1990s that the DPRK fell into this category. By 2011, it would seem that such a view has become the new consensus of the U.S. policy community – including, one suspects, the Obama administration itself.⁵³

This change is quite significant. Not long ago, there still existed three basic narratives that competed for acceptance within that portion of the U.S. policy community concerned with DPRK policy:

- The first, as we have already seen, was an interpretation popular among many American conservatives pursuant to which the DPRK is nothing less than an outlaw state – the aggressor in the Korean War, the fomenter of peninsular instability in innumerable cross-border incidents, the violator of every nuclear agreement it has ever reached, an egregious ballistic missile and nuclear proliferator, an abuser and exploiter of its own population, and a drug-trafficking and terror-sponsoring family criminal dynasty in the guise of a national state – with which serious negotiations were both impossible and immoral.
- The second interpretation was more popular on the pro-engagement political Left, and was inclined to see America as being *also* at fault for the ongoing diplomatic

⁴⁹ See, e.g., Obama & Myung-bak, *supra* (remarks of President Obama) (noting that “we have not come to a conclusion that North Korea will or should be a nuclear power,” and that “[g]iven their past behavior, given the belligerent manner in which they are constantly threatening their neighbors, I don’t think there’s any question that that would be a destabilizing situation that would be a profound threat to not only the United States’ security but world security”).

⁵⁰ Lt. Gen. William K. Harrison, Jr., USA, from 1951; and William J. Taylor, “The Best Strategy Is to Do Nothing,” *Los Angeles Times* (September 2, 1998), at A11.

⁵¹ Downs, *supra*, at 10 & 77.

⁵² Mazarr, *supra*, at 196 (quoting Stephen Meyer).

⁵³ See Chinoy, *supra*, at 379-80.

difficulties of the nuclear talks. Through this prism, *both* sides bore blame for the collapse of the Agreed Framework, and much could be done to resolve the DPRK nuclear problem if the United States took steps (*e.g.*, by means of a nonaggression pact, peace treaty, or normalized relations) to allay the legitimate security concerns that had helped make Pyongyang interested in nuclear weapons.⁵⁴

- The third interpretation was what one scholar promoted as a philosophy of “hawk engagement.” By this view, the primary threat from the DPRK is no longer that of a 1950-style invasion of the ROK, but rather that the government in Pyongyang might lash out after having concluded that its certainty of facing a losing game of isolation and gradual economic and political collapse made it worthwhile to gamble on military provocations as a way to create a new and more tenable *status quo*. Through this prism, U.S. strategies involving *only* pressure were seen as increasing the likelihood that the DPRK would take such a desperate gamble. Accordingly, it was necessary to engage Pyongyang with a mix of positive and negative incentives, and to demonstrate that its best chance to *avoid* being stuck in a losing game lay in constructive and cooperative behavior.⁵⁵

The last few years, however, have seen what seems to be a partial collapsing of these narratives into a single discourse that – although its adherents disagree among themselves on some important details – appears broadly to agree that further engagement will require a fundamental change of strategic direction by the DPRK. Proponents of the first school of thought, of course, were essentially always uncomfortable with the diplomatic track that led to the 1994 Agreed Framework and then Six-Party accords of 2005 and 2007. Yet neither the third nor even the second school was ever *uncritically* in favor of engagement: they agreed that engagement needed to be “conditional,” and could be derailed by “extremely deviant behavior by Pyongyang.”⁵⁶ As “hawk engagement” scholar Victor Cha put it, for instance, “a wholesale and secretive breakout” attempt from prior DPRK nuclear commitments would make *any* negotiation “tantamount to appeasement,” leaving “no choice but isolation and containment.”⁵⁷ Just such a shift in the discourse, in fact, seems to have been happening.

It remains the official position of the Obama administration – as articulated, for instance, by Assistant Secretary of State Kurt Campbell in late 2010 – that the Six-Party nuclear talks should resume as soon as possible. Nevertheless, the clear precondition for such engagement is that “North Korea needs to commit to abide by its commitments made in 2005 and 2007”⁵⁸ – that is, to return to the path of denuclearization. The message seems clear: nuclear negotiations are still possible, but only if they are genuinely about denuclearization. If they are not, the DPRK should expect to face only continued pressure and isolation.

⁵⁴ See, *e.g.*, Cha & Kang, *supra*, at 120 & 135-36 (arguments of David Kang).

⁵⁵ See, *e.g.*, *id.*, at 15-16, 20-21, 24, 34, 37, 86 & 92 (arguments of Victor Cha).

⁵⁶ *Id.*, at 4.

⁵⁷ *Id.*, at 156.

⁵⁸ Remarks by Assistant Secretary Kurt Campbell on North Korea during meetings with South Korean officials (February 3, 2010), available at http://seoul.usembassy.gov/p_rok_020310.html.

President Obama has himself spelled this out, declaring last November when visiting a U.S. military base in the ROK that the DPRK's impoverishment and isolation is the "direct result of the path that has been taken by North Korea – a path of confrontation and provocation; one that includes the pursuit of nuclear weapons and the attack on the *Cheonan* last March." Particularly in the wake of this aggression, Obama said, "we have made it clear that North Korea's continued pursuit of nuclear weapons will only lead to more isolation and less security."⁵⁹ If indeed, as more and more analysts today believe, Pyongyang remains committed to retaining its nuclear arsenal, it is hard to see there being much of a future for nuclear engagement.

The DPRK's commitment to retaining its nuclear capabilities has also strengthened the hand – and increased the numbers – of those in the United States who believe that the only real solution to the DPRK nuclear problem is the end of the DPRK regime. To be sure, there have always been analysts who believe that "the nuclear question will not be completely solved before Korean unification" and "will remain a problem as long as North Korea exists,"⁶⁰ and there has been no shortage of American conservatives inclined to favor regime change.

It is not often understood, however, the degree to which even the traditionally more pro-engagement U.S. Left *also* favored regime change in the DPRK. In this regard, in fact, they often disagreed with the Right only about how such change might be expected to come about. Pro-engagement scholar David Kang, for instance, promoted a strategy of "regime change through economic integration," arguing that engagement was "the best and most viable way to promote regime change in North Korea."⁶¹ There have even been hints that this was to some extent in the mind of the Clinton administration, which may have expected its Agreed Framework to control the DPRK nuclear threat long enough for the government there to crumble under its own weight. (In 1997, for instance, the CIA had predicted that the DPRK would collapse within five years⁶² – a timeframe that offers an interesting perspective upon the Framework's 2003 "target date" for light water reactor delivery.⁶³) In any event, it seems clear that it might not take much to convince even the American Left that the only real solution to the DPRK nuclear crisis is a change of government in Pyongyang.

As can be seen in the conversion of even the Bush administration to the cause of Six-Party negotiations in the mid-2000s, proponents of continued engagement have traditionally tended to win out over those who feel such talks to be unwise and counterproductive. Nevertheless, the fruitlessness of diplomatic endeavors to date – coupled with Pyongyang's continuing penchant for defiance, regional provocations, and steps making ever more clear that it will *never* accept denuclearization – is helping collapse the three U.S. narratives into a single consensus. In this emerging view, *non*-engagement and continued isolation of the

⁵⁹ Barack Obama, remarks at Yongsan Garrison, ROK (November 11, 2010), *available at* <http://latimesblogs.latimes.com/washington/2010/11/veterans-day-obama-korea.html>.

⁶⁰ *See, e.g.*, Mazarr, *supra*, at 235 (quoting analyst).

⁶¹ Cha & Kang, *supra*, at 103 & 126 (arguments of Kang).

⁶² Chinoy, *supra*, at 9.

⁶³ *Cf.* Agreed Framework, *supra*, at I(1).

DPRK is necessary for so long as present circumstances continue. At the time of writing, therefore, the view of hawkish former Bush official Robert Joseph seems to be not too far from a U.S. policy consensus:

“To date, Pyongyang has repeatedly used its nuclear program to gain concessions vital to its survival. The objective of U.S. policy must be to present the Dear Leader with a clear choice: he can keep his weapons and lose all [of this survival-facilitating] outside assistance, or he can give up the weapons. We cannot allow him to continue to have it both ways.”⁶⁴

III. *Bargaining and Information*

A more game-theoretical and less explicitly political perspective may shed additional light on these dynamics. During the nuclear negotiations of the 1990s, observers noted a tension in the DPRK’s approach. At that time, Pyongyang’s negotiating strategy was best served by an ambiguous posture. On the one hand, the DPRK wanted the world to be aware *enough* of its nuclear weapons program to make engagement with the DPRK seem potentially profitable. The concessions desired by Pyongyang, therefore, required that foreigners perceive there to be a meaningful chance that an agreement could really resolve the nuclear issue. (Otherwise they would have no reason to consider paying the requested price for a deal.) At the same time, however, Pyongyang did not want its weapons ambitions to seem *so* obvious, provocative, and irreversible that this would *preclude* negotiation and elicit only threatening counter-moves that could endanger the regime’s survival.⁶⁵

As Michael Mazarr recognized in a thoughtful 1995 study, from the DPRK’s perspective there was always a danger that this tension between ambiguity and disclosure would become “untenable.”⁶⁶ Nonetheless, having discovered that its nuclear weapons program had value precisely because outsiders feared it – thus offering the DPRK an opportunity to win concessions by manipulating “the threat ... that it might proceed to manufacture nuclear weapons”⁶⁷ – Pyongyang managed to keep these elements in some kind of balance for years, reaping significant benefits along the way.

It was also always understood, though, that this strategy might come to undermine the preconditions for its own success. As Scott Snyder noted several years ago, the basic dilemma for the DPRKs’ approach to nuclear diplomacy lay in the fact that

“North Korea’s greatest leverage is its potential threat, yet as it trades away the threat to gain the benefits of negotiation necessary to ensure its survival,

⁶⁴ Robert Joseph, “How To Deal With A Dictator,” *The Wall Street Journal* (June 6, 2009).

⁶⁵ See, e.g., Downs, *supra*, at 212 (noting DPRK strategy of trying to “cultivate uncertainty” by permitting “enough exposure of its program to generate concern” but not enough to be conclusive).

⁶⁶ See Mazarr, *supra*, at 48.

⁶⁷ Oberdorfer, *supra*, at 305; see also *id.* at 249-50; see also, e.g., Mazarr, *supra*, at 182.

leverage is diminished as negotiating counterparts can again afford to ignore North Korea's concerns and take for granted the absence of confrontation."⁶⁸

Many commentators seem to have realized that this bargaining-induced need to *keep* presenting a threat might ultimately make the DPRK unwilling to agree to full and verified denuclearization. It seems to have been less appreciated, however, that to the degree that diplomatic partners came to understand that clear denuclearization was not actually on offer, the credibility of continued engagement would similarly wane, causing North Korea's diplomatic strategy to run aground. This analysis also implies, moreover, that the DPRK's nuclear program would lose its utility as an inducement to negotiation if Pyongyang's policies *removed* the ambiguity upon which its bargaining posture rested.

Ambiguity about the nature and extent of its nuclear program served North Korea well for a long time, in at least two important respects. First and most obviously, ambiguity, as noted, made it possible for Pyongyang to elicit foreign concessions aimed at forestalling the development of DPRK nuclear weapons. A policy of future DPRK nuclear restraint was easy to promise, and if followed, would indeed have prevented the development of a nuclear weapons capability that the United States and others clearly viewed as a serious potential threat. Restraint was, moreover, an easy variable for the DPRK to *adjust*: so long as the object over which parties were bargaining was merely Pyongyang's forbearance from nuclear development, the DPRK would have considerable leeway to calibrate its apparent steps *toward* or *away from* nuclear weapons according to the degree to which it felt it was getting what it wanted from its negotiating partners. For these reasons, bargaining against the *possibility* of nuclear weapons proved an effective DPRK strategy.

Such bargaining utility, however, ebbs in the *absence* of ambiguity. As noted, it has long been understood that this sort of bargaining power would erode as the DPRK verifiably denuclearized. It also erodes, however, to the degree that the DPRK *unambiguously* reveals an existing nuclear weapons capability. Because it is for various reasons much less credible to offer (or difficult to *induce*) the dismantlement of an established capability than to promise (or persuade someone) not to acquire it in the first place, openly-possessed nuclear weapons and an extensive supporting infrastructure are both much harder things for Pyongyang to bargain *against* and less promising *objects* of negotiation for foreign partners. By banishing ambiguity through in some sense actually *achieving* its "nuclear deterrent" ambitions, therefore, the DPRK may actually have crippled its long-successful nuclear diplomacy and created more compelling reasons for outsiders to adopt isolation strategies.

The loss of ambiguity also works against the DPRK's bargaining strategy in a second way. To the extent that any sort of denuclearization accords *are* negotiated, newfound clarity about the Pyongyang's possession of any given nuclear capability all but compels foreign partners to insist upon demanding verification requirements for its dismantlement. The more numerous and extensive are the capabilities the DPRK is revealed to possess, in other words, the more intrusive will tend to be the forward-looking verification measures and accountability for past activity it forces its interlocutors to demand in conjunction with

⁶⁸ Snyder, *supra*, at 157.

denuclearization. Especially in light of the DPRK's apparent fear of openness to the outside world – which seems to preclude any sort of genuinely intrusive verification – this provides both another way for the negotiating process to break down and an additional incentive for outsiders to conclude that it is pointless to engage in talks in the first place.

Two real-life examples will serve to illustrate this dynamic. By the time the United States began to engage in its nuclear negotiations with Pyongyang in the early 1990s, U.S. intelligence analysts had concluded that the DPRK might *already* have developed nuclear weapons. As described earlier, based upon satellite imagery suggesting that one of the Yongbyon reactors had been shut down for defueling for a time in 1989, the CIA felt that the DPRK might possess sufficient fissile material for – and might thus in fact actually possess – one or two nuclear devices. (This estimate, in fact, remained in place for years, until subsequent Yongbyon defuelings, and nuclear weapons tests, changed U.S. assessments of the plutonium likely available.)

As more information was learned about the DPRK's past plutonium work, however – not least, as we have also seen, with the completion of IAEA laboratory tests indicating that additional undeclared rounds of reprocessing had indeed occurred – the Clinton administration deliberately *declined* to make possible pre-existing nuclear weapons a major issue in its negotiations with Pyongyang. Faced with the possibility that the plutonium-producing reactor and reprocessing plant at Yongbyon might soon allow the DPRK to begin full-scale plutonium production and create a sizeable nuclear arsenal, the United States opted, in effect, to ignore the possible existence of a small number of *existing* weapons in attempt to preclude the creation of a large number of *new* ones.

Though American officials – including President Bill Clinton himself – had in 1993 taken a more uncompromising position on the need for full DPRK nuclear transparency, by early 1994 they were backing away from this in favor of an exclusive focus upon *future* work at Yongbyon. The United States opted, in other words, to

“leave aside the immediate demand for the location of every bit of previously acquired fissile material in exchange for a full and complete accounting of all other aspects of a given nuclear program, including, crucially, a firm and verifiable cap on any future production of fissile materials.”⁶⁹

As Mazarr's study of this period highlighted, such moves of strategic and diplomatic expediency are greatly facilitated by ambiguity.⁷⁰ Indeed, the Clinton administration's choice to ignore the nuclear weapons it felt the DPRK already possessed might have been politically or strategically impossible had that this assessment not been merely *inferential* – and thus necessarily somewhat ambiguous. (U.S. intelligence did not “know” that the DPRK had one or two nuclear devices: it merely felt this was very likely. As one senior intelligence analyst put it to me in the early 2000s, “we don't think they extracted the plutonium just to sit around

⁶⁹ Mazarr, *supra*, at 198; *see also id.* at 150.

⁷⁰ *Id.*, at 198 & 201 (describing this in approving terms, and suggesting as a general proposition that in such cases it may be necessary to “grant the existence of ambiguity” about the precise capabilities of a proliferator while “work[ing] to keep the situation from getting any worse”).

and stare at it for ten years.”) Arguably, it took such a lack of utter certainty to make possible Washington’s “fudge” on pre-existing weapons: clarity might have compelled the issue to be dealt with somehow, thus potentially precluding agreement even on Yongbyon. U.S. officials could not, of course, admit having ignored the matter altogether, but ambiguity about what the DPRK really had allowed this question to be “deferred” indefinitely.

It would seem, in fact, that the DPRK well understood the value of this ambiguity and sought both to cultivate and to take advantage of it. It is perhaps not a coincidence, for instance, that Pyongyang went to such trouble – in its dealings with the IAEA – to obscure what it had done in the past. Pyongyang’s 1992 declaration to the Agency about reprocessing was clearly false, but after IAEA analyses began to peel back this deception by revealing additional extractions, the DPRK acted decisively to obscure the extent of its past plutonium holdings by removing all the Yongbyon reactor fuel rods in such a way that the IAEA lost the ability to reconstruct past activities there.⁷¹

Mazarr plausibly sees in Pyongyang’s approach not merely a reflexive secrecy or paranoia but instead a strategy of ensuring U.S. ambiguity about how much plutonium North Korea actually had.⁷² From the DPRK’s perspective, the Clinton administration’s choice to downplay pre-existing weapons served to strengthen the “ambiguity value” of Pyongyang’s bargaining posture, allowing the DPRK to “sell” a freeze at Yongbyon to the Americans while preserving whatever deterrent value inhered in the nuclear weapons Washington assumed already to exist. In that context, ambiguity was in Pyongyang’s interest, and needed to be preserved. As DPRK Minister of Atomic Energy Choi Hak Gun reportedly told the IAEA in discussions over prior reprocessing, “[e]ven if we had done it, we would never admit it.”⁷³

A later episode further illustrates the relationship between ambiguity and the politics of bargaining. In principle, U.S. discovery of the DPRK’s uranium work vastly increased the verification demands upon which U.S. diplomats would need to insist along the road to denuclearization. In the absence of evidence of plutonium work elsewhere, verifying a “freeze” at Yongbyon had seemed comparatively unproblematic. Once the uranium program surfaced, however, a much more elaborate verification program would clearly be necessary, and this would clearly be very difficult to negotiate.

Nevertheless, the degree to which greater clarity about DPRK enrichment raised negotiating obstacles depended upon the degree to which there actually *was* clarity about DPRK involvement with uranium. As a matter of negotiating politics, after all – as Mazarr had observed years earlier in connection with the issue of pre-existing weapons – “[u]rgent and uncompromising demands for intrusive inspection regimes, cannot be based on vague evidence of exactly how close to the threshold a proliferant may be.”⁷⁴ Accordingly, the Bush

⁷¹ See, e.g., Chinoy, *supra*, at 5-6; Mazarr, *supra*, at 159; Downs, *supra*, at 237-38.

⁷² See Mazarr, *supra*, at 159.

⁷³ Quoted by Oberdorfer, *supra*, at 278.

⁷⁴ Mazarr, *supra*, at 190.

administration came to agonize endlessly about how certain it *really* was about the nature and extent of enrichment efforts.

Sometimes the very *success* of the United States' discovery of the secret uranium work seems to have vexed its diplomats, who felt compelled by such intelligence assessments to raise the issue but resented the difficulties this presented for their own prospects of "solving" the DPRK nuclear crisis. Perhaps not surprisingly, therefore, uranium intelligence became a sharply contentious issue inside the Bush administration. At issue was not just how *long* the DPRK had been violating the Agreed Framework – with all this implications this might hold for Pyongyang's trustworthiness as a negotiating partner *ab initio* – but also how *extensive* this uranium program was and thus what it would be necessary to demonstrate having dismantled or removed before declaring "success."⁷⁵

Some Bush officials felt that the new uranium information demanded a much more intrusive verification regime. Now that the issue had been raised and U.S. intelligence had determined a production-scale effort to be underway, potentially for some time, they saw no responsible way *not* to insist upon a strict accounting. Others, however, equally adamantly disagreed. Recycling the crude insult a former U.S. ambassador to the ROK had leveled in the early 1990s at IAEA inspectors – whose investigation of past plutonium work at Yongbyon had similarly complicated diplomats' chances of a perceived success in nuclear negotiations – one U.S. official in 2004 described such verification planning as amounting to a "nationwide proctological examination" for the DPRK. Ultimately, Secretary of State Colin Powell opted *not* to insist upon the stringent requirements his own arms control verification bureau had recommended.⁷⁶ Whatever the "right" answer was at that point, however, there clearly existed a complicated relationship between informational clarity and diplomatic bargaining dynamics: there were intense disputes both over to the extent to which available information about the DPRK uranium program required the United States to demand more of Pyongyang and over the extent to which any such demands would impede negotiating progress.

By early 2007, the Bush administration was feeling hard-pressed to show diplomatic progress and actually seemed to want to know *less* about DPRK uranium work. In public

⁷⁵ For one participant's look back upon these internal struggles, see Christopher A. Ford, "Some Thoughts on How Not to Do WMD Intelligence: Lessons of Politicization After Iraq," *New Paradigms Forum* (website) (January 4, 2010), available at <http://www.newparadigmsforum.com/NPFtestsite/?m=20100104>.

⁷⁶ Chinoy, *supra*, at 196 (quoting memorandum to Secretary of State Colin Powell by State Department policy planning director Mitchell Reiss). Similarly, and perhaps for similar reasons, former U.S. Ambassador to the ROK Donald Gregg had described IAEA inspectors at Yongbyon in 1990s as "a bunch of eager proctologists." Quoted by Oberdorfer, *supra*, at 310. Clarity is not always welcome in diplomatic bargaining.

A subsequent – and presumably much watered down – plan drawn up by State Department arms control verifiers and presented to the DPRK in July 2008 is reported to have infuriated DPRK envoy Kim Gye Gwan, who insisted upon the right to veto any proposed inspection of any location that Pyongyang had not already declared to be a nuclear facility. Even then, Kim would not commit to anything in writing. See Chinoy, *supra*, at 371. (In the spirit of full disclosure, it should be noted that the author of this paper served as second-in-command of the U.S. State Department's verification bureau from 2003 until the end of 2006 and was a participant in many of these debates.)

comments he made in February 2007, the chief U.S. negotiator, Ambassador Christopher Hill, seemed to try to back away from prior uranium assessments. He now avoided phrasing that would suggest the existence of the sort of extensive effort that would require demanding dismantlement verification, now referring only to the Americans having detected “certain purchases of equipment” such as “aluminum tubes” which “fit the Pakistani-designed centrifuges we know they purchased.” Hill even publicly raised the possibility that “the tubes do not go to an HEU program” at all – which was exactly what the DPRK obligingly, albeit falsely, claimed later that year in their official “declaration.” During the course of 2007, U.S. officials also gave their DPRK counterparts more and more specific information about U.S. intelligence on uranium-related procurements, including about specific transactions involving high-strength aluminum tubes.⁷⁷

One almost senses here that U.S. officials were trying to recreate the kind of ambiguity necessary for a Clinton-style decision indefinitely to “defer” a thorny and potentially negotiation-preclusive issue. It would be unfair, however, to suggest that this newfound uncertainty – however convenient it proved in allowing a retreat from extremely rigorous verification demands – was *entirely* a fiction. Indeed, it appears to be the case that over the course of 2006-08, U.S. intelligence really *did* see a decline in new reports of illicit DPRK uranium-related procurement.⁷⁸ In retrospect, of course, it seems clear that these conveniently negotiation-facilitating U.S. “doubts” were unfounded – and that any diminishment of incoming intelligence reporting was likely due either to Pyongyang having largely *finished* buying what it needed or to improved DPRK security now that leaks had made it public knowledge that U.S. intelligence was tracking the uranium program by following aluminum tube procurement.⁷⁹ Either way, however, the decline in incoming information provided the perfect excuse for U.S. officials to discover “doubts” about whether there really was a serious uranium effort underway after all.

This newly-declared ambiguity, in turn, facilitated agreement on verification by seeming to make it less important that the United States require demanding provisions that might imperil the talks.⁸⁰ Accordingly, in a series of meetings in 2008 – by which point DPRK assistance to Syria’s secret nuclear reactor program had emerged to *further* complicate the verification negotiations – Ambassador Hill and DPRK envoy Kim Gye Gwan agreed upon an approach that closely resembled the Clinton administration’s strategic

⁷⁷ Chinoy, *supra*, at 330, 347, 358, 364-65 & 368; *see also generally* Albright, *supra*, at 163.

⁷⁸ *See* Niksh, *North Korea’s Nuclear Weapons Development and Diplomacy, supra*, at 19.

⁷⁹ *See e.g.*, Mark Hibbs, “DPRK Sought Enough Aluminum Tubing in Germany for 4,000 Centrifuges,” *Platts Nuclear Fuel* (May 12, 2003), at 1, 16–17; Joby Warrick, “U.S. Followed the Aluminum: Pyongyang’s Effort to Buy Metal Was Tip to Plans,” *Washington Post* (October 18, 2002), at A01; *see also generally* Chaim Braun & Christopher F. Chyba, “Proliferation Rings,” *International Security*, vol.29, no.2 (Fall 2004) at 5, 13; Mitchel Reiss & Robert Galucci, “Red Handed,” *Foreign Affairs* (March/April 2005).

⁸⁰ Perhaps, for example, it was anticipated that uranium verification could be declared a “success” if Pyongyang merely produced a quantity of aluminum tubes conveniently corresponding to the numbers U.S. officials had helpfully declared themselves to know about. Or perhaps Washington – with a knowing sigh and allusions to past mistakes about *Iraqi* aluminum procurement – might have professed itself satisfied that they were really for “rockets” after all.

choice to “defer” the question of pre-existing nuclear weaponry.⁸¹ Pursuant to this arrangement, Pyongyang would address U.S. concerns about Syria, uranium enrichment, and nuclear weapons simply by signing a confidential side letter in which the United States would set forth the details of what it believed about these matters. After this, Pyongyang would “acknowledge the U.S. conclusions.”⁸²

On June 26, 2008, therefore, the DPRK duly agreed to a side letter in which it “acknowledged [U.S.] concerns about the DPRK’s uranium enrichment and nuclear proliferation activities, specifically with regard to Syria” – without, of course, committing, one way or the other, to whether there was any basis for these worries.⁸³ Hill later told Congress that

“The declaration package that the DPRK provided to the Chinese on June 26 addresses its plutonium program, and acknowledged our concerns about the DPRK’s uranium enrichment and nuclear proliferation activities, specifically with regard to Syria. The DPRK’s declaration is not an end point in our efforts to understand North Korea’s nuclear programs, but rather is the basis for a rigorous process of verifying all of the DPRK’s nuclear programs.”⁸⁴

As with President Clinton’s 1994 decision about pre-existing nuclear weapons, negotiators had tried to take advantage of real or asserted informational ambiguity in order to push grappling with the toughest matters off into the indefinite future.⁸⁵

The significant point here for the future of U.S.-DPRK nuclear negotiations, however, is twofold. First, this history illustrates that ambiguity and diplomatic “negotiability” are

⁸¹ One difference, of course, was that in 1994 the U.S. decision had been to downplay a small and finite stock of weapons in favor of preventing the production of many new ones. By contrast, the choice was made in 2008 to downplay the existence of an entire weapons development *program* that U.S. officials had themselves assessed to be designed to allow the DPRK to make “two or more” uranium-based nuclear weapons every year. This distinction is not necessarily to the Bush administration’s credit.

⁸² Chinoy, *supra*, at 365 & 368. This phrasing seems to be designed to make it appear to that the DPRK had “acknowledged” that the U.S. account was accurate, but technically it stopped at an acknowledgment merely that the United States *had* concerns – a true but trivial statement.

⁸³ See, e.g., Mary Beth Nitkin, “North Korea’s Nuclear Weapons,” *Congressional Research Service* (February 12, 2009), at 14, available at <http://fpc.state.gov/documents/organization/120976.pdf>.

⁸⁴ Assistant Secretary of State for East Asian and Pacific Affairs Christopher Hill, statement to the Senate Committee on Armed Services (July 31, 2008), at 3, available at http://www.ncnk.org/resources/publications/Amb_Hill_Testimony_SASC_July_08.pdf.

⁸⁵ In fairness, it must be noted that such expeditious deferrals do not always involve the *de facto* U.S. abandonment of a particularly troublesome issue. In the September 2005 “Joint Declaration” agreed by the Six-Party partners, the parties “agreed to discuss, at an appropriate time, the subject of the provision of [a] light water reactor to the DPRK.” The United States, Russia, Japan, the ROK, China, and the DPRK, *Joint Statement on North Korea’s Nuclear Programme* (September 19, 2005), available at <http://www.acronym.org.uk/docs/0509/doc04.htm>. As U.S. officials interpreted this, the “appropriate time” for such reactors would only come when North Korea had eliminated its nuclear weapons and other nuclear programs, when this had been verified to the satisfaction of all participants in the Six-Party process, and when Pyongyang had demonstrated “a sustained commitment to cooperation and transparency and has ceased proliferating nuclear technology.” See Chinoy, *supra*, at 250.

indeed related in a complex way – and that *clarity* is not always conducive to the “success” of diplomatic negotiations. Second, all of these various U.S. efforts to negotiate around the thorniest nuclear issues in dealing with North Korea appear to have been in vain.

Pyongyang has gone to considerable trouble to remove almost *all* the key elements of informational ambiguity upon which any future such expeditious evasions might be built. At the time of writing, for instance, the DPRK has tested nuclear weapons twice, thus requiring that the issue of existing nuclear weapons – and by now, presumably, a considerably larger stockpile of them – be part of any future negotiating agenda, vastly complicating the issue of denuclearization and its verification. At the same time, no meaningful ambiguity remains about the DPRK uranium program. Rather than having the uranium question be potentially dismissible as a matter resolvable merely by properly accounting for “certain purchases” of “aluminum tubes,” the DPRK’s own November 2010 revelations now require any future U.S. negotiators to address a large uranium infrastructure.

The traditional sort of ambiguity-facilitated diplomatic expediency, in other words, is now essentially impossible – and it is by no means clear that the negotiating process is *capable* of producing an outcome capable of satisfying the transparency and verification requirements upon which today’s clarity will tend to force the United States to insist. As Victor Cha has noted, the negotiating project with Pyongyang was “based on some degree of ambiguity with regard to the target regime’s intentions.”⁸⁶ Now that ambiguity has been stripped away about the breadth and depth of the DPRK’s nuclear weapons effort – and now that Western analysts are increasingly coming to conclusion that Pyongyang’s intentions are both quite *clear* and *incompatible* with the continuing U.S. desire for peninsular denuclearization – what is left to make it worth attempting further negotiations? Pyongyang’s nuclear development seems to have undermined its ability to engage, and to interest others, in nuclear negotiation.

IV. *Where Now?*

Is there any way to imagine the United States and the DPRK finding some way out of the increasingly negotiations-preclusive nuclear impasse in which Pyongyang’s policies have thrust them?

One should remember, in this regard, that while the prospect of any genuine success has surely become more remote, no U.S. president has yet concluded that negotiations with Pyongyang are *entirely* hopeless. Nor, clearly, is the United States opposed in principle to having a more “normal” and mutually beneficial relationship even with a government the nature and past behavior of which it finds abhorrent.

This, after all, was precisely what occurred with Libya – which agreed in December 2003 to abandon its weapons of mass destruction (“WMD”) programs, and during the course of 2004 provided “extremely good” cooperation as part of a trilateral U.S., British, and

⁸⁶ Cha & Kang, *supra*, at 155.

Libyan dismantlement and removal program.⁸⁷ As President Bush put it in a statement issued at the time of Qaddafi's historic December 2003 announcement, Libya offered supported a model for restoring long-isolated regimes to a more "normal" relationship with the rest of the world in return for their abandonment of WMD and terrorism. In his words,

"leaders who abandon the pursuit of chemical, biological, and nuclear weapons, and the means to deliver them, will find an open path to better relations with the United States and other free nations."⁸⁸

And indeed, despite recent efforts by Libyan dictator Muammar Qaddafi to create the impression that he should have been given even *more* concessions by the international community,⁸⁹ Libya did benefit tremendously from the normalization made possible by his renunciation of terrorism and his WMD programs. Soon after U.S. officials certified his abandonment of WMD, the United States started easing its longstanding sanctions against Libya, including travel restrictions and on trade in oil and on other important industries. In short order, hundreds of millions of dollars in new U.S. oil contracts had been signed – helping U.S. oil imports from Libya increase from an average of 56,000 barrels per day in 2005 to 117,000 in 2007⁹⁰ – and a formal diplomatic relationship began with each country's opening of a liaison office in the other's capital.⁹¹ In 2008, after the final settlement of terrorism-related litigation, Condoleeza Rice became the first U.S. Secretary of State to visit Libya in half a century, and the United States established full relations with Libya for the first time in 30 years.⁹²

Nor were Libya's newly-flowering relationships with the United States alone. Indeed, the Anglo-American opening, along with Tripoli's resolution of longstanding problems with the outside world arising out of Qaddafi's sponsorship of terrorism, paved the way for a remarkable expansion of economic relationships between Libya and other states in Europe. (So great did Italian and French ties become to Libya, in fact, that these relationships have become an embarrassment for Rome and Paris in light of the Libyan Revolution of 2011.⁹³ Their expansion of economic ties to Libya after 2004 is today viewed in some quarters as having been almost *too* beneficial to the Qaddafi regime.)

⁸⁷ See, e.g., Paula A. DeSutter, "Libya Renounces Weapons of Mass Destruction" (March 1, 2005), available at <http://www.america.gov/st/peacesec-english/2005/March/20080815121758XJyrreP0.2967798.html>. (DeSutter's bureau at the U.S. State Department coordinated American contributions to this effort.)

⁸⁸ DeSutter, *supra*.

⁸⁹ See, e.g., Stephen Brown & Phillip Pullella, "Gaddafi complains not 'rewarded' for renouncing WMD," *Reuters* (June 11, 2009).

⁹⁰ See U.S. Energy Information Administration, "Libya: Oil" (undated), available at <http://www.eia.doe.gov/cabs/Libya/Oil.html>.

⁹¹ DeSutter, *supra*.

⁹² See, e.g., Glenn Kessler, "Libya's Final Payment to Victim's Fund Clears Way for Normal U.S. Ties," *Washington Post* (November 1, 2008).

⁹³ See, e.g., "France and Italy share strong ties with Libya's Gaddafi," *Deutsche Welle* (February 22, 2011), available at <http://www.dw-world.de/dw/article/0,,14859155.00.html>.

For purposes of drawing lessons relevant to the paralyzed U.S.-DPRK nuclear relationship, perhaps the most important innovation of this “Libyan model” was the way in which it avoided being subject to the most common complaint leveled against the DPRK nuclear negotiations. As outlined earlier in this paper, the “appeasement critique” is a common criticism of these talks – and one that is increasingly credited across the breadth of the U.S. policy community. It seems today to be an ever more common view that bargaining to entice the DPRK into doing what it should have done anyway (*e.g.*, comply with the NPT, the Agreed Framework, and/or the 2005 and 2007 Six-Party accords) “rewards” DPRK provocations, encourages further misbehavior, and creates moral hazard problems subversive to nonproliferation policy around the globe.

The Libyan approach, by contrast, is much less subject to such engagement-preclusive conclusions. Indeed, it was central to the Libya deal that Qaddafi was *not* offered “specific promises or rewards.” Instead, said U.S. Assistant Secretary of State Paula DeSutter,

“We promised only that Libya’s good faith, if shown, would be reciprocated – and that renouncing WMD would be a path to improved relations with the rest of the world. In effect, therefore, we held out the most attractive incentive available: the opportunity for Libya to reap the benefits that naturally flow from participating more fully in the community of nations.”⁹⁴

Libya thus offers a refutation of the arch-hawkish syllogism that defines negotiating with WMD-toting dictators as “appeasement.” It demonstrates that normalization of relations *can* be offered to a pariah government in return for its return to the sort of law-abiding *behavior* expected of “normal” countries without raising the specter of “appeasement,” as long as benefits are not provided beyond what such a state would have enjoyed had it not broken the rules in the first place. (This is another way of saying that the country is not rewarded for its misbehavior.)

In Libya’s case, as we have seen, these “non-rewarding” benefits were quite considerable. To be sure, such “normal” inducements might not have worked for all countries, but Libya had been severely isolated by the international community for many years. As of early 2003, when Libya first began its secret talks with U.S. and British officials on WMD, normalization offered an escape from the pains and struggles of continued isolation and potential conflict – and it was remarkable how the relationship improved thereafter. (In the 1980s, after all, Qaddafi and U.S. President Ronald Reagan seem to have tried to kill each other – Qaddafi by allegedly dispatching so-called “hit squads” to the United States,⁹⁵ and Reagan by ordering a bombing raid on Tripoli in April 1986.) Libya offers a remarkable example of being able, by renouncing WMD and terrorism, to turn around a relationship that was once one of the worst in the world.

⁹⁴ DeSutter, *supra*.

⁹⁵ See, *e.g.*, Clyde Mark, *Libya* (Washington, D.C.: Congressional Research Service) (May 2, 2005), at CRS-7 (recounting allegations appearing in the Western press), *available at* <http://fpc.state.gov/documents/organization/47065.pdf>.

There are obvious important potential lessons here for the DPRK – a country the punitive isolation of which is today probably notably deeper and *more* painful than that suffered by Libya prior to 2004, and which therefore might seem to have even *more* to gain from a “normal” relationship with the outside world. And, in fact, the United States still seems to be holding out this possibility.

So far, though Pyongyang’s recent behavior has been strengthening the hand of those who feel otherwise, no U.S. president engaged in nuclear negotiations with the DPRK has taken a position of *inherent* hostility towards Pyongyang. To the contrary, the communiqué issued by President Bill Clinton and Vice Marshal Jo Mong Rok in 2000 affirmed the absence of “hostile intent,” while President George W. Bush and his most senior officials repeatedly disclaimed any intention to attack or invade the DPRK. President Bush also sent a letter to Kim Jong-Il in 2007 expressly raising the possibility of normalized relations in exchange for real denuclearization.⁹⁶

Most recently, U.S. President Barack Obama has, in effect, reiterated President Bush’s point about Washington’s openness to normalized relationships with leaders who renounce WMD – and has expressly offered Pyongyang such an option. As he put it,

“there is another path available to North Korea. If they choose to fulfill their international obligations and commitments to the international community, they will have the chance to offer their people lives of growing opportunity instead of crushing poverty – a future of greater security and greater respect; a future that includes the prosperity and opportunity available to citizens on th[e] [southern] end of the Korean peninsula.”⁹⁷

In light of how things have collapsed in the U.S.-DPRK nuclear negotiations, however, the metaphorical ball is now in *the DPRK’s* court in this respect. A deal on the basis of what one might call the “two normals” – that is, normalization of relations in return for a demonstration of normal behavior – is apparently still possible, but it will require a clear demonstration that the background conditions that have come to make negotiations seem entirely *unpromising* have changed. Pyongyang needs to show, for instance, that it can resist undertaking further regional or specifically nuclear provocations, and that it actually *is* willing to trade away its WMD – with all the cooperative elimination and verification that this will need to entail in light of what has become clear about Pyongyang’s programs – in return for a new and finally “normal” relationship with the United States and the rest of the world. More and more analysts in the United States believe that the DPRK is *not* willing to make this strategic choice, but Washington has not yet withdrawn the offer.

To embark upon such a journey of rebuilding such trust even in the *possibility* that Pyongyang will agree to denuclearization in good faith, however, it may be necessary to revise the basis upon which the two countries have hitherto approached their nuclear bargaining. As we have seen, past negotiations have generally tended to avoid struggling

⁹⁶ See Chinoy, *supra*, at 43, 184, 233, & 357.

⁹⁷ Barack Obama, remarks at Yongsan Garrison, ROK (November 11, 2010), *available at* <http://latimesblogs.latimes.com/washington/2010/11/veterans-day-obama-korea.html>.

with issues of past activity and the genuine nature and extent of DPRK programs in favor of trying to cap *future* movement across the threshold of nuclear weaponization. With Pyongyang having itself pierced the veil of ambiguity that made such maneuvers possible, however, this approach may now have run its course. It is today too late for the DPRK to cross the bridge back into more traditional strategies ambiguity, and it may now be time to reverse the presumption, as it were, and start rebuilding trust by coming genuinely clean about the past.

It would likely be fruitless to demand that Pyongyang immediately reveal tactically and operationally sensitive details about its current nuclear weapons holdings – *e.g.*, specific information about the number, location, and delivery system load-out of nuclear warheads. Denuclearization would in time have to reach such matters, of course, and ongoing plutonium and enriched uranium production would clearly have to be capped early in any denuclearization process. To acknowledge this, however, is in no way to preclude significant transparency about the past. (After all, as can be seen from U.S. transparency about so much of its *own* nuclear weapons program, it is indeed possible for a responsible state to disclose a great deal without peril to its security.) To begin to rebuild with the United States something that looks more like the kind of relationship that could support meaningful negotiations and provide evidence of sincerity on the issue of denuclearization, therefore, a good place to begin might be for Pyongyang to provide a detailed accounting of the history of its uranium enrichment program and weaponization work, and its foreign nuclear relationships.

Because ambiguity about past activity no longer has the bargaining value that it did before it became absolutely clear that Pyongyang had a full-fledged weapons program involving both the plutonium and uranium routes, and because a great deal can be revealed in such matters without compromising specific present-day tactical and operational secrets, such transparency would be constructive and symbolically important. Indeed, offering clarity about such details might provide the seeds for a new relationship in part precisely *because* these matters have in the past been so deliberately shrouded in mystery and deception, and so marred by controversy. Such disclosures would also help fill the “hole” so damagingly torn in the 2005 and 2007 Six-Party accords by the DPRK’s refusal to discuss uranium enrichment and overseas proliferation. Whereas once bargaining value was to be found in a studied *ambiguity* about the past, in other words, it may now be that the prospects for nuclear bargaining are greatest in an environment of improving transparency and the sincerity it can demonstrate.

V. *The Alternative*

Such transparency would no doubt be unfamiliar uncomfortable for Pyongyang. To understand why it might nonetheless be the best – or perhaps the only – way back into a mutually-beneficial relationship of nuclear negotiations with the United States, however, it is useful to recall Victor Cha’s analysis of DPRK incentives.

Cha is likely quite right that in most respects the strategic balance has shifted decisively against the DPRK government since the days when it could credibly threaten (and

almost achieve) forcible reunification on its own terms by invading the ROK in 1950, and when it had recourse to Chinese military intervention to prevent its defeat at foreign hands. In more recent years, the rise of a powerful, prosperous, and well-armed South Korean democracy in the southern part of the peninsula contrasts sharply with the DPRK's isolated and impoverished autarky. Coupled with the recognition of the ROK by both Russia and the PRC, and the collapse of its military alliance with the (equally collapsed) Soviet Union, these developments have created an entirely new strategic situation for Pyongyang, and seem to have forced a transformation of the DPRK's strategy from one of coerced reunification into one simply of maneuvering for basic survival.

This is surely an important subtext of Pyongyang's nuclear ambitions, as well as of the desperate "crisis diplomacy" that it uses periodically to inflame tensions in the peninsula in trying to adjust a *status quo* in which linear projections from current trends would otherwise spell only continued decay and eventual collapse. In this context, Cha is insightful to note that there is a danger of conflict in such North Korean desperation, and to advise the United States to avoid putting it into a situation in which provocative hostility could seem "a 'rational' course of action even if victory were impossible."⁹⁸

When Cha wrote in 2002 and 2003 about "hawk engagement" conceived on this basis, however, the specifically *nuclear* situation was different than it is today. Now, Pyongyang has withdrawn from the NPT, repudiated both the North-South denuclearization agreement and the Agreed Framework, revealed an extensive and longstanding uranium enrichment program, reprocessed large additional quantities of plutonium, announced its possession of a "nuclear deterrent," and conducted two nuclear explosive tests. There is now very little uncertainty left about the basic outlines either of the DPRK's (significant) capabilities or its (nuclear weapons) intentions, making "engagement" – at least on any terms that have yet really been tried – no longer so analytically or politically compelling.

Despite the pessimistic conclusions toward which DPRK policy has steadily been driving its erstwhile negotiating partners, however, it may yet be that a Libya-style denuclearization deal based upon the "two normals" remains feasible and desirable for both America *and* the DPRK. The logic is fairly straightforward, if perhaps brutal. Under today's conditions, there is little reason for the United States to engage with Pyongyang in further nuclear negotiations, and there is steadily *less* reason to do so with every additional provocation that the DPRK engineers in an effort to relive past successes in scaring its counterparts back to the table. Absent evidence of a fundamental change of direction by the government in Pyongyang, therefore – the kind of strategic choice Libya made in 2003 – there seems to be little future for the DPRK *other* than that of isolation and international pressure that becomes ever deeper and more prolonged.

It is sometimes thought indelicate to mention the subject in diplomatic circles, but no serious treatment of the strategic dynamics and geopolitical future of nuclear weaponry on the Korean Peninsula can ignore the fact that the *ROK* once had an ambitious nuclear weapons program of its own – and that Seoul is worryingly well positioned today should it

⁹⁸ Cha & Kang, *supra*, at 16 (arguments of Cha); *see also id.* at 15-16, 18, 20-21, 24, 37, & 86.

feel that DPRK nuclear threats, perhaps coupled with some deficit in Seoul's U.S. alliance relationship, again make such a move necessary. Particularly given that it has been (and apparently remains) a DPRK goal to break up the U.S.-ROK defensive alliance even as Pyongyang continues to develop its own nuclear weapons capabilities, these dynamics are worth addressing honestly. These facts may bear powerfully on the future threat environment that the DPRK stands to face *absent* denuclearization.

The ROK apparently began considering developing nuclear weapons in the late 1960s when it began to have worries about the strength of its U.S. alliance guarantees as a result of U.S. problems in Vietnam and regional reductions in the American military presence under the "Nixon Doctrine." ROK President Park Chung Hee reportedly decided in 1970 to begin a nuclear weapons program after U.S. President Richard Nixon announced a drawdown of U.S. troop levels in the ROK. In 1971, at Park's direction, a "Weapons Exploitation Committee" began to look into the development of an indigenous nuclear arsenal. (The ROK's original idea seems to have been to purchase a reprocessing facility from France and a mixed-oxide [MOX] fuel fabrication laboratory from Belgium, thereafter being able to use such dual-use plutonium-cycle capabilities for weapons purposes.)⁹⁹

The ROK's weapons program ran into difficulties, however, when some of its supply arrangements fell through amidst international concern over India's 1974 nuclear test – which, inconveniently for Seoul, was just the sort of misappropriation of "dual-use" plutonium technology that the ROK then hoped to achieve for itself. After alarmed U.S. officials reportedly threatened to cancel U.S. alliance guarantees if Seoul continued its weapons program, moreover, the effort was disbanded. President Park professed himself willing to refrain from nuclear weapons development as long as the U.S. "nuclear umbrella" continued to cover Seoul against Soviet or DPRK aggression – and as U.S. officials reassured him in 1975 that it did – and provided that other aspects of the U.S. relationship remained strong.¹⁰⁰

Despite the fact that the United States subsequently removed the last of its "tactical" nuclear weapons from the ROK by December 1991,¹⁰¹ Seoul seems never to have revisited Park Chung Hee's decision to abandon its nuclear weapons program. Nevertheless, Seoul clearly retains what has been called a "latent technical capability to produce nuclear weapons,"¹⁰² in the form of its large, capable, and sophisticated civilian nuclear power generation industry.¹⁰³ This "latent" capability is these days accompanied, it must also be noted, with the ROK's recent development of long-range land-attack cruise missiles,¹⁰⁴ as

⁹⁹ See, e.g., Mazar, *supra*, at 26-28.

¹⁰⁰ *Id.*

¹⁰¹ See, e.g., Oberdorfer, *supra*, at 260; Mazarr, *supra*, at 67-68.

¹⁰² Nuclear Threat Initiative, *Country Profile: South Korea* (October 2010), available at http://www.nti.org/e_research/profiles/skorea/index.html.

¹⁰³ See, e.g., Mark Hibbs, "Global Insider: South Korea's civil Nuclear Industry," *World Politics Review* (June 22, 2010).

¹⁰⁴ See, e.g., Daniel A. Pinkston, "South Korean Response to North Korean July Missile Exercise Includes Unveiling of New Cruise Missile," *WMD Insights* (October 2006), available at http://www.wmdinsights.com/19/19_EA2_SKResponse.htm.

well as Seoul's pursuit of a space-launch capability that will doubtless provide some expertise relevant to any potential future interest in ballistic missile work.¹⁰⁵

In 1991, as we have seen, the ROK agreed to forswear fissile material production (*i.e.*, plutonium reprocessing and uranium enrichment) as part of its North-South denuclearization accord with the DPRK. This was apparently not, however, an easy decision. President Roh Tae Woo resisted the idea for a time, reportedly unhappy that he was being asked to foreclose an option that the Japanese were not. (Japan today has a large reprocessing facility at Rokkasho.¹⁰⁶) Roh agreed to the ban under significant U.S. pressure,¹⁰⁷ but Seoul was clearly uncomfortable with the fuel-cycle prohibition thereafter.

Indeed, it came to light several years ago that ROK scientists had conducted a series of "laboratory scale" experiments in both uranium enrichment and plutonium reprocessing that continued through the 1990s and up to the year 2000, and without properly declaring them to the IAEA. Once the scandal broke, Seoul provided "active cooperation" with the IAEA, and no evidence emerged that this work formed part of a nuclear weapons program, that it has continued, or that anything more than basic research was involved. Nevertheless, the revelations attracted understandable attention, and the Agency expressed "serious concern" about the lapses.¹⁰⁸

Today, particularly now that the DPRK's uranium enrichment program has shattered the 1991 denuclearization accord and the Agreed Framework, the question of ROK fissile material production is again at issue. The ROK is today strongly interested in developing a plutonium fuel cycle for its civilian power program, and has been negotiating with the IAEA and the U.S. Department of Energy over safeguards for a "partially constructed, pilot pyroprocessing facility" that it wishes to complete as part of a decade-old plan to re-use spent reactor fuel. Seoul at one point said it wanted to have such a facility completed by 2012, and a "semi-commercial" facility in place by 2025.¹⁰⁹

The pyroprocessing proposal has caused much debate in nonproliferation and arms control circles, because although the method does not produce pure plutonium, it is generally regarded as a variation of plutonium reprocessing and does raise some nonproliferation concerns. Difficult negotiations remain underway on this topic in connection with replacing the current U.S.-ROK nuclear cooperation agreement, which expires in 2014.¹¹⁰ So far, the

¹⁰⁵ See, *e.g.*, Choe Sang-Hun, "South Korea Launches Satellite," *New York Times* (August 25, 2009).

¹⁰⁶ See, *e.g.*, Shinichi Ogawa & Michael Schiffer, "Japan's Plutonium Reprocessing Dilemma," *Arms Control Today* (October 2005), available at http://www.armscontrol.org/act/2005_10/Oct-Japan.

¹⁰⁷ See, *e.g.*, Oberdorfer, *supra*, at 264; Mazarr, *supra*, at 65.

¹⁰⁸ See, *e.g.*, Paul Kerr, "IAEA: Seoul's Nuclear Sins Past," *Arms Control Today* (December 2004), available at <http://www.armscontrol.org/print/1714>.

¹⁰⁹ See, *e.g.*, Miles A. Pomper, "Concerns Raised as South Korea Joins GNEP," *Arms Control Today* (January/February 2008), available at <http://www.armscontrol.org/print/2629>.

¹¹⁰ See, *e.g.*, Daniel Horner, "S. Korean Pyroprocessing Awaits U.S. Decision," *Arms Control Today* (July/August 2009), available at http://www.armscontrol.org/act/2009_07-08/SouthKorea.

matter remains undecided, but U.S. Energy Department officials have allowed ROK scientists to participate in joint pyroprocessing experiments at U.S. laboratories.¹¹¹

All of the ROK's existing "latent" nuclear potential – combined with the still undetermined fate of nuclear fuel cycle planning in the ROK – highlights a potentially dramatic "worst case" outcome for Pyongyang of any DPRK "success" in undermining the U.S.-ROK alliance and/or convincing Seoul that *northern* nuclear weapons are here to stay. Particularly if it acquired dual-use plutonium-production capabilities, Seoul would presumably not find an emphatic move into nuclear weapons development to be terribly difficult. The ROK today ranks "behind" Japan as a country for which weaponization is within technical reach, but not all that *far* behind.

And indeed, there *are* periodic political debates in the ROK over whether or not the DPRK's nuclear program presents such a threat that Seoul should also weaponize. In 1993, for instance, there existed a small pro-weapons faction in the National Assembly, with some legislators suggesting that Park Chung Hee's old program should be revived in light of DPRK developments. Some ministers also urged that the 1991 North-South agreement be revised in order to permit plutonium reprocessing in the ROK, though both of these suggestions were firmly rebuffed at the time by the government of President Kim Young Sam.¹¹²

With the DPRK's nuclear provocations having steadily continued, this "bomb debate" continues today. At the time of writing, for instance, ROK media accounts are carrying reports of senior legislators from the ruling Grand National Party urging that the United States reintroduce the "tactical" nuclear weapons it withdrew from the peninsula in 1991. Such reintroduction is apparently seen as an alternative to the ROK's *own* development of nuclear weapons – an approach that a recent poll reportedly showed is now viewed favorably by more than *two-thirds* of the ROK population.¹¹³ Such ideas have as yet not received any support from the ROK administration of President Lee Myung-bak, but in Victor Cha's terms, this debate highlights the fact that Pyongyang might be said to face *particularly* grim long-term strategic prospects if its policies cement in place the conclusion that there remains no serious prospect of DPRK denuclearization.

Actually, from Pyongyang's perspective, the situation may be even more perilous than this analysis would at first suggest, insofar as one of the reason ROK Foreign Minister Han Sung Joo gave in 1993 for rejecting a revived ROK weaponization program was that such a step would provoke *Japan* also to acquire nuclear weapons.¹¹⁴ Should these reservations erode, of course, the DPRK might face a troubling scenario indeed. At any rate,

¹¹¹ Under the terms of the existing U.S.-ROK bilateral arrangement, however, Washington has restricted experiments occurring in the ROK itself to those involving fresh fuel that does not contain plutonium, or to work that involves only turning spent fuel into metal, so as not to generate an indigenous ROK capability for separating plutonium. Pomper, *supra*.

¹¹² See Mazarr, *supra*, at 119-20.

¹¹³ Ser Myo-ja, "GNP reps want return of U.S. nuclear weapons," *Joong Ang Daily* (English version) (February 26, 2011).

¹¹⁴ Mazarr, *supra*, at 119-20.

concern about Pyongyang's nuclear program and military provocations *do* seem to be driving Japan and the ROK increasingly into each other's arms. In January 2011, for instance, it was announced that the two countries had agreed to hold talks on establishing a military cooperation agreement for the first time.¹¹⁵

It must also be noted that the political reaction in the ROK to the DPRK's sinking of the *Cheonan* and its artillery attack on Yeonpyeong island in 2010 has been very severe. Many U.S. analysts worry that the *next* time the DPRK tries some such provocation, it will elicit not nervous concessions aimed at keeping the peace but rather some kind of tit-for-tat *retaliation* from the ROK – even if this is not what Washington would like Seoul to do. Some observers have not forgotten that after the 1996 incident in which ROK forces hunted down a group of DPRK special forces who had been stranded when their infiltration submarine ran aground near Gangneung, officials in Washington feared that Seoul would retaliate without obtaining American consent or even notifying U.S. authorities.¹¹⁶ Nor will strategists in Pyongyang have missed the fact that Washington is preparing to hand over wartime operational control of its own military forces on the peninsula to ROK commanders in 2015.¹¹⁷

For all of these reasons, therefore, it may well be that a change of course in favor of a U.S. nuclear deal on the basis of real denuclearization and the “two normals” is very much in the DPRK's interest. If the DPRK cements in place the grim conclusions toward which it has been driving its negotiating partners, it likely faces a grim future indeed. Precisely because a “two normals” deal *does* remain available, however, these unhappy prospects do *not* amount to the sort of provocation-provoking “losing game” about which Cha warned. There remains a “way out” for Pyongyang along the lines outlined by President Obama: a future of greater security, respect, opportunity predicated upon a bold new strategic choice about WMD. The question is whether the government in Pyongyang will be willing to take such a farsighted and decisive step.

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¹¹⁵ “Japan, S. Korea set defense pact talks,” UPI (January 10, 2011), available at http://www.upi.com/Top_News/World-News/2011/01/10/Japan-S-Korea-set-defense-pact-talks/UPI-10451294670229/.

¹¹⁶ See Snyder, *supra*, at 133.

¹¹⁷ See “U.S., S. Korea delay OPCON transfer until 2015,” *Stars and Stripes* (June 27, 2010).

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