



The Next Nuclear Agreement with North Korea: prospects and pitfalls

A report of a meeting held October 29, 2007

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Executive Summary:

This report is drawn primarily from a workshop held on October 29, 2007 organized by the National Committee on North Korea (NCNK) and the American Association for Advancement of Science (AAAS) with support from the Carnegie Corporation. Participants included experts from around the country, as well as congressional staff members and other members of the U.S. government. The October workshop was done in collaboration with the Managing the Atom Project at Harvard University's John F. Kennedy School of Government. Early conclusions from a June 2007 workshop on decommissioning the DPRK's nuclear facilities held at Harvard University's John F. Kennedy School of Government were a central element of the October workshop. A substantial report on the decommissioning process will soon be available at <http://www.managingtheatom.org>.

2007 saw continued progress between the U.S., the DPRK, and other members of the Six Parties. The DPRK has pledged to declare and disable all its nuclear facilities, and the U.S. has pledged to remove the DPRK from its list of state sponsors of terror and to provide limited fuel aid. Thus, it is important to begin thinking about the potential long-term issues and problems that may face the U.S. as it moves forward with its relationship with the DPRK. This briefing focuses on three central areas of cooperation with the DPRK: the political issues involved in dealing with North Korea, the costs and actual problems in decommissioning nuclear facilities, and the legislative hurdles involved in removing sanctions from the DPRK. All three issues will likely be far more difficult to resolve than many observers expect.

With the mostly positive moves of 2007, the potential for a long-term agreement between the United States and DPRK is greater now than in the past five years. The February 13, 2007 agreement and the follow-on meetings that have been held at both the Six Party and working group levels have led to continued, albeit halting, progress. The DPRK pledged to disable its reactors and provide the United States with a complete list of nuclear-related sites by the end of 2007, and to allow inspectors back into the DPRK. The United States provided shipments of heavy fuel oil totaling 46,000 MT in October and November 2007, pledged to take the DPRK off the State Department's List of State Sponsors of Terror and terminate the application of the Trading with the Enemy Act, begin removing economic sanctions, and alluded to a possible political relationship of some type in the future. The February 2007 agreement was intended to sharpen and further clarify and institutionalize what had already been agreed to in September 2005.

Given that the North Korean nuclear issue is a major foreign policy concern of the United States, it is important to begin thinking about the potential long-term issues and problems that may face the U.S. as it moves forward with its relationship with the DPRK. There are clearly many potential obstacles that could derail progress at any time. It is therefore prudent to consider how best to implement an agreement, and what the actual details and costs will entail. This briefing focuses on three potential issues: the political issues involved in dealing with North Korea, the costs and actual problems in decommissioning nuclear facilities, and U.S. legislative hurdles involved in removing sanctions from the DPRK. Success in all three arenas will be difficult to achieve.

Political issues

The DPRK had agreed to submit a report by December 31, 2007 that will list all of their nuclear facilities and material. As of this writing, this report has not been delivered. Given the expectation that North Korea will be less than fully forthcoming in their report, the United States will have to decide whether or not to accept the report, and how long to work with North Korea on a more complete declaration. Ultimately, a key issue for U.S. negotiators will be to decide whether the U.S. is better off with a deal than it would be without a deal, and how much they are willing to compromise in order to maintain momentum in negotiations.

Even countries that have actively cooperated with the United States have provided incomplete and deceptive information to the United States regarding their nuclear activities. For example, Libya did not declare all its sites or its materials, and United States inspectors were “allowed to find” some of the materials that Libya did not declare. One participant noted that South Africa also did not fully disclose all its programs, even though it was judged to be fully cooperative. (The United States itself at one point failed to acknowledge old Pershing I missiles without warheads stored in Texas until the Soviets reminded the U.S. of their existence.)

Thus, it is expected that even a relatively cooperative North Korea will provide information that is partial at best. The United States will have to distinguish between “meaningful violations” versus mere “violations” of the agreement, and decide whether the deal still makes sense. For example, will a few ounces of plutonium below the best estimate of existing plutonium stocks make a difference? Four kilograms? Ambassador Christopher Hill has described DPRK disclosures as an iterative discussion¹, a process during which the United States will go back and forth with the North Koreans. Thus, the final document will almost certainly be a negotiated one. North Korea may be asked to provide “clarity” outside of the formal declaration, so that the DPRK is able to provide more details in perhaps a more highly classified context. That is, the DPRK

¹ See, for example, Ambassador Hill’s oral testimony at the October 25, 2007 hearing of the Subcommittee on Asia, the Pacific and the Global Environment and Subcommittee on Terrorism, Nonproliferation, and Trade, House Committee on Foreign Affairs.

quite likely will declare much but not all of their facilities and nuclear material, and when pressed, will provide the United States with informal or additional clarification.

Furthermore, the February 13 agreement has raised a number of follow-on questions: how much and what type of centrifuge equipment does North Korea actually have in relation to the materials suspected by the U.S. intelligence community, and must DPRK declare nuclear components, too? The new deal does not specify whether these parts and components count as part of the nuclear program. In addition, will the United States be able to inspect all suspected sites and will the IAEA have a role in these inspections? Will there be a new protocol for future rights to inspect sites? Will North Korea allow inspectors to interview scientists and technicians? How will the United States deal with the Japanese abductee issue? In addition, how much should the United States coordinate policy with Seoul? What will happen with respect to suspicions that North Korea has transferred nuclear technology to Syria?

In the September 2005 Six party agreement, North Korea agreed to rejoin NPT and the IAEA “at an early date.” That has not happened in any meaningful sense, in the two years that have passed since the agreement, although it is important to note that most negotiators probably saw this as happening later in the process. (There was an IAEA inspection in 2007 to determine if Yongbyon had been shut down). It is unclear whether the inspection groups that have gone to North Korea in 2007 (one group consisting of U.S., Chinese, and Russian personnel, others comprised solely of U.S. scientists and officials) herald the beginning of the DPRK’s return to the NPT (Non Proliferation Treaty) or if the DPRK has no intention of rejoining the NPT at this time.

Even with potential DPRK hesitance to provide a complete declaration, some observers felt the situation now is relatively positive: plutonium production has been stopped, the weaponization of the Highly Enriched Uranium (HEU) program is not a realistic threat, and the Yongbyon facility is being disabled. However, it is not clear how much the United States will learn beyond the DPRK’s initial declaration. The U.S. disablement team in Pyongyang in October was not authorized to conduct interviews, take samples, or to travel freely, all of which are

necessary to refine the U.S. estimate on the amount of plutonium the DPRK has produced. Thus, the declaration will identify some quantity of plutonium, and then the United States will need to refine that number in 2008 through interaction with the DPRK.

One chief concern in the United States is whether the DPRK will admit to having purchased components that could be used in an HEU program. Christopher Hill briefed the Senate in November that he expects North Korea will declare that they are in possession of material which “might be construed by someone” as useable for an HEU program, and that the North Koreans are prepared to convince the U.S. that the material is not what was suspected.

A complete stonewalling by the DPRK of their HEU program is considered unlikely. There is an expectation by some observers that the U.S. will get reasonable clarity when the North Koreans make their declaration sometime in early 2008, although this assessment is modified daily depending on circumstance. Ambassador Hill has received some indications from the North that they are prepared to say something about HEU. Hill is also confident that the DPRK fully understands that the cause of the 2002 crisis were suspicions regarding an HEU program, and that without addressing those suspicions, there is no chance for progress with the U.S. In fact, there are various ways for the North Koreans to deal with the 30 suspected centrifuges they bought: they could claim the parts were for a “new pipe organ in Pyongyang,” or that they were gifts from Libya. The DPRK could also claim that the suspected HEU material is merely “a couple of machines and a box of junk.” Thus, the North Koreans know that HEU is the problem, and a non-starter would be for them to ignore it completely.

There are other political issues that may arise as the United States and DPRK move forward on their nuclear agreement. In particular, as the U.S. makes more progress with its nuclear relationship with the DPRK, some groups in the U.S. may consequently increase their pressure to criticize North Korea about its human rights. That is, security is clearly the top U.S. priority. However, if the nuclear issue is solved, then it is quite likely that human rights violations will become the top priority, and the political relationship will suffer, and could even have a

deleterious impact on the nuclear negotiations.

Furthermore, if it is indisputably confirmed that North Korea has been transferring knowledge or material to Syria, the political climate in the United States will change dramatically, and both congressional and popular support for a nuclear agreement with North Korea would almost inevitably diminish. Some participants noted that transfer of nuclear materials or knowledge to third countries is a key issue. If there actually is a link between the DPRK and Syrian nuclear programs, the question of timing becomes critical: if the cooperation between Syria and North Korea occurred in the distant past or in 2006, the DPRK -- and the United States as well -- could choose to argue that the Six Party negotiation process was moribund at the time, and so this was not as severe an action by the DPRK. However, if the cooperation had occurred since February 2007, while the DPRK was negotiating the current deal in the Six Party process, this is a major problem that potentially undermines any potential deal between the U.S. and the DPRK, because it raises questions about North Korean intentions and honesty. (Incidentally, unless it transferred material or information controlled under IAEA safeguards, the DPRK would not be required to notify the IAEA of its activities, even if it were still a party to the NPT.)

Some have also argued that North Korea would have problems even without a close relationship with the United States, and that increasing contact with the United States may actually increase destabilization. For the United States, this may be an opportunity as well as a challenge. The February 2007 agreement envisions a political relationship, which will be harder to achieve than a "simple" nuclear agreement. It is not possible to envision and craft a U.S.-DPRK relationship except through diplomacy. In favor of a political relationship, some participants noted that it is demonstrably in the U.S. interest to have a physical presence in North Korea, because it provides important information, a better sense of what are the internal DPRK dynamics, and allows the United States to react more quickly to events in North Korea. Because of that, some participants were willing to go farther than the Bush administration in pushing for liaison office(s) in North Korea and other physical placement of U.S. personnel in North Korea. This leads to a

question: Is the U.S. really willing to consider a diplomatic relationship with the North? The participants were not sure about how the current administration would answer that question.

Potential problems on the road to denuclearization of the DPRK

The overall task of denuclearization is more than a pledge to stop producing nuclear material.² This is unlikely to be a quick process, and will last well into the next U.S. presidential administration. The six parties need to complete four overarching tasks:

- **Task 1: Disable the plutonium production program: This task focuses on plutonium production, separation, storage, and waste processing facilities.**
- **Task 2: Disable the nuclear weaponization program: This task focuses on any nuclear weapons and the means to research, develop, test, and manufacture them.**
- **Task 3: Disable the uranium enrichment program:** This task focuses on the dismantlement of any uranium enrichment activities and the facilities to research, develop, test, and make enrichment equipment, such as gas centrifuges.
- **Task 4: Implement the DPRK/IAEA safeguards agreement and bring the DPRK into compliance with the NPT:** The DPRK will need to rejoin and come into compliance with the NPT, including implementation of the Additional Protocol.

In addition, alternative jobs and sources of income must be identified for the up to 20,000 scientists and others involved in the nuclear program.

North Korea must declare its nuclear weapons arsenal so that inspectors can make thorough verifications. There will be three phases of progressive, verifiable dismantlement of the production program. Currently, we are in one portion of the first phase of this process. The phases consist of the following actions:

- **Phase 1: (Currently in early portion of Phase 1.)**
 - The DPRK will halt proscribed activities, disable facilities and key items, and present declarations.
 - The verification organization will monitor shutdown and begin to review declarations.
 - The Six-Parties will provide initial benefits to the DPRK.
- **Phase 2:**
 - DPRK will dismantle items and facilities and allow removal of key items.
 - The verification organization will verify the dismantlement and removal of key items, and continue to verify declarations.
 - The Six-Parties will provide additional benefits.

² For more information on the specific problem of decommissioning North Korea's major nuclear facilities, see Dr. Matthew Bunn's and Dr. Hui Zhang's paper "Dismantling the North Korean Reactors: Issues, Options and Costs," forthcoming.

- Phase 3:
 - The DPRK will come into compliance with the NPT.
 - The verification organization will conduct verification activities to ensure against undeclared nuclear activities, and reach a conclusion about the completeness of the DPRK's declarations.
 - The Six-Parties will continue to provide agreed benefits.

In this sense, we are using “key items” to include, but not be limited to, enrichment and reprocessing facilities, unprocessed and reprocessed plutonium, highly enriched uranium, designs for nuclear weapons, and extant weapons.

North Korea still has not admitted to having purchased centrifuge components from Pakistan. Thus, the U.S. must address the question, “What, if anything, is still hidden in North Korea and what has been transferred?” One possible timeline for decommissioning may run as follows:

- End 2007: Implement disablement of plutonium program and receive DPRK declaration of its nuclear program. The declaration is not expected to be complete. [At this time January 2007, the DPRK and the United States are debating in the press whether or not an early document, which the DPRK says that it submitted, qualifies as a declaration. Disablement has begun.]
- 2008: Verify declaration. Receive additional DPRK declarations.
- 2008: Six parties negotiate dismantlement steps by end of year. They may reach agreement to take some dismantlement steps in 2008, perhaps even a decisive one, such as removing plutonium from the DPRK..
- Late 2008 through 2010+: Conduct and verify dismantlement. DPRK comes into compliance with NPT.

Decommissioning North Korea's Nuclear Facilities

Disablement and decommissioning are extremely related tasks. Early stages of decommissioning will provide more permanent disablement than can be accomplished quickly. Some approaches to near-term disablement could make decommissioning more difficult and expensive (such as pouring cement into the reprocessing plant cells without cleaning them out first). Hence decommissioning planning should begin now.

The fuel should be removed from the reactor as quickly as practicable (while taking care to keep damage to the fuel to a minimum). The fuel should then be canned in a dry atmosphere as soon as it has cooled enough to do so. The fuel should be shipped out of the country. Britain is the

only country with a reprocessing plant designed to handle fuel of this type. Russia and China, however, may be able to modify their reprocessing plants, and may be more willing to accept this fuel.

Graphite reactors in other countries have been put in a safe storage condition in which all of their auxiliary buildings are removed, key equipment is dismantled, and the reactor is encased in concrete, for costs in the range of \$20-\$100 million. This approach can allow final dismantlement of the facility to be postponed for decades, reducing costs. Much of the reprocessing plant will have to be kept operational long enough to flush out radioactive liquids, which may take 1-2 years. However, the head-end equipment necessary to prepare spent fuel for reprocessing can be removed even before this is accomplished, disabling the plant.

Reprocessing plants in other countries have been decommissioned for costs in the range of \$250 million. There are no good options for managing the high-level wastes left over from reprocessing, which pose serious safety hazards. The most plausible approach is to attempt to stabilize these wastes in their current location, while more permanent solutions are developed. Institutionally, it will be critical to develop approaches that give North Korea incentives to get the decommissioning job done quickly and cost-effectively, rather than incentives to delay and drive up the cost.

The DPRK is a totally different – and more difficult -- country in which to operate than almost all other countries and this will increase the cost and also time of decommissioning:

- Virtually all equipment and materials will likely have to be brought in from elsewhere.
- For safe operations, many personnel will likely have to come from outside – and will likely demand high salaries to work at Yongbyon.
- The project must be structured to provide incentives to the DPRK for work to move quickly; the Agreed Framework was structured to provide incentives for delay.
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- Much of the needed infrastructure is lacking in-country:
 - No waste disposal site or vitrification facility.
 - No functioning safety regulator.
 - Limited roads, transport for heavy equipment.

- Limited, unreliable electricity, heat, etc.

Issues regarding the reprocessing facilities in North Korea:

- Need to start with detailed assessment of facility design and degree of current contamination.
- “Head end” – where fuel cladding is removed and fuel dissolved – could be destroyed reasonably quickly.
- Rest of plant needs to be kept functioning for 2 or more years to flush out radioactive materials.
- Complete building disassembly will take years and \$100s of millions to do safely; another option would be to fill process areas and the building with cement after flushing out radioactive material.

The next possible steps in the decommissioning process might include:

- Establishing a process to consider decommissioning options in details in parallel with disablement.
- Beginning 6-party discussions of decommissioning issues, including the order of magnitude of likely costs.
- Beginning developing approach to structure process so DPRK has incentives to move decommissioning forward, rather than incentives to delay – e.g., pay for achievement of specified milestones.
- Identifying the IAEA role in helping to develop a decommissioning plan (as in current effort with Iraq).

Verification

Decommissioning will also require a verification organization to conduct a range of activities to ensure that dismantlement has occurred and that sanctioned items are destroyed, shipped out of North Korea, or monitored. The organization charged with verifying these actions will also undertake a set of actions to gain confidence in the absence of undeclared materials, equipment, and facilities. Although verification is essential, some observers believe verified dismantlement of the DPRK’s *declared* nuclear weapons program and its facilities can be accomplished successfully at a fair cost and in a reasonable amount of time. However, verifying that there are no undeclared facilities will take considerably longer. The key issue will be the

cooperation of the DPRK leadership; without their proactive cooperation, it will be virtually impossible to verify that there are no hidden or undeclared sites. Furthermore, although the entire verification process will likely take several years, all parties would feel the positive political benefits from dismantlement almost immediately; the DPRK would also receive material benefits.

There are many candidates for the verification organization to verify North Korea's compliance. This could include: a specific organization created by the United States, other acknowledged nuclear weapon states (NWS), and other states in the region;³ an "IAEA Plus," which would involve the IAEA safeguards department supplemented by experts or assistance from key member states (variants of this model were used in Libya and South Africa); or a bilateral or regional inspection agency. One participant felt that of the choices, IAEA Plus offers the most advantages and the fewest problems, arguing in part that the IAEA has vast experience and expertise directly relevant to the verified dismantlement of the DPRK's nuclear weapons programs. The IAEA will have to be involved in any case in verifying DPRK coming into compliance with the NPT. IAEA-plus would also help to avoid competing and possibly conflicting verification efforts.

Implementation:

Any agreement with North Korea is meaningless without implementation plans. In order to achieve that, the United States itself must remain committed to investing intensive and sustained diplomatic attention throughout the implementation period. The United States has to play a central role in the process of implementing any denuclearization agreement with the DPRK. The United States will also have to make a substantial financial commitment. Political momentum is necessary, as well: maintaining a sustained focus both in the United States and with the DPRK will be critical to continuing the denuclearization process. This will involve close contact at working level, with channels at the senior level when there are problems. This is one action that

³ A team headed by the US, with occasional participation by other NWS as well as NNWS – a weakened version of this option -- is currently verifying the disablement process. They may also verify the initial declarations.

did not happen in 1994.

One way to do that is to set up structures and institutions. Currently, the “Six party talks” are the informal institution that has this responsibility, but this will almost undoubtedly require greater institutionalization later. The level of coordination required to actually decommission North Korean nuclear facilities and implement the U.S. side of any bargain will require real institutions.

The following are some suggestions presented at the meeting to achieve implementation of the February 2007 agreement.

1. The United States should productively play a central role to make sure that its interests are met.
2. The United States should be the major contributor toward implementation. Congress under-funded the 1994 Agreement, and the Clinton administration was criticized for successfully negotiating the agreed framework, only to pledge a mere \$30 million a year to implement it.
3. Establishment of a “Korea Peace Fund” would be a major benefit. This fund would contribute to dealing with security issues, beginning with disablement activities. This may also address issues such as North Korea’s missile, biological and chemical weapons, which the U.S. administration will likely address.
4. The United States must also set up organizational structures to ensure implementation. As issues become more complex, the structures will need to evolve comprehensively to address such changes. These organizations may not be coordinated well with the Six-Party Talks; however, they should be able to report their activities back to the 6PT regime.
5. Other organizations could be established in North Korea or perhaps a new KEDO could be established: This organization could be tasked with large projects.

Legislative issues regarding removing North Korea from the sanctions list⁴

The third area covered in the meeting was the potential legislative issues regarding removing North Korea from sanctions. Removal of North Korea from the sanctions list is much

⁴ This section draws heavily on Dianne Rennack, “North Korea: Economic Sanctions,” CRS Report for Congress (October 17, 2006). For further detailed discussion of sanctions, refer to Rennack, as well as Karin Lee and Julia Choi, “North Korea: Economic Sanctions and U.S. Department of Treasury Actions, 1955-September 2007,” (Washington, D.C.: National Committee on North Korea, 2007).

more difficult than it appears. North Korea is one of the most heavily sanctioned states under U.S. law. There are myriad laws and regulations that affect U.S.-DPRK economic, cultural, and political relations, and each of them needs to be dealt with individually. In fact, there are at least 42 different laws restricting economic activity between the U.S. and the DPRK. There is no simple way to remove all sanctions by presidential fiat; removal of the DPRK from the list of State Sponsors of Terror would not trigger an automatic process freeing DPRK from all sanctions and restrictions.

Since the beginning of the Cold War, the United States has imposed sanctions on North Korea for combinations of five major reasons: 1) as a threat to U.S. national security, as determined by the president under the Trading with the Enemy Act; 2) as a Marxist-Leninist state, or non-market economy, as stated in the Export-Import Bank Act of 1945, and the Foreign Assistance Act of 1961; 3) as designated by the Secretary of State as a state sponsor of terrorism; 4) as proliferator of weapons of mass destruction by exporting missiles, as stated in the Arms Export Control Act, Export Administration Act of 1979, and Iran Proliferation Act of 2000; and 5) due to the detonation a nuclear device, as found in UN Security Council resolution 1718. Other legislation affects North Korea for issues such as human rights violations, religious freedom, and human trafficking. There is also significant “piling on” of sanctions: even when sanctions are already in place because of a country’s human rights violations, for instance, another law may be passed that restricts the same economic interactions because of support for terror groups, or because it is a Marxist-Leninist country. Thus, the same economy activity (trade, investment, etc.) may be prohibited under multiple different statutes. Unwinding all the legislation is relatively difficult.

The statutes do allow for some aid under certain conditions: the promotion of biodiversity, the provision of food aid, assisting with health and disease, de-mining assistance, international disaster assistance, and for other (generally humanitarian) reasons. Thus, the U.S. can currently provide aid to North Korea for these reasons, “notwithstanding” the multiple sanctions in place.

The president has unilateral authority to remove states from the “state sponsors of terror” (terrorism list) and to terminate the application of the Trading with the Enemy Act (TWEA); Congress must pass legislation to block removal. However, although the current action-for-action proffered by the United States is removal from the State Sponsors of Terrorism list and terminating the application of TWEA, several other laws and regulations prohibit the United States from having normal trade and foreign aid relations with North Korea. Removal of North Korea from the list of state sponsors of terror, or terminating the application of TWEA would not provide North Korea with any immediate or near-term financial benefit, because of other legislation in place.

Furthermore, for each piece of legislation covering economic relations with the DPRK, the President or Congress has to waive the finding in each instance or pass legislation exempting North Korea from the law. Some legislation requires amendments by Congress. For example, the *Foreign Assistance Act* of 1961 (P.L. 87-195) provides for no presidential waiver authority and must be amended by Congress in order to exclude North Korea from the affects of this piece of legislation. Congress passes foreign assistance acts annually, so the President can make requests to Congress for the exclusion of a country.

Some legislative acts contain “notwithstanding language.” For example, “Notwithstanding any other provision of the law, the President is authorized to furnish assistance to any country or international organization...” This gives the President the authority to override certain regulations imposed by legislation. The President also has the authority to request up to \$50 million dollars in foreign assistance largely without question each fiscal year.

The president makes determinations in three areas regarding individual countries: the Foreign Assistance Act (a human rights reporting requirement); the 1998 International Religious Freedom Act (P.L. 105-292; P.L. 106-55, P.L. 106-113, P.L. 107-228, P.L.108-332, and P.L. 108-458); and the Trafficking Victims Protection Act of 2000 (P.L. 106-386), which since 2003 has found the DPRK to be a “most severe offender.” However, the President has broad authority

to determine and waive findings regarding human rights. For example, on October 18, 2007, President Bush waived the Trafficking Victims Protection Act prohibition against US government funding of cultural and educational exchanges with North Korea, determining that “funding for educational and cultural exchange programs described in ... [Public Law 106-386] that are aimed at improving U.S.-DPRK relations would promote the purposes of the Act or is otherwise in the national interest of the United States.”

In some cases Congress will have to pass new legislation about North Korea or find that previous legislation is no longer relevant. For example, most foreign aid to North Korea is prohibited because it is a Marxist-Leninist country, and in order for this to change, the president has to make three findings: 1) relations with that country is vital to the security of U.S.; 2) that the recipient country is not controlled by the “international communist conspiracy;” and 3) that assistance would promote independence of the country from communism. Congress could strike the reference to North Korea in the various pieces of legislation, or the president can remove the country from the list.

At this point, the most significant piece of legislation barring implementation of the nuclear agreement is a section of the Nuclear Nonproliferation Act popularly known as “The Glenn Amendment,” which imposes sanctions on a country that explodes a nuclear device or transfers nuclear material or reprocessing equipment. In the case of North Korea, the Glenn Amendment prohibits the United States from furnishing any “assistance to that country under the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], except for humanitarian assistance or food or other agricultural commodities.” Until language is passed by Congress & signed by the president exempting North Korea from Glenn provisions, funding for the implementation of the nuclear agreement which could be considered “assistance” can only be appropriated under authorities that incorporate “notwithstanding” provisions as part of law. The Glenn Amendment thus effectively bars Congress from appropriating funds for use by the Department of Energy, which would ordinarily be the agency of choice. Instead, funds must be appropriated under

certain State Department provisions that include notwithstanding authorities.

But the Glenn Amendment is just one element of the complex legislative challenges in play. The North Korean nuclear negotiations present numerous issues for Congress in the upcoming year, and election year politics will have an impact on the foreign policy issues presented here. At this point, it appears that Congress is generally supportive of the Bush administration's approach to North Korea, although whether that general willingness to allow the administration the time and tools it desires will continue in the future depends on a number of international and domestic factors.⁵

Conclusion

Although the past year has seen substantial progress in capping and ultimately eliminating North Korea's nuclear weapons program, there remain many obstacles that could derail the progress made so far, and slow or even halt continued improvement in relations. The reciprocal actions laid out in the February 13, 2007 agreement are genuinely the first step in a long process for all countries involved in the negotiations, and sustained U.S. attention at the policymaking, executive, and legislative levels will be critical for the process to continue in a manner which enhances U.S. interests.

⁵ For more detailed discussion of the issues and attitudes of the U.S. Congress, see the accompanying NCNK report, *The Next Nuclear Agreement with North Korea: prospects and pitfalls. Highlights of October 29 Workshop.*