

Opening Remarks/ Framework Paper

**THE ROLE OF A NE Asia NWFZ IN ELIMINATING NUCLEAR WEAPONS
FROM THE KOREAN PENNINSULA**

Morton H. Halperin

East Asia Nuclear Security Workshop

Tokyo, Japan

November 11, 2011

THE PROPOSAL IN BRIEF

If the international community is seen to accept the DPRK as even a de-facto permanent nuclear power there would be a very serious deterioration of the security situation. Over time the ROK and then Japan would acquire nuclear weapons and the danger of armed conflict in which nuclear weapons might be used would significantly increase. Until and unless it becomes absolutely clear that reversing the DPRK nuclear program is not possible, the focus of Western security policy in the region must be directed at the goal of persuading the DPRK to give up its nuclear weapons and committing to a verifiable regime to insure its permanent compliance with this agreement.

There is no prospect of that happening unless the ROK also gives up the right to develop nuclear weapons and have them stored on its territory and that the United States pledges not to threaten the DPRK with nuclear weapons. Agreement would be more likely if Japan were included and a treaty creating a NWF zone for Northeast Asia. The

prospects for such an agreement would be increased if they were embodied in a more comprehensive agreement on peace and security in the region.

Therefore, In order to break the current impasse which has prevented any real negotiations for several years, the parties to the northeast Asia six power talks should seek to negotiate, through bilateral channels, the text of a comprehensive treaty which would end the state of belligerency from the Korean War, establish a security organization for the region, commit all parties to normalization of relations with no hostile intent, and establish a NWF zone. Once an agreement on the text was reached the parties would negotiate the process for bringing it into force.

ANAYSIS OF THE CURRENT IMPASSE

The US and the ROK on the one hand, and the DPRK on the other, have very different perceptions of why negotiations collapsed in acrimony leading to the end of the dismantlement process and then to the DPRK ending its commitment to a freeze. The North believes that it made and kept an agreement to dismantle its plutonium reactor in return for deliveries of fuel and a nuclear reactor. It believes that the USG broke the agreement by cutting off the fuel supply and withdrawing the promise of no hostile intent. It does not believe that there was any commitment on its part to refrain from proceeding with other possible nuclear programs and that its commitment in the six party talks and in its joint declaration to the denuclearization of the peninsula was only the ultimate goal not a present commitment. It is ready to resume the negotiations, but only if the other side implements what the DPRK

believes was agreed to. It remains to be seen if it is still willing to give up all of nuclear capability in the negotiations.

The USG and the ROK believe that the DPRK did commit itself to stop all of its nuclear weapons programs and to permit verification of that process. They believe that the North reneged on the agreement by proceeding with the clandestine uranium program. They are ready to negotiate but only if the DPRK agrees to resume dismantlement of the reactor and to end all other nuclear programs without pre-conditions and with effective inspection. They believe that the joint ROK-DPRK declaration already commits the DPRK to this action and that it should do it without further discussion or compensation.

Diplomatic efforts focused on reconvening the six party talks, regardless of how much both sides might be interested in reaching a settlement that will produce a non-nuclear peninsula, will not be able to resolve this impasse.

To reach a settlement, an effort must be made to bypass this dispute. The North is not going to relinquish its nuclear weapons until, at the very least, it is satisfied that it can meet its security needs without such weapons. The lesson the North drew from the past ten years is that the United States is ready to use force to effect regime change in countries whose governments it does not like, and can be deterred only by the credible threat of a nuclear response. It believes, from its experience, that USG commitments of no hostile intent, to which it has attached great significance, can easily be withdrawn. The DPRK fears an American conventional or nuclear attack and does not understand that it is one of the few countries in the world, and the only small country, that has a credible non-nuclear deterrent in the form of its ready

conventional and chemical forces which can reach the Seoul region and cause great damage. The US and the ROK are not ready to resume the commitments they made in the previous agreement, which they consider null and void.

To break this impasse, the United States should work with the ROK and Japan on the terms of a comprehensive agreement covering all of the outstanding issues affecting relations with North Korea. It should then seek the agreement of China and Russia on a comprehensive approach, and then on the terms of the proposed agreement. Once the five powers are in general agreement, the DPRK should be formally drawn into the process, formal negotiations on the proposed treaty would then begin. Once the final document was agreed upon the parties would discuss the implementation of the agreement.

Comprehensive agreement on peace and security in NEA

The proposed comprehensive treaty would be signed and ratified by the parties to the six party talks. Some sections would be adhered to only by some of the signatories; others would be adhered to by all of the parties. As I will discuss below, there should be flexibility about when the treaty and each of its elements enters into force. Other states may be invited to join, including the two other NWS and states in the region. A way of including Taiwan may be developed, although this should not be a deal breaker if the PRC objects.

The elements of the comprehensive Treaty on Peace and Security in Northeast Asia would include:

Termination of the state of war

This is clearly a major objective of the DPRK. This section of the Treaty should be adhered to by the armistice nations and by the ROK. It should end the state of war and provide for the normalization of relations while providing support for the eventual unification of the peninsula.

Creation of a permanent council on security

The Treaty should create a permanent council and support organization to monitor the provisions of the Treaty and to provide a forum to deal with future security problems in the region. In addition to the six parties to the treaty, other states from the region could be invited to join as full participants or observers.

Mutual declaration of no hostile intent

This is a key objective of the DPRK, which put great stock in getting such a statement from the Clinton Administration. It was flummoxed when the Bush Administration simply withdrew it and when this policy was continued by the Obama Administration. To be credible this commitment must be embodied in the treaty and affect all the parties' relations with each other.

Provisions of assistance for nuclear and other energy

The right of all parties to the Treaty to have access to necessary sources of energy including nuclear power will need to be affirmed. Any limitations on the DPRK will need to apply equally to the other non-nuclear states party to the Treaty. The DPRK will also want assurances that its energy needs will be subsidized. Beyond a general commitment this will probably need to be negotiated as a separate agreement.

Termination of sanctions/Response to Violations of the Treaty

The parties to the treaty will need to commit to refrain from the use of sanctions on any other party to the treaty and to remove them from its list of state sponsors of terrorism. The parties would reserve the right to collectively impose sanctions on any state which violates its commitments under the Treaty.

Nuclear Weapons Free Zone

Finally, the treaty would contain a chapter which would create a Nuclear Weapons Free Zone in Northeast Asia. The elements of that chapter are discussed in the next section.

Details of the NWFZ Chapter

These Articles of the Treaty would be consistent with the UN resolutions concerning the appropriate elements of a NWFZ treaty and with the conditions of an acceptable NWFZ laid down by the USG and the PRC. It would have specific obligations for the non-nuclear states and others for the nuclear powers.

The ROK, Japan and the DPRK (and possibly Taiwan) would commit themselves to abstain from the manufacture, test (for any purpose) or deployment of nuclear weapons and to refuse to allow nuclear weapons to be stored on their territory. They might agree to future restrictions on reprocessing. They would agree to permit inspections on their territory by the security organization created by the Treaty so as to insure effective verification of the agreement. The inspection provisions and the obligations to provide information would apply equally to all the non-nuclear parties to the treaty. In the case of

North Korea, there would need to be specific provisions concerning the destruction of their existing stockpile and production facilities under the auspices of the security organization. Both the ROK and the DPRK would need to make a commitment that, in the instance that Korea was unified before the weapons and production facilities were dismantled, the unified government would immediately turn over the weapons to a NWS for destruction and agree to international supervision of the dismantlement of the facilities. (The experience of the three states of the Former Soviet Union which had nuclear weapons on their territory when they became independent may provide the most relevant analogy.)

The US, the PRC and Russia (as well as perhaps the UK and France) would agree in a Protocol to the zone, to abide by the provisions of the Treaty and not store nuclear weapons in the zone or in any way support violations of the Treaty by the non-nuclear states. They would agree not to threaten or use nuclear weapons against any non-nuclear state that was observing the terms of the treaty. (Note that this offer by the USG is inherent in the clean negative security assurance offered by the USG in the Nuclear Posture Review and is consistent with the past commitments of Russia and China, as well as the USG). The parties would agree to confer and to take appropriate actions if any non-nuclear state party to the Treaty and compliant with its terms was threatened with the use of nuclear weapons by another party to the Treaty or another nuclear weapon state. Consistent with the USG clean negative security assurance and the Chinese NFU pledge this agreement would not have an exception for biological weapons.

There would need to be provisions spelling out issues of transit of nuclear armed ships or planes and defining the territorial scope of the treaty in terms of international waters.

Alternative transition and EIF Arrangements

It goes without saying that any hope of success for the proposed Treaty depends on the DPRK's willingness, at the end of the day, to give up its nuclear weapons. I believe that there is a chance that with the right incentives and the right pressure, particularly from China, it might ultimately be willing to do so. I suggest that the provisions in the Treaty concerning implementation and a possible transition period be structured so as to maximize the pressure on the DPRK and to give both China and North Korea the greatest incentives to accept the framework. One piece of that is the inclusion of the other objectives that the North has been seeking. Another is to propose a scenario for adherence by Japan and the ROK that contributes to this process.

I am not at all persuaded that having the ROK and Japan sign their own NWFZ treaty is an effective scenario. For one thing, I do not envision either government agreeing by treaty, beyond the NPT, not to acquire nuclear weapons when the DPRK has accepted no limits on its nuclear weapons program, let alone made a commitment to denuclearization. Moreover, I believe that the greatest concern of the Chinese government is that Japan will acquire nuclear weapons under a right wing nationalist government. The Chinese understand that if the DPRK program continues unchecked, the South will eventually develop nuclear weapons (or will obtain them when the north collapses) and that, as a result, Japan will move to acquire nuclear weapons. Thus, we

want to underscore the concerns of the PRC - not alleviate them – and at the same time assure the PRC that if they succeed in persuading the DPRK to give up nuclear weapons, the ROK and Japan would, by treaty, be committed not to develop nuclear weapons.

One way to achieve this is to have a provision in the treaty which permits the ROK and Japan to sign and ratify the treaty on a conditional basis. The treaty could be structured so that it goes into effect when two non-nuclear states (ie. Japan and ROK) ratify it. However, those states would have the right to withdraw from the treaty after 3 or 5 years, unless the provisions are being enforced effectively throughout the Korean peninsula. This would occur if either the DPRK ratified and implemented the treaty, or it collapses and the peninsula is unified under the ROK. If this condition was not met, Japan and the ROK could opt to remain in the treaty for another period of 3 or 5 years or to terminate their obligation. If the condition was met, they would be permanent parties to the treaty subject only to the standard withdrawal clause.

Nuclear states would ratify the treaty but their obligations would apply only to those non-nuclear states that also ratify and are in compliance with the treaty.

These provisions would accomplish several purposes. First, the ROK would be obliged to surrender any nuclear weapons or weapons grade material it acquires as a result of the collapse of the DPRK. Second, China would know that if it persuaded the DPRK to adhere to the treaty, it would have a permanent treaty commitment by Japan and the ROK to not acquire nuclear weapons or permit them to be stored

on their territory. The DPRK would be aware of this, and would have a negative security assurance from the USG if it joined the treaty.

Specific provisions would be included to develop a process by which the DPRK would dismantle its existing stockpile over some period of time and receive compensation the specifics of which would be subject to agreement.

US nuclear deterrent for Japan and ROK

One additional consideration is whether the USG can and should continue to assure Japan and the ROK that in the event of a nuclear attack on either state by a party to the Treaty, it would respond in the same way as it would to a nuclear attack on the United States, understood to mean a nuclear strike on the aggressor state.

I do not think that continuing this commitment is in any way incompatible with the obligations of states that adhere to any NWFZ treaty. I do think, however, that it should be understood in a different way, but one that involves altering the second assumption rather than the first. That is, the United States should affirm that it would respond to a nuclear attack on Japan or the ROK in the same way that it would respond to a nuclear attack on the United States or its forces in the field. However, it should make clear that the nature of the response in either case would be tailored to the circumstances of the attack and would not necessarily involve the use of nuclear weapons.

I believe that the statements in the NPR describing the circumstances under which the United States would use nuclear weapons make it clear that there would not be an automatic or rapid

nuclear response to a nuclear attack, and that the response would be in the form most likely to achieve American objectives in light of the nature of the attack. The use of nuclear weapons would be contemplated only in the most dire situations and only when this was the most effective response.

Specifically, if the DPRK dropped one or several nuclear weapons on south Korea, Japan, or American forces or territory, the appropriate response would not be to punish the Korean people (both North and South) by dropping nuclear weapons on the territory of the DPRK, but rather to launch a conventional attack designed to remove the current leadership from power and permit the unification of Korea as a democratic and non-nuclear country. Moreover, after such an attack there would neither be any targets in North Korea which could *only* be destroyed with nuclear weapons nor any targets for which nuclear weapons would be a lawful and proportional response.

Conclusion

De-nuclearizing the Korean peninsula must remain a high priority of the international community. Failure to dismantle the DPRK's nuclear capabilities will lead to further proliferation and to a more dangerous world. The outline proposed here with a flexible NWFZ is a way forward which deserves careful consideration.