

## **A New Approach to Security in Northeast Asia: Breaking the Gridlock**

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American policy should continue to be directed at seeking to persuade the government of the DPRK to give up its nuclear weapons and its capacity to produce weapons grade fissionable material. This goal may not be attainable either because the DPRK leadership is no longer willing, if it ever was, to give up this option, or because its price for doing so is more than the United States or other nations is prepared to pay. However, the costs of accepting a DPRK operational nuclear capability are very high and we should not accept this outcome without at least one more sustained effort to find a solution.

It seems clear that the approach that the United States has tried thus far in Democratic and Republican administrations has reached a dead end. The approach had three elements. First, an effort was made to negotiate a common understanding of the end point of the process which included a de-nuclearized peninsula and an end to hostile intent. This understanding was embodied in a general political statement between the US and the DPRK (Joint Statement of June 11, 1993) or the ROK and the DPRK. It was not legally binding and had no enforcement mechanisms nor a blueprint for how to reach the set of changes specified in the understanding.

Based on these guiding principles there was an effort to negotiate a set of specific steps that each side would take on a quid-pro-quo basis. A very broad agreement was negotiated during the Clinton Administration (Agreed Framework, October 1994) and a narrower one was negotiated during the Obama administration on February 29, 2012.

Since August 2003, a third element was added to the package, namely the six party talks. The assumption was that formalizing the role of Russia and Japan along with the two Koreas and China and the United States could facilitate the reaching and enforcement of an agreement.

This approach made sense and came close to reaching a final agreement. It also delayed the DPRK nuclear program for a substantial period of time and led to the disabling of the one reactor that has produced all of the weapons grade fissionable material which the DPRK now possesses.<sup>1</sup> However, it was not able to produce a final settlement and is at a dead end.

Neither side seems willing to enter into another limited agreement. The US and the ROK want the DPRK first to dismantle its entire nuclear apparatus in a transparent and verifiable way. The

DPRK wants a peace treaty and an end to hostile intent before it considers dismantling its nuclear capacity. The PRC and Russia appear to be supporting the DPRK or at least stressing the need for all elements. While the five parties (other than the DPRK) appear committed to all of these elements there are significant differences as to what steps should be taken first.

The US and the ROK on the one hand and NK on the other have very different perceptions of why the negotiations at least twice collapsed in acrimony. The North believes that it made and kept an agreement to dismantle its plutonium reactor in return for deliveries of fuel, two new nuclear power plants, and above all, movement toward full political and economic normalization – in short, an end to enmity. It believes that the USG broke the agreement by cutting off the fuel supply and not moving to end enmity. It believes that its commitment to the denuclearization of the peninsula was a goal to which it remains committed.<sup>2</sup>

The USG and the ROK believe that that NK did commit itself to stop all of its nuclear programs and to permit verification of that process. It believes that the North reneged on the agreement by proceeding with the clandestine uranium program.

On February 29, 2012 there was a similar if narrower disagreement. The package agreed to included a ban on all space and missile tests. The DPRK seems to have believed that it made it clear that launches of space vehicles were not included while the U.S. believes its negotiators made clear that such launches would be grounds for terminating the agreement.<sup>3</sup>

How valid the arguments on both sides are in each of these episodes is very much beside the point. Neither is likely to go this route again.

We need a new approach which takes account of where we are now and the fundamental interests of the two sides. The first step in the process should focus on agreeing on the details of the final solution embodied in a single binding international treaty. Only then should we negotiate the steps that each party will take to bring the full agreement into force in a way that assures compliance with all the provisions of the agreement.

Finally, the six party talks may have out lived their usefulness, if they ever had any. While the PRC would like to see a de-nuclearized peninsula, it gives precedence to preventing instability or a collapse in North Korea and has not been willing to bring the necessary pressure on the North. Japan has been primarily focused on resolving the kidnapping issue and is unlikely to play an important role until there is a bilateral agreement with the DPRK resolving that issue. Russia is not a key actor and is unlikely to become one. The DPRK continues to emphasize bilateral discussions with the USG and, at times, with the ROK.

In light of this reality, bilateral conversations and negotiations are the way forward. When agreement is in sight among the four key actors, a larger group of states should be brought into the process and invited to participate in a large international conference at which the agreement would be formally negotiated and signed. This larger group of states would adhere to and help enforce various parts of the treaty package.

Such an approach will at least avoid the misunderstandings of the past. The end result will be spelled out in a binding international treaty with a clear understanding of the commitments of each participant and with international enforced procedures for verification supported by a larger group of countries. Every participant will know what the final result will be. The steps towards implementation need to be equally unambiguous. They will need to be spelled out clearly and precisely with no party free to add or subtract from the agreed steps by a unilateral statement to the world or to its own society.

The DPRK will not consider giving up its nuclear weapons at least unless it is satisfied that it can meet its security needs without these weapons. The North has learned from the past ten years that the United States is ready to use force to bring about regime change in countries whose government it does not like and can be deterred only by a credible threat of unacceptable retaliation which may require nuclear weapons. It now understands, from its own experience, that USG commitments of no hostile intent, to which it attached great significance, can simply be withdrawn. The DPRK does fear an American conventional or nuclear attack. It does not seem to understand that the US military recognizes that it cannot prevent the DPRK from inflicting very heavy casualties on US forces and civilians as well as those of South Korea before it could be defeated even if it does not use nuclear weapons and that it is one of the few countries in the world and the only small country that has a credible non-nuclear deterrent.

The DPRK has made it clear that its priority now is a peace treaty and a binding international commitment for the US to end hostilities and establish normal relations with the DPRK. It must be sure these objectives will be met before it is willing to consider taking irrevocable steps to dismantle its nuclear capacity.

The US and the ROK on the other hand are unwilling to consider any concessions to the DPRK until it has dismantled its nuclear capability in a verifiable way. This impasse, which has continued since the collapse of the second agreement in April 2012 cannot be broken by small steps. Only if both sides are confident that they will in the end have a binding agreement which meets their needs will they be willing to consider taking steps to move in that direction.

To repeat, the DPRK leadership may not be willing to dismantle its existing nuclear capability or its capacity to produce more weapons-grade material whatever offers are made. We can only test this proposition by developing a new initiative without making any new commitments or taking any steps based on good faith.

To break this impasse the USG should develop the text for a comprehensive treaty dealing with all of the outstanding issues affecting peace and security on the Korean Peninsula. Early in the process it should approach the ROK, once a new government is in place, and develop an agreed treaty text and a diplomatic strategy to seek support for this effort. The four other parties to the six party talks will need to be consulted and will need to be full participants in the conference and in the comprehensive treaty. However, rather than debating endlessly the pre-conditions for convening the six party talks the other states should be approached one by one by the USG and the ROK. Other states including the UK and France as well as Mongolia and Canada should be consulted and eventually invited, along with the six parties, to a diplomatic conference where the treaty text would be finalized and implementing steps agreed.

## **Comprehensive agreement on peace and security in Northeast Asia**

The proposed comprehensive treaty would be signed and ratified by a number of states. Some sections would be adhered to only by some of the signatories; other would be adhered to by all the parties. Some provisions may go into effect as soon as the treaty is ratified by the required states. Other provisions would enter into force in the future when specified conditions are met. 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 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 among the signatories while providing for the eventual unification of the peninsula.

### ***Creation of a permanent council on security***

The Treaty should create a permanent council and organization to monitor the other provisions of the treaty and to provide a forum to deal with future security problems in the region. In addition to the six parties and the other two nuclear weapons states, other states from the region and beyond would be invited to join. The IAEA might be asked to play a role in the monitoring process; other verification might be done by a staff recruited by the security organization and be composed of nationals from countries other than the six parties.

### ***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, as provided for in the NPT, will need to be affirmed. Any limitations on the DPRK will need to apply equally to other non-nuclear states party to the treaty, especially the ROK and Japan. 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***

The Parties to the treaty will need to commit not to impose sanctions on any other party to the treaty or to maintain them on a 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 Treaty are discussed in the next session.

### **Details of elements of NWFZ**

This chapter of the Treaty would be consistent with the UN resolutions concerning the appropriate elements of a NWFZ treaty. It would have specific obligations for the non-nuclear states and others for the nuclear powers.

The ROK, Japan and the DPRK (and possibly other states including Mongolia and perhaps Canada) would commit themselves not to manufacture, test (for any purpose) or deploy nuclear weapons, nor to allow nuclear weapons to be stored on their territory. The DPRK would commit itself to re-join the NPT and the other states making this commitment would agree to remain parties to the NPT if the provisions of this treaty were being observed.

The precise territorial scope of the non-nuclear commitments would need to be clearly specified and would depend, in part, on which other states, if any, other than the two Koreas and Japan made these commitments.

The non-nuclear states adhering to these commitments might agree to future restrictions on reprocessing. They would agree to permit agreed 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 accepting the non-nuclear commitments. In the case of North Korea there would need to be specific provisions providing for the destruction of their existing stockpile and production facilities under the auspices of the security organization. The ROK would need to commit that if Korea were unified before the weapons and the production facilities were dismantled it would immediately turn over the weapons to a Nuclear Weapons State for destruction and agree to international supervision of the dismantlement of the facilities. The US, the PRC and Russia as well as the UK and France would agree to abide by the provisions of the treaty and not to store nuclear weapons in the zone or support in any way 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 consistent with past commitments of Russia and China as well as the USG. The UK and France have made such commitments to states in other NWF zones). The parties would agree to confer and to take appropriate actions if any non-nuclear state party to the treaty was threatened with the use of nuclear weapons by another party to the treaty or another state with nuclear 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 being willing at the end of the day to give up its nuclear weapons. There is a chance that with the right incentives and the right pressure especially from China (which is more likely to come quietly and bilaterally) it might be willing to do so. The provisions in the treaty relating to entry into force and possible transition period should 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 to include in the same treaty the other elements that the North has been seeking. Another is to propose a scenario for adherence by Japan and the ROK that contributes to this process.

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 three of the nuclear weapons states (U.S., Russia, and China) ratify the treaty and when two non-nuclear states (Japan and ROK) ratify it. However, the ROK and Japan 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. Effective enforcement 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 were 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 were met, they would be permanent parties to the treaty subject only to the standard withdrawal clause.

The obligations of nuclear weapons states that ratify the treaty or the protocol would apply only to those non-nuclear states that also ratify and are in compliance with all the provisions of 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 not to acquire nuclear weapons or permit them to be stored on their territory. The DPRK would be aware of this, and would know that it 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. A provision of the Treaty might permit the DPRK to accept the basic commitment that it become a non-nuclear weapons state while delaying its obligation to begin the dismantling process. Still it will not be easy to persuade the DPRK to give up its existing nuclear capability and it will certainly take some time.

In the interim having a process under way which presents a way to de-nuclearize the Korean Peninsula will contribute to the overall effort to prevent nuclear proliferation.

## **Notes**

<sup>1</sup> Leon V. Sigal, “How to Bring North Korea Back into the NPT,” *Nuclear Proliferation and International Order*, ed. Olav Njolstad (New York: Routledge, 2011), pp. 70-75.

<sup>2</sup> Sigal, “How to Bring North Korea Back into the NPT,” pp. 68-69. Cf., Condoleezza Rice, *No Higher Honor* (New York: Crown, 2011), p. 162 on the pivotal October 2002 meeting.

<sup>3</sup> Leon V. Sigal, “Charting Kim Jong-un’s Course,” *Nippon.com* (forthcoming).