

## REPLACING THE ARMISTICE WITH A PEACE TREATY IN KOREA

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A peace process on the Korean Peninsula is essential to curbing the DPRK's nuclear and missile programs.

For over two decades the DPRK has said that denuclearization requires the United States to end what it calls the US "hostile policy" and to reconcile with it. A peace treaty to replace the armistice that terminated the Korean War is its long-sought manifestation of that end to enmity.

Recently, following US demands that it take "unilateral steps ... to live up to [its] obligations," (US Special Envoy Glyn Davies, VOA interview, July 26, 2012), North Korea toughened its negotiating stance, demanding that the United States move first to reassure it: "The 20 year-long history of the talks between the DPRK and the US has shown that even the principle of simultaneous action steps is not workable unless the hostile concept of the US towards the DPRK is removed" (DPRK Foreign Ministry Memorandum in KCNA, "DPRK Terms US Hostile Policy Main Obstacle in Resolving Nuclear Issue," August 31, 2012). That stance was implicit in its insistence that the United States tolerate its satellite launches as part of the so-called Leap Year deal.

The September 19, 2005 Six-Party Joint Statement envisioned a peace process in parallel with steps toward denuclearization: "The Six Parties committed to joint efforts for lasting peace and stability in Northeast Asia. The directly related parties will negotiate a permanent peace regime on the Korean Peninsula at an appropriate separate forum." Yet Pyongyang has since indicated that a peace treaty would have to precede denuclearization. As the DPRK Foreign Ministry spokesman put it on January 11, 2010,

The course of the six-party talks which witnessed repeated frustrations and failures proves that the issue can never be settled without confidence among the parties concerned. ... If confidence is to be built between the DPRK and the US, it is essential to conclude a peace treaty for terminating the state of war, a root cause of the hostile relations, **to begin with.**

Whether a peace treaty precedes or follows denuclearization, it is inconceivable that Pyongyang would curb its nuclear and missile programs, never mind give up its nuclear arms and missiles, without a peace process. As long as the United States and South Korea remain its foes, it will feel threatened and want a stronger "deterrent" to counter that threat.

A peace treaty could also reduce the risk of military clashes on the peninsula. Washington and Seoul talk a lot about the need to deter another Cheonan. Notwithstanding the South's conventional military superiority, it is not clear how they can do so. To the contrary, the March 2010 sinking of the Cheonan in retaliation for a fatal November 2009 shooting up of a North Korean naval vessel in the contested waters of the West (Yellow) Sea and the November 2010 artillery barrage on Yeonpyeong Island in reprisal for South Korea's live-fire exercise show that steps taken by each side to bolster deterrence can cause armed clashes, even unpremeditated war. Deterrence alone will not keep the peace on the peninsula. The only way out is a peace process.

Negotiating a peace treaty is a formidable task. To be politically meaningful, it would require rectification of land and sea borders—whether temporary pending unification or permanent—and normalization of diplomatic, social, and economic relations. To be militarily meaningful, it would require changes in force postures and war plans that pose excessive risks of unintended war on both sides of the Demilitarized Zone. That would mean, above all, redeployment of the North's forward-deployed artillery and short-range missiles to the rear, out of range of Seoul. Yet to the extent Pyongyang would see that redeployment as weakening its deterrence against attack, it might be more determined to keep its nuclear arms.

Who would participate in peace talks? The three parties with forces on the ground in Korea, plus China. It might be useful for Japan and Russia, as well as nations that contributed forces to the war, to endorse a

treaty once it is negotiated by the four. China has maintained it was not a belligerent even though Security Resolution 498 called it an “aggressor” state when it intervened in the war, and General Peng Teh-Huai signed the armistice as commander of “Chinese People’s volunteers.” At times, when the DPRK wanted to underscore the importance of peace with the United States, it omitted China from its list of invitees. At other times, when its relations with the South had soured, the North, consistent with its longstanding view that the United States had intervened in the civil war to prop up a “puppet” regime in Seoul, has said the South should be excluded from peace talks because it was not a signatory to the armistice. Yet the North accepted participation of the South in four-party peace talks in 1997. The United Nations was neither a party to the war nor a party to the armistice, although the US commander signed the armistice as United Nations Commander and USFK has used the United Nations Command as a fig leaf legitimating the US presence in Korea and Japan. Yet, as Secretary General Boutros Boutros-Ghali noted in a June 24, 1994 letter to the foreign minister of the DPRK, UN Security Council resolution 84 of July 7, 1950 “did not establish the unified command as a subsidiary organ under its control, but merely recommended the creation of a command, specifying that it be under the authority of the United States.”

A peace treaty is unlikely without a more conducive political environment. One way to accomplish that is a peace process, using a series of interim peace agreements as stepping stones to a treaty. Such agreements, with both the United States and South Korea as signatories, would constitute token recognition of DPRK sovereignty. North Korea, in return, would have to reciprocate step by step with permanent dismantlement of its nuclear and missile production facilities.

A first step could be what Seoul once called a “peace declaration.” Signed by the United States, North and South Korea and perhaps China, Japan and Russia as well, such a document would declare an end to enmity by reiterating the language of the October 12, 2000 US-DPRK joint communiqué stating that “neither government would have hostile intent toward the other” and confirming “the commitment of both governments to make every effort in the future to build a new relationship free from past enmity.” It could also commit the three parties to commence a peace process culminating in the signing of a peace treaty. The declaration could be issued at a meeting of six-party foreign ministers.

A second step long sought by Pyongyang is the establishment of a “peace mechanism” to replace the Military Armistice Commission set up to monitor the ceasefire at the end of the Korean War. This peace mechanism could serve as a venue for resolving disputes like the 1994 North Korea downing of a US reconnaissance helicopter that strayed across the DMZ or the 1996 incursion by a North Korean spy submarine that ran aground while dropping off agents. The peace mechanism would include the United States and the two Koreas—the three parties with forces on the ground in Korea.

The peace mechanism could also serve as the venue for negotiating a series of agreements on specific confidence-building measures, whether between the North and South, the DPRK and the United States, or among the three parties. The joint fishing area in the West Sea, as agreed in principle in the October 2007 North-South summit meeting, is one. Naval confidence-building measures such as “rules of the road” and a navy-to-navy hotline are also worth pursuing. Lacking satellite reconnaissance, North Korea has conducted surveillance by infiltrating agents into the South. An “open skies” agreement allowing reconnaissance flights across the DMZ by both sides might reduce that risk. In October 2000 Kim Jong-il offered to end exports, production, and deployment of medium- and longer-range missiles. In return he wanted the United States to launch North Korean satellites, along with other compensation. A more far-reaching arrangement might be to set up a joint North-South watch center that could download real-time data from US or Japanese reconnaissance satellites. It is unclear how much CBMs will reduce the risk of inadvertent war but they would provide political reassurance of an end to enmity.

North Korea has long called for withdrawal of US troops. While the North emphasizes that stance when relations deteriorate, at other times North Korean officials have taken the position that, in effect, so long as the United States remains its foe, US forces are a threat to it and must be withdrawn, but with the end of enmity, US forces would no longer be a threat and could remain.