THE SIX-PARTY TALKS AND THE NORTH KOREAN NUCLEAR DISPUTE 
RESOLUTION UNDER THE IAEA SAFEGUARDS REGIME

ERIC YONG-JOONG LEE*

I. INTRODUCTION

In December 1938, two German nuclear physicists, Otto Hahn and Fritz Strassmann, performed a revolutionary experiment which resulted in the splitting of the uranium atom. As a result, this experiment demonstrated that the fission of uranium could provide Germany with a weapon of unprecedented explosive power and destructive capability. American nuclear scientists developed an atomic bomb in 1945. This incredible creation was perpetrated against Japan in August 1945. With the destruction of Hiroshima and Nagasaki, the world recognized the atomic bomb as the ultimate weapon that could annihilate mankind. The world’s concern for the destructive power of the atomic bomb was reflected on the international legal devices of the

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1 See H. ATHANASOPULOS, NUCLEAR DISARMAMENT IN INTERNATIONAL LAW 1 (McFarland & Company 2000).

2 Id.
postwar international community such as the United Nations Charter$^3$ and the Statute of the International Atomic Energy Agency (IAEA).$^4$ Under the IAEA, the safeguards regime and the Treaty of Non-Proliferation of Nuclear Weapons (NPT)$^5$ have played pivotal roles in maintaining the peaceful use of nuclear energy and in creating a restraint system on the use and development of nuclear weapons.

This nuclear control framework was working quite well until North Korea challenged it in the early 1990s. With the North Korean nuclear dispute, however, the IAEA and surrounding international community recognized the instability of the current nuclear control system, and started to seek more accountable nuclear norms and world order. The North Korean nuclear dispute is significant, as it forced the international community to apply a new framework and reform the nuclear control system prevailing at the time. A careful analysis of the North Korean nuclear question is, thus, a basis of developing a world nuclear security model for the 21st Century. In particular, the six-party talks are a matter of extreme importance.

Part II will examine the confrontation between North Korea and the international community. In this part, the genesis of the first nuclear crisis and its evolution will be reviewed. The relationships between North Korea and the IAEA will also be focused on. The key topic of Part III will be the Geneva Agreed Framework (hereafter “Agreed Framework”). The Agreed Framework was adopted as a compromise between North Korea and the United States after painstaking negotiations. This Agreed Framework will be interpreted from an international legal perspective. Part IV will discuss the on-going Light-Water Reactor (LWR) project. The LWR project is a product of the Agreed Framework. With the project, the relationship of the concerned parties dramatically shifted from confrontation to a cooperative approach. The implementation process of the LWR project and its accompanying legal problems will be examined. Next, Part V will examine the second nuclear crisis and the six-party talks. After the United States President George W. Bush came into office, the cooperative mood drastically changed into one of hostility and instability. This part reviews U.S. policy toward North Korea regarding this issue. With a view toward

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resolving the crisis, meanwhile, two six-party talks were held in Beijing in August 2003 and February 2004, and this article concludes with a discussion of the most recent negotiations. Overall, the process and prospects of the multilateral negotiation forum is investigated from a perspective mindful of the principles of international law and diplomacy.

II. THE CONFRONTATION

Nuclear development in North Korea dates from 1964, and is not a recent phenomenon. At that time, North Korea found uranium deposits, and established its first Soviet-supplied nuclear research center in the Yongbyon area. In 1974, North Korea joined the IAEA. Three years after becoming a member, in 1977, North Korea concluded a Safeguards Agreement for two nuclear research facilities. On December 12, 1985, North Korea became a party to the NPT. Article III.4 of the Treaty required North Korea to accede to the IAEA’s full-scale inspection its nuclear facilities. Despite the IAEA’s inspection requirements, North Korea avoided signing an implementing agreement until early 1992. After nearly five years of mounting

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7 Id. North Korea seems to have undertaken its secret nuclear weapons program in the late 1970s. Between 1980 and 1987, a 30-megawatt research reactor, of the gas-graphite design that uses natural uranium as fuel, was built near Yongbyon. This design is well suited to produce plutonium, and is the logical option for aspiring nuclear states with limited industrial capabilities. See L. Spector & J. Smith, Nuclear Ambitions: The Spread of Nuclear Weapons, 1989-1990 123-24 (1990).


9 See Joseph S. Bermudez Jr., Jane’s Intelligence Review 406 (1991) (for further discussion of the safeguards agreement (INFCIRC 252) of July 20, 1977, between the DPRK and the IAEA for the application of safeguards with respect to a research reactor facility).


11 NPT, supra note 5, art. III.4.

12 See id. art. III.

13 Lee, supra note 10, at 291.
international pressure, North Korea signed the safeguards agreement on January 30, 1992, and ratified it on April 10, 1992. The agreement required North Korea to send the Agency an “Initial Report” on all nuclear material to be subject to safeguard inspections. Following North Korea’s Report to the IAEA on May 4, 1992, the Agency conducted six international inspections of nuclear facilities in North Korea to investigate inconsistencies in the report. In these inspections the IAEA focused on controversial matters listed on the Report including three Magnox reactors which were “essentially similar” to reactors the United Kingdom used to produce its first plutonium warheads. In these inspections, the IAEA was not able to find anything relating to nuclear weapons. A month later, however, while analyzing the plutonium samples and test results, the IAEA found that North Korea must have reprocessed plutonium on at least three separate occasions in 1989, 1990 and 1991. Additionally, a United States intelligence satellite report showed two structures in North Korea not listed in the Report. Nuclear waste is usually stored in such structures. The IAEA concluded that North Korea had separated more plutonium than it had stated in the Initial Report.

Subsequently, the IAEA’s Director General Han Blix formally

14 Lee, supra note 10, at 291.


16 See DAVID FISCHER, HISTORY OF THE INTERNATIONAL ATOMIC ENERGY AGENCY 1 (1997) (indicating that the Initial Report showed that North Korea had built a 5 MW(e) graphite moderated Magnox type reactor, a fuel fabrication plant, a radiochemical laboratory, and two much larger Magnox reactors were under construction).

17 Id.

18 In 1941, Dr. Glenn T. Seaborg discovered plutonium, a man-made heavy metal. When rapidly assembled or compressed into a critical mass, these radioactive materials fuel the fast chain reaction that produces a nuclear explosion. Between four and eight kilograms of plutonium, an amount about the size of a large orange, is enough to make a nuclear explosion equivalent to the one that destroyed Nagasaki. Amarillo National Research Center, What Is Plutonium?, available at http://www.pu.org/main/facts/pu-issue.html (last visited n.d., on file with author).


20 See id.

21 Id.

22 Id.
demanded a “special inspection” by March 25, 1993 of the two facilities suspected to be storing nuclear waste.23 At that time, North Korea strongly denied the request.24 South Korea proposed to allow inspection of U.S. military bases in South Korea for the simultaneous inspection of nuclear complexes.25 On February 25, 1993, the IAEA Board set a three month limit for North Korea to comply with the inspections.26 Notwithstanding months of thorough negotiations,27 North Korea announced its withdrawal from both the NPT and the safeguards agreement on March 12, 1993,28 and ultimately withdrew from the IAEA in June 1994.29

The North Korean situation aroused shock waves, which reverberated throughout the world.30 This conflict between North Korea and the IAEA posed an unprecedented test for the NPT and the IAEA’s safeguards regime.31 As the confrontation was steadily escalating,32 the IAEA Board of Governors, acknowledging the North


27 In February 1993, North Korea refused IAEA’s inspection of the two sites at the Yongbyon facilities in spite of six visits of IAEA to North Korea on the grounds that they were military sites not related to the nuclear program. Because IAEA was not satisfied with the explanation, IAEA Board of Governors formally demanded a special inspection of North Korea again. See P. Leventhal & S. Dolley, The NORTH KOREAN NUCLEAR CRISIS 2 (1994).

28 North Korea announced on the same day that: “It was withdrawing unavoidably from NPT as a measure to defend its supreme interests,” invoking Article 10 of NPT. North Korea added: “The withdrawal from NPT is a well-justified and self-defensive measure against the nuclear war maneuver of the United States and the unjust acts of some officials of the secretariat of IAEA.” See THE PYONGYANG TIMES, Mar. 12, 1993.


31 The crisis raised a number of important issues: the enforceability and effectiveness of NPT, the credibility of IAEA’s safeguards system, the proliferation hazards of the civilian use of weapon-usable nuclear materials, and interactions among such nuclear programs in Northeast Asia. See Leventhal & Dolley, supra note 27 at 1.
Korea’s violation of the Safeguards Agreement, referred the issue to the United Nations Security Council on April 1, 1993, in an effort to take strong measures to force North Korea to conform the rules of the regime. On April 8, 1993, the Statement of the President of the Security Council was publicized, and then the Security Council passed Resolution 825 regarding the North Korean nuclear crisis. Moreover, the IAEA took resolutions in the general conferences on this issue. These international pressures were strong enough for North Korea to seek a way out of the stalemate. One day before the three-month notice period ended, North Korea announced on June 11, 1993, that it would suspend its withdrawal from the NPT for as long as necessary. They were dramatically coming out of the deadlock.

III. THE COMPROMISE: THE AGREED FRAMEWORK OF 1994

A. Background

The very first step of resolving this clash was the bilateral meetings between North Korea and the United States, which finally led to the adoption of the “Agreed Framework.” The Agreed Framework was the offspring of the resolution of the North Korean nuclear dispute.


33 See Fischer, supra note 16, at 2. The UN Security Council passed a resolution to invite North Korea to fulfill its obligations under its Safeguards Agreement on May 11, 1993, by a vote of thirteen in favor, none against and two abstentions. Id.


36 Id. This Resolution of the UN Security Council calls upon the following: (1) the DPRK to reconsider the announcement contained in the letter of March 12, 1993; (2) the DPRK to honor its non-proliferation obligations under the Treaty and comply with its Safeguards Agreement with IAEA; (3) the Director-General of IAEA to continue to consult with the DPRK with a view to resolving the issues; (4) all Member States to encourage the DPRK to respond positively to this resolution and encourages them to facilitate a solution; and (5) decides to remain apprised of the matter and to consider further Security Council action if necessary. See id.

37 Id.


An initial sign of establishing any kind of accord was delivered by the former U.S. President Jimmy Carter.\textsuperscript{40} In his visit to Pyongyang in June 1994, President Carter discussed this crisis with Kim Il-Sung and brought conciliatory messages.\textsuperscript{41} Following Carter’s initiative, North Korea and the United States opened diplomatic negotiations. After three months of highly charged talks, the two sides reached an accord called the “Agreed Framework” in Geneva on October 21, 1994.\textsuperscript{42} On November 4, 1994, the UN Security Council asked the IAEA to carry out the tasks assigned to it in the Agreed Framework\textsuperscript{43} and, a week later, the IAEA Board of Governors authorized the Director General to do so.\textsuperscript{44}

The Agreed Framework became a watershed unto which North Korea’s suspected nuclear weapons development entered a new phase towards the peaceful use of nuclear energy under the IAEA’s safeguards regime, as well as the grand scheme of the nuclear-weapon-free-zone (NWFZ)\textsuperscript{45} on the Korean peninsula.

B. The Agreed Framework: A Legal Analysis

In the course of resolving the North Korean nuclear issue of the early 1990s, the United States and North Korea actually adopted the following three documents: the Agreed Framework between the Democratic People’s Republic of Korea and the United States of America; a letter from U.S. President Bill Clinton to “the supreme leader

\textsuperscript{40} See FISCHER, supra note 16, at 2.

\textsuperscript{41} Id.


\textsuperscript{44} IAEA Teukbyul YiSaHye SungIn . . . 14il Bootu BookKwa JupChok [IAEA Special Meeting of the Board of Governors Approve . . . Interaction with North to Commence on the 14th], CHOSUN ILBO DAILY, NOV. 12, 1994.

\textsuperscript{45} It was originally addressed by the General Assembly in Resolution 3472B (XXX) on December 11, 1975. See U.N. Doc. A/10027/Add.1. In accordance with the resolution, a NWFZ is defined as any region where (a) all nuclear-weapon states should respect the statute of total absence of nuclear weapons defined in the treaty or convention which serves as the constitutive instrument of the zone; and (b) an international system of verification and control has been established to guarantee compliance with the obligations derived from that statute. On the resolution of the General Assembly on the NWFZ, see 1975 U.N.Y.B. 29, at 8-10. See also UN: THE UNITED NATIONS AND NUCLEAR NON-PROLIFERATION 21 (1995).
of North Korea” Kim Jong-II; and a Confidential Minute included at the request of North Korea. The Agreed Framework was the primary result among them. With the Agreed Framework, North Korea and the United States reached accords not only about the Light-Water Reactor (LWR) project, but also about their relationship in general.

The Agreed Framework consisted of four main articles with detailed regulations. Article I provides: “Both sides will cooperate in replacing the DPRK’s graphite-modereated reactors and related facilities with light-water reactor (LWR) power plants.” For the realization of this principle, Article I, provision 1, establishes that the United States should organize an international consortium to finance and supply the LWR project with a total generating capacity of approximately 2000 MW(e) to be provided to North Korea. Under this consortium, according to Article I, provision 2, the United States agreed to offset the energy that was lost due to the freezing of the graphite-modereated reactors and related facilities of North Korea in the form of heavy oil, until the completion of the first LWR unit. Meanwhile, North Korea promised to freeze its graphite-modereated reactors and related facilities upon receiving assurances from the United States for the provision of LWRs and for arrangements of interim energy alternatives. The two sides also agreed to cooperate in solving the technical problems including a method to safely store the spent fuel from the experimental reactor and to dispose of the fuel in a safe manner.

In Article II, the United States and North Korea agreed upon rather general questions concerning the political as well as the economic relations between them. Article II stipulates: “The two sides will move toward full normalization of political and economic relations.” Normalization of the actual relationship shall be a crucial foundation to obtaining the final goal that lies before the two sides. For the enforcement of this principle, the two sides gave consent to reduce

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46 President Clinton wrote: “I wish to confirm to you that I will use the full power of my office to facilitate arrangements for the financing and construction of a light-water nuclear power reactor project within the DPRK. . . . I will follow this course of action so long as the DPRK continues to implement the policies described in the agreed framework between the United States of America and the Democratic People’s Republic of Korea.” See A letter from the U.S. President Bill Clinton to Supreme Leader of the DPRK, Kim Jong-II (Oct. 20, 1994) (recited from ERIC YONG-JOONG LEE, LEGAL ISSUES OF INTER-KOREAN ECONOMIC COOPERATION UNDER THE ARMISTICE SYSTEM 56 n.104 (2002)).

47 See UNITED STATES INFORMATION AGENCY (USIA), FOREIGN PRESS CENTER BRIEFING (Oct. 19, 1994). Ambassador at Large Robert Gallucci, who headed the U.S. negotiating team, had said that the confidential minute contained no secret deals, but only explicated and extended the Agreed Framework. Id.

48 See AGREED FRAMEWORK, supra note 39.

49 See id. art. I(3).
barriers to trade and investment between them, including restrictions on telecommunications services and financial transactions.\(^{50}\) Furthermore, they agreed to open a liaison office in the each other’s respective capitals, following the resolution of consular and other technical problems, which would hopefully be upgraded into the ambassadorial level.\(^{51}\)

Article III stipulates that “Both sides will work together for peace and security on a nuclear-free Korean Peninsula.” Pursuant to this article, the United States pledged not to threaten with or consign to using nuclear weapons against North Korea, while North Korea declared to take steps to implement the North-South Joint Declaration on the Denuclearization of the Korean Peninsula.\(^{52}\) They eventually reached a compromise whereby the Agreed Framework would help create a favorable atmosphere to promote dialogue between North and South Korea, and guarantee peace and security on the Korean peninsula.\(^{53}\)

Article IV reads that: “Both sides will work together to strengthen the international nuclear non-proliferation regime.” As a result of the article, North Korea agreed to the following: to remain a party to the NPT and accept its safeguards agreement;\(^{54}\) to allow ad hoc and routine inspections with respect to the facilities not subject to the freeze;\(^{55}\) and to come into full compliance with the safeguards agreement with the IAEA (INFCIRC/403) including taking all steps deemed necessary by the IAEA.\(^{56}\)

C. Results of the Agreed Framework

The Agreed Framework was an epoch-making document. With the Agreed Framework, both sides tried to solve the two critical issues—freezing North Korea’s suspected nuclear weapons development program and normalizing the U.S.-DPRK relationship—through a package deal. There were several concrete results of the Agreed Framework. First, North Korea was supplied with two LWRs with a generating capacity of approximately 2000MW(e). For this project, the United States was obliged to organize an international consortium that would be later called the Korean Peninsula Energy Development Organization (KEDO) for the

\(^{50}\) See AGREED FRAMEWORK, supra note 39, art. II(1).

\(^{51}\) See id. art. II(2 & 3).

\(^{52}\) See id. art. III(1 & 2).

\(^{53}\) See id. art. III(3).

\(^{54}\) See AGREED FRAMEWORK, supra note 39, art. IV(1).

\(^{55}\) See id. art. IV(2).

\(^{56}\) See id. art. IV(3).
acquisition and financing of the reactors. North Korea was also provided with technical cooperation with South Korea through the KEDO. Second, as compensation of freezing its nuclear facilities (graphite nuclear reactors), the United States was committed to supply heavy oil for alternative energy before the construction of the LWRs. Third, North Korea was given a chance to normalize its diplomatic relations with the United States. Finally, the Agreed Framework required the United States to lift its economic embargo. Initial measures for reducing barriers to trade and investment were to be carried out such as restrictions of telecommunications services and financial transaction.

Notwithstanding the fact that most of the world greeted the Agreed Framework with relief, some criticism arose from the IAEA and the United States. Despite North Korea agreeing to remain a party to the NPT and the safeguards regime, the Agreed Framework hardly strengthened IAEA’s rights of inspection due to a delay before the full implementation of the LWR project. The Agency could neither inspect the two suspected sites nor fully verify the Initial Report of North Korea for at least five years. A few American officials also criticized that the United States yielded too much in the negotiation process with North Korea, and that other states would follow this example. Regardless of the criticisms, however, it is clear that the Agreed Framework was a stepping stone to establishing nuclear peace on the Korean peninsula as well as on the Northeast Asian region.

IV. THE COOPERATION: THE LWR PROJECT UNDER THE KEDO

Following the conclusion of the historic Agreed Framework, North Korea entered a cooperative phase with the United States and the IAEA. The most important substantial product of the Agreed Framework was the establishment of the LWR project under KEDO. Right after signing the Agreed Framework, the United States, Japan

57 The Agreed Framework has announced to upgrade their relationship ultimately to an ambassadorial level. See AGREED FRAMEWORK, supra note 39, art. II(3).


60 See id. at 4.

61 Id.

62 On the United States perspective regarding KEDO, see T. Wilborn,
and South Korea hosted a conference in New York City in March 1995, and established KEDO with the signing of the Agreement on the Establishment of the Korean Peninsula Energy Development Organization (KEDO Agreement). KEDO is an international, non-profit organization established to implement key principles of the Agreed Framework. Under the KEDO Agreement, KEDO was to deliver interim energy until the first LWR was completed. In addition, KEDO planned to carry out other measures deemed necessary for the attainment of the purposes of the Agreed Framework.

KEDO’s construction activities are actually controlled by other detailed legal measures, such as the “Agreement of Supply of a Light Water Reactor Project to the Democratic People’s Republic of Korea between the Korean Peninsula Energy Development Organization and the Government of the Democratic People’s Republic of Korea” (hereafter “Supply Agreement”) and eight other protocols that have been adopted so far. In accordance with the Supply Agreement, KEDO is responsible for furnishing two LWR units designed to meet international


KEDO was established during this conference with six members: the United States, Japan, South Korea, Australia, Canada and New Zealand. See Steven Greenhouse, U.S. Presses North Korea to Accept Reactors Made By South, N.Y. TIMES, Mar. 10, 1995, at A10.

See THE AGREEMENT ON THE ESTABLISHMENT OF THE KOREAN PENINSULAR ENERGY DEVELOPMENT ORGANIZATION [hereinafter KEDO AGREEMENT], available at http://www.kedo.org/pdfs/EstablishmentKEDO.pdf (last visited June 8, 2004). It consists of a preamble and 15 articles, which set forth the following: KEDO’s purpose, function, principles, composition, organization, financial operations, and legal status. Id.


See KEDO AGREEMENT, supra note 64, art. II(a).

In order to realize these plans, Article XIII, paragraph a, of the KEDO Agreement makes it clear that KEDO possesses juridical capacity to contract, lease or rent real property, acquire and dispose of personal property, and institute legal proceedings.

See “Agreement on Supply of A Light-Water Reactor Project to the Democratic People’s Republic of Korea between the Korean Peninsula Energy Development Organization and the Government of the Democratic People’s Republic of Korea,” Dec. 15, 1995, KEDO-DPRK [hereinafter Supply Agreement]. The Supply Agreement, in eighteen articles, covers every aspect of furnishing the LWR project between KEDO and North Korea as follows: scope, repayment terms, delivery, implementation, site, quality assurance and warranties, training, operation and maintenance, services, nuclear safety and liability, intellectual property, assurances, force measure, dispute resolution, and actions in the event of noncompliance. Id.
and US standards of safety\textsuperscript{69} to North Korea. As outlined by the Kuala Lumpur Agreement,\textsuperscript{70} North Korea recognized the employment of the South Korean standard model reactors and the selection of the Korean Electric Power Corp. (KEPCO) as the main contractor.\textsuperscript{71}

The LWR project in North Korea made significant advances when KEPCO moved into operation. The implementation of the decision of the parties involved can be read in further detail in the three protocols of 1996.\textsuperscript{72} Upon the completion of such preparation work and site surveys,\textsuperscript{73} KEDO held the historic groundbreaking ceremony on August 19, 1997 in the Kumho area\textsuperscript{74} of North Korea.\textsuperscript{75} In November 1997, North Korea began negotiations with KEDO on quality assurance and warranties protocols.\textsuperscript{76} Based on the meetings of January and May of 1998 between the two sides,\textsuperscript{77} as of July 31, 1998, the KEDO and the

\[\text{\textsuperscript{69} See Supply Agreement, supra note 68, art. XVIII & Annexes 1-2.}\]

\[\text{\textsuperscript{70} The gist of the Kuala Lumpur Agreement is as follows: (1) KEDO shall take charge of the light-water reactor project and the United States shall play the role of main contractor with North Korea; (2) two pressurized light reactors will be furnished and the model of the light-water reactors shall be chosen by KEDO; and (3) KEDO and North Korea shall begin negotiations for the conclusion of a supply contract. See KEDO, Joint U.S.-DPRK Press Statement, (June 13, 1995) available at http://www.kedo.org/pdfs/KualaLumpur.pdf (last visited June 8, 2004). For details on the negotiating process, see also MINISTRY OF NATIONAL UNIFICATION, SOUTH-NORTH DIALOGUE IN KOREA 64-5 (1995); PEACE AND COOPERATION: WHITE PAPER ON KOREAN UNIFICATION 126-7 (1996).}\]

\[\text{\textsuperscript{71} See id.}\]

\[\text{\textsuperscript{72} During the first stage of the talks held in New York City beginning in April 1996, the two sides agreed on three protocols: (1) the Protocol on the Juridical Status, Privileges and Immunities and Consular Protection on May 22, 1996, (2) the Protocol on Transportation on June 14, 1996, and (3) the Protocol on Communication on June 14, 1996. During the second stage, both sides agreed to two more Protocols, the Protocol on Site Take-over, Site Access and Use of the Site on September 26, 1996, and the Protocol on the Use of Services officially signed on January 9, 1997. See THE KOREA HERALD, Jan. 9, 1997.}\]

\[\text{\textsuperscript{73} In accordance with Article V, paragraph 1, of the Supply Agreement, KEDO conducted site surveys six times from August 15, 1995 at an area near Sinpo City, South Hamkyong Province of North Korea, and finally decided on Kumho, 247 kilometers northeast of Pyongyang.}\]

\[\text{\textsuperscript{74} The construction site in Kumho area covers approximately 8,900,000 square meters. Id.}\]

\[\text{\textsuperscript{75} See THE KOREA HERALD, Aug. 19, 1997.}\]

\[\text{\textsuperscript{76} See KOREA PENINSULA ENERGY DEVELOPMENT ORGANIZATION, ANNUAL REPORT 1997/1998 (1998), at 7.}\]

\[\text{\textsuperscript{77} Id. At the January meeting KEDO and North Korea agreed on the details}\]
KEPCO accelerated their negotiations on the LWR plants construction. Beginning in 1999, KEDO and North Korea negotiations became more active. They conducted a nuclear safety experts meeting and finalized a Memorandum of Understanding on Environmental Protection and Indemnification. From September 1999 to February 2000, high-level experts meetings were held to address the full range of the KEDO issues. The two parties deliberated on policy, technical, and services-related issues. According to the discussions, the Turn-key Contract became effective on February 3, 2000. In April and July 2000, KEDO and North Korea carried out the negotiations for the Training Protocol and the Protocol dealing with the quality assurance program and warranties. By July 31, 2000, six units of the Korean Standard Nuclear Plant design were in operation or under construction (see Table 1).

Table 1: Light Water Reactor Models

<table>
<thead>
<tr>
<th>UNIT</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ulchin Units 3 &amp; 4</td>
<td>Operating (1998 &amp; 1999)</td>
</tr>
<tr>
<td>Yonggwang Units 5 &amp; 6</td>
<td>Under construction</td>
</tr>
<tr>
<td>Ulchin Units 5 &amp; 6</td>
<td>Under construction</td>
</tr>
</tbody>
</table>

Source: KEDO Secretariat, Reactor Project <http://www.KEDO.org>

concerning efficient transportation to the site and oceanographic survey, while at the May meeting, they agreed on some technical modifications to previous protocols, off-site recreational travel by KEDO personnel, and details on improving telecommunications for the LWR project. Id.

78 See id.


80 See Lee, supra note 6, at 302.

81 Id.

82 Id.

V. THE CRISIS OF 2002 AND THE BEGINNING OF THE SIX-PARTY TALKS

A. The Second Nuclear Crisis

The cooperative relationship between the United States and North Korea, however, suddenly cooled as President Bush came into office in 2001. The Bush administration set up a new foundation for its relationship with North Korea. The initial step was to recognize North Korea as a grave threat towards peace and security of Northeast Asia. President Bush issued a statement on June 6, 2001, outlining the United State’s new policy objectives over North Korea’s nuclear and missile program and its conventional forces. Bush stated that if North Korea took positive actions in response to U.S. policy, the United States “will expand our efforts to help the North Korean people, ease sanctions and take other political steps.” U.S. administration officials warned that North Korea’s proliferation of Weapons of Mass Destruction (WMD) could make such weapons available to Al Qaeda. The Bush administration’s policy was to eliminate even the minutest elements of North Korean military power and to secure absolute U.S. hegemony in Northeast Asia. This perspective was clearly enunciated by President Bush’s State of the Union speech of January 29, 2002, in which he regarded North Korea as part of an “axis of evil” group of states that included Iran and Iraq—all countries which were presumed to be producing and proliferating WMDs.

In October 2002, matters took a turn for the worse when North Korea indirectly acknowledged its nuclear weapons development program. In response to the acknowledgment, the United States decided to stop supplying heavy oil to North Korea in November. In

84 See NIKSCH, supra note 58, at 1.
85 Id.
86 Id.
87 See id.
89 See Lee, supra note 6, at 297.
retaliation, North Korea refused to admit the KEDO delegation from entering the country to inspect the use of heavy oil.\textsuperscript{91} North Korea also proclaimed the resumption of the construction and operation of all its nuclear facilities.\textsuperscript{92} In fact, North Korea made preparations for re-operating the nuclear reactors between the 22\textsuperscript{nd} and 25\textsuperscript{th} of December, and purged the IAEA inspectors on December 27, 2002.\textsuperscript{93} This uncompromising trend of the United States reached its peak with its “tailored containment”\textsuperscript{94} policy against North Korea at the end of 2002. Having recognized that this hostile policy of the United States was a grave threat to its ‘supreme national interests’ and sovereignty, on January 10, 2003, North Korea declared their withdrawal from the NPT.\textsuperscript{95} It accelerated the tension between the North Korea and the IAEA that in turn escalated into the second nuclear crisis on the Korean peninsula. The disagreements between the two sides was hardly alleviated by the mediation proposal of the IAEA\textsuperscript{96} and the following the war in Iraq.

Since the U.S. invasion of Iraq in March/April 2003, nuclear strains on the Korean peninsula have not heightened. Moreover, with North Korea’s acceptance of multilateral dialogues on April 14, 2003\textsuperscript{97} two nuclear talks were held in Beijing. Among them, the six-party talks in August were notable. With the newly reinforced peaceful mood, the nuclear standoff is expected to be resolved gradually. The chronology of the development of nuclear tension between the United States and North Korea from October 2002 to August 2003 is illustrated in Table 2.

\textsuperscript{91} See Lee, \textit{supra} note 6, at 297.


\textsuperscript{94} For details on the tailored containment policy, see J. Gittings \& O. Burkeman, \textit{Bush Seeks to Turn Screw on N. Korea: Tailored Containment Policy, available at http://dawn.com/2002/text/int12.htm} (last visited June 8, 2004).


\textsuperscript{96} The details of the mediation proposals of the IAEA can be found in the \textit{Fact Sheet on DPRK Nuclear Safeguards}, see IAEA, \textit{supra} note 15, at 2-3.

Table 2: The Road to the Six-Party Talks in Beijing

<table>
<thead>
<tr>
<th>Date</th>
<th>Nuclear Standoff</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 4, 2002</td>
<td>North Korea reportedly acknowledged its nuclear weapons development program when James Kelly visited Pyongyang.</td>
</tr>
<tr>
<td>October 25, 2002</td>
<td>North Korea proposed a non-aggression pact with the United States.</td>
</tr>
<tr>
<td>November 14, 2002</td>
<td>KEDO announced the discontinuance of heavy oil supply to North Korea.</td>
</tr>
<tr>
<td>December 12, 2002</td>
<td>The United States declared the nullification of the Geneva Agreed Framework with North Korea.</td>
</tr>
<tr>
<td>December 27, 2002</td>
<td>North Korea purged the IAEA inspectors from its territory.</td>
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<td>December 29, 2002</td>
<td>The United States adopted a ‘tailored containment’ policy against North Korea.</td>
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<td>January 10, 2003</td>
<td>North Korea withdrew from NPT.</td>
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<tr>
<td>March 17, 2003</td>
<td>The U.S. Ambassador to South Korea clarified that U.S. policy toward Korea would be different from the case of Iraq.</td>
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<tr>
<td>April 14, 2003</td>
<td>North Korea announced its acceptance of new multilateral talks for resolution of nuclear problem.</td>
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<tr>
<td>April, 23, 2003</td>
<td>Trilateral Talks (DPRK, USA and China) in Beijing, China</td>
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<tr>
<td>July 12, 2003</td>
<td>Chinese Vice Foreign Minister Dai Bingguo visited North Korea</td>
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<tr>
<td>July 17, 2003</td>
<td>Dai Bingguo visited Washington</td>
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<tr>
<td>August 1, 2003</td>
<td>North Korea agreed to participate in six-party talks</td>
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<tr>
<td>August 27-9, 2003</td>
<td>First Round of Six-Party Talks in Beijing, China</td>
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<tr>
<td>February 25-8, 2004</td>
<td>Second Round of Six-Party Talks in Beijing, China</td>
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B. The Six Party Talks

1. Road to the Six-Party Talks

Beginning in April 2003, the United States and North Korea resumed contacts to ease the standoff over North Korea’s suspected nuclear weapons program. The first instance of contact occurred during the trilateral talks between China, the United States and North Korea, held in Beijing on April 23, 2003.\textsuperscript{98} One day before the talks Assistant Secretary of State James Kelly, the U.S. representative, met with Chinese Vice Foreign Minister Wang Yi to discuss the current agenda. Kelly seemed to be anticipating the role of China in persuading North Korea to completely dismantle its nuclear weapons program.\textsuperscript{99} North Korea’s representative, Ri Gun, the Foreign Ministry deputy director of American affairs, however, did not change his position. Instead, Ri reiterated calls for a legally binding non-aggression pact with the United States in exchange for its nuclear disarmament.\textsuperscript{100} The outcome of the trilateral talks could not but be severely restricted. This is due not only to the incompatibility of the United States and North Korea, but also because one of the main actors of the North Korean nuclear issue, South Korea, did not attend the meeting. Despite this lack of attendance, those countries that did attend the trilateral talks agreed to establish an extended multinational cooperative framework with a view to resolving the North Korean nuclear problem in a more peaceful and systematic manner.\textsuperscript{101} Such an envisaged framework was finally linked with the six-party talks in August of 2003.

2. Meeting of the Six Nations

On August 27, 2003, six nations—China, the United States, Russia, Japan and the two Koreas—gathered at a hexagonal table in Beijing for a three-day meeting to discuss how to resolve the pressing issue of North Korea’s suspected nuclear weapons program.\textsuperscript{102} The meeting served as a forum for clarifying the positions between North


\textsuperscript{99} Id.

\textsuperscript{100} Id.

\textsuperscript{101} James Kelly visited Seoul to consult with South Korean officials about the outcome of the talks. See South Seeks Chair at Talks, \textit{Korea Herald}, Apr. 23, 2003.

Korea and the United States. However, their mutually irreconcilable positions were reconfirmed. North Korea’s objective was to construct a new level of relations leading to the normalization of ties with the United States, and to obtain economic rewards for giving up its nuclear program. North Korea’s position may be divided into the following: (1) it wanted to confirm that the United States would shift away from its hostile policy; (2) it wanted to secure a non-aggression treaty that would strictly and legally guarantee that neither of the two sides would resort to attacking one another; and (3) it would not submit to inspections until the United States would agree to abandon its antagonistic position toward North Korea. The United States, however, was deliberately vague on what rewards it might bestow upon North Korea if it agreed to dismantle its nuclear weapons program in a verifiable and irreversible manner.

The purposes of the other nations that were present at the talks may be summarized as follows: China tried to play the role of an active mediator, by hosting the second nuclear talks after the trilateral meeting in April 2003. China also attempted to increase its influence over the Northeast Asian region. Russia, by offering a joint assurance (along with China) to the Kim Jong-II regime in North Korea, wanted to intervene as a main actor in resolving the nuclear crisis. Japan’s primary concern in the talks was to solve the kidnapping of the Japanese by North Korea as well as to maintain its security from the suspected nuclear weapons and missiles. Finally, South Korea, by reconfirming

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103 See Hwang & Kim, supra note 102.

104 Id.


106 Stressing the multinational nature of the nuclear problem, the United States refused to deal one-on-one with North Korea at the six-party talks. See Soo-Min Seo, Six Nations, Six Agendas, KOREA TIMES, Aug. 27, 2003, at 3.


109 Kim Jong-II admitted that North Korea had kidnapped some Japanese citizens in previous decades. The Japanese citizens were allowed a visit, but have not returned to North Korea. This situation has become an important issue between the two countries. For details on Japan’s position, see The Ministry of Foreign Affairs of Japan, Six-Party Talks on North Korean Issues, available at
its position as the most important counterpart of North Korea, hoped to enforce a non-nuclear Korean peninsula plan.\textsuperscript{110} South Korea had hoped that the success of the multilateral talks would translate into a more permanent peace regime between the two Koreas.

3. Outcome of the Talks

The six-party talks provided participants with a forum for exchanging their basic positions. The six nations failed to adopt a joint statement of any kind. Although no countries were able to make significant breakthroughs, their expectations were partially fulfilled, as further meetings would be likely. China’s Deputy Foreign Minister Wang Yi summed up the consensus of all the parties and delivered it in a press conference. The following objectives were enumerated:

1. The nuclear issue should be resolved through peaceful means and dialogue, and stability and peace should be maintained on the Korean peninsula;

2. While a nuclear-free Korean Peninsula should be realized, the security concerns of the DPRK should also be taken into consideration;

3. While the process of negotiations is under way, all participants should refrain from taking any action that may aggravate the situation;

4. In order to resolve the standoff, the parties should take parallel or simultaneous step; and

5. The six-party talks should continue, and the specific date and venue should be decided through diplomatic channels as soon as possible.\textsuperscript{111}

The outcome of the six-party talks may also be examined in the following context: Who gained the most and who gained the least? Constituting the former, China might be seen as the reigning winner. China was outstanding as a host, and tried diligently to facilitate

\textsuperscript{110} See Seo, supra note 106.

unofficial bilateral contacts between North Korea and the United States. China also attempted to forge a consensus among the participants. As a result, China emerged as the more assertive diplomatic power. The United States partially obtained the basic objectives that it had desired. The primary goal of the United States was to settle the North Korean nuclear issue within the multilateral frame. (This was achieved by placing pressure on Kim Jong-Il.) A multilateral channel may also be an efficient measure for the United States’ policy towards China. For Japan and Russia, the opportunity to participate in the multilateral negotiations was beneficial, and may also be viewed as an accomplishment in its own right. Unlike the trilateral talks in April, South Korea was able to attend the six-party talks and confirm its position as a main counterpart of North Korea. South Korea is expecting to play a more influential role in this process. North Korea, however, may not have been satisfied with the outcome of the talks. It was supposedly disappointed with China and Russia. Even worse, North Korea’s proposal to exchange an expression of its good will to the United States was refused.

VI. CONCLUSION: THE SECOND SIX-PARTY TALKS

This article has analyzed, legally and politically, the process and outcomes of the North Korean nuclear dispute resolution. The most important measure in this discussion was the fate of the IAEA nuclear safeguards system. Because the IAEA failed to solve the North Korean nuclear dispute and turned to the U.N. Security Council, this controversial question has been intermingled with political and diplomatic considerations. Two confrontational actors on this stage were North Korea and the United States. From the beginning, North Korea wanted to contact, directly, the United States because it regarded the U.S. as the only accountable counterpart for discussing the question of the Korean peninsula. They talked and finally reached an accord, the Agreed Framework after one year of negotiations. The Agreed Framework obligated North Korea: (1) to eliminate its existing capability

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113 Id.

114 For details, Tae-Hyo Kim, How to Resolve the North Korean Nuclear Question, in ANALYSIS OF MAJOR INTERNATIONAL QUESTIONS 3-7 (2003).

115 See Koh, supra note 108, at 6-7.

116 Id. at 7.
to produce weapons grade plutonium; (2) to resume full membership in the NPT, including the requirement to comply completely with the IAEA safeguard agreement; (3) to allow the IAEA inspectors to investigate suspected nuclear waste sites and to place any nuclear material not previously identified under the IAEA safeguards; (4) to consistently take steps to execute the North-South Joint Declaration of the Korean Peninsula; and (5) to engage in North-South Korea dialogue. The Agreed Framework turned the confrontation between the United States and North and South Korea into cooperation. The LWR project finally approached a resolution for the peaceful use of nuclear energy on the Korean peninsula.

This compromise phase of cooperation, however, was broken when U.S. President George W. Bush was inaugurated in 2001. From the beginning, Bush took a hostile policy recognizing North Korea as a WMD-making country with his statement of declaring North Korea as part of an “axis of evil.” To make matters worse, in October 2002, North Korea acknowledged the existence of a nuclear weapons development program. This announcement ignited a second nuclear crisis in North Korea. While such a clash could not be easily reconciled, it needed to be dealt with through a multilateral framework. China started the process by acting as a mediator at the trilateral talks in April 2003. Based on the three-way talks, China and the United States proposed to expand the number of participants to six, by adding Russia, Japan and South Korea to construct a more stable multilateral frame to resolve the North Korean nuclear question peacefully. The historical six-party talks were held in Beijing in August 2003. The result of the first six-party talks was insignificant, except that the parties exchanged and confirmed their own positions. Through a number of direct contacts at the six-party talks in Beijing, the United States and North Korea agreed that the nuclear weapons problem should be resolved peacefully and that they needed to keep the dialogue running continuously. They disagreed, however, as to who should make the first step. North Korea insisted that the United States first sign a non-aggression pact to resolve the nuclear conundrum; North Korea’s purpose was to establish diplomatic relations with the United States. The United States, however, wanted North Korea to dismantle its nuclear facilities prior to any incentives on this issue. A highly topical question is how to guarantee the security of the Kim Jong-II regime in North Korea. Both sides are still struggling over these issues; Pyongyang desires a legally binding non-aggression pact, while Washington is sticking to a less formal written assurance.

The six-party talks were definitely a turning point in the evolution of a nuclear standoff between the United States and North Korea. A closer inspection of the agreement between all the

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117 See Wilborn, supra note 62, Summary.
participants of the six-party talks to gather again for further discussion is essential.

As the number of meetings and talks increase in the future, hopefully a settlement of the controversies can occur under a multilateral framework. In this process, all the parties should keep in mind the following: First, this nuclear dispute should be resolved under the basic principles of international law. The importance of peaceful means and sovereign equality cannot be emphasized enough. Second, all the participants should respect the IAEA’s safeguards regime and harmonize under an international standard of nuclear control. Thus, the active role of the IAEA should be highly recommended. Third, the basic spirit of the Agreed Framework should not be ignored. The most important principle of the agreement is the peaceful use of nuclear energy on the Korean peninsula. Although the substantial binding force of the Agreed Framework has been nearly nullified at the moment, the agreement’s underlying principles should be pursued by every nation. Lastly, to avoid a hasty conclusion, it is necessary to ascertain the very basic question relating to this dispute: Had North Korea really been developing nuclear weapons? In spite of many conjectures, indirect sources, and even ambiguous statements from North Korean officials, no one has shown clear evidence that North Korea is actually carrying out a nuclear weapons development program. North Korea’s statements on this question have always been confined to the probability of a nuclear development program, which might be transformed into weapons development project. A nuclear development program does not directly imply nuclear weapons development.

The parties of the six-party talks recently launched a series of multilateral talks regarding North Korean nuclear standoff. The second round of six-party talks was held between February 25th and 28th of 2004. This second round of talks signifies a momentum of upgrading the multilateral cooperative frame for resolving the current North Korean nuclear crisis. In the second round of talks, key parties seemed to be more positive than the first round of talks. North Korea, taking a more pro-active stance in closed-door plenary sessions, repeated its previous positions including the conclusion of a non-aggression treaty with the United States and the immediate resumption of providing heavy oil and electricity. The United States, on the other hand, demanded that North Korea dismantle its nuclear program including the suspected uranium based one in a “complete, verifiable and irreversible” manner. South Korea proposed a three-step solution to coordinate this dissident. After the four-day talks, the six parties adopted the


Chairman’s Statement. In the Statement, the attending parties expressed their commitment to a nuclear-weapon-free Korean peninsula and to resolving the nuclear issue peacefully through dialogue. The parties agreed to not only continue the process of the talks and agreed in principle to hold the third round of six-party talks in Beijing no later than the end of the second quarter of 2004, but also set up a working group in preparation for the plenary session. Despite the huge gap still remaining between them, the second round nuclear talks became a stepping stone for standardization of the multilateral meetings to settle the North Korean nuclear dispute.

Extensive discussions and cooperation is still required before a final resolution can be reached. All disputes must be settled under relevant international legal principles; the safeguards regime and the Agreed Framework will thus be substantial baselines of the process.

The peaceful settlement of the North Korean nuclear dispute will be the key to a peaceful and prosperous 21st century in Northeast Asia. As the parties strive toward a peaceful lasting resolution, it would be wise to keep in mind that many disputes of human society should, however, be resolved first within the human mind. Endurance, wisdom and generosity—these are the prerequisites for the journey toward nuclear peace in this region.
