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## Denuclearization of the Korean Peninsula: Recent Agreements and Lessons from the Past

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## Denuclearization of the Korean Peninsula: Recent Agreements and Lessons from the Past

### Cover Page Footnote

J.D. Candidate Dec. 2007 at Florida State University College of Law. Special thanks to my ever-helpful wife my colleague.

# DENUCLEARIZATION OF THE KOREAN PENINSULA: RECENT AGREEMENTS AND LESSONS FROM THE PAST

JARED M. LEE\*

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## I. INTRODUCTION

Just a mere five months after the Democratic People's Republic of Korea (DPRK or North Korea) successfully tested its first nuclear weapon, possibly signaling the most dismal point in the efforts to denuclearize the Korean Peninsula, the International Atomic Energy Agency (IAEA) Director General Mohamed El-Baradei concludes a visit to North Korea symbolically representing a surprising reversal in the international political landscape. El-Baradei's visit followed an agreement announced on February 13, 2007 at the Six Party Talks in Beijing, China.<sup>1</sup> The February Implementing Agreement (the February 13 Agreement) is one of the largest steps towards denuclearization of the Korean Peninsula since the 1994 Agreed Framework.<sup>2</sup>

However, the current agreement has received instant criticism for its similarities to the 1994 Agreement<sup>3</sup> that not only failed to stop North Korea's renouncement of the Nuclear Non-Proliferation Treaty (NPT),<sup>4</sup> but was also unsuccessful in preventing the development of as many as eight nuclear weapons<sup>5</sup> and the testing of

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\* J.D. Candidate Dec. 2007 at Florida State University College of Law. Special thanks to my ever-helpful wife my colleague.

1. Condoleezza Rice, Sec'y of State, U.S., Briefing on the Agreement Reached at the Six-Party Talks in Beijing (Feb 13, 2007) (transcript available at <http://www.state.gov/secretary/rm/2007/feb/80496.htm>).

2. Tom Lantos, Chairman, Committee on House Foreign Affairs, North Korea: The February 13 Agreement (Feb. 28, 2007) (stating that "it would be profoundly unwise not to recognize the enormous significance of this deal").

3. *Id.* (noting the criticism in Washington for the similarity between the February Agreement and the 1994 Agreed Framework).

4. Assia Dosseva, *Recent Developments*, 31 *Yale J. Int'l L.* 265, 266 (2006); Devon Chaffee, *North Korea's Withdrawal from Nonproliferation Treaty Official*, Nuclear Age Peace Foundation, Apr. 10, 2003.

5. Sharon Squassoni, North Korea's Nuclear Weapons: Latest Developments, Congressional Research Service, available at [http://italy.usembassy.it/pdf/other/RS2\\_1391.pdf](http://italy.usembassy.it/pdf/other/RS2_1391.pdf) (North Korea may have enough Plutonium for eight to ten weapons).

both long-range missiles and nuclear weapons.<sup>6</sup> Similarly, the Joint Statement in September 2005<sup>7</sup> was also ineffective in stifling the communist state's nuclear ambitions, partially undermined by the United State's accusation and investigation of money laundering by Pyongyang that resulted in the freeze of a \$25 million DPRK bank account.<sup>8</sup> Nevertheless, it is on the framework of the 2005 Joint Statement on which the current agreement moves forward.<sup>9</sup>

The most recent agreement is the first step to instituting the September 2005 Joint Statement. If legitimized as a basis for future action and cooperation, the product of the Fifth Round is a solid starting point for achieving the goals and objectives outlined by the Six Party Talks in 2005, namely the imperative denuclearization of the Korean Peninsula.<sup>10</sup> If the U.S. instead denies North Korea's credibility, history risks repeating itself. This time, however, nuclear weapons will be involved, jeopardizing not regional but global stability.

## II. BACKGROUND

North Korea has an inauspicious history of back-and-forth agreements and retractions on nuclear weapons.<sup>11</sup> It has often been accused of using nuclear weapons as a negotiating or blackmail technique.<sup>12</sup> Many hardliners and hawks in Washington are unwilling to trust Pyongyang and have outspokenly denied the

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6. *Id.* at 1; Paul Richter, *N. Korea Pact Marks Major Shift for Bush*, L.A. Times, Feb. 14, 2007, at A1.

7. *Joint Statement of the Fourth Round of the Six-Party Talks*, Six Party Talks (September 19, 2005) available at <http://www.state.gov/r/pa/prs/ps/2005/53490.htm> [Hereinafter 2005 Joint Statement].

8. Barbara Demick, *Macau Getting Image Makeover*, L.A. Times, available at [http://seattletimes.nwsourc.com/html/nationworld/2002934645\\_macau17.html](http://seattletimes.nwsourc.com/html/nationworld/2002934645_macau17.html).

9. Christopher R. Hill, Asst. Sec'y for East Asian and Pacific Affairs, Statement Before the House Foreign Affairs Committee (Feb. 28, 2007), available at <http://www.state.gov/p/eap/rls/rm/2007/81204.htm> (Hill stating that the Feb 13 agreement is a step to implement the Sept 2005 Joint Statement); Christopher R. Hill, Asst. Sec'y for East Asian and Pacific Affairs, Evening Walkthrough With Reporters at the Six-Party Talks (Feb. 8, 2007), available at <http://www.state.gov/p/eap/rls/rm/2007/80298.htm>; Condoleezza Rice *supra* note 1 (stating that the Feb. Agreement is an "initial implementing agreement of the joint statement of September 2005").

10. See John R. Crook, *U.S. and Other Powers Reach Tentative Understanding on North Korea's Nuclear Program*, 99 AM. J. INT'L L. 914, 914 (2005) (The Six Parties began as and remain the United States, North Korea (DPRK), China, Japan, Russia and South Korea (The Republic of Korea or ROK)).

11. *Id.* at 914-15.

12. DYER, Gwynne, *North Korea: the '05 deal again*, The Daily News (New Plymouth, N.Z.) Feb. 22, 2007 (quoting former US ambassador to the UN John Bolton as saying "North Korea has been going through its blackmail handbook, but we're not going to play.").

credibility of the recent development.<sup>13</sup> However, Washington is not without unclean hands, and just like the armed communist state, it has failed to live up to all the tenants of the previous agreements.<sup>14</sup>

Nuclear disagreements with North Korea date back to the discovery of uranium in the mid-sixties.<sup>15</sup> In 1974 and 1985 respectively, DPRK joined the International Atomic Energy Agency (IAEA) and the Nuclear Non-Proliferation Treaty (NPT).<sup>16</sup> Yet flippantly in 1993, North Korea threatened to withdraw from the NPT and denied IAEA inspection of nuclear facilities.<sup>17</sup> After bilateral negotiation with the United States<sup>18</sup> and the voluntary, guest appearance by former President Jimmy Carter,<sup>19</sup> the Geneva Protocol, also known as the Agreed Framework, was adopted in October of 1994.<sup>20</sup>

The Agreed Framework outlined a number of goals including the normalization of relations between North Korea and the U.S. The U.S. promised to supply the DPRK with heavy fuel oil while it coordinated the construction of two proliferation resistant light-water reactor power plants.<sup>21</sup> Eight years later, in 2002, the reactors had not been built and plans for their construction were publicly abandoned when possession nuclear weapons were admitted by a DPRK official.<sup>22</sup> This was later formally denied by the North Korean government.<sup>23</sup> The heavy oil shipments were also stopped in 2002 after President George W. Bush named North Korea a part of his "Axis of Evil."<sup>24</sup> Then, after the U.S. stopped shipment of oil, the DPRK accused the U.S. of breaching the Agreed Framework.<sup>25</sup>

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13. See Donald Kirk, *North Korea hawks down but not out*, The Asian Times, Mar. 14, 2007, available at <http://www.atimes.com/atimes/Korea/IC14Dg01.html>.

14. See Karen M. Takishita, *U.S. Economic Sanction Against North Korea: An Unsuccessful and Sanctimonious Policy Ripe for Modification*, 14 PAC. RIM L. & POL'Y J. 515 (2005); see also *infra* notes 21 & 22 (discussing the failure to build light water reactors).

15. Eric Yong-Joong Lee, *The Six-Party Talks and the North Korean Nuclear Dispute Resolution Under the IAEA Safeguards Regime*, 5 ASIAN-PAC. L. & POL'Y J. 3 (2004).

16. *Id.*

17. Dosseva, *supra* note 4 at 265-266.

18. *Id.*

19. Morse Tan, *The North Korean Nuclear Crisis: Part Failures, Present Solutions*, 50 ST. LOUIS U. L.J. 517, 532 (2006); Lee, *supra* note 15.

20. *Id.*

21. Lee, *supra* note 15; Takishita, *supra* note 14 at 534.

22. Kristen Eichensehr, *Broken Promises: North Korea's Waiting Game*, Disease, Vol. 23 (3) (2001).

23. Tan, *supra* note 19.

24. Abid Mustafa, *US Normalising Relations With The Axis Of Evil*, Countercur-rents.org, available at <http://www.countercurrents.org/mustafa100307.htm>.

25. Tan, *supra* note 19 at 533.

Early in 2003, North Korea withdrew from the NPT without warning and without following the steps outlined in the treaty.<sup>26</sup>

Six nations including China, the United States, Russia, Japan and the two Koreas, “gathered at a hexagonal table in Beijing for a three-day meeting [in August 2003], to discuss how to resolve the pressing issue of North Korea’s suspected nuclear weapons program.”<sup>27</sup> After several rounds of Six Party Talks, in September 19, 2005, they appeared to reach a successful milestone.<sup>28</sup> Without outlining the implement stages of the agreement, the parties released the Joint Statement of the Fourth Round of the Six-Party Talks.<sup>29</sup>

While surprisingly silent on the steps to denuclearization of the DPRK, the Joint Statement announced that Pyongyang was committed to abandoning all nuclear programs and weapons, a return to the NTP and supervision under the IAEA.<sup>30</sup> In addition to the United States’ pronouncement that it had no nuclear weapons on the Korean Peninsula, the U.S. also stated that it had no intention of attacking or invading the “DPRK with nuclear or conventional weapons.”<sup>31</sup> The Republic of Korea (South Korea or ROK) concurrently affirmed that it had no nuclear weapons on the peninsula.<sup>32</sup> The agreement ends with a statement of consensus that the six parties would continue to meet to discuss the implementing steps for that statement in “phased manner” explaining that it would be “commitment for commitment, action for action.”<sup>33</sup> However broad, the Joint Statement left no doubt that its purpose was the denuclearization of the Korean Peninsula and it is now the basis for the current implementing agreement.

The Joint Statement expressed that all of the nations were committed to helping the DPRK through energy assistance. While the statement includes an assertion by the DPRK that it has a right to the peaceful use of nuclear energy, it explicitly declines to address the timeline of the development of the light water reactor that was promised by the 1994 Agreed Framework stating that the parties “agreed to discuss, at an appropriate time, the subject of the provision of light water reactor to the DPRK.” Similarly, it does not promise oil or any other assistance specifically other than

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26. Chaffee, *supra* note 4; Dosseva, *supra* note 4 at 265-266.

27. Lee, *supra* note 15.

28. Dosseva, *supra* note 4 at 265 (the Joint Statement was also hailed as a breakthrough).

29. 2005 Joint Statement, *supra* note 7.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

a pledge by ROK to provide “2 million kilowatts of electric power to the DPRK.”<sup>34</sup> The agreement clearly anticipates other “implementing agreements” that will follow and supplement the skeleton of goals.<sup>35</sup>

Nonetheless, the DPRK withdrew from the Six Party Talks because of sanctions placed upon it by the U.S. related to the investigation of possible money laundering and counterfeiting by Pyongyang and the resulting freeze placed on a \$25 million DPRK bank account in Macau, China.<sup>36</sup> The Joint Statement appeared to be dead for over a year as Pyongyang tested both long-range missiles and proceeded to contradict its stated goal of denuclearization by performing tests of a nuclear weapon.<sup>37</sup> The DPRK tested at least seven missiles in July 2006 including a long-range Taepodong, which is speculated to be able to reach Hawaii and parts of Alaska.<sup>38</sup> In October, the DPRK threatened imminent nuclear testing<sup>39</sup> that later occurred on October 9.<sup>40</sup> The world was given little warning that the test was about to occur. In fact, China was informed only twenty minutes before the blast. Other nations received frighteningly less notification.<sup>41</sup>

North Korea blamed the “[United States] extreme threat of a nuclear war and sanctions and pressure”<sup>42</sup> for the need to conduct the nuclear tests and ironically called for a multilateral disarmament that would lead to “world-wide nuclear disarmament and the ultimate elimination of nuclear weapons.”<sup>43</sup> Still, the nuclear test-

34. *Id.*

35. 2005 Joint Statement, *supra* note 7.

36. *N Korea offers nuclear talks deal*, BBC Apr. 13, 2004

<http://news.bbc.co.uk/2/hi/asia-pacific/4905308.stm>.

37. See Squassoni *supra* note 5 at 1; Michael Evans, *A test wrapped up in a Riddle*, *The Australian* (Austl.), Oct 11, 2006. Compare 2005 Joint Statement, *supra* note 7 with the DPRK’s stated goal of denuclearization and abandonment of all nuclear weapons with nuclear tests in Oct. 2006.

38. The Taepodong missile launch appeared to be unsuccessful as it seemed to exploded midair minutes after launch and went no further than other short-range missiles tested. See, Barbara Demick, *A Big, Booming Cry for More Attention?*, *L.A. Times*, Jul. 6, 2006; Stephen J. Hedges, *Missile fizzle hurt N. Korea*, *Chicago Tribune*, July 6, 2006, at C17; Paul Richter and Barbara Demick, *A Level Reply to N. Korea Missiles*, *L.A. Times*, July 6, 2006, at A1.

39. *N Korea statement on nuclear test*, BBC News, Oct. 3 2006, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/5402292.stm> (summarizing the N. Korean Statement on Oct. 3) [hereafter DPRK Statement].

40. See generally, *North Korea Conducts Nuclear Test*, Center for Nonproliferation Studies Monterey Institute of International Studies, Oct 10, 2006, available at [http://cns.miis.edu/pubs/week/pdf/061010\\_dprktest.pdf](http://cns.miis.edu/pubs/week/pdf/061010_dprktest.pdf); Squassoni *supra* note 5 (discussing the North Korean nuclear test including a technical analysis).

41. *1st lead: U.S. Congressman thanks China for informing U.S. of DPRK nuclear test*, *Xinhua General News Service*, Oct. 10, 2006.

42. DPRK Statement, *supra* note 39.

43. *Id.*

ing lead to an escalation of international tension as the United Nations voted only five days later to impose sanctions on the already impoverished nation.<sup>44</sup> Even Pyongyang's friendliest neighbor and "key ally" China voted in support of the economic sanctions.<sup>45</sup> North Korea responded by declaring the sanctions and political pressure an act of war.<sup>46</sup>

Possibly because of international pressure, or potentially because it felt a new bargaining advantage as a nuclear nation, DPRK expressed at the end of October 2006 that it would return to the Six Party Talks.<sup>47</sup> It was reported that its return to the table was a result of "frantic behind-the-scenes negotiations" by the Chinese to restart the derailed diplomacy.<sup>48</sup> The Second phase of the Fifth round of negotiation resumed in December. The round concluded, however, without a written agreement<sup>49</sup> and resumed in the Third phase from February 8-13.<sup>50</sup> Through many days of negotiation as well as multiple intermittent bilateral negotiations, a "breakthrough" agreement was drafted and released.<sup>51</sup>

### III. CURRENT AGREEMENT

The February 13 Agreement is the first step in implementing and reestablishing the legitimacy of the September 2005 Joint Statement. While there are many issues yet to be resolved such as the light water reactors, the Agreement is a much-needed diplomatic triumph that has been welcomed by the Bush administration. By creating working groups, allowing the IAEA back into DPRK and delivering energy assistance to the impoverished nation, it will actually start to put flesh on the skeleton of the Joint Statement

The current agreement introduces a number of straightforward tasks accompanied by an expeditious timeline. North Korea is

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44. David Osborne, *U.N. Imposes Sanctions on North Korea*, Independent on Sunday (London), Oct. 15, 2006.

45. *North Korea Talks Set to Resume*, BBC, Oct. 31, 2006, available at <http://news.bbc.co.uk/2/hi/asia-pacific/6102092.stm> [hereafter *Talks Resume*].

46. *U.N. Imposes Sanctions on North Korea*, CNN, aired Oct 14, 2006, available at <http://transcripts.cnn.com/TRANSCRIPTS/0610/14/cnr.08.html>.

47. *Talks Resume*, *supra* note 45.

48. *Id.*

49. *See Six-Party Nuclear Talks Recess, Issuing Chairman's Statement*, People's Daily Online, available at [http://english.people.com.cn/200612/22/eng20061222\\_335123.html](http://english.people.com.cn/200612/22/eng20061222_335123.html).

50. *Id.* *The Fifth Round of Beijing Six-party Talks Wraps Up Adopting a Document on the Initial Step to Implement the Joint Statement*, Consulate General of the People's Republic of China in San Francisco, available at <http://www.chinaconsulatesf.org/eng/xw/t298177.htm>.

51. Rice, *supra* note 1.



given a sixty-day “initial phase”<sup>52</sup> to “shut down and seal for the purpose of eventual abandonment the Yongbyon nuclear facility.”<sup>53</sup> The agreement also invites the IAEA back to the Asian peninsula to monitor nuclear sites and additionally develops and discusses a comprehensive inventory of all nuclear programs and material that will eventually be abandoned.<sup>54</sup> Meanwhile, the U.S. and DPRK will embark on the process of normalizing relations by bilaterally discussing the removal of the “state-sponsor of terrorism” label and the associated economic sanctions.<sup>55</sup> Japan will similarly attempt to rehabilitate the unstable relationship it has with its communist neighbor.<sup>56</sup> All five countries agree to provide “economic, energy and humanitarian assistance to the DPRK,” specifically in the shipment of 1 million tons of heavy fuel oil, though only 50,000 tons to be shipped during the initial phase.<sup>57</sup>

The most recent agreement is the first of many steps required to implement the 2005 Joint Statement. However, unlike previous agreements and subsequent statements, it establishes a timeline for an initial sixty-day window of implementation. This quickly approaching deadline allows defined and verifiable steps to be completed on both sides. To develop specific plans for implementing the 2005 Joint Statement, the February 13 Agreement behests:

Five working groups [that] will meet within the [first] 30 days to implement the Initial Actions and the Joint Statement of September 2005. These working groups will focus on denuclearization of the Korean Peninsula, normalization of relations between North Korea and the United States, normalization of relations between North Korea and Japan, economy and energy cooperation, and Northeast Asia peace and security.<sup>58</sup>

Unlike previous U.S – DPRK measures such as the 1994 Agreed Framework, the 2005 Joint Statement and February 13 Agreement are multilateral.<sup>59</sup> Secretary of State Condoleezza Rice and Assistant Secretary Christopher Hill have focused on the

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52. North Korea - Denuclearization Action Plan, Six Party Talks, *available at* <http://www.state.gov/r/pa/prs/ps/2007/february/80479.htm> [hereafter Action Plan] .

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *North Korea: An Important First Step*, U.S. State Dept, *available at* <http://www.state.gov/r/pa/scp/80575.htm>; Action Plan, *supra* note 52.

59. Hill, Statement Before the House Foreign Affairs Committee, *supra* note 9.

stake that all of the players in the region have in enforcing this agreement.<sup>60</sup>

On March 14, IAEA Director General Mohamed ElBaradei completed his visit to Pyongyang.<sup>61</sup> After meeting with high level DPRK officials he reported that the nation appeared to be “fully committed” to the “Initial Actions” agreement declaring that “[t]hey are ready to work with the Agency to make sure that we monitor and verify the shutdown of the Yongbyon facility [and are] committed to the denuclearization of the Korean peninsula.”<sup>62</sup>

The Sixth round of the Six Party talks commenced on March 19<sup>63</sup> and all of the working groups should have met and discussed the initial steps to beginning their work.<sup>64</sup> Intentionally or coincidentally, just as the parties embarked on another round of negotiations, the U.S. publicly announced that it had resolved the dispute surrounding the North Korean bank account with Banco Delta Asia that was frozen eighteen months ago obliterating any immediate potential solutions to the nuclear crisis.<sup>65</sup> The current resolution, however, is expected to lead to the swift shutdown of the Yongbyon site and opening it to IAEA inspection.<sup>66</sup>

#### IV. CONCLUSION

Nuclear weapons, economic sanctions, UN restrictions and international pleasure have only further isolated the North Korean nation. Although there is an acknowledgeable risk that the repeat offender may again use nuclear weapons as an attention-getting

60. Christopher R. Hill, Assistant Secretary for East Asian and Pacific Affairs, Update on the Six-Party Talks, Feb. 22, 2007, available at <http://www.state.gov/p/eap/rls/rm/2007/81050.htm>; Condoleezza Rice *supra* note 1.

61. IAEA Director General Concludes Trip to the DPRK, International Atomic Energy Agency, Mar. 15 2007, available at [http://www.iaea.org/NewsCenter/News/2007/dg\\_dprk\\_concludes.html](http://www.iaea.org/NewsCenter/News/2007/dg_dprk_concludes.html).

62. *Id.*

63. Luis Ramirez, *US, N. Korea Resolve Dispute Over Frozen Funds*, Voice Of America, Mar. 19, 2007, available at <http://voanews.com/english/2007-03-19-voa9.cfm>; *New round of six-party nuke talks launched*, The Hindu, Mar. 19, 2007, available at <http://www.hindu.com/thehindu/holnus/003200703191022.htm>.

64. See *Six-party talks move into practical phase*, People's Daily Online, Mar. 19, 2007, available at [http://english.people.com.cn/200703/19/eng20070319\\_359041.html](http://english.people.com.cn/200703/19/eng20070319_359041.html).

65. Ramirez, *supra* note 63; Mark Magnier, *Frozen funds to be released to North Korea*, L.A. Times, Mar. 19, 2007, available at <http://www.latimes.com/news/nation/world/world/la-fg-norkor19mar19,1,1270784.story?coll=la-headlines-world>; Joseph Kahn, *U.S. clears fund dispute that stalled North Korea nuclear pact*, San Francisco Chronicle, Mar. 19, 2007, available at <http://www.sfgate.com>; Byun Duk-kun, *Six-way talks resume under shadow of lingering financial sanctions dispute*, Yonhap News, Mar. 19, 2007, available at <http://english.yonhapnews.co.kr>; *N. Korea says will halt reactor if accounts unfrozen*, Interfax, Mar. 19, 2007, available at [http://www.interfax.ru/E/B/politics/28.html?id\\_issue=11694989](http://www.interfax.ru/E/B/politics/28.html?id_issue=11694989) [hereafter Unfrozen].

66. Unfrozen, *supra* note 65.

device, options are scarce and worldwide stability depends on the removal all nuclear threats from the peninsula. Fortunately, regardless of the similarities to the 1994 Agreed Framework, a number of key distinctions provide reason for the U.S. to commit full support to the February 13 Agreement. The most consequential difference is that the 1994 Agreed Framework was bilateral whereas the present agreement is multilateral, linking China and Russia to the arrangement. This variance creates a burden sharing affect where the global powers have incentive to enforce the denuclearization because they are sharing the cost of the support that is being given to North Korea. At the same time, North Korea is discouraged from breaching the agreement because of the regional players' involvement. Moreover, the careful and artful phrasing of agreement builds trust and credibility among each of the parties, supporting the verification of the agreed objectives.

The lack of a realistic military option due to U.S. troops stretched across the Middle East and the desperate importance of halting proliferation in Asia makes this a compact that the U.S. must accept as a legitimate starting point for implementing the 2005 Joint Statement. For the North Koreans, severe economic isolation and the need for aid and normalized relations are likely to be incentives to allow IAEA verification and abandonment of all nuclear programs. To avoid past mistakes, the U.S. and other parties in the talks should follow through on the agreement and move towards discussion of providing Pyongyang with proliferation resistant light-water reactors as an effective and safe energy replacement for the dangerous nuclear facilities it currently possesses. Verification and inspection of all North Korean nuclear sites with international oversight of all plutonium that has been processed must occur immediately. Let's not allow history to repeat itself.

