

# **Compliance Assessment of North Korean and U.S. Obligations Under the Non-Proliferation Treaty and 1994 Agreed Framework**

by Arjun Makhijani, Nicole Deller <sup>[1]</sup>, and John Burroughs <sup>[2]</sup>

January 24, 2003

Also see the press statements of [Nicole Deller](#) and [John Burroughs](#)

The principal question raised by the recent turn of events has been what the United States can do to ensure compliance by North Korea. Of equal importance, both to the specifics of the Korean situation and for the continued relevance of the Non-Proliferation Treaty ([NPT](#)), is what can the United States do to ensure compliance with its obligations?

## **Timeline**

1980-1987: North Korea builds a nuclear reactor, which is gas-cooled and graphite moderated, ostensibly for power but which can [yield](#) a theoretical maximum of 15 kilograms of [plutonium](#) every two years – about three nuclear bombs worth.

1985: North Korea ratifies the [NPT](#).

1989: North Korea withdraws some fuel rods from the reactor. It may have as much as one to two nuclear bombs equivalent of [plutonium](#) as a result of [reprocessing](#) these fuel rods.

1992: IAEA inspections begin and North Korean declarations are found to be false.

Early 1990s: North Korea acquires [reprocessing](#) capacity, i.e. the capacity to separate [plutonium](#) from irradiated fuel.

1993: North Korea threatens to withdraw from the [NPT](#). In June the US and North Korea sign an agreement in principle that is formalized in 1994. North Korea does not withdraw.

1994: Agreed Framework signed. North Korea shuts down reactor and suspends construction of two others then in progress.

Mid-to late 1990s: North Korea begins to acquire capability to fabricate uranium enrichment centrifuges. US provides aid but normalization of trade and security guarantees are not forthcoming.

1998: North Korea tests a medium-range missile.

Late 1990s: Nuclear reactor construction progress stalled. New disputes with the United States.

1999: North Korea agrees to suspend missile testing.

December 2001: US Nuclear Posture Review names North Korea as a possible target, in violation of the Agreed Framework.

January 2002: President Bush names North Korea one of three countries in the “axis of evil.”

Late 2002-early 2003: North Korea uranium enrichment efforts revealed, with possible cooperation of Pakistan. US suspends fuel oil shipments and states that the Agreed Framework must be revisited. North Korea states intention to restart reactors, throws out IAEA inspectors and takes down inspection cameras, announces immediate withdrawal from the [NPT](#) and makes threats of war if the UN or the United States imposes sanctions.

## **Background**

In 1985, North Korea ratified the Nuclear Nonproliferation Treaty ([NPT](#)) as a non-nuclear weapon state. Under the terms of the [NPT](#), North Korea was prohibited from manufacturing or acquiring nuclear weapons or other nuclear explosive devices and was required to accept safeguards as set forth in an agreement with the International Atomic Energy Agency (IAEA) to ensure against diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. North Korea entered into a safeguard agreement in 1992. Subsequent IAEA inspections suggested that North Korea had not made a full declaration of the fuel rods containing [plutonium](#) that it had withdrawn from the graphite-moderated reactor. In the early 1990s, North Korea completed a new [reprocessing](#) line that gave it the capacity to separate [plutonium](#), which led to greater concern on the part of the IAEA. The total amount withdrawn from the reactor in the late 1980s outside of safeguards may contain enough [plutonium](#) for one to two nuclear bombs, but to date, there is no firm information on (1) whether this [plutonium](#) has been separated, (2) whether enough [plutonium](#) has been separated to make a nuclear weapons, and (3) whether one or more nuclear weapons have actually been fabricated into nuclear weapons.

In 1993, North Korea refused to allow the IAEA to inspect its nuclear facilities and in March 1993, announced its withdrawal from the [NPT](#). The United States and North Korea began high-level negotiations and arrived at a preliminary understanding as early as June 1993. North Korea suspended its withdrawal, and inspections resumed. A new breakdown ensued in 1994, when North Korea refused to allow inspectors to investigate certain nuclear facilities and then withdrew from the IAEA. Talks with the United States continued and ultimately resulted in the 1994 Agreed Framework.

## **1994 Agreed Framework**

The Agreed Framework is a series of reciprocal steps aimed at ensuring North Korea’s nonproliferation. The technical non-proliferation provisions of the Agreed Framework required North Korea to shut down its nuclear reactor and [reprocessing](#) plant and freeze construction of its two reactors (50 MW electrical and 200 MW electrical) then under construction. The United States agreed to provide North Korea, through the Korean Peninsula Energy Development Organization (KEDO), two light water reactors, whose irradiated fuel North Korea could not reprocess without extensive, costly, and detectable modifications to its [reprocessing](#) facilities. The United States also agreed to the interim provision of 500,000 tons of fuel oil per year, pending completion of the [light water reactor](#) project. On the diplomatic



side, North Korea agreed to remain a party to the [NPT](#) and both sides agreed to strengthen the nuclear nonproliferation regime. A crucial clause for the North Koreans was that the United States agreed “to provide formal assurances to the DPRK, against the threat or use of nuclear weapons by the U.S.”

The end of the Clinton administration was marked with some further progress with North Korea, including the 2000 U.S.-DPRK Joint Communiqué during which both sides issued a statement that “neither government would have hostile intent toward the other.” North Korea also announced a temporary halt on long-range missile testing. However, construction of the nuclear reactors stalled in the late 1990s, and this became a sore point in the relationship between the two countries.

## **Changes in Policy Under President Bush**

When President Bush first took office, his administration’s position with respect to continuing talks with North Korea waffled. Then the events of September 11, 2001 spawned a revised foreign policy that singled out states suspected of backing terrorists and developing and proliferating weapons of mass destruction. In the January 2002 State of the Union Address, President Bush referred to North Korea, Iran and Iraq as states that, along with their terrorist allies “constitute an axis of evil, arming to threaten the peace of the world.” North Korea was also reportedly included as a target for use of nuclear weapons (along with Russia, China, Iraq, Iran, Syria and Libya) in the December 2001 Nuclear Posture Review. The Nuclear Posture Review reportedly identifies possible “immediate contingencies” requiring nuclear U.S. nuclear use, including one for a North Korean attack on South Korea.

In a June 2002 speech by President Bush, and then in the September 2002 National Security Strategy and the December 2002 National Strategy to Combat Weapons of Mass Destruction, the Bush administration announced a shift in U.S. policy toward possible “preemptive” military action against states acquiring weapons of mass destruction and with links to terrorism. A classified version of the December WMD Strategy reportedly authorizes preemptive strikes on states and terrorists that are close to acquiring weapons of mass destruction or long range missiles for delivery, and an appendix reportedly names North Korea among the countries that are the focus of the strategy.

## **The Resumption of North Korea’s Nuclear Programs**

In October 2002, according to U.S. officials, North Korea admitted that for several years it had been acquiring the capacity to build a plant for producing highly enriched uranium for nuclear weapons. It is unclear at this time whether North Korea has actually built such a plant and if so, whether it has produced any highly enriched uranium. In November 2002, the United States halted the shipments of heavy fuel that it agreed to provide under the Agreed Framework. On December 12, 2002, North Korea announced its decision to resume operations of the graphite reactors that had been frozen by the Agreed Framework and ordered IAEA monitors to dismantle their inspection equipment and leave the country. North Korea claimed it needed to restart the reactors for producing needed electricity, but the restart had evident implications for North Korea’s nuclear capabilities. At the end of 2002, North Korea unsealed its irradiated fuel storage, removed the cameras, and ejected the IAEA inspectors. Thus, North Korea had put itself in a position to resume a nuclear weapons program without international safeguards by the end of the year, though it might take some weeks for it to actually begin operating the facilities.

The developments in late 2002 were accompanied by incompatible demands by the United States and North Korea, as well as intimations of possible attacks and war on both sides. North Korea's threats of war were in the explicit context of sanctions imposed by the United Nations or the United States for its actions.

In the initial part of the crisis the United States refused to talk or negotiate or discuss any action on its part until North Korea had agreed to dismantle its weapons program. But its ally South Korea has preferred negotiations. A January 7 statement of the United States, Japan and South Korea stated that the United States is "willing to talk to North Korea about how it will meet its obligations to the international community" and that the United States "has no intention of invading" North Korea.

On January 10, 2003, North Korea announced its immediate withdrawal from the [NPT](#), although it stated, "we have no intention to produce nuclear weapons and our nuclear activities at this stage will be confined only to peaceful purposes such as the production of electricity."

Since North Korea's withdrawal, the United States has in various ways and forums re-affirmed its intention to resolve the issue peacefully and without resort to war. It has expressed its readiness to engage in talks but not negotiations, and offered aid in case of agreement by North Korea to abandon its nuclear weapons program.

### **North Korea's Failure to Comply with the [NPT](#) and the Agreed Framework**

North Korea's policies have violated its fundamental commitments under the [NPT](#) and the Agreed Framework. The uranium enrichment program is designed develop weapons-grade uranium, which violates the nonproliferation treaty's requirement that non-nuclear states subject their nuclear programs to safeguards to ensure against diversion of nuclear materials and technologies for development of or use in nuclear weapons. To the extent that the Agreed Framework demands continued membership in the [NPT](#), it also violates that commitment. The ejection of the IAEA inspectors, the shut down of the monitoring equipment including cameras, and North Korea's decision to restart its nuclear reactors in that context also violate the [NPT](#) commitment to subject nuclear programs to IAEA safeguards, including inspections. Those actions also violate the obligations under the Framework to freeze the reactors and to continue inspections under the IAEA safeguards agreement.

Furthermore, North Korea's immediate withdrawal from the [NPT](#) was in violation of the [NPT](#)'s withdrawal clause. [NPT](#) Article X allows a state to withdraw "if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country." North Korea in its withdrawal letter stated that the United States threatened its security: "the United States listed the D.P.R.K. as part of an 'axis of evil,' adopting it as a national policy to oppose its system, and singled it out as a target of pre-emptive nuclear attack, openly declaring a nuclear war." The debate as to whether North Korea has asserted these security interests in good faith or as part of a political posture is not germane to the legal aspects of [NPT](#) compliance. A state may withdraw based on its determination that its security is seriously threatened. However, North Korea was required to provide three months' notice to the [NPT](#) parties and to the Security Council, which it failed to do by announcing an immediate withdrawal. Thus, the immediate withdrawal does constitute an [NPT](#) violation. The failure to withdraw properly may mean that North Korea's [NPT](#) partners do not acknowledge the effect of the termination prior to the lapse of that period. IAEA's director, Dr. ElBaradei, noted that under Article 10 of the [NPT](#), a

decision to withdraw can only be effected after three months notice. He expressed the hope that, as a matter of urgency, the international community and the DPRK through dialogue would arrive at an agreed and peaceful solution.

Finally, North Korea's actions also violate the provision of the Agreed Framework under which it agreed to work "consistently" for the de-nuclearization of the Korean Peninsula.

The issue of North Korea's [NPT](#) violations may be taken up by the Security Council under its authority to determine the existence of threats to peace and security. North Korea has threatened war if the UN Security Council imposes sanctions or other penalties for [NPT](#) withdrawal.

## **The United States' Failure to Comply with its [NPT](#) and Agreed Framework Obligations**

Largely ignored in the discussions of bringing North Korea into compliance with the [NPT](#) is that the states that joined the [NPT](#) as nuclear weapon states made a commitment to eventual disarmament. This bargain was struck in order to obtain a non-proliferation agreement by all other states that would join the treaty. Specifically, under [NPT](#) Article VI, nuclear weapon states agreed to "pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control." In the past decade, this vague undertaking was transformed into a concrete obligation to show demonstrable progress toward reaching this goal through measured steps.

In 1995, the year that the [NPT](#) was due to expire, the United States and other nuclear weapons states pressed for its indefinite extension. All parties agreed to the indefinite extension provided that nuclear weapons states committed to a statement of "Principles and Objectives" that set forth measures regarding the implementation and fulfillment of the obligation of nuclear disarmament. These included, among other commitments, the "*systematic and progressive* efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons..." These commitments have political weight because they are tied to a binding legal decision to extend the treaty indefinitely.

The 1995 developments were bolstered by a 1996 advisory opinion from the International Court of Justice, the legal arm of the UN, in its decision on the legality of the threat or use of nuclear weapons. Although it was unable to decide on the legality of use in extreme circumstance of self-defense involving the very survival of a state, it held that use of nuclear weapons was "generally" illegal. It also unanimously held that the [NPT](#) requires the nuclear weapons states "to pursue in good faith and *bring to a conclusion* negotiations leading to nuclear disarmament *in all its aspects* under strict and effective international control."

The 2000 [NPT](#) Review Conference marked the most specific disarmament commitments made to date. The conference's Final Declaration included 13 steps "for the systematic and progressive efforts to achieve nuclear disarmament." A key element was "an unequivocal undertaking by the nuclear-weapon states to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament..." The Final Document also required that the steps be irreversible. In other words, nuclear weapons once eliminated from the arsenal must not be reactivated or redeployed; reductions in numbers of weapons

must not be reversed; and new developments in technology must not lead to development of new nuclear weapons. Another important aspect of both the 1995 and 2000 commitments is the call for upholding the nuclear test ban and the prompt entry into force of the Comprehensive Test Ban Treaty (CTBT). From the creation of the [NPT](#), the CTBT has been anticipated – it was mentioned in the [NPT](#) preamble, and has long been understood to be an essential element of the “cessation of the arms race” commitment under Article VI.

The thirteen steps, like the 1995 commitments, are politically binding, as they were adopted without objection by the Review Conference and, as such, represent all [NPT](#) states’ view of what Article VI requires as of the year 2000. This interpretation of Article VI converts the [NPT](#) into an unequivocal instrument for the complete and irreversible elimination of nuclear weapons.

## **Current U.S. Nuclear Policy**

Measured against the standards set in 1995 and 2000, the United States, and the other nuclear weapon states, are failing to comply with the disarmament obligation. The U.S. opposition to the CTBT and its withdrawal from the ABM are contrary to its [NPT](#) commitments. The commitment to irreversibility in reductions and disarmament has also been abandoned. This is evidenced by the Defense Department’s Nuclear Posture Review, submitted to Congress at the end of 2001, and the May 2002 Moscow Treaty. The Moscow Treaty, which codifies portions of the NPR does not require destruction of any delivery systems or warheads, and contains no provisions for verification or transparency. Buildup may begin again in the year 2012, when the treaty expires. Nuclear weapons states are also failing to meet their commitments by the complete impasse in the negotiations for a fissile materials treaty.

The lack of compliance with [NPT](#) obligations in specific areas is most apparent in the broader failure to make disarmament the driving force in national planning and policy with respect to nuclear weapons, which is also a [NPT](#) requirement. The Nuclear Posture Review, which is the strongest indication of the direction of U.S. nuclear policy, envisages enlarging the circumstances under which nuclear weapons could be used, including in response to non-nuclear attacks, threats involving biological or chemical weapons or “surprising military developments.” As mentioned above, this includes use of weapons on North Korea in circumstances that go beyond a response to a nuclear attack. The NPR also emphasizes the possibility of developing new lower-[yield](#) weapons, for example, to burrow into the earth – a development that would increase the possibility of their use in wartime. Thus, far from diminishing the role of nuclear weapons in security policies as promised in 2000, the Bush administration is moving towards expanding options for nuclear use. And the Nuclear Posture Review’s core assumption of indefinite U.S. reliance on nuclear forces is contrary to the thrust of commitments made in the post-Cold War era to implement the [NPT](#) disarmament obligation.

## **Assurances of non-use of nuclear weapons**

The posture on the possible use of nuclear weapons contained in the NPR is furthered by the December 2002 National Strategy to Combat Weapons of Mass Destruction. It does not rule out the possibility that nuclear weapons would be used as part of the doctrine of preemptive military force, even though that possibility appears remote. These policies undermine the negative security assurances that the United States is committed to provide to all non nuclear weapon states.

The 1995 U.S. negative security assurance reads:

The United States reaffirms that it will not use nuclear weapons against non-nuclear-weapon states parties to the [\[NPT\]](#) except in the case of an invasion or any other attack on the United States, its territories, its armed forces or other troops, its allies, or on a state toward which it has a security commitment carried out or sustained by such a non-nuclear-weapon State in association or alliance with a nuclear-weapon State.

This assurance, which has been given by all [NPT](#) nuclear weapon states, was essential to the bargain struck in 1995 to extend the [NPT](#) indefinitely. For that reason, even though the security assurances are not a formal part of the treaty itself, they have arguably become a part of the legal obligation that is binding upon the nuclear weapon states.

In the context of North Korea, the inclusion of North Korea on a list of possible nuclear weapon target states in the Nuclear Posture Review violates the specific undertaking in the agreed framework to provide formal assurances to North Korea “against the threat or use of nuclear weapons,” and was one of the reasons expressed for the North Korean withdrawal from the [NPT](#).

## **A Lack of Symmetry in Obligations**

The true motives behind North Korea’s recent activities are a matter of conjecture and the rest of the world must decide upon a policy in that context. But one must also take into account the open intent of the United States to continue to wield nuclear weapons and threaten their use under a variety of circumstances to named and unnamed states as a central part of its military posture. The United States insistence that others must fully adhere to their treaty commitments is therefore not very persuasive. Indeed, it undermines the credibility of U.S. demands for compliance. The specific obligations of nuclear and non-nuclear states under the [NPT](#) are not symmetrical. But there is a common desire for all to be secure, which creates symmetry in the necessity of complying with the respective obligations that nuclear and non-nuclear states have undertaken. Only in symmetry of compliance is there any hope for maintaining the strength of the [NPT](#) regime, which is considered crucial in preventing more states from choosing the nuclear option and further jeopardizing global security.

The United States should immediately act to strengthen the [NPT](#) by complying with steps that it has already agreed to undertake. This includes a commitment to irreversible reductions of nuclear weapon stockpiles and affirming its commitment to a test ban and the ratification of the CTBT. It means an end to expanding the options for use of nuclear weapons, and the adoption of a nuclear policy that does not include the possibility of use of nuclear weapons against [NPT](#)-compliant countries not acting in alliance with a nuclear weapon state. With specific reference to North Korea, we believe that United States and North Korea must negotiate towards an agreement in which North Korea will:

- Suspend and dismantle its nuclear weapons program under international supervision and inspections.
- Subject all nuclear facilities to safeguards and inspections.
- Stop any trade in nuclear weapon technologies, either for acquisition or export.



The United States, in turn, must:

- Provide formal assurances that it will not use or threaten to use nuclear weapons against North Korea.
- Abandon its policy in the Nuclear Posture Review to target non-nuclear countries.
- Explicitly renounce the use of nuclear weapons as part of any pre-emptive strike or counter-proliferation strategy.

We recognize that other issues, such as energy, aid, and trade may figure in the discussions between the United States and North Korea. These are beyond the scope of this briefing paper. But within the context of the nuclear weapons issue, the United States must go beyond a commitment to North Korea not to use or threaten to use nuclear weapons. That is because providing an assurance only to North Korea would send a message to states that are complying with their [NPT](#) obligations that the United States is ready to assure some aspects of the security of states that violate their commitments and have or are close to having nuclear weapons. There is an urgency and immediacy to ensuring the return of North Korea to the [NPT](#) and thereby it return to a non-nuclear-weapon status that derives from the immediate need to avoid war and possibly a nuclear war on the Korean Peninsula. But that urgency cannot obscure the problem that compliant states must have security assurances if the [NPT](#) is to endure. A failure to provide clear and unequivocal security assurances in this regard could cause festering sores in other regions to become full blown crises.

Notes:

1. Deller is Consultant to IEER and Lawyers' Committee on Nuclear Policy [? Return](#)
2. Burroughs is Executive Director, [Lawyers' Committee on Nuclear Policy ? Return](#)

Published on 2003-01-24

Last modified on 2012-05-04