

Press statement of Nicole Deller on North Korea, the United States and Nonproliferation

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The struggle to bring North Korea into compliance with the NPT is only one example of a trend in U.S. policy whereby the United States insists on other countries' compliance with legal standards while it refuses to abide by its agreements. This trend was the subject of our book *Rule of Power or Rule of Law?* which analyzed U.S. compliance with its obligations under a range of security treaties, and concludes that the United States has violated, or significantly undermined each of them.

At first glance, the U.S. policy on treaties appears generally hostile toward international law. But in reality it is a hostility to international laws that don't benefit them. For example, with the rejection of the Rome Statute of the International Criminal Court and the treaty banning landmines, it was only after the United States had pushed for provisions that would have disproportionately favored its interests- and lost - that it walked away from these treaties. In the case of North Korea and Iraq, the United States is demanding strict compliance with international legal obligations. It is because of the many ways that the administration does appeal to international law that it seems insincere that members of the administration argue against treaties because they allow cheaters, or because treaty partners cannot be trusted. What appears to be at the heart of the trend that we document in this book is no so much the failings of the treaty system, but that the United States seeks to set itself above the system: it relies on treaties on it to enforce obligations on others, but when it comes to the hard cases, the ultimate authority for U.S. action is U.S. power -- economic and military.

To illustrate the point, the New York Times quoted Under Secretary of State for Arms Control and International Security John Bolton, when the Administration was still opposed to talking with North Korea, saying that it is "hard to see how we can have conversations with a government that has blatantly violated its agreements." (North Korea Says Nuclear Program Can Be Negotiated 11/3/02) Bolton expressed intolerance of a country that won't uphold its treaty obligations, but has in the past made the case that the United States need not be bound by its international legal commitments. In a law journal article published prior to his appointment, he said, "There may be good and sufficient reasons to abide by the provisions of a treaty, and in *most cases* one would expect to do so because of the mutuality of benefits that treaties provide, but not because the United States is "legally" obligated to do so." (John Bolton, Is there really law in international affairs? *Journal of Transnational Law and Contemporary Problems*, Vol. 10, Spring 2000.) (*emphasis added*)

Although the United States may feel itself better suited than any other country to adopt this position due to its "sole superpower status," the flaws in its application are beginning to show. We have argued in our briefing paper that North Korea's violations of the NPT are egregious. But the United States failure to abide by its commitments under the Agreed Framework and its

naming of non-nuclear countries as potential nuclear targets in the Nuclear Posture Review in violation of its NPT commitments has also played a large role in contributing to the present crisis. In other words, U.S. failures to abide by its commitments are playing an increasing role in the unfolding crises regarding weapons of mass destruction. We have documented other examples of the US undermining security treaties in our book, such as the United States exempting itself from certain rules of inspections under the Chemical Weapons Convention, which other states have applied to their inspections.

The conclusion in *Rule of Power or Rule of Law*- the conclusion that we also reach viewing the situation with North Korea - is that international security requires all parties to uphold the international rule of law. Treaties are invaluable instruments for safeguarding the long-term collective interests of this increasingly global society. They create institutions for the peaceful resolutions of conflict, they implement disarmament of weapons of mass destruction, promote justice and human rights and work preserve the environment

The system of treaties is certainly in need of improvement. Some treaties are unjust, others lack proper means of redress, but it must be recalled that rule of law governing international affairs is still in a nascent stage. And it is crucial for the development of this the rule of law that the most powerful should comply with the law even when it is difficult or costly, or when a superiority of economic military or diplomatic power makes it seem unnecessary.