

## Breakouts, Evasive Maneuvers: *Managing the Proliferation Intentions of Determined States*

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### Introduction

Nuclear proliferation is arguably one of the greatest threats to international security in the post-Cold War world. Some argue that recent efforts to proliferate by Iraq, Iran and North Korea demonstrate the failure of diplomacy under the international nuclear nonproliferation regime. They argue that these countries' breakouts from the regime and/or evasive maneuvers to avoid the regime are succeeding and require new tools and programs to prevent and/or cut off such proliferation. But is the nonproliferation regime the problem? Is diplomacy so ineffective? Are tougher counterproliferation programs and even military actions needed to stop proliferation?

A careful review of attempts to address proliferation problems in the last decade have involved some grave mistakes, ones which years of diplomacy might have foreshadowed had the protagonists listened, especially to the international community. It is also true that several geopolitical events over the last fifteen years have contributed to making proliferation prevention more difficult. But, these problems are external to the regime and do not mean the regime is falling apart. Geopolitical changes have made proliferation prevention harder, but only increased the importance of the nonproliferation regime and diplomacy. What is required is some innovation in and strengthening of the nuclear nonproliferation regime, but the regime is worth the effort.

The nuclear nonproliferation regime has limited actual nuclear weapons development to nine countries as of today; five enshrined in the treaty, three outside the treaty, and sometime in this decade, one more—North Korea. Not a bad track record if one considers President Kennedy's concerns voiced in 1963 that we might have as many as 25 nuclear weapons countries by the 1970s. Successful nonproliferation efforts have been carried out since the 1970s largely through diplomacy. These efforts, frequently along with simultaneous and fortuitous changes in national leadership, have led to several regime successes in South Africa, Brazil, Argentina, Taiwan, Sweden, and three of the former Soviet republics—Kazakhstan, Ukraine and Belarus.

So where have mistakes been made? In three areas: loss of faith in the Nuclear Nonproliferation Treaty (NPT); hegemonic efforts to intervene in cases of suspected proliferation without multilateral consent, and use of counterproliferation measures that allow for only zero-sum outcomes and leave the loser no chance for face-saving.

Proliferation prevention efforts in North Korea, Iraq and Iran all suffered from these mistakes, and success is not any closer in the cases of Iran and North Korea. The costs of the 2003 war in Iraq, titulary to stop Saddam Hussein's weapons of mass destruction program, have monumentally outweighed the proliferation problem.

## Why Diplomacy?

If one looks at why states proliferate, there is usually another state or states that have created the sense in the would-be proliferator of relative weakness. Thus, proliferating states choose this path for status among countries, because of regional insecurity, economic insecurity, perceived asymmetric military weakness, and even natural resource shortages. Each of these reasons involves interrelations among states or between them. As a consequence, if the relevant states are willing to establish a dialogue to address the perceptions of the proliferator and resolve them to both (or all relevant) states' satisfaction, most proliferation problems can be resolved. This type of negotiation where there is usually some give and take on both (or all sides) can be considered traditional nonproliferation diplomacy. It offers the opportunity for both (all) sides to gain something they need to manage their domestic and/or international relationships after they bow to international demands.

On the other hand, some have argued that it is implausible, or will be unsuccessful, to address these perceptions through diplomatic negotiations, because some proliferators will never trust approaches from the international community or are themselves inherently untrustworthy. These reasons have been used to argue for different anti-proliferation approaches and often harsher ones.

## Complicating Factors

As mentioned earlier, significant geopolitical changes in the last fifteen years have affected the regime and have made proliferation prevention more complex. First was the global strategic balance shift from two superpowers to one, which prompted many countries to create different alliances to solve world problems like proliferation. It has also led to a new level of global instability, especially as the "balance" sustained by the Cold War has disappeared. This instability may have heightened the value of nuclear weapons in states caught by the ensuing imbalance, such as North Korea.

Second, in the last fifteen years, access to nuclear technology, equipment and know-how has grown through legal and illegal means. More countries are considering or have begun to develop nuclear power programs for energy security, diversity of supply, and recently, in the face of global climate change. Nuclear research programs are becoming more publicly acceptable to solve development problems such as the need for access to clean water through desalination or to reduce public health threats by medical isotope production and food irradiation.

More troubling has been access to nuclear materials, equipment and technology through the successful, illicit nuclear market, especially the black market of A.Q. Khan of Pakistan that was finally exposed in 2004. In operation for perhaps as many as twenty years, this market helped both Iran, North Korea and possibly Iraq to develop clandestine nuclear programs with proliferation sensitive nuclear technology without international knowledge and supervision under the nonproliferation regime. In particular, Khan's market enabled Iran and North Korea to evade the international controls on the trade of sensitive nuclear technologies and commodities established by the Nuclear Suppliers Group (NSG), and gain access to centrifuge uranium enrichment technology and equipment. [1] Thankfully, use of centrifuge enrichment technology is not straightforward and requires skill, as we learned from the fact that apparently neither North Korea nor Iran may have yet succeeded in their operations; but the skills can be developed with practice.

The break-up of the Soviet Union appears to have increased access to nuclear materials, as strong Soviet controls over widespread nuclear materials used in Russia and its client states were weakened or eliminated. Subsequently, some of these materials may have been marketed illicitly, especially within the former Soviet states.

These legal and illegal pathways have made nuclear material, equipment and technology more easily accessible to all countries, which can ease the job of a state determined to proliferate. The illicit paths for nuclear material and technology have made implementation of the standard controls in the nonproliferation regime more difficult, i.e., International Atomic Energy Agency (IAEA) safeguards and inspections, and at the same time more important, as they are a chief line of defense.

Until 1997, the IAEA depended on a state's willingness to declare what kinds and amounts of nuclear materials, technology and equipment it possessed. If the state did not declare the material, the IAEA believed it had no mandate to search for undeclared nuclear materials and facilities. The revelation of a clandestine nuclear weapons program in Iraq in 1991 led to the realization that IAEA safeguards needed to be strengthened to increase the transparency of states' nuclear programs and allow the Agency to search for undeclared nuclear activities. With the introduction of an Additional Protocol (AP) amendment to its IAEA safeguards agreement, a state can be requested to allow the IAEA to search for clandestine nuclear material and facilities. However, not all states have an AP in place; a relevant example is Iran.

IAEA controls, however, cannot always identify and alert the international community of proliferation. Moreover, even if the Agency identifies a proliferator, it has little to no enforcement power. The burden for managing and punishing proliferators is transferred to nation states acting through the United Nations Security Council (UNSC). Consensus votes in the UNSC provide the mechanism for invoking sanctions or other restraints on a proliferating nation.

But here is the third change that has affected the NPT regime. Over the last 15 years, nations have turned to the UNSC several times to sanction Iraq, North Korea and Iran. While consensus was reached in the early 1990s to take action against proliferation in Iraq and North Korea, international consensus has become harder to achieve in this decade. This is due at minimum to the fact that many countries, including U.S. allies, opposed the U.S. action to attack Iraq in 2003 and no longer support U.S. leadership. The fact that no weapons of mass destruction were found in Iraq—the primary rationale for the war—exacerbated mistrust of the United States. Deep concerns remain that the United States and its ally, Britain, chose to act without UNSC support. This has been especially apparent in subsequent relations among the permanent members of the UNSC, or the P-5: China, France, Russia, the United Kingdom and the United States.

Consensus among these states, or at minimum, assurance that no P-5 state will work at cross purposes with the others, is important to ensure concerted international action when cases of proliferation concern arise. In the recent sanctions cases in the Security Council for North Korea and Iran, the P-5 have been less willing or unwilling to work together, sometimes apparently in a desire to balance—or blunt—U.S. leadership. Nonproliferation has been also given different priority in P-5 foreign policies over time as compared to other strategic objectives, so consensus making would not be straightforward in any event because national interests of a P-5 state might take precedence, such as China's and France's oil interests with Iran.

The lack of P-5 consensus limits the ability of the UNSC to enforce the nonproliferation regime because the P-5, and only the P-5, has the right to veto a UNSC action. One veto stops UNSC action. Global competition among the P-5 is increasing as the five countries jockey for international leadership in the evolving global balance caused by waning international support for U.S. leadership, especially on nonproliferation. The P-5 split has increased the power of other international groupings of countries such as the non-aligned nations and the G-77. In fact, the political and technical maneuvers of Iran and North Korea have been successful in building sympathy in the non P-5 nations so that they block consensus on strong sanctions against these two proliferators.

The three changes above—the change from a bipolar to a unipolar world, increased access to nuclear materials, equipment and technology, and lack of consensus among the P-5 in jointly

addressing proliferators—indicate that diplomacy, always a messy trade, is getting much tougher as a means to solve proliferation problems. But not impossible, as the Six Party Talks agreement of February 13, 2007 demonstrates. China, Russia, and the United States, partnered with South Korea and Japan, worked closely together to reach an agreement with North Korea. Perhaps the fact that North Korea tested a nuclear weapon on October 9 provided sufficient urgency and impetus for consensus.

A history of the diplomatic negotiations with North Korea is presented below as a case study applying the issues discussed in the preceding discussion and to illustrate the growing complications of responding to a state that has determined that nuclear weapons are necessary for its security. With the benefit of hindsight, the history indicates the deadly importance of continuing to engage diplomatically, and the progress made when a win-win deal can be found.

## Negotiating with North Korea

Getting North Korea into the nonproliferation regime was not easy. Under pressure from the Soviets, North Korea finally signed the Nuclear Nonproliferation Treaty in 1985. But, Pyongyang soon raised international concern over its proliferation intentions. In 1989, a nuclear fuel reprocessing facility appeared at its Yongbyon nuclear site,<sup>[2]</sup> the need for which was unclear if North Korea's nuclear program was to be peaceful. Such a facility appeared to demonstrate North Korea's interest in developing plutonium for nuclear weapons. The United States and its allies, South Korea and Japan, consulted and each took actions to discourage North Korea from completing and operating its reprocessing plant. They all pressed North Korea to conclude its safeguards agreement with the IAEA so that inspections could begin and assure the world that its nuclear program was intended only for peaceful use. But North Korea balked, indicating that while the United States continued to have nuclear weapons on the Korean peninsula, it would not agree to sign a safeguards agreement. In September 1991, President Bush announced unilateral withdrawal of all tactical land and sea-based nuclear weapons world-wide for many reasons. Usefully, it coincided with North Korea's demand and shortly afterwards South Korea announced that no U.S. nuclear weapons existed in South Korea.<sup>[3]</sup> In January 1992, North Korea signed its safeguards agreement with the IAEA.

Meanwhile, North Korea's patron, the Soviet Union, was disintegrating. North Korea, apparently beginning to see a new weakness in its strategic position, joined the United Nations in September 1991. Three months later, it entered into a denuclearization agreement with South Korea, and in January 1992 finally concluded its safeguards agreement with the IAEA.

However, tensions reemerged between the Koreas, and between the North and the United States when no progress was made on the denuclearization agreement and when the IAEA safeguards inspections in mid-1992 turned up discrepancies between North Korea's declaration and other information the IAEA had collected on the North's programs. This one-step-forward and one-step-backward progress with North Korea became a continued pattern of action between the international community and North Korea, seeming to make diplomacy a failed mechanism with North Korea because no one could trust that it would do what it agreed to do. The inability of the U.S. or South Korea, Japan, and others to rely on North Korea's willingness to maintain a commitment beyond a few months or meet the full requirements of a commitment made sustained interest in and real forward progress in negotiations with it difficult. Yet the national security and international security implications of failure to engage North Korea were clear, so efforts continued.

In 1993, as tensions mounted, the IAEA requested a special inspection at Yongbyon to verify that North Korea had not diverted spent reactor fuel from its Soviet-supplied reactor to its reprocessing plant. However North Korea refused and shocked the world by instead announcing on March 12, 1993 that it would withdraw from the NPT rather than endure IAEA inspections. The

extreme position taken by North Korea was meant to force the international community into letting North Korea go about its business without further meddling. But the nonproliferation community reacted quickly and the governments on the IAEA Board of Governors referred the matter to the United Nations Security Council. The hope was that consensus of the Security Council would leave even the isolated North Korea with little choice but to comply with IAEA safeguards. In April 1993 the IAEA added to the pressure, declaring that it could not guarantee that North Korea was not diverting nuclear material for peaceful purposes. The UNSC passed a resolution in May calling on North Korea to fully comply with its international nonproliferation obligations and asked all countries to facilitate this solution.[4]

During this tumultuous year, some contact was made with North Korea by either the United States, the IAEA, or one of the North's regional neighbors; at least once a month contact was made trying to convince North Korea to give up its nuclear weapons program. Five contacts were made with Pyongyang in February alone as North Korea escalated the terms under which it would comply with international requests. It might seem these efforts to pressure North Korea were pointless, or worse, harmful, because in March North Korea withdrew from the NPT. But in June, following bilateral talks with the United States, North Korea suspended its decision to withdraw from the NPT and agreed to full and impartial application of IAEA safeguards.[5] So had North Korea declared it was withdrawing from the NPT as a shock to get the international community's and especially, the United States', attention? The United States did react, but in return for North Korea's decision to suspend its withdrawal, also granted North Korea assurances against the threat and use of force, including nuclear weapons. The United States further agreed not to interfere in North Korea's internal affairs. In effect, a win-win occurred for both sides.

Bilateral talks continued in July on a good note, with North Korea agreeing to begin consultations with the IAEA on "outstanding safeguards and other issues." There was also a joint statement indicating North Korea might agree to a deal with the United States to replace its graphite reactors with light water ones. At this point, the United States needed to reassure South Korea and in July, President Clinton spoke before the Korean National Assembly reaffirming U.S. security assurances for South Korea and its commitment to the U.S. military presence as "a bedrock of U.S. security policy in the Asian Pacific." [6]

However, it appears the North did not like this move by President Clinton or some other fact, as the good news did not last. In the autumn of 1993, North Korea was again not meeting its commitments and a third round of bilateral talks was postponed. In fact, the Central Intelligence Agency was now reporting that North Korea had separated about 12 kilograms of plutonium. (And by early 1994 CIA estimated that North Korea may have produced one or two nuclear weapons.) [7] Such intelligence was exactly the kind of information that made U.S. and South Korean officials question North Korea's intent to keep its commitments and to rethink what could be done to ensure the North met its commitments. North Korea's weak commitment record clearly required innovative thinking about how to structure an agreement that gave us what we needed, but also gave North Korea a strong incentive to act in accord with the agreement for its own benefit. Probably most important was to ensure North Korea did not get what it wanted until the United States and its partners got what they wanted. [8]

With the news of North Korea's possible weapons development, the IAEA intensified its efforts. In February 1994, North Korea and the IAEA finalized their agreement to allow IAEA inspections of North Korea's seven declared facilities. By this action North Korea averted U.N. sanctions, but almost as soon as it had escaped these, it pulled back on its commitment. When the IAEA inspectors arrived, they were not allowed to inspect the plutonium reprocessing plant at Yongbyon as had been agreed. In May 1994, the IAEA confirmed that North Korea had begun to remove spent fuel from its research reactor, which lent support to the previous CIA report that North Korea had separated plutonium and possibly made a nuclear weapon.

The seriousness of these developments in North Korea led to a concerted U.S. effort to strengthen its military readiness in South Korea but also to intensify diplomatic efforts, including reaching out to China to help pressure North Korea to suspend its nuclear operations. North Korea continued to defy the international community and in June pulled out of the IAEA. The United States responded by stepping up its interactions with North Korea, now that the IAEA was seen to have no role.<sup>[9]</sup>

The United States considered a military attack,<sup>[10]</sup> but instead relied on diplomacy, carried out by former President Carter, to open up a channel for further bilateral negotiations. In these ensuing negotiations, North Korea finally agreed to freeze and eventually dismantle its nuclear reactors and related facilities under the Agreed Framework signed in 1994. The Agreed Framework required North Korea to freeze construction of its nuclear reactors and their related facilities, and in return provided for two light water reactors and other energy assistance until these reactors were completed.

With the Agreed Framework in hand, the United States, Japan and South Korea created multilateral support for the Framework by establishing a revolutionary new international organization, the Korean Energy Development Organization (KEDO), to coordinate and fund the reactor projects and energy assistance.<sup>[11]</sup> KEDO staff were hired to develop and implement the reactor project. Negotiation of the reactor project with North Korea was difficult, tedious and intense. Over 100 meetings were held with North Korea in the ten years of its operations with thousands of hours of work to build a common vocabulary and a sense of trust between North Korea and the KEDO members.<sup>[12]</sup>

The years between 1994 and 2000 were characterized by constant slippage on the part of North Korea. The North would issue invitations to the IAEA for safeguards inspections, and then refuse to comply with inspection requirements. It appears that Pyongyang kept up clandestine efforts to move closer towards reprocessing the spent fuel from its 5 MW reactor. But the overall climate was improving. In 1999, South Korea proclaimed its sunshine policy and the United States relaxed sanctions on North Korea. By the fall of 2000, the progress with North Korea seemed real and in October Secretary of State Albright visited North Korea and met with Kim Jong Il. Her visit was tied to continued progress on bilateral missile talks in which North Korea would agree to stop missile testing and exports. However, the last negotiating session in November 2000 did not result in agreement. Shortly thereafter, the elections in the United States turned the process of negotiating with North Korea over to a new administration.

At the beginning of the Bush presidency, it seemed that the administration was leaning towards continuing the progress made by the Clinton administration in both nuclear and missile talks. Yet, the U.S. attitude towards the North appeared to change in March 2001, when President Bush met with South Korean President Kim Dae-jung. North Korea, perhaps looking to find a way to slow the process down, or to test the meaning of Bush's statement that "any negotiations would require complete verification of the terms of any potential agreement"<sup>[13]</sup> cancelled political reconciliation talks. Two days later, the North made it clear that it believed Bush wished to sabotage the North-South talks, declaring North Korea "fully prepared for both dialogue and war"<sup>[14]</sup> with the United States.

With a comprehensive policy review of North Korea completed in June 2001, President Bush's envoy initiated new discussions with the North Korean representative to the United Nations in New York. Over the next nine months, however, the situation deteriorated. In his State of the Union address in January 2002, President Bush named North Korea as part of the "Axis of Evil." In March 2002, the new U.S. Nuclear Posture discussed the use of nuclear weapons against North Korea, provoking an angry response. Relations remain on tenderhooks as the first concrete was poured in the KEDO reactor project in June 2002, but new sanctions were also imposed by the United States on North Korea. In a trilateral meeting that brought together the United States, China and North Korea in April, the North for the first time announced it had a nuclear weapons

program. In October, Assistant U.S. Secretary of State James Kelly visited North Korea, but no statement followed; two weeks later, Kelly announced that North Korea admitted to him that it had begun a uranium enrichment program.

This announcement started a cascade of reactions. The KEDO heavy fuel oil shipments were suspended in November. In December 2002, North Korea sent a letter to the IAEA saying it was restarting its 5 MW reactor and asked the IAEA to remove its seals on the other frozen facilities. And at the end of December, the DPRK ordered the IAEA out the country. [15] In January 2003, North Korea announced it was withdrawing from the NPT, effective the next day.

The gravity of this action energized efforts for further negotiations with North Korea and in August 2003 the first Six Party Talks were held. The purpose of the Six Parties was to ensure regional partners who had a stake in the solution were there to participate in resolving the problem, but also to reduce the emphasis on the bilateral U.S.-North Korea relationship.

Little progress appears to have been made in the talks and in November 2003 KEDO announced it was suspending reactor construction. One more Six Party meeting was held in June 2004, but essentially all appears to have been quiet until February 2005, when North Korea announced it was indefinitely suspending participation in the Six Party Talks and declared it had manufactured nuclear weapons. Significant effort was made to stimulate U.S. action to engage North Korea during this time frame. Specifically, the previous participants in the Agreed Framework noted:

To the contrary, now that the North has restarted its nuclear program, every day it increases both its nuclear capabilities and the price it will demand to give them up. Hoping that regime change will stop North Korean nuclear weapons before they wreak havoc would recklessly gamble with our security.[16]

The Six Party Talks were not restarted until July 2005. It appears possible that once again North Korea was looking for U.S. attention because once the talks resumed progress was made and in September 2005 agreement was reached on a joint statement among the Six Parties. This did not last more than one day before North Korea denounced the agreement. This may have been because of actions by the U.S. Treasury to limit transactions with the Macao Bank which apparently North Korea used frequently. The transactions were stopped as the U.S. Department of Treasury claimed the bank was laundering money for North Korea. North Korea bitterly demanded that the United States meet to discuss the issue. No meeting was forthcoming and apparently relations between North Korea and KEDO soured so significantly that KEDO terminated its project in June 2006.

Whether this action triggered them or not, on the 4th and 5th of July North Korea tested its missiles, angering the international community sufficiently enough that on July 15 the UNSC unanimously condemned North Korea's tests. Not to let things rest, North Korea tested the limits of the international community when on October 9 2006 it tested one of its nuclear "weapons." In five days the UNSC acted unanimously voting to increase sanctions on North Korea. But, was this the last straw for the five countries? For the United States? Luckily, within four months, the Six Party Talks were restarted and on February 13 they announced a new agreement on closing down North Korea's nuclear operations. Perhaps North Korea agreed because it perceived that it had wandered too far from the norm? It is not clear, but, within ten days after agreement was reached, North Korea followed through on its first obligation by inviting the Director General of the IAEA to visit. And now we sit and wait to see if this agreement can lead to a positive, non-nuclear North Korea. Recent U.S. actions to address the Macao bank issue appear to be offering a more activist U.S. role. Is this a change in USG interest in working with the regional group and North Korea to solve the problem?

The negotiations of the mid 1990s did lead to an agreement that limited North Korea's ability to develop its nuclear weapons by limiting access to its spent fuel to separate the plutonium for weapons. Moreover, the history appears to indicate that it was when North Korea was not engaged in talks with the five parties, sometime in 2003-2005, that it was able to get access to the nuclear material and the time needed to reprocess its nuclear fuel to obtain bomb material and possibly develop some nuclear warheads.

Now that North Korea apparently has nuclear weapons, the job of the Six Party negotiations is easily orders of magnitude harder. Nuclear weapons may have provided North Korea with a new sense of power that makes finding a win-win deal with it much more difficult. But, history tells us a win-win deal is what is needed with North Korea. The bottom line now is whether the five parties are able to find sufficient incentives to convince North Korea to give up the weapons that it may view as providing the military power needed to fend off the United States, its long term foe, and the regional power to broker regime protection from its neighbors.

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