The Complete Denuclearization of the Korean Peninsula: Some Considerations under International Law

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Abstract

The primary purpose of this article is to propose general conditions for establishing a nuclear weapon-free zone (NWFZ) in the Korean Peninsula from the viewpoint of international law. North Korea’s nuclear weapons development has created the most negative environment for the peace and security of Northeast Asia since the early 1990s. In spite of painstaking negotiations to denuclearize North Korea, the parties concerned have not found any fundamental solution yet. This interim failure is due to the uncompromising positions of the two sides as well as the inherently paradoxical structure of the Treaty on the Non-Proliferation of Nuclear Weapons, which legalizes the development of nuclear weapons by the recognized nuclear powers. The most reasonable solution is to completely and fairly denuclearize the whole Korean Peninsula under an NWFZ. This paper scrutinizes legal, political and technical problems for realizing the plan for a nuclear-free Korean Peninsula.

In a world that all too often seems dark and ominous, the Treaty of Tlatelolco will shine like a beacon. This Treaty is a practical demonstration to all humanity of what can be accomplished when sufficient dedication and the necessary will exist.

U Thant

I. Introduction

1. With the bombing of Hiroshima, the world recognized the destructive power of nuclear energy when not used for peaceful purposes. Since then, nuclear weapons have been regarded as completely different from other conventional arms previously developed by mankind.¹ This fatal weapon has attracted great concern from people of two diametrically opposed positions. Some are deeply interested in completely removing these catastrophic arms from the planet, while others are doing

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their best to develop and augment their nuclear arsenals. Although nuclear weapons are gradually becoming prohibited under international law, they remain a critical issue in post-Cold War regional and world politics.

2. As North Korea launched its nuclear weapons development programme in the early 1990s, the nuclear conflict escalated as a political issue in and around the Korean Peninsula. Both sides have worked through a painstaking process to reach a consensus for the denuclearization of the Korean Peninsula, but have found no ultimate solution yet. In order to break through this deadlock and find the key to realizing nuclear peace in the Korean Peninsula, new perspectives are needed. The research herein will be dedicated to this objective; searching for a successful path to completely denuclearize the Korean Peninsula under some international legal considerations is the primary purpose of this paper.

3. This article is composed of three parts. The first part will generally examine the whole picture of the North Korean nuclear weapons development programme. The reason why North Korea is trying to develop nuclear weapons will be analysed from the viewpoint of Northeast Asian regional politics. In this part, the author will also discuss the structure of international law governing nuclear weapons. The second part will review the nuclear arms control process in and around the Korean Peninsula. The Korean nuclear arms control process may be divided into three stages: inter-Korean talks in the early 1990s, the US–North Korea talks in the mid-1990s and the Six-Party Talks in the 2000s. Each stage delivered legal results such as the Joint Declaration of Denuclearization, the Basic Agreement, the Geneva Agreed Framework and the Joint Statement. The author will analyse these consecutive accords and try to find the main reasons why they have not fully succeeded. The third part will discuss the nuclear weapon-free zone (NWFZ) in the Korean Peninsula. The Korean NWFZ is presumed to be the most reasonable solution to completely stop North Korea’s nuclear weapons development and finally restore nuclear peace in the Korean Peninsula. The author will investigate the general and regional nuclear weapon-free areas existing in the contemporary world and propose basic conditions for building the Korean NWFZ. A treaty for the Korean NWFZ will be drafted in the end.

II. The picture

II.A. Background

4. There are a few fundamental questions regarding North Korea’s nuclear weapons development. What brought about North Korea’s nuclear ambitions? What is North Korea really trying to accomplish by developing nuclear weapons despite the harsh criticism and the accompanying isolation from the international community? Former US President George W. Bush may promptly respond, “Because North Korea is an evil!” This trivial answer, however, does not explain why other nuclear powers are still developing weapons of mass destruction (WMD). Is the United States, which used nuclear weapons leading to the deaths of hundreds of thousands of people, an evil country, then? President Bush would never accept it, saying, “The United States is not an evil.” Who is evil and who is an angel? What is the principal criterion delineating vice and virtue in the international community? How should other nuclear-armed States including Russia, China, the United Kingdom, France and other minor nuclear powers be evaluated?

5. The answer to the proliferation questions is a simple one. North Korea is developing nuclear weapons for the same reason that other nuclear powers developed nuclear weapons in the past: “national security”. When North Korea began developing nuclear weapons in the early 1990s, its political regime faced the most serious political and economic crisis in the post-Korean War period. The recognition of this crisis was aggravated by the death of the former premier Kim Il Sung in 1994. His successor, Kim Jong Il, finally decided to develop a nuclear weapons programme to survive and maintain his political power. Kim Jong Il might be concerned that he would face a fate similar to other communist leaders of the Eastern Bloc if political support for his regime were to collapse. It is natural that such political conditions led him to the desperate option to develop nuclear weapons. This position is still governing North Korea’s external policy.
6. Since the mid-1990s, the international community has taken pains to stop North Korea’s nuclear weapons development programme. However, this effort has not been fully successful yet. There are two reasons for this interim failure. Firstly, two opposite parties have maintained uncompromising solutions, ideas and perspectives on this question. The United States takes a “winner-takes-all” approach. It keeps an eye on North Korea’s nuclear weapons development with a viewpoint of vice and virtue. Secondly, general international law has proved feeble in preventing nuclear weapons development. The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was the major international legal instrument to prevent development of nuclear weapons. The NPT is replete with contradictions, however.

7. Recently, the North Korean nuclear crisis has become a serious dilemma. Neither the Lee Myung-bak administration of South Korea nor the Obama administration of the United States has released a reasonable solution for the current nuclear crisis. Both merely agreed to the so-called Grand Bargain initiative, a kind of visionary initiative.

II.B. International law governing non-proliferation of nuclear weapons

8. The international legal regime governing nuclear non-proliferation has limited scope. The NPT is the only general international legal measure which controls nuclear weapons proliferation. Introduced by the International Atomic Energy Agency (IAEA) in 1968, the NPT is a comprehensive legal framework for materializing the nuclear safeguards programme. The Treaty is based on two important rules: one is the peaceful use of nuclear energy, and the other is the dissemination of nuclear technology only for peaceful purposes.

9. Although the NPT played a significant role in keeping the nuclear power balance by restraining the withdrawal of Member States, it also has an inherently paradoxical structure. The most critical loophole is that nuclear powers have not joined the NPT. They are enjoying a one-sided privilege having developed nuclear weapons, while non-nuclear powers must be bound by the regulations of the NPT, which strictly prohibits the development of nuclear weapons. The five nuclear powers and the following nuclear weapon States (NWSs) including Brazil, India, Israel and Pakistan could not clearly excuse themselves. In addition, there is no strict legal basis forcing North Korea to remain in the NPT. Article X, Provision 1, of the NPT reads:

   Each party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme national interests of its country, . . . giving three months notice to all the parties and the UN Security Council.

In accordance with this provision, any party could state the extraordinary event which, it regards, would be jeopardizing its supreme national interests. No article of the NPT gives a clear legal criterion for deciding and interpreting what the supreme national interests of a party are in the context of the international legal framework. As a consequence, each Member State has the
right to define the “supreme interests” from its own position. In addition, Article XVIII, paragraph d, of the Statute of the IAEA provides Member States with the conditions to withdraw from the Agency. The main problem of the NPT is its double standard legalizing the nuclear monopoly for the States who have already developed nuclear weapons. This two-tier structure is threatening the NPT’s future.

III. The negotiations: nuclear arms control process in and around the Korean Peninsula

III.A. Inter-Korean talks: The Joint Declaration of the Denuclearization of the Korean Peninsula

10. North Korea’s nuclear science research started in 1955 when its Academy of Science decided to build the Institute of Atom and Nuclear Physics. North Korea concluded the Founding Charter of the Soviet Union’s Joint Institute for Nuclear Research in 1956. It was in 1964 when North Korea fully began carrying out its nuclear research programme. At that time, it was reported to have discovered uranium deposits at a few places and built the first Soviet-supplied nuclear research centre at Yongbyon. Following the Yongbyon project, North Korea joined the IAEA in 1974 and ratified the NPT on 12 December 1985. The IAEA required North Korea to take the inspection of all of its nuclear installations. However, North Korea avoided signing the implementing agreement with the IAEA until early 1992, criticizing US nuclear arms in South Korea. Instead, North Korea proposed that South Korea sign denuclearization accords. The denuclearization was a highly topical issue of inter-Korean peace talks ongoing at that time. South Korea finally agreed to adopt the Joint Declaration of the Denuclearization of the Korean Peninsula (Joint Declaration) on 31 December 1991, with the simultaneous conclusion of the Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation between the two Koreas (Basic Agreement).

11. The Joint Declaration was an epoch-making initiative covering independent solutions to nuclear disputes between the two Koreas. As a steppingstone for denuclearizing the Korean Peninsula, both sides declared as follows:

1. not to test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons;
2. to use nuclear energy solely for peaceful purposes;
3. not to possess nuclear reprocessing and uranium enrichment facilities;
4. to conduct inspection of the objects selected by the other side and agreed upon between the two sides; and
5. to establish and operate a Joint Nuclear Control Commission within one month of the effectuation of the Joint Declaration.

7 Hyun Chung, North Korea’s Nuclear Ambitions and the Current Nuclear Non-Proliferation Regime, 25 Korean JIS (1994), 241–243; see also Lee, above n.4, 52.
8 Art. XVIII, para.d, reads: “Whenever a member is unwilling to accept an amendment to this Statute, it may withdraw from the Agency by notice in writing to that effect given to the depository Government referred to in para.c of Article XXI.”
9 Hyun Chung, above n.7, 26; Lee, above n.4, 53.
12 For the official English translations of the Joint Declaration, see ROK Ministry of Foreign Affairs and Trade, A Collection of International Treaties and Other Legal Instruments (2008), 1839.

12. Despite the Joint Declaration, North Korea continued to avoid the IAEA inspections. As US President Bush ordered the withdrawal of all US tactical nuclear weapons from overseas including from South Korea in September 1991 and the international pressure increased, however, North Korea could not but sign and ratify the Safeguard Agreement in January and April of 1992. In accordance with the Safeguard Agreement, the IAEA conducted six international inspections of nuclear facilities in North Korea, but did not find any clear evidence relating to nuclear weapons. Shortly after the inspections, however, the IAEA found differing amounts of the radioactive isotope americium-241 while analysing the plutonium samples and test results from the North Korean hot cells. In addition, a US intelligence satellite photo showed two structures in North Korea not listed in the Initial Report of North Korea. The IAEA suspected that North Korea must have reprocessed plutonium at least three times in 1989, 1990 and 1991. The IAEA requested North Korea to reopen the two suspected sites that were believed to store nuclear waste from plutonium production for the special inspection by 25 March 1993. North Korea strongly denied this request. Instead, North Korea made a counter-proposal that US military bases in South Korea be open for simultaneous inspection of nuclear complexes. After months of debates, North Korea declared its withdrawal from both the NPT and the Safeguard Agreement on 12 March 1993 and even from the IAEA in June 1994. This marked the beginning of the nuclear crisis in the Korean Peninsula.

13. Both the NPT and the safeguard system of the IAEA faced a fundamental crisis due to the North Korea’s actions. As the confrontation between North Korea and the United States escalated, the IAEA referred this dispute to the UN Security Council, which finally passed Resolution 825 regarding North Korea’s nuclear crisis. In this Resolution, the Security Council called upon North Korea to respect its non-proliferation obligations under the NPT and to comply with the safeguard agreement of the IAEA. It also encouraged all UN Member States to facilitate a solution and the IAEA’s Director-General to continue to consult with North Korea to resolve this issue. In addition, the IAEA adopted resolutions in the general conferences on this question. Due to these international pressures, North Korea finally announced the suspension of its withdrawal from the NPT on 11 June 1993, just one day before the three-month notice period ended.

14. After taking long and painstaking diplomatic negotiations, North Korea and the United States concluded the Agreed Framework in Geneva on 21 October 1994. The Agreed Framework was a result of the effort to re-establish more peaceful relations by carrying out the light-water reactor (LWR) project. With the Agreed Framework, North Korea and the United States also reached agreements for the full normalization of political and economic relations as well as a nuclear-free Korean Peninsula. Pursuant to Provision I of the Agreed Framework, the United States pledged to undertake the LWR project with a total generating capacity of approximately 2000 MW(e) by 2003. In Provision II, both sides agreed to reduce barriers to trade and investment and to open a liaison office in each other’s capital. The two sides also declared to upgrade
bilateral relations to the ambassadorial level. In Provision III, the United States pledged not to use or threaten to use nuclear weapons against North Korea, while North Korea promised to take steps towards implementing the Joint Declaration. This Provision created an atmosphere promoting a nuclear-free zone in the Korean Peninsula. In Provision IV, North Korea guaranteed full compliance with the IAEA safeguards agreement. The Agreed Framework has been substituted by four agreements and eight protocols since its adoption. Among these, the Supply Agreement was noticeable. It laid down the ways of supplying two LWR units with two coolant loops.

15. Right after the conclusion of the Agreed Framework, the United States, Japan and South Korea established the Korean Peninsula Energy Development Organization (KEDO) in charge of delivering interim energy until the completion of the first reactor.

III.C. The Six-Party Talks: The Joint Statement

III.C.i. The Joint Statement of the Fourth Round of the Six-Party Talks of 19 September 2005

16. The Geneva Agreed Framework became a key to resolving the North Korean nuclear crisis peacefully. North Korea and the United States agreed to develop nuclear energy solely for peaceful purposes. North Korea completed unloading 8000 spent fuel rods by June 1995 and, in October 1998, announced that it would not export missiles in return for 3 billion US dollars of financial support for three years. North Korea opened its suspicious underground facilities at Kumchangri to the US inspection team. At the high-ranking meeting between North Korea and the United States held in Berlin in September 1999, the United States promised the raising of economic sanctions and the provision of food support to North Korea after it decided to stop missile launches. At the same time, William Perry, the US North Korea Policy Coordinator wrote a report entitled, "Review of United States Policy Toward North Korea". In this report, he proposed a "comprehensive and integrated approach" dealing with North Korea. As the United States announced the mitigation of economic sanctions, North Korea declared a moratorium on missile launches. In a peaceful mood, a historic inter-Korean summit was held in Pyongyang in June 2000. On 12 October 2000, North Korea and the United States released the Joint Communiqué reaffirming bilateral cooperation based on the Geneva Agreed Framework. Following the Joint Communiqué, the US Secretary of State, Madeleine Albright, visited Pyongyang, the capital of North Korea.

17. However, their cooperative ties suddenly turned tense when President George W. Bush took office in January 2001. The Bush administration redesigned the US policy towards North Korea, recognizing North Korea as a grave threat towards the peace and security of Northeast Asia. The US administration officials warned that North Korea’s proliferation of WMD could be used to arm Al Qaeda. Their standoff rapidly escalated when President Bush designated North Korea as part of an “axis of evil” with Iran and Iraq. North Korea criticized the speech and regarded it as an actual declaration of war. Finally, in October 2002, their relations became irreconcilable when North Korea indirectly acknowledged its nuclear weapons development programme.
response, in November 2002, the United States decided to stop supplying heavy oil to North Korea. North Korea also prevented the KEDO delegation from entering the country to inspect the use of heavy oil. Furthermore, North Korea proclaimed the resumption of the construction and operation of all its nuclear facilities. Such a serious situation was getting worse when the United States proclaimed its “tailored containment policy” against North Korea. It resulted in political and economic sanctions at the end of 2002. North Korea regarded this hostile action as a grave threat to its “supreme national interest.” On 10 January 2003, North Korea finally declared its withdrawal from the NPT. This clash triggered the second nuclear crisis. The deadlock seemed far worse than that of the first nuclear crisis in 1994. Neither party could find a suitable exit from this diplomatic quagmire.

18. Entering April 2003, the United States and North Korea resumed contacts to ease the standoff, partially due to the fact that the US could no longer focus on North Korea as a result of the start of the Iraqi war. Both sides first renewed discussions at the trilateral talks held in Beijing on 23 April 2003. At these talks, the two sides reached the accord that this crisis should be handled in a more peaceful and systematic manner among the nations concerned. Such an envisaged framework was finally realized as a form of Six-Party Talks. The six nations of China, the United States, Russia, Japan and the two Koreas, seated at the hexagonal table in Beijing on 27 August 2003, discussed how to resolve the pressing issue of North Korea’s suspected nuclear weapons programme. There, North Korea and the United States merely reconfirmed their mutually irreconcilable positions. North Korea wanted to construct a normalization of ties with the United States and to obtain economic rewards for giving up its nuclear weapons programme in a “complete, verifiable and irreversible” manner. The point at issue lay in which of the two bargain conditions should be implemented first.

19. The Six-Party Talks were becoming a stable discussion forum to manage North Korea’s nuclear crisis. In the course of the Six-Party Talks, however, there were many frustrations and disappointments. North Korea and the United States exchanged harsh debates especially between the third and the fourth rounds of the Six-Party Talks. Beginning in 2005, their criticisms reached the highest peak when US Secretary of State Condoleezza Rice designated North Korea in a list of “outposts of tyranny” in her confirmation hearings and North Korea announced that it had nuclear weapons. This standoff, however, was dramatically resolved in September 2005 by a series of the Six-Party Talks. The fourth round of the Six-Party Talks finally adopted a Joint Statement on the nuclear crisis on 19 September 2005, which contains similar agreements to the Geneva Agreed Framework.

20. Reaffirming that the ultimate goal of the Six-Party Talks is the verifiable denuclearization of the Korean Peninsula in a peaceful manner, the parties agreed to the following in the Joint Statement. Firstly, North Korea committed to abandoning all of its nuclear weapons and existing nuclear programmes and to return to the NPT and the IAEA safeguards. Secondly, the United States affirmed its intention neither to deploy nuclear weapons in the Korean Peninsula nor to attack North Korea with nuclear or conventional weapons. Thirdly, South Korea affirmed that the 1992 Joint Declaration on the Denuclearization of the Korean Peninsula should be observed and implemented. It also confirmed that no nuclear weapons were within its territory. Fourthly, North Korea and the United States would respect each other’s sovereignty and take steps to normalize their relations. Fifthly, China, Japan, South Korea, Russia and the United States agreed to provide energy assistance to North Korea. In particular, South Korea reaffirmed its proposal of providing 2 MW(e)

32 Ibid., 115.
33 Ibid.
34 Ibid., 117.
35 Ibid.
36 For details on the positions of both sides, see Lee, above n.13, 118.
LWRs to North Korea. Finally, all the parties agreed to negotiate a permanent peace regime in the Korean Peninsula.37

III.C.ii. Actions for the implementation of the Joint Statement

21. Less than a year after celebrating the Joint Statement, the third nuclear crisis happened. The crisis was first triggered by a missile launch of North Korea on 5 July 2006. North Korea fired a total of seven missiles towards the East Sea of Korea including Rodong, Scud and inter-continental ballistic missiles.38 Following the missile launch, the United States and Japan called for the Security Council to address this issue. After hard talks among Member States regarding the draft, the Security Council unanimously passed Resolution 1695 on 15 July 2005.39 Resolution 1695 urges North Korea to suspend all activities related to its ballistic missile programme and to return to the Six-Party Talks and the NPT immediately. In addition, the Security Council, in this resolution, requires all UN Member States to exercise vigilance and prevent missile and missile-related items, materials, goods and technology from being transferred to North Korea.40

22. The missile test-firing was followed by a nuclear weapons test on 9 October 2006. It made the situation deteriorate further. Regarding it as one of the most serious problems against global security, the United States and Japan addressed the Security Council, calling for effective action against the nuclear weapons test. The United States drafted a resolution urging both international inspections of all cargo moving into and out of North Korea to detect weapons-related materials, and a freeze on any transfer or development of WMD. This draft resolution was in connection with the US proposal of the Proliferation of Security Initiative (PSI).41 After harsh debates at the Security Council, Resolution 1718 was passed on 14 October 2006.42 Resolution 1718 demanded that North Korea not conduct any further nuclear weapons tests and return to the NPT and IAEA safeguards and ultimately the Six-Party Talks. The Security Council, in this resolution, decided that North Korea should abandon all other existing WMD and ballistic missile programmes in a ‘complete, verifiable and irreversible manner.’43 Under this resolution, all UN Member States were called upon both to take cooperative action through inspection of cargo to and from North Korea and to freeze its funds, other financial assets and economic resources.44

23. This uncompromising stalemate was relieved by two consecutive Actions for the Implementation of the Joint Statement released at the Fifth and the Sixth Rounds of the Six-Party Talks of 2007. The Initial Actions were adopted on 13 February 2007.45 Under this accord, North Korea agreed: to shut down and seal the Yongbyon nuclear facility for the purpose of eventually abandoning its nuclear programme; to invite back the IAEA personnel to conduct all necessary monitoring and verifications; and to discuss with other parties a list of all the nuclear programmes as described in the Joint Statement. In addition, North Korea would start bilateral talks with the United States and Japan, aiming to resolve the pending issues and to normalize their relations up to the ambassadorial diplomatic level. In accordance with these actions, the other parties agreed to provide emergency assistance to North Korea equivalent to 50 000 tons of heavy fuel

40 Ibid.
42 SC Res 1718 (14 October 2006).
43 Lee, above n.38, 10–11.
44 SC, above n.42.
Table 1. The Process of the Six-Party Talks (from August 2003 to September 2007)

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<thead>
<tr>
<th>Round</th>
<th>Period</th>
<th>Outcomes</th>
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<tbody>
<tr>
<td>The first round</td>
<td>27–29 August 2003</td>
<td>Agreed on the denuclearization of the Korean Peninsula through peaceful resolution</td>
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<tr>
<td>The second round</td>
<td>25–28 February 2004</td>
<td>The Presidential Statement</td>
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<td>The third round</td>
<td>23–25 June 2004</td>
<td>Consensus for “Action for Action”</td>
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<td>The fourth round</td>
<td>26 July–7 August 2005</td>
<td>The Joint Statement</td>
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<td></td>
<td>13–19 September 2005</td>
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<tr>
<td>The fifth round</td>
<td>9–11 November 2005</td>
<td>Actions for the Implementation of the Joint Statement</td>
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<td></td>
<td>18–22 December 2006</td>
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<td>8–13 February 2007</td>
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<tr>
<td>The sixth round</td>
<td>19–22 March 2007</td>
<td>The Second-phase Actions for the Implementation of the Joint Statement</td>
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<td></td>
<td>27–30 September 2007</td>
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oil in the first 60 days and to establish five working groups to carry out the initial actions required in the agreement and to work on full implementation of the Joint Statement.46

III.C.iii. The Second-phase Actions for the Implementation of the Joint Statement
24. The Second-phase Actions for the Implementation of the Joint Statement were passed on 3 October 2007, after the second session of the Sixth Round of the Six-Party Talks. These agreements include more concrete measures which could verify the Joint Statement of 19 September 2005. With these Actions, North Korea agreed to disable all existing nuclear facilities and to provide a complete and correct declaration of all its nuclear programmes. North Korea also reaffirmed its commitment not to transfer nuclear materials, technology or know-how. In connection with these actions, the United States would begin the process of removing the designation of North Korea as a State sponsor of terrorism and advance the process of terminating the application of the Trading with the Enemy Act47 with respect to North Korea. In addition, the other parties agreed to provide economic, energy and humanitarian assistance (Table 1).48

IV. The future: the Korean NWFZ
IVA. Why the Korean NWFZ?
25. No one can deny that the North Korean nuclear dispute is one of the most critical and hardest diplomatic issues to settle in contemporary world politics. Through the drudgery of the Six-Party Talks, the members adopted the Joint Statement and the following two Actions for Implementation. Despite the key rules for resolving the North Korean nuclear crisis, these legal initiatives have been lacking in enforcement thus far. The crisis was even exacerbated when North Korea conducted its second nuclear test on 25 May 2009. The UN Security Council passed Resolution 1874 on 12 June 2009, imposing further economic and financial sanctions on North Korea and encouraging Member States to search North Korean cargo.49 In addition, South Korean President

47 See United States Federal Law, 12 U.S.C. § 95a (1917) (www.conservativeusa.org/eo/1917/enemy.htm (last visited 4 September 2010)).
Lee Myung-bak made the “Grand Bargain” proposal to stop the North Korean nuclear weapons programme by 21 September 2010. His proposal involves monetary compensation in exchange for North Korea’s abandonment of its nuclear programme. No significant response was received from the North, however. As things are unstable, little is expected even in the near future.

26. At this time, the failure is also due to a critical defect in the underlying nature of the NPT system. The NPT is not a comprehensive nuclear disarmament package, but a limited nuclear deterrence system under the “nuclear umbrella”. Recognizing the United States, the United Kingdom, Russia, China and France as nuclear States, the other Member States agreed to limit the proliferation of nuclear weapons. It imposes a duty only on non-NWSs not to develop nuclear weapons and continues to conduct inspections under the safeguards. In addition to the so-called Big Five, three non-parties to the Treaty are believed to possess nuclear weapons: India and Pakistan have openly tested and declared that they possess nuclear weapons, while Israel has maintained a policy to “neither confirm, nor deny” the existence of its own nuclear weapons. Although North Korea evidently violated the NPT, there is no way to legally bind it to the Treaty mainly because of these dual standards applied to nuclear and non-nuclear weapon countries. A more consistent and advanced legal and policy measure is thus required to stop North Korea’s nuclear weapons development programme in a “complete, verifiable and irreversible” manner. The best way is to fairly apply a general and comprehensive nuclear demilitarization system to all parties involved. That would be to establish an NWFZ in the Korean Peninsula.

IV.B. Definition of NWFZ

27. Just a few decades ago, the creation of NWFZs was more of a hypothetical or ideal question. Today, however, about half of the world’s nations are direct or indirect members of the five regional NWFZs.

28. The idea of establishing NWFZs first appeared in the mid-1950s. This zonal approach to nuclear arms control was advanced by the former Soviet Union in the Subcommittee of the UN Disarmament Commission. The proposal was aimed at banning the stationing of atomic military formations and the locating of atomic and hydrogen weapons in Central Europe.

29. An NWFZ generally means “a specified region in which countries commit themselves not to manufacture, acquire, test or possess nuclear weapons.” The UN General Assembly defines an NWFZ as:

Any zone, recognized as such by the General Assembly of the United Nations, which any group of States, in the free exercise of their sovereignty, has established by virtue of a treaty or convention whereby: (a) The statute of total absence of nuclear weapons to which the zone shall be subject, including the procedure for the delimitation of the zone, is

51 Ibid.
53 For details on the historical context of NWFZs, see M. Rosen, Nuclear-Weapon-Free Zones, 48 Naval War College Review (1996), 45–46.
56 Arms Control Association, Nuclear-Weapon-Free Zone at a Glance (www.armscontrol.org/factsheets/nwfz (last visited 14 February 2010)).
defined; (b) An international system of verification and control is established to guarantee compliance with the obligations deriving from that statute.

30. The concept of the NWFZ may also be found in the NPT. Article VII of the NPT provides the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories. This provision is intended to encourage States to create barriers against the proliferation of nuclear weapons through the establishment of NWFZs.58

31. In order to establish an NWFZ, however, a few more conditions may be required as follows59:

1. Regional States must be subjected to the obligations deriving from the regional status as an NWFZ. No new nuclear weapons may be introduced into the region, and any existing nuclear weapons must be destroyed;
2. Regional States must make a full declaration of existing nuclear programmes and agree to subject them to verification with the IAEA;
3. Foreign powers exercising trusteeship responsibilities in territories forming part of the zone should commit themselves to respecting the denuclearized status of the zone;
4. All regional States should accede to the NPT and submit their nuclear activities to the IAEA safeguards; and
5. NWSs should agree to negative security assurances; they should make commitments neither to attack nor threaten to attack zonal States with nuclear weapons.

32. An NWFZ promotes the core values associated with a universal nuclear non-proliferation treaty. Those nations that have renounced nuclear weapons should be protected from such arms.60

IV.C. The General NWFZs

33. The general NWFZs have been established in a few “global common areas” on and around the earth, including Antarctica, the seabed and outer space. Firstly, the Treaty of Antarctica of 1959 declares that the Antarctic area be used for peaceful purposes only; any measure of a military nature, such as the establishment of military bases and fortifications, the carrying out of military manoeuvres as well as the testing of any type of weapon, is prohibited.61 Article 5 of the Treaty prohibits any nuclear explosions or disposal of radioactive waste materials in Antarctica.62 Secondly, the Treaty on Principles Governing Activities of States in the Exploration of Outer Space, the Moon and other Celestial Bodies of 1967 (Outer Space Treaty)63 arose from the former Soviet Union’s efforts to forestall the possibility of orbital nuclear weapons.64 Article IV of the Outer Space Treaty prohibits the orbiting or installation of any weapon of mass destruction in outer space or on the Moon or other celestial bodies. Thirdly, the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor of 1971 (Sea-Bed Arms Control Treaty) prohibits States from “implanting or emplacing” nuclear weapons or “other weapons of mass destruction as well as

61 Treaty of Antarctica, art. 1, para.1 (1959).
62 Ibid., art. 5.
structures, launching installations, or other facilities” on the “seabed and the ocean floor”.

The non-nuclear zone extends seaward from the 12-nautical-mile territorial sea of its parties. The Sea-Bed Arms Control Treaty provides for the necessary verification procedures. Fourthly, the Agreement Governing the Activities of States on the Moon and other Celestial Bodies of 1979 (Moon Treaty) provides that “the State parties shall not place in orbit around or other trajectory to or around the Moon objects carrying nuclear weapons, or place or use such weapons on or in the Moon” (Table 2).

IV.D. The regional NWFZs

34. A zonal approach to the NWFZ was first tried in Latin America and the Caribbean in 1967. Currently, five NWFZs are regionally working on the earth, and Mongolia has unilaterally declared itself as a single-State NWFZ.

IV.D.i. The Latin American NWFZ

35. The Latin American NWFZ was born after the Cuban missile crisis of 1962 with the Treaty of Tlatelolco. The people in Latin America and the Caribbean became worried about nuclear war between the United States and the former Soviet Union. In order to prevent future nuclear tension in this region, 33 Latin and Caribbean States agreed to establish an NWFZ and adopted the Treaty of Tlatelolco containing 31 articles, 4 annexes and 2 protocols in 1967. As the first international legal instrument for an NWFZ, the Treaty of Tlatelolco prohibits any nuclear weapon-related activity including testing, use, manufacturing, production, acquisition, receipt, storage, installation, deployment. The Treaty allows the use of nuclear energy only for

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Area</th>
<th>Year</th>
<th>Prohibition of nuclear arms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treaty of Antarctica</td>
<td>Antarctica</td>
<td>1959</td>
<td>Any nuclear explosions or disposal of radioactive waste materials in Antarctica</td>
</tr>
<tr>
<td>Treaty on Principles Governing Activities of States in the Exploration of Outer Space, the Moon and other Celestial Bodies</td>
<td>Outer space</td>
<td>1967</td>
<td>The orbiting or installation of any weapon of mass destruction in outer space or on the Moon or other celestial bodies</td>
</tr>
<tr>
<td>Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons ofMass Destruction on the Sea-Bed and the Ocean Floor</td>
<td>Sea-bed</td>
<td>1971</td>
<td>“Implanting or emplacing” nuclear weapons or “other weapons of mass destruction as well as structures, launching installations, or other facilities” on the “seabed and the ocean floor.”</td>
</tr>
<tr>
<td>Agreement Governing the Activities of States on the Moon and other Celestial Bodies</td>
<td>The Moon</td>
<td>1979</td>
<td>Place in orbit around, or other trajectory to or around, the Moon objects carrying nuclear weapons, or place or use such weapons on or in the Moon</td>
</tr>
</tbody>
</table>

Table 2. The General NWFZs

66 Rosen, above n.64, 46.
68 Moon Treaty of 1979, art. 3.
peaceful purposes. Because it embraces a vast maritime area, which would influence the maritime activities of non-Member States, the general principles of law of the sea including the “freedom of the high seas” and the “rights of innocent passage” are respected in the Treaty.  

IV.D.ii. The South Pacific NWFZ
36. The South Pacific NWFZ was established in 1985 with the Treaty of Rarotonga. The Rarotonga Treaty was a product of the French nuclear threat in the South Pacific area dating back to the 1960s. It was originally proposed by Australia, and 12 other States in the South Pacific area endorsed it. A major ground for this proposal was a series of French atmospheric nuclear tests in French Polynesia from 1966. In accordance with the interim orders from the International Court of Justice in 1973, France discontinued its atmospheric nuclear test in 1974, but began underground nuclear testing at Mururoa Atoll in early 1975. As a countermeasure, 13 South Pacific nations including Australia and New Zealand agreed to set up an NWFZ. The South Pacific NWFZ covers a broader area than the Latin American NWFZ. The Treaty of Rarotonga prohibits the States parties from developing, manufacturing, testing, acquiring, owning or using nuclear explosive devices.

IV.D.iii. The African NWFZ
37. The African NWFZ was created with the Treaty of Pelindaba in 1996. The African NWFZ covers the territory of the African continent, island States of the Organization of African Union (OAU) and all islands considered by the OAU in its resolutions to be part of Africa. A significant number of African countries have signed the Treaty and major NWSs have acceded to the three protocols.

IV.D.iv. The Southeast Asian NWFZ
38. The Southeast Asian NWFZ was built out of the Treaty of Bangkok in December 1995. It is based on the aspirations of the Southeast Asian people to live in a region where nuclear weapons are neither developed nor deployed, nor used or threatened by regional or extra-regional States. In regard to the principles of the NPT, the Southeast Asian States have urged the NWSs to support the protocol of the Treaty of Bangkok to ensure the total implementation of the zone.

IV.D.v. The Central Asian NWFZ
39. The Central Asian NWFZ is the youngest nuclear-free area in the world. It was proposed in 1993 and entered into force on 21 March 2009 when the Treaty of Semipalatinsk was ratified by the five Member States in this region, formerly part of the Soviet Union. All parties should comply with the Comprehensive Nuclear-Test-Ban Treaty. The Central Asian NWFZ forbids the development, manufacture, stockpiling, acquisition or possession of any nuclear explosive devices.

69 Hyun-sook Hong, Nuclear Weapon Free Zone in Northeast Asia (thesis for master’s degree submitted to Ewha Womans University, 2003), 20–22.
73 Alves and Cipollone, above n.1, 49–54.
74 Power, above n.72, 456.
75 Alves and Cipollone, above n.1, 58.
76 Ibid., 59.
device within the zone. Peaceful uses of nuclear energy are permitted if placed under the enhanced IAEA safeguards.78

**IV.D.vi. Mongolia**

40. There is another case that a single country pursued a different path to achieve a nuclear weapon-free area. Mongolia, in 1992, declared itself a single-State NWFZ and was recognized as having NWFZ status by the UN General Assembly in 1998.79 Mongolia may provide an example that other countries can build on to develop the NWFZ concept further and make them better able to address contemporary non-proliferation challenges (Table 3).80

### IV.E. A proposal for the Korean NWFZ

**IV.E.i. Origin**

41. The idea for the Korean NWFZ was originally claimed by North Korea. It was officially proposed in a statement of North Korea’s Foreign Ministry on 30 July 1991.81 In the course

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**Table 3. The Regional NWFZs**

<table>
<thead>
<tr>
<th>Name of Treaty</th>
<th>Region</th>
<th>Entered into force</th>
<th>Number of State parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treaty of Tlatelolco</td>
<td>Latin America and the Caribbean</td>
<td>25 April 1969</td>
<td>33 nations including Argentina, Brazil, Chile, Mexico, Uruguay and Venezuela</td>
</tr>
<tr>
<td>Treaty of Rarotonga</td>
<td>South Pacific</td>
<td>11 December 1986</td>
<td>13 nations including Australia, New Zealand and Tonga</td>
</tr>
<tr>
<td>Treaty of Bangkok</td>
<td>Southeast Asia</td>
<td>27 March 1997</td>
<td>10 nations including Brunei, Cambodia, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam</td>
</tr>
<tr>
<td>Treaty of Pelindaba</td>
<td>Africa</td>
<td>15 July 2009</td>
<td>28 nations including Algeria, Ethiopia, Nigeria, South Africa and Zimbabwe</td>
</tr>
<tr>
<td>Treaty of Semipalatinsk</td>
<td>Central Asia</td>
<td>21 March 2009</td>
<td>5 nations including Kazakhstan, Kyrgyzstan and Uzbekistan</td>
</tr>
<tr>
<td>Unilateral Declaration</td>
<td>Mongolia</td>
<td>4 December 1998</td>
<td>1 nation</td>
</tr>
</tbody>
</table>

Compiled by the author. For details, see http://www.armscontrol.org/factsheets/nwfz (last visited on February 24, 2010).

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81 UN Doc S/23172 (28 October 1991).
of the fourth round of the inter-Korean high-ranking talks, North Korea’s Prime Minister Yon Hyong-muk released a draft declaration on the Korean Peninsula NWFZ. 82 On 8 November 1991, South Korea’s President Rho Tae-woo affirmed a clear position on the denuclearization, declaring “No Nuclear Arms in South Korea.”83 This denuclearization trend was finally memorialized in the Joint Declaration of the Denuclearization of the Korean Peninsula of 1992. In the Joint Declaration, the two Koreas agreed “not to test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons.”84 They also agreed to use nuclear energy solely for peaceful purposes. However, the two Koreas might have understood differently what constitutes denuclearization in this Joint Declaration.85 South Korea regarded it as limited nuclear deterrence under the NPT, while North Korea saw it as general and comprehensive nuclear disarmament through an NWFZ. In the Geneva Agreed Framework between the United States and North Korea of August 1994, both sides reached a consensus for realizing the denuclearization of the Korean Peninsula. The denuclearization process was further accelerated by the Joint Statement of 2005. In the Joint Statement, North Korea agreed to abandon all existing nuclear weapons programmes, and the United States affirmed its intention neither to deploy nuclear weapons in the Korean Peninsula nor to attack North Korea with nuclear or conventional weapons. South Korea confirmed no nuclear weapons in its territory, recognizing the Joint Declaration of Denuclearization.

IV.E.ii. Geographical scope
42. The Korean NWFZ would apply to the whole Korean Peninsula including North Korea and South Korea. It would cover all land holdings with the adjacent islands, internal waters and territorial seas. A question may arise with respect to the nuclear States maintaining their strategic interest in this region if the NWFZ covers the maritime area beyond the territorial seas. When the Treaty of Tlatelolco permitted the NWFZ to extend to hundreds of kilometres from the territorial seas of Member States into the Pacific and the Atlantic Oceans,86 the NWSs, invoking the principle of freedom of sea, asserted that this should not apply to their ships and aircraft that might be carrying nuclear weapons. In the case of the Treaty of Pelindaba, Diego Garcia in the Indian Ocean was a place in controversy due to the US military base there. Neither the United States nor the United Kingdom recognizes Diego Garcia as a part of the African NWFZ.87

IV.E.iii. Object of regulation
43. The “nuclear explosive device” would be the main object of regulation in the Korean NWFZ. The delivery system would not be regulated. Any previous nuclear activities would be opened; already-made and stationed nuclear arms would be abolished. The nuclear facilities would be operated only for peaceful purposes under the inspection of the IAEA.

IV.E.iv. Prohibited activities
44. The following would be the prohibited activities related to the nuclear weapons in the Korean NWFZ: development, testing, manufacture, production, acquisition, receipt, stationing, deployment, storage, stockpiling, installation, emplacement, implantation, transportation, possession, control and use.88 Research for the peaceful use of nuclear energy would be permitted.

84 Joint Declaration, art. 1.
85 Ibid., art. 2.
86 Treaty of Tlatelolco, art. 4.
87 Arms Control Association, above n.56.
IV.E.v. Duration
45. The Korean NWFZ treaty would remain in force indefinitely without a special notice of withdrawal. Because only the two Koreas are the direct Member States of the Korean NWFZ, the treaty would be invalid if one of the parties withdraws from it. The Korean NWFZ treaty would require 12 months of notice in advance before withdrawal.

IV.E.vi. Verification
46. The two Koreas should accept the IAEA safeguards, which verify that Member States are not pursuing nuclear weapons illicitly. The Agency could verify the peaceful use of nuclear energy in the Korean Peninsula on a regular basis. Both sides would fully conduct the nuclear inspection of the suspected nuclear sites of the other side. They would also build a multilateral verification agency in which the UN, IAEA and neighbouring countries participate. In the case of the Central Asian NWFZ, the Treaty of Semipalatinsk requires that States in the region adopt the IAEA’s Additional Protocol providing for expanded monitoring.89

IV.E.vii. Confirmation of NWSs
47. The Korean NWFZ would need negative security guarantees which would be made by the NWSs. In order to maintain the inviolability and integrity of the proposed Korean NWFZ, the NWSs would agree not to violate any terms of the Korean NWFZ treaty. In addition, the NWSs would have to guarantee not to threaten or use nuclear weapons against either of the two Koreas.90

IV.E.viii. Prospect
48. The Korean NWFZ would serve as fertile ground for the development of a limited NWFZ in Northeast Asia or a Pan-Pacific NWFZ.

V. Conclusion
49. This paper has tackled highly topical questions concerning North Korea’s nuclear weapons development from the viewpoint of international law. As the most efficient way to restore nuclear peace in the Korean Peninsula, the author has scrutinized the general conditions to create an NWFZ in this region. This paper began with re-examining North Korea’s nuclear weapons development programme and its relevant international legal measures. North Korea has been developing nuclear weapons for its national security. This nuclear crisis, however, became more complicated due to both a moralistic approach which simply regarded the problem as one of good versus evil, and the restriction of the current nuclear non-proliferation regime. The paper has also reviewed the negotiation process for nuclear arms control in and around the Korean Peninsula. The author has checked a series of nuclear negotiations including the inter-Korean talks in the early 1990s, the US–North Korean talks in the mid-1990s and then the most recent Six-Party Talks. Although such painstaking processes have not been always fruitful, these negotiations delivered a few significant outcomes towards nuclear peace in the Korean Peninsula. In lieu of its nuclear weapons programme, North Korea has needed: to guarantee its political regime; to normalize its relationship with the United States; and to ensure the flow of economic aid. The third part has proposed a Korean NWFZ plan. Because the NPT could not fully deter North Korean’s nuclear weapons development, due especially to the inherent paradoxical regulations, the NWFZ is presumed to be the best option for the denuclearization of the Korean Peninsula. Five regional NWFZs and three general nuclear-free areas are currently working throughout the world. In addition, Mongolia declared itself a single-State NWFZ and

89 Arms Control Association, above n.56. For details, see M. Rocini, Something Old, Something New: The 2006 Semipalatinsk Treaty on a Nuclear Weapon-Free Zone in Central Asia, 7 Chinese JIL (2008), 600.
a few more regions such as the Middle East91 and the Balkans92 are planning to establish NWFZs. As more than a half of the UN Member States currently belong to an NWFZ, an NWFZ is recognized as the best option to ensure the total absence of nuclear weapons in the Korean Peninsula. The author discussed the general conditions for establishing the Korean NWFZ, such as geographical scope, object of regulation, prohibited activities, duration and verification. A model treaty for the Korean NWFZ has also been drafted in this paper.

50. It seems that North Korea’s nuclear crisis is one of the most difficult questions facing the international community in the twenty-first century. However, both sides have already reached a consensus not to develop nuclear weapons in the Joint Declaration of Denuclearization and the Joint Statement of the Six-Party Talks. There, both agreed that nuclear energy should be used only for peaceful purposes and any nuclear activities for military purposes should be prohibited in the Korean Peninsula. In order to realize these principles, North Korea agreed to abandon all nuclear weapons and existing nuclear weapons programmes, and the United States clarified its intention not to attack North Korea. The situation is now in a deadlock, nonetheless. The critical point at issue is which proposal should be implemented first. The right answer would be the simultaneous denuclearization under the Korean NWFZ plan. If the parties return to these accords and keep these principles in mind, the denuclearization of the Korean Peninsula will not remain a utopian dream.

Annex

A Draft Treaty for the Korean Nuclear Weapon-Free Zone

Preamble

The Parties to this Treaty,
Reaffirming the ultimate desire of all Koreans for the reunification of our fatherland,
Deeply concerned that the escalating nuclear arms race in and around the Korean peninsula presents the risk of nuclear war which would have incalculably catastrophic results for all the Korean people,
Stressing the spirits of the Joint Declaration of the Denuclearization of the Korean Peninsula and the Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation between the two Koreas,
Headed by the declarations of the inter-Korean summits in 2000 and 2007,
Recalling the United Nations General Assembly Resolution 3742 B(XXX) of December 11, 1975, in which it considered nuclear-weapon-free zones one of the most effective means for preventing the proliferation, both horizontal and vertical, of nuclear weapons,
Recognizing the importance of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in preventing the proliferation of nuclear weapons in the Korean peninsula as well as in the international community,
Noting Article VII of the NPT which recognizes the right of any group of States to conclude regional treaties in order to assume the total absence of nuclear weapons in their respective territories,

92 Klick, above n.90, 111–123.
Convinced that the Korean nuclear weapon-free zone will take a crucial step towards strengthen-
ing the non-proliferation regime, promoting cooperation in the peaceful uses of nuclear energy,
enhancing general and complete disarmament in both Northeast Asia and the world,
Determined to keep the Korean peninsula free of environmental pollution and hazards of
radioactive wastes and other radioactive matter,
Welcoming the cooperation of all States and governmental and non-governmental organi-
sations for the attainment of these objectives,
Have decided by this Treaty to establish the Korean Nuclear Weapon Free Zone (NWFZ) and
hereby agree as follows.

Article 1: Definition of Terms
1. For the purposes of this Treaty, the Contracting Parties are the Republic of Korea and the
Democratic People's Republic of Korea for whom the Treaty is in force.
2. For the purposes of this Treaty, a nuclear weapon is any device which is capable of releasing
nuclear energy in an uncontrolled manner and which has a group of characteristics that are appro-
priate for use for warlike purposes. An instrument that may be used for the transport or propulsion
of the device is not included in this definition if it is separable from the device and not an indi-
visible part thereof.
3. The Korean Nuclear Weapon-Free Zone covers the areas described in Annex 1 as illustrated
by the map attached to that Annex.
4. Territory means all land territories of the Korean peninsula with the adjacent islands, internal
waters, territorial seas and the airspace above them as well as the seabed and subsoil beneath.
5. “Stationing” means implantation, emplacement, transport on land or inland waters, stock-
piling, storage, installation and deployment.
6. “Nuclear installation” means a nuclear-power reactor, a nuclear research reactor, a critical
facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation
plant, a separate storage installation and any other installation or location in or at which fresh
or irradiated nuclear material or significant quantities of radioactive materials are present.
7. “Nuclear material” means any source material or special fissionable material as defined in
Article XX of the Statute of the International Atomic Energy Agency (IAEA) and as amended
from time to time by the IAEA.
8. “Radioactive waste” means any radioactive material, i.e., any substance containing radio-
uclides, that will be or has already been removed and is no longer utilized, at activities and
activity concentrations of radionuclides greater than the exemption levels established in inter-
national standards issued by the IAEA.

Article 2: Application of the Treaty
1. The Zone of application of this Treaty is the whole of the territories for which the Treaty is in
force.
2. Except where otherwise specified, this Treaty and its Protocols shall apply to the territory
within the Korean Nuclear Weapon-Free Zone, as illustrated in the map in Annex I.
3. Nothing in this Treaty shall prejudice or in any way affect the rights, or the exercise of the
rights, of any States under international law with regard to freedom of the high seas, the rights of
innocent passage and other relevant principles of international law consistent with the Charter of
the United Nations.

Article 3: Basic Undertakings
1. Renunciation of Nuclear Explosive Devices

Each Party undertakes:

(a) not to manufacture or otherwise acquire, possess or have control over any nuclear explosive
device by any means anywhere inside or outside the Korean Nuclear Weapon-Free Zone;
(b) not to seek or receive any assistance in the manufacture or acquisition of any nuclear explosive device;
(c) not to take any action to assist or encourage the manufacture or acquisition of any nuclear explosive device by any State.

2. Peaceful Nuclear Activities

Each Party undertakes:

(a) not to provide source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material for peaceful purposes to:
   (i) any non-nuclear-weapon State unless subject to the safeguards required by Article III.1 of the NPT, or
   (ii) any nuclear-weapon State unless subject to applicable safeguards agreements with the IAEA.

(b) to support the continued effectiveness of the international non-proliferation system based on the NPT and the IAEA safeguards system.

3. Prevention of Stationing of Nuclear Explosive Devices

Each Party undertakes:

(a) to prevent in its territory the stationing of any nuclear explosive device;
(b) to decide for itself in the exercise of its sovereign rights whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea or archipelagic waters in a manner not covered by the rights of innocent passage, archipelagic sea lane passage or transit passage of straits.

4. Prevention of Testing of Nuclear Explosive Devices

Each Party undertakes, in accordance with the Comprehensive Test Ban Treaty (CTBT):

(a) to prevent in its territory the testing of any nuclear explosive device;
(b) not to take any action to assist or encourage the testing of any nuclear explosive device by any State.

5. Prevention of Dumping

Each Party undertakes:

(a) not to dump radioactive wastes and other radioactive matter at sea anywhere within the Korean Nuclear Weapon-Free Zone;
(b) to prevent the dumping of radioactive wastes and other radioactive matter by anyone in its territorial sea;
(c) not to take any action to assist or encourage the dumping by anyone of radioactive wastes and other radioactive matter at sea anywhere within the Korean Nuclear Weapon-Free Zone.
Article 4: IAEA Safeguards
Each Party shall conclude an agreement with the IAEA for the application of full scope safeguards to its peaceful nuclear activities not later than eighteen months after the entry into force.

Article 5: The Consultative Commission
1. The Commission shall be the consulting organ of the Korean NWFZ.
2. The Commission shall be organized by the Foreign Minister of each party and five special representatives, two among which shall be recommended by each State party and one shall be recommended by the United Nations Secretary-General.
3. The Commission has the function to oversee the implementation of the Treaty and ensure compliance with its provisions.
4. The Commission shall meet regularly and when necessary for the efficient exercise of its function.

Article 6: The Liaison Office
Each contracting party shall have the liaison office in each territory for the communication.

Article 7: Peaceful Use of Nuclear Energy
1. Nothing in the provisions of this Treaty shall prejudice the rights of the two Parties, in conformity with this Treaty, to use nuclear energy for peaceful purposes, in particular for their economic development and social progress.
2. In order to verify the peaceful use of nuclear energy, each party shall:
   (a) conclude a comprehensive safeguards agreement with IAEA;
   (b) provide source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material for peaceful purposes to any non-nuclear-weapon State unless subject to a comprehensive safeguards agreement concluded with IAEA.

Article 8: Control System
1. The two Parties shall establish a Control System for the purpose of verifying compliance with the obligations laid down in this Treaty.
2. The Control System shall be used for the purpose of verifying that devices, services and facilities intended for peaceful uses of nuclear energy are not used in the testing or manufacture of nuclear weapons.
3. The Control System shall comprise:
   (a) reports and exchanges of information as provided for in Article 9;
   (b) consultation;
   (c) the application to peaceful nuclear activities of the IAEA Safeguards; and
   (d) a complaints procedure.

Article 9: Reports and Exchanges of Information
1. Each Party shall report to the Consultative Commission as soon as possible any significant event within its jurisdiction affecting the implementation of this Treaty.
2. The two Parties shall endeavour to keep each other informed on matters arising under or in relation to this Treaty. They may exchange information by communicating it to the Liaison Office, which shall circulate it to the other party.
Article 10: Settlement of Disputes
Any dispute arising from the interpretation of the provisions of this Treaty shall be settled by peaceful means as may be agreed upon by the two parties to the dispute under the arbitration of the IAEA. If both parties are unable to achieve a peaceful settlement of the dispute, one party shall, with the prior consent of the other party, refer the dispute to international judicial institutions such as the Permanent Court of Arbitration or the International Court of Justice.

Article 11: Reservations
This Treaty shall not be subject to reservations.

Article 12: Duration
This Treaty shall remain in force indefinitely.

Article 13: Signature and Ratification
1. This Treaty shall be open for signature by the Republic of Korea and the Democratic People’s Republic of Korea.
2. This Treaty shall be subject to ratification by the two contracting parties in accordance with their respective constitutional procedures. This instrument of ratification shall be deposited with each government and the United Nations.

Article 14: Entry into Force
This Treaty shall enter into force 30 days after the date of deposit of the second instrument of ratification.

Article 16: Amendments
1. One contracting party may propose amendments to this Treaty and shall submit its proposals to the other party through the Liaison Office.
2. The amendment shall be adopted when the other party takes it.
3. An amendment so adopted shall enter into force 30 days after the date of deposit of the amended instrument of ratification.

Article 16: Withdrawal
1. Each party shall have the right to withdraw from this treaty if it decides that extraordinary events, including the violation of a provision essential to the achievement of the objectives or the spirit of the Treaty, have jeopardized its supreme national interests. Such notification shall include a statement of the extraordinary events it regards as having jeopardized its supreme national interests.
2. Withdrawal shall be effected by one Party giving notice twelve months in advance to the other Party.