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REIGNING IN A ROGUE: ACHIEVING AND DRAFTING A NORTH KOREAN NUCLEAR DEAL

*JAMES K. WILLIAMS**

The path to an effective nuclear deal with North Korea is narrow. Yet a deal is possible, and could potentially benefit the United States. North Korea's nuclear program poses a major global security threat. That a rogue, albeit not irrational, regime presides over an increasingly sophisticated nuclear arsenal¹ is especially problematic for the United States and its allies across the world.²

It would be difficult to form an effective nuclear deal with North Korea because the existence of a strong nuclear program helps the Kim regime maintain its power and control over the North Korean people.³ North Korea's strong nuclear program also makes dealing with the country sufficiently unpredictable, which ironically enhances North Korean security.⁴ While typically nuclear arsenal development signals economic strength, North Korea's economy has been decimated by sanctions imposed by the

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¹ *North Korea's nuclear programme: How advanced is it?*, BRIT. BROAD. CO. (Feb. 10, 2016), <http://www.bbc.com/news/world-asia-pacific-11813699>.

² See, e.g. Javier E. David, *North Korea's arsenal raises the stakes for US grid security: Experts*, CNBC (Feb. 20, 2016), <http://www.cnbc.com/2016/02/20/north-koreas-arsenal-raises-the-stakes-for-us-grid-security-experts.html>.

³ See Kyle Mizokami, *Welcome to North Korean Nuclear Weapons 101*, NAT'L INTEREST (Sept. 26, 2015), <http://nationalinterest.org/feature/welcome-north-korean-nuclear-weapons-101-13940?page=2>.

⁴ *Id.*

United States and others.⁵ As a result of North Korea's recent nuclear tests and other hostile actions, the United States and the United Nations Security Council ("UNSC") recently imposed harsh new sanctions on Pyongyang.⁶ These new sanctions, in addition to South Korea's suspension of the Kaesong Industrial Project,⁷ have dealt North Korea's economy a significant blow.⁸ Most recently, Kim Jong Un expressed a willingness to normalize relations with "hostile" states during the ruling Workers' Party of Korea's Seventh Party Congress.⁹ This expressed interest, along with the grim economic situation in North Korea, signals the possibility of engagement.¹⁰ The most beneficial engagement for disarmament purposes, however, can only occur if the United States first seeks to weaken the increased leverage North Korea has gained from its recent nuclear tests.¹¹

The United States should continue to exert pressure on North Korea by enforcing strong

⁵ Nicholas Eberstadt, *How North Korea Became the World's Worst Economy*, WALL ST. J. (Dec. 29, 2015), <http://www.wsj.com/articles/how-north-korea-became-the-worlds-worst-economy-1451430114>. Sanctions are not solely responsible for North Korea's fragile economy. It has also been decimated by the Kim regime's mismanagement, corruption, and abuse.

⁶ *New North Korean sanctions issued by President Obama*, BRIT. BROAD. CO. NEWS (Mar. 17, 2016), <http://www.bbc.com/news/world-asia-35828831>; *UN Security Council Resolutions on North Korea*, ARMS CONTROL ASSOC. (Mar. 2016), <https://www.armscontrol.org/factsheets/UN-Security-Council-Resolutions-on-North-Korea>. It is notable that China, as part of the UN Security Council, also approved new sanctions against North Korea. Although they expressed disapproval of the new sanctions imposed by the United States, the mere fact that China was willing to approve sanctions against North Korea shows that it recognizes the threat posed by the country's nuclear arsenal. See David Francis, *Beijing Blasts New U.S. Sanctions on North Korea*, FOREIGN POLICY (Mar. 17, 2016), <http://foreignpolicy.com/2016/03/17/beijing-blasts-new-u-s-sanctions-on-north-korea/>.

⁷ Jack Kim, *North Korea took 70 percent of Kaesong wages for weapons program: South Korea*, REUTERS (Feb. 14, 2016), <http://www.reuters.com/article/us-northkorea-satellite-kaesong-idUSKCN0VN02O>.

⁸ See Eberstadt, *supra* note 5.

⁹ See *supra* note 6.

¹⁰ Many analysts feel that North Korea's interest in engagement is really designed to get the United States to withdraw from the Korean peninsula as part of a deal to end the Korean War. *Id.* After a withdrawal by the United States, North Korea would have the military might to attack South Korea. This entire strategy may be merely a political ploy by Kim, as some analysts believe that his power is being threatened from within North Korea and that he is using the strategy as a means of consolidating power. *Id.*

¹¹ *Id.*

economic sanctions against the Kim regime and third parties who assist with its human rights abuses, trying to secure China's support, and strengthening its military capability in South Korea without encroaching on North Korea's sovereignty.¹² These strategies will probably give the United States its best shot at bringing North Korea to the negotiating table.¹³

An effective North Korean nuclear deal must be carefully structured. This paper proposes potential language that might realistically be included in such a deal. Unlike the recent Iran nuclear agreement, an agreement with North Korea should be structured as a formal treaty rather than as a political agreement and would have to include strong nuclear cessation provisions in its operative text rather than solely within its preamble. It could also be used to address other issues with North Korea, such as the Kim regime's human rights abuses and the country's market structure.

Even with uncertain language, a North Korean nuclear deal would provide a number of important benefits. First, it would help halt regional nuclear proliferation and increase global security. Second, it would also diminish the nuclear threat to the United States and result in a beneficial economic impact for North Korea and those who are currently prohibited from trading with it due to the existing sanctions framework. Third, a nuclear deal with North Korea would benefit the United States by providing extensive information regarding North Korea's secretive nuclear program.

¹² Kim Jong Un noted in a recent speech that North Korea would not use its nuclear weapons in a preemptive strike unless necessary to defend its sovereignty. *Id.*

¹³ Interview with Bruce Klingner, Senior Research Fellow, Heritage Foundation, in D.C. (Apr. 7, 2016).

The first part of this paper describes the global security threat posed by North Korea's nuclear program, focusing on the Kim regime's use of the program to maintain support and increase North Korea's security. It will also describe the program's rapid development and how this poses a global security threat. Next, the paper will discuss past attempts at forming a nuclear deal with Pyongyang and how the United States can exert pressure on North Korea, given its current situation, to force them to the bargaining table. Third, the paper will provide potential language and clauses that should be included in a North Korean nuclear deal and will discuss why they are both important and realistic. Fourth, the paper will discuss the benefits of a potential nuclear deal for the United States. The paper will conclude by discussing how strict verification measures, hard power, continued diplomacy, and economic penalties for cheating are essential to securing an agreement's long-term ability to protect global security.

1. North Korea's Nuclear Arsenal Poses a Major Global Security Problem

North Korea's nuclear arsenal poses a major concern for the United States, its allies, and a number of other countries in Asia.¹⁴ Although North Korean leadership has a history of making escalating threats whenever the United States or any other major developed nations focus their attention on its nuclear program, many believe these threats to be more bark than bite.¹⁵ Some believe that they are primarily designed to capture and

¹⁴ For instance, Russia and China have both expressed concern about North Korea's nuclear development. Chad O'Carroll, *Russia warns North Korea over threats of nuclear strike*, GUARDIAN NEWSPAPER (Mar. 8, 2016), <http://www.theguardian.com/world/2016/mar/08/russia-warns-north-korea-nuclear-strike>; Jane Perlez & Choe Sang-Hun, *China Struggles for Balance in Response to North Korea's Boldness*, N.Y. TIMES (Feb. 7, 2016), <http://www.nytimes.com/2016/02/08/world/asia/china-struggles-for-balance-in-response-to-north-koreas-boldness.html>.

¹⁵ See, e.g., *How potent are North Korea's threats*, BRIT. BROAD. CO. (Sept. 15, 2015), <http://www.bbc.com/news/world-asia-21710644>.

divert the attention of the United States and other developed countries.¹⁶ If this is North Korea's goal, the threats have proven incredibly effective, as the United States has spent considerable energy and manpower attempting to hedge against them.¹⁷ This is mainly because there is no way to be sure that North Korea and its rogue regime are not preparing to launch a preemptive nuclear attack against the United States, South Korea, or another country given the paucity of intelligence we have relating to North Korea's nuclear program.¹⁸ It would be irresponsible to ignore such persistent threats coming from a rogue regime that is in possession of a rapidly developing nuclear arsenal.¹⁹

a. North Korean Leadership: a Rogue Regime

North Korea is controlled by a rogue but rational regime headed by Kim Jong Un. To understand North Korea's regime and how it operates, you have to understand how the Kim dynasty came to power and currently maintains its control over the country. The Kim dynasty is a three-generation lineage of North Korean leadership descending from the country's first leader, Kim Il Sung.²⁰ Kim Il Sung came into power after the Japanese surrendered their occupation of Korea in 1945.²¹ The Soviet Union persuaded him to assume the leadership of the Soviet-occupied northern half of Korea, while the southern

¹⁶ *Id.*

¹⁷ See Kyle Mizokami, *It's time for the U.S. military to leave South Korea*, THE WEEK (Aug. 13, 2015), <http://theweek.com/articles/570764/time-military-leave-south-korea>.

¹⁸ See David Sanger & Choe Sang-Hun, *Intelligence on North Korea, and Its New Leader, Remains Elusive*, N.Y. TIMES (May 6, 2013), <http://www.nytimes.com/2013/05/07/world/asia/intelligence-on-north-korea-still-out-of-reach.html>.

¹⁹ See *supra* note 15.

²⁰ See JASPER BECKER, ROGUE REGIME: KIM JONG I; AND THE LOOMING THREAT OF NORTH KOREA 46, 49 (2004).

²¹ *Kim Il Sung*, ENCYCLOPAEDIA BRITANNICA, <http://www.britannica.com/biography/Kim-II-Sung>.

half of Korea was supported by the United States.²² Kim's rule was backed by Soviet occupation from 1945 until 1948.²³ After the Soviet forces left North Korea, Kim launched the Korean War in 1950 in an attempt to reunify North and South Korea by force.²⁴ Ultimately, his attempt failed due to efforts by troops from the United States and United Nations. Kim narrowly maintained his power in the north after the Chinese intervened to stave off an invasion by UN forces.²⁵ Ultimately, the Korean War ended in a stalemate in 1953.²⁶ Kim's leadership during that war helped him establish legitimacy, a cult following, and god-like persona among North Koreans.²⁷ This status, along with extensive propaganda, the brutal use of force, and the granting of major rewards to others with power, has allowed the Kim family to maintain a hereditary dynasty.²⁸

The story told to North Korean school children is far less realistic. "Koreans are taught that by the age of 14 Kim Il Sung had founded an 'anti imperialism league' and at 19, he had invented the country's *Juche* ideology and was leading a Korean rebel army equipped with tanks. They are told that this force defeated the Japanese and drove them out of Korea, although in fact the Japanese Kwantung Army did not suffer any military defeats in either Manchuria or Korea. In this imagined history, the role of the Americans, the Soviets, the atomic bombs, the Chinese Communist and Nationalist Parties, and

²² See *supra* notes 20-21.

²³ GBINGBA T. GBOSOE, MODERNIZATION OF JAPAN 212 (2006).

²⁴ BECKER, *supra* note 20, at 49, 53, 55; *supra* note 21.

²⁵ See *supra* note 21.

²⁶ *Id.*

²⁷ BECKER, *supra* note 20, at 49, 124.

²⁸ See *supra* note 21.

virtually every other historical fact vanishes from the record.”²⁹ The Kim dynasty derives its legitimacy from the propaganda it promulgates.³⁰ In fact, Kim Il Sung led a campaign to “purge” those privy to his actual background from the North Korean government. In an effort to further the Kim dynasty’s deification, the North Korean government effectively exiled two hundred thousand Christians and destroyed more than 2,400 temples, churches, and Buddhist shrines.³¹ All remaining Christians were persecuted, and by 1962 Kim claimed to have executed all Protestant and Catholic priests and sent all religious figures to hard labor camps.³² At the same time, Kim “investigated” more than 600,000 of his supporters and punished 450,000 who violated his rules.³³ All of this was designed to establish the Kim regime as the ultimate power in North Korea and develop a god-like following for Kim among North Korean citizens, such that they would not question or restrict his leadership.³⁴

As a result of the Kim regime’s propaganda and efforts to stifle dissent, there are few internal North Korean threats to the Kim dynasty. Therefore, even if some citizens are wary of spending roughly 25% of North Korea’s GDP on its nuclear program³⁵ or deliberately provoking the United States, resulting in harsh rounds of sanctions, there is little they can do to change the country’s direction. Perhaps more importantly, the Kim

²⁹ BECKER, *supra* note 20, at 49.

³⁰ *See* BECKER, *supra* note 20, at 63.

³¹ *See* BECKER, *supra* note 21.

³² *Id.*

³³ *Id.*

³⁴ *See* BECKER, *supra* note 20, at 63. Many citizens probably do not know that North Korea spends this much on nuclear weapons given the Kim regime’s control of information and news within the country.

³⁵ David Francis, *How North Korea Starved Its People for a Nuke*, FISCAL TIMES (Apr. 9, 2013), <http://www.thefiscaltimes.com/Articles/2013/04/09/How-North-Korea-Starved-Its-People-for-a-Nuke>.

regime's elaborate network of informants working for multiple internal security agencies and its brutal use of force assures that dissenters do not speak out against it.³⁶ Those accused of minor offenses against the Kim dynasty must undergo "reeducation."³⁷ More serious offenses usually result in the perpetrator being executed or placed in a political prison camp.³⁸ Even if a dissenter accepts one of these punishments, North Korea's three-generations policy assures that their entire family is ultimately punished, effectively stifling any and all dissent.³⁹

While ordinary citizens suffer, military and political elites generally receive rewards in the form of better and more plentiful food, lodging, and the most desirable jobs.⁴⁰ This has insulated North Korean political elites from famines and given them some say over the country's policies.⁴¹ Some also see the country's extensive military spending, erratic foreign affairs policies and propaganda, and nuclear weapons programs as tools to assure military loyalty, as they grant the military prestige and international attention that it would not otherwise have.⁴² These benefits help prevent a military coup, which has become a potential threat in recent years.⁴³ This is especially important given how much power the military wields within the country and in global affairs due to the country's erratic foreign policy.

³⁶ Byman & Lind, *supra* note 29.

³⁷ *Id.*

³⁸ Byman & Lind, *supra* note 29.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

b. The Kim Regime: Rogue, but Rational

Although the North Korean regime is rogue, it is not irrational.⁴⁴ The Kim regime uses its unpredictability to rile up South Korea, Japan, and the United States while keeping the country secure.⁴⁵ As a result of this unpredictability, top United States intelligence officials are not confident that Kim will not make an unprovoked nuclear strike against the United States.⁴⁶ In other words, the Kim regime's seemingly irrational approach to foreign policy is rationally designed to protect North Korean sovereignty.

The Kim regime often takes unpredictable and seemingly irrational action. For example, North Korea shut down the Kaesong industrial park in 2013 to strike a blow to South Korea.⁴⁷ While most of the companies in this park are South Korean companies, more than 55,000 of their workers are from North Korea.⁴⁸ The North Korean government used to take between 45% and 70% of the wages these workers earned for its military and nuclear program, which is an important source of hard cash amid a myriad of strict economic and nuclear sanctions.⁴⁹ As a result of its action to pull workers out of the industrial park, North Korea shut off its best source of foreign currency, which is necessary for it to advance its nuclear program.⁵⁰ While South Korea suffered losses as

⁴⁴ See *supra* note 13.

⁴⁵ See *supra* note 13.

⁴⁶ Matt Smith, *US lawmaker questions North Korean leader's 'stability'*, CNN (Mar. 17, 2013), <http://www.cnn.com/2013/03/17/us/north-korea/>.

⁴⁷ *North Korea blocks South's access to Kaesong factory park*, GUARDIAN NEWSPAPER (Apr. 3, 2013), <http://www.theguardian.com/world/2013/apr/03/north-korea-blocks-souths-factory>.

⁴⁸ Mark E. Manyin, *The Shutdown of the Joint North/South Korean Kaesong Industrial Complex*, (Feb. 11, 2016), <https://www.fas.org/sgp/crs/row/IN10442.pdf>.

⁴⁹ See *supra* note 7.

⁵⁰ See Manyin *supra* note 48; Ulv Hanssen, *Explaining North Korea's irrationality*, EAST ASIA FORUM (June 29, 2013), <http://www.eastasiaforum.org/2013/06/29/explaining-north-koreas-irrationality/>. Of

well, it seems at least somewhat irrational for North Korea to hurt itself and its workers to strike a relatively minimal blow to South Korea. Also, North Korea sought to reengage in six party talks after backing out of the Nuclear Nonproliferation Treaty (the “NPT”).⁵¹ North Korea accepted an agreement initially, but ultimately backed out of it after the United Nations (the “UN”) condemned North Korea’s failed attempt to launch a satellite.⁵² North Korean leaders probably knew that the satellite would ultimately fail to enter orbit but allowed the launch to go forward anyway, to draw international media attention.⁵³ International experts have struggled to explain why North Korea would intentionally conduct a satellite launch that was destined to fail when it knew that doing so would jeopardize its agreement.⁵⁴ The North Korean government deciding to undertake such actions makes little sense and demonstrates a pattern of unpredictability and irrationality.

Despite its unpredictable actions, North Korea’s nuclear program exists for a relatively predictable purpose. The existence of a strong military and nuclear program helps keep North Korean citizens loyal to the Kim regime by uniting the country against two perceived enemies: the United States and South Korea.⁵⁵ The Kim regime has long argued that it alone maintains the real spirit of the Korean people while South Korea is an

course, South Korean firms that utilized cheap North Korean labor also suffered substantial losses as a result of the project’s closure.

⁵¹ See Hanssen, *supra* note 50.

⁵² Morgan Potts, *Is North Korea a Rational Actor? The Wrong and Right Questions to Ask*, SINO NK (Dec. 5, 2013), <http://sinonk.com/2013/12/05/is-north-korea-a-rational-actor-the-wrong-and-right-questions-to-ask/>.

⁵³ See Hanssen, *supra* note 50.

⁵⁴ *Id.*

⁵⁵ See *supra* note 3.

illegitimate Korean country because it is a puppet of the United States.⁵⁶ North Korean propaganda often paints the United States as being the antithesis of the Korean spirit and a threat to the Korean way of life.⁵⁷ As discussed below, North Korea's nuclear weapons program is touted as being the best way to stop a United States invasion. To the people of North Korea, this nuclear defense and the Kim regime are the only things standing between the Korean way of life effectively becoming influenced by the American way of life. Without a nuclear program, North Koreans may see the Korean way of life being threatened and call for a change in leadership.⁵⁸

The Kim regime's unpredictability coupled with its nuclear program and strong conventional military force undoubtedly helps prevent preemptive foreign military action.⁵⁹ Pyongyang used to view chemical weapons as sufficient to deter against foreign invasion by the United States and others.⁶⁰ However, after watching the United States soundly defeat the Iraqi military during the Persian Gulf War, which was built and outfitted similarly to the Korean People's Army, North Korea realized that it needed more than a conventional military force to protect itself.⁶¹ The country jumpstarted its nuclear weapons program.⁶² This view was largely vindicated when President George W.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ This mentality has obvious implications for a nuclear deal that are discussed further *supra*. If North Korean's are wary of giving up the Korean way of life and view the country's nuclear program as the best means of protecting their way of life, it would seem that a nuclear deal would hinge on either total North Korean regime change or the Kim regime's ability to convince the people that not having a nuclear program would do more to protect their way of life than maintaining such a program.

⁵⁹ JOEL S. WIT & SUN YOUNG AHN, NORTH KOREA'S NUCLEAR FUTURES: TECHNOLOGY AND STRATEGY 27 (2015), <http://38north.org/wp-content/uploads/2015/02/NKNF-NK-Nuclear-Futures-Wit-0215.pdf>.

⁶⁰ *Id.* at 26-27.

⁶¹ *See supra* note 3.

⁶² *See* WIT & AHN, *supra* note 59.

Bush labeled North Korea, along with Iran and Iraq, as part of the “axis of evil” but chose only to invade Iraq.⁶³ While Iran started scrambling to develop a fledgling nuclear program, North Korea had already insulated itself against foreign action and there was little the United Nations Security Council could do to prevent the regime from continuing its nuclear activities.⁶⁴ While developing its new nuclear program, Iran was forced to come to the negotiating table with the United States, giving up its isolationist strategy to deter against action by the United States.⁶⁵ North Korea was able to maintain a completely isolationist policy despite rounds of new sanctions levied against it.⁶⁶ As evidenced by the Kim regime’s ability to maintain control and defend its sovereignty, its seemingly erratic and isolationist foreign policy has actually been quite rationally designed to advance the regime’s security. North Korea’s growing nuclear program will do so even more effectively.

c. North Korea’s Nuclear Weapons Program is Developing Quickly

Given the paucity of intelligence on North Korea’s nuclear weapons program, it is unclear just how advanced it really is.⁶⁷ Based on the available intelligence, North Korea is thought to have a between ten and sixteen crude atomic bombs at present,⁶⁸ although its recent test of a hydrogen bomb may indicate that it has achieved a more complex

⁶³ Glenn Kessler & Peter Baker, *Bush’s ‘Axis of Evil’ Comes Back to Haunt United States*, WASH. POST (Oct. 10, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/09/AR2006100901130.html>.

⁶⁴ *See id.*

⁶⁵ Peter Harris, *North Korea: The Axis of Evil’s Last Man Standing*, NAT’L INTEREST (Jan. 5, 2015), <http://nationalinterest.org/feature/north-korea-the-axis-evil’s-last-man-standing-11958>.

⁶⁶ *Id.*

⁶⁷ *North Korean leader: Prep nukes for use at moment’s notice*, CBS NEWS (Mar. 3, 2016), <http://www.cbsnews.com/news/report-north-korea-readying-nuclear-weapons/>.

⁶⁸ *Id.*

boosted fission weapon.⁶⁹ However, many analysts have questioned whether the weapon tested was actually a hydrogen bomb and, even if it was, whether it was successful.⁷⁰ Most evidence points to this being an extremely crude attempt at developing a hydrogen bomb, but it also indicates that North Korea desires to and will eventually be able to achieve hydrogen capability.⁷¹ This threat looks certain to continue growing in coming years.⁷² It is estimated that Pyongyang could potentially develop as many as fifty to one hundred bombs within the next four years.⁷³ Although this number seems somewhat unrealistic, it is indicative of North Korea's goal of drastically expanding its nuclear arsenal.⁷⁴

Given North Korea's new, advanced weapon and its ongoing development of several different missile systems, the country increasingly poses a direct threat to the United States and its regional allies in Asia.⁷⁵ North Korea appears to have developed both medium and long-range ballistic missiles ("MRBM" and "LRBM", respectively) and miniaturization capabilities that allow them to place some of their nuclear bombs on those missiles.⁷⁶ Some analysts speculate that the country has developed intercontinental ballistic missiles ("ICBM") because it has allegedly sold those types of missiles to

⁶⁹ Anna Fifield, *North Korea Hints It Has a Hydrogen Bomb, But Skepticism Abounds*, NAT'L INTEREST (Dec. 10, 2015), https://www.washingtonpost.com/world/north-korea-says-its-ready-to-detonate-h-bomb-but-skepticism-abounds/2015/12/10/fe69922e-17ef-4020-8342-1b07fde0a55b_story.html.

⁷⁰ *Id.*

⁷¹ *See supra* notes 13, 69.

⁷² *See* WIT & AHN *supra* note 59.

⁷³ *See id.*

⁷⁴ *See supra* note 13.

⁷⁵ Bruce Klingner, *North Korea Claims Successful H-Bomb Nuclear Test*, HERITAGE FOUND. (Jan. 6, 2016), http://www.heritage.org/research/reports/2016/01/north-korea-claims-successful-h-bomb-nuclear-test#_ftnref5.

⁷⁶ *See supra* notes 3, 75.

countries in the Middle East, including some that do not currently have nuclear programs.⁷⁷ If true, this would allow North Korea to reach the continental United States with a nuclear enabled missile.⁷⁸ Even if it is untrue, North Korea is developing and testing submarine launched ballistic missile (“SLBM”) capabilities and recently conducted what appears to be a successful SLBM test.⁷⁹ Given the threat posed by this rapidly developing nuclear program, a North Korean nuclear agreement containing strict disarmament and verification provisions would be a significant boon for the United States and its allies.

d. North Korea Has a Large Traditional Military

Given North Korea’s large and well-positioned conventional military, a preemptive strike against the country would be difficult, deadly, and costly. South Korea has largely been hostile to this idea, but the United States considered it prior to North Korea’s development of a strong nuclear program.⁸⁰ While North Korea’s conventional arms are largely antiquated, sometimes dating back half a century or more, what the country lacks in modernity it makes up for in volume and location.⁸¹ North Korea has about 18,000 heavy artillery pieces near its border with South Korea and can reach Seoul,

⁷⁷ See *supra* note 13.

⁷⁸ See *supra* note 75.

⁷⁹ John Schilling, *A New Submarine-Launched Ballistic Missile for North Korea*, 38 NORTH (Apr. 25, 2016), <http://38north.org/2016/04/jschilling042516/>.

⁸⁰ Robert Kelly, *The Ultimate Nightmare: Why Invading North Korea Is a Really Bad Idea*, NAT’L INTEREST (Apr. 10, 2013), <http://nationalinterest.org/blog/the-buzz/the-ultimate-nightmare-why-invading-the-north-korea-really-12157>.

⁸¹ Richard Johnson, Andrew Barr & Jonathan Rivait, *Graphic: North Korea’s Conventional Arms*, NAT’L POST (Apr. 10, 2013), <http://news.nationalpost.com/news/graphics/graphic-north-koreas-conventional-arms>.

the capital of South Korea, within 60 seconds with artillery fire.⁸² In addition to this artillery, the North has 63 submarines, which it has used in the past to sink South Korean ships.⁸³ It also has more than 625 boats of different varieties, each designed to either fight or aid in combat.⁸⁴ In addition to these forces, North Korea has a relatively sizeable air force and army, each capable of inflicting a large amount of damage on anyone attempting to attack the country.⁸⁵

While some have argued that North Korea's military is largely a paper tiger, there are strong reasons to suspect that it would fight against any invasion attempt backed by the United States. An invasion by the United States or another similar foreign power would likely trigger a strong military response because it would justify the propaganda North Korean soldiers have heard for decades.⁸⁶ Likewise, North Koreans would view an invasion as an attempt to end North Korean sovereignty, and would likely use the full weight of their force against such an invasion.⁸⁷ Indeed, the Kim regime has long maintained that any invasion or attack against North Korea would be met with the full weight of the country's military forces, including the potential use of chemical, biological, or nuclear weapons.⁸⁸ The potential disaster that would ensue if these weapons were to be used would be incredibly brutal and costly, which makes diplomacy the more attractive approach when dealing with North Korea.

⁸² *See supra* note 80.

⁸³ *See supra* note 81.

⁸⁴ *See id.*

⁸⁵ *See id.*

⁸⁶ *See supra* note 80.

⁸⁷ *See id.*

⁸⁸ *See supra* note 81.

2. A Nuclear Deal with North Korea Would be Difficult, but Possible

There are many reasons to doubt North Korea's willingness to strike a deal that curtails their nuclear program or allows United Nations ("UN") or outside access to the program for verification purposes. There are also reasons to think that North Korea would be willing to engage in talks that may lead to nuclear disarmament or a nuclear pause.

It should be noted that there is a big difference between merely striking a nuclear deal and striking a deal that includes strong disarmament and verification provisions. It will be even more challenging for the United States to strike a deal that effectively binds North Korea for the long term, as North Korea has backed out of many prior agreements that seemed promising when they were signed.

a. Previous Attempts to Strike a Nuclear Deal with North Korea have Failed, but There are Promising Signs that a Deal is Possible

Previous nuclear deals with North Korea have fallen apart. In one particularly poignant example, North Korea was suspected of cheating on its nonproliferation obligations under the Treaty on the Non-Proliferation of Nuclear Weapons⁸⁹ ("NPT") between 1992 and 1993.⁹⁰ The International Atomic Energy Agency ("IAEA") conducted six inspections of North Korean nuclear facilities, but North Korea refused entry to two of its suspected nuclear waste sites. After the IAEA went to the UNSC to request special ad-hoc investigations of all North Korean nuclear facilities, North Korea announced its

⁸⁹ Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483.

⁹⁰ *Chronology of U.S.-North Korean Nuclear and Missile Diplomacy*, ARMS CONTROL ASSOC. (Mar. 2016), <https://www.armscontrol.org/factsheets/dprkchron>.

intent to withdraw from the NPT on March 12, 1993.⁹¹ However, it ultimately suspended its announced withdrawal and used the threat of potential NPT withdrawal in subsequent sanctions negotiations with the United States.⁹² This produced the Agreed Framework, an agreement between the United States and North Korea under which North Korea pledged to freeze its nuclear program in exchange for energy aid, including two light-water reactors.⁹³ Ultimately, the Agreed Framework collapsed in October 2002 when the United States confronted North Korea with evidence of a secret uranium enrichment program.⁹⁴ Shortly after, North Korea wound up withdrawing from the NPT on January 10, 2003.⁹⁵

The six-party talks provide yet another example of a failed attempt at a nuclear deal with North Korea. These talks were a series of multilateral negotiations between China, Japan, Russia, South Korea, North Korea, and the United States that occurred irregularly starting in 2003.⁹⁶ The First Round of talks started on August 27, 2003, but ultimately ended with no agreement because the United States and North Korea were at odds over a non-aggression pact.⁹⁷ The talks were also marred when North Korea announced that it

⁹¹ *Id.*

⁹² *Id.*

⁹³ Xiaodon Liang, *Six-Party Talks at a Glance*, ARMS CONTROL ASSOC. (May 2012), <https://www.armscontrol.org/factsheets/6partytalks>.

⁹⁴ *Id.* North Korea apparently admitted to undertaking this program, although they later denied this admission when confronted by the international media. *Id.* Some argue that the United States was actually the party in breach because the uranium enrichment program was separate from the plutonium-based program that Pyongyang agreed to freeze during negotiations for the Agreed Framework. *See id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

would test a nuclear weapon in order to prove that it had attained the ability to do so.⁹⁸ The Second Round of talks, which started on February 25, 2004, were much more promising.⁹⁹ North Korea announced that it was willing to destroy its nuclear weapons program if it were allowed to maintain its peaceful nuclear activities.¹⁰⁰ The United States balked at this deal, believing that North Korea would use its peaceful nuclear facilities as a front to develop its nuclear weapons program.¹⁰¹ The Third Round, held in June of 2004, proved no more fruitful, as North Korea announced that it would only destroy its nuclear weapons in exchange for compensation, which the United States was unwilling to agree to.¹⁰² The Fourth Round, held in September of 2005, was precluded by North Korean claims that the United States planned to overthrow its government.¹⁰³ Despite the rough start, these talks produced a joint statement on agreed steps toward denuclearization of the Korean peninsula.¹⁰⁴ North Korea agreed to abandon all nuclear weapons, return to the NPT, and accept IAEA inspections.¹⁰⁵ In return, the other parties agreed to do three things: (1) recognize North Korea's right to maintain a peaceful nuclear program, (2) provide North Korea with energy aid, and (3) consider providing North Korea with a light water reactor at some time in the future.¹⁰⁶ The United States

⁹⁸ *Id.*

⁹⁹ *See id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

and South Korea also agreed not to deploy nuclear weapons on the peninsula.¹⁰⁷ After striking this agreement and before the Fifth Round, North Korea conducted a number of missile tests and its first nuclear test in response to sanctions imposed on North Korean trading entities and Banco Delta Asia by the United States.¹⁰⁸ Ultimately, the Fifth Round was held in February of 2007 and resulted in initial steps to implement the agreement struck during the Fourth Round.¹⁰⁹ In the Sixth Round of negotiations, held in March of 2007, North Korean negotiators walked out over the delayed release of North Korean funds held in Banco Delta Asia.¹¹⁰ Although some steps were taken, delays in implementing the agreement struck during the Fourth Round and difficulty in agreeing on a verification system ultimately plagued implementation of the agreement.¹¹¹ After the UNSC implemented sanctions on North Korean firms in response to the testing of a Taepo Dong-2 rocket, the Kim regime announced that it would not participate in future six-party talks and conducted a second nuclear test in short order.¹¹²

Although these talks ultimately faltered, it is notable that Pyongyang used them as a launching point for two nuclear cessation agreements.¹¹³ In one instance Kim Jong Il

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* For instance, the IAEA inspected and confirmed that North Korea's Yongbyon reactor had been shut down and sealed.

¹¹² *Id.*

¹¹³ See Steven Myers & Choe Sang-Hun, *North Koreans Agree to Freeze Nuclear Work; U.S. to Give Aid*, N.Y. TIMES, (Feb. 29, 2012), <http://www.nytimes.com/2012/03/01/world/asia/us-says-north-korea-agrees-to-curb-nuclear-work.html?pagewanted=all>.

allowed foreign inspectors to inspect Kumchang-ri in exchange for food aid.¹¹⁴ In the other, Kim Jong Un froze the country's nuclear program in exchange for similar humanitarian aid.¹¹⁵ These concessions, along with North Korea's willingness to agree to destroy its nuclear program in exchange for energy aid during the Fourth Round of the six party talks, indicate that a deal is possible. However, these talks also show that any deal struck between the United States and North Korea must include incentives to prevent North Korea from backing away from the agreement and cannot provide frontloaded sanctions relief and aid. Effective verification procedures are also essential, as North Korea appears to have become especially adept at developing its nuclear program in secret.¹¹⁶

Most recently, in 2015 North Korea reached out to United States officials through the UN to propose formal peace talks on ending the Korean War.¹¹⁷ This effort was a response to President Barack Obama's remarks that the United States would be willing to

¹¹⁴ Philip Saunders, *DPRK Briefing Book: Confronting Ambiguity: How to Handle North Korea's Nuclear Program*, NAUTILUS INST. (Mar. 3, 2003), <http://nautilus.org/publications/books/dprkbb/nuclearweapons/dprk-briefing-book-confronting-ambiguity-how-to-handle-north-koreas-nuclear-program/>.

¹¹⁵ See *supra* note 113.

¹¹⁶ From North Korea's perspective, the inclusion of a peace treaty ending the Korean War is also probably vital to any nuclear agreement. This is probably because such an agreement has the potential of drastically reducing the United States' efforts to defend South Korea. Doug Bandow, *North Korea Wants to Talk Peace Treaty: US Should Propose a Time and Place*, NAT'L INTEREST (Dec. 3, 2015), <http://nationalinterest.org/blog/the-skeptics/north-korea-wants-talk-about-peace-treaty-us-should-propose-14504?page=2>. North Korea has regularly proposed peace talks with South Korea and the United States. Elise Labott & Nicole Gaouette, *North Korea offered – then rebuffed – talks with U.S.*, CNN (Feb. 22, 2016), <http://www.cnn.com/2016/02/22/politics/north-korea-nuclear-talks-peace-treaty/>. In general, Pyongyang has been willing to discuss reducing its conventional military forces stationed near the North Korea-South Korea border but it has not been willing to negotiate using its nuclear program. North Korea has signaled, however, that a peace treaty would make it possible to “put an end to the nuclear arms race.” *Id.*

¹¹⁷ *Id.*

engage Pyongyang.¹¹⁸ The United States was hopeful that it could extract nuclear concessions from North Korea during this process.¹¹⁹ However, negotiations stalled as North Korea refused to include provisions restricting its nuclear program in any agreement even though they had recently tested a nuclear weapon.¹²⁰ The United States has long required that North Korea take steps toward denuclearization prior to the initiation of any formal peace talks, so its willingness to engage in peace talks without this precondition signified a policy pivot toward engagement.¹²¹ However, the United States became unwilling to negotiate with North Korea, which it saw as seeking “to bargain, to trade or ask for a pay-off in return for abiding by international law.”¹²² North Korea’s decision to not include nuclear cessation or disarmament provisions as part of the negotiations despite the United States’ lowered negotiation threshold seems to indicate its general unwillingness to agree to any restrictions on its nuclear efforts. However, in recent days the regime has indicated a willingness to normalize relations with “hostile regimes.”¹²³ Whether this is true remains to be seen, but it is a positive sign when considered in combination with North Korea’s willingness to reach out to the United States of its own accord after the Obama administration’s policy shift.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ See Labott & Gaouette, *supra* note 116.

¹²¹ See *id.* It seems as if the previous position of the United States was designed to signify its unwillingness to engage with North Korea.

¹²² *US: No sign yet NKorea Serious on nuke talks*, YAHOO! NEWS (Feb. 4, 2015), <https://www.yahoo.com/news/us-no-sign-yet-nkorea-serious-nuke-talks-222146387.html?ref=gs>.

¹²³ See *supra* note 9.

b. A Three-Pronged Policy Approach May Draw North Korea to the Bargaining Table

Although this background may seem bleak, North Korea's current situation combined with a three-pronged policy approach from the United States could draw the country to the bargaining table willing and ready to make a deal with significant disarmament provisions. First, the United States should fully enforce targeted economic sanctions against North Korea. President Obama issued Executive Order 13722 on March 16, 2016, which imposed additional sanctions on North Korea and third parties who assist North Korean violators with human rights abuses, human trafficking, cyberattacks, and censorship.¹²⁴ Unfortunately, the executive order's accompanying list of violators was minimal and failed to include any North Korean entities involved in human rights, cyber, or censorship violations.¹²⁵ No third parties were sanctioned.¹²⁶ Since the United States has the good fortune of being able to sanction almost any financial entity because most financial transactions must be cleared through New York,¹²⁷ the lack of third party violators from the sanctions list seems especially remarkable.¹²⁸ This sanctions authority should be used to seize North Korean assets, fine third party banks doing business with North Korea, and block those entities from accessing the United States' financial

¹²⁴ Exec. Order No. 13722, 81 Fed. Reg. 14943 (Mar. 16, 2016).

¹²⁵ Bruce Klingner, *North Korea May Be Preparing Another Nuclear Test*, DAILY SIGNAL (Apr. 20, 2016), <http://dailysignal.com/2016/04/20/north-korea-may-be-preparing-another-nuclear-test/>.

¹²⁶ *Id.*

¹²⁷ *See supra* note 13; U.S. CONG. OFFICE OF TECH. ASSESSMENT, INFO. TECH. FOR CONTROL OF MONEY LAUNDERING 23 (1995).

¹²⁸ *See supra* note 13.

system.¹²⁹ Similar sanctions on Banco Delta Asia had a significant effect on North Korea's ability to access foreign currency and cast a pall over other entities engaged in business with the Kim regime.¹³⁰ Doing this will undoubtedly make it more difficult for the Kim regime to support military elites and continue to fund its nuclear program. It will also have the added effect of diminishing the number of major foreign financial and corporate entities who are willing to do business with North Korea. This should make it increasingly difficult for North Korea to obtain enough foreign currency to sustain its nuclear operation.¹³¹

Second, the United States should engage with China to attempt to gain support for a nuclear deal with North Korea. At the same time, the United States should alert China to its intention to enforce enhanced sanctions against third parties, and should point out that it plans to name and shame violators as a part of enforcing these sanctions laws. China is unlikely to be pleased with this strategy. North Korea trades almost exclusively with China and the Kim regime has generally received at worst lukewarm support from China. Therefore, it will probably be difficult to convince China that a nuclear deal, which may destabilize the Kim regime, is in its best interests. However, given North Korea's erratic foreign policy and that the United States will likely have to maintain a strong military presence in South Korea so long as the threat of nuclear weapons remains, China might be convinced to push North Korea toward a nuclear deal. It would be in their best

¹²⁹ The United States has done this with regard to Iran. Tom Arnold & Jonathan Saul, *Iranians exasperated as U.S. sanctions frustrate deal making*, REUTERS (Mar. 22, 2016), <http://www.reuters.com/article/us-iran-trade-finance-idUSKCN0WO1Y3>.

¹³⁰ See *supra* notes 13, 93.

¹³¹ See Steve Hanke, *North Korea: From Hyperinflation to Dollarization*, CATO INST. (July 2013), <http://www.cato.org/publications/commentary/north-korea-hyperinflation-dollarization>.

interests to see the United States diminish its long-term military presence in South Korea.¹³² Likewise, since most of North Korea's export partners are Chinese entities, some of these entities will inevitably become wrapped up in any push for stronger sanctions against third parties who assist North Korea. So long as no enormous, well-regarded Chinese entities are among these violators, this issue can probably be overcome if the United States stresses that it is merely enforcing its domestic laws. The imposition of sanctions against smaller Chinese entities is unlikely to greatly worsen relations with China.¹³³ Obtaining China's support for increased sanctions and an initial increased military presence in South Korea is essential to obtaining a strong nuclear agreement with North Korea.¹³⁴ Given that China is North Korea's primary export market, preventing Chinese entities from trading with North Korea is also essential to weakening the Kim regime and the North Korean economy enough to draw it to a nuclear bargaining table.

Third, the United States should enhance its military presence and capability in Asia until nuclear negotiations are underway. This should primarily include placing missile defense systems in South Korea.¹³⁵ It should also develop plans with South Korea to launch air strikes against North Korean nuclear facilities, missiles, command and control centers, and senior leaders should war break out between the two countries. Some of

¹³² See Christopher Lee, *Time for U.S. Forces to Leave South Korea*, WAR ON THE ROCKS (July 24, 2014), <http://warontherocks.com/2014/07/time-for-u-s-forces-to-leave-south-korea/>; Doug Bandow, *Newsflash: The U.S. – South Korea Military Alliance Isn't Working*, NAT'L INTEREST (Sept. 4, 2015), <http://nationalinterest.org/feature/newsflash-the-us-south-korea-military-alliance-isnt-working-13772>.

¹³³ See *supra* note 13.

¹³⁴ See Nicole Gaouette, *North Korean Military Moves: What Can The U.S. Do?*, CABLE NEWS NETWORK: POL. (May 5, 2016), <http://www.cnn.com/2016/04/28/politics/u-s-north-korea-military-moves/>.

¹³⁵ See Jonathan Marcus, *What Impact Will S Korea's Expanded Missile Defence System Have?*, BRIT. BROAD. CO. (Mar. 5, 2016), <http://www.bbc.com/news/world-asia-35724422>.

these actions are already in progress.¹³⁶ Even if this capability is never exercised, it will provide the hard power necessary to counterbalance North Korea's military might, most of which is stationed right outside the demilitarized zone.

It should be noted that, even if the United States succeeds at getting North Korea to the negotiating table, all past attempts to establish long-term restrictions on North Korea's nuclear program have ultimately failed.¹³⁷ The country restarted its nuclear program and banished inspectors within twelve months of striking previous small-scale nuclear deals.¹³⁸ Therefore, any nuclear deal with North Korea must be carefully structured to avoid or, at minimum, account for the likelihood that Pyongyang backs out of the agreement. Given these concerns, along with the necessity of including strong disarmament language within a prospective agreement, great attention must be paid to how any nuclear deal with North Korea is drafted.

3. Structuring a North Korean Nuclear Agreement

In order for an agreement with North Korea to be effective, it must contain strong disarmament provisions. However, in proposing potential provisions, it is important to be mindful of reality. North Korea is unlikely to agree to a deal that binds it to complete disarmament or is solely favorable to the United States. However, the United States will want to make sure that any agreement reached is a treaty rather than a political

¹³⁶ See Gaouette, *supra* note 134.

¹³⁷ See Myers & Sang-Hun, *supra* note 113.

¹³⁸ See *id.*; see also *supra* note 93.

agreement, as the latter is not sufficiently binding.¹³⁹ This section provides a non-exhaustive list of provisions that may be included in the preamble and operative portions of a North Korean nuclear deal, explaining why each of these potential provisions are both realistic and important. It also discusses other issues that might be wrapped into a final agreement.

a. The Preamble

The preamble to a treaty ordinarily describes the contracting parties, their objectives in executing the treaty, and any underlying events that prompted the treaty. In formal negotiations, it is often advantageous to start with provisions that can be easily agreed upon. Within the context of a nuclear deal with North Korea, many of these easily agreed upon terms will likely be found in the preamble. Some provisions that might fall within the preamble to an agreement are detailed below.

- i. *The Democratic People’s Republic of Korea, China, Russia, Japan, South Korea and the United States (the “six parties”) have decided upon this long-term normalization plan. The plan includes the reciprocal commitments as provided in this document, and is to be endorsed by the United Nations Security Council.*

There are three key components to this provision. First, the description of the agreement as a “normalization plan” rather than a nuclear disarmament agreement is more likely to draw the support of both North Korea and the United States because it will

¹³⁹ See Matthew Weybrecht, *State Dep’t Affirms That Iran Deal is Only a Political Commitment*, LAWFARE (Nov. 28, 2015), <https://www.lawfareblog.com/state-department-affirms-iran-deal-only-political-commitment>.

allow leaders of both countries to declare a political victory at home. In the United States, the political victory will be achieving some North Korean disarmament. In North Korea, the Kim regime will need to describe the agreement as one in which they are not giving up the entire nuclear program in order to maintain regime stability. The second key component involves receiving support from the United Nations Security Council. This is important because it effectively signals the UN's blessing of the agreement. There is little doubt that both countries will be able to agree on this provision. Third, the inclusion of all parties from previous six-party talks makes a deal more likely, as there are both North Korean allies and United States allies within the group. Given that nuclear talks with this group have occurred in the past, it is likely that the parties would prefer negotiating within this six party framework.

- ii. *The six parties agree to implement this plan in good faith in a constructive atmosphere based on mutual respect and to refrain from issuing verbal threats against each other based on the use of nuclear weapons while this agreement is in place.*

The Joint Comprehensive Plan of Action included a similar “mutual respect” provision, but it has done little to prevent Iran from issuing threats against the United States. While these threats are unlikely to turn into concrete violence, they are still costly to respond to. The inclusion of this provision will help assure that the same thing does not happen with the North Korean nuclear deal. It will also hopefully allow the parties to negotiate with each other without issuing nuclear threats if things do not work out later in the negotiations. The United States will clearly agree to this provision, although it may be difficult to get North Korea to do the same. The Kim regime uses its unpredictable

foreign policy to assure security, and nuclear threats are a vital part of that policy. If the parties can come to an agreement that internal propaganda detailing potential nuclear attacks against the United States does not fall within this provision, North Korea may agree. This would allow the Kim regime to maintain an erratic foreign policy not centered on nuclear threats, and would assure that the regime has the ability to use these threats to assure citizens' loyalty.

iii. *The six parties will meet each year in order to review and assess progress and to adopt appropriate decisions by consensus.*

This provision is designed to encourage the parties to remain engaged with each other after an agreement is struck. Regular meetings will make it easier to discuss issues related to implementation of the agreement. Regular engagement with North Korea may also decrease tensions between them and the United States, although this is unlikely given how crucial having the United States as an enemy has been to the Kim regime's grasp on power. Since provisions like this are common in nuclear agreements, it is doubtful that any party will object to the inclusion of this provision.¹⁴⁰

b. Operative Provisions

The operative provisions of a treaty usually contain the substance of the parties' actual agreement. These provisions will be more difficult for the involved parties to agree upon. Provisions that might be included within the operative provisions are detailed below.

¹⁴⁰ See, e.g. Joint Comprehensive Plan of Action, U.S.-Iran, art. xvi, Jul. 14, 2015.

- i. *North Korea reaffirms that under no circumstances will it ever seek, develop, or acquire any nuclear weapons. North Korea also agrees to destroy one of its nuclear weapons each year until it has no more than three nuclear weapons.*

This provision is designed to achieve both a nuclear pause and affirmative disarmament. A pause in North Korean nuclear activity is essential because of how rapidly their nuclear program has been growing. Achieving a nuclear pause would help stall this development, which would help every other member of this agreement because it would diminish the number of nuclear tests and threats they have to respond to. This would save a substantial amount of money. The proposed affirmative disarmament provision will help diminish North Korea's nuclear weapon count to levels in place at the time of the Agreed Framework.¹⁴¹ It will also make it more difficult for North Korea to credibly threaten to use its weapons in a preemptive strike, as having such a minimal number of weapons would diminish the country's second-strike capability. If North Korea were to use its limited number of weapons to launch a preemptive strike, it would effectively be committing self-destruction.¹⁴² Obviously, this will be among the most hotly negotiated items within any treaty. However, given North Korea's willingness to sign disarmament agreements during the six party talks in exchange for energy aid and sanctions relief, which is contained in a proposed provision discussed *infra*, it is possible that they will agree to a similar provision here.

¹⁴¹ Matthew Bell, *The Iran Nuclear Deal Has North Korea Written All Over It*, PUB. RADIO INT'L (July 21, 2015), <http://www.pri.org/stories/2015-07-21/iran-nuclear-deal-has-north-korea-written-all-over-it>.

¹⁴² Given the large number of weapons possessed by other nuclear states, a preemptive strike by North Korea would likely result in the retaliatory use of nuclear weapons against it. With such a diminished weapon count, it would be difficult for North Korea to maintain the ability to deter these retaliatory strikes.

- ii. *The full implementation of this plan will ensure the exclusively peaceful nature of North Korea's nuclear program. Successful implementation of this plan will enable North Korea to fully enjoy its rights to nuclear energy for peaceful purposes under the relevant articles of the nuclear Non-Proliferation Treaty (NPT).*

This provision is designed to mimic the agreement formed during the Fourth Round of six-party talks. Allowing North Korea to use nuclear technology for peaceful purposes accomplishes two things. First, in combination with the disarmament provision, this will effectively make North Korea a partial member to the NPT. The NPT allows members to use nuclear technology for exclusively peaceful purposes, which North Korea would be doing with the exception of its already-developed nuclear weapons. Second, allowing North Korea to develop nuclear technology for energy purposes has the potential to increase the quality of life of those within North Korea. At present, North Korea struggles to provide sufficient energy for its people.¹⁴³ This agreement would effectively force North Korea to refocus its nuclear program on providing nuclear energy. Given the extensive resources North Korea devotes to its nuclear program,¹⁴⁴ this will probably enhance the country's ability to provide electricity to its people. A similar provision was agreed upon during the six party talks, so all parties should be willing to agree to it. However, it should be noted that strong verification procedures, which are discussed *infra*, would be necessary to get the United States to agree to this provision

¹⁴³ Christian Oliver, *N Korea energy crisis could threaten regime*, FIN. TIMES (Mar. 15, 2009), <http://www.ft.com/cms/s/0/9f0d498a-11b6-11de-87b1-0000779fd2ac.html>.

¹⁴⁴ *E.g. North Korea*, NUCLEAR THREAT INITIATIVE (FEB. 2013), <http://www.nti.org/learn/countries/north-korea/facilities/>.

given concerns that North Korea could use its peaceful nuclear program to further its non-peaceful nuclear goals.

- iii. *The full implementation of this plan will result in the United States lifting sanctions against North Korea in proportion to the percentage of its initial nuclear weapons stockpile that North Korea has destroyed at that point in time. Once implementation is complete, the United States will suspend all joint military exercises with South Korea.*

This provision represents a novel approach to implementing sanctions relief. Any sanctions relief provision must be carefully structured to provide relief in proportion to North Korea's disarmament. In the JCPOA, the United States provided significant frontloaded sanctions relief.¹⁴⁵ This approach provided a significant boost to Iran's economy in exchange for relatively minor nuclear weapon concessions.¹⁴⁶ However, during early talks with Iran, the Obama administration proposed phased sanctions relief, with sanctions to be lifted as Iran met agreed upon benchmarks.¹⁴⁷ Phased sanctions relief was incorporated into the final agreement, although most of the relief occurred when Iran met its first few benchmarks.¹⁴⁸ In a nuclear deal with North Korea, sanctions relief should be more evenly distributed between different benchmarks. The United States

¹⁴⁵ James Phillips, *The Iran Nuclear Deal: What The Next President Should Do*, HERITAGE FOUND. (Oct. 2, 2015), <http://www.heritage.org/research/reports/2015/10/the-iran-nuclear-deal-what-the-next-president-should-do>.

¹⁴⁶ *Id.*

¹⁴⁷ *Treasury: Sanctions Relief Would be Phased*, U.S. INST. OF PEACE (June 8, 2015), <http://iranprimer.usip.org/blog/2015/jun/08/treasury-sanctions-relief-would-be-phased>.

¹⁴⁸ *See supra* note 145.

should have no problem agreeing to this, but it will be more difficult to get North Korea's support. North Korea might require strong sanctions relief as a prerequisite to forming a nuclear pause. Since sanctions have failed to curb North Korea's nuclear program to date, it appears that sanction relief alone is not sufficient to cripple North Korea's nuclear program, so the United States may be somewhat willing to provide significant sanctions relief in exchange for North Korean nuclear concessions.¹⁴⁹ Despite this, sanctions relief alone likely will not be enough to get North Korea to agree to a nuclear deal with the United States.¹⁵⁰ Therefore, the inclusion of cessation of South Korea – United States joint military exercises will be essential to reaching a final agreement. The United States may agree to this provision if it views the final agreement as containing sufficient verification procedures to prevent North Korea from nuclear cheating. This would make it easier for South Korea to defend itself against threats from North Korea's conventional forces, which would potentially allow the United States to draw down some of its resources in South Korea. A diminished presence in South Korea would be in the United States' fiscal interest and in the interests of North Korea, China, and Russia. So long as nuclear cessation and disarmament provisions are strong enough, it is likely that the United States will agree to this provision.

iv. *North Korea will not share its nuclear weapons, any devices used in association with those nuclear weapons, or information regarding nuclear technology with any other country.*

¹⁴⁹ Leon Sigal, *Getting What We Need With North Korea*, ARMS CONTROL ASS'N (Apr. 2016), http://www.armscontrol.org/ACT/2016_04/Features/Getting-What-We-Need-With-North-Korea.

¹⁵⁰ *Id.*

It appears that North Korea has already shared ballistic missiles and related technology with both Syria and Iran.¹⁵¹ Pyongyang has also engaged in nuclear cooperation with Syria.¹⁵² A deal that prevents North Korea from assisting other countries in their development of nuclear weapons programs would help prevent widespread nuclear proliferation among countries that are hostile to the United States, and is therefore extremely beneficial to American national security. However, it will be difficult to get North Korea to agree to this provision because they may view sharing their nuclear technology with other states as essential to helping those states protect their sovereignty from the United States. Although this provision might not ultimately make it into a final agreement, it would be useful for the United States and its allies to ask for it as a means of testing North Korea's willingness to refrain from providing its nuclear technology to the Middle East.

v. In order to implement this plan, North Korea will allow a full and complete inspection by IAEA inspectors. It will allow for two regular annual inspections by the IAEA. If North Korea prevents inspections, the most recent round of sanctions relief will be re-implemented.

This represents the verification portion of a potential agreement. Given North Korea's perceived cheating in the past, it is likely that the United States, South Korea, and Japan will desire and require strong verification procedures in order to strike a

¹⁵¹ Paul Kerr, Steven Hildreth & Mary Beth Nikitin, *Iran-North Korea-Syria Ballistic Missile and Nuclear Cooperation*, CONG. RES. SERV. (Feb. 26, 2016), <https://www.fas.org/sgp/crs/nuke/R43480.pdf>.

¹⁵² *Id.*

nuclear deal with North Korea. North Korea has agreed to similar verification procedures in the past, although they have also blocked IAEA inspections of certain facilities and evaded verification procedures. As a result, those concerned about North Korean verification should make sure to clarify that the “full and complete” provision allows for inspections of any and all nuclear facilities. The inclusion of a penalty in the case of blocked inspections will also help prevent verification violations. North Korea has agreed to similar verification provisions in the past, so it is possible that they will do so again, although the inclusion of sanctions penalties may make obtaining their approval for this provision more difficult. Since these verification procedures are stricter than those contained in previous six party agreements, and since the United States likely recognizes the necessity of strong verification procedures, it is likely that they will agree to this provision.

c. Other Subjects That Might Be Included in the Final Agreement

Although not necessarily germane to nuclear disarmament, a number of other issues might be included in a prospective agreement with North Korea. Two potential topics stand out: (1) North Korean human rights abuses and (2) economic reforms.

Human rights in North Korea are extremely limited. In practice, North Koreans have no right to free speech and only have access to radio, television, music, and news providers that are owned and operated by the government.¹⁵³ As mentioned *supra*, North Korea strictly punishes those who speak out against the government by reeducating,

¹⁵³ *North Korea: Human rights Concerns*, AMNESTY INT’L (Nov. 28, 2006), <http://www.amnesty.org.au/news/comments/304/>.

imprisoning, or executing the violator as well as the violator's family.¹⁵⁴ The United Nation's Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea also found human rights abuses related to the right to food, the right to life, the right to freedom of movement, religious persecution, torture and inhumane treatment, sexual violence and human trafficking, enforced disappearances (including abductions of nationals from other countries), and arbitrary detention.¹⁵⁵ The Kim regime uses many of these abuses to stay in power.¹⁵⁶ Even if someone manages to defect from North Korea, they often suffer the same human rights abuses.¹⁵⁷ Most North Korean defectors defect to China, which does not recognize them as refugees but rather refers to them as "economic migrants."¹⁵⁸ As a result, most of them do not receive protection under Chinese law, which often results in them being taken advantage of in the border region China shares with North Korea.¹⁵⁹ Given the United States' and United Nations' interest in reducing human rights abuses in North Korea, it is possible that they would attempt to include language that would make certain human rights abuses violations of a prospective nuclear deal. Unfortunately, this is an unrealistic idea because many of the human rights abuses

¹⁵⁴ Byman & Lind, *supra* note 28.

¹⁵⁵ Comm'n of Inquiry on Human Rights in the Democratic People's Republic of Korea, *Report of The Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, UNITED NATIONS HUMAN RIGHTS COUNCIL A/25/63 (Feb. 7, 2014), <http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/CommissionInquiryonHRinDPRK.aspx>. To collect its findings, the commission held public hearings with 80 North Korean defectors and 240 confidential interviews with other defectors. It was denied access to North Korea and the border region that China shares with North Korea, but it corroborated defector testimony using satellite imagery and reliable informants from within and outside of North Korea. Olivia Enos & Bruce Klingner, *Next Steps for Human Rights in North Korea*, HERITAGE FOUND. (Jan. 12, 2016), <http://www.heritage.org/research/reports/2016/01/next-steps-for-human-rights-in-north-korea>.

¹⁵⁶ See Byman & Lind, *supra* note 154.

¹⁵⁷ Olivia Enos & Bruce Klingner, *Next Steps for Human Rights in North Korea*, HERITAGE FOUND. (Jan. 12, 2016), <http://www.heritage.org/research/reports/2016/01/next-steps-for-human-rights-in-north-korea>.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

are likely to continue regardless of any nuclear deal.¹⁶⁰ Any provision that strongly restricts against these abuses would probably result in the nuclear deal being violated, rendering the entire exercise of negotiating one pointless. Further, China and North Korea are extremely unlikely to agree to curtail these abuses because they are critical to helping the Kim regime maintain its power.¹⁶¹ Given this reality, the United States and others should pursue an alternative strategy to get North Korea to end its human rights abuses, and should not attempt to weave this issue into nuclear negotiations.¹⁶²

Including economic reforms in a nuclear disarmament treaty would make more sense. North Korea has already made some market-oriented economic reforms.¹⁶³ As a result of not enforcing its laws against private entrepreneurship, analysts believe the North Korean economy has grown between 1.5% and 4% annually over the last decade and now includes private mines, truck companies, and oil refineries.¹⁶⁴ Although owners have to register the enterprise as state property, they are treated for all intents and purposes as private companies.¹⁶⁵ Although private entrepreneurship was initially solely

¹⁶⁰ *Id.*

¹⁶¹ *See* Byman & Lind, *supra* note 156.

¹⁶² At present, the United States has the ability to use targeted economic sanctions to punish North Korean human rights violators and any third parties who assist them. *See supra* note 124. The “third party” prong of these sanctions has not been used against violators from outside North Korea, which might present one effective solution, although it might also make a nuclear deal based largely on sanctions relief less appealing to North Korea. *See supra* note 13. At the very least, the United States and South Korea should attempt to get China to agree to allow for the resettlement of North Korean defectors outside of China. *See supra* note 157. Although this will likely damage China’s relationship with North Korea and the Kim regime, it would also provides low hanging fruit for China to assure the outside world that it takes human rights abuses seriously.

¹⁶³ Andrei Lankov, *Kim Jong-un’s Recipe For Success: Private Enterprise and Public Executions*, GUARDIAN PAPER (Oct. 7, 2015), <http://www.theguardian.com/world/2015/oct/07/north-korea-recipe-for-success-economic-liberalisation-public-executions>.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

available to the rich, it has now started to become accessible to middle and lower class people, which has improved their quality of life.¹⁶⁶ Agriculture reforms have been particularly successful. Like Chinese agricultural reforms in the 1970s, North Korea maintains fields as state owned but gives them to individual households, who work for between 30% and 70% of the harvest.¹⁶⁷ This has resulted in larger harvests and decreased food shortages.¹⁶⁸ These economic gains may help further entrench the Kim regime, as a stronger internal North Korean economy will mean that the existing North Korean government is less likely to collapse due to internal pressure. Economic growth also makes North Korea more immune to sanctions and less willing to agree to a nuclear deal solely based on sanctions relief. The United States and others may encourage North Korea to open their economy for foreign direct investment as part of a potential nuclear deal. In one sense, this is similar to what the United States has recently done with Cuba. Given the potential economic benefit and increased tax revenue that might flow into the country as a result of foreign investment, North Korea may be willing to agree to allow such a provision to be included in a nuclear deal. This type of provision would also make it easier for North Korea to export their natural resources, which would further benefit their economy. On the other hand, North Korea might view opening their economy as an attempt to advance capitalism and an infringement on their sovereignty.¹⁶⁹ The United States and others would most likely want any provision that opens up North Korea's economy to include measures designed to prevent the seizure of foreigners' property.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

Given the Kim regime's various human rights abuses, it is unlikely that North Korea would agree to or abide by such a provision. As a result, it is unlikely that significant amounts of foreign investment would flow into the country. However, merely opening up North Korea's economy and encouraging imports and exports has the potential to improve the quality of life for North Koreans while also allowing them more access to Western ideas and goods. Ideally, this would make the North Korean people more amenable and less hostile to the West, an important philosophical benefit that has the potential to normalize relations over the long term.

4. Strategic Benefits of a North Korean Nuclear Deal

A nuclear deal with North Korea would provide many strategic benefits to the United States. While those benefits largely hinge on the contents of the hypothetical agreement, the analysis below focuses primarily on an agreement that contains the provisions recommended *supra*.

a. Regional Nuclear Proliferation and Political Impact

A North Korean nuclear deal would be a major step toward Asian regional nuclear non-proliferation. Asia contains two of the United States' strongest and most well established allies in South Korea and Japan.¹⁷⁰ At the same time, Asia already contains two states with well-developed nuclear arsenals in China and Russia.¹⁷¹ Both of these states are NPT nuclear-weapons states.¹⁷² China has approximately 260 total warheads

¹⁷⁰ See 77 Fed. Reg. 76865 (Dec. 31, 2012) (22 C.F.R. 120 and 126).

¹⁷¹ *Nuclear Weapons: Who Has What at a Glance*, ARMS CONTROL ASSOC. (Aug. 10, 2016), <https://www.armscontrol.org/factsheets/Nuclearweaponswhohaswhat>.

¹⁷² *Id.*

while Russia has 1582 deployed warheads on 515 ICBMs, SLBMs, and strategic bombers.¹⁷³ In addition to China and Russia, India and Pakistan also have nuclear weapons.¹⁷⁴ Neither of these countries has joined the NPT.¹⁷⁵ India's nuclear program started for peaceful purposes, with the country testing its first nuclear weapon in 1974.¹⁷⁶ As a result of that test, Pakistan developed a secret nuclear weapons program.¹⁷⁷ This resulted in a small nuclear arms race between both countries.¹⁷⁸ Today, India possesses between 90 and 110 nuclear warheads while Pakistan has roughly 100 to 120 warheads.¹⁷⁹ All of these arsenals are far larger than North Korea's current arsenal,¹⁸⁰ so in theory each of these countries has the means of deterring a North Korean nuclear threat. However, given North Korea's erratic behavior and unpredictability, it is difficult to use traditional means of deterrence. Even if the Kim regime is rational enough not to use its nuclear weapons in a preemptive strike within the region, its unpredictability coupled with its bellicose language might lead some within the region to solidify their nuclear capabilities or develop strong conventional forces as a means of assuring regional stability.

A nuclear deal would help assure regional stability and would diminish military buildup within the region. As a result, it is likely that these countries will not feel

¹⁷³ *Id.* In total, Russia has more nuclear warheads than any other country. *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *See id.*

¹⁷⁹ *Id.*

¹⁸⁰ *See id.*

compelled to greatly enlarge their nuclear weapon count even if a deal with North Korea allows Pyongyang to keep some nuclear weapons or continue uranium enrichment. The remaining non-nuclear states within the region, South Korea and Japan, are two of the United States' strongest allies and rely on it for defense. A nuclear deal struck between the United States and North Korea would help ensure that these countries do not attempt to develop their own nuclear programs as a means of potentially enhancing their deterrence capability and therefore regional security. Of course, a potential nuclear deal may call for the United States to reduce its presence in South Korea or perhaps Asia as a whole. If this is the case, it will be vitally important to South Korea and Japan that strong verification procedures are established. Further, even if the United States' removes forces from these countries, it will likely still be able to provide them with missile defense systems as a means of deterring any remaining North Korean nuclear threat.¹⁸¹ A nuclear deal would benefit China and Russia specifically by putting each country in a better position to preserve their power in the region. For instance, a strong nuclear disarmament deal with North Korea that contains sufficient verification provisions might result in the United States diminishing its presence in Asia. This would strengthen China's regional power. It would also likely benefit Russia, one of North Korea's few remaining allies, as the country has been critical of the United States' presence in South Korea.¹⁸² Likewise, Russia has pointed out that North Korea's repeated threats of using nuclear weapons for a preventative strike give Pyongyang's opponents just cause to pursue military action

¹⁸¹ It would remain important for the United States to have the ability to send troops to South Korea in short notice as a means of defending against the possibility that North Korea restarts its nuclear program after the United States pull troops out of South Korea.

¹⁸² O'Carroll, *supra* note 14.

against it.¹⁸³ This would be a particularly troublesome prospect for Russia, which would potentially lose a relatively strong regional ally. A nuclear deal would help solidify the power of Russia and China in the region because it might put an end to North Korea's repeated nuclear threats and would likely result in some withdrawal of American troops from the region. As a result, it is likely that these states will refrain from developing weapons of their own as the result of a North Korean nuclear deal.

A North Korean nuclear deal might also help aid political stability in the Middle East. Syria has received ballistic missiles and related technology from North Korea, and both countries have engaged in nuclear technology cooperation.¹⁸⁴ A North Korean deal that restricts the country's ability to share nuclear weapons technology and support with other regimes will make it more difficult for rogue regimes in the Middle East to develop nuclear weapons, which will aid in Middle Eastern nuclear stability. Therefore, the benefits of a North Korean nuclear deal would extend far beyond Asia to the Middle East. Increased stability in these regions would benefit the United States.

b. Diminished Threat to the United States

North Korea has tested nuclear weapons on three separate occasions.¹⁸⁵ Its weapons program appears to be rapidly developing, as Pyongyang has developed primitive SLBM capability and has ramped up its nuclear testing.¹⁸⁶ A North Korean nuclear deal would at worst help slow down this development and at best help stop it in

¹⁸³ *Id.*

¹⁸⁴ *See supra* note 151.

¹⁸⁵ *Id.*

¹⁸⁶ *See supra* notes 59, 79.

its tracks. Given the rapid rate of North Korean nuclear development, the United States' role in Asia, and its associated obligation to respond to tests and threats on behalf of its allies in the region, a nuclear deal would greatly enhance the security of the United States and would reduce resource drain.

North Korea may have the ability to reach the continental United States with its nuclear weapons.¹⁸⁷ Even if it lacks ICBM capability at present, it appears poised to build one in the near future.¹⁸⁸ North Korea has been rapidly developing its nuclear weapons and delivery devices, which has led analysts to believe that they are aiming to increase the range of their weapons to the point that they could reach the entire continental United States.¹⁸⁹ At present, the program can reach the Northeastern, Mid Atlantic, South, and Southeastern portions of the United States, including cities like Washington, DC and New York, NY.¹⁹⁰ While any nuclear attack against the United States would be devastating, an East Coast attack would be potentially more problematic because the area is more populous than the West Coast and contains centers of American government and finance.¹⁹¹ As a result, a deal that leads to a North Korean nuclear pause would make important strides toward diminishing the potential nuclear threat to the United States. A nuclear pause that also requires North Korea to halt development of miniaturization

¹⁸⁷ See *supra* note 75. Official unclassified intelligence claims that North Korea's greatest range would include countries within Asia, but other sources contradict this intelligence. See *supra* note 151. Even if North Korea does not possess this capability, their rhetoric makes it clear that the country's focus is on developing a weapon that could eventually reach the continental United States.

¹⁸⁸ See *supra* note 59.

¹⁸⁹ See *supra* note 13, 125.

¹⁹⁰ See *supra* note 13.

¹⁹¹ *Population Density*, EARTH OBSERVATORY, <http://earthobservatory.nasa.gov/IOTD/view.php?id=7052>.

capabilities and nuclear warhead delivery missiles would be vitally important to diminishing North Korea's ability to use a nuclear weapon against the United States.

c. Economic Impact of Lifting Sanctions

North Korea has the world's worst economy as a result of economic sanctions and the Kim regime's own mismanagement.¹⁹² For instance, North Korea's per capita imports in 2015 were three-fifths of what they were in 1974.¹⁹³ The country's 2015 exports were the same as those in the mid-1970s.¹⁹⁴ Although recent reforms have helped the domestic economy grow, it still pales in comparison to many of the least developed countries.¹⁹⁵ As discussed *supra*, the Obama Administration placed strong economic sanctions on North Korea and third parties assisting in North Korea's human rights violations through Executive Order 13722. The UNSC has also placed significant sanctions on North Korea in response to its testing of nuclear bombs and ballistic missiles.¹⁹⁶ Regardless of international sanctions, the country has the worst business climate of any fully functioning nation state.¹⁹⁷ While the Kim regime remains deeply committed to its nuclear weapons program, it is also starting to face the reality that it must improve its economy if it is to remain in power.¹⁹⁸ This is likely part of the motivation behind recent

¹⁹² Eberstadt, *supra* note 5.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *See supra* note 163.

¹⁹⁶ Somini Sengupta & Choe Sang-Hun, *U.N. Toughens Sanctions on North Korea in Response to Its Nuclear Program*, N.Y. TIMES (Mar. 2, 2016), http://www.nytimes.com/2016/03/03/world/asia/north-korea-un-sanctions.html?_r=0.

¹⁹⁷ Eberstadt, *supra* note 5.

¹⁹⁸ *See Spring release*, ECONOMIST (Feb. 28, 2015), <http://www.economist.com/news/asia/21645252-tantalising-signs-change-are-emerging-whether-they-signal-more-profound-shifts-less>.

economic reforms in the country.¹⁹⁹ Even though the Kim regime has historically been opposed to reform of any kind, there appear to have been efforts in recent years to modernize North Korean agriculture and allow private enterprise.²⁰⁰ These efforts have been partially modeled on Chinese economic reforms that relied on foreign expertise and access to global capital markets.²⁰¹ While these reforms have helped North Korea's economy,²⁰² significant economic improvement will most likely only be possible if the Kim regime is willing to engage with the outside world. Pyongyang remains skeptical of foreign direct investment, but that it has embraced economic advancement signals its potential willingness to eventually engage with the global economy.²⁰³ For instance, North Korea has agreed with China, its strongest trading ally, to construct a third bridge linking the two countries and allowing for expanded trade.²⁰⁴ At present, North Korea only has decent economic relationships with China and Russia. While both countries are major economic powers, their economies have struggled as of late. Chinese companies have also become wary of North Korea's inhospitable business environment.²⁰⁵ As a result, if North Korea wants to grow its economic security, it will likely have to open its economy to some foreign investment. Sanctions relief will help North Korea accomplish this.

¹⁹⁹ Eric Talmadge, *North Korea's creeping economic reforms show signs of paying off*, GUARDIAN PAPER (Mar. 5, 2015), <http://www.theguardian.com/world/2015/mar/05/north-korea-economic-reforms-show-signs-paying-off>.

²⁰⁰ *See supra* note 198.

²⁰¹ *See id.*

²⁰² *See supra* note 199.

²⁰³ *See supra* note 198.

²⁰⁴ *See id.*

²⁰⁵ *See id.*

Since most sanctions are based on Pyongyang's nuclear program, that program will most likely have to be the primary negotiating chip in order to remove or pause sanctions.²⁰⁶ Given that sanctions have done little to convince North Korea to restrict its nuclear activities, it appears that a nuclear deal with North Korea will have to be based on more than sanctions relief alone.²⁰⁷ It is likely that the United States will have to also include provisions designed to curtail joint military exercises with South Korea and potentially reduce its military presence in Asia. Even so, for a deal to be successful, it will have to incentivize North Korea to comply with its provisions. Pegging sanctions relief to disarmament is one way to accomplish this. As North Korea disarms itself further, more and more sanctions will be eliminated. In other words, an agreement structured like this will make it so that nuclear disarmament helps North Korea grow its economy, resulting in potentially greater political stability for the Kim regime.

Sanctions relief will have many benefits for each of the six countries likely to be included in any prospective nuclear agreement. First, sanctions relief will allow third parties within each of the countries to trade with North Korea with little fear that the United States will subject them to harsh sanctions. It should be noted, however, that the United States would probably maintain the ability to bring sanctions against third parties who assist North Korea with its human rights abuses. Either way, this will provide a significant boost to international commerce. Second, if the agreement calls for the opening of North Korea's economy, it will allow some or all of the countries to export to and receive imports from North Korea. In reality, a provision in which North Korea

²⁰⁶ *See id.*

²⁰⁷ *See supra* note 149.

allows for all foreign investment is unlikely to be a part of any agreement. However, it is possible that a provision allowing some limited and pre-screened foreign investment may be included. It is unlikely that entities from certain countries, especially the United States, would really want to invest directly in North Korea. However, merely opening up the possibility of trade between these countries may expose North Koreans to some Western culture or media and will make the North Korean economy more likely to expand. Exposing North Koreans to Western culture may also make them less hostile to the United States, as happened when China began trading on a global scale.²⁰⁸ Third, if the North Korean economy grows as the result of increased trade and foreign investment, some of that growth will likely flow to its citizens.²⁰⁹ The effect of this is uncertain. In combination with increased access to Western goods and media, this might result in greater cross-cultural understanding. On the other hand, the Kim regime may well prevent Western media and goods from reaching its citizens, fearing that this would decrease the regime's ability to maintain power in the country. Either way, enhanced prosperity of the North Korean people may lead to fewer human rights violations, which will allow the United States to diminish its military presence in South Korea and decrease the amount of humanitarian support it provides to North Korea. All of this will save the United States substantial amounts of money.

d. Informational and Communicational Benefits

²⁰⁸ Charles Freeman, *U.S.-China Relations: Challenges for the 114th Congress*, NAT'L BUREAU OF ASIAN RESEARCH, <http://www.nbr.org/research/activity.aspx?id=538>.

²⁰⁹ This is by no means certain. For instance, workers from the Kaesong Industrial Project were taxed at rates of up to 70% as a means of helping fund North Korea's nuclear program. There is a good chance that the North Korean government might levy similar taxes on any North Koreans working for or with foreign companies.

Uncertainty is the name of the game when it comes to North Korea's nuclear weapons program. Since there is no international oversight of Pyongyang's nuclear program and no real intelligence on the threat it poses within the region, it is difficult to accurately assess North Korea's nuclear capabilities.²¹⁰ And while North Korea is known to exaggerate these capabilities, there is also no guarantee that the rogue regime does not pose a clear nuclear threat to the United States despite any language to the contrary.²¹¹ Any nuclear deal with North Korea that would enable the United States and the global intelligence community to get a better handle on North Korea's nuclear capabilities and ambitions would be an important advancement to international security.

Verification procedures are essential to gathering intelligence related to North Korea's nuclear program. These procedures will help provide a better idea of whether they are capable of striking the continental United States, as the intelligence community, outside commentators, and international agencies seem to have come to different conclusions about whether this is possible.²¹²

Even if verification procedures reveal that North Korea does not pose an immediate threat to the United States, a nuclear deal may curtail North Korea's harsh threats. North Korea has released propaganda videos depicting nuclear attacks against the United States and Seoul, South Korea.²¹³ Likewise, it has threatened to turn Seoul into "a

²¹⁰ Erin Banco, *Lack of International Nuclear Oversight in North Korea Raises Questions About Cooperation With Iran*, INT'L BUS. TIMES (Jan. 6, 2016), <http://www.ibtimes.com/lack-international-nuclear-oversight-north-korea-raises-questions-about-cooperation-2252730>.

²¹¹ See *supra* note 9.

²¹² See *supra* notes 75, 151.

²¹³ *North Korean video purportedly shows US getting hit by nuke*, FOX NEWS (Mar. 27, 2016), <http://www.foxnews.com/world/2016/03/27/north-korean-video-purportedly-shows-us-getting-hit-by-nuke.html>.

sea of fire” and to launch a “merciless sacred war” against South Korean media groups.²¹⁴ Rhetoric such as this, even if it is empty and not indicative of an actual threat, causes severe security anxiety and diverts national security resources.²¹⁵ If North Korea were to strike a nuclear deal with the United States, it would be difficult for them to continue to successfully use propaganda rhetoric claiming that it is prepared to attack the United States. The JCPOA has been moderately successful in accomplishing this, although the agreement has been primarily used by Iranian politicians as signifying that Iran “went into a war with the six great powers of the world and was...successful.”²¹⁶ The United States would probably prefer this type of rhetoric from North Korea to its perpetual nuclear threats. Further, a provision barring specific threats of preemptive nuclear strikes could potentially be included in a nuclear agreement. A provision like this will help keep the implementation of a nuclear agreement on track and will play a role in assuring that the agreement does not fall apart after it is implemented.

5. A Nuclear Deal for the Long-Haul

To maximize the benefits of a nuclear deal, the United States and other parties will have to find a way to keep the deal in place over a long period of time. Promising agreements have been negotiated with North Korea in the past only to dissolve upon allegations of North Korean cheating or sovereignty infringements by the United States. Strong verification measures alone cannot fully prevent this from happening again. A

²¹⁴ *See supra* note 15.

²¹⁵ *See id.*

²¹⁶ *If the Iran Deal's So Good, Why do the Iranians Love It*, POLITICO (Sept. 3, 2015), <http://www.politico.com/magazine/story/2015/09/iran-nuclear-deal-tehran-213114>.

combination of hard power, continued diplomacy, and economic penalties for cheating will be necessary to assure that a nuclear agreement remains in place over the long haul.

Hard power will not require substantial military action. The United States should provide South Korea and Japan with defensive systems and leave some troops near Seoul in order to counterbalance North Korea's large conventional military. For their part, South Korea and Japan should both increase their military power enough to dissuade North Korea from attempting to use its conventional military forces. These actions will discourage North Korea from rapidly revamping its nuclear program as a means of threatening the United States' Asian allies.

A provision requiring continued diplomatic engagement should be a part of any North Korean nuclear agreement. While routine engagement with North Korea cannot prevent it from cheating on an agreement, it will play a significant role in developing a cooperative relationship between all parties. Continued diplomacy will make it easier to tell if diplomatic relationships have soured or remain strong, and may help encourage further dialogue between the parties regarding North Korea's human rights abuses.

Economic penalties for cheating should also be a part of a North Korean nuclear deal. While these provisions may not prevent all cheating, they will give North Korea greater incentive to avoid cheating than an agreement that merely terminates when it is violated. Further, if an agreement contains both economic aid or development provisions and strong verification provisions that make cheating difficult, it will make North Korea less likely to cheat and violate the agreement. If the potential detriment of cheating is strong economic penalties and the potential benefit is minimal nuclear development, it would be difficult for North Korea to justify continuing a nuclear program in secret.

Together, all of these protections should help keep a nuclear agreement in place for significantly longer than past agreements. Developing a stable treaty that stands the test of time would be the best possible outcome for national and international security.