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TABLE OF CONTENTS

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- The Roh Administration's Peace and Prosperity
Policy and International Cooperation:
The Eurasian Dimension, Catalyst for
the Korean Reunification Process? *Markku Heiskanen / 1*
- US International Strategy and the Nuclear Crisis
on the Korean Peninsula:
Reality and Policy Implications *Hong Kwan-Hee / 29*
- Nuclear Crises in Korea:
Why they Arise and How to Resolve Them *Alexander Zhebin / 55*
- Legal Elements for a Comprehensive Solution
to the Problem of North Korea's Weapons
of Mass Destruction and Criminal Activities *Grace M. Kang / 85*
- North Korea's Economic Policy in the Era of "Military First"
- Reform Measures in July and 'Defense Industry First'
Strategy from September 2002 *Park Hyeung-Jung / 115*
- Regional Integration in East Asia and Perspectives
for Economic Transformation in North Korea
- Lessons from Europe *Bernhard Seliger / 139*
- Comparison of the South's Confederation Proposal
with the North's "Low Stage Federation"
Proposal - from the Perspective of International Law *Jhe Seong-Ho / 165*

**THE ROH ADMINISTRATION'S PEACE
AND PROSPERITY POLICY AND
INTERNATIONAL COOPERATION:
THE EURASIAN DIMENSION, CATALYST FOR
THE KOREAN REUNIFICATION PROCESS?**

Markku Heiskanen

The new South Korean President, Roh Moo-hyun, declared in his inauguration speech on February 25, 2003 that "the Age of Northeast Asia is fast approaching." The Korean peninsula has to be reborn as a gateway to peace that connects the Eurasian landmass with the Pacific, and leads to "The Age of Northeast Asia in the 21st century," as long predicted by renowned scholars. These predictions are now coming true. Northeast Asia, as a region covering the Korean states, Japan, Mongolia, northeastern parts of China and the Russian Far East, can indeed become an important sub-region of East Asia, Asia-Pacific and Eurasia. Northeast Asia partly overlaps the concept of North Pacific, the latter including also parts of the United States (Alaska) and Canada (British Columbia). Northern Eurasia, connecting Northeast Asia with northern Europe through Russia, was in fact a political and economic unit from 1809 until 1917 under Imperial Russia, which extended from the Finnish Aland Islands, close to the Swedish eastern coast,

across to the Pacific Ocean, and until 1867 even to Alaska. In the new post-Cold War international situation, northern Eurasia could again become a connecting factor between Northeast Asia/the North Pacific and Europe/the EU through the vast Eurasian Land Bridge. The 320 million people of Northeast Asia and the huge natural resources and complementarities of the Northeast Asian economies could form a realistic basis for a new regional architecture in Northeast Asia, with logistical and other connections towards Eurasia, North America and the South Pacific. It has all the potential to develop into a new major pole or power center in the developing multi-polar/multi-centered world order. The Korean peninsula is in a key position in this development. Increasing regional cooperation in Northeast Asia could lessen the prevailing tensions in the region and facilitate the development toward an eventual reunification of Korea, in one form or another, even in the foreseeable future. The growing relationship between Northeast Asia and Europe, and particularly the European Union, called in this article "the Eurasian Dimension," could become an important catalyst for the future normalization of inter-Korean relations.

I. Introduction

1. *Eurasian Dimension and Northeast Asia*

The new South Korean President Roh Moo-hyun declared in his inauguration speech on February 25, 2003 that the Age of Northeast Asia is fast approaching. The Korean peninsula has to be reborn as a gateway of peace that connects the *Eurasian landmass* with the Pacific, and leads to the Age of Northeast Asia in the 21st century, as long

predicted by renowned scholars. These predictions are now coming true.¹

Eurasia, the Eurasian landmass, is in fact one and the same continent. The Ural Mountains, regarded as a frontier between Europe and Asia, are considered even by many geographers an artificial frontier. The border was to be drawn somewhere and the Ural Mountains offered an easy line.

Northeast Asia, as a region covering the Korean states, Japan, Mongolia, northeastern parts of China and the Russian Far East, is a sub-region of Eurasia as well as Asia-Pacific. Northeast Asia overlaps the geographic concept of North Pacific, the latter including also parts of the United States (Alaska) and Canada (British Columbia). In political and military terms, the United States is a regional player in Northeast Asia. The Ural Mountains were penetrated as early as 100 years ago by the construction of the Trans-Siberian Railway connecting Moscow to Vladivostok, and opening the then *Eurasian dimension*.

A few decades earlier, in 1878-80, the Finnish-born explorer Adolf Nordenskiöld, under the flag of Sweden, had found the Northern Sea Route from northern Europe to Japan.

Northernmost Eurasia, connecting Northeast Asia with northern Europe through Russia, was in fact a political and economic unit from 1809 until 1917 under Imperial Russia, which extended from the Finnish Åland Islands, close to the Swedish eastern coast, across to the Pacific Ocean, and until 1867, even to Alaska.

Finland was an autonomous Grand Duchy of Imperial Russia in 1809-1917, and a number of Finnish officers, officials, scholars and businessmen worked in the Russian Far East and there were even Finnish Governors in Alaska.

Finland established friendly relations with Koreans, Japanese and

¹ "A New Takeoff Toward an Age of Peace and Prosperity," address by President Roh Moo-hyun at the 16th Inaugural Ceremony, Seoul, February 25, 2003.

Mongolians in the region, who were considered linguistic relatives of Finns based on the disputed theory of Ural-Altai family of languages. The first Korean grammar in the west was published by a renowned Finnish scholar in Korean, Japanese and Mongolian languages, Professor Gustaf Ramstedt, who spent years in late 1800s, early 1900s in Mongolia, Korea and Japan. He was the first envoy of independent Finland in Japan, China and Siam in 1919-1929.

In the new post-Cold War international situation, northern Eurasia could again become a connecting factor between Northeast Asia/the North Pacific and Europe, particularly the growing European Union, through the vast Eurasian landmass/Land Bridge as referred to by President Roh Moo-hyun.

The 320 million people of Northeast Asia and the vast natural resources, also in the Russian Far East, and complementarities of the Northeast Asian economies could form a realistic basis for a new regional architecture in Northeast Asia, with logistical and other connections towards Eurasia, North America and the South Pacific. It has all the potential to develop into a new major pole or power center in the developing world order.

The Korean peninsula is in a key position in this development. Increasing regional cooperation in Northeast Asia could lessen the prevailing tensions in the region and facilitate the development toward an eventual reunification of Korea, in one form or another, even in the foreseeable future.

The growing relationship between Northeast Asia and Europe, particularly the European Union, called in this article "the Eurasian Dimension," could become an important catalyst for the future normalization of inter-Korean relations.

The term "Eurasian Dimension" reflects the "Northern Dimension" of the European Union, a program of cooperation in northernmost Europe with non-EU members, covering parts of Iceland, Norway, Sweden, Finland, Russia and the Baltic Sea region. The "Eurasian

Dimension" could become an operative element of policy of the European Union.

2. Eurasian Dimension in the Early 21st Century

The *Eurasian dimension* has acquired substantive contents following the Korean Summit in Pyongyang in June 2000, the EU summits in both Korean States in May 2001, the ASEM (Asia Europe Meeting) summit in Copenhagen in September 2002, and particularly the strong emphasis on Eurasian relations of the new Roh Moo-hyun administration in South Korea.

The first great victory of President Roh's policy towards Eurasia was undeniably the symbolic re-linking of the Trans-Korean railways on June 14, 2003, after half a century, and in the midst of the escalating nuclear crisis on the Korean peninsula. There are concrete prospects for reconnecting the Trans-Korean railway in the future to the Eurasian railway networks utilizing the transport corridors through China, Kazakhstan, Mongolia and Russia's 100-year-old Trans-Siberian railway. Moreover, the planned Eurasian freight rail corridor from China up to the Norwegian port of Narvik, and further by ship to the ports of North America, Boston, Halifax and even the U.S. West Coast, could also be connected to the trans-Korean railway network.

At the ASEM summit in Copenhagen in September 2002, the ASEM countries renewed their commitment to peace and stability on the Korean Peninsula and welcomed the launching of the construction work for the reconnection of rail and road links across the inter-Korean border.²

It is not out of question that after re-linking the railway in June 2003, the first test trains could cross the Korean DMZ still in 2003.

2 "ASEM Copenhagen Political Declaration for Peace on the Korean Peninsula," Copenhagen 2002.

Former President Kim Dae-jung of the Republic of Korea referred in his remarks at the Copenhagen ASEM to the Eurasian connections:

“In particular, the reconnection of the inter-Korean rail and road, which began last week, bears great significance in that it leads to the easing of military tensions...The reconnection of the inter-Korea rail link holds even deeper meaning. It completes a land link between Korea and Europe, which we like to refer to as the “Iron Silk Road.” This will provide an unprecedented opportunity to realize the lofty ideal of ASEM, a united community. Trains departing from Europe will be able to cross the Eurasian continent to arrive in Korean destinations such as Seoul and Pusan, the world’s largest container port and a gateway to the Pacific. Likewise, trains departing from Korea also will be able to reach Western Europe, thereby forming a connection to the Atlantic. This will result in a drastic reduction of costs and transportation time.”³

The new President of the Republic of Korea, Roh Moo-hyun, also included the European Union in his inaugural address on February 25, 2003:

“Initially, the dawn of the Age of Northeast Asia will come from the economic field. Nations of the region will first form a “community of prosperity,” and through it, contribute to the prosperity of all humanity and, in time, should evolve into a “community of peace.” For a long time, I had a dream of seeing a regional community of peace and co-prosperity in Northeast Asia like the European Union. The Age of Northeast Asia will then finally come to full fruition. I pledge to devote my whole heart and effort to bringing about that day at the earliest possible time... In order to bring about a genuine Age of Northeast Asia, a structure of peace must first be institutionalized on the Korean Peninsula. It certainly is most unfortunate that the peninsula still remains the last legacy of the Cold War of the 20th century. In the 21st

century, we have to change the peninsula into a land that sends out messages of peace to the rest of the world. It has to be reborn as East Asia’s gateway of peace that connects the Eurasian landmass with the Pacific Ocean. We have to soon bring the day when passengers will be able to buy a train ticket in Pusan and travel all the way to Paris, in the heart of Europe, via Pyongyang, Shinuiju and the many cities in China, Mongolia and Russia... Military tension in any form should not be heightened. We will strengthen coordination with the United States and Japan to help resolve the nuclear issue through dialogue. We will also maintain close cooperation with China, Russia, the European Union and other countries...”

President Roh visualized a strong perspective for the future of Northeast Asia:

“In this new age, our future can no longer be confined to the Korean Peninsula. The Age of Northeast Asia is fast approaching. Northeast Asia, which used to be on the periphery of the modern world, is now emerging as a new source of energy in the global economy. Renowned international scholars have long predicted that the 21st century would be the Age of Northeast Asia and their predictions are coming true. Business transactions in the region already represent one fifth of global volume and the combined population of Korea, China, and Japan is four times larger than that of the European Union. The Korean Peninsula is located at the heart of the region. It is a big bridge linking China and Japan, the continent and the ocean. Such a geopolitical characteristic often caused pain for us in the past. Today, however, this same feature is offering us an opportunity. Indeed, it demands that we play a pivotal role in the Age of Northeast Asia in the 21st century.”

South Korea is planning an “Iron Silk Road” Conference to be convened in Seoul in late 2003 or early 2004 to further develop in concrete terms the railway and transportation links between Asia and Europe. These are concrete building blocks for the further development of *the Eurasian dimension*, relations between the European Union and Europe at large, and Northeast Asia. The Eurasian dimension could serve as a

3 “Remarks by H.E. President Kim Dae-jung of the Republic of Korea,” ASEM summit, Copenhagen 2002.

catalyst for peace and prosperity in Northeast Asia and the unification process on the Korean Peninsula.

II. Post-Cold War Political Developments and Options in Northeast Asia

1. Regional Players and Legacies in Northeast Asia

To understand the prospects, but also obstacles, on the way to a functioning Eurasian dimension, a short review of the post-Cold War political developments in Northeast Asia and options involved might be useful. Northeast Asia is a specific sub-region in the Asia-Pacific and Eurasia context because of the presence of the three nuclear powers, the U.S., China, and Russia, and the economic, but also militarily strong power Japan. Although the Cold War confrontation between the U.S. and the Soviet Union is over, there are still remnants and legacies of the post-World War and Cold War period in Northeast Asia: the division of the Korean Peninsula and the Japan-Russia border dispute. Even the China-Taiwan dispute may affect stability in Northeast Asia, and the successful and historic inter-Korean Summit in Pyongyang in June 2000 hopefully will be seen as the beginning of a new area of detente in the whole of Northeast Asia. However, it will take time, perhaps even decades, before the fundamental political issues are definitively resolved. The present escalating tension between North Korea and the United States on the nuclear issue is significantly threatening the promising new development started during the term of the South Korean President Kim Dae-jung, and vowed to be continued under the new President Roh Moo-hyun.

2. Regional Structures for Security and Cooperation Needed in Northeast Asia

The ongoing situation on the Korean Peninsula shows that concentration of military power, including nuclear weapon options, the prospects of potential “power vacuums,” and the presence of historical animosities, all make up a potentially explosive cocktail in Northeast Asia. These tensions could explode into open conflict with possible global implications if inter-state tensions are not duly managed. Northeast Asia still lacks comprehensive confidence-building measures (CBMs) in the form of multilateral institutions or structures. State relations are generally conducted on a bilateral basis, with no real forum for discussion of issues of common Northeast Asian concern.

Perhaps a little ironically, the only multilateral regional forum involving all the Northeast Asian nations at the moment (North Korea has joined recently) is the ASEAN Regional Forum (ARF). In fact, ASEAN is based half a continent away from Northeast Asia, and although the ARF is a useful arena for informal dialogue, there are no obvious reasons why ASEAN should be in a key position in the regional processes in Northeast Asia.

In developing the new post-Cold War world order, one of the main issues is the development of new multilateral structures, security structures and regional, particularly economic cooperation in the Asia-Pacific region in general, and in sub-regions such as Northeast and Southeast Asia. The question is whether and how the potential regional cooperation or even integration process in Northeast Asia can be connected with regional development and integration processes in other parts of the world, particularly North America and Europe.

3. The Post-Cold War Regional Order in Northeast Asia

The irony of the Cold War was that, apart from raising the spectra

of a nuclear war, it provided Asia-Pacific, including Northeast Asia, with strategic balance and predictability. There was bipolar (or sometimes tripolar) stability, with clear areas of Chinese, American and Soviet influence. The ending of the Cold War, however, has resulted in a more unpredictable Asia-Pacific, including Northeast Asia. The break-up and strategic withdrawal of the Soviet Union have meant leaving the U.S. as the *de facto* superpower in the region. The U.S. is domineering and China is troubled by the fact that there is for the time being no other power which can oppose the U.S.'s tendency to impose its democratic values and economic agenda and maintain its military presence in the region. Other Pacific states feel strongly that the U.S. must stay in the region. They fear that because there is no longer a need to counter the Soviet Union, there could be a diminished U.S. presence in Asia. A power vacuum could result, leading to Chinese regional dominance, and become the next regional hegemony. China, in turn, fears the possibility of a remilitarized Japan, which might "go nuclear" in the event of an American withdrawal from Northeast Asia in one form or another.⁴ Unlike in the Cold War era, the situation in Asia-Pacific today has become more unpredictable and uncertain. The fact is that the Cold War is not over in Northeast Asia and will not be as long as there is no solution, primarily to the Korean problem and particularly the ongoing North Korean nuclear issue as well as in the longer term to the Japan-Russia and even China-Taiwan issues. The situation in summer 2003, the North Korean nuclear issue and the inauguration of the new South Korean President Roh Moo-hyun have initiated discussions among the main players in Northeast Asia on the future regional order in the region, including the threat of nuclear escalation. The European Union has been mentioned in the discussions as a possible "third party player" in North-

east Asia when multilateral solutions to the situation are being mapped out.

4. Regionalism and Globalism in Northeast Asia

The development of first the European Union (EU), and then the North American Free Trade Agreement (NAFTA) as major economic groupings, has brought visions of a world dominated by three "global regions": Asia-Pacific, North America, and Europe. Regionalism is seen as providing a measure of security against the vagaries of the global economy and a strong base from which to compete within it. The "tripolar vision" neglects other potential power centers of the world such as Russia and Latin America. Asia-Pacific could be challenged by Eurasia, where Russia has a central role between Europe/EU and East Asia/North Pacific. The old "Silk Road," revived in the form of the "Iron Silk Road" by the Trans-Korean railway and introduced by former President Kim Dae-jung, and the "Age of Northeast Asia" suggested by the new President of South Korea Roh Moo-hyun opens up prospects for Northeast Asia to become one of the power centers of the world, in the long run probably even along the lines of the integration process in Europe. In recent discussions, the concept of a "*Eurasian union*" has been brought up as a concept and a framework for an area of economic cooperation across the Eurasian continent, probably offering an economic counterweight to the sole superpower position of the U.S., based on its military superiority. Regionalism can vary in character and it cannot be directly assumed that Europe presents some suitable model for regionalism and integration elsewhere. It is not possible to build a kind of "regional bloc transition model" with different regional groupings at different stages in a broadly similar trend. There may be common features but each development is a product of a particular combination of local and regional circumstances and history set within a wider world context. This also applies

⁴ See articles on this topic in Anthony McGrew and Christopher Brook (ed.), *Asia-Pacific in the New World Order* (Routledge: London 1998).

to Northeast Asia.

The European Union is in any case a realistic and certainly also a compatible partner for a potential regional organization in Northeast Asia. The EU was established in 1957 as the European Economic Community (EEC) as much for political and security reasons as to energize economic development. The political reasons can be summarized as preventing war from ever breaking out again in Europe between Germany and France. This policy has proved successful now for over half a century. A key aim underlying the creation of an economic community was the wish to rebuild relations after the devastation of the Second World War, and a key influence was the U.S.'s concern to strengthen western Europe against the perceived threat of the Soviet Union.

In North America NAFTA was established in 1993 under a different set of circumstances. It was designed as a "free trade area" rather than a political unit in its own right (as was the EU) although, as in the EU, there is trade discrimination against non-members. Unlike the EU, NAFTA is dominated by the interests of one state, the U.S., which has produced a different kind of arrangement and pattern of winners and losers. The reasons underlying the grouping's establishment were again both economic and political. It was seen by the U.S. to be in its interests to develop a trading counterweight to other core economic powers centered on Europe and Japan and cementing relations in the "U.S.'s backyard." For Canada and Mexico, NAFTA formalized their strong trade links with the U.S. and provided a "safe-haven arrangement" in the event of a collapse in multilateral trade and a rise in U.S. protectionism.

The prospects for Northeast Asian regionalism and the region's connections with global systems and networks can be observed against these developments. They very much depend on what kind of regionalism and even integration is developing in Asia-Pacific in general. The world is becoming more and more inter-connected and inter-

dependent, and it is also likely that the connections of Northeast Asia with Europe will have an increasing relevance. International non-governmental organizations and sub-national groups as well as inter-governmental arrangements, are sometimes viewed as an early stage in the development of more *global* governance. Many of these arrangements have developed around international organizations while others have come into being through international conference resolutions and specific treaties and are sustained through follow-up meetings and more detailed proposals.⁵ All these elements have a relevance for future developments in Northeast Asia and its relations with Europe, and the European Union, the developing Eurasian dimension. One of the key questions in future development and in a new world order is the relationship between regionalism and globalism. Are they mutually exclusive or perhaps complementary?

5. Options and Obstacles for Regional Integration in Northeast Asia

The question of possible regional integration in Northeast Asia has been approached very cautiously among scholars and politicians. One of the reasons for caution has been the great diversity of communities in Northeast Asia. In Northeast Asia, the countries concerned share a common history, to a large extent a common cultural heritage (Chinese) and even basically, a common writing system (Chinese characters). The problem is, however, that common history is mostly a history of inter-state tensions and military conflicts with bitter legacies in all states of the region. The period of Japanese imperialism in the 19th and early 20th centuries left a bitter legacy which is still felt today in China and Korea. China and Korea, the latter as a Japanese colony from 1910 to 1945, suffered greatly at the hands of the Japanese especially during the Second World War, and they, therefore, fear

5 Anthony McGrew and Christopher Brook (ed.), *op.cit.*

that Japan might embark on a new round of colonial and militaristic adventure. All these experiences left deep imprints on the national psyches of people in Northeast Asia. Hence, their attitude to military power and their approaches to conflict-resolution have been, and still are, conditioned by their experiences of war and invasions. It is to be kept in mind that Japan, too, was occupied by the U.S. at the end of the Second World War. It seems, however, that neither the occupation nor even the atomic bombings caused in Japan as deep psychological and national scars as did the Japanese occupation of China and Korea, at least not publicly. The military-based experience throughout the history of the Northeast Asian countries (the Mongolians dominated the region in the 13th and 14th centuries) has led to a strategic culture which places a premium on the utility of military power and on the importance of maintaining the *balance of power*. The strongest example of this thinking is certainly North Korea's "military first" doctrine. Against this background, the Northeast Asian "neo-realist" atmosphere does not seem to offer the same preconditions for the development of regionalism, not to speak of integration, as in Southeast Asia or in Europe, where the states behave in a more cooperative way characterized as "neo-liberal-institutionalist."

A divided Korea remains as the actual key threat to the security of the region and a major obstacle to broader regional cooperation, due particularly to longstanding isolationist policy and the present nuclear threat from North Korea. Engaging North Korea in regional cooperation in Northeast Asia is the vital task on the way to a comprehensive process of security and cooperation in the region. The international community should support the process of cooperation and the ongoing and increasing positive contacts between the two Korean states. A reunified Korea, in any form, is unlikely to be seen in years or perhaps even decades, but a cooperative Korea might be a reality in the foreseeable future. It is extremely difficult at this moment, particularly under the ongoing nuclear dispute, to predict the political and strate-

gic or even economic outcome of the rapprochement between the two Korean states. At sub-regional or micro-regional level, cross-border and institutionalized cooperation between the cold climate regions of Northeast Asia and the North Pacific as well as a lot of economic and cultural interaction are taking place even where political tensions are imprinted on the region around the East Sea (Sea of Japan).

6. European Involvement in Regional Cooperation in Northeast Asia

The Korean Peninsula Energy Development Organization (KEDO) is the first, and so far the only, governmental-level multilateral organization in Northeast Asia focused on stabilizing the military, political and economic situation in North Korea. The EU is a donor to and a member of the board of KEDO through Euratom. An interesting proposal at track-two level is the establishment of a specific Northeast Asian Development Bank to provide an international foundation for (re)construction of this sub-region also with non-regional participation. This proposal has not advanced, and it is likely that the U.S. does not see the idea in a positive light. The UNDP Tumen River Delta project, involving North Korea, has also been one of the first major cooperative regional efforts in Northeast Asia. Finland joined the Tumen Project as an observer in the mid-1990s. Northeast Asia regionalism seems to be developing at the moment from down-up unlike the situation within APEC. The pending political issues should be resolved, however, by the governments concerned with appropriate support from the world community. This may take time. Meanwhile, the key is likely to be sub-regional cooperation on a step-by-step approach.

III. The Eurasian Dimension and the Korean Peace and Unification Process

1. *The Eurasian Dimension in the Post-Cold War World*

During the 1990s, after the Cold War, a number of two-track, non-governmental forums have been studying the possibilities and options for opening a “Eurasian Land Bridge” between Northeast Asia and Europe across the “Eurasian Landmass.” One of the main hypotheses has been that the opening of a functional Eurasian land bridge, particularly one based on the Trans-Siberian railway and other Eurasian railway connections, could constitute to the basis for a new, but also for old “Eurasian dimension” linking Northeast Asia and Europe, particularly the growing EU. Through this Eurasian dimension, the EU could become an active, and at the same time, neutral player in Northeast Asia. The EU could be an active partner particularly in the economic field, and thus also a catalyst for constructing a new political architecture for peace, security and cooperation in Northeast Asia, including the eventual reunification of Korea. The EU is by no means a passive actor in Northeast Asia, due to its member countries’ close relations with Japan, South Korea, and the United States. The EU has developed relations and political dialogue with other Northeast Asian states, particularly China, and (the EU Commission) has recently established diplomatic relations with and installed a resident ambassador in North Korea. An increasing number of EU member states has established diplomatic relations, with accredited resident ambassadors in both capitals, and with North Korea following the June 2000 Summit in Pyongyang. Finland and Sweden, together with the other Nordic countries, recognized the two Korean states in the early 1970s, and for decades, Finland and Sweden were among the very few western countries having resident diplomatic representations (commercial) in Pyongyang. Even Australia and New Zealand are active non-regional

players in Northeast Asia. Both countries have traditional ties with western Europe and could serve as “hinge states” between European and Asian cultures. The logistics of the “Eurasian Land Bridge” via Northeast Asia may offer plausible options for the South Pacific.

2. *Eurasian Railways as a Confidence and Security Building Resource in Northeast Asia*

In the tense and threatening situation developing on the Korean peninsula in early 2003, only little attention has been paid to a number of positive inter-Korean developments, including the symbolic re-linking of the trans-Korean railway in June 2003. The reconnection of the trans-Korean railway would be of the utmost importance as a confidence and security building measure on the Korean peninsula.⁶ The further connection of the trans-Korean railway with the Eurasian railways networks through Korea’s gigantic neighbors, China and Russia, opens up prospects for the Eurasian railways to become an important multilateral confidence and security resource, not only on the Korean peninsula but in the whole of Northeast Asia.

One of the first signs of the potentially constructive role the Eurasian railways could play in Northeast Asia was the participation of both North and South Korean railway officials and experts in the Eurasian railways symposium in Helsinki on 3 – 4 April 2002, hosted by the Finland – Northeast Asia Trade Association.⁷ The convening of the symposium was based on the presumption that the Eurasian railways network, a railway land bridge between Europe and Northeast

6 Markku Heiskanen, “*Eurasian Railways – Key to the Korean Deadlock?*,” Nautilus Institute, Berkeley, California, U.S.A. 2003.

7 “*Eurasian Railways Symposium – The Eurasian Dimension; The Role of Railways in Northern European – Northeast Asian Relations*,” The Finland – Northeast Asia Trade Association, Helsinki 2002 (http://www.geocities.com/kaky_ry/symposium/new).

Asia, could be a high common denominator, not only to Northeast Asian players but also to their European counterparts. The Eurasian railways could become a major confidence and security-building factor in Northeast Asia and probably even a key to the half-century of deadlock in Korea. The symposium in Helsinki could be characterized as a “1.5 track” meeting, with some 70 participants from governments, various institutions and the business communities of 13 countries, among them all Northeast Asian countries and players: Russia, China, Mongolia, North Korea, South Korea, Japan, and the United States. The European end of Eurasia was represented by participants from Finland, as the host country, the European Union through the European Commission, Sweden, Norway, and Germany. Canada was represented too. The UN was represented through the UNDP Tumen Secretariat from Beijing. The *de facto* consensus reached at this NGO meeting showed that all relevant players share an interest in developing the Eurasian railway network including the Korean Peninsula.

3. The North Europe – Korean Peninsula Railway Connection

At the Helsinki symposium, the concept of “Eurasian railways” did not cover the entire network of railways between Europe and Asia. The organizers defined the context of the Helsinki symposium as “*The Eurasian Dimension – the Role of Railways in Northern European and Northeast Asian Relations.*” The primary rationale for this definition was that the symposium would focus particularly on the northernmost Eurasian railway “corridor” from Finland via Russia along the Siberian railway to countries in Northeast Asia. This link between Finland and the Russian Far Eastern port of Vladivostok is served daily in both directions and has proved to be a safe, rapid and effective transportation route, further to and from South Korea. The Finland – South Korea daily rail connection, which is in effect also a link between the European Union and Northeast Asia, has brought up for discussion

the evident benefits of the reopening of the trans-Korean railway to international traffic between the Korean peninsula and Europe.

At the present time, cargo from Finland has to be transferred from trains to ships in the port of Vladivostok, then shipped onto Pusan, the southernmost port of South Korea. In various preparatory talks preceding the Helsinki symposium, an idea was developed that the trans-Korean railway connection could be reopened in a way that would not jeopardize the security interests of either Korean state. The economic benefits to both Korean parties particularly to North Korea would be indisputable. Relevant political, military, and other experts should study how a safe and working “corridor” could be established through North Korea so that, if necessary, the trains would not need even stop in North Korea on their journey to and from South Korea, Russia, or China. A concrete example of the basic functioning of the North Korean – Russian railway connection was the journey of the North Korean leader, Chairman Kim Jong-il, by train from Pyongyang to St. Petersburg in the summer of 2001. Seoul is, in principle, only a few hours by train from Pyongyang and Finland (i.e. the European Union) only a few hours by train from St. Petersburg.

Chairman Kim Jong-il’s somewhat controversial journey proved to be in fact an important contribution to the idea of studying seriously the establishment of a direct rail connection to Europe from the Korean peninsula. In the background were also, among others, the superior benefits this connection could offer to Japan compared with the sea route via the Suez Canal.

4. Prospects for Future Eurasian Railways

There have been a number of misconceptions relating to the functioning of the Russian Trans-Siberian railway connection. Finnish experience shows, in a reassuring way, that the Helsinki – Vladivostok – (Pusan) railway connection is a punctual, safe, rapid and effective way

to transport freight from western Europe/the European Union to Northeast Asia. It seems that it can also offer favorable costs compared to corresponding sea transportation.

In December 2002, the last sections of this dual-track, 10,000 kilometer-long, 100-year-old railway were electrified. The opening of the Trans-Korean railway connection, not only for freight but in the long run also for Trans-Siberian/Eurasian passenger traffic between Northeast Asia and Europe at large, would have (or perhaps we can already say 'will have'), large-scale positive geo-economic and geopolitical implications for Northeast Asia.

Rapid Eurasian passenger train services are by no means wishful thinking. A good example of the prospects for development in this field is the testing of the world's first magnetic levitation (maglev) rapid train, reaching a maximum speed of 430 kilometers per hour, in China at the end of 2002, in the presence of the German Chancellor, Gerhard Schröder and the Chinese Prime Minister Zhu Ronjin, thus demonstrating intensive Sino-German cooperation and the high standard of the Chinese railways.

In Europe, post-war confidence building between former enemy states was based on mutually beneficial economic cooperation with international multilateral support. Even if the European experience could not be used outright as a model for development in Northeast Asia, some elements of the European experience might prove useful. In the eyes of an outside observer, the opening of the trans-Korean border, which is now in sight for railway freight traffic and later on for international passenger traffic too, seems to be politically and even militarily a realistic overture in spite of ongoing international tensions. The trans-Korean railway would – or will – certainly catalyze broader regional, multilateral and international economic cooperation, as a part of confidence and security building measures in the whole of Northeast Asia. Economically, increasing confidence within Northeast Asia would decrease military expenditure, which could then be diverted for

improvement of the railway networks and other infrastructure, particularly in North Korea. It might not be out of the question that even the North Korean army could be utilized in railway construction work, like the Chinese army in the case of the maglev train in Shanghai. Reopening of the trans-Korean railway would connect the whole Korean peninsula more closely with the outside world, China, Russia, Kazakhstan, Mongolia, other Asian countries, and Europe, particularly the growing European Union.

The connections through the Korean Peninsula to the Eurasian and Trans-Siberian railway systems via China, Russia, Kazakhstan, and Mongolia would open, at the first stage, concrete and economically beneficial alternatives for freight traffic between Northeast Asia and Europe. The maritime traffic routes via the Suez Canal will certainly retain their importance, but the potential benefits of the Eurasian railways and perhaps in the future even the Northern Sea Route along the Arctic Sea coast from Japan to northern Europe are undeniable. Today the security of Trans-Siberian railway transportation can be fully guaranteed in practice, which gives a trump card to railways now that the post-9/11 period and the turbulence in the Middle East have increased and complicated security arrangements on the traditional sea-lanes. Impoverished North Korea and land-locked Mongolia could benefit from the fruits of transit traffic, and a new Eurasian railway system could also open up fresh prospects for the utilization of the huge natural sources, including energy of the Russian Far East. Logistical systems of North America and even of Australia and New Zealand could be made compatible with the Eurasian multi-modal transportation networks. The N.E.W. transportation project between China and North America via Eurasian railways described below is a concrete step forward in this aspect.

European countries are connected through increasingly dense and rapid railway networks. Even Britain is now linked with mainland Europe via the Channel tunnel. Thus, the idea of connecting Japan to

the Korean peninsula and mainland Asia by an underwater tunnel may no longer be just a dream or a utopian vision. Perhaps one day, one will be able to travel by train from Tokyo to London direct. Railways in the future could make possible the revival of the age-old Eurasian lines of contact, which included the ancient Silk Road long before cars and trains were even thought of.

5. China – Europe – North America Freight Corridor plan

One of the most ambitious Eurasian railway projects, which can be connected also in the trans-Korean railway network, has been launched by The International Union of Railways (UIC) called “*Northern East-West Corridor (N.E.W.)*” – a project to open a freight corridor from China to the eastern coast of the United States via the Eurasian railways, deep-water and ice-free port of Narvik in northern Norway. The first stage would be from Narvik. Cargo would be transported by sea to the port of Boston in the U.S. and later on probably to other feasible North American east coast ports including Halifax in Canada.⁸ The main artery of the corridor would be the 100-year-old Russian Trans-Siberian Railway via Kazakhstan directly from the port of Vladivostok and through other available Eurasian routes. On reaching the Nordic region, the freight would be transported via Finland and Sweden to Norway. Logistically, the ports and transportation routes of Iceland, too, could be utilized for the journey to and from North America. Chinese and Russian Government support the project, and the greatest Chinese multi-modal transportation companies have shown concrete interest in the further feasibility study on the project. The International Union of Railways estimates that concrete testing of the corridor can be started in 2004.

⁸ “*East-West Transports – Northern Alternative (N.E.W.)*,” International Union of Railways (UIC), Paris 2001.

6. Toward a New Logistical World Order?

We are evidently witnessing, at least potentially, a fundamental change and development in international logistics in the northernmost part of the northern hemisphere including North America. President Kim Dae-jung of South Korea characterized these prospects as “monumental” in his speech at the ASEM 2002 summit in Copenhagen.

What is under way now could mark the beginning of “a new logistical world order,” probably constituting new large-scale conceptions in international relations, not least by introducing a new (yet ancient) region of continental peaceful cooperation: Eurasia. The increasing transfer of freight transportation from the sea routes via the Suez Canal, and eventually even the Panama Canal to other alternative routings, and an eventual increase in passenger train traffic between Europe and Northeast Asia, would reflect positively on the economies of the whole of Northeast Asia, including Japan and not least the Russian Far East with its abundance of natural resources.

The increasing utilization of Eurasian and other railway networks such as North American does not present a threat to international sea transportations. The N.E.W. project shows the benefits of multi-modal systems, connecting various forms of transportation. Different means of transportation can be complementary, rather than competitive. A widely forgotten option particularly in this new scenario is the Northern Sea Route, a sea route from northern Europe to Northeast Asia along the Arctic Sea. The route was navigated for the first time in 1878-80 from Norway to Japan by Finnish-born explorer Adolf Nordenskiöld under the flag of Sweden.

After the dissolution of the Soviet Union, this route, including the Port of Vladivostok, has been opened for international traffic. The harsh ice-conditions make a high threshold for large-scale use of the route, which virtually has been and is an internal Russian waterway. In the 1990s several thorough international studies were jointly made of

the feasibility of the Northern Sea Route by Russia, Norway, Japan, and the European Union. They concluded that it is possible to keep the route open for commercial traffic even in the harshest ice-conditions. At the moment, however, the route is not commercially viable.

In the future, the Northern Sea Route may offer new prospects for economic development and international cooperation in northernmost Russia, probably connecting the sea route with the Eurasian railways via rivers and roads.⁹

IV. Conclusions

1. Eurasian Dimension as Multilateral Support to Korean Peace and Unification Process

The Eurasian dimension-scenario might open the way to a multilateral process of security and cooperation in Northeast Asia. Like the CSCE/OSCE (the Conference/Organization on Security and Cooperation in Europe) in Europe, it might open the way to give multilateral support to the Korean peace and unification process by the non-regional players.¹⁰

The railway issue is evidently a high common denominator for all relevant players in Northeast Asian politics, and it could be the main

topic of an intergovernmental meetings, even in the near future of all Northeast Asian players. The meeting could concentrate not only on the railway but also on other current concrete and common economic issues, where a basic consensus prevails. Outside observers like the EU could be invited to attend the meetings. The next or parallel step might be to convene an intergovernmental Eurasian railways conference during 2003.

The ASEM conference in Copenhagen in September 2002, which was in practice a summit involving the European Union and Southeast and Northeast Asia, proved in a concrete way the benefits of multilateral cooperation between Europe and Asia in the economic and political field. Northeast Asia particularly the Korean peninsula is a good example of a region where the virtually neutral European Union could be a catalyst for peaceful regional development, as shown by the EU-Korean summits in both Korean states during the Swedish EU Presidency in summer 2001.

The most efficient multilateral instrument of the Union is its economic capacity. It seems that the EU and Europeans in general are ready to contribute to the development of economic relations between the two regions, including the development of the "Iron Silk Road." The international community including Europe and the European Union on the same huge Eurasian continent as Northeast Asia could contribute to new post-Cold War structures in Northeast Asia by developing mutual economic cooperation. The Eurasian railway system offers an excellent, concrete and realistic framework for such cooperation.

The EU is a member of KEDO (the Korean Peninsula Energy Development Organization). If some other forms of peaceful multilateral cooperation could be established in Northeast Asia, e.g. a special *Northeast Asian Development Bank*, the EU, too, could take part in its work. Moreover, the possibility of establishing some kind of international "*Eurasian Railway Consortium*," or financial arrangements to

9 Claes Lykke Ragner (ed.), *The 21st Century – Turning Point for the Northern Sea Route?* (The Fridtjof Nansen Institute, Lysaker, Norway, Kluwer Academic Publishers, Dordrecht 2000).

10 John E. Endicott, "A New Helsinki Process for Northeast Asia? (A Limited Nuclear Weapons-Free Zone in Northeast Asia: A Track II Initiative)," *Disarmament Diplomacy*, London, March 1999. The present complex and dangerous political situation in Northeast Asia has lasted for more than half a century. The European post-war experience shows that even the most complicated political and military problems can some day be solved peacefully. That day may have come now in Korea, in spite of the present tensions caused by the nuclear issue.

guarantee international funding for the development of the Eurasian railway network, including the railways in North Korea with the financial participation of the European Union, should be studied seriously.

2. Eurasian Dimension and Multilateral Scenarios for Korea

Newly published authoritative report of the Task Force on U.S.-Korea Policy "Turning Point in Korea" focuses briefly on a multilateral scenario to reinforce U.S. – North Korean relations, or to serve as an alternative if a bilateral dialogue is unsuccessful.¹¹

The report suggests that "a seven-nation conference should be convened in Brussels with the European Union as host on the topic of 'Security and Economic Development in Korea' plus the United States, South Korea, North Korea, China, Russia and Japan." The report refers to the decision of the European Parliament on January 29, 2003, to call on the European Commission of the EU to convene "in the late spring or early summer seven-nation talks about the situation in the Korean peninsula focusing on economic, security and nuclear disarmament issues." The report argues that the European Union would be an acceptable host to all parties concerned including North Korea. The Task Force suggests that working groups on economic and security issues could meet in advance to develop specific proposals for consideration at the conference such as natural gas pipelines and other energy projects urgently desired by North Korea. At the moment, it seems unlikely that the EU could play any major role in the ongoing "high politics" game on the nuclear issue on the Korean Peninsula.

On the other hand, the EU might have an active, relevant and constructive role in "low politics," primarily economic issues. The Task

Force is certainly correct in assuming that the EU and Brussels as the host for a suggested multilateral forum are acceptable, perhaps even welcome to North Korea. In spite of the growing tensions due to the nuclear crisis on the Korean Peninsula, many promising inter-Korean cooperation projects continue on a "business as usual" basis including the recently opened traffic routes and tourism across the DMZ. North Koreans have recently participated actively in high-level NGO-based economic forums together with their southern relatives, their U.S. adversaries, their Northeast Asian neighbors and Europeans, such as the Wilton Park – seminar in the U.K. in February 2002, and the Northeast Asia Cooperation Dialogue organized by the University of California and the Russian Academy of Science in Moscow in October 2002. These events have shown that North Korea is willing to participate actively, openly, and as equals in such informal multilateral forums together with the United States.

In November 1999, the Policy Planning and Analysis Working Group (COPLA) of the European Union produced a report entitled "Perspectives for Multilateral Support to Security and Cooperation in Northeast Asia; The Role of the European Union." The COPLA report noted that the main instruments of the European Union to contribute to the solution of international and regional problems are its economic wealth, and in the eyes of parties, its politically "neutral" position towards conflicts including North Korea in the case of Northeast Asia. Conflict prevention is one of the Union's main policy goals. The report also noted that Northeast Asia as a sub-region of Eurasia connected with the now enlarging EU and Europe at large by the huge "Eurasian Land Bridge" has throughout history been a natural partner for Europe in Eurasia.¹²

11 "Turning Point in Korea," Report of the Task Force on U.S. Korea Policy, chaired by Selig S. Harrison, cosponsored by The Center for International Policy and The Center for East Asian Studies, University of Chicago, 2003.

12 Markku Heiskanen, "A Multilateral Scenario for Korea; the Role of the European Union," Nautilus Institute, Berkeley, California, U.S.A. 2003.

3. Toward the Age of Northeast Asia and the Eurasian Dimension

The new South Korean President Roh Moo-hyun stated in his inaugural speech on February 25, 2003 that “renowned international scholars have long predicted that the 21st century would be the Age of Northeast Asia, and their predictions are coming true.”

For decades, much work has been done to create a basis for the “Age of Northeast Asia” including peace arrangements on the Korean Peninsula and cooperation with Europe. This work should now be continued on the basis of high common denominators and small steps from low politics to the ultimate goals of high politics. The European Union could be a constructive facilitator and participant in this overall process. The Eurasian Dimension could be an effective contribution and catalyst for the Korean peace and unification process.

US INTERNATIONAL STRATEGY AND THE NUCLEAR CRISIS ON THE KOREAN PENINSULA: REALITY AND POLICY IMPLICATIONS

Hong Kwan-Hee

In the wake of the September 11 terrorist attacks and the War with Iraq, the United States has been strengthening its status and role as an 'absolute' super power. To some extent, the US seems to be successful in justifying and making universal its major foreign policy directions against terrorism, weapons of mass destruction, dictatorship, and regional hegemony. Currently, North Korea is not willing to give up its nuclear weapons development program, ROK and the US need to restore the relationship between the two countries to its past level, to the extent that both countries fully share such as common goal for protection of a free ROK and a common concept of "main enemy" regarding Pyongyang's totalitarian regime, and agreed policy directions toward North Korea's nuclear program. Especially these days, when active discussion about a role change for US troops on the Korean Peninsula is rising, increased efforts for ROK national security are urgent.

I. Introduction

The war on Iraq concluded with a US victory within three weeks or so. There has risen a great deal of controversy around the world over the nature of the war, the cause for the US attack, and the role of the UN. In South Korea, particularly, anti-war and anti-American sentiments have greatly expanded just prior to and during the war. Korean people's view has been divided, especially over the issue of dispatching non-combat troops into Iraq and overall, and it has been discovered that large and serious divergence in views exists within South Korean society over America's international strategy and the ROK-US alliance.

It is an indisputable fact that the US has emerged as the one-pole world superpower in the wake of the collapse of the Soviet Union and the East European socialist countries. Since then, the US has been undergoing another rapid change in its international strategy, what could indeed be called 'a revolutionary change,' especially since September 11. The Iraq War could be a watershed solidifying this changed US strategy toward the world. While the September 11 terrorist attacks provided the United States with an opportunity to initiate a bolder and more offensive foreign policy line, it can be said that the Iraq war has rendered this US foreign policy line more confident and, as a consequence, has Washington seeking new relations with the United Nations. The long period of US efforts to obtain a UN resolution for the Iraq War has led to a diversity of controversy over the issue of 'world reordering' expressed in such phrases as 'restructuring of the UN' and 'post-UN era.' At any rate, it is certain that the Iraq war is becoming a significant moment of opportunity for the US to strengthen its status and role as a superpower, as well as to justify and make universal its major foreign policy directions against terrorism, weapons of mass destruction, dictatorship, and regional hegemony.

President Bush, in his State of the Union address in January 2002,

conceptualized the "axis of evil" states that disregard "human dignity" and instead attempt to develop WMD.¹ Since then, preemptive attack upon such "evil" states was justified and clearly stipulated in the "National Security Strategy(NSS)" published in September 2002. The NSS report proclaims that the US will fulfill the duty of protecting basic human rights and guaranteeing political and economic freedom against enemies in the twenty-first century.²

It is beyond question that this change in America's international strategy would also have a great impact on the US policy toward the Korean Peninsula. As we can see in the question, "what is next after Iraq," North Korea's nuclear issue has emerged as the most prominent security issue in Northeast Asia after the Iraq War. At the critical juncture where Pyongyang accepted the trilateral talks in Beijing, it is indeed a question whether or not the Kim Jong-il regime will be willing to comply with international demands to nullify its nuclear ambition without going beyond the "red line" to make the just incipient Three Party Talks, a moment of opportunity for a non-nuclear Korean peninsula.

In this situation, South Korea's response is crucially important. South Korea needs to firmly stand in the position of a concerned party, not just a "mediator" in all issues related to the Korean peninsula. Among other things, it is important for South Korea to realize Pyongyang's real intention, which was revealed in the fact that Pyongyang strongly demanded South Korea's exclusion from the Trilateral Talks. This signifies that North Korea refuses to recognize Seoul as a dialogue partner with respect to the crucial security issues on the peninsula. In reality, the Kim Jong-il regime in Pyongyang appears

1 Specifically, rule of law, limits on state power, respect of women, free speech, tolerance of religious and ethnic diversity, private property, and equal justice were listed as examples.

2 The preface of the NSS declares that "freedom is the non-negotiable demand of human dignity: the birthright of every person in every civilization."

interested only in drawing the South to its side against Washington using the National Unity and Cooperation ideologies. Therefore, the South Korean government must not allow itself to be held hostage to “dialogue for the sake of dialogue itself” and must not neglect its duty of vigilance over Pyongyang’s WMD development and human rights violations.

It is very unfortunate and non-principled for Seoul to have accepted Pyongyang’s demand that South Korea be excluded from the multilateral talks in Beijing. The government should also be criticized for failing to vote on the UN resolution regarding the North’s human rights situation. This paper attempts first to review and outline the United States’ international strategy, the drastic change that has been underway since the September 11 terrorist attacks and the Iraq war. Based on that, the US strategy toward the Korean Peninsula will also be examined. Pyongyang’s South Korea policy based on its nuclear development program needs to be examined, and in conclusion, the policy implications for the Seoul government in response to Pyongyang’s development of nuclear weapons will be explored.

II. US International Strategy

1. Characteristics of US Foreign Policy

a) Morality and Power

It is a peculiar characteristic of the US foreign policy that it contains an element of strong morality. As an immigrant society established by freedom-seeking immigrants from all over the world, America is different from ‘historical societies.’ Specific policy objectives of this moral stand in American foreign policy can be listed as protection and preservation of freedom, expansion of democracy, and improvement of

human rights throughout the entire world. The US security strategy, under the Bush administration, is outlined as: (i) protection of peace from the threat of terrorists and dictators; (ii) preservation of peace through friendly relations with other powers; and (iii) expansion of peace through support for establishment of free and open societies over the world.³ All of these foreign policy goals are understood to be inherited from the principle of priority for morality in American foreign policy making.⁴

At the same time, another characteristic of US foreign policy is that it bases its consideration of aspects of power upon the reality of world politics. Power is considered to be an important policy-making element, no less than morality. Thus, US policy makers always appear to have examined in implementing foreign policy whether or not the country is militarily prepared to sustain its moral goals. Summed up, it can be seen that historically, the US foreign policy has been the result of compromise and balance between morality and power.

(b) Pursuit of Leadership not Hegemony

A hegemon, in general, is a strong state pursuing a narrow sense of selfish or imperial national interests. In contrast, a leadership state pursues a role of public good in world affairs with good will and a pattern of cooperation rather than exploitation or domination, yet possessing the strong power of a hegemon. The US appears to have committed itself to this role of leadership. In other words, it is willing to take

3 The US security strategy during the Clinton administration was outlined as (i) promotion of security through diplomacy and military power (ii) economic prosperity (iii) expansion of democracy over the world.

4 This tradition of morality in American foreign policy can be also seen in the recent comment from the Bush administration: “Some worry that it is somehow undiplomatic or impolite to speak the language of right and wrong. I disagree. Different circumstances require different methods, but not different moralities.” Refer to President Bush’s West Point address, June 1, 2002.

responsibility to lead the world with the great mission: protection of and expansion of the free world.⁵

Such US stance vis-à-vis the outside world was well revealed in statements or comments made by US leading figures, especially during the Iraq war for instance, President Bush's emphasis on the purpose of the war, which he stressed was to restore freedom and to re-establish a democratic system in Iraq. Also, US senator John McCain commented that the Iraq War was a fight for freedom and that the US must not be "imperial" in the sense of pursuing its self-interest.⁶

The US is thus positioning itself as a leadership state playing the role of policeman to serve the global public good, in order to secure the peace and stability in the international community and deter the rise of dangerous hegemonic states. Examples of the 'public good' would be to provide a nuclear umbrella, to ensure the free-market system, and to secure oil transport or other routes. To fulfill this leadership role, the US is making continuous efforts to maintain military superiority over other states in the world. The so-called hegemonic stability theory is a branch of international political theory that supports this leadership role on the part of the US. It promotes that a leadership role of a hegemonic state with both goodwill and power contributes to the stability and peace of international society.

2. Change in the US Foreign Policy since the September 11 Terrorist Attacks

(a) Counter-Terrorism: A New Component of Morality

US international strategy has undergone a fundamental change

5 For further details, see NSS: "The United States welcome our responsibility to lead in this great mission."

6 John McCain, U.S. Republican Senator from Arizona, "A fight for freedom," *Korea Herald*, March 26, 2003.

since September 11. As alluded to earlier, the Bush administration has gone forward with the MD (missile defense) against possible missile attack from the outside potential enemies, but it was soon realized that MD would not be sufficient to defend the nation from terrorism. A change in the security concept has taken place and counter-terror strategy has been added. For the US, September 11 became a moment of opportunity to establish a new foreign policy guideline with which to distinguish enemy states from friendly states, depending upon where a country stands in its response to terrorism. Since then, terrorism has been squarely labeled evil and anti-terror has been added as a new component of the morality question. In a word, it can be said that the September 11 terrorist attacks provided a crucial moment for transforming the US foreign policy from a kind of "reluctant sheriff" agonizing between isolation and intervention to a more realistic and "resolute" attitude for positive intervention.⁷

The NSS of September 2002 also made it clear that the US would intervene anywhere in the world for the improvement of freedom, democracy, and human rights. The report, under the cause of "non-negotiable human dignity," officially proclaimed that the US would intervene aggressively in international affairs to assert the rule of law, limits upon state power, respect for women, free speech, tolerance of religion and ethnicity, private property, and equal justice.⁸

(b) Justifying Preemptive Action

Another important change in US foreign policy after September 11 is that the preemptive action, namely first-strike strategy, has been officially and expressly stipulated and justified as right and sometimes necessary.⁹ Containment and deterrence had been the core strategy in

7 Richard N. Haass, "From Reluctant to Resolute: American Foreign Policy after September 11," Remarks to the Chicago Council on Foreign Relations (June 26, 2002).

8 NSS, *op.cit.*

the Cold-War era but this is no longer regarded as the most effective strategy for terrorists armed with WMD. The US has established a new doctrine of national security that permits itself a room for preemptive actions against terrorists or against new 'rogue' states armed with WMD, beyond the conventional strategy of containment or deterrence. According to the new doctrine, even the nuclear preemptive action is regarded to be a possible last resort.

NSS has made it clear in this regard that, given the goals of rogue states and terrorists, the US can no longer solely rely on a reactive posture as it did in the past, "We cannot let our enemies strike first."¹⁰ The regime of a rogue state is willing to take risks and put itself and its population in harm's way at the whim of a dictator, whereas a democratically empowered population refuses its leadership to take such a risk. Against rogue regimes, deterrence based only upon the threat of retaliation is ineffective. It is thus predicted that the changed situation in world security compels the US to action and that preemption is inevitable.¹¹

(c) Security Cooperation with Other Powers

It has been a procedural guideline no less important than the principle and goals of US foreign policy to build cooperative relations with the Western powers in dealing with world security issues. For the Gulf War of 1991, the US successfully established a cooperative relationship with the other powerful states. Other examples include: the solid American alliance with the United Kingdom, cooperative relations within NATO, support for Japan and strengthening the US-Japan alliance, American cooperation with China and Russia on anti-terror

issues, and ROK-US policy coordination in policy towards North Korea.

During the Iraq War as well, much diplomatic evidence could be discovered regarding US diplomatic efforts to obtain support from the UN Security Council for the US war initiative. It is well-known that the established US allies, France and Germany, opposed the US attack on Iraq. The central point in this division between the US and those allies has been over the right to attack (or "punish") another sovereign state unilaterally. Yet, disconnection and punishment of the linkage between terrorists or rogue states and the weapons of mass destruction are being regarded as valid and necessary for the peace of the world, and they are increasingly obtaining support from the international community.

Furthermore, it is considered even inevitable by the international community to restrict and punish the sovereign rights of rogue states that infringe upon universal human rights. That was probably the major reason for UN Security Resolution 1441, which was clearly for the disarmament of Iraq, to be approved unanimously. After that, Iraq was temporarily successful in weakening the US stance by complying with UN demands for further WMD inspections several months before the outbreak of war.

Upon conclusion of the war, the US perception of the security cooperation with other powerful states seems to be changing. In other words, it seems that the US discovered that not only do other powers not feel the same degree of desperate necessity as do the US and Britain for war against rogue states such as Iraq, but also US military capability alone is sufficient to defeat them. At the same time, the US perception of the UN as a unique representative institution for peace and security in international society also seems to have undergone rapid change throughout the Iraq war.

9 Thomas E. Ricks and Vernon Loeb, "Bush Developing Military Policy of Striking First," *Washington Post* (June 10, 2002).

10 *Ibid.*

11 *Ibid.*

3. Iraq War and the US International Strategy

Throughout the outbreak of the war on Iraq, there have risen severe internal divisions inside the UN Security Council as well as within NATO. This was primarily due to the difference in view on war. In other words, it is clear that the US justification for the preemptive action in the name of anti-terrorism and human rights improvement collided with the national interests of the other powerful states inside the UN, who obviously support the status quo on sovereign rights. This phenomenon is one that the UN has never before experienced and shows that, while the UN Security Council is being divided anew, the UN function is being paralyzed by vying interests among member nations. This phenomenon is also a slice of the fact that the UN hardly represents the new distribution of power, which is currently under formulation centering upon the US.

The global distribution of power continues to change. This is the change that has been progressed since the collapse of the East European socialist countries and the Soviet Union, especially after the Gulf war of 1991. The controversial debates over themes such as 're-ordering of the UN,' or 'post-UN era' are a consequence from this new distribution of power based on the uni-polar system centering upon absolute US power. South Korea should keep an eye on how this new power relation in the world after the Iraq war would exert impact on the international politics of Northeast Asia and further on its future national interests.

The US appears to be pursuing a re-structured international order in the Middle East in the wake of the Iraq victory. As mentioned, the direction of re-structuring would be clearly toward the establishment of liberal democratic institutions in Iraq and the expansion of those systems toward as many neighboring countries as possible in the region. With respect to the American post-Iraq War strategy, an analysis that the US exerts hegemonic influence depending only upon its military

capabilities would be biased. As alluded to earlier, the US foreign policy puts forward a moral stand on the basis of military power. Morality implies a guideline in life and value judgment in all kinds of human affairs from personal to world-scale. The US morality, epitomized as liberal democracy, free-market system and protection of human rights, is evaluated and recognized as one of the best relevant ideologies among the hitherto existents. It is the very international strategy of the US that proceeds forward for the world peace and stability, with liberal ideology in one hand and the strong military power in the other.

III. North Korea's Nuclear Development and the Strategy toward South Korea and the US

1. North Korea's Strategy toward the South

(a) Military Superiority over the South

North Korea's military buildup including its nuclear development program and short-ranged missile (so far, not as serious as long-range ones) and bio-chemical weapons, is a core element for DPRK's strategy toward the South. That is increasingly becoming a direct powerful threat to the national security of the ROK.¹²

Although the North's level of nuclear development is not sophisticated and far from practical use, a problem exists in Pyongyang's persistent and continuous ambition for producing and possessing nuclear weapons. Overall, it is judged that the principal objective of North Korea's nuclear development program is, not simply as a negotiation card but for the purpose of becoming a nuclear-possessing nation and

¹² David C. Wright, "Assessment of the North Korean Missile Threat," napsnet@nautilus.org, March 19, 2003.

thus belonging to the nuclear club that currently consists of 7-8 countries. In other words, North Korea's primary intention in its nuclear program, as revealed in abrupt actions such as the official proclamation that it already has nuclear arsenal, appears to be to make its possession of nuclear bombs an established fact.

The purpose for Pyongyang to produce and possess nuclear weapons is thought to be, among other things, in securing military superiority over the South. Put differently, the Kim Jong-il regime is attempting to exert military and strategic hegemony over the Korean Peninsula, and thus to control the overall situation of the Peninsula, thereby preparing for the possibility of unification by force.

For decades, there has continued on the Korean Peninsula a situation of military confrontation between the DPRK army and the Combined Forces Command of US and ROK across the DMZ (Demilitarized Zone). Unless the North's fundamental strategy toward Seoul changes, there exists the possibility of military collision between the two camps, or Pyongyang's unilateral provocation, even if limited.¹³

At present, considering Kim Jong-il regime's persistent ambition for nuclear weapons, even some hard-line policy options are not excluded from the US policy options: economic-military sanctions or replacement of the Kim regime with new leadership through the US-led international pressure.¹⁴

On the other hand, some development of events underway in South Korea might be influencing Pyongyang's strategy-making toward the South. For instance, the controversial plan to relocate the US 2nd infantry division south of the Han River, if implemented, might be an attractive situation for Pyongyang to make limited provocation in the area north of the river. Overall, it is clear that a main aspect of Pyongyang's strategy toward the South is to secure military superiority

over the South, especially through WMD development in preparation for anything that might take place on the Korean Peninsula.

(b) Psychological War and Camouflage Tactics

It is true that the Pyongyang regime has not changed its basic direction of strategy toward South Korea even under the Sunshine Policy during the Kim Dae-jung administration. Rather, the Kim Jong-il regime has taken advantage of the opportunity for its own military buildup. It should be noted that, for the past several years, it has been hard to ascertain the North's real intention in terms of inter-Korean relations since it has been covered with camouflage, psychological and propaganda tactics.

At present, it seems clear that the North is still not willing to accept Seoul as a dialogue partner, especially on military and security issues including the nuclear problem. This fact was illustrated in the 10th inter-Korean ministerial talks, where North Korea refused to put the nuclear issue on the agenda, arguing that it is a matter only between the US and DPRK.

Instead, the Kim Jong-il regime continued its propaganda for the cause of National Unity and Cooperation, confusing the South Korean people's perception about North Korea. Pyongyang's basic intention seems a kind of international united front tactic with which it is taking the South as hostage with one hand, while checking the US hard-line policy toward the North with the other. At the same time, North Korea is attempting to separate the two allies, ROK and the US. Upon South Korea's acceptance of the ministerial talks when the Kim Jong-il regime unexpectedly proposed the 10th inter-Korean ministerial talks only a couple of days after Beijing Three Way Talks, it can be pointed out that if separate responses from the ROK and the US continue, then distrust between the ROK and the US could further deepen and thus damage South Korea's national interests.

¹³ *Washington Post*, March 8, 2003.

¹⁴ *New York Times*, April 21, 2003.

Also, North Korea's request to the South for rice and fertilizer through the Red Cross does not correspond with its hostile behavior excluding Seoul from the three-way talks. It is regarded to be an arrogant act that Pyongyang demanded economic aid of the South without admitting Seoul as a dialogue partner. It is clear that North Korea is only interested in dialogue channel in economic sectors through which it can obtain economic benefits in hard currency and social-civilian sectors which could be used as a stage for Pyongyang's political propaganda and united front strategy.

Put simply, it is gradually becoming clear that North Korea is not sincerely interested in main themes such as the improvement of inter-Korean relations, the co-existence of both Koreas, and eventual peace settlement on the Korean Peninsula. An important lesson that we can learn from the experiment and failure of the Sunshine Policy during the past several years is that the Kim Jong-il regime, by nature, can be changed only through deterrence or sanctions based on military force, not through dialogue or persuasion.

(c) Propaganda Warfare

The most powerful logical backbone for Pyongyang's political propaganda toward the South is the June 15 Communiqué made during the two Koreas' Summit Talks of June 2000. Provisions that are most frequently used for propaganda are the first article stipulating the Korean peninsula's own solution of the unification issue without the intervention of foreign powers, the second article implying acceptance of a unification formula based on low-level federation, and the fourth article pursuing "a balanced development of national economy," i.e., South-North economies through inter-Korean economic cooperation.

These provisions not only violate the fundamental identity of the Republic of Korea, but also have no practical relevance in the current military confrontation between the two Koreas. These articles can even

be dangerous in that they can mislead South Korean people's perception and understanding of the Kim Jong-il regime. Today, some leftist-inclined youth and NGOs in South Korea even demand that South Korea as a whole should put each provision of this June 15 Communiqué into practice.

Similarly, Pyongyang also attaches great importance to the July 4 Joint Statement which is regarded by the northern authority as one of the so-called Three Charters of Unification. The three principles of the July 4 Joint Statement are Independence, Peaceful Unification, and Great National Unity, and the North is using these as an effective tool to propagandize anti-American and anti-war sentiment, and national unity and cooperation. North Korea strongly insists that The Three Principles of the July 4 Joint Statement make up the basic guideline and permanent platform for national unification that the North and the South must adhere to in making and implementing their unification policy.¹⁵

However, we cannot ignore the fact that the July 4 Joint Statement came about through motivation for power solidification by both Koreas by taking advantage of mutual acknowledgement. The old Park Jung-hee regime attempted the October Reform without the consensus of the South Korean people, and the Northern Kim Il Sung regime also wanted to strengthen its dictatorship in 1972. It is also true that the contents of the Joint Statement excessively emphasized opposition to foreign influence, and this is being used as grounds by the North for pushing for a withdrawal of US troops.

At this critical juncture in which the nuclear crisis is escalating, North Korea is heightening its criticism of the ROK-US alliance and ROK-US joint measures for the security and peace of South Korea. For instance, the North's mass media argued that "our whole nation confirmed that not only the peace but also the unification of the nation can

¹⁵ *Yonhapnews*, May 15, 2002.

be achieved only when the whole nation sticks to the June 15 Communique, and so it is obviously a betrayal of the June 15 Communique that the Southern authority is conducting a joint military exercise with the US.”¹⁶

2. North Korea's Strategy toward the US

North Korea has consistently demanded as a prerequisite for it to abandon its nuclear program that the US agree to the non-aggression treaty with the DPRK based on legal procedures such as US congressional ratification. That is Pyongyang's only persistent demand in its negotiation with the US, since North Korea has begun its nuclear program. This is also a slice of the fact that North Korea has pursued direct, bilateral talks and peace negotiation with the US without South Korea, probably with the purpose of the withdrawal of the US troops from the South.

Currently, the military balance between the two Koreas on the Korean Peninsula has been maintained with the existence of the US troops based on the military alliance between the ROK and the US, which possess ultra-modern weapons. If the US troops withdraw from the Peninsula, then, among other things, the psychological blow to the South Korean people would be tremendous. Also, in the case that the US second infantry division near the DMZ is moved south of the Han River as a first step of relocating the US troops, some unrest of public sentiments in the Metropolitan area is expected. The South Korean people's present ideological division and resulting anticipated difficulties in the country's united and effective response to Pyongyang's provocative stance are critical factors that might cause North Korea's misperception and miscalculation.

North Korea has been pursuing direct and bilateral peace negotia-

tion with the US. In Pyongyang's insistence on a non-aggression treaty with the US, there lies a long-standing strategy to eventually induce a change in the status of the US troops through establishing and intensifying the direct channel of dialogue with the US. Kim Jong-il authorities want to be treated by the US as the only legitimate and representative power on the Korean Peninsula that can solve the current security issues with the US. Thus, the North argues, on the basis of abandoning hostile attitudes and mutually acknowledging each other through diplomatic relations, the US could escape from its current agony on the Peninsula. North Korea's demand of a guarantee on the regime security and mutual abandonment of hostile policy is the very strategy to bring the current security structure of the Peninsula to the bilateral relations between the US and DPRK.

North Korea's strategy toward the US for a bilateral peace treaty has continued ever since the end of the Korean War and was especially salient in the wake of Vietnam's unification by the northern force. Therefore, Pyongyang's insistence upon a non-aggression treaty with the US has a very crucial strategic meaning in the current situation of the Korean Peninsula.

IV. US Policy toward North Korea

1. Improvements of Human Rights in North Korea

As examined above, the fundamental American belief in universal human rights is reflected in the case of Washington's North Korea policy.¹⁷ The principal background for the US hard-line policy toward Pyongyang comes from the US assessment of the human rights viola-

¹⁷ The annual human rights report of 2003 states that human rights “are indigenous to every corner of the world, in every culture and in every religious tradition,” March 31, 2003.

¹⁶ North Korea's *Pyongyang Broadcasting*, April 1, 2003.

tions in North Korea. This is in the same line with the aforementioned traditional US emphasis on morality in foreign policy making. It is also in the same context as in the US's dealing with Saddam Hussein in Iraq. In other words, the miserable situation of the North Korean people is becoming an overall concern of the people in the international community, especially the US political leaders.

It is true that distrust and hard-line policy toward North Korea has been deeper since the inauguration of the Bush administration. It stems from the consistent perception of the Republican conservatives even before the Bush administration, an image of the Pyongyang regime that the totalitarian state "arms with missiles and weapons of mass destruction, while starving its citizens."¹⁸ This perception and image of North Korea has been further strengthened and solidified, especially since the September 11 terrorist attacks.

The US has long expressed a deep concern and warned against North Korea's human rights violations. An example is President Bush's mention of the North Korea's situation, where children are starving while large amounts of food are provided for the army, cannot be ignored for a long time and that no state should become a prison for its own people.¹⁹ Also, the human rights situation of the defectors from North Korea has recently become a world-wide concern. Governments and NGOs in Europe have begun to reveal the miserable situations and to discuss some possible policy options to improve them. Finally, the US has begun to deal with the issue of defectors as an important human rights issue. It is significant that the US administration has

begun to look at the issue from the human rights dimension. It implies that the issue of defectors from North Korea has become an important agenda of an American foreign policy that regards human rights as a significant policy guideline.

The US ambassador in charge of human rights, who participated in the 58th UN Human Rights Commission stated that "North Korea is a real hell on the earth" and that the UN Human Rights Commission needs to actively respond to DPRK's horrible records of human rights infringement and that international community should call North Korean leaders to account for it.²⁰ It was also by the US support that the 53-member UN Human Rights Commission passed the European Union-issued resolution condemning the DPRK's human rights violations for the first time. All of these are examples that demonstrate the US concern over the human rights situations in North Korea.

2. Deterrence of North Korea's Development of WMD

Another characteristic of the US policy shift toward the North since the September 11 is the US's firm will to deter Pyongyang's development of WMD, such as nuclear weapons, missile and bio-chemical weapons. According to current US leaders, some terrorist-supporting "rogue states" such as North Korea form an "axis of evil," thereby threatening world peace by arming with WMD.²¹

Washington especially worries that there might be a link between North Korea and international terrorists through the North's export of missiles. Pointing to the DPRK as a dangerous state opening threatening US security, the NSS report states that "in the past decade North Korea has become the world's principal purveyor of ballistic missiles."²²

18 President Bush's State of the Union address, January 29, 2002.

19 President Bush's address in Seoul during his visit to South Korea, February 2002. Bush also warned the North that he would not let the world's "most dangerous regimes" acquire its "most dangerous weapons." The president added, he believed in freedom and was "troubled" by a regime that tolerated starvation: "I worry about a regime that is closed and not transparent"; "I'm deeply concerned about the people of North Korea."

20 *Yonhapnews*, April 2, 2003.

21 President Bush's State of the Union address, January 29, 2002.

22 *NSS, op. cit.*

The nuclear issue of the DPRK has emerged as an important international concern since October 2002, when Pyongyang authority revealed that it had already begun to develop the nuclear weapons, and the stance of the Bush administration is becoming clearer and more briefly outlined. Put simply, the US will not, by any means, tolerate nuclear weapons in North Korea, and thus complete nullification of nuclear program should be a prerequisite for any negotiations with Pyongyang. Especially in the wake of the Iraq war, Washington has made it clear that all the options are open, while starting that peaceful and diplomatic resolution of the nuclear problem in DPRK is a basic principle.

The never-softening US stance derives also from Pyongyang's uncompromising attitude on the nuclear agenda over the past several months. As a response to the North's demand that it needs to be guaranteed for regime survival and thus needs a non-aggression treaty between the US and the DPRK, Washington has repeatedly expressed that it has no intention to invade North Korea. On the other hand, Pyongyang has continuously taken bold steps for nuclear development, such as issuing some striking statements about reprocessing, possession of nuclear weapons and threats to sell these weapons. Particularly, during the Three Way Talks in Beijing, where many expected a prospect for peace through negotiation in the wake of a several-month absence of dialogue with North Korea, Pyongyang failed to demonstrate any changed attitude or to bring about a bright prospect with respect to the controversial nuclear issue.

3. The US Stance towards Three Way Talks and ROK-US Summit Meeting

The trilateral talks in Beijing abruptly broke down since North Korea's representative claimed to have the nuclear bomb and threatened to export or use it. After the collapse of the talks, Pyongyang pre-

sented "a new and bold" proposal to resolve the dispute. But in reality, it did not have anything new or advanced compared to the past ones. Rather, Pyongyang's proposal included more demands and was unilateral without consideration of the US response. It was purely based on the North's standpoint that was mainly centered on abandonment of the US 'hostile policy' and agreement of non-aggression treaty.

The North's proposal was flatly ignored by Washington. Given that the US is seeking first the "verifiable and irreversible" elimination of the North's nuclear weapons program and then dialogue, there is almost no possibility for Washington to take the proposal seriously.

Overall, it is true that the US stance toward Pyongyang has become somehow more hardline-directed after the war in Iraq. This, as mentioned, basically derives from the deep-rooted distrust and frustration of the Bush administration over the behavior of the Pyongyang leaders. For instance, Washington is reportedly planning to replace current Pyongyang leadership, albeit not official position. For the last several months including the war in Iraq, the US leaders and public sentiment have felt that North Korea is more dangerous and threatening than Iraq in light of development of nuclear weapons. One of the most influential political figures in the US, Senator John McCain, mentioned after the collapse of the three-way talks that North Korea's nuclear weapons are considered to be more threatening to the US than pre-war Iraq, so the US is in a very serious situation. He added, "in a sense, the North's problem is more serious than Iraq's."²³

In this situation, a ROK-US summit meeting was held in mid-May 2003. Both countries pledged to work together for the complete, verifiable and irreversible elimination of North Korea's nuclear weapons program. Before the summit, it is true that the two countries revealed a somewhat different nuance with respect to an effective policy response to deter the North's nuclear ambition. For instance, South

²³ Refer to his interview with *the Associated Press*, April 25, 2003.

Korea has insisted on “solution by peaceful means” which would imply total exclusion of coercive means such as sanction or military options, while the US proposes the possible use of coercive means in the case of failure of nuclear negotiations with Pyongyang.

This conflict seemed to have been delicately and implicitly solved when the joint statement was completed, emphasizing a strong commitment to work for the complete, verifiable and irreversible elimination of North Korea’s nuclear weapons program through peaceful means based on international cooperation. In the case of increased threats to peace and stability on the Korean Peninsula, both countries agreed that further steps would be necessary. This is a kind of “deliberately vague” solution to overcome the difference of view between the two countries. In the current situation, where North Korea is not likely to give up its nuclear ambition only by means of negotiations, the two principles of “no tolerance of the North’s nuclear weapons” and “solution by peaceful means” are not realistically compatible. Any kind of choice and decision in priority should be made between the two principles. Meanwhile, North Korea has been strongly resisting the joint efforts of the US, ROK and Japan for sanctions through an international institution such as the UN, arguing that the regime will regard such a move as “a declaration of war.”

To summarize, the US stance on the nuclear talks with DPRK seems clear after the three-way talks and ROK-US summit meeting. First, the Bush administration will not tolerate DPRK’s possession of nuclear weapons. This seems an unquestionable principle of the Bush administration’s policy toward North Korea’s nuclear issue. The second principle is that Washington will not yield to North Korea’s pressure and come to the negotiation by Pyongyang’s “blackmail.” That means that the US will stand firmly on the common rule of American foreign policy that threatening behavior will not be rewarded. Lastly, the US reiterates the policy direction that policy toward North Korea should be based on the allied countries’ close coordination and common

responses. This position is almost reaffirmed in the ROK-US Summit Meeting after which a joint statement of the two countries is issued. Finally, the US position should be added that Pyongyang’s possible possession of nuclear weapons is an international problem, thereby justifying the US efforts to incorporate South Korea and Japan into the present three-way talks.

V. Concluding Remarks: Policy Implications for South Korea

In the 5th Inter-Korean Talks on Economic Cooperation that opened on May 20, 2003 in Pyongyang, North Korea threatened to bring an “unspeakable disaster” to South Korea, condemning the May 15 summit agreement between the ROK and the US, which emphasized the necessity to take “further steps” if the North escalates its nuclear threat. This is the initial reaction of Pyongyang to the summit, but reveals its long-standing attitude or strategy toward Seoul: attempting blackmail using the South’s fear of the North’s military retaliation on one hand, and Pyongyang’s style of engagement toward Seoul based on “national unity and cooperation” propaganda on the other. It also purports to separate ROK and the US.

The ROK-US relationship that had become fragile in recent months has been, to some extent, restored through “smile diplomacy” shown at the summit meeting, but the outcome remains to be seen in the follow-up measures to be taken by both countries. Although the US strongly indicated that Washington will not relocate its major combat unit in the DMZ area, high officials in Washington still do not deny the possibility.

Unless the relationship between the two countries is restored to its past level, to the extent that both countries fully share a common goal for protection of a free ROK and a common concept of “main enemy” regarding Pyongyang’s totalitarian regime, and agreed policy direc-

tions toward North Korea's nuclear program, then ROK national security seems likely to remain continuously weakened and fragile by the lack of full support from the US.

Therefore, the importance of national security for South Korea is becoming a matter not of slogan but of reality, especially these days, when active discussion about a role change for US troops on the Korean Peninsula is rising. First and foremost, the task for self-reliant defense is that South Korean people should have resolute determination to boldly face North Korea's conventional-force as well as WMD military threat. For this, the followings are prerequisite: re-establishment of a proper viewpoint and perception on North Korea, an iron will to defend the free ROK while being ready to go to war if necessary, and a people's consensus that there is a state of emergency over national security and the identity of the Republic of Korea as a legitimate state on the Korean Peninsula.

Especially in the situation that Pyongyang regime strengthens such political propaganda as anti-war and anti-US sentiment, peace, unification, national self-reliance, etc., the assertion that the anti-war stance is the way towards peace is naive. It should be pointed out that humiliating peace is not a real peace but the road to slavery. Ironically, only when we inspire courage to fight and prepare for war with an evil enemy can peace and freedom be secured. Therefore, in this nuclear crisis situation, it would be regarded to be wrong if appeasement or humiliation is advised by the logic that "at any rate we must escape the war" for fear of Kim Jong-il regime's retaliation. Further, the anti-war campaign can, albeit unintentional, have consequences rather supporting the North's propaganda.

Korea, geo-politically surrounded by hegemonic powers, has always had a difficult international circumstance for survival and prosperity. Before long, South Korea will probably meet a certain critical juncture, eventually being forced to choose an alliance and a side with an outside power to reorder the power distribution. Northeast Asia is

becoming a stage for power struggle and a chaotic situation. Considering state ideologies and geo-political elements, among the four powers surrounding the Korean Peninsula, the United States is probably the one that could most favorably serve South Korea's national interests.

It is clear that the ROK-US alliance will be a powerful foundation on which South Korea can overcome international confusion and difficulties that can take place in the future and thus maintain the nation's survival and prosperity. On the other hand, the decline of the US power and influence in this region is also clear to bring about the growth and increase of influence of other selfish hegemonic powers around the Korean Peninsula such as China and Japan.

If South Korea's foreign policy deviates from the long-standing alliance with the US and moves to a somewhat neutrality-inclined direction, it is worried that South Korea will meet a crucially difficult fate in light of national interests. The recently expanded and diffused anti-war sentiments are dangerous, considering the existing North Korea's military threat and the fact that Pyongyang's political campaign such as anti-war, anti-US, peace, unification, independence, centering on the "National Unity and Cooperation" can be easily linked to anti-Americas sentiments.

The ROK-US alliance should be, among other things, based on ideologically common ground. When South Korea sticks to this moral and ideological goal, a solution for the nuclear crisis on the Korean Peninsula will be found relatively easily on the basis of cooperation with the US. Opposition to dictatorship, human rights violations, terrorism, WMD, and regional hegemony should be common targets for both countries. From this common sharing of value and goals, common responses to Pyongyang's threat, policy coordination and cooperation between the two countries are possible. It is time for ROK and the US to take the opportunity at the summit meeting to restore and strengthen their traditional alliance.

NUCLEAR CRISES IN KOREA: WHY THEY ARISE AND HOW TO RESOLVE THEM

Alexander Zhebin

Analyzing the current situation around the North Korean nuclear problem, the author argues that both the DPRK and the US are both responsible for the development to a stage dangerous for the world peace. Comparing the present crisis with the similar one of 1993-1994, he underlines that both of them were caused by US attempts to block further detente in Korea because the process could undermine US's forward deployment strategy and TMD scheme in the region. He presents Russia's attitude toward a multilateral approach, proposed by the United States. He explains how developments in Iraq could make the North Korean leadership come to the conclusion that nuclear weapons is the best deterrent and identifies factors which will prevent the use of force for resolving the nuclear problem. On the basis of the analysis of these factors and positions of the US, China, the DPRK, the ROK, Japan and Russia the paper offers three possible developments of events on the Korean peninsula: a comprehensive settlement of the basic disagreements, a military conflict and a long negotiating process. The last one is considered the most probable one. The DPRK's behavior testifies that its leaders have so far made stakes on dialogue with the purpose of easing external threats to the regime

and getting economic assistance in order to maintain stability within the country in a time of cautious economic reforms. Under the circumstances, Russia expects the ROK to play a more active role in search for peaceful solution of the current situation through promotion of inter-Korean dialogue and cooperation.

I. Introduction

The so-called “North Korean nuclear problem” appeared almost settled in the 20th century, but has reappeared as the epicenter of world politics. To develop an adequate course of action on this question and to ensure support for it among the public, it is necessary to understand the essence of the present conflict between the US and the DPRK.

The task became of special importance because with the beginning of the current “nuclear crisis” in Korea, and many analysts and the mass media in Russia and other nations abroad, following the US approach, have hastened to “shift arrows” at the DPRK, not having taken the trouble at all to read the texts of the Nuclear Non-Proliferation Treaty (NPT), the Agreed Framework (AF) or other US-DPRK agreements. Moreover, the tendency has appeared to disperse a certain opinion of “the world community” regarding this problem - a position of the most hawkish wing of the Bush administration, ignoring views expressed by more moderate and responsible American politicians and observers, let alone third party countries. Some authors have openly attempted to “demonize” North Korea. A number of hot-heads referred to dealing with Pyongyang as dealing with terrorists. This approach excluded from the “world community” not only Russia and China, but many other countries as well as the United Nations,

which was supporting settlement of the problem by means of dialogue and negotiations.¹

Russia has consistently supported preservation of the non-proliferation regime and the denuclearized status of the Korean peninsula. At the same time, Moscow has its own, sometimes not coincident with Washington, opinions of the causes of the present nuclear crisis in Korea and methods for its settlement.²

II. Mutual Claims of the US and DPRK: Whom to Blame?

The foremost demand on the part of the US is the demand for the DPRK to abandon its nuclear weapons program. Of course, one can talk only about the military component of the nuclear program. Thus far, we know of the DPRK’s nuclear weapons only from US Assistant Secretary of State for East Asian and Pacific Affairs, J. Kelly, but his word has been subject to doubt.³

As to the peace program of scientific research and development of atomic energy, the NPT does not forbid any country from developing peaceful atomic energy, and also urges nuclear nations to assist the non-nuclear states in the field. The founding of the Korean peninsula Energy Development Organization (KEDO) in 1995 and the consent of its members - US, Japan and ROK - to build the atomic power station in the DPRK meant none other than recognition by the West of North Korea’s right to possess an atomic power industry, certainly under the

1 *Kommersant*, January 13, 16, 2003; *Izvestiya*, February 3, 2003; *New Time*, No. 4, 2003, pp. 24-27.

2 The Statement of the Ministry of Foreign Affairs of the Russian Federation, January 10, 2003; Official Spokesman for Russia’s Ministry of Foreign Affairs Alexander Yakovenko Replies to Questions from Russian Media on North Korean Problems, May 28, 2003 (<http://www.mid.ru>).

3 *Japan Times*, May 1, 2003.

IAEA's control.

Accusations directed at Pyongyang of so-called "nuclear blackmail" or "extortion of oil," assistance, etc., from the "world community" became commonplace. The DPRK does not demand anything from the "world community," but insists on fulfilling through the US's obligations under bilateral agreements and the UN Charter. The US and their allies have agreed on deliveries of oil fuel and construction of an atomic power station in North Korea just because they had no legal ground to request the termination of DPRK's national atomic power program and were compelled to "redeem" it. The bargain was fixed in the AF between DPRK and the US on October 21, 1994. The demand for indemnification for the refusal of realizing the legitimate right can hardly qualify as blackmail.

Nowadays, Washington prefers to limit the American obligations under the AF to two basic points: Promises to organize an international consortium for construction of an atomic power plant with two Light-Water Reactors (LWR) and to deliver before start-up of the first of (planned for 2003) 500,000 tons of oil fuel annually.

Instead, Pyongyang was obliged to "freeze" a 5-megawatt graphite-moderated reactor and other related facilities in Yongbyon where it could produce weapons plutonium, stop construction of two more reactors of the same type with capacities of 50 Mwt and 200 Mwt to remain a member of NPT, and abide with provisions of the Declaration of North and South Korea signed in 1991 on denuclearization of the Korean peninsula.⁴

The US is attempting to convince the world that they have met their obligations under the AF, but the DPRK has failed to do so. However, if this is true, why did the US wait almost 8 years until August 2002 for the beginning of construction of the atomic power station in the DPRK? Incidentally, in the so-called "letter of guarantee"

4 See the text of the Agreed Framework in *KCNA*, Pyongyang, October 22, 1994.

sent by former US President Clinton to North Korean leader Kim Jong-il, Americans promised to build the plant, even if for any reason KEDO was unable to cope with the task.⁵

The matter of concern was that the Clinton administration was slow with construction, based on the belief of those analysts who assured that after Kim Il-sung's demise in July 1994, the North Korean regime would quickly break up. As for the Republicans, after coming to power in the beginning of 2001, they entirely partisan by ideological reasons, anathematized everything that was done by the Democratic administration.

Most of all, the Bush administration was reluctant to recall that the AF contains non-proliferation articles that rather precisely specified US political obligations before the DPRK. Washington promised, firstly, to give Pyongyang "formal guarantees" - that the US would not use or threaten to use nuclear weapons against the DPRK, and secondly, to move to "full normalization of political and economic relations" with North Korea.⁶

Neither the first nor the second has yet been fulfilled. On the contrary, after Bush came to power, North Korea was included in the "axis of evil" listed among the countries selected for US preventive strikes including nuclear attacks.

Observing all these developments taking place, North Korea did not sit idly by. As a "trump-card" for future bargaining or (depending on how events evolve) as a deterrent, it started the second parallel program to produce materials for nuclear weapons (the first plutonium program which had been "frozen" until December of 2002 by the AF). However, we know about the latter project only from the words of Americans. According to US intelligence leakage, North Korea's nuclear program is to produce enriched uranium in exchange for mis-

5 See the text of the letter in *KCNA*, Pyongyang, October 22, 1994.

6 See the text of the Agreed Framework in *KCNA*, Pyongyang, October 22, 1994.

sile technologies imported the necessary equipment from Pakistan. Nonetheless, Washington was not in a hurry to impose any sanctions on Islamabad for producing nuclear weapons and proliferation of nuclear technologies in exchange for missile workmanship, Pakistan, a *de facto* nuclear power and an important US ally in the “antiterrorist operation” in Afghanistan.

Under the pretext of North Koreans admitting they had been engaged in the enrichment of uranium, the US decided to stop oil fuel deliveries to the DPRK and to finish with the AF. In return, Pyongyang expelled IAEA inspectors, withdrawing from NPT and reactivating the “frozen” facilities at Yongbyon.

The Agreed Framework does not forbid uranium enrichment directly. However, Americans point out that one must recognize, not without good reasons, that the DPRK has promised in the document to observe the Declaration on denuclearization of the Korean peninsula, in which both Koreas promised to refrain from processing plutonium and enrichment of uranium.

If we accept the linkage as being legitimate, then the same should be said concerning references contained in the AF regarding the necessity to abide with principles of the US-DPRK joint statement of June 11, 1993. The document, besides the “refusal of use of force or threat by force,” calls for the US and the DPRK to “respect sovereignty” and to “not interfere with the internal affairs” of each other, and to “continue dialogue between the governments” of the two countries on the basis of “equality and fairness.”⁷

How can anyone consider a 20-month-long boycott of dialogue with Pyongyang, threats addressed to the DPRK, public insults of its leaders, hints of introduction of a sea blockade, the US’s course for regime change, and toughening of sanctions against this country to not contradict these principles and not break the AF?

7 *Rodong Sinmun*, June 12, 1993.

A similar picture exists with numerous accusations concerning the DPRK’s infringement of its “international obligations.” One of the basic propositions of international law reflected in the NPT (article X) states that when a country is faced with threats to its existence, it has the right to forgo any treaty and use all means available for the protection of its sovereignty and territorial integrity. North Koreans have taken advantage of such a right. Certainly, an undesirable precedent has been created. However, the DPRK has been pushed to exercise the measure by none other than the United States.

The US’s reproaches addressed to the DPRK and other countries concerning their observance of international obligations and international law are not too convincing because the track record of the US in this sphere is not spotless - they unilaterally left the ABM Treaty, withdrawing their signature under the Kyoto protocol - a major document for mankind’s future on preventing global warming, refused to join the International Convention on Land Mine Ban or to accept jurisdiction of the International Criminal Court.

III. Hidden Aspects of the Crisis

There are striking similarities between the ongoing nuclear crisis in Korea and the one that occurred here in 1993-1994. Both were results of US attempts to hinder the further normalization of relations between South and North Korea and the relaxation of tension on the Korean peninsula.

Nowadays, as well as in the beginning of the 1990s, continuation of detente in Korea inevitably would lead to questioning motives of preservation of foreign military presence in South Korea. The withdrawal of US troops from the ROK would remove a cornerstone from under the US strategy in NEA and the Asia-Pacific region as a whole, which is based on bilateral military alliances with Japan and the ROK

and advanced deployment of the American armed forces in these countries.

Also, the disappearance of the so-called “North Korean missile threat” would expose the US’s actual plans, which envisage, along with the NMD, to neutralize nuclear missile deterrent potentials of China and Russia.

The difference between the two crises is that the US wants to use the present one to disarm the DPRK according to the “Iraq scenario.” This would make it possible for the US to establish control from a strategic viewpoint area of Asia situated right on the borders of Russia, China and Japan - three powers potentially still capable to challenge the American hegemony. The advancement of the US armed forces with their precision weaponry to almost within 1400km of the Chinese border with North Korea and the 17km within the Russian Federation would result in cardinal changes in the military-political situation in this region and the whole of the Asia-Pacific region.

IV. Why a Multilateral Approach?

Washington is refusing to hold bilateral dialogue with Pyongyang because, allegedly, the US honored its side of the AF, but North Korea did not. The real picture is somewhat different:

The main reason for the US’s sudden interest in multilateral efforts is due to the aspiration to evade any responsibility for provoking the present situation in Korea. Washington does not have enough honesty to admit that the US is far from honoring its own obligations under the AF. The multilateral format is called on to create the impression that the problem is not of mutual claims between the US and the DPRK concerning quite concrete bilateral agreements, but the DPRK’s attempts to “blackmail” the rest of the world. A major issue is that not only Russia and China, but even South Korea does not acknowledge

this threat and, despite the Bush administration’s insistence, they do not believe that Pyongyang is going to attack anyone.

The choice in favor of a multilateral approach was also caused by domestic political considerations of the Bush administration. Congress always financed the US’s obligations under the AF very reluctantly. However, these days it is almost impossible to receive money for this purpose. Under a multilateral settlement, it would be much easier for the US to reduce this burden or to shift it completely onto others. In the case of bilateral dialogue with the DPRK, Washington would bear the burden of all expenses.

The US’s interest in multilateral efforts in Korea, including attempts to refer the problem to the UN Security Council, looks especially suspicious nowadays. The US attack against Iraq in spite of the UN Security Council’s position confirmed that Washington is ready to act without regards to international organizations, and even contrary to the opinion of the majority of the international community.

The clue seemingly can be found in Secretary of State C. Powell’s and other members of the Bush administration’s remarks made as early as the end of 2002, when they began discussing the US’s intention to follow the Iraq scenario for solving the North Korean nuclear problem. As we already have seen, the plan envisages securing a maximum rigid UN Security Council resolution in order to put constant pressure both upon the disliked regime and the UNSC member-countries, and later in proper time (by US discretion), to declare that even only one resolution would be enough to allow the US to lash out unilaterally.

Washington’s motives were obvious. Therefore, essentially, not excluding the multilateral approach to the crisis solution, other parties concerned and primarily Russia and China, specified that US-DPRK bilateral dialogue should play a leading role. The multilateral approach is meaningful only when it is not staged as a kind of certain tribunal intended to “punish” North Korea, but instead, be a forum to seek a mutually acceptable solution and guarantee its implementation.

The attitude toward the multilateral approach has changed slightly, though most likely for tactical reasons only in April 2003 under the influence of a victorious and rather quick US military campaign in Iraq.

The Chinese, apparently, began to be seriously concerned that the Americans, intoxicated by their military success, may continue with similar steps on the Korean peninsula. Beijing feared facing a lonely veto option in the UNSC. Thus, China confirmed the offer made earlier on its intermediary for a meeting between the US and DPRK representatives in Beijing, and increased pressure on Pyongyang to compel them to agree to a multilateral format.

It would appear that North Koreans received due impression from the US's determination to wage war, not taking into consideration the position of allies such as France and Germany. Pyongyang apparently was shocked by the absence of resistance on the part of the Iraqi military. Finally, the DPRK declared that "it will not adhere to any particular dialogue format" if the US makes a "bold switchover" in their policy towards the DPRK.⁸

Washington has blinked too. The Americans went to Beijing notwithstanding earlier declarations to the effect that the US would not sit at the table until the DPRK starts dismantling its nuclear program in a verifiable manner that would satisfy the US. The Iraq war brought good news as well as a number of bad ones; it made clear even to hawks in the Bush administration that their stakes in Korea based only on force and pressure without any attempts to negotiate would not gain any support from the world community.

The ROK, just like during the nuclear crisis of 1993-1994, was not considered a party necessary for finding a solution to the problem directly related to its vital interests. Many in Seoul were painfully offended and felt humiliated, but quickly reconciled, having declared

8 Spokesman for DPRK Foreign Ministry on Peaceful Solution to the Nuclear Issue, KCNA, Pyongyang, April 12, 2003.

that the main thing is not the list of participants, but positive negotiation results.

Moscow had to take a similar face-saving position. The Americans did not forgive Russia for its position concerning Iraq, and by the North Koreans for unambiguous condemnation of their nuclear ambitions.

The Ministry of Foreign Affairs of the Russian Federation, in a statement released on the eve of the Beijing talks, in explaining Moscow's position said that, "Russia always emphasized that we welcome any format of negotiations and any arrangement which would bring about a peaceful settlement of the problem."⁹

Some Russian analysts considered Moscow's absence in Beijing to be a result of the US policy for pushing Russia out from the process of Korean settlement. Others found the situation to be an omen of an emerging American-Chinese condominium that would rule the modern world.¹⁰

The tripartite meeting of DPRK representatives, the US and China, held on April 23-25, 2003 in Beijing, happened to be limited mainly to the statements which contained their respective well-known positions - no progress was achieved. The date of the next round is not decided, and it is not yet known whether or not it would in fact be held and who would participate.

Perhaps the most interesting outcome of the Beijing meeting one can notice is the quite opposite reaction it has received, where C. Powell described it as "useful." President Bush came to the conclusion that the DPRK had returned to its "tactics of blackmail," and in Russia, the majority of observers regarded the Beijing negotiations as a "failure."¹¹

9 The Ministry of Foreign Affairs of the Russian Federation. Statement for Press, "Concerning reports on possible negotiations on the Korean problem in Beijing," April 17, 2003 (<http://www.mid.ru>).

10 *Nezavisimaya gazeta*, April 23, 2003; *Novaya gazeta*, No. 28, April 21-24, 2003.

It appears that the DPRK gained the greatest benefits from the meeting. The matter of concern is that the US intelligence community seems to have failed to detect the beginning of reprocessing of fuel rods stored in Yongbyon into weapons-grade plutonium. After reassessment of available data conducted by the order of the White House, relevant officials conceded that they can neither confirm nor deny North Korean statements allegedly made during the Beijing talks, and that the reprocessing work had entered a final stage. The US was compelled to cancel the de facto “red line” drawn by them for the DPRK as the beginning of reprocessing. Earlier, Washington hinted that they may use force to stop the North Koreans from starting the process. Actually, the US, despite their public denials, had to reconcile with the DPRK’s acquisition of nuclear weapons. The new approach, though officially denied, now calls for preventing North Korea from transferring nuclear devices and materials to third party countries, especially terrorist groups.

V. Major Players’ Positions

Turning to the US’s position, unfortunately one can hardly see, any political will on the part of the Bush administration to seek a compromise with the DPRK. Bush’s hawks are unwilling to take into consideration an inherent rule. However, not only with regards to the American foreign policy, but use of force for achieving the correct purposes (in this case, non-proliferation of WMD) frequently brings about opposite results. A policy of peaceful integration has always led to positive changes in North Korea’s behavior while threats and pressure invariably led to attempts being closed and lost. The convincing proof is the DPRK’s reaction to the policies of the US’s previous and present

administrations.

There is every reason to believe that North Koreans would be much more compliant if the US starts to fulfill their own obligations under the bilateral agreements with Pyongyang and under the UN Charter; making practical steps toward normalization of relations, lifting unilateral sanctions, ceasing to interfere with the DPRK’s admission into international financial institutions and blocking foreign aid for rebuilding the country’s sagging economy. Complicated and long negotiations are not necessary to achieve these aims. The only step to take is to reaffirm the sides’ adherence to the US-DPRK joint communique accepted from the results of vice-marshal Cho Myon-rok’s visit to the US and his negotiations with Clinton and other members of the administration in October 2000, and to start implementing the document’s provisions.

Unbiased studying of this unduly forgotten document, as well as other US-DPRK arrangements, attests that the DPRK’s present security demands to the US do not exceed the framework of the promises already made by the Americans to the country. So far, the US is yet to deliver on these promises. Pyongyang is offering to re-start dialogue from the point where it was interrupted in 2000, while Washington, not wanting to comply with any of its former promises, is insisting that the DPRK, even before negotiations, had brought forth an entire package of new requirements.

The ever-growing list of US claims on the DPRK causes a deepening of doubts of whether Washington really desires to resolve the problem. The US added to their initial demand to abandon the nuclear weapons program, various items such as a ban on production and export of missiles and related technologies, reduction of conventional armed forces and arms, as well as their withdrawal from the areas adjacent to the Demilitarized Zone, terrorism, human rights and lastly, termination of drug trafficking, and as well, that the whole “package” should include inspections similar to those conducted in Iraq.

Linking such problems in one package is a sure way to lead negotia-

11 *Izvestiya*, April 25, 26, 2003; *Nezavisimaya gazeta*, April 28, 2003.

tions to a deadlock. Realization and verification of US conditions will take, under the most favorable circumstances, several years. But even in the event that the DPRK accepts these conditions, as lessons learned from the Iraq affair have proved, it would not guarantee that sometime in the future Washington would not declare that it was tired of waiting and begin disarmament unilaterally.

The tripartite meeting in Beijing has again confirmed that alongside the US, China's position is of key importance for settlement. During the present crisis, Beijing repeatedly spoke in favor of preservation of the denuclearized status of the Korean peninsula. A nuclear North Korea could push for the same road as Japan, South Korea, and probably the most dreadful thing for Beijing and Taiwan.¹²

At the same time for China, because of its strategic, political and prestigious considerations, liquidation of the DPRK by force, possibly as a result of US attack, would be absolutely unacceptable. Such an outcome would result in US control over the entire Korean peninsula, stationing of American armed forces directly on Chinese borders.

Beijing cannot afford to sit idly by and watch Korea be turned into the US's bridgehead for pressure on China in an already unraveling grandiose rivalry of these two most powerful economic and military powers of the world. Loss of the DPRK would seriously undermine China's prestige and international standing in Asia and all over the world. China would probably even have to reveal its plans to regain Taiwan.

US prudence demonstrated so far in Korea can be explained by the one and only circumstance that with respect to the NEA, China is a powerful factor, unlike in the Middle East. The US is likely unprepared to directly clash with China because of the North Korean nuclear problem; it would mean a conflict with one and a half billion people, and the Americans would think twice before resorting to military measures

12 *Nezavisimaya gazeta*, April 28, 2003.

in Korea.

Furthermore, China has a wide arsenal of means to maintain the DPRK as a buffer zone between itself and the US on the peninsula. Beijing, in particular, is the unique ally of North Korea's together upholding a military-political treaty.

Therefore, the US is attempting to lure the Chinese with promises that after the DPRK's "disarmament" is concluded, US forces would not be deployed in the North but returned south of the 38th parallel, or that American strikes would be limited only to North Korean nuclear facilities. Simultaneously, the Americans in every way possible are attempting to sow alienation and mistrust between China and North Korea, particularly by compliments, including one made at the top-level concerning a "constructive role" allegedly demonstrated by Beijing during the crisis.¹³

In view of the specified interests on the Korean peninsula, Beijing, apparently, is attempting henceforth to mobilize all political and diplomatic methods available as well as necessary economic resources to ensure the DPRK's survival. At the same time, China will induce North Korea in every possible way to exercise restraint in foreign policy and to go on with economic transformation which would lessen political and economic burdens for China to support the regime.

China's leadership is vitally interested in the creation of favorable external conditions for the country's further development. Therefore, Beijing has already shown that, more than ever before, it is ready to influence Pyongyang. The Chinese representative in the IAEA on February 12, 2003 had voted for the resolution to refer the North Korean nuclear problem to the UN Security Council. During the same month, China, according to some reports, blocked for "technical reasons" the only oil pipeline between the two countries for several days, thus sig-

13 "Bush Urges Multilateral Efforts on North Korea," (<http://usinfo.state.gov/2003/03/07>).

nalng to Pyongyang its displeasure with the latter's behavior on the nuclear question.

In view of China's position, any military operation especially ground forces by the US and their partners against the DPRK remains highly improbable, and without it, the goals of the use of force would be unattainable.

North Korea's bravado, at times apparently reckless, in a dog-fight with the US can be explained partly by Pyongyang's understanding that China's geopolitical interests, finally, will compel it to support the DPRK.

The DPRK's position is dictated first of all by the task to ensure physical survival of the regime in the international environment that has considerably changed after the Sept. 11 attacks in the US and their easy victory in Iraq. North Koreans have read long ago a stalemate situation which exists between the US and China on the Korean peninsula, and seemingly, have decided to take their destiny in their own hands. Being incapable of deterring a probable aggressor with their out-of-date conventional armaments, they began to develop missiles and probably nuclear weapons as well.

Some aspects of the DPRK's behavior after the US attack on Iraq confirm the most pessimistic predictions made by Russian observers, who well before the war had warned about its negative influence on attempts to dissuade North Korea from development of a nuclear program.¹⁴

US policy, almost explicitly aimed at the physical elimination of S. Hussein, arrest and prosecution not only of the members of Iraq's top leaders but also middle-level nomenclature, and dissolution of the ruling party could, contrary to US expectations, push the North Korean ruling elite to a decision at any cost to obtain means which would keep a new world "Messiah" from using in Korea those technologies of

export and American values which were applied in Iraq. Testifying to this is both the hints of the DPRK's chief delegate at the tripartite meeting in Beijing and North Korean official statements regarding the necessity to implement a "powerful physical deterrent force" and Pyongyang's determination to create such a force.¹⁵

In this context, it seems that those analysts who asserted that a decrease of Pyongyang's interest in the conclusion of the non-aggression pact with the US apparently signals its readiness for concession to Washington, in the absence of another possible motive for changes in North Korea's position. It is possible that the DPRK leadership came to the conclusion that, after the war in Iraq, written non-aggression guarantees from the US are obviously insufficient.¹⁶

At the same time, the DPRK's position remains basically dialogue-oriented, aimed at normalization of interstate relations with the US. Thus, Pyongyang hopes to gain time for fulfillment of those military programs, which by its calculations would make any risk of an attack on the DPRK unacceptable for any probable adversary, to acquire access to funds of the international financial institutions and western investments including Japanese assistance, new technologies, and foreign markets. Only under these conditions is it possible to carry out modernization of economy. Without resolving the latter task, it would be extremely difficult for the regime to support the ideological myths that justify the present political and social system in the country.

At the same time, Pyongyang understands that hasty and excessive openness of the North Korean society to the modern world is dangerous for the foundations of the system that exists in the DPRK. Therefore, the presence of sufficiently high but a controllable level of "threats from the outside" and tension on the peninsula remain important conditions for the preservation of domestic political stability. Paradoxically

¹⁵ KCNA, Pyongyang, May 12, 2003.

¹⁶ *Kommersant*, April 9, 2003.

¹⁴ *The Conservative*, January 30, 2003; *Vremya- MN*, February 8, 2003.

enough, the fact is that both the US and DPRK are rather close on the issue, albeit for quite different reasons.

In the Republic of Korea's approaches to settlement as President Kim Dae-jung's coming to power orientation on pan-Korean interests began to gather force, the South Korean leader attempted to assist North Koreans in initiating integration into the world community by implementing the so-called "sunshine policy." However, he was met by a cold reception in Washington in March 2001. Actually, the US already at the time had tried to impose their veto on further detente between the two Koreas.¹⁷

Washington's obvious cool attitude towards the first-ever inter-Korean summit as well as towards the beginning process of normalization between the two Koreas was not left unnoticed in Seoul. The US's position provided critics with arguments to assert that US strategic interests became the main external factor preventing further movement towards detente on the Korean peninsula. Unexpected by the US in December 2002 was the presidential electing of Roh Moo-hyun, who staked on continuation of dialogue with the North, and proved to be an unambiguous reaction by the South Koreans to high-handed US aspiration, to hold them as pawns when implementing its geopolitical combinations in the region.

The newly elected Korean President declared from the beginning that he would exclude even discussion of any military option for resolving the current nuclear crisis. South Koreans started to assert that for the sake of maintaining peace they were ready to reconcile even with a nuclear DPRK. Seoul called Washington to undertake, for the purpose of reconciliation with the DPRK, the same bold steps which were made 30 years ago towards China.

However, the joint statement on the results of the Bush-Roh summit

¹⁷ See Alexander Zhebin, "Inter-Korean Relations After the Summit Meeting between the Two Koreas: A Russian View," *International Journal of Korean Unification Studies*, Vol. 11, No. 1, 2002, pp. 89-92.

on May 14, 2003 in Washington concluded that both sides "will not tolerate" the DPRK's nuclear weapons program and consider "further steps" if it continues the nuclear program, and testifies to the fact that the ROK was compelled to drift towards the US's position on this nuclear issue. These changes aroused sharp criticism against Roh Moo-hyun, both in the South - from those who voted for him in the elections last year, and in the North, which warned Seoul about an "indescribable catastrophe" in the event that it continues to follow US policy on the nuclear issue.¹⁸

However, it would be premature to draw a final conclusion about concurrence of the US and ROK's positions on relations with the DPRK. Seoul understands that another war on the peninsula would be a tragedy for all Koreans.

Japan has appreciably toughened its approach towards the DPRK. Positive results of Prime Minister Koizumi's unprecedented visit to Pyongyang in September 2002 very quickly became drastically devaluated. Tokyo is attempting to include the problem of abducted Japanese nationals into the US package addressed to the DPRK. Japan has launched two satellites for tracking North Korea's missile activity. There have been statements in Japan on the necessity to acquire capability to deliver preventive strikes against North Korea's missile bases in the event that Pyongyang decides on a new missile test over Japanese territory.

At the same time, Japan shares the existing opinion in the region that it is necessary to maintain the denuclearized status of the Korean peninsula to induce North Korea towards market changes, and it is desirable to achieve these aims through peaceful means without allowing the North Korean nuclear problem to become an "apple of discord" in Northeast Asia. War in Korea is a great danger to Japan, considering its territory is within the range of North Korean missiles.

¹⁸ KCNA, Pyongyang, May 21, 2003.

The US-Japan summit in May 2003 between President Bush and Prime Minister Koizumi, where they promised not to tolerate a nuclear-armed DPRK, has finally chained Tokyo's diplomatic maneuvering in their relations with Pyongyang, and placed it back in the wake of the US policy in Korea.

In Russia, after the beginning of the current nuclear crisis in Korea, a vivid discussion was unraveled among analysts and the mass media on how Moscow should handle the situation. Some people expressed opinions in favor of the creation of a united front with the US and their allies to demonstrate "collective rigidity" towards the DPRK and to put an end to its nuclear ambitions. Opponents of such an approach pointed out that, in this case, Russia would retreat to the methods of its diplomacy in Korea during the first half of the 1990s, which resulted in Pyongyang losing its trust in Moscow and its influence on Seoul, and acquiring an ignoring attitude in the West.

There are various views on whether the DPRK already is in possession of nuclear weapons. The probability of the existence of the related program and even nuclear devices ready for testing was not excluded in a KGB report sent to the USSR Communist Party's Central Committee in 1990. Reports of the Russian Intelligence Service (SVR) published in Russian newspapers in the first half of the 1990s presented more cautious estimates on how advanced North Korea's nuclear program was, and the very opportunity of such a program was not denied.¹⁹

Some observers believe that the DPRK similar to the beginning of the 1990s is only bluffing in order to gain diplomatic concessions and economic benefits. The majority of experts agree with Russian Minister for Atomic Energy A. Rumyantsev that the DPRK lacks the industrial base necessary for production of nuclear arms.²⁰

19 *Izvestiya*, June 24, 1994; New Challenges after Cold War: Proliferation of Weapons of Mass Destruction, SVR Report, Moscow, 1993, pp. 92-93; Nuclear Non-Proliferation Treaty, Problems of Extension, SVR Report, Moscow, 1995, p. 26.

20 *Nezavisimaya gazeta*, January 13, 2003; *Vremya novostei*, February 5, 2003.

In January of 2003, Russia drew up the fundamentals of a package settlement for the North Korean nuclear issue. It essentially consisted of a sequence of synchronized interlinked steps to be taken by the parties concerned that would result in the DPRK renouncing its nuclear program in exchange for international security and development guarantees. What is noteworthy is that Russian ideas figured in the proposals brought forward by the North Korean side at the tripartite talks in Beijing. At the same time, unfortunately, since Russia's initiatives were not put to use right away, time was lost and the situation grew complicated in many ways. Now more radical steps are needed in order to pull back from a dangerous brink. Nevertheless, the fundamental approach of the Russian side remains unchanged; Moscow is convinced that it is only the removal of concerns in a "package" on the basis of a broad compromise that makes it possible to achieve the goals formulated by the world community for itself with regard to the situation on the Korean peninsula.²¹

Russia undertook a number of active efforts to settle the problem, working both with the DPRK (visit by Deputy Minister of Foreign Affairs of the Russian Federation A. P. Losyokov as the special representative of President Putin to Pyongyang in January 2003) and maintaining regular contact with other interested parties.

The most natural partner by virtue of rather similar purposes in Korea was China. At the same time, as voting has proved at the IAEA on February 12, 2003 concerning referring the DPRK nuclear problem to the UN Security Council, when China supported the move Russia and Cuba refused; there is much to do before sound coordination of the two countries' policies in Korea is achieved. A number of observers regarded the Chinese action as an "unpleasant surprise" for Russia.²²

21 Official Spokesman for Russia's Ministry of Foreign Affairs, Alexander Yakovenko, Replies to Questions from Russian Media on North Korea Issues, May 28, 2003 (<http://www.mid.ru>).

22 *Nezavisimaya gazeta*, April 23, 2003.

Both sides made an attempt to mend fences during Russian Foreign Minister Ivanov's trip to Beijing in February of 2003 by publishing an unprecedented joint communique about the situation of the Korean peninsula. Moscow and Beijing, while not totally denying a multilateral approach to the problem, called first for "constructive and equal dialogue" between the US and the DPRK and stressed its "great significance" for resolving the situation around the North Korean nuclear issue, normalizing US-DPRK relations. They pledged to "make every effort to facilitate American-North Korean dialogue," thus signaling that they see both sides bearing major responsibility for seeking a proper solution. However, the document did not mention anything in regards to cooperation of the two countries on the Korean problem.²³

The final coordination of the positions of Russia and China about the Korean problem has taken place, probably as a result of new Chinese leader Hu Jintao's visit to Russia and his summit with President Putin on May 27, 2003 in the Kremlin. The two leaders signed a Joint Declaration stating, "preservation of peace and stability on the Korean peninsula meets the security interests of the two countries and the common aspirations of the international community." They also rejected as "unacceptable" the scenarios of power pressure or the use of force to resolve the problems existing there and called for the parties concerned to use political and diplomatic methods.²⁴

Russia and China set their priority ensuring a "nuclear-free status of the Korean peninsula and observance there of the regime of non-proliferation of the WMD." Simultaneously, Putin and Hu Jintao emphasized "the security of the DPRK must be guaranteed and favorable conditions must be established for its socio-economic development."

23 Joint Communiqué of the Ministers of Foreign Affairs of the Russian Federation and the Peoples's Republic of China on the Situation on the Korean peninsula, February 27, 2003 (<http://www.mid.ru>).

24 Joint Declaration of the Russian Federation and the People's Republic of China, Moscow, May 27, 2003, (<http://www.mid.ru>).

Both sides promised to continue "close cooperation" in the interests of peace, stability and development on the Korean peninsula.²⁵

Moscow should not concern itself over losing its position in the DPRK for the benefit of China. It is quite natural for historical, cultural, political and geographical reasons that Beijing is playing a leading role in "sponsoring" Pyongyang. It will make the Moscow alternative for North Korean leadership even more valuable; Russia's importance to the DPRK as a counterbalance to the Chinese influence undoubtedly will increase.

Commenting on the eve of President Bush's visit to Saint Petersburg in May-June of 2003 on Russian and US positions concerning the North Korean nuclear issue, the official spokesman for Russia's Ministry of Foreign Affairs A. Yakovenko mentioned that both sides' approaches to the nuclear problem "appear to pursue similar goals. They boil down to firmly ensuring WMD non-proliferation in that region, peaceful solutions to the existing problems, and relaxation of tensions."

At the same time, they differ in the nature of bilateral relations of each country with the DPRK. The latter country and Russia have history of diplomatic relations dating back more than half a century and a Treaty of Friendship, Good-Neighborliness and Cooperation that was signed in February 2000. US-North Korean relations have thus far not been settled, which cannot help but affect Washington's approaches to diverse developments on the Korean peninsula. Under these circumstances, Russia is prepared to play a constructive role in the settlement of US-DPRK differences naturally to the extent that Russia's assistance is needed. In general, Russia believes that in this situation Moscow and Washington have far more room for cooperation than was the case with Iraq.²⁶

25 *Ibid.*

26 Official Spokesman for Russia's Ministry of Foreign Affairs, Alexander Yakovenko, Replies to Questions from Russian Media on North Korea Problems, May 28, 2003 (<http://www.mid.ru>).

This new approach was confirmed at the Putin-Bush summit on June 1, 2003 in Saint Petersburg, Russia.

Russia's approach to the settlement of the nuclear problem is determined by the fact that the Korean peninsula directly borders on the Russian Far East region. Therefore, security of our Far East regions and their population directly depends on how events in Korea develop. In the event of a war, radioactive clouds from the Korean-style Chernobyls and streams of refugees hardly would be able to reach the US west coast, but almost certainly would enter Russian and Chinese territories.

The power option is unacceptable for Russia because it would create a direct threat to its own security. Even the low probability of WMD usage in Korea, the region directly adjoining Russia's borders, would demand putting on full alert our air defense and even nuclear deterrent forces with realization of the appropriate measures in the civil defense area at least in the Far Eastern region. China would be compelled to do the same. We and the Chinese should act in this manner because the US, in the event of preparation for military action, would in time undertake the same measures even ahead of us since the US would fear DPRK's retaliation.

It is difficult to imagine what kind of situation would arise when the three largest nuclear powers (and also their allies) stand in full readiness for a nuclear conflict, and the US concentrating a military force similar to what they had deployed against Iraq in direct proximity at our borders on the Far East. Any incident could turn out to be a catastrophe, and the fact that during the war in Iraq, American bombs and missiles were found on territories of almost all neighboring countries confirms that it is impossible to exclude such incidents during similar operations.

For this reason, Russia does not hesitate to say that they have their own interests on the peninsula, and they are not any less important than those of the states separated from Korea by seas and oceans.

VI. Possible Scenarios

The above-stated factors make it possible to outline the following possible scenarios of developments in Korea: The final settlement of the North Korean nuclear issue by diplomatic means and elimination of the danger of military conflict on the Korean peninsula. Realization of the scenario actually would complete the process of a "cross recognition" of the two Korean states (DPRK - by the US and Japan, since Russia and China have already done so concerning South Korea), of normalization of relations between the DPRK and the US, of clearing concerns related to North Korea's possible possession of WMD and means of their delivery, of cutting down the size of conventional armed forces and armaments of both Koreas and the US in South Korea, of withdrawal of troops from the areas adjoining the DMZ, and of realization of other confidence-building measures including those of the military sphere.

These kinds of developments in the short term and intermediate term prospect are deemed improbable because of the unwillingness of certain states in due manner to take into account legitimate interests of other participants for settlement. First of all, the problem is the US's unwillingness to provide the DPRK with security guarantees, and also to respect security interests of other states in the region.

Also, different foreign policy priorities and domestic political circumstances – escalation of the US's demands to the DPRK, Pyongyang's position on security guarantees and US troops withdrawal from South Korea, somewhat contradictory priorities of the US, Japan and the ROK in the process of settlement of the North Korean missile problem, and enormous complexity of tackling future verification procedures caused by the unwillingness of Pyongyang to "open" the country – make the tasks of working out and implementing a package acceptable to all participants practically impossible.

The main obstacle for realization of the "package," even if conclud-

ed, would be almost certainly the problem of verification. Attempts to impose on Pyongyang Iraqi-style tailored inspections, most likely, may be unacceptable to North Korea because of its long-time xenophobia, lack of adequate reliability in view of the regime's leaders, security guarantees, and simply because the DPRK unlike Iraq did not lose a war. In addition, as North Koreans point out, and not without basis, the Iraq experience proved that the consent to inspections has not saved Iraq from the US attack at all.

Verification of the termination and physical liquidation of WMD programs in the DPRK is a clockwork bomb that provides any of the parties concerned, the US, and DPRK foremost with an opportunity to suspend realization of even the best possible solution.

An alternative to comprehensive settlement is the military scenario of resolving the US-DPRK conflict. Development of events in Korea under this scenario is being promoted by the Bush administration's unwillingness, and with realization of its policy in the region, to take into consideration legitimate interests of the security of other states located there including the DPRK, to abide with universal norms and principles of international law including the UN Charter (unilateral sanctions, refusal to normalize bilateral relations, unwillingness to fulfill the United States' international obligations, preference given not to methods of diplomacy, but power politics when solving the existing problems), the United States' refusal to fulfill its obligations under AF, Washington's desire to impose on Pyongyang pro-American parameters of international and domestic political behavior, and finally to replace the regime.

From the other side of the coin, it does not help to seek a compromise on the DPRK's determination to acquire at all costs such deterrent potential that would exclude unpunished intervention from the outside in its internal affairs for the purpose of liquidation of the present regime. Pyongyang believes that it is possible to achieve normalization of relations with the United States mainly because of the absence of

other "trump cards" by implicit or explicit threats to undermine nuclear and missile non-proliferation regimes.

In the short-term perspective, such an option has been deemed improbable as well. First, the US is far from sure how China and Russia would react to the use of force in Korea and what would be the long-term consequences for US relations with these two countries. An attack on the DPRK can become the most awful nightmare that can only be imagined in Washington, as well as something the Americans would like to avoid most of all - resurrection of the Russia-China alliance, even if it were vaguely similar to the alliance between the USSR and the PRC in the 1950s.

The US, in the event of conflict with the DPRK, cannot exclude probability of North Korea inflicting unacceptable damage to US allies, Japan and South Korea, which almost certainly would cause their serious objections, as well as to the US troops stationed in these countries and likely to continental parts of the US.

To this point, the primary factor determining Japan and the ROK's interest in a military-political alliance with the US remains the belief that such a union would save them from military conflict and provide security guarantees and foster economic prosperity. Washington's attempts to involve Japan and the ROK in military actions, in which this arena can become their territory directly threaten Japan's and ROK's security and the well-being achieved with such hard work, thus depriving the alliances of their coup d'état.

In light of the above-stated factors, the most probable situation remains the development of the situation under a protracted negotiation scenario with extensive usage of traditional elements of a "carrots and sticks" policy by all parties involved with a gradual advance towards a comprehensive settlement.

With the exception of the US, all other parties concerned including the DPRK are strongly in favor of political and diplomatic methods to be employed for resolving the problem.

Thus, an initial format of dialogue has no essential value because of two major reasons: First, it is clear to all that the agreement can be achieved only after the DPRK and the US is able to establish a certain level of mutual understanding. Second, the fate of the present and already almost forgotten “four-party talks” on the Korean question (US, China, DPRK, ROK) has shown that as soon as an opportunity for progress on bilateral tracks opens the dialogue members easily forget multilateral mechanisms.

While continuing their rigid rhetoric, North Koreans are in every possible way signaling to Washington about their readiness to restart dialogue. The DPRK’s promises to remove all Washington’s concerns about its military programs and to accept American inspections demonstrate how far North Korea is ready to go to alleviate US concerns. This would certainly be the case, if the US takes appropriate reciprocal steps, which would take into account the DPRK’s security concerns.

On the US’s side, the matter is complicated by a number of factors: The Bush administration is deeply divided over how to handle the nuclear problem. It is possible that in the near future the situation will not improve. Even more fundamental is the problem of what the US really wants - preservation of the denuclearized status of the Korean peninsula or regime change?

Also, US foreign policy including the field of nuclear non-proliferation still is beset by an “arrogance of power “ and “double standards.” Americans believe that under any circumstances they are free to act at their disposal, but all others are obliged to “play by the rules” - the rules that the US recently has had a tendency to change for each particular case. The US Senate decision in May 2003 on renewal of development of low-yield nuclear arms primarily intended the destruction of underground targets (where in the DPRK most military facilities are located there) which would hardly promote confidence on both sides, not to mention persuasiveness of US arguments in favor of preserva-

tion of nuclear non-proliferation in Korea and in other parts of the globe.²⁷

It seems that under these circumstances it would be almost impossible to achieve sound progress without a clear signal from the US to North Koreans about its intention to work for a peaceful solution to the nuclear issue. Among such unambiguous signals that do not require congressional consent, one example could be the removal of the DPRK from the list of states-sponsored of international terrorism. It would be much easier to do so since the State Department for several years already could not find any proof of such activity. This step could open channels to the West and may first provide Japanese aid and loans from the international financial organizations to the DPRK. The step would not cost the US a cent, and it is rather important for the administration for its relations with Congress. At the same time, such a move would provide a strong impetus for progress in all other directions.

Unfortunately, before agreeing to any substantial negotiations, the Bush administration seems inclined to use all coercive methods available for putting maximum pressure on the DPRK. The new policy is likely to be isolation and containment with employment of such highly provocative elements like keeping Pyongyang leaders under threat of instant strike and inspections of North Korean ships in the high seas. Its success would depend on to a great extent on the US’s ability to organize a new “coalition of the willing” and cooperation with China and Russia.

Incidentally, under the circumstances, Russia and China expect the ROK to play a more active role in search of a peaceful solution. Both countries consider necessary the continuation of active dialogue and further development of cooperation between North and South Korea. Moscow and Beijing hailed the process for its “substantial contribution to improving the situation on the Korean peninsula and Northeast

27 AFP, Washington, May 22, 2003.

Asia as a whole.”²⁸

Even under the long-term negotiation scenario, it is impossible to exclude occurrences of some instances of animosity and possibly even mini-crises in the relations between the DPRK on the one side, and the US, Japan and South Korea on the other. However, such outbursts of tension would most likely arise not as harbingers of the “big” conflict but as a signal of the necessity for parties to make new mutual concessions.

In any case, one can hardly expect an early and smooth settlement of the present crisis. All parties should understand that a solution to a much more fundamental problem should be sought simultaneously - how to prevent recurrence of such situations in Korea and elsewhere in the world.

28 Joint Communique of the Ministers of Foreign Affairs of the Russian Federation and the People's Republic of China on the Situation on the Korean Peninsula, February 27, 2003 (<http://www.mid.ru>).

LEGAL ELEMENTS FOR A COMPREHENSIVE SOLUTION TO THE PROBLEM OF NORTH KOREA'S WEAPONS OF MASS DESTRUCTION AND CRIMINAL ACTIVITIES

Grace M. Kang

The problems posed by the DPRK extend beyond nuclear weapons. They include chemical and biological weapons, ballistic missile proliferation and organized criminal activity. The potential for linkage to terrorists is significant. This paper recommends legal requirements to be embedded in a political solution to the DPRK nuclear crisis to achieve security comprehensively. It requires that the DPRK adhere to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention, the Biological Weapons Convention, the International Code of Conduct Against Ballistic Missile Proliferation, and the UN conventions on transnational crime, drug trafficking, terrorism, and human rights. This paper recommends immediate enforcement of existing law by interdictions, economic sanctions, and tightened export controls. For the short term, it also recommends the passage of UN Security Council Resolutions to cover gaps in existing law and to enhance political support for enforcement actions. For the longer term, it advocates the creation of more treaties against international crime, the criminalization of WMD and their proliferation, and the expansion of the ICC's legal

jurisdiction to include drug trafficking and other crimes committed by the Kim Jong il regime. These lines of action can lead to the realization of a coherent international order maintained more by comprehensive rule of law rather than use of force.

I. Introduction

The latest North Korean nuclear crisis remains a troubling puzzle begging for resolution. In October 2002, the Democratic People's Republic of Korea (DPRK) admitted to continuing the development of its nuclear weapons capability despite its agreement in 1994 to freeze its nuclear program. In addition, the DPRK possesses a significant chemical weapons stockpile and production capability, which is mostly overlooked by the press, yet is a threat as real as nuclear weapons during this time of terrorism. In addition, it maintains development of its biological warfare program. It also produces missiles, one of its chief exports along with illegal drugs. The rottenness of the regime is emanating outward. The fear is that its reach will touch the likes of Al Qaeda, providing them with weapons of mass destruction in exchange for desperately desired cash.

The DPRK's engagement in organized crime must be taken as seriously as its production of weapons of mass destruction. The networks for the former provide the same opportunity for sales and export of the latter to unsavory customers. The distinction between drug trafficking, terrorism, and other crimes is becoming increasingly blurred.¹ These areas reinforce and fuel each other and must be considered comprehensively.

The world's response, however, to the DPRK's activities has been weak and ill-defined. States have chastised the DPRK for its nuclear activity, but little more than rhetoric has materialized. The war in Iraq occupied center stage in spring 2003 and directed attention away from the DPRK. Although the United Nations (UN) Security Council met in April 2003 to address the DPRK's withdrawal from the Nuclear Non-Proliferation Treaty (NPT), it failed to reach any agreement on what measures should be taken. Although China, the DPRK and the United States met later that month, nothing was resolved. In July, the UN Security Council again failed to condemn the DPRK's actions because permanent members China and Russia opposed.²

This paper considers policy for resolving the North Korean weapons of mass destruction and illegal trade problem. It breaks the problem into three parts: 1) Problems, primarily DPRK's weapons of mass destruction (WMD), missiles and their proliferation, and criminal activities, 2) Elements for a Comprehensive Solution, focusing on legal components, and 3) Enforcement. It advocates a multilateral, comprehensive solution, incorporating legally binding international instruments. It recommends that the DPRK comply with nuclear, chemical, and biological weapons conventions; the International Code of Conduct Against Ballistic Missile Proliferation; and transnational organized crime, terrorism, and human rights conventions. It also discusses the legal basis of enforcement by practical means for restraining the DPRK, such as interdiction of ships, economic sanctions, and tightened export controls.

This paper does not advocate international law at the exclusion of politics and traditional diplomacy as the sole solution to the DPRK problem. Rather, it recognizes that international legal standards must be imbedded into a political solution to provide a clear mechanism for

1 Raphael F. Perl, Congressional Research Service, "Organized Crime, Drug Trafficking, and Terrorism in a Changing Global environment," Statement before the U.S. House Judiciary Committee (December 13, 2000).

2 John Larkin and Donald MacIntyre, "Arsenals of the Axis," *Time Asia* (July 14, 2003), p. 33.

achieving security comprehensively. It also advocates enforcement of existing law and creation of new law to promote the development of a global legal order that can manage WMD production and proliferation and transnational crime comprehensively.

II. Problems

The problems associated with the DPRK are myriad and complex. They include WMD and missile production and proliferation, illegal drug trafficking, and other international crimes. The gravest concern is that the DPRK's WMD may reach the hands of terrorists, assisted by organized criminal networks. At the same time, the people of the DPRK are suffering from inhumane conditions and human rights abuses.

Weapons of mass destruction are defined generally as nuclear, chemical, and biological weapons, with radiological weapons ("dirty bombs")³ occasionally included. International legal analysis usually follows this definition, as neither treaty nor customary international law contains an authoritative definition of WMD.

1. Nuclear Weapons

The DPRK's nuclear activities have absorbed worldwide attention since it allegedly admitted them to United States envoy James Kelly in October 2002. Since then, the DPRK has engaged in increasingly provocative behavior. In December 2002, the DPRK expelled Interna-

tional Atomic Energy Agency (IAEA) inspectors and announced its withdrawal from the 1968 Treaty on the Non-proliferation of Nuclear Weapons (NPT). In 2003, it restarted its plutonium-producing reactor and in July said it had completed processing its 8,000 spent fuel-rods,⁴ which is enough nuclear material for six or so bombs.

The agreements⁵ governing the DPRK's nuclear weapons capabilities that capture the most international attention are the NPT and the 1994 Agreed Framework between the United States and the DPRK⁶ (the Agreed Framework). The latter agreement resulted the previous time the DPRK threatened to withdraw from the former agreement in 1993. The DPRK has again threatened to withdraw from the NPT, this time apparently carrying through with its threat. It has also violated the Agreed Framework, thus undermining the resolution of the 1994 crisis.

The Agreed Framework originated when the possibility of a resolution sanctioning the DPRK was before the UN Security Council, and China indicated it might not veto it. China's pressure made the DPRK far more conducive to negotiations.⁷ Former US President Jimmy Carter brokered the deal that led to the Agreed Framework, which required North Korea to freeze its nuclear weapons program in exchange for two light water nuclear reactors (LWR) and diplomatic recognition by the United States.

3 A "dirty bomb" is a conventional explosive, such as dynamite, packaged with radioactive materials that scatter upon detonation. It is not a nuclear weapon, although it may have weapons-grade plutonium or uranium, Council on Foreign Relations, "Terrorism: Questions & Answers" (2003) at <http://www.terrorismanswers.org/weapons/dirtybomb.html>.

4 "North Korea: Fuel rod reprocessing finished," *The Korea Herald*, July 14, 2003, p. 1.

5 Another important agreement is that between the ROK and DPRK, signed December 31, 1991, in which both parties agreed not to "test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons" and not to "possess nuclear reprocessing and uranium enrichment facilities." They also agreed to reciprocal inspections by a Joint Nuclear Control Commission. However, the DPRK said it was scrapping the agreement on May 12, 2003.

6 Agreed Framework between the United States of America and the Democratic People's Republic of Korea, Geneva, October 21, 1994.

7 Don Oberdorfer, *The Two Koreas, A Contemporary History* (Indianapolis: Basic Books, 2001), p. 320.

The Agreed Framework required the United States to supply heavy oil for heating and electricity production to offset the energy foregone due to this freeze until the LWR power plants were completed. At that time, the DPRK's graphite-moderated reactors would have been dismantled. The agreement utilized the IAEA and specified that the DPRK remain a party to the NPT. It timed the delivery of key nuclear components of the LWR power plants until after DPRK's full compliance with its Safeguards Agreement with the IAEA, by which it carried out its obligations under the NPT. In addition, the Agreed Framework required the United States to provide formal assurances to the DPRK against the threat or use of nuclear weapons by the US. It would have upgraded bilateral relations to the ambassadorial level. It also called for reduction of trade and investment barriers.

Based on its alleged confession in October 2002, the DPRK has violated Section I(3) of the Agreed Framework by continuing to develop its nuclear weapons capability instead of freezing its reactors and complying with the Safeguards Agreement. When the United States stopped delivery of heavy oil in December in response, the DPRK charged that the United States was the party that was in violation of the Agreed Framework (Section I(2)) by failing to deliver.

The current status of the Agreed Framework is in doubt. The DPRK is seeking a negotiated solution to resolve the nuclear weapons crisis. The United States is also considering a negotiated solution, but does not necessarily support a return to the Agreed Framework. It has left open the possibility of more robust measures such as economic sanctions and use of force. At the same time, legislation is before the United States Congress that would definitively end compliance with the Agreed Framework.⁸ Neither the United States nor the DPRK has raised the possibility of adjudication although the breach of the Agreed

Framework could be brought before the International Court of Justice if both the DPRK and the United States agreed to its jurisdiction, as the Court lacks compulsory jurisdiction.

2. Chemical Weapons

The DPRK may be among the largest possessors of chemical weaponry in the world. The DPRK arsenal reportedly includes all of the major classes of chemical weaponry, such as mustard (blistering), phosgene (choking), hydrogen cyanide (blood) and sarin (nerve agent).⁹ Reports estimate huge amounts between 2,500 and 5,000 tons, although it is unclear if these amounts include the munitions or only the chemical agents. The DPRK has long employed chemical weapons in its military strategy, reflecting the influence of the Soviet model. In 1961, Kim Il Sung's "Declaration for Chemicalization" called for greater support of chemical weapons production. In 1966, the Soviets began providing assistance. By the late 1980s, the DPRK reportedly was able to produce chemical weapons and deploy ordnance in very large amounts. The Republic of Korea (ROK) Agency for Defense Development has estimated that the DPRK's chemical weapons production capability is 4,500 tons annually in peacetime, and 12,000 tons in wartime.¹⁰

3. Biological Weapons

The DPRK also has biological weapons capability, resulting from a dedicated effort to achieve it. While its biotechnology infrastructure is not advanced, it likely has the capability to produce sufficient amounts

⁸ Dianne E. Rennack, "North Korea: Economic Sanctions," Congressional Research Service, Washington, D.C. (January 24, 2003).

⁹ "Chemical Overview," Center for Nonproliferation Studies at the Monterey Institute of International Studies (2003) at http://www.nti.org/e_research/profiles/NK/Chemical/print/index.prt.

¹⁰ *Ibid.*

of biological agents for military use within weeks of deciding to do so.¹¹ Specific agents it is likely to possess are anthrax, smallpox, plague, and botulism. The DPRK's development of biological weapons began in the early 1960s while actual production of biological weapons agents did not begin until the early 1980s.

4. Ballistic Missiles

The DPRK's significant ballistic missile production capability is well-known. It has deployed about 500 Scud missile variants, about 100 Nodong missiles, and about 10 Taepodong-1 missiles. It is developing the Taepodong-2, which reportedly will have an intermediate range Nodong for its second stage and the capability to reach the continental United States.¹² A weaponized Taepodong-2 missile could carry a several-hundred-kilogram payload to Alaska or Hawaii. Lighter Taepodong-2 missiles could reach as far as Madison, Wisconsin.¹³ Most significantly, the DPRK may be the world's greatest exporter of ballistic missiles systems, components and technology. These exports have been valued at \$100 million annually.¹⁴ This is particularly troubling, given which states are the DPRK's primary customers. Recipients of DPRK's ballistic missiles, nuclear technology and bomb making components include Iran, Syria, Libya, Pakistan, Egypt, and the United Arab Emirates.¹⁵ The United States has attempted to negotiate an

11 "Biological Weapons Overview," Center for Nonproliferation Studies at the Monterey Institute of International Studies (2003) at http://www.nti.org/e_research/profiles/NK/Biological/print/index.prt.

12 "Missile Overview," Center for Nonproliferation Studies at the Monterey Institute of International Studies (2003) at http://www.nti.org/e_research/profiles/NK/Missile/print/index.prt.

13 Hun Kyung Lee, "North Korea's Missile Program and US Nonproliferation Strategy," *The Korean Journal of Defense Analysis*, Vol. XIV, No. 2 (Fall 2002).

14 Marcus Noland, *Avoiding the Apocalypse, the Future of the Two Koreas* (Washington, D.C.: Institute for International Economics, June 2000), p. 118.

agreement with the DPRK to halt its missile proliferation since 1996. Negotiations stalled at the end of US President Bill Clinton's administration, and they have yet to begin under President George W. Bush's administration, which favors development of a missile defense system as one element of its policy.¹⁶

5. Other Trade in Illegal Goods

The DPRK also engages in illicit activities such as smuggling, drug trafficking, and counterfeiting. The magnitude of the drug trafficking in terms of revenues is about the same as that of arms. In essence, DPRK leader Kim Jong Il is running a criminal enterprise. As Marcus Noland states in *Avoiding the Apocalypse, the Future of the Two Koreas*:¹⁷

In most countries, gangs try to penetrate the state. In the case of North Korea, it is the other way around: it is a state attempting to penetrate the world of international criminal syndicates, exploiting its sovereign status to produce drugs at home and distribute them through embassies abroad. DPRK embassies are actually required to generate profits that are sent to Kim Jong Il's "Bureau 39," his private slush fund. During the 1990s, North Koreans, mostly diplomats, have been arrested for smuggling cigarettes, alcohol and gold; trafficking in counterfeit goods, endangered species, and ivory; and illegally dealing in military equipment. The major activity, however, has been drug trafficking. The DPRK began refining opiates in the mid-1980s, but it shifted to production of methamphetamines when bad weather hurt poppy cultivation in the mid-1990s. Still, opiates dominate total revenues from drug trafficking with \$59 million annually, compared to \$12 million from amphetamines. Counterfeiting United States paper currency is another source of revenue for the DPRK, perhaps \$15 mil-

15 Larkin and MacIntyre, *op. cit.*, p. 33.

16 Lee, *op. cit.*, pp. 65-68.

17 Noland, p. 120.

lion annually.¹⁸ Other activities include prostitution, passport forgery, and bribery. Profits from all of these crimes may be financing the DPRK's WMD production.¹⁹

6. Human Rights Violations

In addition, the DPRK egregiously violates the most fundamental human rights of its citizens in several ways. Human Rights Watch has documented torture and cruel and degrading treatment of DPRK detainees in labor training camps, provisional concentration centers, political prison camps, the use of forced labor, and arbitrary and discriminatory treatment of citizens based on family background. DPRK criminal law also prohibits unauthorized departure from the country, in violation of the fundamental right to leave one's country, as stated by the International Covenant on Civil and Political Rights.²⁰ Punishment for those who leave the DPRK in such a manner may include imprisonment, hard labor, or execution.²¹ Compounding this abominable situation is the country's grave food shortage, which in previous recent years has resulted in deaths of perhaps two million persons. The shortage is the result of floods and government economic mismanagement.²²

¹⁸ Noland, *op. cit.*, p. 121.

¹⁹ Woosang Kim and Sung-Kwon Cho, "Human Security in the Korean Peninsula: A Case of the North Korean Drug Trafficking," UNESCO International Conference on Human Security in East Asia, Seoul, Korea (June 16, 2003).

²⁰ Article 12(2) states: Everyone shall be free to leave any country, including his own.

²¹ Human Rights Watch, Briefing to the 59th Session of the UN Commission on Human Rights, February 27, 2003, <http://www.hrw.org/un/chr59/dprk.htm>.

²² Hun Kyung Lee, "The US Policy and Strategy toward DPRK: Comparison and Evaluation of the Clinton and Bush Administrations," *Pacific Focus*, Vol. XVII, No. 2 (Fall 2002), p. 74.

III. Elements for a Comprehensive Solution

Finding a negotiated solution that encompasses all of the problems delineated above is complex. It involves questions of states to be involved timing and venue for negotiations and other diplomatic issues. It also requires consideration of incentives whether to have them and in what form. Policy positions range from no incentives, on the grounds that providing them would be succumbing to blackmail, to generous incentives, including large amounts of aid. The Agreed Framework or some form of it could be revived with the DPRK receiving some form of energy assistance and aid for development of its energy infrastructure. In addition, the United States could ease its trade restrictions such as waiving the Jackson-Vanik Amendment,²³ which requires freedom of emigration to allow normal trade relations and removal of the DPRK from its terrorism list, thereby opening the possibility of World Bank Group financial assistance. It could also issue a statement of non-aggression in the form of an executive agreement and elevate diplomatic relations. However, this paper recommends, whatever modalities are chosen, that the following legal requirements be included to achieve a comprehensive solution that fills in gaps, such as control of the DPRK's chemical and biological weaponry, missile proliferation, and criminal activities not covered by the Agreed Framework. Mindful of the large scale and egregious human rights abuses perpetrated by the Kim Jong il regime in addition to its WMD security threat, this paper advocates grounding policy in legal standards and holding the DPRK accountable to them. It also advocates further development of the international legal order to more comprehensively address actions such as those taken by the Kim Jong il regime as criminal.

²³ Title IV of Trade Act of 1974. The DPRK violates its citizens' freedom of emigration; therefore waiving the Jackson-Vanik Amendment would allow this human rights violation to continue.

1. The DPRK must comply with the Treaty on the Non-Proliferation of Nuclear Weapons.

The DPRK must comply with the NPT and its corresponding Safeguards Agreement including IAEA inspections. The NPT is the principal multilateral instrument for addressing the problem of nuclear proliferation. Articles I and II provide that each nuclear-weapon State Party to this Treaty undertakes not to transfer to any recipient nuclear weapons or other nuclear explosive devices and each non-nuclear-weapon State Party undertakes not to receive nuclear weapons or other nuclear explosive devices and not to manufacture or otherwise acquire nuclear weapons.

Importantly, Article III of the NPT also requires each non-nuclear state to enter into an agreement that specifies methods for verification of its compliance with the NPT. The International Atomic Energy Agency (IAEA) was created to carry out this verification function and therefore is an important element of the NPT mechanism. The DPRK met the Article III requirement by entering into a Safeguards Agreement with the IAEA on January 30, 1991.²⁴ It is this Safeguards Agreement that supplies the details on what materials the DPRK may possess and how IAEA inspections are to be conducted.

When the DPRK expelled the IAEA inspectors in December 2002, it was in violation of its Safeguards Agreement with the IAEA. The DPRK's viewpoint is that the Safeguards Agreement is no longer in force pursuant to Article 26 because the DPRK is no longer a party to the NPT. On January 10, 2003, the DPRK declared immediate effectuation of its withdrawal from the NPT, which it said took place in March 1993, when "it unilaterally announced a moratorium as long as it

deemed necessary, (because) the US has unilaterally abandoned its commitments to stop nuclear threat and renounce hostility towards the DPRK in line with the same statement."²⁵

Article X of the NPT does allow parties to withdraw from the NPT "if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country..." NPT state parties have not yet made an agreed statement in response to the DPRK's action. An argument against the DPRK's withdrawal is that it has failed to notify the state parties as required by Article X. The state parties also could question the grounds for the DPRK withdrawal. Legal status aside, the important practical significance of the DPRK's action is the IAEA's inability to verify whether it is engaging in nuclear materials production or proliferation.

2. The DPRK must sign, ratify or accede to and comply with the Chemical Weapons Convention.

The DPRK is not a party to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and Their Destruction (the Chemical Weapons Convention), which is a landmark treaty in that it was the first to eliminate an entire category of WMD. It entered into force in 1997 after 65 states had ratified it. It requires each state party to destroy its chemical weapons and production facilities and any chemical weapons it may have abandoned on the territory of another state party. The verification measures are extensive including on-site inspections that are short notice. A technical headquarters, the Organization for the Prohibition of Chemical Weapons, was established at the Hague and carries out the verification provisions. It also contains provisions for assistance of a state party if it is

²⁴ Agreement of 30 January 1992 between the Government of the Democratic People's Republic of Korea and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons.

²⁵ Text of North Korea's Statement on NPT Withdrawal in English by North Korean news agency, KCNA, at <http://cns.miis.edu/research/korea/nptstate.htm>.

attacked or threatened by chemical weapons. In addition, it governs trade in certain relevant chemicals.

In short, the Chemical Weapons Convention offers a legally binding method of reducing chemical weapons that is analogous to that provided by the NPT. It follows logically that the DPRK should be pressured to enter the Chemical Weapons Convention for the same type of legal governance of its chemical weapons activities. According to defectors, the DPRK actually considered joining the Convention in the early 1990s, but the military opposed it and overrode the foreign ministry's support of it.²⁶ The ROK has been urging the DPRK to join since 1997 but to no avail. Importantly, the Chemical Weapons Convention also prohibits proliferation. This prohibition is enhanced by the efforts of the Australia Group, which coordinates member states' domestic export controls for both chemical and biological weapons. The DPRK's membership in the Australia Group would, therefore, also be desirable.

3. The DPRK must comply with the Biological and Toxin Weapons Convention.

The principal legal instrument governing the DPRK's biological weapons development is the Biological and Toxin Weapons Convention (Biological Weapons Convention), which DPRK acceded to in 1987. The Convention, which entered into force in 1975, bans the research, development, production, stockpiling or acquisition of biological and toxic weapons. It also bans delivery systems designed for biological weapons. It does not have a specific provision for monitoring, but states may abide by a non-binding "confidence-building" regime to declare compliance by their facilities that handle dangerous organisms. A group of member states is drafting a legally binding protocol for verification to compensate for the lack of a monitoring provi-

sion, a weakness that distinguishes the Biological Weapons Convention from the better-designed Chemical Weapons Convention.

4. DPRK must sign and abide by the International Code of Conduct Against Ballistic Missile Proliferation.

The International Code of Conduct Against Ballistic Missile Proliferation (the Code) requires states to curb the proliferation of WMD-capable ballistic missiles and to exercise maximum restraint in developing, testing and deploying such missiles. Unlike the Conventions, it is not legally binding. It was produced by the Missile Technology Control Regime (MTCR), which is the chief multilateral mechanism for member states to coordinate their export controls on items that facilitate missile proliferation. The MTCR provides licensing policy and procedures for states to follow and lists specific commodities for control.

The Code is open to all states including those such as the DPRK, which are not members of the MTCR. The Code incorporates three legally binding treaties related to outer space into the actions to be followed by states.²⁷ In addition to abiding by the Code, the DPRK should join the MTCR itself. For the greatest possible comprehensiveness in export controls, it should also join the other multilateral non-proliferation export control regimes: the Nuclear Suppliers Group, the Australia Group (on chemical and biological weapons, as stated above), and the Wassenaar Arrangement (military and dual-use export controls).

²⁶ "Chemical Overview," *op. cit.*, p. 3.

²⁷ The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967); the Convention on International Liability for Damage Caused by Space Objects (1972); and the Convention on Registration of Objects Launched into Outer Space (1975).

5. *The DPRK must sign, ratify or accede to and comply with the UN Convention Against Transnational Organized Crime and the UN Drug Convention and associated conventions and protocols.*

The UN Convention Against Transnational Organized Crime, which opened for signature in December 2000, has not yet come into force and is therefore not legally binding.²⁸ However, like the Code, it provides useful guidance for curbing criminal behavior and should therefore be required of the DPRK. The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (UN Drug Convention), which is legally binding, prohibits drug trafficking. It also recognizes the link between drug trafficking and other organized criminal activity. It requires all signatories to criminalize money laundering, to institute banking safeguards, and to provide mutual legal assistance. With the Council of Europe's Laundering Convention, the UN Drug Convention has facilitated the development of an international regime against money laundering.

6. *The DPRK must sign, ratify or accede to and comply with the UN terrorism conventions.*

The United Nations has produced 12 conventions related to terrorism.²⁹ The DPRK has ratified or acceded to six of them, all dated before or during the 1970s.³⁰ The DPRK should become a party to all the UN

28 As of March 24, 2003, 147 states have signed the United Nations Convention against Transnational Organized Crime, and 33 have become parties. 40 parties are required to bring the Convention into force, <http://untreaty.un.org/English/TreatEvent2003/corelist.htm>.

29 See <http://untreaty.un.org/English/Terrorism.asp>.

30 The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973; International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on

terrorism conventions, particularly the 1997 International Convention for the Suppression of Terrorist Bombings, which prohibits any contribution connected to any explosive or lethal device deployed in a public place with the intent to cause death, serious injury, or extensive destruction. It should also become a party to the 1980 Convention on the Physical Protection of Nuclear Material, which requires levels of protection of nuclear material used for peaceful purposes while in transport.³¹ Both of these conventions also criminalize violations of their provisions, an important feature, as discussed below. In addition, the UN terrorism conventions include the prohibition of financing terrorism, another important restriction that can weaken the link between organized crime and terrorism.

7. *The DPRK must comply with international human rights standards.*

The DPRK is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The DPRK must meet its legal obligations and abide by these principal human rights treaties instead of egregiously violating them.

IV. Enforcement

Gaining DPRK agreement to the legal provisions listed above does not, of course, guarantee that it will comply with them. Enforcement of

December 17, 1979; the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on December 16, 1970; and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971.

31 See <http://untreaty.un.org/English/tersumen.htm>.

these provisions is critical for their effectiveness. An effective enforcement strategy against the DPRK must also include its organized criminal activities as they fortify the regime and magnify the potential for harm by its WMD in that they become more accessible to terrorists. However, enforcement is the weakest aspect of international law at its present stage of development.

Forms of enforcement include the use of force, the interdiction of ships and aircraft transporting weapons and illegal items, economic sanctions, and tightened export controls. The legal grounds for such actions can be created or found in several existing sources to compensate for the lack of a fully developed global enforcement mechanism. Some, therefore, are an alternative if the DPRK refuses to agree to or comply with the above instruments.

International law may require obligations of a state even in the absence of explicit treaty requirements. Customary international law, for example, is as binding as treaty provisions. Customary international law is composed of two parts: 1) actual behavior of states and 2) *opinio juris*, the belief by states that such is law. This second component is what distinguishes the custom from mere social usage. In domestic legal systems, custom is not a significant source of law. Its great significance in the international arena is a reflection of the relatively undeveloped state of legal affairs at the international level.

Customary international law is by its very nature an evolving standard. The post-Cold War has produced political and technological developments that have demanded legal development to encompass problems that have gone beyond arms control treaties.³² Scholars contend that the prohibition of WMD is now recognized as customary international law,³³ and therefore, DPRK's failure to respect the treaties

governing them does not mean that it avoids legal responsibility for its WMD activities. Some scholars also contend that terrorism and trade in illegal drugs are also now prohibited by customary international law.³⁴

The following legal grounds include traditional use of force and traditional criminal enforcement approaches. Because the DPRK includes both security and criminal threats, both approaches are appropriate. Indeed, the distinction between security threat and crime is in itself a developing area. This paper advocates a comprehensive approach that links WMD proliferation and international criminal law into one problem³⁵ to be solved by international cooperation of state bodies and instruments of enforcement, such as Interpol, state coast guard bodies, and state intelligence services. As the world increasingly seeks legal solutions, rather than coercive measures to resolve conflicts, the distinction between security threat and criminal activity should be dissolved and a unified system of order more akin to that within states should be prepared.

A. Anticipatory Self-Defense

Anticipatory self-defense is one customary international legal basis for the use of force against the DPRK. Customary international law has long recognized anticipatory self-defense as a legitimate basis for action. The concept was first articulated in the *Caroline* case of 1837, in which the British attacked the American ship *Caroline* because it was

Biological and Chemical Weapons through Sanctions, Use of Force, and Criminalization," *20 Michigan Journal of International Law* 477 (Spring 1999).

34 There is disagreement, however. Antonio Cassese, *International Law* (Oxford: Oxford University Press, 2001), states that drug trafficking is not an international crime according to customary international law, while terrorism is. Other scholars state that terrorism is not because of the difficulty in defining it.

35 Barry Kellman and David S. Gualtieri, "Barricading the Nuclear Window - A Legal Regime to Curtail Nuclear Smuggling," *University of Illinois Law Review* (1996), p. 667.

32 David P. Fidler, "Weapons of Mass Destruction and International Law," *American Society of International Law Insights* (February 2003) at <http://www.asil.org/insights/insigh07.htm>.

33 Michael P. Scharf, "Clear and Present Danger: Enforcing the International Ban on

supplying Canadian rebels in their fight against the British. US Secretary of State Daniel Webster stated that the criteria for determining whether anticipatory self-defense legally applies are whether the threat is “instant, overwhelming, leaving no choice of means and no moment for deliberation.”

An “instant” threat meant a visible mobilization of military forces preparing to attack. However, the advent of terrorism as a significant threat has raised questions about the applicability of this standard. What does “instant threat” mean after September 11, 2001? The very nature of terrorism is invisibility and utter surprise; it does not allow for the observable build-up that could provide sufficient time for a defensive response. Accordingly, scholars contend that use of force against terrorists can be justified on their past practices and doctrines alone. A specific threat is not required.

Stretching anticipatory defense to allow for use of force against a state that has not made a specific threat is more difficult to ground in law than its use against non-state terrorists because it is usually easier to see the preparation for hostile activity by a state. However, when the scenario involves WMD, states possessing them can hold the same power of surprise as non-state terrorists in that very little lead time is needed to deploy some of these weapons.³⁶ Some scholars justify the United States prosecution of the recent war in Iraq on this ground although most believe that a UN Security Council Resolution was required specifically for the action. The Security Council voted on such a Resolution but failed to pass it. The United States, with the support of the United Kingdom, disregarded the Security Council’s failure to approve and proceeded with its invasion of Iraq. The United States’ minority position was that Resolution 1441, passed in October 2002, provided sufficient legal grounds.³⁷ In the case of the DPRK, no analo-

gous Security Council Resolution exists. The legal basis for a United States attack against the DPRK would, therefore, be weaker than that for the recent war in Iraq. The ultimate enforcement mechanism - using military force to topple Kim Jong il - would be ill advised from a legal point of view.³⁸

However, anticipatory self-defense has also been applied as the legal basis for blockades. In 1962, when the United States imposed “quarantine” against Cuba to interdict the delivery of materials for medium-range ballistic missiles capable of hitting the United States, the action was largely justified as self-defense.³⁹ The interdiction of vessels laden with WMD and missile materials is now called a “critical part” of the United States’ National Strategy to Combat Weapons of Mass Destruction.⁴⁰ The catalyst for the new policy was a recent interdiction of a DPRK vessel that ironically failed to result in seizure of WMD materials because of insufficient legal grounds.⁴¹ On December 10, 2002, two Spanish naval ships stopped and boarded a DPRK cargo vessel about 600 miles from the coast of Yemen. The Spanish navy was participating in organized patrols of the area to find Al Qaeda members fleeing from Afghanistan. On board the DPRK vessel, the *Sosan*,

1441 meant the use of force if Iraq did not comply with its provisions. Some scholars contend that Resolution 687 (1991) was sufficient grounds in that the Gulf War of that time never ended.

38 In 1981, Israeli jets bombed an Iraqi nuclear reactor at Osirik. The UN Security Council condemned the attack as illegal because there was no evidence of Iraqi intent to use WMD for an attack. However, some scholars contend anticipatory self-defense justified the Israeli attack. Guy B. Roberts, “The Counter-proliferation Self-Help Paradigm: A Legal Regime for Enforcing the Norm Prohibiting the Proliferation of Weapons of Mass Destruction,” *27 Denv. J. Int’l L. & Pol’y* 483 (Summer 1999).

39 *Ibid.*

40 United States National Strategy to Combat Weapons of Mass Destruction, December 2002.

41 Wade Boese, “US Pushes Initiative to Block Shipments of WMD and Missiles,” *Arms Control Today*, Arms Control Association (July/August 2003) at <http://www.arm-scontrol.org>.

36 Stephen Murdoch, “Pre-emptive War: Is It Legal?,” *The Washington Lawyer* (January 2003), pp. 24-31.

37 The United States contended that the phrase “serious consequences” in Resolution

the Spanish found fifteen SCUD missiles hidden under sacks of cement. United States explosive experts also inspected the missiles on board. Conventional warheads and 85 drums of inhibited red fuming nitric acid, an oxidizer for Scud missile fuel, were also found. However, the United States released the *Sosan* and allowed delivery of the missiles and materials to Yemen on the grounds that the sale was legal because the short-range missiles are not banned under international law.⁴²

Although the Bush administration was not pleased with this outcome, its current policy is to focus on existing law rather than creating new international law to allow for future seizures. Interdiction is a controversial policy because a blockade is an act of war under international law. Proponents say that they are not advocating an embargo, but rather a “selective interdiction” of only suspect vessels. Critics note that the benefits of the policy are marginal whatever the legal status, given the ease of hiding WMD materials - such as a grapefruit-size ball of plutonium, which is sufficient for a nuclear weapon - without detection, while its provocation of the DPRK may be great, given that it has already stated that it considers sanctions an act of war.⁴³

42 Given the United States’ “war against terrorism,” the law of contraband could arguably be applied. This law allows confiscation of items that have military uses and are on their way by sea for the use of an enemy belligerent in wartime. The missiles clearly had a military use. However, a broad definition of belligerent state (encompassing venues of terrorist attacks, such as the USS Cole, or suspected terrorist enclaves) and wartime (the “war against terrorism”) would be required to include Yemen within its purview. The United States apparently decided not to take such a position, as the political goodwill of Yemen outweighed legal arguments favoring seizure.

43 *Council of Foreign Relations*, “Q & A: The Hunt for WMD: Is Interdiction Legal?,” June 26, 2003 at <http://www.nytimes.com/cfr/international>.

B. Domestic law of cooperating states

In its focus on existing law, the US initiative will necessarily rely significantly on the domestic law of cooperating countries to support interdictions and other enforcement actions.⁴⁴ On June 12, 2003, United States officials began orchestrating the initiative with ten states - Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, and the United Kingdom. These countries are to assess their domestic authorities to determine what interdiction efforts are possible and to identify gaps in current measures against weapons proliferation. For example, cooperating states can target known proliferation routes and chokepoint. They can strengthen existing instruments and close current loopholes. US Undersecretary of State John Bolton noted on June 4 that within the past two months, two separate WMD-related shipments believed to be headed to the DPRK were seized with France and Germany involved.

The legality of state involvement rests on law that governs jurisdiction. Customary international law recognizes five bases of extraterritorial jurisdiction: 1) territorial, 2) nationality of the perpetrator (active personality), 3) nationality of the victim (passive personality), 4) protective, and 5) universal.⁴⁵ Maritime law addresses state sovereignty over the sea and therefore is important for determining territorial jurisdiction. According to the 1982 UN Convention on the Law of the Sea, a state possesses full sovereignty over its territorial sea, which is 12 nautical miles from its coastal baseline, subject to the right of innocent passage of foreign merchants’ ships and warships. Beyond the state’s contiguous zone, 24 nautical miles beyond the baseline, and its exclusive economic zone, 200 miles beyond the baseline, is the high seas, which

44 Boese, *op. cit.*

45 CarrieLyn Donigan Guymon, “International Legal Mechanisms for Combating Transnational Organized Crime: The Need for a Multilateral Convention,” 18 *Berkeley J. Int’l L.* 53 (2000).

are free for every state.

Each state also enjoys sovereignty over the airspace above its territory and territorial sea, and therefore, may require that a foreign aircraft seek permission to fly through. Bilateral and multilateral agreements may also allow for over-flight. The 1944 Chicago Convention on International Civil Aviation, for example, allows contracting parties to fly without permission, and subjects non-scheduled air services to the right of the state flown over to require landing.⁴⁶

Thus enforcement actions will be focused on territorial waters and national airspace, where domestic law is clearly relevant, as opposed to the high seas. On the high seas, each state has exclusive jurisdiction over its own ships. A state may exercise jurisdiction over foreign ships and board them under the exceptional cases of ascertaining their nationality or whether they are engaged in piracy or slave trading, or if it is in "hot pursuit" of the ship for illegal activities and the chase commenced within its areas of jurisdiction. Otherwise, consent from the state where the ship is registered will be required to stop it on international waters and seize its cargo.

In the *Sosan* incident, the fact that the ship lacked a flag meant that it was considered as not having nationality. In such a case, persons from a foreign naval ship may board the flagless ship, as an exception to the normally governing prohibition under the United Nations Convention on the Law of the Sea. However, the DPRK has declared the incident "an act of piracy" and demanded compensation despite the unambiguous legality of the boarding.

States regularly exercise jurisdiction over drug trafficking and other crimes in the international arena, pursuant to the five bases of jurisdiction described above. Enforcement against the DPRK's criminal activity as well as WMD proliferation must be targeted as a critical element for addressing the DPRK WMD security threat because the organized

criminal activity fortifies the DPRK regime and magnifies the potential for terrorists to access DPRK's WMD. The link between terrorism and organized crime cannot be overlooked.

Drug trafficking and terrorism share many operational similarities. For example, perpetrators in both areas need weapons and use violence to achieve their aims. They both need financing and launder funds to obscure their activities. They require logistical and operational support for their clandestine activities. The same channels of delivery of drugs can easily be used for delivery of WMD to terrorists. Thus the same enforcement approaches are useful for both such as interdiction of ships. Australia, for example, stopped and boarded a DPRK freighter, the *Pong su*, after finding 50 kg of heroin in April 2003 and arrested 30 crew members including a DPRK ruling Worker's Party official. Another 75 kg of heroin believed to be from the *Pong su* was found in May 2003.⁴⁷

The similar modalities of enforcement against organized crime and the proliferation of WMD suggest that the criminalization of WMD and their proliferation may be appropriate. Indeed, nuclear smuggling and weapons proliferation is considered a primary activity of international organized crime. Nuclear smuggling is already codified by the Convention on the Physical Protection of Nuclear Material as an international crime. Scholars contend that proliferation of nuclear materials - whether by state or non-state actors - also constitutes an international crime and a crime against peace.⁴⁸ In addition, the UN Convention on the Suppression of Terrorist Bombings⁴⁹ criminalizes WMD terrorism. The Chemical Weapons Convention also requires each state party to enact implementing legislation that criminalizes its prohibitions for each of its citizens.⁵⁰

47 Dominic Hughes, "North Korea ship Heroin Haul Found," *BBC News* (May 27, 2003) at <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk>.

48 Guymon, *op. cit.*, p. 6.

49 Jan. 12, 1998, Art. 1.3(b) at <http://untreaty.un.org/English/Terrorism/Conv11.pdf>.

46 Cassese, *op. cit.*, p. 63.

Given the US initiative's emphasis on domestic legislation, cooperating states may consider enacting domestic legislation to criminalize WMD proliferation and then exercise extraterritorial jurisdiction to prosecute violators. For example, the United States has enacted a law that provides that any person who, without lawful authority, uses or threatens, attempts, or conspires to use a weapon of mass destruction including any biological agent, toxin, or vector against a national of the United States shall be punished whether such national is within the United States or not. The US Code also prohibits chemical weapons for similar uses.⁵¹

States could also apply protective and universal bases of jurisdiction to allow for their enforcement actions. Protective jurisdiction covers activities, otherwise not punished that have particularly grave consequences for the prosecuting state or threaten specific national interests such as security, integrity, sovereignty or other governmental functions.⁵² Universal jurisdiction, in its broadest form, allows a state to exercise jurisdiction over any international crime based on the rationale that it is of such gravity and magnitude that it warrants universal prosecution and that the exercise of jurisdiction does not breach the sovereign equality of states and does not lead to undue interference in the internal affairs of the state where the crime has been perpetrated.⁵³ Spain and Belgium, for example, have enacted legislation that allows their courts jurisdiction even if the accused is not in the custody of the state.⁵⁴

Another major area of domestic law that can be employed to signifi-

cant effect is export controls. States should tighten their export controls to prevent contributing to the proliferation problem. They should comply with the regulations of the Wassenaar Arrangement, the Nuclear Suppliers Group, the Australia Group, and the Missile Technology Control Regime.

C. Further Development of International Criminal Law

While existing customary law and domestic law applied extraterritorially provide significant grounds for enforcement action, significant gaps remain. A global legal architecture that effectively curbs international organized crime and WMD proliferation has yet to emerge. However, recent trends indicate that this is a realistic possibility for the future. International criminal law has developed to an extraordinary degree during the last decade. The end of the Cold War produced several mostly internal, horrifically bloody conflicts. However, international recognition of human rights standards also rose during this period, along with the revival of the UN Security Council as a potent international law-making body for the first time in decades. This new ethos, which favored greater international criminal justice, produced international criminal tribunals for the former Yugoslavia and Rwanda, and most significantly, the International Criminal Court (ICC).

The statute of the ICC does not on its face encompass such activities as trade in illegal drugs and nuclear materials, nor does it include terrorism. Perhaps an indictment against Kim Jong Il could be constructed on the grounds that his corrupt policies have resulted in grievous harm that could be categorized as a "crime against humanity," which is within the purview of the Court. Nonetheless, the DPRK has not acceded to the ICC and would assert a lack of jurisdiction against it. Again, the current situation requires that domestic law be invoked, allowing a state court to exercise extraterritorial jurisdiction over him if prosecution were to be pursued. For the future, the ICC's jurisdiction

50 Organization for the Prohibition of Chemical Weapons at <http://www.opcw.org>.

51 Scharf, *op. cit.*, p. 13.

52 Guymon, *op. cit.*

53 Cassese, *op. cit.*, p. 262.

54 Cassese, *op. cit.*, p. 261. Belgium is considering repealing its law granting Belgian courts the power to try war crimes no matter where they were committed. Patrick Lannin, "Belgium Scraps War Crimes Law Which Angered U.S.," *Reuters*, July 13, 2003.

should be expanded to cover drug trafficking and other international crimes.

In addition, more treaties should be drafted, signed and ratified to fill other gaps in international criminal law. For example, criminalization of biological weapons-related offenses should be realized by the coming into force of a draft convention to this effect.⁵⁵ Similarly, the UN Convention Against Transnational Organized Crime should come into force. Following the realization of these treaties, state parties must enact domestic legislation to implement them.

D. United Nations Security Council Resolutions

Although recent years have been propitious for the development of international criminal law, additional treaties to this effect will take time to realize. In the meantime, UN Security Council Resolutions can provide a way to supplement reliance on the enforcement of existing law. They also have the appeal of clear political support, as tangibly articulated by affirmative votes and the abeyance of veto powers held by the permanent five members of the Security Council. They also can be less ambiguous than custom-based international law.

United Nations Security Council Resolutions are legally binding on member states of the UN. Articles 41 and 42 of the United Nations Charter provide that the Security Council may use force, if necessary, to restore international peace and security. Thus the Security Council may produce resolutions requiring member states to impose sanctions and to use force to achieve this end.

The recent Security Council resolutions on Iraq illustrate the use of such resolutions to enforce the NPT. Security Council Resolution 1441

formed the legal basis for the Bush administration's decision to attack Iraq. A similar resolution could be adopted for the use of force against the DPRK, which is precisely what the DPRK fears. The Bush administration has deliberately left the use of force open as an option, though it emphasizes a preference for a peaceful, negotiated solution.

In addition to prohibiting proliferation of military materials, UN Security Council Resolutions can demand the end of proliferation of illegal drugs, counterfeit money and other illegal products. International organized criminal activity is a threat to world security and is therefore analogous to activities associated with WMD production and proliferation.⁵⁶

UN Security Council Resolutions can also require economic sanctions. Halting trade with China, for example, would have an enormous effect on DPRK behavior, as it supplies the DPRK with at least 70 percent of its fuel oil.⁵⁷ Ending the flow of money from ethnic Koreans living in Japan to the DPRK could also provide leverage, as DPRK supporters in Japan account for 80 percent of foreign investment in the DPRK.⁵⁸

The great drawback of reliance on UN Security Council Resolutions is that there is no guarantee they can be produced. As discussed above, the UN Security Council has already failed twice in 2003 to produce any statement condemning the DPRK, much less a legally binding resolution.

55 E.g. the Harvard/Sussex Program on CBW disarmament and Arms Limitation, Draft Convention on the Prevention and Punishment of the Crime of Developing, Producing, Acquiring, Stockpiling, Retaining, Transferring, or Using Biological or Chemical Weapons.

56 Guymon, *op. cit.*

57 *Council on Foreign Relations*, "Q & A: Is the US Willing to Negotiate with North Korea?," (July 17, 2003) at http://www.nytimes.com/cfr/international/slot1_071703.html.

58 Noland, *op. cit.*, p. 102.

V. CONCLUSION

The problems posed by the DPRK extend beyond non-compliance with the NPT. They include production and threatened proliferation of chemical and biological weapons in addition to nuclear weapons. The DPRK also widely proliferates ballistic missiles. In addition, it engages in organized criminal activity. The potential for linkage to terrorists is significant. This paper recommends a comprehensive, negotiated solution that includes requiring the DPRK to adhere to the NPT, Chemical Weapons Convention, Biological Weapons Convention, the International Code of Conduct Against Ballistic Missile Proliferation, and the UN conventions on transnational crime, drug trafficking, terrorism, and human rights.

This paper recommends immediate enforcement of existing law by interdictions, economic sanctions, and tightened export controls. For the short term, it also recommends the passage of UN Security Council Resolutions to cover gaps in existing law and to enhance political support for enforcement actions. For the longer term, it advocates the creation of more treaties against international crime, the criminalization of WMD and their proliferation, and the expansion of the ICC's jurisdiction to include drug trafficking and other crimes committed by the Kim Jong il regime. These lines of action can lead to the realization of a coherent international order maintained more by comprehensive rule of law rather than use of force.

**NORTH KOREA'S ECONOMIC POLICY
IN THE ERA OF "MILITARY FIRST"
- REFORM MEASURES IN JULY AND
'DEFENSE INDUSTRY FIRST' STRATEGY
FROM SEPTEMBER 2002**

Park Hyeung-Jung

The economic reform measures in July 2002 has been the subject of greatest attraction in the world recently. But just two month after July, i.e. in September, North Korea secretly, in the sense that at that time it had not officially announced any new economic policy, set a new economic strategy for developing its defense industry first, and then the light industry and agriculture, simultaneously. The July economic measures have attempted to both reserve and reform the command economy in the new conditions and environment surrounding North Korea. They may be compared to the reform measures taken between 1979-1985 in China. Although they were designed on the basis of keeping the socialist principles, they abolished the most rigid aspects of North Korean style command economy: The party lost command in the factory as the planning system decentralized; the factory and local government were managed economically and greater attention were placed on the categories of cost, profit, etc., so that they may invest their profit in

new undertakings; wage and price obtained more concrete meaning. But since September 2002, North Korea's economy has been reoriented towards developing its defense industry first. Almost every policy announcement included the axiom of developing the defense industry first, or has been legitimized by it.

I. Introduction

Kim Il-sung died on July 4, 1994. Kim Jong-il's idiosyncratic political rule began with the catchwords 'military first politics' from January 1, 1995. During the North Korean 'march of suffering' period (1995-1997), there appeared to be no special policy orientation regarding economy. After assuming chairmanship of the Korea worker's party in September 1997, Kim Jong-il started renovating state structure and embarked upon active economic policy, resuming 'on the spot guidance' for the economy from January 1998.

North Korea's economic policy thereafter can be analyzed in four phases: 1998 can be regarded as the first phase, in which North Korean authorities prepared the groundwork for economic recovery, attempting a 'new great upsurge' in production through the second Chollima movement in agriculture, coal mining, electricity, railway and transportation, and metal industry. The second phase ranged from 1999 to 2000, when they attempted to normalize production in all sectors and emphasized both strengthening planning discipline under the centralized unified guidance and harvesting actual material gain in the economic undertakings. The third phase of 'improving and strengthening the socialist economic management' started late in 2000 and included the more or less well known July economic measures of drastic wages and price increases in 2002. The fourth and current phase began in Sep-

tember 2002 with the catchwords, 'developing defense industry first,' which replaced the traditional principle of 'developing heavy industry first.'

Among the various economic measures, the July measures in 2002 have attracted much attention - they have been praised as 'reform measures introducing market economy' by many experts. In order to understand the context and theories of the July measures, we should be more or less well versed in the theories of 'improving and strengthening socialist economic management,' which has been propagated since 2001 (chapter II). The July measures will be revisited through analysis of articles in the North Korean economic journal in 2002 to find several 'economic (reform) measures,' which have not been given due attention (chapter III). Compared with the July measures, the new 'basic economic policy line of developing defense industry first' has received little attention even though North Korea's economic policy has been centered on achieving it. The economic policy of 2003 and the issuance of public bonds for people's lives in May 2003 should be understood in the context of a new principle (chapter IV).

II. Reform in Kim's Method?

- 'Improving and strengthening the socialist economic management' since 2001 -

As was previously stated, the third phase began in late 2000. Its basic orientation can be summarized with three slogans based on the report by Prime Minister Hong Sung-nam at the supreme people's assembly in April 2001: firstly, to pursue actual material gains while keeping socialist principles; secondly, to improve and perfect the socialist economic management; and thirdly, to develop management methods of socialist economy on North Korea's own idiosyncratic method, adapted to change environment and conditions.

What these mean is more concretely explained in October 3, 2001 in Kim Jong-il's lecture delivered on October 3, 2001, "On improving and strengthening socialist economic management towards the need for construction of a powerful and prosperous state."¹ His speech can be regarded as the most important and influential document on the current orientation of North Korea's economic policy. On the one hand, it emphasized the socialist principles: to regard collectivism to be superior over individualism; to maintain firmly and put rightly into practice the principle of planned economic management by the state; and to guarantee the centralized guidance by the state, etc. On the other hand, it suggested several policy innovations in the economic management to earn actual material gains: to enhance the creativity of the lower units; and to take the material interests of workers and firms into consideration more seriously, etc. They included the followings:

- Decentralization of the planning process: The state planning board only plans strategic indexes, concrete and specified indexes are left in the hands of the lower organizations and firms;
- Creating a goods exchange market between firms: Factories and firms can exchange a certain percentage of their products with others for the purpose of securing material supply;
- Setting priority for quality indexes, such as technical-economic indexes, cost, and profit, etc.: Monetary accounting systems and financial planning methods for the firms are to be established;
- Promoting production specialization while gradually abrogating self-reliance facilities in sectors and factories;
- Strengthening independent accounting and rationalization of production and distribution;
- Promoting science and technology, modernization of national

- economy, and accelerated introduction of information technology in the economy;
- Rational mobilization of surplus workers in factories for territorial and agricultural construction and urban renovation;
- Strengthening linkage between contribution and material compensation;
- Reducing what has been supplied freely by the state.

Besides these, this lecture contained one more new policy orientation which was never mentioned before - 'developing military industry first.' The following is a quotation from the lecture: "We must develop military industry first and concentrate our power on electricity, coal mining, metal industry, railway and transportation, and last but not least, agriculture. Then, we can solve food shortage problems, recover our economy step by step, and induce a new upsurge in economic construction."

This phrase, 'military industry first,' attracted little attention when the lecture was exposed by the South Korean press and made public. At that time, it was read as an announcement of policy intention for a certain period and not as a 'general line of economic construction' as has been proclaimed since September 2002.

One more innovation is contained in the lecture although it is not mentioned directly in the letter of text. Since 1961, the Daeaner (factory management) system, in which factory party commission is regarded as the supreme institution and the (right) role and behavior of party organization in factories and economic practices have been the two central subjects of both Kims' lectures almost every time they discussed economic management. But in this lecture, Kim Jong-il did not mention anything in regards to these.

¹ The Korean version of this paper can be found in the web page, http://nk.chosun.com/original/original.html?ACT=detail&mode=year&original_id=584&year=2000.

III. Economic Policy in 2002 and the July Measures

As in the past, North Korea's economic policy of 2002 has been made public through several occasions, besides the co-authored new year's editorial of the party organ, *Rodong Shinmun*. It showed little difference from that of 2001. As in the past, extractive industry, electricity, metal industry, railway and transportation have been regarded as the main fronts of economic construction. A dramatic increase in agricultural production, straightening out of the farmland in Hwanghae province, completing construction of waterways between Gaechon-Taesungho, and other problems related to people's lives have been suggested as the 'priority tasks.' Additionally, development of science and technology, cultivating human ability, improving urban management, reconstruction and modernization of industrial technology, and production movement under the catchwords 'Ranam's beacon' have been mentioned. At the supreme people's assembly in April, Prime Minister Hong Sung-nam reported several measures, which were understood as 'improving economic management' in 2001.²

1. Essentials of the July Measures

The July measures attracted much attention in 2002. Combining information, North Korea's July measures are composed of three parts: the first was increase in wages and prices on July 1st. The second was related to improving economic management. The third was temporal repression of the farmer's market.

In general, only the increase in prices and wages has been regarded as the July measures. In the beginning of July, North Korean authorities increased the state prices and wages to a realistic level - i.e. that of

the farmer's market. The price of rice, regarded as the base for other prices, was increased 55 times from 0.8 Won to 44 Won, a little lower than in the farmer's market. Basic wage was increased from 110 Won to 2000 Won. Besides this, prices of consumer goods for daily use were increased by about 20 times, and the exchange rate increased to a realistic level from 2.14 Won to 150 Won per dollar.

In regards to improving economic management, there have been no official pronouncements about which measures have been newly taken. South Koreans knew mainly from pro-North Korean *Choson Shinbo* in Japan and other sources that after July, besides factories and firms, management of all economic units are being assessed according to 'earned income,' the principle of distribution according to work done is now strictly put into practice; and the impact of party organization in the factories has been reduced, etc.

Repression of the farmer's market has been, from the start, unrealistic, and so, before long, it came to have no purpose. After July, North Korean authorities mobilized physical forces to increase control over the farmer's market while attempting to increase supply to state commodity distribution chains and thereby strengthen them. But, because these attempts reaped no success and only worsened hardships, the authorities allowed re-opening of the farmer's market. Surprisingly, in March 2003, North Korean authorities acknowledged the farmer's market as a part of socialist commodity circulation. From late March, the farmer's market in Pyongyang is now simply being called the 'market' and no longer the 'farmer's market,' taking into account the reality that not only agricultural goods but also industrial commodities are exchanged there.³ It perhaps hints at the re-evaluation of the market by North Korean authorities.

Here, reviewing articles in the North Korean quarterly, 'Economic journal' in 2002, the background and purposes of the July measures

² Report on the fifth meeting of the supreme people's assembly in the 10th legislature, *Rodong Shinmun*, March 18, 2002.

³ *Choson Shinbo*, April 1, 2003.

will be discussed, centered on the increase in prices and wages, as well as introduction of the 'earned income' index and other decentralization measures.

2. Background and Purpose of the July Measures

At first, we can observe that with the passage of time after 1998, North Korea successively pursued policies with more active and ambitious purposes. In 1998, North Korea attempted to restore the basic sectors of its industries such as agriculture, electricity, machinery and steel-making, railway and transportation. During 1999-2000, it attempted to restore the basic structure of centralized command economy, emphasizing planning discipline and normalization of production. Upon the results of years prior to 2001, North Korea has been pursuing more ambitious goals of modernized reconstruction of industry, decentralization of economic management, stressing profitability, and rationalization and restructuring of the economy.

However, as was stated by North Koreans because of new conditions and environment due to 'the demise of the world socialist market, pressure by imperialists and continuous natural catastrophe,' the traditional planned economy, which had functioned till the early 1990s, could not be restored as it was without adaptation. Restoration must take the new realities and situations into account.

Firstly, because of economic hardship, the surplus at the hands of the state has been greatly reduced and financial and material resources for the minimum function of centralized command economy are in short supply. Not only could the center not control production capacities and workers in the state factories, but it also had to promote self-reliance of the lower units, encouraging extra-plan undertakings utilizing surplus facilities and workers.

Secondly, North Korea's economy has in reality evolved into a dual economy with the state sector and farmer's market (second economy)

and with contrasting economic regularities. Traditionally, money played a passive role in the state sector, but with the development of the second economy, it increased its potential active roles (preserving values, medium of exchanges, etc.).

The duality of the economy and the increased active role of money have made it difficult to re-establish traditional centralized command economy as it was before the economic crisis of the mid-1990s. The reasons thereof can be summarized in four points: First, factories and firms would rather divert their products to the second economy with higher prices than sell them to the state with lower prices. Second, assets and resources already at the hands of the state flowed continuously into the farmer's market through larceny and corruption because of lower wages of employees. Third, the state prices for basic goods have been maintained at the lowest prices, which have no relation to the real cost, supply and demand situations, or world market prices, even if they promote squandering of goods in short supply. Fourth, disciplining of state employees has eased greatly. Officially, almost everyone in North Korea is employed in the state sector, but with the lowest wages, disappearance of subsidized goods, and highest price levels in the farmer's market, the state could not guarantee them a minimum standard of life. They would rather try to find work in the farmer's market or use their administrative power and knowledge for private purposes.

The policy of 'improving and strengthening socialist economy' from 2001 has, on the one hand, officially acknowledged the irreversible reality of the loosened grip of the state's capacity to control the lower economic units and attempted to adapt to the new situation proactively, allowing new space for the lower units where production could be increased without state guidance and material supply. On the other hand, the state attempted to secure firmly a part of the increased products to guarantee its financial income under the new circumstances.

3. General Increases in Wages and Prices

The increase in wages and prices in July has the purpose of enhancing the level of wage and price in the state sector to that of the farmer's market. First, the state price of rice has risen from 0.8 Won to 44 Won, which is almost the same as the farmer's market. It has been said that the new price of rice was determined after calculating the production cost of rice, even if it was quite impossible considering the realities of North Korea's pricing system. Actually, it was set according to 'supply and demand in the domestic market' - i.e. market prices in the farmer's market. Prices of other goods were determined by taking into account the price of basic food - i.e. rice as the standard.⁴ Second, "the volume of wage was decided after calculating living costs including payments for rice, housing, etc., with new prices." The basic wage was raised from 110 Won to 2000 Won. In this case, the average household income per month may be 4000 Won, considering almost every housewife has a job in North Korea. The new wage level may be calculated based on the price level in the farmer's market because under the current situation, almost all daily needs should be bought there. According to a survey of North Korean refugees in South Korea, the average living cost of North Koreans was said to be 3000 Won per month, and the average expenditure in the farmer's market was said to be 2000 Won.⁵

The increase in wage and price was intended to narrow the gap in wage and price levels between the state sector and farmer's market, thereby enhancing the functionality of the state sector while attempting to close the operation places of the farmer's market. Its intended impact could be summarized as follows: first, factories and farms would sell their products to the state if the price level is roughly equal between

4 *Choson Shinbo*, July 26, 2002.

5 Park Sok-sam, "Research on the Private Economic Sector in North Korea - Inferring the Scale of Private Economy, Volume of Money in Circulation, *Foreign Currency Owned by the People*," (Korean) (Bank of Korea, 2002).

state sector and farmer's market, and thereby, the state can amplify controlling power over them. Second, the firms and farms would transfer and sell their assets and resources (facilities, semi-products, foods for public distribution, etc.) to other state organizations if there is no visible advantage in selling them to the farmer's market. Third, the price increase of goods and services for daily needs, which has been supplied by the state at the lowest price level, would promote economic use of these. Fourth, the increase in wages in the state sector to reflect actual living costs could raise disciplining of state employees.

4. Measures for Improving Economic Management

Besides increases in wages and prices, several other measures are intended to enhance production and strengthen state finance. They did not resort to measures of simply increasing centralization as before. Rather, they attempted to increase or guarantee the revenue of state finance while promoting and increasing independence and responsibility of factory management. The measures are geared to enhance the productivity of state firms and local units and to establish financial relations between state and firm, in which the state could secure a certain portion of increased products as state revenue. The introduction of the 'earned income' index and the revision of financial relations between the central and local governments could be interpreted in such a context.

Introduction of the 'Earned Income' Index

Though the introduction of the 'earned income' index has not attracted much attention as part of the July measures,⁶ it constituted the economic infrastructure, upon which price and wage increase could

6 *Choson Shinbo*, November 22, 2002.

exert its effect. It replaced the index of actual goods gross production and the index of the value of gross production as the main criteria for assessing the result of a firm's management. 'Earned income' means the newly created value in monetary terms and is the sum of the social net income plus the wages of a particular firm. The introduction of the earned income index signifies the priority of the quality index and money index in the planning,⁷ and that everything be calculated and assessed in monetary terms.

There are two major merits of the earned income index.⁸ First, in order to fulfill this earned income index, the volume of realized sale must be increased. In the past, with the actual goods index or gross value of production index, if produced anyhow, the firms would be assessed as fulfilling plan targets - it does not matter whether products are sold or not. The earned income index can improve production and management quality by emphasizing indexes such as efficiency in production and profitability. In the past, the firms were appraised if having produced more even if at higher costs. Second, the earned income index makes it possible to realize the potential of firms to its fullest even if the production is not fully normalized, because it contains earned income from both planned and extra-planned production. The firms are created to endeavor to save materials and mobilize inner reserves in order to produce extra goods not foreseen in the plan for their own interests and expenditures.

The earned income would be distributed among the state, firms, and producers, and is to be distributed according to prescribed proportionalities among them,⁹ or after deduction of a certain amount of

7 Gang Eung-chul, "In order to realize the principle of our system being the best system, we should carry out the chu-che management principles of planned economy," *Economic Research* (Korean), Vol. 4, 2002, p. 12.

8 Gang Il-chun, "Temporary Interpretation on the Recent Economic Measures in our State," *KDI Economic Review of North Korea* (Korean), Vol. 4, No. 10, October 2002, p. 39.

money for the state and firms, the residues would go to the employees. In any case, if the amount of earned income becomes bigger, the distributed income for firms and employees also increases. In the past, even if the plan was not fulfilled, the state guaranteed 80% of the salary, but now, firms and factories are required to pay employees only from their earned income. Above all, under the system of earned income, firms and factories could use, on their own, surplus facilities or workers. For example, if there were no state orders or disruption of production due to interruption of supply from the state, the firms could organize production of timber, which has not been included in the plan. It was illegal to organize production outside the plan in the past. Now, the firms are able to do something with surplus facilities and workers, and if the product can find buyers, it would be acknowledged as an accomplishment.¹⁰ The piecework system as a method of payment has been reinforced and the role of reserve money for the firms has been increased - the demand for working funds is met mainly by the firm's own money or credit from banks; the firms should guarantee the depreciation by itself, and basic construction financed by the firm's own money has been increased.¹¹ The firms would be able to invest in new undertakings outside the plan if they can provide them with money.¹²

Improvements in Planning System and Methods

Besides introduction of the earned income index, planning system and methods have also been changed to encourage 'creativity' of lower

9 Chang Sung-eun, "The Substance of Earned Income in Factories and Firms, and Principles for Distribution," *Economic Research* (Korean), Vol. 4, 2002, p. 40.

10 *Chosun Shinbo*, April 28, 2003.

11 Lee Won-kyung, "The Principled Way of Solving Money Demands in the National Economy," *Economic Research* (Korean), Vol. 3, 2002, p. 28.

12 *Chosun Shinbo*, April 28, 2003.

units. The division of labor for setting plan indexes has been decentralized and rationalized¹³ - the state plans only the strategic and most important indexes regarding the priority sectors and basic industry, and firms and local governments plan the detailed and local indexes.

Above all, the independent accounting system, which has been reinforced with the introduction of the earned income index, demands also that the firms be able to concretize the indexes from above according to their own circumstances and be responsible for themselves. Thereby, the firms should earn enough money to cover their expenditures and to obtain profits, as if the firms cannot fulfill the actual material indexes, they are to be penalized through legal measures or fine imposed.¹⁴

Modifying Financial Relations Between Central and Local Governments

The introduction of the earned income index makes it possible to create a context, in which the amount of earned income can be related not only to that of firms and worker's income but also with that of state revenue, as all parties become interested in the increase of earned income. With the same intention, the financial relationship between the central and local governments has been revised.

In the case of financial relations between the state, firm, and employee, after introduction of the earned income index, the firm is to pay part of their income to the state in the first place, and only thereafter, the residual income is to be distributed between the firm and workers. In the past, from the total sales results, wages and allotments for the firm were deducted in the first place, and thereafter, the residuals went to the state.¹⁵ In this case, if the production plan has been ful-

13 Gang Eung-chul, "In order to realize the principle of our system being the best system, we should carry through the Chu-che management principles of planned economy," *Economic Research* (Korean), Vol. 4, 2002, p. 9.

14 *Choson Shinbo*, November 22, 2002.

filled to its entirety, there would be no problem, but if the plan is not satisfactorily fulfilled after deducting cost and allotments for the firm, the state would receive less than anticipated in the original plan.

Financial relations between central and local governments have been also revised on the one hand to enhance local creativity, and on the other hand to pay the state in the first place. Nowadays, the payment to the state is included in the local budget planning from the start and becomes legally binding. In the past, the local government paid this with residuals after its expenditure plan was fulfilled. The new responsibility is based upon new competency of the local government; regarding the local plan, the state decides only the amount of revenue it should collect from the local governments, and other details are left in the hands of the latter, making the local government responsible for the economic well being of the locality. Now the social welfare expenses must be paid from the local budget, not from central budget, as in the past.

In order to reinforce the local government's finances and control over firms in its locality, the revenue collection system according to locality has been reestablished. In late 2000, North Korean authorities abolished the former locality-centered revenue collection system and installed the sector ministry-oriented system. In the latter, the firms and organizations are to pay part of their income to the state through their ministry. Under the reinstalled locality centered system, they are to make payment through the local government according to their whereabouts. It is said that this measure enhances the function and role of the local governments and makes guiding and controlling local finance more efficient.¹⁶

15 Chang Sung-eun, "*The Substance of Earned Income in Factories and Firms, and Principles for Distribution*," p. 40.

16 Oh Sun-hee, "Some Problems in Improving Organization of Local Finances," *Economic Research* (Korean), Vol. 2, 2002, p. 44.

Goods Exchange Market Among Firms

With the creativity of the lower units enhanced, organizations and firms can concretize their plan indexes and also produce goods not envisaged in the plan. This situation makes it imperative to allow exchange of goods among firms outside the plan. Related to this is 'goods exchange market among firms.' Through this market, firms can exchange various surplus goods for various reasons, which would be allowed for disposal independently to increase creativity and responsibility. This type of direct exchange of goods among firms is regarded as a secondary goods supply method besides the planned supply system and as the favorable mechanism for planned development of socialist economy.¹⁷

Others

Additionally, there have been several measures worthy of attention. Firstly, factory party organization has been cut down.¹⁸ In the past, the secretary of the primary party organization would have three or four under secretaries or party guides. Now, he or she has two or three staffs. The three or four cells under the primary party organization have been cut down to essential members, and a part of the paid party officials has been replaced by non-paid members. Secondly, the area of the farmer's plot has been enlarged from 30-40 pyong (119-158 square yards) to 400 pyong (1580 square yards). The purchase price of agricultural products by the state has been increased. Distribution regarding the work group, the basic subunit of collective farms, has also improved; in the past, the results of the work group were divided evenly among its three or four smaller subgroups, but now, the distrib-

17 Lee Chang-hee, "Chu-che Opinion on Circulation of Production Goods," *Economic Research* (Korean), Vol. 1, 2002, p. 24.

18 *Choson Ilbo*, August 27, 2002.

ution is made according to the results of each subgroup. The state started to charge fees for land use to collective farms and farmer's plots, and last but not least, after Shineuju, a border city to China, was designated as a special administrative zone (Sept. 12), the Mt. Kumgang tourist zone (Oct. 23) and Gaesung industrial zone (Nov. 3) were also established.

IV. 'Defense Industry First' Policy from Sept. 2002

The fourth phase of economic policy after 1998 began in Sept. 2002 as Kim Jong-il changed the catchwords of 'basic orientation of economic construction' from 'developing heavy industry first' to 'developing defense industry first.'¹⁹ Since last September, North Korea's propagation regarding its economic policy has been related to or argued on the new principle of 'developing defense industry first.' Considering the current state of information, it is unclear as to how it has influenced North Korea's economic policy. What is certain is that it has not abrogated the reform measures from last July. Thus, it may be interpreted as mere *ex ante* ideological adaptation of economic theory to the primary political catchwords of 'military first policy.' Or, it may have reflected the intention of the leadership to change the allocation of economic resources on behalf of the defense industry to the detriment of other sectors of industries.

1. *The Relationship between the Economy and the Military in the Theory of 'Military First' Politics*

The policy of 'defense industry first' was supported by a new North Korean concept of the relationship between the economy and military

19 *Choson Shinbo*, April 11, 2002.

in the era of 'military first.'

It was clearly stated in an article: "The military first politics is the infallible precious sword for independence of the nation," as stated by the editorial board of Rodong Shinmun, the party organ on April 3, 2003. According to the article, traditionally, the relationship between the economy and the military has been falsely contemplated from the economy-centered viewpoint. On the contrary, it should be affirmed that the military plays the leading role in the relationship between the two, with economic prosperity and military first policy being observed as one entity. And even if economic power should be considered as the foundation for military power, this would mean playing the role of guarantor and propelling engine for the former.²⁰

It is true that former North Korean articles about military first policy were not written about the relationship between the military and the economy. They did not consider for the military to play the leading role. Also, when they talked about economy, they usually did not mention defense or the military industry. Representatively, the new year's editorial of 2001 declared, "The strong and grand state, which we are constructing, is a socialist paradise where all prosper and the people live without any envy," and in 2001 continued, "We have endeavored our utmost to improve the lives of the people." Additionally, it ascertained, "In the tightening of our strong economic power to the demands of a military-revolutionary era, our unfailing military power and great politico-ideological potency must be based on strong economic power." Referring to North Korea's four foremost institutions of the leader, ideology, military, and economy, the new year's editorial of

20 *Korea Central News Agency* translated the Korean word for 'military-first policy' into 'Army-based policy' before April 7, 2003. From this date, it has been designated as the 'Songun policy' as is pronounced in Korean: "Songun means regarding the military affair as the greatest state affair, and strengthening the main agent of revolution and promoting national defense and socialist construction as a whole, with the people's army as the mainstay."

2002 mentioned military and economy separately. Thereafter, it only expressed the most important problem in realizing that the potential of the economic institution was in improving the lives of the people by expediting economic construction.

However, this line of logic has changed since September 2002. At that time, it is said that Kim Jong-il propagated it as the direction of economic construction in the era of military first to develop the defense industry first and then simultaneously, the light industry and agriculture.

2. The Direction of Economic Construction in the Era of Military First Since September 2002

This 'basic line of economic development' should be regarded as a meaningful change of policy orientation. In other words, North Korea has maintained this for 50 years as the basic line of economic development to develop the heavy industry first and then simultaneously, the light industry and agriculture. This has changed since last September. Undoubtedly, North Korea had once put into practice the 'parallel policy of economic and defense construction' after the fifth general assembly of the central committee of the Korean workers' party in the fourth legislature in December 1962, but nevertheless, at that time, the 'basic line of economic development' remained in developing the heavy industry first.

We should take note of the time, September 2002, when the policy of military industry first was promulgated. This was the time, not after, but before Under Secretary of the State Department James Kelly visited North Korea during October 3-5, and North Korea's secret highly enriched uranium (HEU) nuclear weapons development was exposed. At that time, the euphoria about North Korea's opening and reform was widely kept because of North Korea's July economic measures, the improvement of relations between the two Koreas and between North

Korea and Japan. Various meetings between the two Koreas were held including North Korea's dispatch of larger sports and cheering teams to the South. Summit meetings between North Korea and Russia in August and between North Korea and Japan in September were held. Shineuju, the western border city to China, was also designated a special administrative zone in September.

Regarding the defense industry first strategy as the necessity of the era, North Korea's media brought forth the following arguments: In a Rodong Shinmun article on February 5, it said that the line of military industry first is the important demand of economic construction in the era of military first, and that they had no other alternative to overcome the reckless challenge of US imperialists and to protect national pride and independence. In an article from a pro-North Korean newspaper, the Choson Shinbo, in Japan on April 11, it said that the principle of military industry first reflects the idiosyncratic economic structure of North Korea, and is the method for enhancing economic power of the state in the shortest period under the condition of the vicious machinations of enemies.

3. The Economic Policy for 2003

As in the past, North Korea's economic policy for 2003 could be understood by reading the new year's editorial of Rodong Shinmun and the reports at the supreme people's assembly in April. The economic policy for 2003 is very similar to that for 2002, though with one important difference in that all the same policies in 2002 are mentioned under the umbrella of the 'military industry first' policy in 2003.

The 6th meeting of the supreme people's assembly in the 10th legislature on March 26 foresaw a 13.6% increase in income and 13.3% increase in expenditures for the 2003 budget. The supreme assembly has set aside 15.4% of the total budget for defense in order to "develop the defense industry and improve the defense power of the nation in

an environment of mounting tension caused by nuclear issues." The share of defense expenditure in the budget had been 14.5% from 1999 to 2001. It had decreased by 0.1% to 14.4% in 2002, but in closing accounts it was 14.9%, thereby having increased by 0.5%. Thus, the share of the defense expenditure in the national budget of 15.4% in 2003 means a 1% increase in comparison with the original plan, but a 0.5% increase in comparison with the closing accounts of 2002. If we think in absolute terms, the expected increase in defense expenditure in 2003 is about 20% in comparison to the closing account of 2002. The budget for 2003 has expected increases in investment for electricity by 12.8%, for coal mining by more than 30%, for agriculture by 21.3%, and for the light industry by 12.4%.

The supreme people's assembly also consented to issuing of public bonds for the lives of the people.²¹ Its purpose has been publicized as, 'to mobilize surplus money to supply capital for economic construction, to make even the state budget, and to guarantee defense construction and people's lives financially.' Three kinds of public bonds - 500, 1000, 5000 Won, with ten years validity - are planned for issuance from May 1, 2003 to April 2013. During the 10 valid years, lotteries for the bonds will be held twice a year for the first 2 years and once a year for the remaining years. For the prize-winning bonds, the prize and the capital will be returned, and for the remaining ordinary bonds, only the capital will be returned. North Korean authorities have said, "The issuing of bonds undertaking mobilization of a great amount of capital demand needed for constructing a strong and prosperous nation is dependent on our people's lofty patriotism and public consciousness, and buying plenty of bonds will be regarded as patriotic behavior, and accordingly, highly awarded politically and materially."

In addition, one more point should be noted. North Korea has put forward a three-year plan for solving the problem of fuel and electrici-

21 Choson Sinbo, March 3, April 2, 2003.

ty. This is the first multi-year plan in ten years - the last was the third seven-year plan between 1987 and 1993. According to Choi Hong-kyu, director of the state planning commission, the plan sets up in detail how to modernize the power plant technically to solve fuel and power problems, such as how much coal is needed to produce electricity, and what kind of machines should be produced by the department of machine industry. The plan has also set targets for sectors of industries such as metal and chemical fertilizers, on the conditions that fuel and electricity be produced as expected by the three-year plan. Traditional multi-year plans in the past set targets for all sectors of the economy, but the three-year plan focuses on energy.

V. Conclusion

To sum up, North Korea's theory and policy of "improving and strengthening socialist economic management" is geared to increase production of state firms and to hoist the earnings for the state budget by establishing new relations with the planning center on one hand and the localities and state firms on the other under the so-called "new conditions and environment." That is to say, under the condition of the state's inability to fully supply materials and financial resource, the state granted the localities and firms more independence and responsibility in management, so that they could be more productive. Simultaneously, the state improved revenue collection from the increased production in order for it to also perk up its financial situation.

Ideologically, the theory of 'improving and strengthening socialist economic management' implied both continuity and discontinuity - continuity, because it had not abolished the centralized command economy but had attempted only to adapt and change it to "the new conditions and environment." And so, it emphasized the old principles, such as the superiority of 'socialism' and 'collectivism,' 'planned

economic management by the state,' 'priority of politico-ideological incentives,' and discontinuity because it abrogates, in reality, major institutions and arguments that specifically represented the North Korean characteristic of a socialist economic management system. The 'Daeaner factory management system' and 'unification and detailed planning' are not only not mentioned, but in fact, also abolished. Although the 'priority of politico-ideological incentives' is still emphasized very strongly, it is emphasized only pathetically. On the other side, Kim Jong-il has ordered the priority of material incentive to be strictly put into practice. Besides this, North Korean authorities maintained that monetary and financial relations must be taken advantage of, that distribution according to work must be strictly adhered to, and that independent accounting for the firms must be strictly applied, all because socialism implied characters of a transitional system between capitalism and communism. They lower the ideological hurdle for speaking about the 'market,' while analyzing 'organized market in socialism' and 'goods interchange market among firms' in theoretical journals, or changing the designation of 'farmer's market' to simply 'market.'

In its overall orientation, the basic theory and policy measures of 'improving and strengthening socialist economic management' could be compared with Chinese economic reforms between 1979-1983. During this period, Chinese reforms were based on the belief in the possibility of improving the efficiency of centralized command economy through practical measures while maintaining its basic structures and principles. That is to say, in order to raise systemic efficiency, the economic units should bear more financial responsibility and increase productive motivation through decentralization and reforms of command and incentive structure. The followings are the focal points of the period: firstly, the decentralization between central and local governments, and between planning center and firms; secondly, improvements in incentive system, in which the central government allowed localities,

firms, and farms to increase their share of their products; thirdly and second, permitting private sectors and establishment of special economic zones.

Naturally, there are also differences. What differentiates the North Korean case from the Chinese counterpart is that North Korea's 'improving socialist economic management' is being linked to the policy of military industry first. The two may not be combined to be successful. One other significant difference is that one of the most important Chinese reforms at the time had been agricultural reform, which introduced a family unit production system. North Korea had not brought in a similar agricultural production system till the end of June 2003.

REGIONAL INTEGRATION IN EAST ASIA AND PERSPECTIVES FOR ECONOMIC TRANSFORMATION IN NORTH KOREA - LESSONS FROM EUROPE

*Bernhard Seliger**

While the political situation on the Korean peninsula has worsened dramatically since October 2002 when North Korea admitted to running a nuclear weapons program, the careful opening process of the North Korean economy witnessed in the recent years nevertheless has continued, forced upon the country by the disastrous economic situation. This enhances the chances for a double integration of North Korea - namely, nationally, with the far more advanced South Korea, and regionally, into the nascent economic integration area of Northeast Asia. Both processes can reinforce each other, but can also be to some extent substitutes for each other. Especially in the case of an economic transformation process without far-reaching political reforms, like in the case of China, regional integration seems more likely than national economic integra-

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tion. This paper analyzes the role of economic integration for the transformation process: In Eastern Europe, transformation preceded economic integration. In the case of Korea, economic integration can be seen as being parallel to transformation, or even anteceding it.

I. Introduction

The dramatically worsened political situation on the Korean peninsula after the exposition of North Korea's nuclear ambitions in October 2002, and the ongoing bold and often outrageous North Korean rhetoric of absolute allegiance to the Kim dynasty and their style of socialism tend to shift attention away from the fact that the careful economic opening process over the recent years has never been revoked, and indeed, continues. North Korea, finally, seems to be embracing at least marginal economic change. This, however, is not important if this change is due to a change of ideology or due to an attempt to save the isolationist ideology of self-reliance, and as long as real changes are the outcome of this opening process.¹

While the economic reform measures of mid-2002, when prices and wages were adjusted, seemed to have failed to stimulate production

1 Most probably it is the latter. Indeed, without the traumatic experience of widespread famine and the economy at the brink of collapse, there possibly would be no changes. For an account of the famine see Noland, M. - S. Robinson - T. Wang, *Famine in North Korea: Causes and Cures*, *Economic Development and Cultural Change*, Vol. 49, No. 4, pp. 741-767, Natsios, A. S. (2001), *The Great North Korean Famine*, Washington D.C., United States Institute of Peace Press; McKay, M. (2002), *The Food Crisis in the DPRK: Prospects for Policy Reform*, *International Journal of Korean Unification Studies*, Vol. 11, No. 2, pp. 143-172. Among the pressures from famine is its demographic impact; see Goodkind, D. - L. West, *The North Korean Famine and its Demographic Impact*, *Population and Development Review*, Vol. 27, No. 2, pp. 219-238.

until now, and only resulted in open inflation² in that they resemble the reforms of the late phase of Soviet socialism in Russia and Central and Eastern Europe, they nevertheless might have an impact on the change of North Korea's economic system. Ironically, the political crisis, which on the one hand leads to further isolation of the country, on the other hand makes economic reform even more necessary, since international aid has sharply reduced, affecting the import possibilities of the DPRK.³ Two questions arise for North Korea - namely, the question of the steps of necessary reform and of their sequencing. These questions have been intensely debated on in the case of the transformation of Central and Eastern European (CEE) states. While experiences in transformation and the sequencing of transformation steps have been discussed with respect to North Korea, the aspect of integration into the EU has been to a lesser degree the focus of research⁴ - this will be explored in this paper.

Early on in the transformation of post-socialist states in Europe, a consensus of necessary reform steps emerged (dubbed the "Washington consensus," since it was formulated in the international, Washing-

2 The reforms included a considerable raise in prices and wages (with the former being much higher than the latter), the introduction of the Euro as a new, parallel currency, and the extension of markets (former "farmers' markets" to include all kinds of goods with semi-free price formation. The former measures could reduce the monetary overhang in domestic and foreign currency (formerly mainly the US \$), but led to open inflation.

3 For an analysis of the DPRK's import policy see Lim, K. T. - Kim, J. - Y. (2002), *Economic and Political Changes and Import Demand Behavior of North Korea*, *Journal of Economic Development*, Vol. 27, No. 1, pp. 137-150.

4 For a discussion see Hernandi, A. (2002), *Hungarian Lessons for North Korea's Economic Transition*, *International Journal of Korean Unification Studies*, Vol. 11, No. 2, pp. 201- 219. The term "economic integration" has only been used in relation to both Korean states, for example in Lee, C. H. (1993), *Korean Unification: Issues in Transition and Economic Union*, Kiel Working Papers, No. 590, Kiel: Institute for World Economics, and Choi, Y. B. (ed.) (2001), *Perspectives on Korean Unification and Economic Integration* (Cheltenham: Elgar).

ton-based institutions involved in reforms in Latin America), a debate broke out about sequencing - i.e. the juxtaposition of “shock therapy” (a big bang transformation with all steps of transformation simultaneously) and “gradualism” (a step-by-step approach) in the early 1990s. However, later, this debate became meaningless, since outcomes of states initially choosing a similar approach differed widely. Then, a new form of sequencing debate became necessary when the CEE attempted to enter the European Communities (EC, today European Union EU): Should the transformation states be allowed to enter EC unreformed, or should they have to complete reforms before entering the EC? Only East Germany, which was absorbed by West Germany, became immediately part of the EC, while other CEE had to fulfill the so-called “Copenhagen criteria” before they were allowed to enter the EC (now EU) after protracted negotiations. The road towards EU accession gave candidate countries a roadmap for policy formulation (the Copenhagen criteria) and reduced uncertainty about their institutional development, and thereby, was crucial also in attracting investors.

The experience of European transformation countries also contains valuable lessons for North Korea for two reasons: First, the transformation processes in CEE and the former Soviet Union provide us with a number of observations on institutional development beginning with, to a large degree, similar initial conditions and similar international environment. Thereby, they come as close as possible to a situation of controlled experiments which are usually lacking in social sciences. While our initial understanding of transformation based on simplified policy choices like “shock therapy” or “gradualism” was limited, the inclusion of institutional factors and the understanding of economies as embedded in a specific culture widened the lessons to be learned from transformation states.⁵ Second, North Korea, while a Northeast

5 For an extended discussion of this methodological statement see Seliger, B. (2000),

Asian country and a political system *sui generis*, resembling a dynastic despot more than a communist party dictatorship, nevertheless has important similarities with Central and Eastern Europe - this concerns the industry structure especially, besides the common history of becoming a part of the Soviet influence sphere in the late 1940s, and at least similarly designed state organs. There has been, before the collapse of the early- and mid-1990s, an asymmetric strong development of the heavy industry at the expense of and including the agriculture and light industries. Therefore, problems in raising productivity for the economy, which had been easier in the largely agricultural countries of China and Vietnam, more closely resemble the difficulties in CEE and the former Soviet Union.

Can international economic integration also be beneficial for North Korea? And where in the sequence of reform steps should economic integration be included? This question is discussed in the latter parts of this paper and organized as follows: In the second section, the experiences from CEE in sequencing are reviewed. The third section discusses the relationship between economic integration and economic transformation. This is followed by an analysis of the potential of economic integration in East Asia for North Korea, followed by a short conclusion.

II. Sequencing in Transformation: Experiences from Central and Eastern Europe and the North Korean Case

After an initial discussion in the mid-1990s, a broad consensus of transformation steps (called the *Washington consensus*, since it was based on the experience of Washington-based international institutions

Politische Ökonomie der Systemtransformation - Stand der Forschung, ungelöste Probleme und eine Fallstudie zu Südkorea, Witten discussion papers, No. 68, Witten: University of Witten/ Herdecke.

The Washington Consensus includes the following policy and institutional changes (Williamson 1990, 1997):

- * Fiscal laxity -> fiscal austerity
- * Incoherent tax code -> tax reform
- * Closed markets -> liberalization of trade and finance
- * Official and black market exchange rate -> unified exchange rate systems
- * Closeness of economy to foreign capital -> attraction of FDI
- * Collectively owned firms -> privatization
- * High degree of regulation, esp. price regulation -> deregulation
- in the extended version: creation of property rights

Sources: Williamson, J. (1990), What Washington Means by Policy Reform, Ders. (ed.), *Latin American Adjustment: How much has happened?* Institute for International Economics, Washington D.C., Williamson, J. (1997), The Washington Consensus Revisited, L. Emmerij (ed.), *Economics and Development in the XXIst Century*, Washington, D.C.: Inter-American Development Bank.

with reforms in Latin America) emerged.

However, soon after, shortcomings of this “cookbook recipe” for transformation became clear when countries with similar initial steps of transformation showed vastly differing results. The role of institutions, especially, emerged as a “missing link” for transformation theory, but also, the role of the state and cultural influences on transformation outcomes were identified as important areas of research. When the steps of transformation are, at least generally, known, one important question remains to be solved - namely the question of, in what sequence reform steps should be taken. This as well concerns broader categories of reforms, for example the question, if political or economic reform should precede each other as more concrete questions as in the example about the relationship between liberalization of prices, privati-

zation and deregulation. Obviously, the question of sequencing is not independent from the question of how much and in what way the political regime is changed. Leaving this question open for the moment, let us turn to the experiences from Central and Eastern Europe (CEE) and East Asia in the sequencing of reforms.

In CEE the different pace and sequence of reform steps led to the juxtaposition of two strategies of transformation, or namely, ‘shock therapy versus gradualism,’ which absorbed much of the energy of the early theoretical transformation debate.⁶ Should transformation be carried out through a ‘big bang’ with all the reforms necessary for transition applied to a market economy enacted simultaneously, or should transformation follow a careful step-by-step approach? An important argument in this debate was politico-economic, concerning the costs of transformation. Advisors for shock therapy argued that the unavoidable costs of transformation would increase opposition to reform, and therefore, only a speedy reform would guarantee irrevocability.⁷ Advisors for gradualism argued that a gradual approach could help avoid certain costs of transformation and could also spread the occurrence of these costs over a longer period, making reforms more palatable.⁸

In reality, neither shock therapy nor gradualism worked as expected, since the original blueprints for transformation like the ‘Washington consensus’ proved to be insufficient for reform and the day-to-day

6 For an example see Dhanji, F. (1991), Transformation Programs: Content and Sequencing, *American Economic Review*, Vol. 81, No. 2, pp. 323-328; Falk, M. - N. Funke (1993), Zur Sequenz von Reformschritten: Erste Erfahrungen aus dem Transformationsprozeß in Mittel- und Osteuropa, *Die Weltwirtschaft*, No. 2, pp. 186-206; Hoen, H. W. (1996), “Shock versus Gradualism” in Central Europe Reconsidered, *Comparative Economic Studies*, Vol. 38, No. 1, pp. 1-20; Heybey, B. - P. Murrell (1999), The Relationship between Economic Growth and the Speed of Liberalization during Transition, *Journal of Policy Reform*, Vol. 3, No. 2, pp. 121-137.

7 Sachs, J. D. (1994), Understanding “shock therapy,” Occasional Paper No. 7, Social Market Foundation (London: Social Market Foundation).

8 Dewatripont, M. F. - G. Roland (1992), The virtues of gradualism and legitimacy in the transition to a market economy, *The Economic Journal*, Vol. 102, pp. 291-300.

decision-making in transformation countries, often in inexperienced coalition governments, led rather to a process of muddling through. Countries originally trying to enact shock therapy, like Poland or Estonia, did not take into account the time-consuming process of institution-building. At best, reforms became a reality much slower than expected, and often, some problems still exist today - for example, those of restructuring inefficient state-owned enterprises have not been fully solved. At worst, as in Russia's case, half-hearted reforms can lead to massive opposition and chaotic economic times. The only partial exception, as discussed earlier, was the German unification process, where West Germany completely absorbed the former German Democratic Republic, resulting in exorbitant costs.⁹

Countries in CEE, originally following a gradualist approach such as Hungary or Slovakia, at best saw that the reforms were inconsequential and did not result in the expected performance, followed by a second phase where reforms were accelerated (in Hungary's case, ironically, by the post-socialist government of Gyula Horn). At worst, gradualist strategies brought about no progress at all, as in some Balkan countries such as Rumania before 1996, and especially in Belarus.

Economic theorists extended their theories to incorporate the role of institutions, good governance and cultural factors to explain the vastly differing performance of transformation countries following the same strategy.¹⁰ Today, there are two results of the sequencing debate: In

9 Seliger, B. (2001a), Ten Years after German Unification: Are there any Lessons for Korean Unification?, *International Journal of Korean Unification*, Vol. 10, No. 1, pp. 117-141.

10 For an example, see Herrmann-Pillath, C. (1998), 'Wirtschaftspolitische Steuerung versus institutionelle Selbstorganisation politisch-ökonomischer Systeme: Die Transformation post-sozialistischer Volkswirtschaften,' *Selbstorganisation, Jahrbuch für Komplexität in den Natur-, Sozial- und Geisteswissenschaften* 9, pp. 333-360. Herrmann-Pillath, C. (1999a), 'Was ist und wie betreibt man wirtschaftskulturelle Transformationsforschung?', *Hans-Herrmann Hoehmann (ed.), Eine unterschätzte Dimension? Zur Rolle wirtschaftskultureller Faktoren in der osteuropäischen Transformation* (Bremen:

CEE, those countries following shock therapy were overall (with the important exception of Russia) more successful than the countries following gradualist approaches. However, the reasons for such were different from what was originally anticipated - the strategy itself was not important because the implementation of a coherent framework for the market economy in a short time period often failed: Rather, shock therapy was often a sign of a greater desire to achieve change, and regardless of the time aspect, countries opting for shock therapy generally enacted more thorough reforms, and vice versa, countries opting for gradual reforms, also often restricted the scope of reforms.

The second observation had concerned, until now, experiences from East Asia that have not been discussed, especially from China. Here, some forms of gradual reform were highly successful: The gradual liberalization of targeted sectors, often first of all agriculture and rural or communal enterprises and the introduction of special economic zones, resulted in constant and high growth rates, and so, guaranteed wide approval for further reforms. However, this approach was an economic transformation without a political transformation, meaning that the costs in terms of human rights were enormous. Under these conditions, gradualist reform in East Asia can be judged as successful.¹¹

Temmen), pp. 40-60. Herrmann-Pillath, C. (1999b) 'Staat und Transformation - Theoretische Reflektionen über einige offene Fragen der Forschung,' Hans-Herrmann Hoehmann (ed.), *Spontaner oder gestalteter Prozess? Die Rolle des Staates in der Wirtschaftstransformation osteuropäischer Länder* (Baden-Baden: Nomos), pp. 371-390; Ahrens, J. (2002), *Governance and Economic Development: a Comparative Institutional Approach*, Cheltenham: Elgar. See also the overview in Seliger, B. (2002a), *Towards a More General Theory of Transformation, Eastern European Economics*, Vol. 40, No. 1, pp. 36-62.

11 For the role of the state in Chinese transformation see Liew, L. H. (1995), Gradualism in China's Economic Reform and the Role for a Strong Central State, *Journal of Economic Issues*, Vol. 29, No. 3, pp. 883-895. Another factor in explaining the stunning high growth rates in China has been the devastation of the economy, and especially, the agricultural sector through Maoism, which later allowed a relatively easy catching-up phase.

For the North Korean transformation process, still both ways and any form of a mixture of them are possible. While North Korea had begun some kind of superficial reform and opening in the late 1980s and accelerated it after the food crisis became uncontrollable in the mid-1990s, domestic reforms are largely symbolic (like the inclusion of private property into the constitution).¹² The small, but slowly growing number of foreign or South Korean invested firms could develop towards a dual economy with a thriving private and lagging state-owned sector like in China, but for now, the developments in North Korea, including the establishment of special economic zones, are not comparable to the growth of private industries in China, as in Shenzhen.¹³ Gradual transformation, as discussed above, would partly resolve the headaches of Korean politicians fearing the collapse of the North and the subsequent costs of unification. But still, this collapse is a real possibility when the opening process translates into domestic opposition to the North's regime.

The growing, albeit small involvement of international economic and political factors, including the introduction of special economic zones, the participation in the ASEAN Regional Forum and diplomatic relationships with European states, all lead to the question of how growing international involvement and possible international integration might change the prospects of economic reform in North Korea.

12 The extent of de facto reforms in North Korea is difficult to measure. However, like in the ending phase of socialism in CEE, the growing shadow economy plays an important role for transformation even before political transformation begins; see Chun, H. - T. (1999), The Second Economy in North Korea, *Seoul Journal of Economics*, Vol. 12, No. 2, pp. 173-194; Jeong, S. - J. (2000), Expansion of North Korea's Second Economy and Change in Governance Structure, *The Economics of Korean Unification*, Vol. 5, No. 1, pp. 148-161.

13 For a comparison of the Chinese and North Korean special economic zones see Seliger, B. (2003 forthcoming), Die nordkoreanischen Sonderwirtschaftszonen - eine Wiederholung des chinesischen Erfolgsmodells? in P. Kollner (ed.), *Korea Jahrbuch 2003* (Hamburg: Institut für Asienkunde).

Again, this question reveals similarities with developments in CEE, where economic integration with the EC, and later the EU, became the foremost political goal of the mid-1990s. Thus, the next section looks into the relationship between economic transformation and integration in the case of European transformation countries.

III. Economic Transformation and Economic Integration

While the sequencing debate in CEE has become in recent years less intense, a new pattern of sequencing has been of increasing interest - namely, the relationship between economic transformation and economic integration. To a lesser extent, this new debate also has been interesting in East Asian transformation countries. In CEE, the economic reform agenda shifted more and more from the initial tasks of transformation to those of integration, especially in the accession to the European Union (EU).

The relationship between integration and transformation is not a clear priority. Trade opening and increased *de facto* integration (as measured in trade interdependence and price differentials) can be seen as a catalyst for economic transformation. In particular, it creates competition in former socialist countries, which were characterized by a monopolistic industry structure. In this sense, it reinforces a competitive policy. In Europe, early trade integration for most categories of goods was achieved through association agreements, or the so-called Europe agreements, which allowed free trade between the EU and transformation countries from the mid-1990s. *De iure* integration, like full membership in an integration area, has been seen as a result of transformation in the European context. This result of successful transformation was measurable in the Copenhagen criteria.¹⁴ However, this

14 The EU took a similar approach in the case of the Economic and Monetary Union,

Figure 1. Transformation and Integration - the CEE Experience

Macroeconomic Reform →	Accession to European Economic and(=>?)
(Inflation, exchange regime, soft budget constraint, budget deficits)	Monetary Union (Fulfillment of Maastricht Criteria)
Microeconomic Reform →	Capacity to Compete within the Single Market
(Price Reform, trade liberalization privatization, creation of markets and competition, competition policy)	(Restructuring and modernization)
Institutional Reform →	Institutional Preparation for the EU
(Law reform, property rights tax reform, banking system)	(Introduction of <i>acquis communautaire</i>)
Timeline →	

Source: Piazzolo, D. (2000), *Eastern Europe between Transition and Accession: An Analysis of Reform Requirements*, Kiel Working Paper No. 991 (Kiel: Institute for World Economics), p. 3.

is not necessary - economic communities can decide for early integration (for example, proto-membership without full rights and obligations, or, as a lesser form of observer status) to enhance transformation by the initial steps of opening.

For CEE, transformation can be divided into three large areas - namely, macroeconomic stabilization, microeconomic reform and creation of the institutional framework. In the 1990s, with the ongoing transformation process, in all three areas, the goals of transforma-

tion were gradually substituted by those of integration into the EU, as figure 1 indicates. Again, East Germany, with its unification process, followed a different path - namely an immediate integration into the EU after the end of transformation of formal institutions with unification in October 1990.¹⁵ For CEE, the path to integration is much more complicated.

The EU had always been more than an economic integration area, and namely, also a political community based on the same principles of government and ethical foundations.¹⁶ However, the large economic gap between CEE and the EU as well as the considerable resulting budgetary implications of EU enlargement made immediate enlargement impossible. Political and economic criteria set up for accession candidates in Copenhagen in 1993 was the basis for ongoing membership negotiations, but equally important is the EU reform to cope with the 12 new accession candidates.¹⁷ Basically, this means that only countries having matured in their reform process can enter the EU - transformation precedes integration.

15 This was not only a logical consequence of the profoundness of EU integration, which created a unified Germany without inclusion of East Germany into the EU - an impossibility. EU integration also was the cornerstone of strategic considerations of France and the United Kingdom, fearing an independent, non-aligned Germany at the center of Europe. For an analysis see Albach, H. (1993), *German Unification and Europe*, Working Paper No. 2, Forschungsprojekt "Transformationsprozesse in ehemals Volkseigenen Betrieben" (Vallendar: Wissenschaftliche Hochschule für Unternehmensführung).

16 The desire to join the 'community of democracies' was important in the Southern European enlargements in 1981 and 1986 when the new democracies of Greece, Spain and Portugal entered the EC. Today, for example, the Baltic states have similar, political reasons for their pursuit of integration.

17 Here is not the place for an extensive discussion of the Eastern enlargement process of the EU. See however, Seliger, B. (1999a), *Ubi certamen, ibi corona*, Frankfurt/Main: Peter Lang, and for the role of institutional competition and external constraints in the enlargement process; Seliger, B. (2002b) *Institutional Competition and External Constraints of Transformation*, *Journal of International and Area Studies*, Vol. 9, No. 1, pp. 103-122.

where membership was linked to the so-called "Maastricht criteria," which also can be measured.

This becomes clear when one is looking at the details of accession criteria. The Copenhagen criteria states that, “Membership requires that the candidate country...”:

- “...achieve stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities.”
- “...have the existence of a functioning market economy as well as the capacity to cope with competitive pressures and market forces within the Union.”
- “...have the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.”

Politically, accession countries are expected not just to subscribe to the principles of democracy and the rule of law, but actually put them into practice in daily life. They also need to ensure stability of the various institutions that enable public authorities, such as the judiciary, the police, and local government, to function effectively and consolidate democracy. Respect for fundamental rights is a prerequisite of membership and is enshrined in the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the protocol allowing citizens to take cases to the European Court of Human Rights. Freedom of expression and association and the independence of the media must also be ensured. The integration of minority populations into society is a condition of democratic stability.

A number of texts governing the protection of national minorities have been adopted by the Council of Europe, in particular, the Framework Convention for the Protection of National Minorities, which safeguards the individual rights of persons belonging to minority groups.

The economic criteria: the existence of a functioning market economy and the capacity to withstand competitive pressures and market

forces within the Union.

Proof of the existence of a functioning market economy requires a number of conditions to be met:

- Equilibrium between demand and supply established by the free interplay of market forces; liberalized prices
- Absence of barriers to market entry and exit
- The legal system, including the regulation of property rights, in place; enforceable laws and contracts
- Macroeconomic stability achieved, including price stability, sustainable public finances and external accounts
- Broad consensus on economic policy, meaning there is no danger of returning to a centrally planned economy
- Sufficiently developed financial sector to channel savings towards investment

A minimum level of economic competitiveness is required in order to withstand the competitive pressures and market forces at play within the Union. Significant factors to be taken into account include:

- A sufficient degree of macroeconomic stability, so that economic agents can make decisions in a predictable and stable climate
- A sufficient amount of human and physical capital, including infrastructure (energy, transport and telecommunications), education and research - at an appropriate cost
- The extent to which the government influences competitiveness through trade policy, competition policy, State aids, support for SMEs, etc.
- The volume and nature of goods already being traded with Member States
- The proportion of small firms in the economy. Other criteria: the obligations of membership

In applying for membership, the accession countries had to accept the complete *acquis communautaire*, i.e. the sum of all treaties, rules, and regulations in the existing EU, including political, economic and monetary union. The candidate countries must contribute to and support the Common Foreign and Security Policy. All these criteria, however, do not guarantee membership since the ability of the EU to absorb new members must be guaranteed before enlargement.

In East Asia, economic integration is much less prominent than in Europe, nevertheless, the role of regional and international integration is growing.¹⁸ Again, for the transformation countries, the minimum degree of transformation is the precondition for entering integration areas. In APEC, for example, this includes adherence to the long-term goal of free trade between member states, and in the WTO, it means a number of preconditions in trade policy, including bilateral agreements with affected WTO members. Given the much more superficial nature of the East Asian integration process, especially the lack of institutionalization, this degree is much lower than the comparable degree for CEE, and to a greater extent, economic transformation and integration into the nascent East Asian integration area are mixed.¹⁹

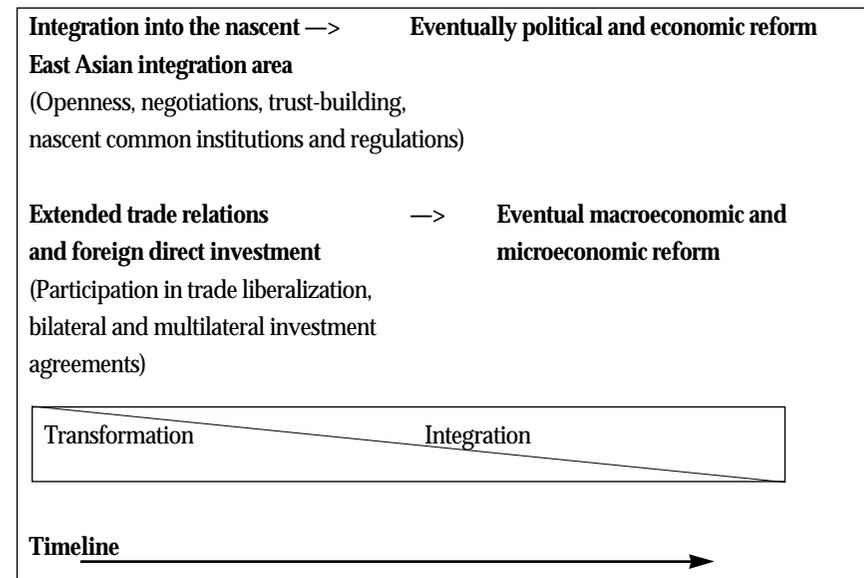
What are the perspectives for North Korea? The economic debate about transformation in North Korea, especially in the early 1990s when a breakdown of communism seemed imminent, focused on the possibilities of a “soft or hard landing” for the North Korean economy. In this sense, North Korea watchers had their own sequencing debate.²⁰

18 See Seliger, B. (2002c), Economic Integration in Northeast Asia: Preconditions and Possible Trajectories, *Global Economic Review*, Vol. 31, No. 4, pp. 17-38.

19 For example, the admission of practically and completely unprepared members into the EU, like the incident with Laos and Cambodia in the ASEAN, would not at all have been possible.

20 See Noland, M. - S. Robinson - L. - G. Liu (1998), The Costs and Benefits of Korean Unification, Institute for International Economics, Working Paper No. 98 (Washington, D.C.: Institute for International Economics); Noland, M. - S. Robinson - T. Wang (2000), Rigid Speculation: the Collapse and Revival of North Korean Economy,

Figure 2. Transformation and Integration - the North Korean Case



The role of economic integration for North Korea was not a factor in this context. Recently, the possibility to link integration and transformation has become clearer, as the inclusion of North Korea into the ASEAN Regional Forum (ARF) demonstrates.²¹ Concerning the nascent integration area in East Asia, with a focus on trade and, to a lesser extent, investment, without budgetary consequences of integration, even if increased aid may be the reward for integration, with no common institutions requiring common political systems, seemingly

World Development, Vol. 28, No. 10, pp. 1767-1787; Hale, C. (2002), North Korea in a State of Evolution: the Correlation between the Legal Framework and the Changing Dynamic of Politics and the Economy, *Korea Observer*, Vol. 33, No. 3, pp. 363-400; Lee, J. C. (2002), The Implications of North Korea's Reform Program and its Effects on State Capacity, *Korea & World Affairs*, Vol. 26, No. 3, pp. 357-364.

21 See also Mansourov, A. Y. (1999), The North Korean Crisis and Regional Cooperation, in: Akaha, T. (ed.), *Politics and Economics in Northeast Asia: Nationalism and Regionalism in Contention* (Basingstoke: Macmillan), pp. 247-275.

favorable is an early extension of East Asian economic integration to North Korea. An important additional aspect from the point of view of North Korea is that economic integration allows for much needed technical aid for transformation and technological exchange, without relying on South Korea - its adversary.

In this sense, the relationship between integration and transformation in North Korea's case is vice versa to that of CEE. In the next section, the possibilities of various economic integration areas enhancing the transformation process of North Korea are discussed.

IV. The Role of Regional Integration for North Korean Transformation

Until recently, the role of North Korea in East Asian economic integration has been seen only as one of the obstacles to closer co-operation in Northeast Asia. The two parallel developments increase the interest in the relationship between economic integration in East Asia and North Korean economic transformation. First, the issue of economic integration itself became much more important in policy discussions in East Asia since 1990, even though the results have been, until now, not very impressive.²² Second, the cautious opening of North Korea, forced

22 For an overview of economic integration in East Asia see Higgot, R. (1998), *The Pacific and beyond: APEC, ASEM and regional economic management*, in Thompson, G. (ed.), *Economic Dynamism in the Asia-Pacific* (Routledge: London/New York), pp. 335-355; Yamazawa, I. (1998), *Economic Integration in the Asia-Pacific Region*, in Thompson, G. (ed.), *Economic Dynamism in the Asia-Pacific* (Routledge: London/New York), pp. 163-184; Seliger, B. (2000a), *Wirtschaftliche Integration in Ostasien - ein Überblick* (Economic Integration in East Asia - an Overview), *Wirtschaftswissenschaftliches Studium*, No. 7, July, pp. 33-37. For Korea's position in East Asian economic integration see Seliger, B. (2001b), *Südkorea und die wirtschaftliche Integration Ostasiens - politische und wirtschaftliche Herausforderungen*, in P. Kollner (ed.), *Koreajahrbuch 2001* (Hamburg: Institut für Asienkunde), pp. 141-157.

upon the hermit state by economic catastrophe, leads to the question of whether or not East Asian integration can be helpful to enhancing the North Korean transformation process. Economic integration in this sense has three aspects: A geographical aspect, a functional aspect, and an institutional aspect.

Geographically, North Korea can act as a bridge between South Korea and Japan on one side, to Russia and the European countries on the other side. Therefore, the plan to revive railway links between North and South Korea received great interest in the last two years. The 'iron silk road' via the Trans-Siberian railroad to Europe could greatly reduce transportation costs for South Korean industries and allow North Korea to profit from this transit system.²³ However, until now, the euphoria over the 'iron silk road' seems to be highly premature due to the exorbitant costs of re-linking the railroads, especially through the inner-Korean border, technical problems due to different railroad systems, and the uncertainty over transportation in the Russian Far East. Also, North Korean interest in the railway project cooled off considerably in the last year, and after the first explorations of the negotiated trajectory, there has been no further progress. However, if one day the railroad is realized, it will aid to modernizing the transportation system in North Korea, and also, provide a closer link to the region of the Russian Far East, which had been, until now, a neglected region in Northeast Asian economic co-operation.²⁴

Functionally, economic integration in the form of bilateral or multi-

23 For a discussion see Simonia, N. A. (2001), *TKR-TSR Linkage and its Impact on the ROK-DPRK-Russia Relationship*, *Journal of East Asian Affairs*, Vol. 15, No. 2, pp. 180-202; Lee, J. Y. (2001) *(The Trans-Siberian Bridge: Activation Opportunities)*, *Studies on Russian Economic Development*, Vol. 12, No. 6, pp. 644-648.

24 For the role of the Russian Far East in East Asian economic integration see Seliger, B. (1999b), *The Double Integration: Siberia as Part of Russia, and Siberia as Part of Northeast Asia*, Paper Presented at the International Conference, Relations between Korea and Siberia, Korean-Siberian Economic Association, November 27, 1999, Proceedings, pp. 51-76.

lateral agreements is the precondition for increased trade and investment. North Korea could act as a 'prolonged workbench' for companies from the region - i.e. specialize according to its comparative advantage of low-labor cost, and thereby, it can earn urgently needed foreign currency and slowly upgrade its production facilities and management qualifications. However, there is also another important function, which is namely the possibility for North Korea to adapt its economic system to one of a politically accepted role model similar to China. While South Korea and Japan are economically the most successful states of the region, ideologically, they are difficult to imagine as role models for North Korea's economic transformation under the current political regime.²⁵ China, with its apparent reconciliation of successful market reforms and the maintenance of a suppressive political regime, has more appeal to North Korea. While China as a role model is not necessarily linked to East Asian integration, such an integration process has two additional benefits: First, it creates more ample opportunity and necessity for opening, simply due to more frequent meetings with less media attention, and until now, even the contacts to China, its closest ally, are not especially firm and profound.²⁶ Second, it allows for rapprochement towards South Korea and Japan and reform of the economy within a politically more acceptable framework. If contacts are carried out within a regional framework, less ideological

25 For the relationship between regime survival and economic policy see Kim, C.N. (2000), *Pyongyang's Dilemma of Reform and Opening: How to Compromise Economic Benefits with Political Risks*, *Korea and World Affairs*, Vol. 24, No. 2, pp. 247-276; Snyder, S. (2000), *North Korea's Challenge of Regime Survival: Internal Problems and Implications for the Future*, *Pacific Affairs*, Vol. 73, No. 4, pp. 517-533.

26 For an overview of North Korea's external relations see Namkoong, Y. (1999), *North Korean External Economic Policies and Inter-Korean Economic Cooperation*, *International Area Review*, Vol. 2, No. 2, pp. 69-91; Noland, M. (2001), *North Korea's External Economic Relations*, <http://www.iie.com/PAPERS/noland0201-1.htm>, to be published in S. S. Kim - T. H. Lee (eds.), *Northeast Asia: New Patterns of Conflict and Cooperation* (Rowman & Littlefield).

confrontation is probable, since the contacts are less prominent and more routine business.

Last but not least, there remains the question of which institutional framework is best for achieving the aforementioned goals of economic integration. Here, it is most realistic to discuss the existing (and nascent) integration projects, especially Asia Pacific Economic Co-operation (APEC), Association of Southeast Asian Nations (ASEAN) plus three (China, Japan, Korea), and membership in international organizations like the Asian Development Bank (ADB), World Trade Organization (WTO), and the International Monetary Fund (IMF). APEC was founded in 1989 with concrete goals concerning the Uruguay-round of the GATT negotiations, but later developed an ambitious program of trade liberalization of a dual track system with speedy liberalization for developed member states and slower liberalization for developing member states.²⁷ Liberalization goals are in accordance with international liberalization in the WTO framework ('open regionalism') and no strong, common institutions are planned. In the time before the Asian crisis, APEC attracted a lot of attention from outsiders since it promised access to the fast growing Asian markets. This led to geographical extension and the inclusion of Latin American states and Russia, in that APEC now reaches, from Eastern Europe, North and South America, East Asia and Oceania. The geographical extension, while a proof of APEC's attractiveness, nevertheless led to serious problems, with a current stoppage of new membership applications. Today, the agenda of member states of APEC is much too heterogeneous to allow for a clear direction of integration. The failure of the Seattle round of WTO negotiations, where various APEC states like Japan and Korea together with the EU were a major obstacle to a more

27 For a history and evaluation of APEC see Ahn, H. (1999), *APEC After 10 Years: Is APEC Sustainable?* KIEP Working Paper 99-08 (Seoul: Korea Institute for International Economic Policy) and Pascha, W. - T. Goydke (2000), *Zehn Jahre APEC*, *Wirtschaftswissenschaftliches Studium*, Vol. 29, No. 11, pp. 616-621.

extensive liberalization agenda, proved this clearly. Moreover, since the Asian crisis, many of the East Asian APEC member states have been riddled with domestic problems and found quite diverse answers to these problems.²⁸ For North Korea, the presence and intellectual leadership of the USA in the APEC process would particularly pose a problem in accepting APEC membership. But also, the liberalization goals, laid down in the Bogor declaration (1994) and the subsequent Osaka Action Agenda (1995) and Manila Action Plan (1996), are an obstacle at least to North Korea's full membership.

More successful could be the concentration of efforts of the nascent ASEAN plus three (China, Japan, South Korea) area to include the North Korea problem in its agenda, and eventually, create an ASEAN plus four. Since 1997, the ASEAN plus three group has been meeting as an 'Asia only' group without the specific anti-Western appeal of Malaysian Prime Minister Mahatir's proposal for an 'East Asian caucus.' The relative success of ASEAN, especially the planned launch of its ASEAN Free Trade Area (AFTA), would be incomplete without the inclusion of the three major North Korean economic powers, which played an important role as investors and trading partners in the Southeast Asian region, and which for various political and historical reasons, were unable to form their own integration area.

Thus far, the ASEAN plus three has not presented an agenda for integration, but has mainly been active in designing new regional macroeconomic structures since after the Asian crisis. This resulted in the Chiang Mai initiative, a system of currency swap and repurchase agreements meant to stabilize the exchange rates in the region. A study group, in existence since last year, presented a proposal for a more extensive agenda in the following ASEAN plus three meeting held in

28 Seliger, B. (2000b), Die Interdependenz von Wirtschaftsordnung und politischer Ordnung - das Beispiel der Asienkrise (the interdependence of economic and political system - the example of the Asian crisis), in: E. Keynes (ed.), *Willensbildungsprozesse und Demokratie* (Frankfurt/ Main: Peter Lang Verlag).

Brunei in November 2001. For the possible role of the ASEAN plus three for North Korea, the fact that no agenda has been fixed as of yet is rather an advantage since it reduces the requirements for participation or observer status to a minimum of political will. China as an important player in the ASEAN plus three may help to make the problematic membership of Japan and South Korea — its archenemies — more acceptable. The membership would be similar to the ARF, but with the focus more on economic questions, which from the point of view of North Korea under any scenario of political development is preferable.

In a scenario of no political change, with the current leadership remaining in power for an indeterminable time, regional integration can be the first step for a cautious opening and offers the possibility for more multilaterally co-ordinated aid.²⁹ Also, gradually, a modernization process of industry can begin, relying on various sources of foreign investment. In any scenario of political change, where either by incremental change or by collapsed leadership in economic system changes, regional integration can not only be helpful economically, but also resolve rising geopolitical questions through possible Korean unification. Economically, foreign competitors, instead of South Korean investment only, can increase the degree of competition in North Korea, thereby transforming the old monopolistic structure.³⁰ The macro and microeconomic advantages of any type of FDI are well known. However, in the case of national unification, it is often forgotten or neglected due to pressure from domestic companies eager to expand their oligopolistic power to the unified area.

The last possibility for greater economic integration is the participa-

29 Whether this aid is desirable from the point of view of South Korea, is an entirely different question. However, aid can be the bait for North Korea to accept opening, and thereby, the possibility for changes in the political system in the long run.

30 This could also have a beneficial impact on South Korea, which is largely dominated by domestic conglomerates in the form of narrow oligopolies, reinforced by vertical and horizontal integration of firms.

tion of North Korea in multilateral organizations such as the ADB, WTO or IMF. Membership would offer many advantages, especially concerning North Korea's macroeconomic unstable situation.³¹ Principally, the case of the former socialist countries joining the IMF long before any transformation process shows the compatibility of a political socialist system with these organizations. However, the information requirements and the conditionality of all possible aid make application for the ADB seem premature. Changes required would be much too drastic for the current political regime - namely, forcing it to abandon their protective shield against change in their reclusion. The Pyongyang declaration between chairman Kim Jong-il of North Korea and Prime Minister Koizumi Junichiro of Japan in September 2002 hinted at a form of official assistance through the channels of ADB - however, the price being in the form of political opening, which in this case means disclosing the fate of abducted Japanese citizens, proved to be too high. From the discussion above, it becomes clear that the ASEAN plus three is the most appropriate framework for efforts to extend East Asian economic integration with North Korea, offering flexibility of agenda and including the appropriate participants.³²

31 For a discussion see Babson, B. (2002), *The International Financial Institutions and the DPRK: Prospects and Constraints*, Vancouver, Program on Canada-Asia Policy Studies, Institute of Asian Research, University of British Columbia.

32 In this paper, the role of special economic zones as an instrument for geographically constrained regional integration and opening cannot be extensively discussed. While the imitation of special economic zones in the Chinese style has been a goal of North Korea since the early 1990s, their policy has been a failure until now; see for the largest zone, Rajin-Sonbong, Kim, I. S. (2001), *The Rajin-Sonbong Economic and Trade Zone (RSETZ): the sources of difficulties and lessons for the future*, *North Korea in Transition: Prospects for Economic and Social Reform* (based on papers from the conference developing infrastructure in North Korea for economic cooperation between the South and the North, Korea University, Seoul, Nov. 1998), pp. 301-333. Among the biggest differences between the Chinese and the North Korean approach are the high costs and inflexible labor market structures, insufficient institutional support, insufficient infrastructural investment

V. Conclusion

In this paper, the lessons of economic transformation in CEE and their implications for North Korea have been discussed. While the lessons from CEE and especially the German unification process provide us with all the necessary ingredients for economic change, there are important lessons not yet learned as to how these ingredients interact and how states must determine the appropriate mix of these ingredients for successful transformation. To reiterate with the cooking metaphor, our cookbook thus far only contains the ingredients, but not the cooking recipe itself. The complexity of change in transformation societies makes it extremely difficult to single out the role that specific policies play in transformation. Comparative research of transformation countries is the only method we have to address this question, but due to the discussed complexity of the interplay of informal and formal institutions, cultural and historical backgrounds, and the politics of transformation, more research is needed, as well positivity and normativeness for a deeper understanding of transformation, and eventually, for policy recommendations.

A concrete recipe necessarily depends foremost on North Korea's political development, the question of a soft or hard landing, and a prolonged suppressive regime or a sudden change. All scenarios, however, should pay more attention to the possibilities offered by economic integration in East Asia for North Korea. Economic integration is helpful in all scenarios, but especially in the scenario that is most probable now - namely, that of incremental political and economic change. Further research in this area seems to be a promising field and may yield valuable policy recommendations also for South Korea's approach to

and the completely changed regional economy since the early 1990s. For an extensive discussion see Seliger, B. (2003 forthcoming), *Die nordkoreanischen Sonderwirtschaftszonen - eine Wiederholung des chinesischen Erfolgsmodells?*, in P. Köllner (ed.), *Koreajahrbuch 2003*, forthcoming (Institut für Asienkunde, Hamburg).

unification. The most obvious of these recommendations for South Korea is the necessity to maintain friendly relations and indeed attempt everything to deepen economic interdependence with neighbors. While South Korea is eager for economic exchange and became for example an important investor in China, political relations to both neighboring states are still not very well developed. Changing this could mean achieving two goals with one policy, or namely, an enhanced geo-political position in Northeast Asia for South Korea and a new channel for supporting change in North Korea.

However, the agenda does not apply to South Korea alone and the dialogue between the EU and the DPRK, which began in the recent years, should also include a discussion of regional economic integration as an instrument to improve DPRK's economy as well as the relevant European lessons.³³

33 For an overview of the EU-DPRK dialogue see Yoon, D. R., Economic implications of improved DPRK-EU relations, *Journal of East Asian Affairs*, Vol. 15, No. 2, pp. 324-343; Frank, R. (2002), EU - North Korean relations: no effort without reason, *International Journal of Korean Unification Studies*, Vol. 11, No. 2, pp. 87-119.

COMPARISON OF THE SOUTH'S CONFEDERATION PROPOSAL WITH THE NORTH'S "LOW STAGE FEDERATION" PROPOSAL - FROM THE PERSPECTIVE OF INTERNATIONAL LAW

Jhe Seong-Ho

After the June 15 South-North Joint Declaration was adopted in 2000, the unification formula has become an official agenda between the two sides, and also a subject for negotiation. Though the 'Low Stage Federation' Proposal and our Confederation Proposal have some parts in common, they are much different in many respects from the international legal perspective. However, there is no doubt that Article 2 of the North and South Declaration will become a step to accelerate unification negotiations. Probably one of the most important tasks we face for cooperative relations between South and North Korea is to fully comprehend the common and differing points of each proposal, and then make every effort to discover the contact point between the two.

I. Introduction

During June 13 to 15 in the year 2000, a summit conference was held between South and North Korea for the first time since the division of the Korean peninsula 55 years ago. The summit meeting has important significance in and of itself. In addition, the conference opened a new era to improve relations between the two sides from the acceptance of the "June 15 South-North Joint Declaration." Now in the process of its implementation, the atmosphere of reconciliation and cooperation is on the rise.

The South-North Joint Declaration includes important paragraphs concerning unification formulae for South and North Korea. Paragraph 1 states, "The South and the North have agreed to solve the question of national unification in an independent manner," and paragraph 2 states, "Acknowledging that the South's Confederation Proposal and the North's "Low Stage Federation" Proposal have similarities, both the South and the North have decided to pursue national unification in this direction." These are the highlights of the declaration. The latter paragraph especially has historical and symbolic meaning because it was the first time since Korea's division for summit-level political leaders of the South and the North to officially discuss the subject of unification and search for direction. That is to say, through the summit conference in Pyongyang, the unification formula has become an official agenda between the two sides, and also, a subject for negotiation.

Generally, it has been analyzed that the June 15 South-North Joint Declaration could be produced since paragraph 2 was agreed to and accepted at the summit conference. Suppose that paragraph 1 and 2 (especially the latter paragraph) were not included - in this case, it is highly likely that the Joint Declaration would not have been drawn up. The North is understood to be placing much importance on paragraph 2, and it is no exaggeration to say that it is due to the symbolism and invisible effect of this paragraph that the declaration is being imple-

mented between the two Koreas.

However, opinions are sharply divided in our society concerning the interpretation of paragraph 2. Some positively estimate that this paragraph will overcome the division system, pursue unification, and make a giant step towards it. Others negatively say that since the paragraph touches the fundamentals of the national structure of the Republic of Korea (ROK), the Assembly's consent is required. Moreover, there exists an extreme opinion that not only the Assembly's, but the people's consent also, is needed.

Meanwhile, the Pyongyang Broadcasting Center of North Korea had reported on December 5, 2000 that the June 15 Joint Declaration, through conveying the familiarities between the South's Confederation Proposal and the North's "Low Stage Federation" Proposal, has laid a firm foundation and made clear a plan that will eventually help to pursue unification by the federation scheme. As such, a report was in conflict with the existing explanations of the ROK government; that the North's "Low Stage Federation" Proposal in fact abandons a federal system as a unification concept, and it has attracted much attention on both national and international levels. Nevertheless, in the future, paragraph 2 of the Joint Declaration will, on the one hand, act as a source of motivation for unification of the South and North, and on the other hand, will bring about conflicts between the opposing civil associations in the South as well as between the South and the North.

In this paper, I will focus on the legal aspects of the Joint Declaration, defining theoretically what the South's Confederation Proposal and the North's "Low Stage Federation" Proposal actually mean. I will first consider confederation and federation from the international law perspective, and distinguish one from the other. And, I will also observe the context of the South's Confederation Proposal and the North's "Low Stage Federation" Proposal and make comparison with each other. This study is to be of help in the future during the process of political unification when the government needs to construct a con-

tact point between the South's Confederation Proposal and the North's "Low Stage Federation" Proposal.

II. Differences Between Confederation and Federation in General International Law

Both the confederation formula and the "low stage federation" formula stated in paragraph 2 of the Joint Declaration are each similar to federation and confederation as viewed from the standpoint of international law. Therefore, before comparing the two, it is necessary to observe the concept and characteristics of confederation and federation in international law.

Both confederation and federation are a form of a union of nations. However, substantially, they differ greatly.¹

Confederation is a union of nations according to the rule of equality of nations without component states losing their individual legal distinctness.² While confederation exists as a new legal entity, it does not possess individual legal distinctness (a subject of international law as a sovereign entity) under international law. Thus, confederation has no sovereignty. In all respects, confederation is only an association of states without its own sovereignty or domestic jurisdiction, and government control over the people lies mostly in the hands of the constituent units.³

1 Regarding Korean studies on differences between confederation and federation, see Myung-gi Kim, *Studies on South-North Federative Unification* (Seoul: Tamguwon 1991), pp. 29-32; Myung-bong Chang, "A Study of Confederation in Relations of the Development of our Unification," *Korean Journal of International Law*, vol. 33, no. 2 (1998), pp. 32-34; Jae Shick Pae, "A Study on the Union of States," *Seoul Law Journal*, vol. 26, no. 1 (1985), pp. 83-85.

2 J. H. W. Verzijl, *International Law in Historical Perspective*, vol. 2 (Leiden: A. W. Sijthoff 1969), p. 159.

3 Charles G. Fenwick, *International Law*, 4th ed. (New York: Appleton, Sterling Pub-

A confederation is essentially a technical association of two or more nations for the purpose of taking a common stand internationally. Nevertheless, the component states generally possess diplomatic and military authority. Exceptionally, a confederate central organization,⁴ called congress or diet, has limited diplomatic competence as provided in the confederation-making treaty.⁵ Thus, the central organization of the confederation can make legally binding decisions on its component states that result in the limitation of their sovereign power to a certain extent.⁶

On the other hand, a federation is formed by a pact between two or more states (the constituent units of a federation are called states, cantons, lands, etc.). In a federation system, only the federal government (central government) possesses complete international distinctness and ability under international law, while constituent units retain limited residuary authority or ability in the field as permitted by federal constitutional law.⁷ Therefore, a federation directly exercises sovereign power over its component states and their people through its own governmental organs.⁸ The characteristics of a federation are as follows: A

lishers, 1983), pp. 241-242.

4 In accordance with the Articles of Confederation adopted by 13 States during the Second Continental Congress in 1777, each state had the equal status in dispatching a diplomatic mission to that congress which was a kind of confederal assembly. According to Farnsworth, the Continental Congress resembled an association of diplomatic representatives of the various states in which each state had an equal vote. E. Allan Farnsworth, *An Introduction to the Legal System of the United States, Corrected First Edition* (New York: Oceana Publications 1975).

5 Majorie M. Whiteman, *Digest of International Law*, vol. 1 (Washington D. C.: United States Government Printing Office 1963), p. 222.

6 Verzijl, *Supra* note 2, p. 159.

7 James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press 1979) p. 291; Gerhard von Glahn, *Law Among Nations*, 4th ed. (New York: Macmillan Publishing Company 1981), pp. 63, 65.

8 *Ibid.*, p.64; J. G. Starke, *Introduction to International Law*, 8th ed. (London: Butterworths 1977), p. 130.

new creation of a single sovereign power above the authorities of the component states; the constitutional distribution of powers between a federal government and constituent states' governments; the acknowledgement of independence and autonomous control of the latter to a certain extent; direct control of the central government over local (component state) governments and their people⁹; concentration of diplomatic and military authority on the central government¹⁰; the admission of component states' legislative or judicatory powers within the limits of the federal constitution, etc.¹¹

There are great differences between a confederation and a federation on various aspects. First, the two are substantially different in terms of whether the component states surrender or renounce their sovereignties. That is, with respect to existing states retaining their sovereign powers. A federation creates a new single sovereign power as a higher authority above its constituent states, but a confederation does not cause any change of sovereignty in relation to its constituent states.

Second, the two are quite different in terms of legal distinctness under international law. A confederation itself does not acquire new international legal distinctness,¹² but rather, its component states retain international distinctness. A federation obtains international distinctness while its component states lose their former international distinct-

ness. Therefore, a federation is in every respect an actual state under international law, while a confederate is not.¹³

Third, the two are drastically different in terms of their constitutive basis. The legal basis of a confederation is a treaty concluded between its component states based on international law. However, a federation is formed on the grounds of a federal constitution, which is a domestic law. Therefore, the constituent states of a confederation possess its own constitution without affecting each other's political independence or constitutional system. In contrast, those of a federation are commonly bound by a single higher federal constitution, possessing also their local constitutions to preserve autonomy within the limits of the federal constitution.

Fourth, the two are different in terms of continual stability. The confederation is substantially a temporary, provisional, and transitional form of association of states. This is proper both theoretically and historically. The fact that a confederation is a temporary union in transition to a federation is well shown by the examples of the United States or Sweden (the Confederate States of America from 1781~1787 and the Confederate States of Sweden from 1815~1948), and the experience of dissolution of the United Arab Republic (a confederation of Egypt and Syria from February 1958 to September 1961).¹⁴ That is, most confederate states either formed a federation or dissolved into unitary states, eventually. On the contrary, a federal state, unless its federal constitution is abolished, remains a permanent or semi-permanent form of association of states.

9 Ivan Bernier, *International Legal Aspects of Federalism* (London: Longman Group Limited 1973), p. 2.

10 In case of federation, its central government exclusively handles currency issuing, besides military and diplomatic authorities.

11 James Crawford, *Supra* note 7, pp. 291-292. On the main characteristics of a federation system appeared in federal constitutions, see The National Unification Board, the ROK, *A Comparison of Federal Constitutions in Democratic and Communist Countries*, Research on Unified Countries' Constitutions (3) (Seoul: the National Unification Board 1982), pp. 1-58.

12 Article 2 of the 1933 Convention on Rights and Duties of States signed at Montevideo states that a federal state shall constitute a sole person in the eyes of international law.

13 Glahn, *Supra* note 7, p. 64; Starke, *Supra* note 8, p. 129.

14 See Robert Jennings and Arthur Watts (eds.), *Oppenheim's International Law* (9th ed.), vol. 1 (London: Longman 1992), pp. 246-248; Wilfred Fiedler, "Confederations and Other Unions of States," Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*, vol. 10 (Amsterdam: North-Holland 1986), pp. 60-61; Myung-bong Chang, *Case Studies on Confederation*, Materials on Unification Policy 86-7 (Seoul: The Executive Office of South-North Dialogue, the National Unification Board of the ROK, 1986), pp. 19-42, 90-101.

Fifth, the two are totally different in terms of nationality. Any constituent person of a confederation retains the former nationality of his or her own home country, not acquiring a new nationality of the confederation itself. However, every constituent person of a federation loses the former nationality of his or her original state and obtains a single and common nationality of the federation itself.

Sixth, the two are quite different in terms of domestic jurisdiction or internal governmental control. Each component state of a confederation exercises its domestic jurisdiction (including legislative, executive, judiciary) on its people. In particular, taxing power belongs not to the confederation itself, but to its component states. Also, each component state possesses military authority (including maintenance of military force and operational command), currency issuing and control authority - a confederation itself does not have such authorities. However, its component states may take collaborated military or economic action within the framework of a confederation.

In the case of a federation, the central or federal government directly administers its authority over its component states and their people. Constituent states possess and exercise limited residuary powers, covering legislative, executive, and judicial, in accordance with the federal constitution.¹⁵ For example, taxing or budgetary power belongs both to the federation itself and to the constituent states. As a result, in a federation, the problem of distributing governmental powers between a federal government and component states arises inevitably. Nevertheless, military power¹⁶ and currency issuing and control belong only to the federal government.

Seventh, the two are much different in terms of external govern-

mental control. In a confederation, the component states, in principle, can exercise their diplomatic authority fully and unrestricted while the confederation itself exercises it with limitation, based on what is recognized in a confederation-making treaty.¹⁷ However, in a federation, the central government principally exercises the diplomatic authority, while component states cannot. In this regard, it must also be remembered that there are exceptional cases where constituent states can conclude some treaties with other countries upon recognition of the central government according to permissive provisions of the federal constitution.^{18 19}

Eighth, the two are quite different in terms of international responsibility. A confederation itself does not take responsibility for wrongful acts committed by its component states in violation of international law. In the case of a confederation, only the direct participant state in

¹⁷ Glahn, *Supra* note 7, p. 63.

¹⁸ In the Basic Law of the Federal Republic of Germany, Article 3 (3) states that insofar as the Lander have power to legislate, they may, with the consent of the Federal Government, conclude treaties with foreign states. The Constitutional Court of the ROK, A Study on Decisions of the Federal Constitutional Court and the Revisions of the Basic Law (Seoul: The ROK's Constitutional Court, 1996), p. 492. The U.S. Constitution states in Article 1 Section 10 (1) that "No State shall enter into any Treaty, Alliance, or Confederation..." and in Article 1 Section 10 (3) that "No State shall, without the Consent of Congress, ... enter into any Agreement or Compact with another state, or with a foreign Power..." An adverse interpretation of the paragraph (3) leads that with the consent of the Congress, a state may enter into an agreement with another state, or with a foreign Power. The U.S. Constitution Research Society of the ROK, *The U.S. Constitution Research*, no. 2 (1991), pp. 353-354. According to a counter interpretation of section 10 Article 1 of the U.S. Constitution, it can be inferred that a state may keep troops and conduct war in time of peace with the consent of the Congress.

¹⁹ Starke, *Supra* note 8, p. 130. The Bylorussian Republic and the Ukrainian Republic, both constituent units of the former Union of Soviet Socialist Republics, sent delegates to vote at the United Nations General Assembly, and possessed limited diplomatic authority to conclude treaties to a certain extent. However, after the dissolution of the Soviet Union rarely does a constituent unit of a federation has or exercises authority on the dispatch or acceptance of diplomatic envoys.

¹⁵ Whiteman, *Supra* note 5, p. 384; Starke, *Supra* note 8, p. 130.

¹⁶ The constituent states of a confederation maintain military power or armed force individually while the confederation itself does not. But in principle the central government only possesses military power in a federation while the constituent states of the federation do not.

international delinquencies assumes responsibility and other component states are not bound by any responsibility. However, a federation is responsible not only for its own international wrongful acts, but also, for those of its component states.²⁰ Constituent units of a federation do not take any international responsibility.

Ninth, the two are sharply different in terms of armed conflicts. Armed conflicts between confederate states are considered under international law as war. However, in a federation, such conflicts are constituted only as civil wars or domestic insurrection.²¹ In other words, the former conflicts are considered international matters, while the latter conflicts are regarded as domestic unrest in the eyes of international law.

III. Legal Character of the South's Confederation Proposal and the North's "Low Stage Federation" Proposal

1. Legal Character and Features of the South's Confederation Proposal

A. Concept of the South's Confederation Proposal

The South's Confederation Proposal, drafted in August 15th, 1994, is a formal governmental unification plan, which suggests a so-called "Korean Commonwealth" as a semi-unification process,²² and so, it can be considered the same as a "Korean Commonwealth Proposal." This

²⁰ Fenwick, *Supra* note 3, p. 243.

²¹ Han-ki Lee, *International Law Lecture*, new edition (Seoul: Pakyoungsa 1997), pp. 165, 246-247.

²² The Korean government announced that the South's Confederation proposal is on the same extension with the *Korean National Community Unification Formula* which was accepted by the absolute majority of general public in South Korea. The Ministry of Unification of the ROK, *Interpretation of Articles in South-North Joint Declaration and Q & A about Related Problems* (2000. 6), p. 12.

was already mentioned in the *Korean National Community Unification Formula*, announced in September 1989. Concerning the substance of its contents, such as the structure and organization of a Korean Commonwealth, these are listed in that unification formula, and hereafter, I will mainly focus on the *Korean National Community Unification Formula* to explain the South's confederation proposal.

The *Korean National Community Unification Formula*, or the South's Confederation Proposal emphasizes "national community" as a paradigm for unification policy. National community is momentum to tie up the entire nation, and also, in itself, is the power immobilizing reunification. This notion of national community focuses on how the people of the South and North can live together, rather than on assembling different political systems.²³

As the "Korean Commonwealth" concept spotlights the divided people's coexistence, it is quite natural to include a wide range of social, cultural, economic and political aspects.²⁴ To become an everlasting momentum for economic, social, cultural, political and military integration among the Korean people, the national community should be corporeal in the process of unification, instead of being a theoretical and ideological concept or morale. Therefore, the national community must be systematically organized. In this context, the Korean Commonwealth is to be a legal and systematic institution, or a corporeal political entity in the real world.

However, the Korean Commonwealth cannot be the ultimate goal.

²³ The National Unification Board of the ROK, *White Paper on Korean Unification 1994* (Seoul: The National Unification Board 1994), p. 65.

²⁴ A community is defined as a territorially bounded social system or a set of interlocking or integrated functional subsystems. See Jessie Bernard, "Community Disorganization," David Sills (ed.), *International Encyclopedia of Social Sciences*, vol. III (New York: The Free Press 1979), p. 163. But when we use the "national community" concept here, it covers a new supranational community, which can be formed on the basis of Korean nationalism beyond the quasi-territorial boundary, namely the Korean Demilitarized Zone.

The eventual object of national community is to unite the entire nation as a single unit. The Korean Commonwealth is a framework to restore or develop a national community that promotes integration among sub-units. From this point of view, the Korean Commonwealth can focus more on technical means or legal institutions to restore or rehabilitate national community, whereas the national community focuses on evolutionary and dynamic procedures or complex systems to bring about national harmony or reconciliation in the process of unification. Still, each affects the other, and can create a synergy effect.

B. Legal Character of the South's Confederation Proposal

The legal status of the Korean Commonwealth is defined in the *Korean National Community Unification Formula*: "As an interim period on the road to national unification, the South and North would be formed into a common sphere of national life, thereby accelerating the development of a single nation (national community), and eventually will form a perfect democratic republic system."²⁵ According to this explanation, the Korean Commonwealth implies an interim unification that prepares for a common sphere of national life, the restoration of national homogeneity and national community on the basis of mutual recognition, co-existence and prosperity. In other words, the Korean Commonwealth is an interim stage towards unification to build a common sphere of national life, managing its process of unification organized systematically.²⁶

25 The National Unification Board of the ROK, *The Korean National Community Unification Formula: to Unify This Way*, Explanations of Unification Formula (Seoul: The National Unification Board 1989), p. 12. From this point of view, the Korean National Community Unification Formula is to pursue national unification first, namely national community (economic, social, cultural community) and political unification second, by gradual progress.

26 Jhe Seong Ho, "A Comparison of Unification Proposals of the South and the North," Research Institute for National Unification, *Theory and Practice of the Korean National*

The legal status of the Korean Commonwealth is controversial:

First, some scholars understand it as a kind of confederation. Professor Jang-hee Lee identifies it as a "tentative confederation" because it is a pending organization until the unification of the two Koreas.²⁷ Professor Myung-bong Chang also identifies it as a type of confederation recognized by international law.²⁸

Second, others understand it as a union of systems or system alliance. Dr. Hong-koo Lee, Deputy Prime Minister of the National Unification Board of the ROK, who designed the *Korean National Community Unification Formula*, defined the Korean Commonwealth as a system alliance.²⁹ These words would originate in a special situation where South and North Korea are reluctant to recognize each other as a state in law, even though each exists as a different political system. Professor Hak-Joon Kim, who consents to the idea of a system alliance, regards it as something halfway between confederation and federation.³⁰

Community Unification Formula (Seoul: Research Institute for National Unification 1994), p. 195.

27 Jang-hee Lee, *Problems of Legal System Confronting the Confederation, Revolution and Korean Democracy* (3rd ed.) (Seoul: Asian Research Institute for Social Science, 1994), p. 98.

28 Myung-bong Chang, Comparison of the South's Confederation Proposal and the North's Low Stage of Federation Proposa, *Gosige*, vol. 522 (Aug. 2000), p. 26. He defined the Korean Commonwealth as a confederation within the two Koreas, partially similar to the British Commonwealth of Nations. See Myung-bong Chang, "A Study on Confederation: Regarding the Development of our Unification Formula," *Korean Journal of International Law*, vol. 33, no. 2 (1988), pp. 27-49.

29 Dr. Hong-koo Lee, former minister of the National Unification Board of the ROK, announced in August 1994 that the new "Three-phased Unification Formula for Constructing the Korean National Community" (abbreviated as "National Community Unification Formula") supplements the existing "Korean National Community Unification Formula" of 1989.

30 Hak-joon Kim, "A Study on National Community and the Korean Commonwealth: Background of the Korean National Community Unification Formula of the 6th Republic," *The Korean Journal of Unification Affairs* (National Unification Board of the

Third, another regards it as an institution between confederation and the British Commonwealth of Nations (Commonwealth). This opinion is related to the use of the words 'Korean Commonwealth,' which originates from British Commonwealth.³¹ However, the South's government explains in the ROK's formal brochure on national unification that 'Korean Commonwealth' is similar to European Community or Nordic Council, more so than confederation.³²

In my opinion, considering the unique or special legal relations between the South and North, it is reasonable to note its dual legal status according to the relationship between the two. They, externally and in the eyes of international law, exist as "one nation, two states, two governments" without denying each other's external statehood in the international arena, whereas, internally and in the eyes of domestic law, they exist as an association between "one nation, one state, two systems."

The former explains the current situation that each makes a treaty with over 100 countries and participates in international organizations such as the UN. The latter makes clear that the South and North exist as independent political entities, where one regards the other's controlled area as part of its own territory under its domestic (especially constitutional) law.

In light of this double character, the Korean Commonwealth is not a confederation of states between two states legally recognizing each other, nor a mere system alliance. Namely, the Korean Commonwealth can be externally regarded as a confederation on the one hand, while on the other, it is regarded internally as a system alliance. This double standard comes from the division of the Korean peninsula. Therefore, I would characterize it as a "quasi-confederation national community."³³

ROK), vol. 1, no. 3 (1989), pp. 38-39.

31 The National Unification Board of the ROK, *Supra* note 25, pp. 38-39.

32 The National Unification Board of the ROK, *White Paper on Unification 1990* (Seoul: The National Unification Board 1990), p. 86.

C. Contents of the South's Confederation Proposal

According to the *Korean National Community Unification Formula* or the South's Confederation Proposal, the South and the North will communicate or cooperate on the pending issues the two face, possessing independent rights on diplomatic, military and economic affairs, and maintaining "one nation, two states, two systems, two government," which means an interim unification system.³⁴

The *Korean National Community Unification Formula* proposed the establishment and operation of the Korean Commonwealth by adopting the "National Community Charter" or "South-North Association Charter" at the summit conference. As for its bodies, there are 4 main organs as in the following: 1) a Council of Presidents, or the chief executives from the two Koreas; 2) a Council of Ministers; 3) a Council of Representatives; and 4) a Joint Secretariat. In particular, the Council of Ministers, to be co-chaired by the Prime Ministers of the South and North, and to be comprised of about ten cabinet-level officials from each side, would discuss and adjust all pending South-North issues and ensure the implementation of its decisions. Under the Council, five standing committees would be created to deal with humanitarian, political or diplomatic, economic, military, social and cultural affairs. The Council of Representatives would be formed of about 100 legislators, with equal numbers representing both sides.³⁵ Through this organ, the Korean Commonwealth can solve current issues, develop the national community and systematically prepare for unification.

In addition, both the South and North would present their own proposals for the constitution of a unified Korea to the Council of

33 Seong Ho Jhe, *Theory and Practice of the Special Relationship between the South and the North: Legal Issues and their Solution* (Seoul: Hanwool Academy 1995), p. 32; Seong Ho Jhe, "The Issue of Amending of Constitutional Articles on National Unification," *Korean Journal of Unification Studies*, vol. 1, no. 1 (1992), p. 27.

34 Seong Ho Jhe, *Supra* note 26, pp. 194-195.

35 The National Unification Board of the ROK, *Supra* note 25, pp. 49-50.

Representatives so as to combine into a single draft. The agreed draft of the constitution of a unified Korea should be finalized and promulgated through democratic methods and procedures.

The address laid down the phased process of unification as follows: 1) Drafting a united constitution; 2) Finalizing the draft constitution; 3) Holding general elections; and 4) Forming a unified legislature and government.³⁶ Furthermore, the unified national assembly would consist of both Houses - the Upper House of local representatives and the Lower House of people representatives.³⁷

The unified Korea must be a democratic nation that guarantees the human rights of everyone and their right to seek happiness.³⁸ Moreover, the unified nation would maintain neighborly and friendly relations with all other countries contributing to world peace and human welfare.³⁹

2. North Korea's "Low Stage Federation" Proposal: Its General Principles, Legal Status and Contents

A. Concept of the "Low Stage Federation" Proposal

The North's proposal for "Low Stage federation," which was stated

in paragraph 2 of the South-North Joint Declaration, is regarded as a modification of its former unification concept by the "Koryo Federation," which was publicly announced on Oct. 10, 1980. But Pyongyang named its Koryo Federation Proposal as the "Proposal for the Establishment of the *Democratic Federal Republic of Koryo* (DCRK)" (English translation). In spite of its name, the DCRK bears more similarity to a federation than to a confederation, and is expressed as the "

in the Korean language ("*Democratic Federal Republic of Koryo*" in the literal translation). It is because the structure and functions of the DCRK resemble those of a federation rather than a confederation, and North Korea characterizes its unification formula as a federation proposal on a domestic political level and in the Korean language as well.

North Korea's standpoint concerning the "Low Stage Federation" was explicitly implied for the first time during Kim Il-sung's policy report in his New Year's speech on Jan. 1, 1991. In the speech, Kim had referred to several concrete proposals such as the following: It is necessary for the South and North to draw a pan-national agreement over the "Koryo Federation Proposal" with more ease; North Korea is now eager to confer more powers to the regional governments of the South and North⁴⁰; North Korea will not object to joining the United Nations with South Korea even before the constitution of a federal union, if the joining is under a single ticket for both sides of Korea; representatives

³⁶ Seong Ho Jhe, *Supra* note 26, p. 198.

³⁷ The National Unification Board of the ROK, *Supra* note 25, p. 51.

³⁸ In regard to the features of a national society, the ROK government said in "the Korean National Community Unification Formula" of 1989 that the unified country must be a single national community in which every citizen is his own master, that is to say, a democratic nation that guarantees freedom and human rights of every individual and his right to seek happiness. The National Unification Board of the ROK, *A Comparison of Unification Policies of South and North Korea* (1990), p. 131; The National Unification Board of the ROK, *Supra* note 32, p. 46. Such a feature of the unified Korea has been slightly modified to an advanced democratic country that guarantees the freedom, welfare and dignity of people in the 1994 National Community Unification Formula. However, there is no big difference between the two.

³⁹ The National Unification Board of the ROK, *Supra* note 23, pp. 62-63.

⁴⁰ Kim Il-sung reaffirmed the basic principles of federal unification idea in his New Year's Speech of 1991. They are as follows. "In consideration of two different social systems of the North and the South, the unification of the fatherland should be accomplished by federation scheme based on 'One Nation, One Country, Two Systems, Two Governments,' not in the condition of the life-and-death struggle but in the peaceful atmosphere. The unification formula based on 'One Nation, One Country, Two Systems, Two Governments' is to ally the two Koreas and establish an unified national country by allowing them to retain their respective ideologies and systems. This theory starts from the premise that two different systems and two different governments can exist in one national country," *Rodong Sinmun* (Labor Newspaper), Jan. 1, 1991, p. 2.

of the two regional governments, all political parties and social organizations from both sides should be called for the 'Conference for Political Negotiation on National Unification' to solve the unification issues confronting the fatherland as soon as possible; and the matter of integrating the two Koreas' different political systems can be settled more gradually and naturally by the coming generations.⁴¹

After Kim Il-sung's New Year's speech, North Korea showed its same standpoint through announcements of the North's high-ranking officials, that it is possible to establish a transient unification system by adopting the "Low Stage Federation."⁴² Sung-pil Son, the then North Korean Ambassador to Russia, stated at the meeting with Mr. Rogachov, the Russian Vice-minister of Foreign Affairs, "In due consideration of the change of the international situations, North Korea has modified the "Koryo Federation Proposal," and its modification is now in the final stage. As the highest unification body over the North and South, the Supreme National Federal Assembly will be formed, and as well, the Permanent Federal Committee (federal government) as a standing executive body will be created to guide the regional governments of the two sides and to take charge of the overall programs of the federal state (DCRK), and it shall not obstruct the autonomy of the North and South. The regional governments of both sides will independently perform operations in the fields of national defense, diplomacy, legislation, and economy. However, both the federal government and the two regional governments shall solve the essential international problems in cooperation, and cope with the external threats together. These schemes reflected some of the affirmative constituents from South Korea's *Korean National Community Unification Formula*, and the North is willing to perform more profound studies

on the unification formula."⁴³

Jun-ki Chung, chairman of the External Cultural Contact Committee, stated at a meeting with a Kyodo Correspondence reporter during his visit to Japan on April 8, 1991, "It is possible for both the two regional governments to maintain their own authorities separately to deal with diplomatic and military affairs."⁴⁴ Ki-bok Yun, Secretary of the North Korean Workers' Party, had mentioned through an interview with reporters at the 8th general assembly meeting of the IPU (International Parliamentary Union) held in Pyongyang in 1991, "We can revise the Koryo Federation Proposal in the direction of conferring powers governing diplomatic and military affairs onto the two regional governments provisionally, within the specified limits."⁴⁵

After Yun's announcement, Si-hae Han, vice-president of the Fatherland's Peaceful Unification Committee, had stated in a press interview with the New York Times on June 2, 1991 that the federative unions of the original thirteen states of the US can be applied to the Korean peninsula. He also mentioned a new idea of the Koryo Federation system from a North Korean perspective. The main framework of the concept is as follows: "Thirteen colonies in the days of independence had united themselves as a confederation and afterwards founded the U.S. as a federal state. In the integration process, the United States made the authorities of the Federal government more powerful gradually, while protecting and promoting each component state's interests. There is no reason why Korea cannot follow in the path of the United States."

Mr. Yun continued his remarks, "South and North Korea can form a

41 See *Ibid.*

42 Seong Ho Jhe, *Analysis and Evaluation of the North Korea's Federation Proposal*, Research Paper 91-02 (Seoul: Research Institute for National Unification 1991), pp. 18-25.

43 The National Unification Board of the ROK, "Analyzing North Korea with its Main Cadres' Speeches and Conducts on Koryo Federation Formula - Centered Round on Recent Information Reports," The Inner Policy Materials, The National Unification Board of the ROK, 1991, p. 1.

44 *Chosun Ilbo*, April 9, 1991, p. 1.

45 *Chosun Ilbo*, May 5, 1991, p. 1.

unitary national community, even though their social systems are different, since both sides have the same blood, same culture, and same language. The federal government in the initial stages may not have powerful authority, and therefore, the powers governing diplomatic and military affairs would be exercised independently by the two regional governments. However, the Koryo Federation would allow a unified Korea's attempt to join the United Nations only when the two Koreas become a member country of the UN under a single ticket, and the unitary application for admission should be presented to the United Nations."⁴⁶

B. Legal Character of the "Low Stage Federation"

As mentioned above, the core of the North's "Low Stage Federation" Proposal is based upon recognition of the fact that the South and North cannot accomplish political unification by federation scheme instantly, and so, it is necessary to confer more authority over foreign and military affairs to the South and North's regional governments provisionally before establishing a unified country (a complete people's federation), and then enlarging the functions of the central government step-by-step, as well as to leave systems unification, which means a complete state unification, entirely to the generations to come. In regards to the North's standpoint, which recognizes the two regional governments' independent powers to manage diplomatic and military affairs, the North's new concept of the "Low Stage Federation" Proposal is quite different from the general concept of federation under international law, and also from the former idea of a "*Democratic Confederal Republic of Koryo*," which was proposed in October 1980. From this point of view, the "Low Stage Federation" Proposal can be interpreted as having some confederation-like elements,⁴⁷ but the so-called

"low level federation" is not a confederation in the real sense of the word, but instead, bears more similarity to federation. That is why the federation concept is being introduced in a building state structure of the unified Korea, and division of powers is to be made between the central or federal government and the regional governments.

Therefore, the "Low Stage Federation" Proposal has much in relation to the DCRK Proposal (the "Koryo Federation Proposal"). It can safely be said that the former proposal is devised as a transitional or intermediate stage, where the latter is hardly realizable in the immediate future. In other words, the "Low Stage Federation" Proposal is one that leads to the DCRK proposal, and hence, both proposals are on the same line of extension.

With the "Low Stage Federation," the central government would be the only symbolic entity, while the regional governments manage

⁴⁷ In this point of view, the North's 'Low Stage of Federation Proposal' can be said as the recurrence of the first "North-South Federation Idea" which North Korea had suggested in 1960. Such a federation Idea is worked out as a transient method leading to unification which Kim Il-sung had suggested at the speech of 15th Anniversary of Korean Independence day on Aug 14, 1960. He suggested with the North-South Confederation Idea that (1) the withdrawal of American forces from South Korea and enforcement of North-South liberal general election on the basis of democracy without any interference of foreign powers, (2) in case of the non-enforcement of the general election, gradual implementation of North-South Korean federation (retaining the current political systems in the North and the South for some time, guaranteeing independent activities of the Government of the DPRK and the Government of the ROK, creating Supreme National Federal Assembly composed of representatives of both governments, and regulating economic and cultural development in a uniform way), (3) on the occasion of impracticability of federal system, organizing Economic Committee composed of representatives from industrial field of both governments (mutual cooperation or support in trading commodities and resources between the two governments), and (4) cultural exchange and free traffic between the North and the South. See "Reports at the 15th anniversary ceremony of Chosen People's National Holiday, August 15th's Korean Independence day," *Writing Collections of Kim Il-sung*, vol. 14 (Pyongyang: Chosen Workers' Party Publishers 1981); Seong Ho Jhe, *Supra* note 42, pp. 4-5.

⁴⁶ *Chosun Ilbo*, June 3, 1991, p. 2.

diplomatic and military affairs independently.⁴⁸ From this point of view, the DCRK Proposal or the "Koryo Federation Proposal" can qualify as a "High Stage Federation" Proposal or completed federation proposal from the North's side.⁴⁹

C. Contents of the "Low Stage Federation"

In examining the contents of the "Low Stage Federation" Proposal, it is necessary to preliminarily consider the DCRK Proposal. The key points of the DCRK Proposal is composed of four main parts:

First, the most realistic and reasonable method of unifying the fatherland on the principles of independence, peace and national unity is for both Koreas to become allies and form a federal state while retaining their ideologies and systems. This means a construction of one federal state.

Second, the federal state would be called the "*Democratic Confederal Republic of Koryo*" outwardly, and under the federal government, the North and the South would maintain their own regional autonomy, carrying equal rights and obligations through regional self-governing systems.

Third, the North and South would form a Supreme National Federal Assembly, which would consist of the appropriate number of their respective representatives and overseas delegates. They also would constitute a federal standing organization.⁵⁰ The federal government (permanent federal committee) would "guide" the regional governments of the two sides and take charge of the overall programs of the DCRK, exercising competence over foreign and military affairs.⁵¹

Fourth, after the formation of the federal government, the so-called Ten Major Policies of a unified federal state would be enforced in the North and South, such as promotion of inter-Korean exchanges and

48 Ahn Kyung-ho, Secretary General of the Fatherland's Peaceful Unification Committee, indicated the key point of the "Low Stage of Federation" as the 'Constructing a National Unification Body by the two Korean regional governments, with each political entity retaining its current functions and authorities over' domestic politics, military and foreign affairs' and the like, at the Report Meeting in Celebration of 20th Anniversary of Proposing the Idea of a *Democratic Confederal Republic of Koryo* in Pyongyang, Oct 6, 2000. Mr. Ahn also stated, "Both the two governments should find an unified solution for national unification, and pursue actualization of the independent unification in accordance with the inter-Korean agreements formulated in the June 15 North-South Joint Declaration of 2000," and emphasized, "All the political and physical barriers which conflict with establishment of Unified Federal Country should be abolished, and North-South Talks must be proceeded in various fields." Refer to News Reports from Korean Central Broadcasting Center and Pyongyang Broadcasting Center on Jun 10, 2000; National Unification Board of the ROK, *Weekly Report on North Korea*, no. 507 (Sep. 30-Oct. 6 2000), p. 39.

49 The Koryo Federation Proposal was to establish a federal country by immediate and structural methods, and refuse the gradual and step-by-step unification policy. However, this proposal had principally focused on assembling state systems, and disregarded the reality of deepened heterogeneities and damaged or disparate 'One-Nation' spirit among both sides' people.

50 Since then, North Korea supplemented it Koryo Federation Proposal with the suggestion of rotation system in relation to operating federal government. That is to say, Kim Il-sung suggested on September 9, 1983, in his speech at a reception held in celebration of the 35th anniversary of his regime building, that the two sides elect co-chairmen of a Supreme National Federal Assembly and a federal Standing Committee, who would then operate the unification bodies by turn, "Kim Il-sung's Speech at a Reception Held to Mark the 35th Anniversary of His Regime." *Korean Central News Agency, Korean Central Yearbook* (Pyongyang: Korean Central News Agency 1984), pp. 39-44; The National Unification Board of the ROK, *Comparison of Proposals on Unification and Inter-Korean Talks (1945-1988)* (Seoul: National Unification Board 1988), p. 225.

51 In Koryo Federation Proposal, the function of the federal government and the regional governments are prescribed as follows: "The federal government shall discuss and decide over the matters of politics, national defense, and mutual problems related to the interests of the Nation and the People (the function of discussion and decision), and promote operations of unified developments for the Nation and the People (the function of promoting operations);" and "The regional governments shall practice independent policies within the limits of fulfilling the People's fundamental interests and requirements, abolishing the gaps in all fields between the North and the South, and serve the unified development of the People."

cooperation, and organizations of allied national forces.⁵² Thus, the North's "Koryo Federation Proposal aims at forming a unified national government based on "one people, one country, two systems, two governments," on the basis of recognizing and tolerating the ideologies and systems existing in each other's areas as they are.

How to establish a unified country under the "Low Stage Federation" Proposal was mentioned in Kim Il-sung's New Year's speech in 1991. The process of national unification is as follows: (1) Holding the "National Unification Political Negotiation Conference," to be attended by political parties and social organizations of the two sides; (2) conference settlement over federal unification formula; and (3) promulgation of the "*Democratic Confederal Republic of Koryo*." Here it is observed that "National Unification Political Negotiation Conference"

52 North Korea suggested 'Ten Major Policies for a Federal State' as follows (which would be enforced, after a unified federal country is established, in the field of political, economic and social life): (1) Enforcement of independent policies in all areas of state activities; (2) Implementation of democracy and promotion of national unity in all areas, throughout the national society and in all sectors; (3) Implementation of economic collaboration and exchanges, and guarantee of the self-reliant development of national economy; (4) Realization of exchanges and cooperation in the areas of science, culture and education, and promotion of the uniform development of science technology, national culture and national education; (5) Connection of transportation and communication routes between the North and the South, and the guarantee of free use of transportation and communications facilities across the country; (6) Promoting the stability of livelihood of working class, including handworkers, farmers, and other working masses, and the rest of the people, and elevating ordinary people's well-being; (7) Elimination of the state of military confrontation between the North and the South, organization of allied national forces and protection of the Korean nation from the invasion of external forces; (8) vindication and protection of the national rights and interests of overseas Korean residents; (9) Proper handling of the external relations which the North and the South established before complete unification, and uniform adjustment of the external activities of the two regional governments; and (10) Development of friendly relations with all other countries as a unified state, and implementation of peace-loving external policies. Suk-yeol Ryu, *The Theory of Korean Unification* (Seoul: Bubmun Publishing Co. 1994), p. 201; Seong Ho Jhe, *Supra* note 42, pp. 14-15.

has the characteristics of a multitude assembly for the talks on the unification schemes.

In short, the DCRK Proposal suggests a federal state by the "one nation, one country, two systems, two governments" formula as the ultimate form of a unified country. In such a formula, the North and South's governments can participate in the operation of a federal system equally. The proposal presents foreign policy based on the principle of independence, peace, good-neighborliness and non-alignment as one of the policy directions of a unified Korea. However, the unification policy of North Korea does not suggest any concrete figures or future images of a unified Korea.

IV. Comparison Between the Unification Proposals of the South and North

1. *Common Points in the Unification Proposals*

There are quite a few common points found in the South's Confederation Proposal (or Korean Commonwealth Proposal) and the North's "Low Stage of Federation" Proposal.

First, the South's Confederation Proposal and the North's "Low Stage Federation" Proposal are similar in that both are not aimed at the ultimate goal of unification. The proposals of both sides are based on the recognition of realities on the Korean peninsula that complete political unification is difficult to achieve in the immediate future, and so, unification-oriented measures should be carried out step-by-step. That is, the Korean Commonwealth and the "Low Stage Federation" are also to be constituted as a provisional union in the transitional period prior to ultimate unification. Through such an intermediate stage, the entire nation would be able to gradually pursue political unification.

It can be said the South's confederation, which has the status of

"inauthentic confederation"⁵³ from the international law perspective, is a form of "systems association" to be organized within a divided country in a transitional manner before complete national unification. The North's proposal to achieve unification through the so-called "Low Stage Federation," including the plan to entrust the task of systems unification to descendants, can be assessed as an interim approach to national unification. Both the South and North's proposals can be interpreted as a means of achieving unification gradually.

Second, both the South and North exist as a sovereign nation and an independent political entity domestically and internationally according to its own unification formulas.⁵⁴ Therefore, South and North Korea maintain separate political identities and have obligations not to interfere in each other's internal affairs. Also, the South and North hold independent authority in diplomatic and military affairs and act individually in the international arena.⁵⁵ If either of them concludes an

agreement with a third party, this agreement would not influence the South-North confederation or the "Low Stage Federation" between the two. In principle, the South and North possess independent authority in diplomatic and military aspects, but within a certain extent, the confederation would regulate the South and North's unified policies (especially in diplomatic, economic, social and cultural spheres).

Third, both the South's Confederation Proposal and the North's "Low Stage Federation" Proposal assume a construction of a South-North cooperative system, although there is a difference in the names of the intermediate unification mechanism. In this stage, the South and North would coordinate exchanges and cooperation in the fields of economy, and social and cultural development, and also endeavor to regain cultural homogeneity. These are also common points.

In short, the North's "Low Stage Federation," which confers more domestic control and military power onto the regional governments, has a confederation-like factor, somewhat similar to the South's "*Korean National Community Unification Formula*" or the Korean Commonwealth Proposal.⁵⁶

53 A scholar of Germany, Friedrich Berber referred to the effect that the relations between East and West Germany before unification was similar to those of 'inauthentic federation' (sogenannte unechten Bundesstaat), compared to the former German Reich (Gesamtstaat). See Friedrich Berber, *Völkerrecht*, Band I (München: C. H. Beck'sche Verlagsbuchhandlung 1975), refer to 17. However as the essential elements of federation are there, first, the existence of central power (federal government), second, mutual agreement on the division of powers between a federation and the component states (to be provided in a federal constitution), but these cannot be found in the relations between East and West Germany. On the other hand, after the Basic Treaty on East-West German relations was concluded, a joint committee was established between the two and this composed an association to adjust the interests of both sides. In light of these facts, it is more appropriate to regard inter-German relations as those of 'inauthentic confederation.' See Jae Shik Pae, *Supra* note 1, p. 95, note 1).

54 The South's Confederation Proposal set mutual independence and full sovereignties' of the South and the North a premise. It seems the North's "Low Stage of Federation" Proposal presupposes something like that. But there is some doubt about this matter in the North's unification proposal.

55 At present, South and North Korea hold separate membership in international organizations, including the United Nations.

56 Seong Ho Jhe, "A Comparison of the South's Confederation Proposal and the North's "Low Stage of Federation" Proposal," *Constitution and Politics*, No. 223 (Jan. 2001), pp.66-67; On the other hand, Prof. Myung-bong Chang suggests the following as the common points between the unification proposals of South and North Korea: (1) recognition and approval of each other's system (coexistence and co-prosperity); (2) exclusion of absorptive unification or unification by national liberation; (3) gradual and step-by-step approach to unification; (4) establishment of provisional unification system as an interim stage; (5) giving priority to the promotion of national unification; (6) regarding the process of unification more highly than the result of unification; and (7) sharing confederation-like elements in the South-North Korean regime's association. Myung-bong Chang, "Comparison between the South's Confederation Proposal and the North's Low Stage of Federation Proposal," *Journal of Legislation Research*, vol. 19 (2000), pp. 21-23, 34.

2. Different Points in the Unification Proposals

Although there are some common points in the South's Confederation Proposal and the North's "Low Stage Federation" Proposal as mentioned above, quite a few different points exist as well between the two proposals:

First, the South recognizes the North as a *de facto* state according to the confederation proposal.⁵⁷ However, considering the territory clause (article 3)⁵⁸ in South Korea's constitution and special relationship between the two Koreas stipulated in the preamble of the South-North Basic Agreement of 1992, the South does and cannot afford to not give the North *de jure* recognition of state. The South also is not considering establishing a super-national organization that would be higher than the governments of the two states (it simply plans a joint organization in the form of a consultative body). That is to say, the South's Confederation Proposal presents the "two states, two systems, two governments" concept as a prerequisite for the Korean Commonwealth.

On the other hand, the North's "Low Stage Federation" Proposal plans to install a central (federal) government, although it would only

be symbolic and nominal, and the South and North's governments would be reduced to and qualify as regional (autonomy) governments. Thus, the 'Low Stage Federation' still presupposes the authorities of the central government to be weak and the regional government to be strong on the basis of the "one state, two systems, two governments" concept.

Second, according to the South's Confederation Proposal, either the South or the North would maintain sovereign political entity even after forming the Korean Commonwealth and use separate names - the 'Republic of Korea' and the 'Democratic People's Republic of Korea.' However, the North's 'Low Stage Federation Proposal' presents the "Democratic Confederal Republic of Koryo" as the single name of an umbrella country, that is to say, a low level of South-North federation.⁵⁹

Third, under the South's Confederation Proposal, South and North Korea would conduct international activities as two sovereign states and join the United Nations as separate member countries. However, under the North's 'Low Stage Federation' Proposal, the two Koreas would join the United Nations with a single seat and act jointly (refer to Kim Il-sung's New Year's Speech in 1991 and Shi-hae Han's speech in June 2, 1991). This point is well taken in the fact that the North had been constantly persisting on a single seat before South and North Korea simultaneously became members of the United Nations in September 1991.⁶⁰ Yet, due to not only the lack of reality but also the South's dissent, the suggestion was not realized.

Fourth, the South's Confederation Proposal assumes that the bodies of the Korean Commonwealth consist of the government representa-

57 The words 'Recognizing North Korea as an actual state' does not implicate 'de facto recognition of state' in the meaning of the International Law, but on the other hand they mean to recognize the 'substantiality of the state' and approve of the communication, contact and interchange between the two nations - as the meaning of 'de facto special recognition of state (faktische Anerkennung).' As for the aspect of effect, this is more restrictive than the 'de facto recognition of state.' According to the State Recognition Law, when bestowing "de facto recognition" the bestowing country must reserve (in a clear statement) that the bestowal is provisional and transient. Originally the notion of 'de facto special recognition of state' was a theory used between Communist countries during the Cold War, however this can still be used in the relations between South Korea and North Korea or a non-foe Communist Country. Dietrich Frenzke, *Die Kommunistische Anerkennungslehre* (Köln: Verlag Wissenschaft und Politik 1972), pp. 178, 180-181.

58 Article 3 of the South Korean constitution stipulates, "The Territory of the Republic of Korea shall be composed of the Korean Peninsula and its adjunct islands."

59 *Rodong Sinmun*, Jan. 1, 1991.

60 See the National Unification Board of the ROK, *South-North Dialogue*, vol. 51 (1990), pp. 85, 152-164; The National Unification Board of the ROK, *Proceedings of the Communication between South and North Korean Representatives concerning the Admission to the United Nations* (Seoul: National Unification Board 1990), pp. 7-76.

tives, but the North's "Low Stage Federation" Proposal suggests its organization consists of not only government representatives, but also, a number of Korean residents living abroad. This point was included in "The Proposal for the Establishment of the *Democratic Confederal Republic of Koryo*," but was not concretely mentioned in the North's "Low Stage Federation" Proposal, or in other words, Kim Il-sung's New Year's Speech in 1991 or the following statements of DPRK high-ranking officials relevant to the Koryo Federation Proposal. Since the North has not referred to the matter in substance contrary to the past proposal, we are led to believe that North Korea maintains their existing standpoint.

Fifth, the South's Confederation Proposal suggests 4 confederate organizations: 1) a Council of Presidents; 2) a Council of Ministers; 3) a Council of Representatives; and 4) a Joint Secretariat. In particular, under the Council of Ministers, there are five concrete standing committees as consultative and executive organs. On the other hand, the North's "Low Stage Federation" Proposal mentions nothing at all about federal organizations. "*The Proposal for the Establishment of the Democratic Confederal Republic of Koryo*," which corresponds to the "High Stage Federation," only states that as a super-national organization, they would establish Supreme National Confederal/Federal Assembly (in contrast to the Council of Representatives) and Permanent Confederal/Federal Committee (in contrast to the Council of Ministers). Therefore, the North's Proposal lacks concreteness in the aspect of organizational structure, if it is compared with the South's Proposal.

Sixth, according to the South's Confederation Proposal, the Council of Representatives (which would be formed of about 100 legislators with equal numbers representing both sides of Korea) is to provide policy advice and recommendations to the Council of Ministers, and draft a unified constitution to provide the method of unification, the procedures to realize national unification, etc. That is to say, assembly persons who are the representatives of the people are to discuss and

decide the method of unification. However, according to the North's "Low Stage Federation" Proposal, such a decision would be in the hands of the "National Unification Political Negotiation Conference," which is a political negotiation meeting in the form of a mass rally. The representatives of the governments, parties and organizations of the South and North would participate in the "National Unification Political Negotiation Conference." To be brief, the South and North's Proposals are completely different from each other in the personal composition of the meeting to discuss and decide the unification method.

Seventh, the South's Confederation Proposal plans for the Council of Representatives to legislate the unification Constitution and to form the unified country's organizations by democratic general elections. On the other hand, the North's 'Low Stage Federation' Proposal, as well as the *Proposal for the Establishment of the Democratic Confederal Republic of Koryo*, do not mention legislation plans nor process of federal constitution. Although the federal constitution is the outline presenting the foundation and the structure of the federal state, the North does not comment on this matter at all.⁶¹

Eighth, the North has in the past insisted on a rotation system concerning the management of the federal state, which the heads of the two regional autonomous governments rotate between the South and North. Although this was mentioned only in the North's suggestion of the early 1980s towards the South, there is a possibility that the North will refer to this again if the Korean Commonwealth takes shape. On the other hand, the South's Confederation Proposal does not discuss the rotation system because the Korean Commonwealth itself does not have a unified government. Instead, it plans to hold regular summit conferences.

Lastly, concerning the form of the ultimate unified country, the South's Confederation Proposal presents a liberal democratic state on

61 Seong Ho Jhe, *Supra* note 26, p. 211.

the basis of "one nation, one state, one system, one government" as the final goal of unification. On the other hand, the North's 'Low Stage Federation' Proposal presupposes a federal state as the ultimate unification form by the "one nation, one state, two systems, two governments" formula, and also adds that they would entrust the task of system unification to the successive generations.⁶²

V. Conclusion

After the June 15 South-North Joint Declaration was adopted, inter-Korean relations have made remarkable progress. De facto regularization of holding the ministerial meetings, tangible efforts for reconnection of the severed Seoul-Sinuiju Railroad, military expert-level meetings for confidence-building measures related to mine-sweeping work at the DMZ, conferences to provide permanent mechanism for economic and social cooperation, etc., are extraordinary changes that we could never have imagined in the past. The recent developments of inter-Korean relations will lay the foundation for the establishment of the Korean national community, and ultimately contribute to peaceful national unification.

Korean unification is a historical event that will incorporate the divided Korean peninsula into one nation, bringing 70 million people together into the same life zone, and furthermore, will integrate the political powers of the South and North. Also, the operation of unifying two different political entities would finally result in integrating and reorganizing two heterogeneous legal systems into one. Therefore, unification is not only a long process of unifying the two Koreas' legal and political systems, but also, it would be the final result of such a process. In light of this point, South and North Korea's unification

formulas, namely, the South's Confederation Proposal and the North's 'Low Stage Federation' Proposal, have significance in providing the basis and direction for integration of the legal and political systems of the two Koreas.

In Paragraph 2 of the June 15 South-North Joint Declaration, South and North Korea recognized common points between the South's Confederation Proposal and the North's 'Low Stage Federation' Proposal, and agreed to promote unification towards this direction. This paragraph showed the exquisite device of compromise as a result of official conference between the highest-level government officials of South and North Korea. Of course, this paragraph does not implicate that we have accepted the North's 'High Stage Federation' Proposal. It means no more than our recognition that the 'Low Stage Federation' Proposal and our Confederation Proposal have some parts in common.

However, there is no doubt that Paragraph 2 of the South-North Joint Declaration will become a step to accelerate unification negotiations. Probably one of the most important tasks we face for cooperative relations between South and North Korea is in finding the contact point of the two proposals and establishing a united system. Consequently, from now on, the government should fully comprehend the common and differing points of each proposal, and then make every effort to discover the contact point between the two.

62 *Ibid.*, p. 209.