Case Number: 2009-0528-F-2

FOIA MARKER

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Folder Title:
North Korea [1]

Staff Office-Individual:
Legal Advisor-Derosa, Mary

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3500

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. draft	Agreed Framework between USA and DPRK (5 pages)	10/00/1994	P1/b(1)
001b. paper	Confidential Minute to the Agreed Framework (2 pages)	10/00/1994	P1/b(1)
002. cable	re responses to issues raised re DPRK settlement (5 pages)	10/12/1994	P1/b(1)
003. memo	Walt Slocombe to Dan Poneman re Team Spirit 94 (5 pages)	10/07/1994	P1/b(1)
004. memo	David Brown to Steve Loeffler et al re financial and legal authority re alternative energy (1 page)	10/11/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Mary Derosa (Legal Advisor)
OA/Box Number: 3500

FOLDER TITLE:

North Korea [3]

2009-0528-F
kc1440

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

[redacted] OPTIONAL FORM 99 (7-90)

10-11-94

FAX TRANSMITTAL # of pages ▶ 8

NN.93

To Janie Baker | From Jeff Kovar
Dept./Agency | Phone # 647-3044
Fax # 456-9110 | Fax # 736-7559

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

COPY

UNCLASSIFIED

TO: P - Mr. Tarnoff

FROM: L - Conrad K. Harper

SUBJECT: Restrictions on Relations with North Korea

Your office has asked that we provide a summary of current restrictions on political and economic relations with the Democratic People's Republic of North Korea (DPRK). A list is at Tab 1.

U.S. restrictions on relations with the DPRK span a broad continuum, from refusal to engage in diplomatic relations to a sweeping trade embargo under the Trading With the Enemy Act ("TWEA"). Significantly, in addition to restrictions applicable to the DPRK by name, it is also subject to other, more general sanctions on account of its weapons proliferation and terrorist-related activities (e.g., it has been designated a "terrorist country" by the U.S. since 1988). Moreover, it is also potentially subject to a wide range of additional restrictions on security and other assistance (including International Financial Institution lending) for human rights reasons and because it remains a communist dictatorship.

While many of the current U.S. restrictions on the DPRK may, as a legal matter, be terminated or relaxed by the executive branch in the exercise of its own discretion without legislation or the need to consult Congress (e.g., the establishment of diplomatic relations, lifting of the 25-mile limit on travel by DPRK representatives to the UN, the trade embargo), the administration's freedom of movement is circumscribed by a complex web of potentially applicable legislation. Moreover, any such effort would receive the closest scrutiny--and possible resistance--from Congress. Congress' strong anti-DPRK bias is illustrated in section 710 of the pending State authorization legislation (proposed by Senator Robb out of concern about the DPRK's nuclear activities), which would, if enacted, diminish the President's authority to lift/relax the TWEA trade embargo (at Tab 2).

Attachments:
- Tab 1 - Compilation of Political and Economic Restrictions on the DPRK
- Tab 2 - Robb Proposal

NORTH KOREA SANCTIONS

Category [Legal Citation]	Description	Repeal/Revise
1. **Diplomatic Relations.** [U.S. Constitution; Note: For a good, general overview of the law regarding state/government recognition, see sections 202-205 of the Restatement 3d, Foreign Relations Law of the U.S. (1986.)]	The U.S. does not currently maintain diplomatic relations with the DPRK.	The establishment of diplomatic relations is a constitutional prerogative of the Executive; no formal congressional approval is required.
2. **U.N. 25-mile Travel Limit.** [Section 162 of the Foreign Missions Act, 22 U.S.C. 4316; U.N. Headquarters Agreement; Immigration and Nationality Act]	Although the DPRK is a member of the United Nations, the U.S. lawfully restricts the travel of DPRK UN representatives to the HQ District, i.e., a 25-mile radius from Columbus Circle.	The 25-mile limit may be removed or relaxed by the Secretary (in consultation with the FBI and CIA) without the need for congressional approval or consultation.
3. **Trade Embargo.** [Trading With The Enemy Act ("TWEA"), Pub. L. 65-91, as amended, 50 U.S.C. App. 5(b); 31 C.F.R. 500.201 et seq.]	--Empowers President to prohibit/regulate a broad range of financial/property transactions. --Since 12/17/50, President has banned trade absent Treasury (Office of Foreign Asset Controls) license.	Executive may relax or terminate the ban at any time w/o congressional consent or consultation. [But note section 710 of the pending State authorization bill, which, if enacted in its current form, would prohibit any license for trade with the DPRK except pursuant to a presidential determination that the DPRK maintains its status as a member of the 1968 Nuclear Nonproliferation Treaty and is in full compliance with its obligations thereunder.]

4. **Exports.** [Export Administration Act of 1979 (Pub. L. 96-72, as amended, 50 U.S.C. App. 2404)("EAA"); 15 C.F.R. Part 700]	Authorizes the President to "prohibit or curtail the export of any goods or technology subject to the jurisdiction of the [U.S.]" absent a license from Commerce.	Executive branch may relax or terminate the ban without congressional consent or consultation.
5. **Shipping.** [Section 704 of the Defense Production Act of 1950 (Pub. L. 81-774, 50 U.S.C. App. 2154); 44 C.F.R. Part 403]	Prohibits owners, owners' agents, and officers from (i) taking to the DPRK any ship or aircraft documented or registered under the laws of the U.S.; and, (ii) from transporting in any such ship goods destined for the DPRK.	Executive may relax or terminate these restrictions without congressional consent or consultation.
6. **Most Favored Nation ("MFN").** [Title IV of the Trade Act of 1974 (Pub. L. 93-618, 19 U.S.C. 1431)]	As a country the products of which were not eligible for MFN treatment on or before 1/3/75, the DPRK is ineligible for MFN extension, absent...	(i) Presidential determination that the DPRK (as a "non-market country") allows its nationals to emigrate freely (the so-called "Jackson-Vanik" amendment); and, (ii) conclusion of a bilateral trade agreement containing specified provisions.
7. **Proliferation** [Sections 1701-1704 of the FY '91 National Defense Authorization Act (Pub. L. 101-510, 50 U.S.C. App. 2402 note); 15 C.F.R. Part 700; 22 C.F.R. 120.29 (ITAR), see 58 F. Reg. 39286 (7/22/93)]	-- Amended the Arms Export Control Act (22 U.S.C. 2778) and the Export Administration Act to require sanctions if the President	-- Sanctions are for a two-year period. -- President may waive upon a determination that such action is

determines that a foreign person knowingly exports, transfers or otherwise engages in trade "of items that contribute to missile proliferation."

-- U.S. imposed such sanctions on two DPRK entities in 1992.

"essential to the national security of the [U.S.]" and so certifies to Congress 20 days prior to issuing the waiver.

8. **Terrorism.**

[Section 6(j) of the Export Administration Act of 1979, as amended by the Anti-Terrorism and Arms Export Amendments Act of 1989, Pub. L. 101-222, 103 Stat. 1892]

[Note: Section 901 of the Internal Revenue Code, 26 U.S.C. 901(j) would also deny in the case of the DPRK certain tax credits for income and other taxes paid to that country.]

-- DPRK designated a "terrorist country" since 1/20/88 per State determination that it had repeatedly provided support for acts of international terrorism.

-- Prohibits certain transactions with DPRK, including direct or indirect export of any munitions list items by USG or any US person (as well as to re-exports by non-U.S. persons).

-- Exports of non-munitions list items must be licensed.

-- President may waive the prohibition for a particular transaction if he determines that it is "essential to the national security interests of the [U.S.]," and both consults with and submits a report to Congress 15 days prior to the transaction.

-- There are two ways by which a country may get off the "terrorist list," i.e., (i) President certifies to Congress that "there has been a fundamental change in the leadership or policies of the terrorist country, that the government ...is not supporting acts of international terrorism, and that the government has provided assurances that it will not support acts of international terrorism in the future,"; or, (ii) President submits to Congress for review, 45 days prior to the

		effective date of the recision, a determination that the government has not supported international terrorism during the preceding 6-month period and has provided assurances that it will not support acts of international terrorism in the future.

THE FOLLOWING ARE POTENTIALLY APPLICABLE ALTHOUGH NO FORMAL DETERMINATION HAS YET BEEN MADE

9. **Foreign Assistance.** A. **Human Rights.** [Section 116 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151n; also covers OPIC insurance, guarantees, or loans, 22 U.S.C. 2199 (i)]	Prohibits assistance to the government of "any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment..." etc.	"Gross violator" determination is made by the AID Administrator and the Assistant Secretary for HA, who must take into account the extent to which the government has permitted unimpeded investigations of alleged human rights violations by appropriate international organizations, and the extent to which multilateral and security assistance is already restricted to that country by the President or Congress for human rights reasons.
B. **Communist States.** [Section 620(f) of the FAA (22 U.S.C. 2370 (f))]	Prohibits assistance to "any communist country," including the DPRK, except for	--President may waive upon finding that such assistance is vital to U.S. national security,

[Note: There are also several other restrictions on assistance that might potentially become applicable to the DPRK that it is not necessary to address now, e.g., sec. 620A of the FAA, 22 U.S.C. 2371 (prohibits assistance to governments supporting int'l terrorism); sec. 620(t) of the FAA (break in diplomatic relations); secs. 523 and 529 of the FY 94 Foreign Ops. Appropriation bill; sec. 543 of the FY '93 FAA (Pub. L. 102-391).]	assistance to schools, libraries, and hospital centers for educational research which are outside the U.S. and are founded/operated by U.S. citizens.	that the country is not controlled by the international communist conspiracy, and that the assistance will promote the country's independence from international communism. -- President may also remove a country for a designated period if he determines that it is in the national interest to do so; one factor to be considered is whether the country is "fostering the establishment of a generally democratic system, with respect for internationally recognized human rights."
10. **Security Assistance.** [Section 502B of the FAA (22 U.S.C. 2304)]	-- Prohibits security assistance to any country "the government of which engages in a consistent pattern of gross violations of internationally recognized human rights." -- Also prohibits security assistance for the police, domestic intelligence, or similar law enforcement forces of such a country. Moreover, export licenses are prohibited even for crime control and detection instruments and equipment, subject to a presidential waiver in	Assistance may be provided only if the President finds such a "significant improvement in [the] human rights record" that it is in the national interest to lift the prohibition.

	"exceptional circumstances." Id., for IMET.	
11. **IFI Lending.** [Section 7001 of the International Financial Institutions Act (22 U.S.C. 262d); see also sec. 528 of the FY '94 Foreign Ops Appropriation Act, which contains a similar provision.]	Requires the U.S. Executive Directors of IFI's (e.g., World Bank) to oppose any loan, extension of financial assistance, or technical assistance to any country the government of which engages in "a pattern of gross violations of internationally recognized human rights," or "provides refuge to individuals committing acts of international terrorism by hijacking aircraft." -- U.S. Executive Directors are only authorized to support assistance "directed specifically to programs which serve the basic human needs of the citizens of such country."	Note: 22 U.S.C. 262d(f) requires Treasury to consult "in a timely manner" with relevant congressional committees to inform them of "prospective changes in policy direction toward counties [sic] which have or recently have had poor human rights records." 22 U.S.C. 262d(c) requires Treasury to report quarterly on all loans considered by the IFI Boards, addressing *inter alia* whether the U.S. opposed, in each instance, assistance on human rights grounds, or changed its voting position for such reasons.
"Gramm Amendment," section 43 of the Bretton Woods Agreement Act, as amended, 22 U.S.C. 286aa.	Requires the Secretary of Treasury to direct the U.S. Executive Director of the IMF	The congressional committees may request that the Secretary of Treasury appear before them to

	"to actively oppose any facility involving use of Fund credit by any Communist dictatorship" unless Treasury certifies to the relevant congressional committees that certain economic criteria are met.	certify and document (or to document in writing) that the requisite conditions have been met. If the Secretary does not appear in response to Congress' invitation, the Executive Director "shall vote against such program."
Gonzalez Amendment, 22 U.S.C. 283r, 284j, 285o.	Requires Secretary of Treasury to instruct Executive Directors to the IBRD and ADB to vote against assistance to any country that has expropriated the property of U.S. nationals.	Unless President determines that (i) an arrangement for proper compensation has been made; (ii) the matter has been submitted to arbitration; or, (iii) good faith settlement negotiations are in progress.

cc: Jamie Bak

DRAFT CONVENTIONAL ENERGY ASSURANCE

As part of the overall settlement of the nuclear issue, the Democratic People's Republic of Korea (DPRK) has agreed to terminate construction on its 50MW(e) and 200MW(e) graphite-moderated reactors while a light-water nuclear power reactor project is constructed in the DPRK. In this connection, the United States Government will take all appropriate action to facilitate multilateral arrangements for the funding and supply of interim energy alternatives for the DPRK pending completion of the light-water reactor project. The U.S. objective will be to arrange for the provision of alternative energy equivalent to (1) the predicted output of the 50MW(e) reactor from July 1995 until the light-water reactor project begins operation, and (2) the predicted output of the 200MW(e) reactor from July 1996 until the light-water reactor project begins operation.

The United States Government follow this course of action so long as the DPRK continues to implement the policies described in the Framework Document dated ______________, 1994.

AN ACT To amend the Atomic Energy Act of 1946, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Atomic Energy Act of 1946, as amended, is amended to read as follows:

ATOMIC ENERGY ACT OF 1954

TITLE I—ATOMIC ENERGY [1]

CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

Section 1.[2] **Declaration.**—Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that—

a. the development, use, and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contributions to the common defense and security; and

b. the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.

Sec. 2.[3] **Findings.**—The Congress of the United States hereby makes the following findings concerning the development, use, and control of atomic energy:

a. The development, utilization, and control of atomic energy for military and for all other purposes are vital to the common defense and security.

c.[4] The processing and utilization of source, byproduct, and special nuclear material affect interstate and foreign commerce and must be regulated in the national interest.

d. The processing and utilization of source, byproduct, and special nuclear material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public.

e. Source and special nuclear material, production facilities, and utilization facilities are affected with the public interest, and regulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is

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[1] Sec. 902(a)(8) of the Energy Policy Act of 1992 (Public Law 102-486; 106 Stat. 2944) inserted title designation, and sec. 901 of that Act added "Title II—United States Enrichment Corporation" at 42 U.S.C. 2297 *et seq.*. For partial text, see page 365.

[2] 42 U.S.C. 2011.

[3] 42 U.S.C. 2012. Sec. 20 of the Private Ownership of Special Nuclear Materials Act (Public Law 88-489; 78 Stat. 602) read as follows:

"Nothing in this Act shall be deemed to diminish existing authority of the United States, or of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended, to regulate source, byproduct, and special nuclear material and production and utilization facilities, or to control such materials and facilities exported from the United States by imposition of governmental guarantees and security safeguards with respect thereto, in order to assure the common defense and security and to protect the health and safety of the public, or to reduce the responsibility of the Atomic Energy Commission to achieve such objectives.".

[4] Sec. 1 of Public Law 88-489 (78 Stat. 602) deleted subsec. 2b. Subsec. 2b. read as follows:

"b. In permitting the property of the United States to be used by others, such use must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public.".

necessary in the national interest to assure the common defense and security and to protect the health and safety of the public.

f. The necessity for protection against possible interstate damage occurring from the operation of facilities for the production or utilization of source or special nuclear material places the operation of those facilities in interstate commerce for the purposes of this Act.

g. Funds of the United States may be provided for the development and use of atomic energy under conditions which will provide for the common defense and security and promote the general welfare.

i.[5] In order to protect the public and to encourage the development of the atomic energy industry, in the interest of the general welfare and of the common defense and security, the United States may make funds available for a portion of the damages suffered by the public from nuclear incidents, and may limit the liability of those persons liable for such losses.

Sec. 3.[6] **Purpose.**—It is the purpose of this Act to effectuate the policies set forth above by providing for—

a. a program of conducting, assisting, and fostering research and development in order to encourage maximum scientific and industrial progress;

b. a program for the dissemination of unclassified scientific and technical information and for the control, dissemination, and declassification of Restricted Data, subject to appropriate safeguards, so as to encourage scientific and industrial progress;

c.[7] a program for Government control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contributions to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons;

d. a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public;

e. a program of international cooperation to promote the common defense and security and to make peaceful applications of atomic energy as widely as expanding technology and considerations of the common defense and security will permit; and

f. a program of administration which will be consistent with the foregoing policies and programs, with international arrangements, and with agreements for cooperation, which will

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[5] Sec. 2 of Public Law 88-489 (78 Stat. 602) deleted subsec. 2h. Subsec. 2h. read as follows: "h. It is essential to the common defense and security that title to all special nuclear material be in the United States while such special material is within the United States.".

Sec. 1 of Public Law 88-256 (71 Stat. 576) (1957) added subsec. i.

[6] 42 U.S.C. 2013.

[7] Sec. 3 of Public Law 88-489 (78 Stat. 602) amended subsec. c. It formerly read:

"c. A program for Government control of the possession, use, and production of atomic energy and special nuclear material so directed as to make the maximum contribution to the common defense and security and the national welfare;".

CHAPTER 11. INTERNATIONAL ACTIVITIES

Sec. 121.[75] **Effect of International Arrangements.**—Any provision of this Act or any action of the Commission to the extent and during the time that it conflicts with the provisions of any international arrangement made after the date of enactment of this Act shall be deemed to be of no force or effect.

Sec. 122.[76] **Policies Contained in International Arrangements.**—In the performance of its functions under this Act, the Commission shall give maximum effect to the policies contained in any international arrangement made after the date of enactment of this Act.

* * * * * * *

Sec. 123.[77] **Cooperation With Other Nations.**—

No cooperation with any nation, group of nations or regional defense organization pursuant to section 53, 54 a., 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until—

a. the proposed agreement for cooperation has been submitted to the President, which proposed agreement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements:

(1) a guaranty by the cooperating party that safeguards as set forth in the agreement for cooperation will be maintained with respect to all nuclear materials and equipment transferred pursuant thereto, and with respect to all special nuclear material used in or produced through the use of such nuclear materials and equipment, so long as the material or equipment remains under the jurisdiction or control of the cooperating party, irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason;

(2) in the case of non-nuclear-weapon states, a requirement, as a condition of continued United States nuclear supply under the agreement for cooperation, that IAEA safeguards be maintained with respect to all nuclear materials in all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere;

(3) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c., a guaranty by the cooperating party that no nuclear materials and equipment or sensitive nuclear technology to be transferred pursuant to such agreement, and no special nuclear material produced through the use of any nuclear materials and

[75] 42 U.S.C. 2151.

[76] 42 U.S.C. 2152.

[77] 42 U.S.C. 2153. Sec. 123, as previously amended by Public Law 85-479 (72 Stat. 276), Public Law 85-681 (72 Stat. 632), and Public Law 88-489 (78 Stat. 602), was further amended and restated by sec. 401 of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 142). Sec. 405(a) of the 1978 Act also stated that these amendments to sec. 123 would not affect the authority to continue cooperation pursuant to agreements for cooperation entered into prior to Mar. 10, 1978. Sec. 407 also of the 1978 Act specified that for any agreement entered into pursuant to sec. 123, the President shall strive to include in such agreement cooperation between the parties in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities.

equipment or sensitive nuclear technology transferred pursuant to such agreement, will be used for any nuclear explosive device, or for research on or development of any nuclear explosive device, or for any other military purpose;

(4) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c. and agreements for cooperation with nuclear-weapon states, a stipulation that the United States shall have the right to require the return of any nuclear materials and equipment transferred pursuant thereto and any special nuclear material produced through the use thereof if the cooperating party detonates a nuclear explosive device or terminates or abrogates an agreement providing for IAEA safeguards;

(5) a guaranty by the cooperating party that any material or any Restricted Data transferred pursuant to the agreement for cooperation and, except in the case of agreements arranged pursuant to subsection 91 c., 144 b. or 144 c., any production or utilization facility transferred pursuant to the agreement for cooperation or any special nuclear material produced through the use of any such facility or through the use of any material transferred pursuant to the agreement, will not be transferred to unauthorized persons or beyond the jurisdiction or control of the cooperating party without the consent of the United States;

(6) a guaranty by the cooperating party that adequate physical security will be maintained with respect to any nuclear material transferred pursuant to such agreement and with respect to any special nuclear material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to such agreement;

(7) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., a guaranty by the cooperating party that no material transferred pursuant to the agreement for cooperation and no material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to the agreement for cooperation will be reprocessed, enriched or (in the case of plutonium, uranium 233, or uranium enriched to greater than twenty percent in the isotope 235, or other nuclear material which have been irradiated) otherwise altered in form or content without the prior approval of the United States;

(8) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., a guaranty by the cooperating party that no plutonium, no uranium 223, and no uranium enriched to greater than twenty percent in the isotope 235, transferred pursuant to the agreement for cooperation or recovered from any source or special nuclear material used in any production facility or utilization facility transferred pursuant to the agreement for cooperation, will be stored in any facility

that has not been approved in advance by the United States; and

(9) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., a guaranty by the cooperation party that any special nuclear material, production facility, or utilization facility produced or constructed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection.

The President may exempt a proposed agreement for cooperation (except an agreement arranged pursuant to subsection 91 c., 144 b., or 144 c.) from any of the requirements of the foregoing sentence if he determines that inclusion of any such requirement would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize that common defense and security. Except in the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., any proposed agreement for cooperation shall be negotiated by the Secretary of State, with the technical assistance and concurrence of the Secretary of Energy and in consultation with the Director of the Arms Control and Disarmament Agency ("the Director"); and after consultation with the Commission shall be submitted to the President jointly by the Secretary of State and the Secretary of Energy accompanied by the views and recommendation of the Secretary of State, the Secretary of Energy, the Nuclear Regulatory Commission, and the Director, who shall also provide to the President an unclassified Nuclear Proliferation Assessment Statement (A) which shall analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this Act, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and (B)[78] regarding the adequacy o the safeguards and other control mechanisms and the peacefu use assurances contained in the agreement for cooperation t ensure that any assistance furnished thereunder will not b used to further any military or nuclear explosive purpose. I the case of those agreements for cooperation arranged purs ant to subsection 91 c., 144 b., or 144 c., any proposed agr ment for cooperation shall be submitted to the President the Secretary of Energy or, in the case of those agreements cooperation arranged pursuant to subsection 91 c., or 14 which are to be implemented by the Department of Defens the Secretary of Defense;

b. the President has submitted text of the proposed a ment for cooperation, together with the accompanying u sified Nuclear Proliferation Assessment Statement, tc Committee on Foreign Relations of the Senate and the

[78] The text to this point beginning with "(A) which shall analyze * * *" was adde 301(a)(1) the Export Administration Amendments Act of 1985 (Public Law 99-64; 99 S

mittee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 130 g. of this Act) concerning the consistency of the terms of the proposed agreement with all the requirements of this Act, and [79] the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security; [80]

c. the proposed agreement for cooperation (if not an agreement subject to subsection d.), together with the approval and determination of the President, has been submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in subsection 130 g.): *Provided, however,* That these committees, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and

d. the proposed agreement for cooperation (if arranged pursuant to subsection 91 c., 144 b., or 144 c., or if entailing implementation of section 53, 54 a., 103, or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts, and there is enacted, a joint [81] resolution stating in substance that the Congress does not favor the proposed agreement for cooperation: *Provided,* That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Director of the Arms Control and Disarmament Agency, when required by subsection 123 a., has been submitted to the Congress: *Provided further,* That an agreement for cooperation exempted by the President pursuant to subsection a. from any requirement contained in that subsection shall not become effective unless the

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[79] The text of subsec. b. to this point was added by sec. 301(a)(2) of Public Law 99-64 (99 Stat. 159).

[80] In 1992, the President made such a determination in two cases: the Republic of Indonesia (Presidential Determination No. 92-35 of June 30, 1992 (57 F.R. 33421; July 28, 1992)); and the People's Republic of Bangladesh (Presidential Determination No. 93-5 of December 15, 1992 (57 F.R. 62149; December 30, 1992)).

[81] Sec. 301(b)(1) of Public Law 99-64 changed the requirement from a concurrent to a joint resolution.

Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement.[82] During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved.[83] Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 130 i. of this Act for the consideration of Presidential submissions.

Following submission of a proposed agreement for cooperation (except an agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c.) to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, the Arms Control and Disarmament Agency, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

If, after the date of enactment of the Nuclear Non-Proliferation Act of 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection 123 a. (2), such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to subsection 128 b. (3) for purposes of the Commission's consideration of applications and requests under section 126 a. (2) and there shall be no congressional review pursuant to section 128 of any subsequent license or authorization with respect to that state until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.

Sec. 124.[84] **International Atomic Pool.**—The President is authorized to enter into an international arrangement with a group of nations providing for international cooperation in the nonmilitary applications of atomic energy and he may thereafter cooperate with that group of nations pursuant to sections 54 a., 57, 64, 82, 103, 104, or 114 a.: *Provided, however,* That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 123.

Sec. 125.[85] **Cooperation With Berlin.**—The President may authorize the Commission to enter into agreement for cooperation with the Federal Republic of Germany in accordance with section 123, on behalf of Berlin, which for the purposes of this Act comprises those areas over which the Berlin Senate exercises jurisdic-

[82] The second proviso of subsec d. was added by sec. 301(b)(2) of Public Law 99-64.
[83] This sentence was added by sec. 301(a)(3) of Public Law 99-64.
[84] 42 U.S.C. 2154.
[85] Sec. 125 was added by Public Law 85-14 (71 Stat. 11).

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1992 Acts. House Report No. 102-569 (I-IV) and House Conference Report No. 102-964, see 1992 U.S. Code Cong. and Adm. News, p. 2703.

References in Text

The amendments made by section 506(a), referred to in subsecs. (a) and (b), are the amendments made by Pub.L. 102-511, Title V, § 506(a), Oct. 24, 1992, 106 Stat. 3341 to section 221(a) of Pub.L. 102-228 which is set out as a note under section 2551 of this title. Section 506(a) of Pub.L. 102-511 is omitted as subsec. (a) of section 5856 of this title.

Reference to subtitle B of the Soviet Nuclear Threat Reduction Act of 1991 in subsec. (c)(2) is probably intended as a reference to Part B of Title II of Pub.L. 102-228, Dec. 12, 1991, 105 Stat. 1693, which is set out as a note under section 2551 of this title. For complete classification of this Act to the Code, see Tables.

Delegation of Functions

For provisions delegating to the Secretary of Defense the authorities and duties vested in the President under this section (with the Secretary of Defense not to exercise such authority unless the Secretary of State has exercised certain authority likewise delegated), and prohibiting the Secretary of Defense from obligating funds in the exercise of such delegated authority unless the Director of the Office of Management and Budget has made certain determinations regarding expenditures for fiscal year 1993, see Memorandum of President of Dec. 30, 1992, 58 F.R. 3193, set out as a note under section 5852 of this title.

§ 5859. International nonproliferation initiative

(a) to (e) Omitted

(f) Avoidance of duplicative authorizations

This section shall not apply if the National Defense Authorization Act for Fiscal Year 1993 enacts the same authorities and requirements as are contained in this section and authorizes the appropriation of the same (or a greater) amount to carry out such authorities.

(Pub.L. 102-511, Title V, § 509, Oct. 24, 1992, 106 Stat. 3343.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1992 Acts. House Report No. 102-569 (I-IV) and House Conference Report No. 102-964, see 1992 U.S. Code Cong. and Adm. News, p. 2703.

References in Text

The National Defense Authorization Act for Fiscal Year 1993, referred to in subsec. (f), is Pub.L. 102-484, Oct. 23, 1992, 106 Stat. 2315. For complete classification of this Act to the Code, see Tables. See Codification note below.

Codifications

Section is comprised of section 509 of Pub.L. 102-511. Subsecs. (a) to (e) were omitted pursuant to subsec. (f) because section 1505 of the National Defense Authorization Act for Fiscal Year 1993, Pub.L. 102-484, which is classified to section 5859a of this title, enacted the same authorities and requirements as contained in subsecs. (a) to (e) and authorized the appropriation of the same or a greater amount to carry out such authorities.

§ 5859a. International nonproliferation initiative

(a) Assistance for international nonproliferation activities

Subject to the limitations and requirements provided in this section, during fiscal year 1994 the Secretary of Defense, under the guidance of the President, may provide assistance to support international nonproliferation activities.

(b) Activities for which assistance may be provided

Activities for which assistance may be provided under this section are activities such as the following:

(1) Activities carried out by the International Atomic Energy Agency (IAEA) that are designed to ensure more effective safeguards against nuclear proliferation and more aggressive verification of compliance with the Treaty on the Non-Proliferation of Nuclear Weapons, done on July 1, 1968.

(2) Activities of the On-Site Inspection Agency in support of the United Nations Special Commission on Iraq.

(3) Collaborative international nuclear security and nuclear safety projects to combat the threat of nuclear theft, terrorism, or accidents, including joint emergency response exercises, technical assistance, and training.

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of this Act to the Code, see Tables.

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(4) Efforts to improve international cooperative monitoring of nuclear proli
tion through joint technical projects and improved intelligence sharing.

(c) Form of assistance

(1) Assistance under this section may include funds and in-kind contributio supplies, equipment, personnel, training, and other forms of assistance.

(2) Assistance under this section may be provided to international organizatic the form of funds only if the amount in the "Contributions to International Org tions" account of the Department of State is insufficient or otherwise unavailable to the United States fair share of assessments for international nuclear nonprolife activities.

(3) No amount may be obligated for an expenditure under this section unless the Director of the Office of Management and Budget determines that the expenditure will be counted against the defense category of the discretionary spending limits for fiscal year 1993 (as defined in section 665(a)(2) of Title 2) for purposes of part C of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C.A. § 900 et seq.].

(4) No assistance may be furnished under this section unless the Secretary of Defense determines and certifies to the Congress 30 days in advance that the provision of such assistance—

(A) is in the national security interest of the United States; and

(B) will not adversely affect the military preparedness of the United States.

(5) The authority to provide assistance under this section in the form of funds may be exercised only to the extent and in the amounts provided in advance in appropriations Act.

Not to be provided against this amount.

(d) Sources of assistance

(1) Funds provided as assistance under this section shall be derived from amounts made available to the Department of Defense for fiscal year 1994 or from balances in working capital accounts of the Department of Defense.

(2) Supplies and equipment provided as assistance under this section may be provided, by loan or donation, from existing stocks of the Department of Defense and the Department of Energy.

(3) The total amount of the assistance provided in the form of funds under this section may not exceed $25,000,000, including funds used for activities of the On-Site Inspection Agency in support of the United Nations Special Commission on Iraq.

(4) Repealed. Pub.L. 103–160, Title XVI, § 1602(c), Nov. 30, 1993, 107 Stat. 1843

(e) Quarterly report

(1) Not later than 30 days after the end of each quarter of fiscal year 1994, the Secretary of Defense shall transmit to the committees of Congress named in paragraph (2) a report of the activities to reduce the proliferation threat carried out under this section. Each report shall set forth (for the preceding quarter and cumulatively)—

(A) the amounts spent for such activities and the purposes for which they were spent;

(B) a description of the participation of the Department of Defense and the Department of Energy and the participation of other Government agencies in those activities; and

(C) a description of the activities for which the funds were spent.

(2) The committees of Congress to which reports under paragraph (1) and under subsection (d)(4) of this section are to be transmitted are—

(A) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Relations of the Senate; and

(B) the Committee on Armed Services, the Committee on Appropriations, the Committee on Foreign Affairs, and the Committee on Energy and Commerce of the House of Representatives.

(Pub.L. 102–484, Div. A, Title XV, § 1505, Oct. 23, 1992, 106 Stat. 2569; Pub.L. 103–160, Div. A, Title XI, § 1182(c)(5), Title XVI, § 1602, Nov. 30, 1993, 107 Stat. 1772, 1843.)

der. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper adjustment of amounts paid in advance shall be made as agreed to by the heads of the agencies or units on the basis of the actual cost of goods or services provided.

(d) An order placed or agreement made under this section obligates an appropriation of the ordering agency or unit. The amount obligated is deobligated to the extent that the agency or unit filling the order has not incurred obligations, before the end of the period of availability of the appropriation, in—

(1) providing goods or services; or

(2) making an authorized contract with another person to provide the requested goods or services.

(e) This section does not—

(1) authorize orders to be placed for goods or services to be provided by convict labor; or

(2) affect other laws about working funds.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 933.)

Amendment of Predecessor Provisions After April 15, 1982, As Superseding This Section

Section 4(a) of Pub.L. 97–258 provided in part that: "Laws enacted after April 15, 1982, that are inconsistent with this Act [which revised, codified, and enacted this title into positive law] supersede this Act to the extent of the inconsistency."

Pub.L. 97–332, Oct. 15, 1982, 96 Stat. 1622, amended the predecessor provision of this section [section 7(a) of Act May 21, 1920, c. 194, 41 Stat. 613] by substituting language authorizing the placing of orders for goods and services from agencies "in a position or equipped to supply, render, or obtain [those goods or services] by contract" for former provisions authorizing the placing of orders for goods and services only from agencies "in a position to supply or equipped to render [the goods and services]", struck out provisions authorizing the Secretary of Defense, the Secretary of a military department of the Department of Defense, the Secretary of Transportation in carrying out duties and powers related to aviation and the Coast Guard, the Secretary of the Treasury, the Administrator of General Services, and the Administrator of the Maritime Administration to place orders under this section for goods and services that an agency or unit filling the order may be able to provide or procure by contract, substituted provisions authorizing the letting of work by contract if the work or services could be as conveniently or more cheaply performed by private agencies for provisions formerly requiring that such work be let by competitive bids, and added provision that any condition or limitation applicable to the procurement funds of any executive department, independent establishment, bureau, or appropriation charged under subsection (a) of this section shall be appropriately credited.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 933.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1534(a)	31:628a (1st sentence)	June 29, 1966, Pub.L. 89–473, § 1, 80 Stat. 221.
1534(b)	31:628a (last sentence)	

Explanatory Notes

In subsection (a), the words "Subject to limitations applicable with respect to each appropriation concerned" are omitted as surplus. The words "or any bureau or office thereof" are omitted as being included in "agency". The words "to pay costs" are substituted for "for the purpose of financing the procurement of materials and services, or financing other costs" to eliminate unnecessary words.

In subsection (b), the words "amounts paid under this section" are substituted for "such expenses so financed", and the words "appropriations charged under subsection (a) of this section" are substituted for "financing appropriation", for clarity.

Library References

United States ⚷85. C.J.S. United States § 123.

§ 1535. Agency agreements

(a) The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if—

(1) amounts are available;

(2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;

(3) the agency or unit to fill the order is able to provide the ordered goods or services; and

(4) the head of the agency decides ordered goods or services cannot be provided as conveniently or cheaply by a commercial enterprise.

(b) Notwithstanding subsection (a)(3) of this section, the Secretary of Defense, the Secretary of a military department of the Department of Defense, the Secretary of Transportation in carrying out duties and powers related to aviation and the Coast Guard, the Secretary of the Treasury, the Administrator of General Services, and the Administrator of the Maritime Administration may place orders under this section for goods and services that an agency or unit filling the order may be able to provide or procure by contract.

(c) Payment shall be made promptly by check on the written request of the agency or unit filling the order. Payment may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the or-connection with any activity authorized pursuant to this chapter, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 2073 of this title or produced by any person in connection with any activity authorized pursuant to this chapter, and to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, and (3) to govern any activity authorized pursuant to this chapter, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property;

Disposition of surplus materials

(j) without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except section 488 of Title 40, or any other law, make such disposition as it may deem desirable of (1) radioactive materials, and (2) any other property, the special disposition of which is, in the opinion of the Commission, in the interest of the national security: *Provided, however,* That the property furnished to licensees in accordance with the provisions of subsection (m) of this section shall not be deemed to be property disposed of by the Commission pursuant to this subsection;

Carrying of firearms

(k) authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize such of those employees of its contractors engaged in the protection of property owned by the United States and located at facilities owned by or contracted to the United States as it deems necessary in the interests of the common defense and security to carry firearms while in the discharge of their official duties;

(*l*) Repealed. Pub.L. 87–456, Title III, § 303(c), May 24, 1962, 76 Stat. 78.

Agreements regarding production

(m) enter into agreements with persons licensed under section 2133, 2134, 2073(a)(4), or 2093(a)(4) of this title for such periods of time as the Commission may deem necessary or desirable (1) to provide for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct, or other material or special nuclear material owned by or made available to such licensees and which is utilized or produced in the conduct of the licensed activity, and (2) to sell, lease, or otherwise make available to such licensees such quansuch buildings and facilities from time to time, as it may deem necessary, and construct, acquire, provide, or arrange for such facilities and services (at project sites where such facilities and services are not available) for the housing, health, safety, welfare, and recreation of personnel employed by the Commission as it may deem necessary, subject to the provisions of section 2224 of this title: *Provided, however,* That in the communities owned by the Commission, the Commission is authorized to grant privileges, leases and permits upon adjusted terms which (at the time of the initial grant of any privilege grant, lease, or permit, or renewal thereof, or in order to avoid inequities or undue hardship prior to the sale by the United States of property affected by such grant) are fair and reasonable to responsible persons to operate commercial businesses without advertising and without advertising[1] and without securing competitive bids, but taking into consideration, in addition to the price, and among other things (1) the quality and type of services required by the residents of the community, (2) the experience of each concession applicant in the community and its surrounding area, (3) the ability of the concession applicant to meet the needs of the community, and (4) the contribution the concession applicant has made or will make to the other activities and general welfare of the community;

Utilization of other Federal agencies

(f) with the consent of the agency concerned, utilize or employ the services or personnel of any Government agency or any State or local government, or voluntary or uncompensated personnel, to perform such functions on its behalf as may appear desirable;

Acquisition of real and personal property

(g) acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the United States, subject to the provisions of section 2224 of this title, and to sell, lease, grant, and dispose of such real and personal property as provided in this chapter;

Consideration of license applications

(h) consider in a single application one or more of the activities for which a license is required by this chapter, combine in a single license one or more of such activities, and permit the applicant or licensee to incorporate by reference pertinent information already filed with the Commission;

Regulations governing Restricted Data

(i) prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in

§ 127a. Expenses for contingency operations

(a) Designation of National Contingency Operations.—The funding procedures prescribed by this section apply with respect to any operation involving the armed forces that is designated by the Secretary of Defense as a National Contingency Operation. Whenever the Secretary designates an operation as a National Contingency Operation, the Secretary shall promptly transmit notice of that designation in writing to Congress. This section does not provide authority for the President or the Secretary of Defense to carry out an operation, but applies to the Department of Defense mechanisms by which funds are provided for operations that the armed forces are required to carry out under some other authority.

(b) Waiver of requirement to reimburse support units.—(1) When an operating unit of the armed forces participating in a National Contingency Operation receives support services from a support unit of the armed forces that operates through the Defense Business Operations Fund (or a successor fund), that operating unit need not reimburse that support unit for the incremental costs incurred by the support unit in providing such support, notwithstanding any other provision of law or Government accounting practice.

(2) The amounts which but for paragraph (1) would be required to be reimbursed to a support unit shall be recorded as an expense attributable to the operation and shall be accounted for separately.

(3) The total of the unreimbursed sums for all National Contingency Operations may not exceed $300,000,000 at any one time.

(c) Financial plan for contingency operations.—(1) Within two months of the beginning of any National Contingency Operation, the Secretary of Defense shall submit to Congress a financial plan for the operation that sets forth the manner by which the Secretary proposes to obtain funds for the full cost to the United States of the operation.

(2) The plan shall specify in detail how the Secretary proposes to make the Defense Business Operations Fund (or a successor fund) whole again.

(d) Incremental costs.—For purposes of this section, incremental costs of the Department of Defense with respect to an operation are the costs that are directly attributable to the operation and that are otherwise chargeable to accounts available for operation and maintenance or for military personnel. Any costs which are otherwise chargeable to accounts available for procurement may not be considered to be incremental costs for purposes of this section.

(e) Incremental personnel costs account.—There is hereby established in the Department of Defense a reserve fund to be known as the "National Contingency Operation Personnel Fund". Amounts in the fund shall be available for incremental military personnel costs attributable to a National Contingency Operation. Amounts in the fund remain available until expended.

(f) Coordination with War Powers Resolution.—This section may not be construed as altering or superseding the War Powers Resolution. This section does not provide authority to conduct a National Contingency Operation or any other operation.

(g) GAO compliance reviews.—The Comptroller General of the United States shall from time to time, and when requested by a committee of Congress, conduct a review of the defense contingency funding structure under this section to determine whether the Department of Defense is complying with the requirements and limitations of this section.

(h) Definition.—In this section, the term "National Contingency Operation" means a military operation that is designated by the Secretary of Defense as an operation the cost of which, when considered with the cost of other ongoing or potential military operations, is expected to have a negative effect on training and readiness.

(Added Pub.L. 103–160, Div. A, Title XI, § 1108(a)(1), Nov. 30, 1993, 107 Stat. 1751.)

HISTORICAL AND STATUTORY NOTES

References in Text

The War Powers Resolution, referred to in subsec. (f), is Pub.L. 93–148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (section 1541 et seq.) of Title 50, War and National Defense. For complete classification of this Resolution to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

Legislative History

For legislative history and purpose of Pub.L. 103–160, see 1993 U.S. Code Cong. and Adm. News, p. ___

Alternative Energy Capability Funding

Question Presented

What legal authorities are available to provide 50,000 metric tons of fossil fuel (heavy oil or coal) on an immediate basis to North Korea, in the event such an undertaking were to become an element of an agreement between the United States and the DPRK. The cost of such an undertaking is estimated at $5-10 million.

This issue was first raised during the negotiations occurring the week of October 10. We further understand that this possible term of agreement has not been approved or endorsed by policy makers, but may be agreed to by negotiators ad referendum. This paper does not address the related question of legal authority to provide 500,000 metric tons of fossil fuel to the DPRK over the next ten years.

Conclusion

DOE, State and DOD have available legal authorities that could be used to fund an initial installment of fossil fuel, assuming the availability of appropriated funds. However, depending on which agency is ultimately designated to provide **long-term** assistance, should policy makers determine to do so, additional authorization and appropriations from Congress will be required. Therefore, we could not now legally commit to a package that included both elements. In addition, counsel for all three agencies remain concerned that use of their agency authorities in this context could be challenged on the Hill.

Summary of Authorities

a. DOE Funds:*

DOE has authority under the Atomic Energy Act (AEA), as amended, to acquire and dispose of personal personal property in the proper performance of functions set forth elsewhere in the Act in keeping with the purposes and policies which the Act prescribes. Specifically, under section 161(g), DOE has authority to acquire,

* It appears that the broad restriction of section 620(t) of the FAA, which currently prohibits all assistance under this or any other act with respect to countries with whom the U.S. has severed diplomatic relations, can be interpreted as not applying to the country in question with which the U.S. has never established such relations. If this provision were applicable, it would be necessary to establish such relations before using Defense funds too provide assistance.

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purchase and lease personal property and to sell, lease or grant that same personal property. In addition, under section 161(j), DOE has authority to "make such disposition as it may deem desirable of (1) radioactive materials, and (2) any other property, the special disposition of which is, in the opinion of the Commission [the Secretary], in the interest of the national security." The FY 1995 DOE appropriations contain $__ million/billion authorized for spending on these purposes.

Section 3, the "purpose" provision of the AEA, demonstrates that among the primary functions and purposes of the DOE under the AEA are peaceful international energy cooperation and nuclear nonproliferation. For example, section 3.c. states that it is the purpose of the AEA to provide for:

> a program for Government control of the possession, use and production of atomic energy and special nuclear material, whether they are owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons."

Section 122 of the AEA further authorizes the Secretary of Energy "to give maximum effect to the policies contained in any international arrangement made after . . . enactment [of the AEA (1954)]." The Act defines "international arrangement" inter alia as "any international agreement approved by the Congress."

The FY 1995 DOE appropriation contains $__ million that may be available for this nuclear nonproliferation purpose.

b. <u>State Funds</u>:

(1) Economic Support Funds (ESF) appropriated under the Foreign Operations Appropriations Act (Foreign Ops Act)) -- funds could only be made available pursuant to a special waiver authority (e.g., sec. 614 (largest annual ceiling), or sec. 451 of the FAA) waiving foreign aid prohibitions applicable to the country. These include prohibitions on direct and indirect assistance to the country using foreign operations appropriations, and on any assistance authorized by the FAA on account of a country being designated a terrorist or communist state/government [Note: This paper does not discuss the content of specific determinations required to be made by the President or Secretary of State under various sections of the FAA including section 614.] If insufficient funds are available in the ESF account, the FAA transfer authority (sec. 610 of the FAA) may be invoked by the President to transfer funds into that account. The majority of

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ESF moneys are earmarked for other purposes (Israel, Egypt, Cyprus) leaving approximately $330 million "available." Section 614, however, may also be used to "unfence" earmarks.

Section 515 of the 1995 Appropriations Act requires 15 day prior notification for expenditures for programs not previously justified to the Congress. While Section 614 can be used to waive this requirement, the Administration would still be required to engage in prior consultation with the oversight committees. Significant political problems could be encountered on the Hill during informal and formal consultations, particularly with regard to the use of foreign operations funds, since the Congress imposed an explicit ban this year on the use of such funds for the country at issue.

(2) Nonproliferation and Disarmament Fund (NDF) -- $10M appropriated for FY 95 in the Foreign Ops Act, subject to a "notwithstanding" authority but also to the regular (15 day) notification procedures. The theory for using this fund is that the provision of alternative energy sources furthers disarmament and nonproliferation objectives of the initiative.

c. <u>DOD Funds</u>:

(1) Emergency and Extraordinary Expenses (EEE) authority -- 10 U.S.C. 127 -- authorizes use of O & M funds for "any emergency or extraordinary expense which cannot be anticipated or classified." Has been interpreted to provide for expenses where appropriations are not otherwise available for Haiti and Africa peacekeeping. Separate appropriations for certain branches of the armed services (e.g., from FY 95 O&M: for Army -- $14,437,000,000; Navy -- $4,301,000,000; for Air Force -- $8,762,000,000; for Defense-wide -- $23,768,000,000. However, the majority of Defense-wide funds are authorized for specific accounts and are not available.

(2) CINC Initiative Fund -- 10 U.S.C. 166(a) -- authorizes use of funds for "contingencies": $25M appropriated for this account for FY 95. Authorizes Chairman of the JCS to provide funds to an officer he designates for specified activities authorized by statute including: (2) contingencies. The statute cites as a priority "the provision of funds to be used for activities with respect to an area or areas not within the area of responsibility of a commander of a combatant command that would reduce the threat to, or otherwise increase, the national security of the United States." Not more than $7 million may be used to purchase items with a unit cost in excess of $15,000.

While this authority was considered, counsel (in particular Legal Counsel for the CJCS) are skeptical at best that the contingency

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considered here fall within the scope of the contingencies Congress intended to be covered by this authority. A decision to use this authority would require additional legal analysis.

d. Authorities for In-Stock Resources:

Section 552(c) Drawdown Authority of the FAA -- authorizes the President to drawdown the commodities and services in stock of any USG agency when an "unforeseen emergency requires the immediate provision of assistance under this chapter." The chapter authorizes assistance for "peacekeeping operations and other programs carried out in furtherance of the national security interests of the United States." One day prior notification required; $25M annual cap; most flexible of drawdown authorities, and thus there are numerous competing needs for it. This authority would have to be used in conjunction with the section 614 waiver authority. As a practical matter, this authority would only appear to be available in the event that the fossil fuel in question is soft coal, because DOD does not have heavy oil in stock.

International Nonproliferation Initiative Fund -- sec. 1505 of the FY 93 National Defense Authorization Act (P.L. 102-484), as amended by sec. 1501(B)(2) of the FY 95 National Defense Authorization Act (P.L. 103-337), authorizes assistance for:

> "efforts to improve international cooperative monitoring of nuclear, biological, chemical and missile proliferation through technical projects and improved information sharing."

The authority to provide assistance under this section in the form of funds may be exercised only to the extent and in the amounts provided in advance by appropriations act. While $20 million was authorized for FY 95 funds were not appropriated against this account for FY-95. However, assistance under this authority may still be provided in the form of "in-kind contributions" and therefore would be a source of authority for providing the initial installment of coal to North Korea.]

Section 5859(a) is subject to a 30-day advance notification requirement. These funds, unlike the foreign operations funds, are not subject to the country-specific aid prohibitions contained in the FAA. The theory for using these funds would be similar to that for using the NDF; i.e., the provision of fuel would constitute a technical project which was part of the effort to improve cooperative monitoring by reducing the country's nuclear capability. Nonetheless, in the judgment of some counsel, use of this authority could be viewed as a stretch as

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the illustrative list of activities envisioned under this statute are international cooperative activities, e.g., with UNSCOM and the IAEA. In the event an international organization were created to oversee and implement the framework agreement this concern may fall away.

Interagency Implementation Mechanisms:

a. The Economy Act:

In the absence of Congressional authority for a directed transfer, the interagency transfer of funds is governed by the Economy Act, 31 U.S.C. 1535-1536. In short, the Economy Act permits the obligation of an appropriation of one agency (the ordering agency) to pay for goods provided by or services performed by another agency so long as both agencies have the underlying authority to undertake the activity in question. In addition, the Economy Act requires that (1) amounts are available; (2) the head of the ordering agency decides the order is in the best interest of the U.S. Government; (3) the agency to fill the order is able to provide the ordered goods or services; and, (4) the head of the agency decides the ordered goods or services cannot be provided as conveniently or as cheaply by a commercial enterprise.

As applied by the Executive branch, in consultation with the Congress, an effective Economy Act argument requires the agency placing the order (i.e., the agency with the appropriated funds) to demonstrate that the good or service provided by another agency benefits the ordering agency and that it is more efficient for the other agency to provide the service than for the ordering agency to provide it themselves. This might be the case where two agencies are authorized to expend money on non-proliferation activities, but one agency may be better situated with respect to skills, liability risks, etc.

b. Section 632(a) and (b) of the FAA:

This section provides "Economy Act-like" authority with respect to the allocation and reimbursement among agencies of funds available under the FAA. Funds allocated under this authority must be obligated and expended "for the purposes for which authorized, in accordance with authority granted in this Act or under authority governing the activities of the agencies of the United States Government to which such funds are allocated or transferred." That is, this authority is only relevant if the receiving agency has the authority to expend the funds for the purpose for which they were authorized.

DRAFT

Baker, James E.

From: Baker, James E.
To: Poneman, Daniel B.
Cc: /R, Record at A1; Kreczko, Alan J.; Aoki, Steven; Wolin, Neal S.
Subject: North Korea [UNCLASSIFIED]
Date: Friday, October 14, 1994 8:38PM

ATTORNEY-CLIENT PRIVILEGED

Dan:

Here is the final draft of the legal authorities paper regarding a possible initial installment of fossil fuel. A couple of points:

1. The initial draft has been reviewed and cleared by agency counsel from DOE, State, DOD, and JCS. I have marked it draft because no counsel has seen the final product.

2. NSC, DOD, and DOE counsel do not believe a Nunn-Lugar formula is legally available. Nunn-Lugar funds are authorized for the newly independent states and therefore those moneys can not be used for a purpose for which they were not authorized or appropriated. Arguing that they were authorized and appropriated for "Nonproliferation" purposes does not work. DOE/GC is still not aware of a Curtis proposal along these lines and they have now inquired.

3. As stated in the conclusion, the use of any authority cited here is subject to the availability of appropriated funds, i.e., this only answers the threshold question.

4. I find the most compelling (and arguable) authorities to be found at DOE if they have the funds and State using 614 with ESF. If a DOD authority is used the EEE fund as discussed appears the only realistic authority.

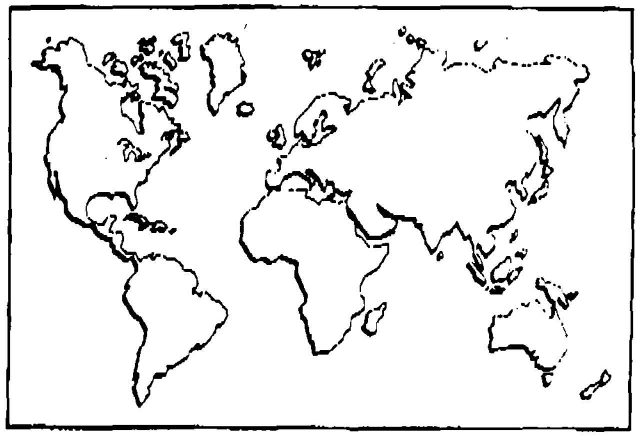
5. In the event an in-kind transfer remains on the table, e.g., coal, the paper suggests two different authorities for such a transfer.

6. In case there is any doubt, State and NSC lawyers agree that the Draft Conventional Energy Assurance that I saw today is a non-binding political undertaking. Even if authority and funds are available for the initial installment, we could NOT bind ourselves to the longer range assistance. Basically we are providing a political assurance that we will seek to obtain the authorities and funds necessary to carry all this out.

<<File Attachment: NKALT.DOC>>

Department of State
Office of the Legal Adviser

FAX COVERSHEET



FROM: Carol Schwab

Ph#202-647-7838 Fax# 202-736-7620

TO: James Baker

Ph# 456-9110 **Fax#** 456-9110

Comments: Please Pass To Poneman, Also

Please acknowledge when received. There is a total of 03 ***pages being transmitted.***

DRAFT

Alternative Energy Capability Funding

State Funds:

(1) Economic Support Funds (ESF) (appropriated under the Foreign Operations Appropriations Act (Foreign Ops Act)) and authorized by the Foreign Assistance Act (FAA)) - funds could only be made available pursuant to a special waiver authority (e.g., sec. 614 (largest annual ceiling), or sec. 451 of the FAA) waiving foreign aid prohibitions applicable to the country. These include prohibitions on direct and indirect assistance to the country using foreign operations appropriations, and on any assistance authorized by the FAA on account of terrorism and communism. If insufficient funds are available in the ESF account, the FAA transfer authority (sec. 610 of the FAA) may be invoked by the President to transfer funds into that account. Significant political problems could be encountered on the Hill during informal and formal consultations, particularly with regard to the use of foreign operations funds, since the Congress imposed an explicit ban this year on the use of such funds for the country at issue.

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(2) CINC Initiative Fund - 10 U.S.C. 166(a) - authorizes use of funds for "contingencies"; $25M appropriated for this account for FY 95.

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Other resources:

Section 552(c) Drawdown authority of the FAA - authorizes the President to drawdown the commodities and services of any USG agency when an "unforeseen emergency requires the immediate provision of assistance under this chapter." The chapter authorizes assistance for "peacekeeping operations and other programs carried out in furtherance of the national security interests of the United States." One day prior notification required; $25M annual cap; most flexible of drawdown authorities, and thus there are numerous competing needs for it. This authority would have to be used in conjunction with the section 614 waiver authority.

drafted: L/PM - CSchwab #5717
cleared:L/PM - ECummings

cc: S/RPP - CJohnstone;MUsnick
L - MMatheson
L/EAP - JKovar
EAP/K - DBrown
NSC/L - JBaker
NSC - DPoneman

Chron.

Dr North Korea

Baker, James E.

From: Baker, James E.
To: Poneman, Daniel B.; Litwak, Robert S.; @LEGISLAT-Legislative Affairs
Cc: /R, Record at A1; Kreczko, Alan J.
Subject: Kim Letter [UNCLASSIFIED]
Date: Monday, July 17, 1995 10:40AM

Judge Mikva has still not heard back from Sen. McConnell. In light of your view and State's that the Galucci meeting must go forward today, Ab is prepared to move to plan B and authorize Galucci to show the letter to McConnell if he must. However, Ab was very clear that he would prefer that Galucci attempt to brief the letter first and only show it to McConnell as a last resort, but not leave it.

Please let me know if you have any questions regarding this message. I will advise State's lawyer (Jim Thessin) on this matter as well. Thank you. ✓

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

OFFICE OF THE LEGAL ADVISER

FAX TRANSMITTAL COVER SHEET

DATE:	
TO: Kovar	FROM: Baker
PHONE NO.:	PHONE NO.: (202) 456-9111
FAX NO.: 736-7559	FAX NO.: (202) 456-9110

COMMENTS:

NUMBER OF PAGES (including cover page):

Jamie Baker

WASHFAX RECEIPT
DEPARTMENT OF STATE

B

'94 OCT 12 P4:59

S/S #

MESSAGE NO. 011941 CLASSIFICATION ~~Secret~~ No. Pages 7

FROM: Joel Wit (Officer name) S/AL (Office symbol) 647-1866 (Extension) 6313 (Room number)

MESSAGE DESCRIPTION Agreed Framework Between the U.S. and the DPRK

TO: (Agency)	DELIVER TO:	Extension	Room No.
NSC	Don Poneman	395-5697	380, OEOB

FOR: CLEARANCE ☐ INFORMATION ☒ PER REQUEST ☐ COMMENT ☐

REMARKS:

S/S Officer: BJS

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS
Initials: [illegible] Date: 03/17/15
2009-0528-F

Withdrawal/Redaction Marker
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. draft	Agreed Framework between USA and DPRK (5 pages)	10/00/1994	P1/b(1)

COLLECTION:
Clinton Presidential Records
National Security Council
Mary Derosa (Legal Advisor)
OA/Box Number: 3500

FOLDER TITLE:
North Korea [3]

2009-0528-F
kc1440

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001b. paper	Confidential Minute to the Agreed Framework (2 pages)	10/00/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Mary Derosa (Legal Advisor)
OA/Box Number: 3500

FOLDER TITLE:

North Korea [3]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. cable	re responses to issues raised re DPRK settlement (5 pages)	10/12/1994	P1/b(1)

COLLECTION:
Clinton Presidential Records
National Security Council
Mary Derosa (Legal Advisor)
OA/Box Number: 3500

FOLDER TITLE:
North Korea [3]

2009-0528-F
kc1440

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..RAFT

Alternative Energy Capability
Funding

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> "efforts to [illegible] .ational cooperat[illegible] [illegible]ing of nuclear, [illegible] emical and missi[illegible] [illegible]ion through techn[illegible] [illegible] and improved inf[illegible] sharing".

For FY 94, $25 000 [illegible] ava[illegible]lable, and for FY 9[illegible] $20,000,000 is availabl[illegible]. Thi[illegible] is subject to a 30-da[illegible] notification requirement. I[illegible] possible that use of funds might be a bit less contentious on [illegible] Hill s[illegible] unlike

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* [illegible] appears that the broad restriction of sectio[illegible] [illegible]) of the FAA, which currently prohibits all assistance under this or any other act with respect to countries with whom the U.S. has severed diplomatic relations, can be interpreted [illegible] not applying to the country in question with which [illegible] [illegible]S. has never established such relations. If this pro[illegible] were applicable, it would be necessary to establish [illegible] relations before using Defense funds to provide assistanc[illegible]

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drafted: L/PM - CSchwab #5717
cleared:L/PM - ECummings

cc: S/RPP - CJohnstone;MUsnick
L - MMatheson
L/EAP - JKovar
EAP/K - DBrown
NSC/L - JBaker
NSC - DPoneman

ID: OCT 12'94 17:36 No.008 P.01

Department of State
Office of the Legal Adviser

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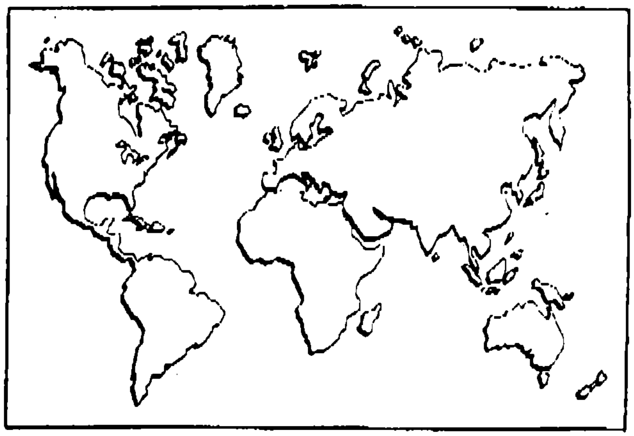

FROM: Carol Schwab

Ph#202-647-7838 Fax# 202-736-7620

TO: Jami Baker

Ph# 456 9110 **Fax#**

Comments:

Revised draft, per conversation

Please acknowledge when received. There is a total of 3 pages being transmitted.

DRAFT

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* Only available if the U.S. were to reestablish diplomatic relations with the DPRK, thereby making inapplicable sec. 620(t) of the FAA which currently prohibits all assistance under this or any other act with respect to countries with whom the U.S. does not have diplomatic relations.

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EAP/K - DBrown
NSC/L - JBaker
NSC - DPoneman

ATTORNEY-CLIENT PRIVILEGED FOR OFFICIAL USE ONLY

614 can waive FAA + For. ops Terrorism, but concern about other Terrorism Statutes.

Alternative Energy Capability Funding

Question Presented

What legal authorities are available to provide 50,000 metric tons of fossil fuel (heavy oil or coal) on an immediate basis to North Korea, in the event such an undertaking were to become an element of an agreement between the United States and the DPRK. The cost of such an undertaking is estimated at $5-10 million.

This issue was first raised during the negotiations occurring the week of October 10. We further understand that this possible term of agreement has not been approved or endorsed by policy makers, but may be agreed to by negotiators ad referendum. This paper does not address the related question of legal authority to provide 500,000 metric tons of fossil fuel to the DPRK over the next ten years.

Conclusion

However, Must have $ identified

DOE, State and DOD have available legal authorities that could be used to fund an initial installment of fossil fuel. ~~However~~, In addition, depending on which agency is ultimately designated to provide long-term assistance, should policy makers determine to do so, additional authorization from Congress will be required. Therefore, we could not now legally commit to a package that included both elements. In addition, State and DOD counsel remain concerned that use of their agency authorities in this context could be challenged on the Hill.

bold

If use DOE or DOD may get better reception

Summary of Authorities

a. DOE Funds:*

If directly tied to the objective of nuclear non-proliferation, DOE has authority to acquire and purchase real property and to sell, lease or grant that same real property. In addition, DOE has authority to "without regard to . . . any other law, . . . make such disposition [of surplus materials] as it may deem desirable of . . . (2) any other property, the special disposition of which is, in the opinion of the Commission [the

* It appears that the broad restriction of section 620(t) of the FAA, which currently prohibits all assistance under this or any other act with respect to countries with whom the U.S. has severed diplomatic relations, can be interpreted as not applying to the country in question with which the U.S. has never established such relations. If this provision were applicable, it would be necessary to establish such relations before using Defense funds too provide assistance.

620 f read Pres. determination State standard.

DRAFT

Kursnick

Secretary], in the interest of the national security." AEA Sections 161(i) and (j). The FY 1995 DOE appropriations contain $__ million/billion authorized for spending on these purposes.

Sections 121 and 122 of the Atomic Energy Act authorize Energy to give broad effect to the policies contained in treaties made after 1954. Further, any provision of the Act that conflicts with the provisions of such a treaty "shall be deemed to be of no force or effect." Finally, use of this authority would be consistent with one of the purposes of the Act provided in Section 3.c. ". . . to make the maximum contributions to the common defense and security and national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons."

b. State Funds:

(1) Economic Support Funds (ESF) appropriated under the Foreign Operations Appropriations Act (Foreign Ops Act)) -- funds could only be made available pursuant to a special waiver authority (e.g., sec. 614 (largest annual ceiling), or sec. 451 of the FAA) waiving foreign aid prohibitions applicable to the country. These include prohibitions on direct and indirect assistance to the country using foreign operations appropriations, and on any assistance authorized by the FAA on account of a country being designated a terrorist or communist state/government.* If insufficient funds are available in the ESF account, the FAA transfer authority (sec. 610 of the FAA) may be invoked by the President to transfer funds into that account. . The majority of ESF moneys are fenced off and may not be used for other purposes. We understand that approximately $330 million is "available."

Sec. 614 can waive earmarks. $1.5 bill appro. Israel/Egypt

Significant political problems could be encountered on the Hill during informal and formal consultations, particularly with regard to the use of foreign operations funds, since the Congress imposed an explicit ban this year on the use of such funds for the country at issue.

Prior consultation w/ Hill. Not just those oversight committees extend portion. Could use to waive final notification but not prior consultation.

(2) Nonproliferation and Disarmament Fund (NDF) -- $10M appropriated for FY 95 in the Foreign Ops Act, subject to a "notwithstanding" authority but also to the regular (15 day) notification procedures. The theory for using this fund is that the provision of alternative energy sources furthers disarmament and nonproliferation objectives of the initiative.

Send up letter after consults NSC + OMB State/H lead in consults.

c. DOD Funds:

(1) CINC Initiative Fund -- 10 U.S.C. 166(a) -- authorizes use of funds for "contingencies": $25M appropriated for this account

Not included in Congressional Presentation. Separate notification when Sec. 80 sends 15 Day S.i.,

Not necessarily justified programs require Sec. 515 of 1995 Appropriations Act. 614 can waive requirement. Not normal process.

DRAFT

for FY 95. Authorizes Chairman of the JCS to provide funds to an officer he designates for specified activities authorized by statute including: (2) contingencies. The statute cites as a priority "the provision of funds to be used for activities with respect to an area or areas not within the area of responsibility of a commander of a combatant command that would reduce the threat to, or otherwise increase, the national security of the United States." Not more than $7 million may be used to purchase items with a unit cost in excess of $15,000.

(2) Emergency and Extraordinary Expenses (EEE) authority -- 10 U.S.C. 127 -- authorizes use of O & M funds for "any emergency or extraordinary expense which cannot be anticipated or classified." Has been ~~broadly~~ interpreted to permit use of funds for Haiti and Africa peacekeeping. Separate appropriations for certain branches of the armed services (e.g., from FY 95 O&M: for Army -- $14,437,000,000; Navy -- $4,301,000,000; for Air Force -- $8,762,000,000; for Defense-wide -- $23,768,000,000. However, the majority of Defense-wide funds are authorized for specific accounts and ~~is~~ are not available.

(3) International Nonproliferation Initiative Fund -- sec. 1505 of the FY 93 National Defense Authorization Act (P.L. 102-484), as amended by sec. 1501(B)(2) of the FY 95 National Defense Authorization Act (P.L. 103-337), authorizes assistance for:

> "efforts to improve international cooperative monitoring of nuclear, biological, chemical and missile proliferation through technical projects and improved information sharing."

For FY 94, $25,000,000 was available, and for FY 95, $20,000,000 is available. This is subject to a 30-day advance notification requirement. These funds, unlike the foreign operations funds, is are not subject to the country-specific aid prohibitions contained in the FAA. The theory for using these funds would be similar to that for using the NDF; i.e., the provision of fuel would constitute a technical project which was part of the effort to improve cooperative monitoring by reducing the country's nuclear capability. Nonetheless, in the judgment of some counsel, use of this authority could be viewed as a stretch as the illustrative list of activities envisioned under this statute are international cooperative activities, e.g., with UNSCOM and the IAEA.

d. Authorities for In-Stock Resources:

Section 552(c) Drawdown Authority of the FAA -- authorizes the President to drawdown the commodities and services in stock of any USG agency when an "unforeseen emergency requires the

DRAFT

immediate provision of assistance under this chapter." The chapter authorizes assistance for "peacekeeping operations and other programs carried out in furtherance of the national security interests of the United States." One day prior notification required; $25M annual cap; most flexible of drawdown authorities, and thus there are numerous competing needs for it. This authority would only have to be used in conjunction with the section 614 waiver authority. As a practical matter, this authority would only appear to be available in the event that the fossil fuel in question is soft coal, that is what is in stock.

Implementation mechanisms

Interagency ~~Transfers~~:

In the absence of Congressional authority for a directed transfer, the interagency transfer of funds is governed by the Economy Act, 31 U.S.C. 1535-1536. In short, the Economy Act permits the obligation of an appropriation of one agency (the ordering agency) to pay for goods provided by or services performed by another agency so long as both agencies have the underlying authority to undertake the activity in question. In addition, the Economy Act requires that (1) amounts are available; (2) the head of the ordering agency decides the order is in the best interest of the U.S. Government; (3) the agency to fill the order is able to provide the ordered goods or services; and, (4) the head of the agency decides the ordered goods or services cannot be provided as conveniently or as cheaply by a commercial enterprise.

only relevant is receiving agency has authority to expend funds

As applied by the Executive branch, in consultation with the Congress, an effective Economy Act argument requires the agency placing the order (i.e., the agency with the appropriated funds) to demonstrate that the good or service provided by another agency benefits the ordering agency and that it is more efficient for the other agency to provide the service than for the ordering agency to provide it themselves. This might be the case where two agencies are authorized to expend money on non-proliferation activities, but one agency may be better situated with respect to skills, liability risks, etc.

FAA 632 (a)(b)

Freedom Support Act SEED legis.

ESF very very broad.

SF ⇒ Memo of U. w/ recipient agency.

Don't have to make considerations in Econ. Act.

Discretion. Purposes for which these funds authorized.

Freed up ESF Couple 614 waiver generally.

DRAFT

Receiving agency

⇒ Can use its own FAA authorities to transfer.

Still obligate w/in period availability

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. memo	Walt Slocombe to Dan Poneman re Team Spirit 94 (5 pages)	10/07/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Mary Derosa (Legal Advisor)
OA/Box Number: 3500

FOLDER TITLE:

North Korea [3]

2009-0528-F
kc1440

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

DEPARTMENT

B

'94 OCT 11 SP5:07

C

cwl/d2

MESSAGE NO. 011873	CLASSIFICATION ~~CONFIDENTIAL~~		No. Pages 1
FROM: RICHARD McCRENSKY	EAP/K	647-5727	5313
(Officer name)	(Office symbol)	(Extension)	(Room number)

MESSAGE DESCRIPTION

TO: (Agency)	DELIVER TO:	Extension	Room No.
CNSC	James BAKER	456-9111	
Commerce	Lee Frazier	482-5491	
OSD	CAPT Steve Loeffler	5-6565	
DOE	Ken Luongo	586-2102	
JCS/J-5	CAPT Tom Flanagan	5-8139	
OMB	Jim Nix	395-4580	

FOR: CLEARANCE ☐ INFORMATION ☑ PER REQUEST ☑ COMMENT ☐

REMARKS:

S/S Officer: DCS

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS
Initials: CW Date: 03/17/15

2009-0528-F

B

S/S #

cover 2 of 2

MESSAGE NO. ______ CLASSIFICATION ~~Confidential~~ No. Pages 1

FROM: Richard McCrensky | EAP/K | 75727 | 5313
(Officer name) | (Office symbol) | (Extension) | (Room number)

MESSAGE DESCRIPTION ______

TO: (Agency)	DELIVER TO:	Extension	Room No.
Treasury	Steve Pinter	622-2480	

FOR: CLEARANCE ☐ INFORMATION ☑ PER REQUEST ☑ COMMENT ☐

REMARKS: ______

S/S Officer: DCS

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS
Initials: [illegible] Date: 03/27/15
2009-0528-F

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. memo	David Brown to Steve Loeffler et al re financial and legal authority re alternative energy (1 page)	10/11/1994	P1/b(1)

COLLECTION:
Clinton Presidential Records
National Security Council
Mary Derosa (Legal Advisor)
OA/Box Number: 3500

FOLDER TITLE:
North Korea [3]

2009-0528-F
kc1440

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Resubmitted 8243

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

December 21, 1998

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: GARY SAMORE

SUBJECT: Presidential Determination on U.S. Assistance to the Korean Peninsula Energy Development Organization (KEDO)

The attached memo to the President recommends that he exercise his section 614 waiver authority to provide an additional $12 million to KEDO. With these funds, KEDO will be able to resume and complete 1998 shipments of heavy fuel oil to North Korea.

Concurrence by: Jack Pritchard, Mara Rudman, Newell Highsmith

RECOMMENDATION

That you forward the attached memo to the President.

Attachment
Tab I Memorandum to the President
Tab A Presidential Determination
Tab B Incoming Correspondence

THE WHITE HOUSE

WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: SAMUEL BERGER
LARRY STEIN

SUBJECT: Presidential Action Required to Provide an Additional $12 Million to the Korean Peninsula Energy Development Organization (KEDO)

Purpose

To invoke Presidential waiver authority under Section 614 of the Foreign Assistance Act to provide $12 million to KEDO.

Background

On November 27, 1998, you authorized the Department of State to consult with, and provide written justification to, the appropriate committees of Congress on your intent to use section 614 waiver authority to provide $12 million in Economic Support Funds (ESF) to KEDO for heavy fuel oil purchases for North Korea. On December 7, 1998, State notified the NSC that these Congressional consultations have been completed.

State reports that the relevant committee staff raised no objections to the proposed reprogramming of $12 million in ESF funds for KEDO, but they did express strong concerns about recent North Korean activities, particularly regarding heavy fuel oil diversions and the suspect underground site, which could weaken support for future funding. State recommends, and we agree, that you use your section 614 waiver authority to provide these funds to KEDO. With these funds, KEDO will be able to resume and complete the required 1998 heavy fuel oil shipments to North Korea.

Recommendation

That you sign the Presidential Determination at Tab A.

cc: Vice President
Chief of Staff

Attachments
Tab A Presidential 614 Determination
Tab B Incoming Correspondence

TAB A

THE WHITE HOUSE

WASHINGTON

Presidential Determination
No. ____________________

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Use of $12 Million in Economic Support Funds for a U.S. Contribution to the Korean Peninsula Development Organization (KEDO)

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1) (the "Act"), I hereby determine that it is important to the security interests of the United States to furnish up to $12 million in funds made available under Chapter 4 of Part II of the Act for assistance for KEDO without regard to any provision of law within the scope of section 614(a)(1). I hereby authorize furnishing of this assistance.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the Federal Register.

S/S 9821261
United States Department of State

Washington, D.C. 20520

8243

December 7, 1998

UNCLASSIFIED

MEMORANDUM FOR GLYN T. DAVIES
EXECUTIVE SECRETARY
NATIONAL SECURITY COUNCIL

SUBJECT: Presidential Action Required to Use $12 Million in Economic Support Funds to Make a Supplementary U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO)

This memorandum requests that the President sign the Determination required to make available $12 million in Economic Support Funds for a contribution to KEDO in order to provide heavy fuel oil to North Korea. On November 27, 1998, the President authorized the Department of State to consult with, and provide a written justification to, the appropriate committees of Congress prior to making his decision whether to exercise his authority under section 614(a)(1) of the Foreign Assistance Act of 1961, as amended (FAA), to permit this U.S. contribution to KEDO.

The Department of State has held formal consultations with, and provided the written policy justification to, the relevant Congressional committees as required under Section 614. Congressional staff members raised no objections to reprogramming the $12 million in ESF funds, but majority staff members on both authorizing and appropriations committees reiterated strong concerns over recent North Korean activities, particularly regarding heavy fuel oil diversion and questions surrounding the suspect underground site. They indicated these problems called into question the entire Agreed Framework and would further weaken Congressional support for future funding.

In the context of the consultations, staff members for Sen. Jesse Helms (R-NC) and Rep. Benjamin Gilman (R-NJ) again asked for access to drafting and clearing information related to the Secretary's Congressional testimony and certain press guidance on North Korea. Some staff members indicated that their support for the 614 waiver hinged on fulfillment of the request. We have offered to brief the staff on procedures for preparing the Secretary's testimony and press guidance. However, in keeping with established policy, we will redact the names of drafting and clearing officers below assistant secretary level. The staff has agreed to the briefing, but may continue to insist on the drafting and clearing information.

Section 634A of the FAA and section 515 of the FY 99 Foreign Operations, Export Financing, and Related Programs Appropriations Act require that the "regular notification procedures" apply to the obligation of these funds, i.e., a notification to Congress 15 days before making the funds available to KEDO. While a waiver of this requirement is a legally available option, we do not recommend doing so on this occasion.

The $12 million which would be provided as a result of the President's exercise of his waiver authority is needed urgently to allow KEDO to resume and complete 1998 shipments of heavy fuel oil to North Korea, fulfilling our obligations under the Agreed Framework and the understanding reached with the DPRK in the August-September New York talks. (Although we told the North Koreans during the New York talks that the 1998 HFO shipments should be completed by the end of this year, they are now likely to extend through most of January. We believe this will still be acceptable to the North Koreans.)

Accordingly, we recommend that the President exercise his authority under section 614(a)(1) of the FAA and sign the attached Presidential determination that "it is in important to the security interests of the United States" to furnish $12 million in reprogrammed ESF funds to KEDO.

Rose M. Likins for
Kristie A. Kenney
Executive Secretary

Attachment:

Draft Presidential determination under section 614

The White House
Washington, D.C.
Presidential Determination
No. ________________

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Use of $12 Million in Economic Support Funds for a U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO)

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1) (the "Act"), I hereby determine that it is important to the security interests of the United States to furnish up to $12 million in funds made available under Chapter 4 of Part II of the Act for assistance for KEDO without regard to any provision of law within the scope of section 614(a)(1). I hereby authorize the furnishing of this assistance.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the Federal Register.

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9808243
RECEIVED: 08 DEC 98 12

TO: DAVIES

FROM: KENNEY, K

DOC DATE: 07 DEC 98
SOURCE REF: 9821261

KEYWORDS: NON PROLIFERATION
CONGRESSIONAL

KOREA NORTH

PERSONS:

SUBJECT: PRES ACTION REQUIRED TO USE $12 MILLION IN ECONOMIC SUPPORT FUNDS TO MAKE SUPPLEMENTARY US CONTRIBUTION TO KEDO

ACTION: PREPARE MEMO FOR BERGER   DUE DATE: 14 DEC 98   STATUS: S

STAFF OFFICER: SAMORE   LOGREF:

FILES: WH   NSCP: CODES:

D O C U M E N T   D I S T R I B U T I O N

FOR ACTION	FOR CONCURRENCE	FOR INFO
SAMORE	BAKER	BOUCHARD
	CARAVELLI	GUARNIERI
	PRITCHARD	JONES, K
	RUDMAN	LEE
		LIEBERTHAL
		MCCARTHY
		SCHWARTZ
		WEISS

COMMENTS: ______________________

DISPATCHED BY ______________ DATE __________ BY HAND W/ATTCH

OPENED BY: NSGP   CLOSED BY: DOC 1 OF 1

UNCLASSIFIED

File
North Korea
Please

Baker, James E.

From: Baker, James E.
To: @ASIA - Asian Affairs; Suettinger, Robert L.
Cc: /R, Record at A1; Kreczko, Alan J.; Hunerwadel, Joan S.
Subject: DPRK Consular Protection Arrangement [UNCLASSIFIED]
Date: Tuesday, August 29, 1995 11:21AM

Bob:

After consultation with L/EAP, I clear the draft notes. Thanks for the look.

Canadian Protection [illegible]

eap/k
Office of Korean Affairs
U.S. Department of State
Washington, D.C. 20520

PHONE: (202) 647-7717 FAX: (202) 647-7388

Stanley Look OK? OK

DATE: ~~8/24/95~~ 8/28/95

TO: Mr. Robert Suettinger fax: 456-9250

~~MESSAGE~~: from Carol Dennison 647-5961

Pouch Hugh Seoul.

[illegible] Swedish [illegible].

The attached letter is for clearance. We are in the final throes of finalizing the protecting power arrangements for the U.S. in DPRK. The DPRK is actually pushing to finish this up. Am also attaching for your info the texts of the diplomatic notes which will be exchanged. These have been cleared throughout the Department with no changes. We want to avoid another round of drafts to expedite the agreement since we will have U.S. Hams in the DPRK very soon.

Thank you.

Carol Dennison

August 23, 1995

Mr. Pak Sok Gyun
Deputy Director
Ministry of Foreign Affairs
Pyongyang, DPRK

Dear Mr. Pak:

This is in reply to your letter of August 14, 1995, passed to us through the New York channel, concerning the interim consular protection arrangements and liaison office issues.

We were pleased to receive your agreement on the exchange of diplomatic notes between our two Missions to the United Nations to finalize the bilateral agreement on the scope and substance of the consular functions to be carried out during the period of the interim arrangement.

We accept the proposed changes as contained in your August 14 letter to the revised drafts of the diplomatic notes to be exchanged between our Missions to the United Nations.

When the United States Mission to the United Nations receives your diplomatic note, it will rapidly send the U.S. diplomatic note in reply to the DPRK Permanent Mission to the United Nations. Your note to the Swedish government will then be the final detail to put the arrangement in place.

With regard to the visit of the liaison office team to the DPRK, we have informed the DPRK Permanent Mission to the United Nations that the team proposes to come in September. The exact date and composition of the U.S. team remain to be finalized.

The team will address the difficulties raised by your reversal on the agreed position reached in December 1994 regarding the transmission of diplomatic pouches through Panmunjom.

Sincerely,

Jeffrey Goldstein
Bureau of East Asian and
Pacific Affairs

Drafted: EAP/K:CDennison, 8/22/95
SEKGEN 2253

Cleared: EAP:THubbard
S/AL:JWit
L/EAP:JHergen
CA/OCS:EBetancourt
P:JMarty
NSC:RSuettinger
IO/UNP:KBoesel

Democratic People's Republic of Korea
Permanent Mission to the United Nations
515 East 72nd Street, 38F, New York, N.Y. 10021
Tel. (212) 772-0712 (0725) FAX (212) 772-0735

FAX COVER

TO: MR. LYNN TURK

FAX NO: (202) 647-7388

FROM: HAN SONG RYOL

FAX NO: (212) 772-0735 (Telephone 772-0712)

PAGES INCLUDING COVER:

DATE:

NOTE:

4)

(Translation)
Pyongyang, August 14, 1995

Mr. Lynn Turk
Coordinator for U.S.-DPRK Affairs
Bureau for East Asian and Pacific Affairs
Department of State
United States of America
Washington, D.C.

Dear Mr. Lynn Turk:

I am responding to your letter of July 31, 1995.

We agree with your proposal that our two Permanent Missions to the United Nations exchange notes to finalize bilateral agreement on the scope and substance of the consular functions and on the interim arrangement for consular protection services, and we also agree to your view that this agreement will not constitute the establishment of consular relations under the Vienna Convention on Consular Relations.

We are proposing just some minor changes in your proposed draft notes, to improve the clarity of the substantive points outlined in the drafts, as follows:

First, as we agree with your suggestion that up to two members of the diplomatic staff of the DPRK Permanent Mission to the United Nations will be permitted to carry out interim consular protection services for the DPRK, there should be a clear stipulation of the principle of reciprocity, under which one official of the Swedish Government and another member of the diplomatic staff of the Interest Section of the Federal Republic of Germany to the DPRK will be permitted to carry out interim consular protection services for the U.S.

Second, in view of the complicated structure of the first sentence of your proposed draft of the DPRK note to the U.S., we propose that this sentence be broken into two sentences for the convenience of understanding.

5)

We are attaching herewith the revised drafts of the notes to be exchanged between the two Permanent Missions to the United Nations.

Upon receipt of your agreement to these drafts, the DPRK Permanent Mission to the United Nations will send its note, written as in our revised version based on your draft in your July 31 letter, to the U.S. Permanent Mission to the United Nations. Further, upon receipt of the note from the U.S. Permanent Mission to the United Nations in response to the DPRK note, we will notify the Royal Swedish Government of our bilateral agreement.

With respect to the selection of the U.S. liaison office buildings, we would like to make it clear that we have already agreed to a visit to Pyongyang by a group of U.S. experts, in the sense that we would permit the collocation of the U.S. office in the compound of the Interest Section of the Federal Republic of Germany to the DPRK.

In our view, you can consult with the DPRK Permanent Mission to the United Nations in New York to firm up the specific timing of the DPRK visit by a group of U.S. experts.

With regard to the impermissibility of the transmission of diplomatic pouches through Panmunjom for reasons beyond our control, if the U.S. position is that we should renegotiate all technical and consular issues because of this problem, we will not object to that, for our part as well.

We will be awaiting your more specific proposals in this regard.

Sincerely yours,

Pak Sok Gyun
Deputy Director
Department of U.S. Affairs
Ministry of Foreign Affairs
Democratic Peoples Republic of Korea

61

Attachments: 1. Draft DPRK Note
2. Draft U.S. Note of Reply

1) Draft Note of the DPRK to the U.S.

(Begin text)

The Permanent Mission of the Democratic People's Republic of Korea to the United Nations presents its compliments to the Permanent Mission of the United States of America to the United Nations and has the honour to inform the latter of the agreement to the contents contained in the latter's Note dated April 25. 1995.

Upon instruction from the Ministry of Foreign Affairs of the Democratic People's Republic of Korea in this regard. the Permanent Mission of the Democratic People's Republic of Korea to the United Nations hereby transmits the following confirmation with regard to the scope and substance of the consular protection functions to be carried out on a temporary basis by the DPRK Permanent Mission to the United Nations and by the Royal Swedish Embassy to the DPRK. assisted by the Interest Section of the Federal Republic of Germany. until the opening of liaison offices between the DPRK and the U.S. in accordance with the Agreed Framework of October 21. 1994:

The Democratic People's Republic of Korea agrees to the U.S. proposal that the Democratic People's Republic of Korea and the United States of America agree on the arrangement that up to two members of the diplomatic staff of the DPRK Permanent Mission to the United Nations in New York and one official of the Royal Swedish Government and another member of the diplomatic staff of the FRG Interest Section to the DPRK shall be permitted to carry out interim consular protection services for the DPRK and the U.S. respectively. prior to the establishment of liaison offices. Such protection services will include the functions prescribed in paragraphs 1) through 10) of the Consular Issues Sections of the Understanding agreed upon at the DPRK-U.S. experts meeting in December of 1994.

7)

The DPRK Permanent Mission to the United Nations and the Royal Swedish Embassy and/or the FRG Interest Section in Pyongyang, as already agreed upon, shall have no authority to issue passports or visas, except that the DPRK Permanent Mission to the United Nations shall have the function of providing replacement passports to the nationals of the DPRK.

Travels by officials of the DPRK Permanent Mission to the United Nations and by the official of the Royal Swedish Government and/or the official of the FRG Interest Section to the DPRK, which are connected to the performance of these interim consular protection services shall be allowed in accordance with existing travel regulations in the DPRK and U.S.

The Permanent Mission of the Democratic People's Republic of Korea to the United Nations avails itself of this opportunity to renew to the Permanent Mission of the United States of America to the United Nations the assurances of its highest consideration.

(End text)

2) Draft Reply Note of the U.S. to the DPRK

(Begin text)

The Permanent Mission of the United States of America to the United Nations presents its compliments to the Permanent Mission of the Democratic People's Republic of Korea and has the honour to inform the latter that the Government of the United States of America agrees to the proposal for interim consular protection services outlined in the Note dated August xx, 1995 from the Permanent Mission of the Democratic People's Republic of Korea to the United Nations to the Permanent Mission of the United States of America to the United Nations.

This arrangem nt does not constitute the establishment of consular relations in accordance with the Vienna Convention on Consular Relations

This arrangem nt will take effect immediately upon notification by th DPRK Government to the Royal Swedish Government of the PRK's agreement to the Swedish Note of April 19, 1995 del vered to the DPRK Embassy in Stockholm.

The Permanent Mission of the United States of America to the United Nations avails itself of this opportunity to renew to the Permanent M ssion of the Democratic People's Republic of Korea to the Un ted Nation the assurances of its highest consideration.

(End text)

Please file
KEDO
or North Korea
~~[illegible]~~ legal analysis

Baker, James E.

From: Baker, James E.
To: Samore, Gary S.
Cc: /R, Record at A1; Kreczko, Alan J.; Hunerwadel, Joan S.
Subject: KEDO [UNCLASSIFIED]
Date: Friday, March 29, 1996 12:54PM

Gary:

Here are my comments and clearance on your KEDO package. However, please let me know if OMB, or any other agency, raises serious objection to the package.

Para. 2, Line 6: Shorthand summary of the Sec. 575 requirements works except for the 3d criteria where I think you should use the statutory language to avoid inadvertently lowering the standard, i.e., statute says "assure" and you have written "encourage," which I believe lowers the bar. Thus, 3) that the U.S. is taking steps to assure that progress is made on the North-South dialogue. . . " You also need second part, "and implementation of the Joint Declaration on Denuclearization."

Para 3, second sentence: For record, clarity and in case TL or SB are called, I would modify as follows.

". . . funding to KEDO. Some Congressional staffers have threatened to block the 614 waiver on procedural grounds, claiming that under Sec. 575 any U.S. funding to KEDO above $13 million is subject to Congressional reprogramming procedures. Sec. 575 provides, among other things, that "no funds may be provided for KEDO funding for administrative expenses and heavy fuel oil costs beyond the total [underscore total] amount included for KEDO in the fiscal year 1996 congressional presentation." In our formal congressional presentation documents we requested a total of $22 million for KEDO. In the course of briefing this request, we indicated that we planned on spending $10 million on heavy fuel oil, $10 million on the LWR project, and $3 million on KEDO administration costs. Since Congress prohibited any U.S. funding for the LWR project, we have told Congress that we now intend to use our total FY96 KEDO contribution of up to $22 million for heavy fuel oil and administrative expenses. Since these amounts are within the total amount included for KEDO, as presented, OMB and State have concluded that there is no basis to require a reprogramming in order to allocate the money as specified above."

Last para. before recommendation: Gary, think you need to signal to TL that this is not a done deal. You know better than I, but in other contexts we have identified the perils of 614. State lawyers advise that while waiver likely will go forward, some sort of hold could be put on amounts over 13 million. Suggest the following: "We anticipate some opposition, however; as a matter of practice, any member can put a hold on a 614 waiver, notwithstanding the President's legal authority to proceed. Moreover, 614 waivers have in the past been controversial in there own right."

MEMO to PRESIDENT:

3d para, second sentence: I would substitute: "In order to use Section 614 you must determine that it "insert standard which you have in memo already "

Top of page 2: DO NOT attach draft 614 determination to this package. The President may sign it in error. This should be submitted later after consultation. The justification is a different matter, as that will be provided to Congress now as part of consultation. You may wish to include as further background, but not always done.

Last sentence top para: ". . . we will request that you sign a determination under cover of a separate memorandum, ... "

Last para. of memo: You state that "some members and staffers have raised various substantive and procedural concerns." I think this is too cryptic. Point about lack of widespread opposition is fair, but remember one member can put a hold on 614. Also, not clear what the substantive objections are in either memo, as I would classify reprogramming issue as procedural, albeit done because members are fighting guerilla war against substantive policy they don't like. How about: ". . funding for KEDO, although we run the risk that a Member, who disfavors our policy generally, will put a hold on your 614 waiver based on procedural or substantive objections."

I defer to Bill Danvers whether to include language for the President on the general use it and lose it issue with 614. Already identified in TL memo.

Note: I have read the determinations carefully, but the accompanying letters with less precision. As always, they warrant a careful look as well.

Hope this is helpful.

[redacted]

1690

(1) Sec. 575
(2) why no need for reprogramming
(3) 20 - 22 mill. what about [illegible]. waiver for full.
(4) 614 process
(5) [illegible] re: 614
(6) Issues sentence
(7) what is the hang up

Comments ASAP! Mary [illegible]

15 days. Held. Reprogramming.

not the right #'s?

March 28, 1996

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: DANIEL PONEMAN

FROM: GARY SAMORE

SUBJECT: Presidential Determinations Required for U.S. Assistance to the Korean Peninsula Energy Development Organization (KEDO)

The memo to the President at Tab I recommends that he initiate the legal steps required to obligate up to $22 million authorized by Congress for KEDO in FY96.

The President must make three substantive certifications under Section 575 of the Foreign Operations Appropriations Act: 1) that an ROK firm has been designated as the prime contractor for the Light water reactor (LWR) project; 2) that the DPRK nuclear program has remained frozen; and 3) that the U.S. is making efforts to ~~encourage~~ assure North-South dialogue. The first two are not controversial, but some members of Congress may argue that we are not doing enough to assure North-South dialogue.

In addition to the three substantive certifications, the President must issue a 614 waiver of the Foreign Assistance Act to allow U.S. funding to KEDO. Some Congressional staffers have threatened to block the 614 waiver on procedural grounds,
1 claiming that any U.S. funding to KEDO above $13 million is subject to Congressional reprogramming procedures. In our original budget request last year for KEDO, we said we planned on spending $10 million on heavy fuel oil, $10 million on the LWR project, and $3 million on KEDO administration costs. Since Congress prohibited any U.S. funding for the LWR project, we have told Congress that we now intend to use our entire FY96 KEDO contribution of up to 3 $22 million for heavy fuel oil and administrative expenses. There is no legal basis to require a
2 reprogramming for any shifting of funds within the total amount authorized by Congress.

OMB and State [illegible]

If the President approves the attached memo, then the NSC will authorize the Department of State (via a Sens-Burns memo) to transmit a letter from the acting Assistant Secretary of S[illegible] for Legislative Affairs to the relevant Foreign Affairs an[illegible]

CPD - 22 requested LWR, hfo, admin. Contingency amount. allocation.
did not break #'s out. Up. to 13 mill. Need all [illegible] 19/3
all within same amount. Cut to 13.

Appropriations Committee Chairmen (Tab II). The letter will notify Congress that the President has made the three substantive certifications under Section 575 and intends to use his 614 waiver authority to authorize U.S. funding for KEDO. The letter to Congress includes the formal 575 determination and the Memorandum of Justification for both the 575 determination and the 614 waiver. After the letter is sent, Win Lord and Paul Cleveland (the new U.S. representative to the KEDO Executive Board) plan to meet with members and staff to resolve any objections.

Once Congressional consultations have been completed, we will ask the President to sign the 614 waiver, which will allow U.S. funds to go to KEDO. (KEDO estimates it will need our funds by early summer to continue heavy fuel oil deliveries.)

RECOMMENDATION

That you sign the memorandum to the President at Tab I.

That you authorize Andrew Sens to sign the memorandum at Tab II, if the President approves the memo at Tab I.

Approve __________

Disapprove __________

Concurrence: Bob Suettinger, Alan Kreczko, Bill Danvers, Jim Nix

Attachments

Tab I Memorandum for the President
- Tab A Presidential 575 Determination and Justification
- Tab B Presidential 614 Determination and Justification

Tab II Proposed Sens-Burns Memorandum
- Tab A Proposed Barbara Larkin Letter, with attachments

Tab III Incoming Correspondence

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: ANTHONY LAKE
JOHN HILLEY

SUBJECT: U.S. Financial Assistance to the Korean Peninsula Energy Development Organization (KEDO)

Purpose

To initiate the legal steps required to obligate U.S. financial assistance to the Korean Peninsula Energy Development Organization (KEDO) for FY96.

Background

The Foreign Operations Appropriations Act (FOAA), 1996 (P.L. 104-107) authorizes the Administration to provide up to $22 million to the Korean Peninsula Energy Development Organization (KEDO) in FY 1996. In order to obligate funds to KEDO, you must take two legal steps.

First, Section 575 of the FOAA requires a Presidential Determination that a) KEDO has designated an ROK company for the purpose of negotiating the prime contract for the light water reactor project; b) the DPRK is maintaining the freeze on its nuclear facilities; and c) the United States is taking steps to assure progress on North-South dialogue and implementation of the Joint North-South Denuclearization Declaration. All of these conditions have been met. Therefore, I recommend that you sign the required Presidential Determination at Tab A, which will be provided to Congress along with a detailed Memorandum of Justification.

Second, you must exercise Presidential waiver authority under Section 614 of the Foreign Assistance Act to overcome various prohibitions or restrictions on direct or indirect assistance to North Korea. ~~The Section 614 provision gives the President authority to redirect foreign assistance funds, when he~~ In order to use Section 614 you must determine~~s~~ that it "is important to the security interests of the United States" to do so. A written statement of justification and, as a matter of practice, 15 days advance consultations with

cc: Vice President
Chief of Staff

specific Congressional Committees are required prior to exercise of this authority. Attached at Tab B is a draft Presidential Determination and Memorandum of Justification for the 614 waiver, which will be provided to Congress as part of our advance consultations. Following these consultations, we will request that you sign the determination at Tab B under cover of a separate memorandum, which will ~~then~~ allow FY96 U.S. funds to be obligated to KEDO.

(5) 614 issue

Based on our preliminary soundings on the Hill, we do not expect widespread opposition to U.S. funding for KEDO, although some members and staffers have raised various substantive and procedural concerns. Once you have authorized Congressional consultations, the Department of State will seek meetings with interested members to resolve these issues. ?

[illegible] above.

RECOMMENDATION

That you sign the Presidential Determination at Tab A.

That you authorize State to consult with the Hill on the exercise of your 614 authority for the purpose of waiving statutory restrictions on U.S. assistance to KEDO.

Approve ______________

Disapprove ___________

Attachment

Tab A Presidential 575 Determination and Justification
Tab B Presidential 614 Determination and Justification

⇒ Practice by member can put a hold.

$13 mil. ⟺ more or less

S

The White House
Washington, D.C.
Presidential Determination
No. ____________

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Determination Under the Heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act for FY 1996: U.S. Contribution to KEDO

Pursuant to the requirements set forth under the heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act, 1996 (P.L. 104-107), I determine and certify that:

(a) in accordance with Section 1 of the Agreed Framework, KEDO has designated a Republic of Korea company, corporation or entity for the purpose of negotiating a prime contract to carry out construction of the light water reactors provided for in the Agreed Framework; and

(b) the Democratic People's Republic of Korea (DPRK) is maintaining the freeze on its nuclear facilities as required in the Agreed Framework; and

(c) the United States is taking steps to assure that progress is made on (1) the North South dialogue, including efforts to reduce barriers to trade and investment, such as removing restrictions on travel, telecommunications services and financial transactions; and (2) implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula.

You are authorized and directed to report these determinations and certifications to the Congress and to publish them in the <u>Federal Register</u>.

MEMORANDUM OF JUSTIFICATION
FOR DETERMINATIONS AND CERTIFICATIONS
UNDER THE HEADING "INTERNATIONAL ORGANIZATIONS AND PROGRAMS"
IN TITLE IV OF
THE FOREIGN OPERATIONS APPROPRIATIONS ACT, 1996
IN CONNECTION WITH THE U.S. CONTRIBUTION TO
THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION (KEDO)

Pursuant to the requirements set forth under the heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act, 1996 (P.L. 104-107), I have determined that:

(a) in accordance with Section 1 of the Agreed Framework, KEDO has designated a Republic of Korea company, corporation or entity for the purpose of negotiating a prime contract to carry out construction of the light water reactors provided for in the Agreed Framework; and

(b) the Democratic People's Republic of Korea (DPRK) is maintaining the freeze on its nuclear facilities as required in the Agreed Framework; and

(c) the United States is taking steps to assure that progress is made on (1) the North South dialogue, including efforts to reduce barriers to trade and investment, such as removing restrictions on travel, telecommunications services and financial transactions; and (2) implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula.

The justification for these determinations is set forth below.

<u>(a) - Designation of ROK Company</u>

In section I of the Agreed Framework between the United States of America and the Democratic People's Republic of Korea (DPRK), signed in Geneva on October 21, 1994, the two parties stated that they would cooperate in replacing the DPRK's graphite-moderated reactors and related facilities with light-water reactor (LWR) power plants. The U.S. further stated that it would undertake to make arrangements for the provision of the LWR project to the DPRK, including organizing under its leadership an international consortium to finance and supply the project. This organization, the Korean Peninsula Energy Development Organization (KEDO), was created on March 9, 1995, by agreement of the U.S., Japan, and the ROK. These parties have agreed that the ROK will assume the central role in financing and building the LWR project.

On June 13, 1995, in Kuala Lumpur, the United States and the DPRK issued a joint statement providing that KEDO will select both the LWR reactor model and the prime contractor to carry out the project. (These points were confirmed in the LWR supply agreement between KEDO and the DPRK, signed December 15, 1995 in New York City.) On the same date as the Kuala Lumpur statement (June 13, 1995), the KEDO Executive Board decided by Board resolution that an ROK reactor model (Ulchin 3/4) would be built in the DPRK by an ROK firm. The Executive Board resolution designated the Korean Electric Power Corporation (KEPCO) as the firm with which KEDO would begin negotiating a prime contract for the light-water reactor project. These negotiations are under way.

(b) - DPRK Maintenance of the Freeze

Section I(3) of the U.S.-DPRK Agreed Framework provides for the immediate freeze and eventual dismantlement of all graphite-moderated reactors and related facilities in the DPRK. Within this context, the DPRK agreed to implement the freeze on its nuclear facilities within one month after the signing of the Agreed Framework and to allow the International Atomic Energy Agency (IAEA) to monitor the freeze on its facilities, with the full cooperation of the DPRK. In addition, the U.S and DPRK agreed to cooperate in finding a method to store safely the spent fuel from the DPRK's 5 MW(e) experimental reactor during the construction of the LWR project, and to dispose of the fuel in a safe manner that does not involve reprocessing in the DPRK.

Since November 1994, all of North Korea's graphite-moderated nuclear facilities have been frozen. Specifically, this means no refueling or operation of the 5MW research reactor; no construction on the 50 and 200 MW reactors; no reprocessing and sealing of the reprocessing facility; no operation of the fuel fabrication plant; and no construction of new graphite-moderated reactors or related facilities. The IAEA has maintained a continuous presence at the Nyongbyon nuclear facility and has continued with inspection activities related to verifying and monitoring the freeze in the DPRK according to the terms of the Agreed Framework. In addition to IAEA monitoring activities, the United States continues to monitor the freeze through National Technical Means.

With the successful conclusion of the December 15, 1995 agreement on the supply of light-water reactors (LWRs) to the DPRK, signed between the DPRK and KEDO in New York City, the IAEA will resume ad hoc and routine inspections under the DPRK's safeguards agreement with the IAEA with respect to the facilities not subject to the freeze. The IAEA and DPRK meet periodically to discuss any outstanding safeguards issues that arise, most recently on January 22, 1996. During this meeting, both sides agreed to measures for safely storing the DPRK's spent nuclear fuel from its 5 MW(e) research reactor. When the first LWR unit is completed, the IAEA will have oversight over the dismantlement of the DPRK's nuclear facilities which will be completed when the second LWR unit is completed.

In January 1995, the U.S. and DPRK agreed on the method for safely storing the DPRK's spent nuclear fuel as an interim step before it is shipped out of the DPRK, as defined in the Agreed Framework. U.S. technical experts have been in the DPRK since July 1995 preparing the fuel for canning in a cooperative joint effort with the DPRK. Actual canning is expected to commence soon and will last approximately three months.

(c) - North-South Dialogue and the Joint Declaration

The U.S.-DPRK Agreed Framework provides that "the DPRK will engage in North-South dialogue." Since then, the U.S. has taken steps to support South Korean initiatives toward the North and to encourage the DPRK to fulfill its commitment to engage in dialogue as soon as possible. In all of our bilateral contacts with the DPRK, the U.S. has made clear that improvement in North-South relations is the key to peace and security on the Korean peninsula, and a requirement if U.S.-DPRK bilateral relations are to continue to move forward. Ambassador Robert L. Gallucci, during his tenure as Chairman of the Senior Steering Committee on Korea, had frequent occasion to raise the issue of North-South relations in his correspondence with his North Korean counterpart, First Vice Minister of Foreign Affairs Kang Sok Ju. Deputy Assistant Secretary of State Thomas Hubbard raised the North-South issue repeatedly during the May-June 1995 negotiations with the North Koreans in Kuala Lumpur on the LWR supply agreement. Most recently, Mr. Hubbard raised this issue when he met with North Korean Ambassador-at-Large Ho Jung in December 1995. Finally, working level officials have repeatedly stressed to their North Korean counterparts the importance of the DPRK improving relations with the South. Over the last year, these points have been made at all three rounds of U.S.-DPRK negotiations on the opening of liaison offices, and repeatedly in contacts with officials of the DPRK Mission to the UN.

In support of ROK initiatives, we have conveyed South Korean positions -- and U.S. support for those positions -- to the DPRK and others. At South Korea's request we have raised several particular issues with the DPRK, sometimes with positive effect. The South Korean government has expressed its appreciation for these U.S. efforts. During this period North and South Korea held a series of bilateral meetings in Beijing that produced an agreement whereby the South provided 150,000 tons of rice to the North as a grant. In December 1995, the DPRK released the crew of a South Korean fishing vessel which strayed into North Korean waters earlier in the year, a step which the ROK had been urging the DPRK to take.

On January 1, 1992, the Republic of Korea and the Democratic People's Republic of Korea issued the Joint Declaration of the Denuclearization of the Korean Peninsula. The provisions of the Joint Declaration state that the North and South:

-- shall not test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons;

-- shall use nuclear energy solely for peaceful purposes;

-- shall not possess nuclear reprocessing and uranium enrichment facilities, and;

-- in order to verify the denuclearization of the Korean Peninsula, shall conduct inspections of the objects selected by the other side and agreed upon between the two sides, in accordance with procedures and methods to be determined by the South-North Nuclear Control Commission which shall be established within one month of the effectuation of this joint declaration.

The DPRK and the ROK held a series of South-North Joint Nuclear Control Commission meetings in early 1992 as specified in the Joint Declaration, but these were discontinued as relations between the two Korean states worsened and the DPRK threatened to withdraw from the Nuclear Non-Proliferation Treaty (NPT) and refused to cooperate with the IAEA. As a result, the absence of sustained governmental talks between the ROK and DPRK has delayed further implementation of the Denuclearization Declaration.

The United States has, however, taken steps to encourage DPRK compliance with the Joint Declaration by encouraging North-South dialogue and ensuring DPRK implementation of the Agreed Framework. The Agreed Framework, as a step towards full implementation of the Denuclearization Declaration, has succeeded in illiciting positive DPRK movement on key provisions of the Declaration. Specifically, North Korea's willingness to freeze immediately and eventually dismantle its graphite-moderated nuclear reactors and related facilities has halted activities which would, had they not been stopped, given the DPRK a nuclear weapons capability. Such a capability would have been a threat to peace and security on the Korean Peninsula as well as to Northeast Asia. The DPRK agreement to forego reprocessing under the Agreed Framework and to replace its existing nuclear reactors with proliferation-resistant LWRs represents a major step toward assuring the DPRK will not test, manufacture, produce, store, deploy or possess nuclear weapons. In addition, by agreeing to allow a continuous IAEA inspector presence on the ground and to come into full compliance with its IAEA safeguards obligations, including taking all steps that may be deemed necessary by the IAEA with regard to verifying the accuracy and completeness of the DPRK's initial report on all nuclear material in the DPRK, the DPRK has not only gone beyond its NPT and IAEA safeguards obligations but also is taking steps related to the inspection objectives set forth in the Denuclearization Declaration.

DRAFT: WILL BE RESUBMITTED FOR SIGNATURE
AFTER STATUTORY CONSULTATIONS WITH CONGRESS

The White House
Washington, D.C.
Presidential Determination
No. ____________

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Use of International Organizations and Programs Account Funds for the U.S. Contribution to KEDO

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1) ("the Act"), I hereby determine that it is important to the security interests of the United States to furnish up to $22 million in funds made available under the heading "International Operations and Programs" in Title IV of the Foreign Operations Appropriations Act, 1996 (P.L. 104-107) for the United States contribution to the Korean Peninsula Energy Development Organization without regard to any provision of law within the scope of section 614(a)(1). I hereby authorize this contribution.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the Federal Register.

MEMORANDUM OF JUSTIFICATION UNDER SECTION 614 OF THE FOREIGN ASSISTANCE ACT TO PROVIDE U.S. CONTRIBUTIONS TO THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION (KEDO)

The Administration proposes that up to $22.0 million in FY 1996 International Organizations and Programs (IO&P) funds be used for a U.S. contribution to the Korean Peninsula Energy Development Organization (KEDO), an international consortium established to implement the Agreed Framework signed between the United States and the Democratic People's Republic of Korea (DPRK) on October 21, 1994. This funding level for U.S. contributions to KEDO was specified in the Administration's congressional presentation documents for the Foreign Operations Appropriations Act, 1996 (P.L. 104-107). KEDO would be permitted to use the U.S. contribution to help cover the FY 1996 administrative and heavy fuel oil shipment expenses.

In order to make available the funds appropriated for this contribution, the President intends to exercise his authority under section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, to authorize the voluntary contribution to KEDO without regard to applicable statutory restrictions within the scope of this section, including any restrictions in sections 307, 620A, 620(f), or 530 of the Foreign Assistance Act or sections 507, 516, 523, or 527A of the Foreign Operations Appropriations Act.

The Agreed Framework addresses U.S. and international concerns about the DPRK's nuclear weapons program and, if fully implemented, will lead ultimately to the complete dismantlement of North Korea's current nuclear program. Under the U.S.-DPRK Agreed Framework, the U.S. represented that it would "organize under its leadership an international consortium to finance and supply the light-water reactor (LWR) project to be provided to the DPRK." In order to meet this pledge, the U.S., South Korea (ROK) and Japan agreed on the creation of an international organization, KEDO, to implement the reactor project, the annual delivery of 500,000 metric tons of heavy fuel oil delivery to North Korea and other possible projects called for in the Agreed Framework (e.g., the transfer of spent fuel out of the DPRK for ultimate disposition). The U.S., ROK and Japan have played and will continue to play leading roles in KEDO.

KEDO's purpose is to coordinate cooperation among interested parties in the international community and to facilitate the financing and execution of projects needed to implement the Agreed Framework. KEDO members have agreed to cooperate in taking the steps necessary to implement the Agreed Framework consistent with the Charter of the United Nations, the Treaty on the Nonproliferation of Nuclear Weapons, the North-South Declaration on the Denuclearization of the Korean Peninsula, and the Statute of the International Atomic Energy Agency. Moreover, KEDO will obtain assurances that nuclear materials, equipment, or technology transferred to the DPRK in connection with projects undertaken by KEDO will be used exclusively for such projects, only for peaceful purposes, and in a manner that ensures the safe use of nuclear energy. The continued funding of KEDO is critical to the success of the specific objectives of the Agreed Framework, the general goals of international nuclear nonproliferation, and the aim of maintaining peace and security on the Korean Peninsula.

KEDO is located in New York and is directed by an Executive Board consisting of representatives of the original member countries-- the U.S., Japan, and the ROK. Other members may participate in its activities by serving on advisory committees covering the organization's projects, attending the KEDO General Conference, participating in ad hoc technical meetings relating to KEDO projects and, in some cases, sending technical experts to serve in the KEDO secretariat. The day-to-day operations of KEDO are directed by Executive Director Stephen Bosworth, former U.S. Ambassador to the Philippines, assisted by two Deputy Executive Directors (one from Japan and one from the ROK). KEDO is seeking to contract with private firms for the bulk of the legal, technical, and financial expertise required to oversee the LWR project and other projects. It will have a secretariat consisting of approximately 30 people to carry out its functions.

The U.S. contribution to KEDO will help fund: 1) KEDO's FY 1996 costs for office space, office supplies, communications, consulting costs and legal services, and employee remuneration for a staff of thirty people, including the Executive Director, the two Deputy Directors, and support personnel; and 2) a portion of the estimated $50 million worth of heavy fuel oil due to be shipped in 1996. These funds are essential to KEDO's ability to meet the terms of the U.S.-DPRK Agreed Framework regarding the provision of heavy fuel oil. Should KEDO fail to meet these deliveries, the DPRK might renege on its Agreed Framework obligations, including possibly breaking the freeze on its nuclear program. Hence, early transfer of these funds is essential to meeting our nonproliferation objectives in the DPRK.

1690B

MEMORANDUM FOR WILLIAM J. BURNS
Executive Secretary
Department of State

SUBJECT: Presidential Determinations and Waiver of Statutory Restrictions on U.S. Assistance to the Korean Peninsula Energy Development Organization (KEDO)

The NSC concurs in the transmittal of the attached Letter of Notification (Tab A) to the Congress, including the Presidential Determination under Section 575 of the Foreign Operations Appropriations Act, the Memorandum of Justification for the Section 575 determination, and the Memorandum of Justification under Section 614 of the Foreign Assistance Act.

Andrew D. Sens
Executive Secretary

Attachments
Tab A Barbara Larkin letter, with attachments

Draft

To be sent to Chairs of Foreign Relations and Appropriations Committees following receipt of Presidential determination:

Dear Mr. Chairman:

On March -, 1996, the President signed Presidential Determination No. .... regarding the U.S. contribution to the Korean Peninsula Energy Development Organization (KEDO). The President has determined and certified pursuant to the requirements under the heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act for FY 1996 that:

(a) in accordance with Section 1 of the Agreed Framework, KEDO has designated a Republic of Korea company, corporation or entity for the purpose of negotiating a prime contract to carry out construction of the light water reactors provided for in the Agreed Framework; and

(b) the DPRK is maintaining the freeze on its nuclear facilities as required in the Agreed Framework;

(c) the United States is taking steps to assure that progress is made on (1) the North South dialogue, including efforts to reduce barriers to trade and investment, such as removing restrictions on travel, telecommunications services and financial transactions; and (2) implementation of the January 1, 1992 Joint Declaration on the Denuclearization of the Korean Peninsula.

This Determination and the Justification for it have been submitted to the Appropriations Committees as required under the headings "International Organizations and Programs" in Title IV. Copies are enclosed for your information. The President will submit the report required under section 575(d) of the Foreign Operations Appropriations Act, 1996 (P.L. 104-107), in accordance with the schedule specified in that Act.

In addition, we wish to inform you that the President proposes to exercise his authority under section 614(a)(1) of the Foreign Assistance Act, as amended (the "Act"), to authorize the furnishing of up to $22.0 million in FY 1996 International Organizations and Programs (IO&P) funds for a U.S. contribution to the Korean Peninsula Energy Development

The Honorable
__________________, Chairman,
Committee on ______________

Organization (KEDO), without regard to provisions of law within the scope of that section. This funding level is the same as specified in the Administration's congressional presentation documents for the Foreign Operations Appropriations Act, 1996 (P.L. 104-107).

The U.S. contribution will be used to help cover the FY 1996 costs of KEDO, an international consortium established to implement the Agreed Framework between the United States and the Democratic People's Republic of Korea (DPRK), signed October 21, 1994. Under the Agreed Framework, the U.S. agreed to organize under its leadership an international consortium to finance and supply two light-water reactors (LWR) to the DPRK. The U.S. also agreed to make arrangements for the provision to the DPRK of annual shipments of heavy fuel oil. In return, North Korea agreed to "freeze" and eventually dismantle its potentially dangerous graphite nuclear reactor program. It also agreed to allow implementation of full-scope safeguards by the International Atomic Energy Agency (IAEA) on its nuclear facilities in accordance with the timetable specified in the Agreed Framework.

In an important milestone, on December 15, 1995, the Democratic People's Republic of Korea and KEDO signed an agreement for the provision of the two light-water reactors specified under the Agreed Framework. Even before that signing, KEDO had begun conducting activities in North Korea to survey the potential site for those reactors. Those activities will probably be concluded in the Spring of 1996 at which time the site may be turned over to KEDO to begin preparations for construction. In the meantime, North Korea continues to maintain the freeze on its nuclear facilities and that freeze is being monitored by international inspectors from the IAEA.

The United States, Japan and South Korea have played and will continue to play a leading role in KEDO through the organization's Executive Board, its main decision-making body. The Republic of Korea will play the central role in financing and constructing KEDO's reactor project -- estimated to cost approximately $4 billion -- and has already contributed an additional $1.8 million for initial KEDO administrative costs. Japan will play a significant role in financing that project and has already contributed $3 million for the initial reactor site survey, in addition to its $2.8 million for initial KEDO administrative costs. We expect further financial contributions from both countries to KEDO's administrative costs and its projects in 1996.

Significant progress has been made in securing additional members and contributions for KEDO and its activities. Over the past year, the three Executive Board members have approached more than thirty-five countries from Europe, Asia, Latin America and the Middle East to ask their support for the organization. The results have been positive. In 1995, we were able to recruit four new members for KEDO -- Australia, New Zealand, Canada and Finland -- as well as to raise funds from a total of ten countries. So far, in 1996, France, Argentina and Indonesia have indicated that they will join KEDO. France, Argentina, Norway, and Germany have pledged additional funding for the organization. We look forward to additional pledges to join KEDO and contribute to the organization over the coming year.

As described in more detail in the enclosed Memorandum of Justification under section 614 of the Act, we believe that the use of these funds in the manner described is essential to carrying out the terms and conditions of the Agreed Framework and in achieving our high-priority nuclear nonproliferation objectives.

Please do not hesitate to contact us if you believe we may be of further assistance.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosures:
(1) Presidential Determination under Section 575 of FOAA
(2) Memorandum of Justification Concerning Presidential Determination
(3) Memorandum of Justification under Section 614 of FAA

The White House
Washington, D.C.
Presidential Determination
No. ____________

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Determination Under the Heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act for FY 1996: U.S. Contribution to KEDO

Pursuant to the requirements set forth under the heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act, 1996 (P.L. 104-107), I determine and certify that:

(a) in accordance with Section 1 of the Agreed Framework, KEDO has designated a Republic of Korea company, corporation or entity for the purpose of negotiating a prime contract to carry out construction of the light water reactors provided for in the Agreed Framework; and

(b) the Democratic People's Republic of Korea (DPRK) is maintaining the freeze on its nuclear facilities as required in the Agreed Framework; and

(c) the United States is taking steps to assure that progress is made on (1) the North South dialogue, including efforts to reduce barriers to trade and investment, such as removing restrictions on travel, telecommunications services and financial transactions; and (2) implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula.

You are authorized and directed to report these determinations and certifications to the Congress and to publish them in the Federal Register.

MEMORANDUM OF JUSTIFICATION
FOR DETERMINATIONS AND CERTIFICATIONS
UNDER THE HEADING "INTERNATIONAL ORGANIZATIONS AND PROGRAMS"
IN TITLE IV OF
THE FOREIGN OPERATIONS APPROPRIATIONS ACT, 1996
IN CONNECTION WITH THE U.S. CONTRIBUTION TO
THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION (KEDO)

Pursuant to the requirements set forth under the heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act, 1996 (P.L. 104-107), I have determined that:

(a) in accordance with Section 1 of the Agreed Framework, KEDO has designated a Republic of Korea company, corporation or entity for the purpose of negotiating a prime contract to carry out construction of the light water reactors provided for in the Agreed Framework; and

(b) the Democratic People's Republic of Korea (DPRK) is maintaining the freeze on its nuclear facilities as required in the Agreed Framework; and

(c) the United States is taking steps to assure that progress is made on (1) the North South dialogue, including efforts to reduce barriers to trade and investment, such as removing restrictions on travel, telecommunications services and financial transactions; and (2) implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula.

The justification for these determinations is set forth below.

(a) - Designation of ROK Company

In section I of the Agreed Framework between the United States of America and the Democratic People's Republic of Korea (DPRK), signed in Geneva on October 21, 1994, the two parties stated that they would cooperate in replacing the DPRK's graphite-moderated reactors and related facilities with light-water reactor (LWR) power plants. The U.S. further stated that it would undertake to make arrangements for the provision of the LWR project to the DPRK, including organizing under its leadership an international consortium to finance and supply the project. This organization, the Korean Peninsula Energy Development Organization (KEDO), was created on March 9, 1995, by agreement of the U.S., Japan, and the ROK. These parties have agreed that the ROK will assume the central role in financing and building the LWR project.

On June 13, 1995, in Kuala Lumpur, the United States and the DPRK issued a joint statement providing that KEDO will select both the LWR reactor model and the prime contractor to carry out the project. (These points were confirmed in the LWR supply agreement between KEDO and the DPRK, signed December 15, 1995 in New York City.) On the same date as the Kuala Lumpur statement (June 13, 1995), the KEDO Executive Board decided by Board resolution that an ROK reactor model (Ulchin 3/4) would be built in the DPRK by an ROK firm. The Executive Board resolution designated the Korean Electric Power Corporation (KEPCO) as the firm with which KEDO would begin negotiating a prime contract for the light-water reactor project. These negotiations are under way.

(b) - DPRK Maintenance of the Freeze

Section I(3) of the U.S.-DPRK Agreed Framework provides for the immediate freeze and eventual dismantlement of all graphite-moderated reactors and related facilities in the DPRK. Within this context, the DPRK agreed to implement the freeze on its nuclear facilities within one month after the signing of the Agreed Framework and to allow the International Atomic Energy Agency (IAEA) to monitor the freeze on its facilities, with the full cooperation of the DPRK. In addition, the U.S and DPRK agreed to cooperate in finding a method to store safely the spent fuel from the DPRK's 5 MW(e) experimental reactor during the construction of the LWR project, and to dispose of the fuel in a safe manner that does not involve reprocessing in the DPRK.

Since November 1994, all of North Korea's graphite-moderated nuclear facilities have been frozen. Specifically, this means no refueling or operation of the 5MW research reactor; no construction on the 50 and 200 MW reactors; no reprocessing and sealing of the reprocessing facility; no operation of the fuel fabrication plant; and no construction of new graphite-moderated reactors or related facilities. The IAEA has maintained a continuous presence at the Nyongbyon nuclear facility and has continued with inspection activities related to verifying and monitoring the freeze in the DPRK according to the terms of the Agreed Framework. In addition to IAEA monitoring activities, the United States continues to monitor the freeze through National Technical Means.

With the successful conclusion of the December 15, 1995 agreement on the supply of light-water reactors (LWRs) to the DPRK, signed between the DPRK and KEDO in New York City, the IAEA will resume ad hoc and routine inspections under the DPRK's safeguards agreement with the IAEA with respect to the facilities not subject to the freeze. The IAEA and DPRK meet periodically to discuss any outstanding safeguards issues that arise, most recently on January 22, 1996. During this meeting, both sides agreed to measures for safely storing the DPRK's spent nuclear fuel from its 5 MW(e) research reactor. When the first LWR unit is completed, the IAEA will have oversight over the dismantlement of the DPRK's nuclear facilities which will be completed when the second LWR unit is completed.

In January 1995, the U.S. and DPRK agreed on the method for safely storing the DPRK's spent nuclear fuel as an interim step before it is shipped out of the DPRK, as defined in the Agreed Framework. U.S. technical experts have been in the DPRK since July 1995 preparing the fuel for canning in a cooperative joint effort with the DPRK. Actual canning is expected to commence soon and will last approximately three months.

(c) - North-South Dialogue and the Joint Declaration

The U.S.-DPRK Agreed Framework provides that "the DPRK will engage in North-South dialogue." Since then, the U.S. has taken steps to support South Korean initiatives toward the North and to encourage the DPRK to fulfill its commitment to engage in dialogue as soon as possible. In all of our bilateral contacts with the DPRK, the U.S. has made clear that improvement in North-South relations is the key to peace and security on the Korean peninsula, and a requirement if U.S.-DPRK bilateral relations are to continue to move forward. Ambassador Robert L. Gallucci, during his tenure as Chairman of the Senior Steering Committee on Korea, had frequent occasion to raise the issue of North-South relations in his correspondence with his North Korean counterpart, First Vice Minister of Foreign Affairs Kang Sok Ju. Deputy Assistant Secretary of State Thomas Hubbard raised the North-South issue repeatedly during the May-June 1995 negotiations with the North Koreans in Kuala Lumpur on the LWR supply agreement. Most recently, Mr. Hubbard raised this issue when he met with North Korean Ambassador-at-Large Ho Jung in December 1995. Finally, working level officials have repeatedly stressed to their North Korean counterparts the importance of the DPRK improving relations with the South. Over the last year, these points have been made at all three rounds of U.S.-DPRK negotiations on the opening of liaison offices, and repeatedly in contacts with officials of the DPRK Mission to the UN.

In support of ROK initiatives, we have conveyed South Korean positions -- and U.S. support for those positions -- to the DPRK and others. At South Korea's request we have raised several particular issues with the DPRK, sometimes with positive effect. The South Korean government has expressed its appreciation for these U.S. efforts. During this period North and South Korea held a series of bilateral meetings in Beijing that produced an agreement whereby the South provided 150,000 tons of rice to the North as a grant. In December 1995, the DPRK released the crew of a South Korean fishing vessel which strayed into North Korean waters earlier in the year, a step which the ROK had been urging the DPRK to take.

On January 1, 1992, the Republic of Korea and the Democratic People's Republic of Korea issued the Joint Declaration of the Denuclearization of the Korean Peninsula. The provisions of the Joint Declaration state that the North and South:

-- shall not test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons;

-- shall use nuclear energy solely for peaceful purposes;

-- shall not possess nuclear reprocessing and uranium enrichment facilities, and;

-- in order to verify the denuclearization of the Korean Peninsula, shall conduct inspections of the objects selected by the other side and agreed upon between the two sides, in accordance with procedures and methods to be determined by the South-North Nuclear Control Commission which shall be established within one month of the effectuation of this joint declaration.

The DPRK and the ROK held a series of South-North Joint Nuclear Control Commission meetings in early 1992 as specified in the Joint Declaration, but these were discontinued as relations between the two Korean states worsened and the DPRK threatened to withdraw from the Nuclear Non-Proliferation Treaty (NPT) and refused to cooperate with the IAEA. As a result, the absence of sustained governmental talks between the ROK and DPRK has delayed further implementation of the Denuclearization Declaration.

The United States has, however, taken steps to encourage DPRK compliance with the Joint Declaration by encouraging North-South dialogue and ensuring DPRK implementation of the Agreed Framework. The Agreed Framework, as a step towards full implementation of the Denuclearization Declaration, has succeeded in illiciting positive DPRK movement on key provisions of the Declaration. Specifically, North Korea's willingness to freeze immediately and eventually dismantle its graphite-moderated nuclear reactors and related facilities has halted activities which would, had they not been stopped, given the DPRK a nuclear weapons capability. Such a capability would have been a threat to peace and security on the Korean Peninsula as well as to Northeast Asia. The DPRK agreement to forego reprocessing under the Agreed Framework and to replace its existing nuclear reactors with proliferation-resistant LWRs represents a major step toward assuring the DPRK will not test, manufacture, produce, store, deploy or possess nuclear weapons. In addition, by agreeing to allow a continuous IAEA inspector presence on the ground and to come into full compliance with its IAEA safeguards obligations, including taking all steps that may be deemed necessary by the IAEA with regard to verifying the accuracy and completeness of the DPRK's initial report on all nuclear material in the DPRK, the DPRK has not only gone beyond its NPT and IAEA safeguards obligations but also is taking steps related to the inspection objectives set forth in the Denuclearization Declaration.

MEMORANDUM OF JUSTIFICATION
UNDER SECTION 614 OF THE FOREIGN ASSISTANCE ACT
TO PROVIDE U.S. CONTRIBUTIONS TO THE KOREAN PENINSULA
ENERGY DEVELOPMENT ORGANIZATION (KEDO)

The Administration proposes that up to $22.0 million in FY 1996 International Organizations and Programs (IO&P) funds be used for a U.S. contribution to the Korean Peninsula Energy Development Organization (KEDC), an international consortium established to implement the Agreed Framework signed between the United States and the Democratic People's Republic of Korea (DPRK) on October 21, 1994. This funding level for U.S. contributions to KEDO was specified in the Administration's congressional presentation documents for the Foreign Operations Appropriations Act, 1996 (P.L. 104-107). KEDO would be permitted to use the U.S. contribution to help cover the FY 1996 administrative and heavy fuel oil shipment expenses.

In order to make available the funds appropriated for this contribution, the President intends to exercise his authority under section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, to authorize the voluntary contribution to KEDO without regard to applicable statutory restrictions within the scope of this section, including any restrictions in sections 307, 620A, 620(f), or 530 of the Foreign Assistance Act or sections 507, 516, 523, or 527A of the Foreign Operations Appropriations Act.

The Agreed Framework addresses U.S. and international concerns about the DPRK's nuclear weapons program and, if fully implemented, will lead ultimately to the complete dismantlement of North Korea's current nuclear program. Under the U.S.-DPRK Agreed Framework, the U.S. represented that it would "organize under its leadership an international consortium to finance and supply the light-water reactor (LWR) project to be provided to the DPRK." In order to meet this pledge, the U.S., South Korea (ROK) and Japan agreed on the creation of an international organization, KEDO, to implement the reactor project, the annual delivery of 500,000 metric tons of heavy fuel oil delivery to North Korea and other possible projects called for in the Agreed Framework (e.g., the transfer of spent fuel out of the DPRK for ultimate disposition). The U.S., ROK and Japan have played and will continue to play leading roles in KEDO.

KEDO's purpose is to coordinate cooperation among interested parties in the international community and to facilitate the financing and execution of projects needed to implement the Agreed Framework. KEDO members have agreed to cooperate in taking the steps necessary to implement the Agreed Framework consistent with the Charter of the United Nations, the Treaty on the Nonproliferation of Nuclear Weapons, the North-South Declaration on the Denuclearization of the Korean Peninsula, and the Statute of the International Atomic Energy Agency. Moreover, KEDO will obtain assurances that nuclear materials, equipment, or technology transferred to the DPRK in connection with projects undertaken by KEDO will be used exclusively for such projects, only for peaceful purposes, and in a manner that ensures the safe use of nuclear energy. The continued funding of KEDO is critical to the success of the specific objectives of the Agreed Framework, the general goals of international nuclear nonproliferation, and the aim of maintaining peace and security on the Korean Peninsula.

KEDO is located in New York and is directed by an Executive Board consisting of representatives of the original member countries-- the U.S., Japan, and the ROK. Other members may participate in its activities by serving on advisory committees covering the organization's projects, attending the KEDO General Conference, participating in ad hoc technical meetings relating to KEDO projects and, in some cases, sending technical experts to serve in the KEDO secretariat. The day-to-day operations of KEDO are directed by Executive Director Stephen Bosworth, former U.S. Ambassador to the Philippines, assisted by two Deputy Executive Directors (one from Japan and one from the ROK). KEDO is seeking to contract with private firms for the bulk of the legal, technical, and financial expertise required to oversee the LWR project and other projects. It will have a secretariat consisting of approximately 30 people to carry out its functions.

The U.S. contribution to KEDO will help fund: 1) KEDO's FY 1996 costs for office space, office supplies, communications, consulting costs and legal services, and employee remuneration for a staff of thirty people, including the Executive Director, the two Deputy Directors, and support personnel; and 2) a portion of the estimated $50 million worth of heavy fuel oil due to be shipped in 1996. These funds are essential to KEDO's ability to meet the terms of the U.S.-DPRK Agreed Framework regarding the provision of heavy fuel oil. Should KEDO fail to meet these deliveries, the DPRK might renege on its Agreed Framework obligations, including possibly breaking the freeze on its nuclear program. Hence, early transfer of these funds is essential to meeting our nonproliferation objectives in the DPRK.

#9 1690

United States Department of State

Washington, D.C. 20520 9603673

March 12, 1996

UNCLASSIFIED

MEMORANDUM FOR ANDREW D. SENS
EXECUTIVE SECRETARY
NATIONAL SECURITY COUNCIL

SUBJECT: Presidential Action Required to Make the U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO)

This memorandum requests that the President authorize the Department of State to consult with, and provide the attached written policy justification to, relevant committees of the Congress concerning the proposed waiver of legal restrictions on providing assistance to the Democratic People's Republic of Korea (DPRK) in order to provide the U.S. contribution to the Korean Peninsula Energy Development Organization (KEDO). In addition, it recommends that the President sign the attached Presidential Determination containing determinations and certifications required by Title IV of the Foreign Operations Appropriations Act under the heading "International Organizations and Programs." Specifically, he must determine that: (a) KEDO has designated an ROK company for the purpose of negotiating the prime contract for the light-water reactor project; (b) the DPRK is maintaining the freeze on its nuclear facilities; and (c) the United States is taking steps to ensure progress on North-South dialogue and on implementation of the Joint Denuclearization Declaration.

In its Congressional presentation documents for the Foreign Operations Appropriations Act, 1996 (P.L. 104-107), the Administration stated its intention to contribute up to $22 million to KEDO from the International Organizations and Programs (IO&P) account. The Foreign Operations Appropriations Act (FOAA) did not limit the amount of the contribution, though the Congress prohibited a U.S. contribution to KEDO's Light Water Reactor Project.

UNCLASSIFIED

The President must exercise his authority under section 614(a)(1) of the Foreign Assistance Act to find that it is "important to the security interests of the United States" to make the contribution without regard to provisions of law within the scope of that section. (Potential legal restrictions on direct or indirect assistance to the DPRK include sections 307, 620A, 620(f), and 530 of the Foreign Assistance Act and sections 507, 516, 523, and 527A of the FOAA.)

Now that the FOAA has been enacted, State requests authority to initiate the section 614 process through consultations with the appropriate congressional committees (the House and Senate Appropriations Committees, the Senate Foreign Relations Committee, and the House International Relations Committee). Following consultations, the President may make a determination, and notify in writing the Speaker of the House and the Chairman of the Senate Foreign Relations Committee, that the furnishing of assistance under this authority "is important to the security interests of the United States."

In addition, Title IV of the FOAA specifies that the appropriated funds cannot be made available to KEDO unless the President determines and certifies in writing to the Appropriations Committees that: (a) KEDO has designated an ROK company for the purpose of negotiating the prime contract for the light-water reactor project; (b) the DPRK is maintaining the freeze on its nuclear facilities; and (c) the United States is taking steps to ensure progress on North-South dialogue and on implementation of the Joint Declaration on the Denuclearization of the Korean Peninsula. We recommend that the President sign the Presidential Determination containing these determinations and certifications (attachment 3) at the same time that he authorizes the section 614 consultations. Having the statutory certifications in hand will significantly assist the Congressional consultation process and deprive Congress of a ground for delay.

The U.S. contribution would be provided to help KEDO meet its FY 1996 administrative and heavy fuel oil (HFO) shipment expenses. (Pursuant to a prohibition inserted in the FOAA, our contribution will not be used for the LWR project.) KEDO will face a financial crisis unless we can provide rapidly the $20 million U.S. contribution. While there have been some encouraging signs of international support for KEDO, there is still a shortfall. As of mid-March, KEDO has received contributions and pledges of $11 million from non-U.S. sources for heavy fuel oil in 1996. In addition, Japan in February provided $19 million in collateral to be used to secure suppliers credits or loans to deal with KEDO's immediate cash flow problem. Nevertheless, with a U.S. contribution of $20 million and other pledges of $11 million, KEDO will still need to raise $19 million in additional funds to pay for the rest of this year's shipments, which will last until October 1996. We are continuing our efforts to secure the necessary support internationally, but it will likely take high-level involvement to ensure enough funding for KEDO to fulfill its commitments this year.

We have conducted informal consultations on the Hill with staff members to indicate that Secretary Christopher may make this recommendation to the President. Our discussions have elicited no expressions of direct opposition to moving forward with a 614 package with respect to funding up to $13 million for administrative and heavy fuel oil costs. However, Majority staff have made clear much remains to be done to satisfy them and their members that the Agreed Framework is working well and the DPRK is in full compliance with the Agreement. Congressional concern is likely to focus on our ability to satisfy fully the determinations and certifications the President must make as mandated in the legislation. In addition, some have asserted that funding above $13 million is subject to congressional reprogramming procedures. We believe there is no legal basis for this assertion. Since the section 614 process is time-consuming, it is essential that we initiate consultations as soon as possible so that we will be able to make the U.S. contribution promptly.

Accordingly, we recommend that the President authorize the State Department to initiate consultations with, and provide a written justification to, the appropriate committees of Congress in preparation for the President exercising his authority under section 614 to permit the U.S. contribution to KEDO. We further recommend that the President sign the Presidential Determination at attachment 3, as required under the FOAA, and authorize the State Department to transmit to the appropriate committees the Presidential Determination and a memorandum of justification therefor.

William Burns
Executive Secretary

Attachments:

(1) Draft Presidential Determination under Section 614
(2) Letters of Notification re Section 614 and transmittal of Presidential determination under FOAA
(3) Memorandum of Justification re Section 614
(4) Draft Presidential Determination under FOAA
(5) Memorandum of Justification re Presidential Determination

NATIONAL SECURITY COUNCIL

FAX COVER SHEET

NATIONAL SECURITY COUNCIL	From: Gary Samore
	To: Jamie Baker
	Agency:
	Fax Number: 69110
17th & Penn, N.W. Washington, D.C. 20504	Date/Time:
	No. of pages to follow: 1
Did you get a complete, clear transmission? If not, please call: (202) 456-9181	Message:

That the House recede from its disagreement to the amendment of the Senate numbered 92, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$30,000,000*; and the Senate agree to the same.

Amendment numbered 94:

That the House recede from its disagreement to the amendment of the Senate numbered 94, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows: *: Provided further, That funds may be made available to the Korean Peninsula Energy Department Organization (KEDO) for administrative expenses and heavy fuel oil costs associated with the Agreed Framework: Provided further, That no funds may be provided for KEDO for funding for administrative expenses and heavy fuel oil costs beyond the total amount included for KEDO in the fiscal year 1996 congressional presentation: Provided further, That no funds may be made available under this Act to KEDO unless the President determines and certifies in writing to the Committees on Appropriations that (a) in accordance with section 1 of the Agreed Framework, KEDO has designated a Republic of Korea company, corporation or entity for the purpose of negotiating a prime contract to carry out construction of the light water reactors provided for in the Agreed Framework; and (b) the Democratic People's Republic of Korea is maintaining the freeze on its nuclear facilities as required in the Agreed Framework; and (c) the United States is taking steps to assure that progress is made on (1) the North-South dialogue, including efforts to reduce barriers to trade and investment, such as removing restrictions on travel, telecommunications services and financial transactions; and (2) implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula; Provided further, That a report on the specific efforts with regard to subsections (a), (b) and (c) of the preceding proviso shall be submitted by the President to the Committees on Appropriations six months after the date of enactment of this Act, and every six months thereafter*; and the Senate agree to the same.

Amendment numbered 106:

That the House recede from its disagreement to the amendment of the Senate numbered 106, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

"Development Assistance"

And the Senate agree to the same.

Amendment numbered 126:

That the House recede from its disagreement to the amendment of the Senate numbered 126, and agree to the same with an amendment, as follows:

In the matter proposed to be inserted in said amendment, strike "wholly paid for" and insert: *wholly paid for from*; and the Senate agree to the same.

Amendment numbered 132:

That the House recede from its disagreement to the amendment of the Senate numbered 132, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

(c) WAIVER AUTHORITY.—The President may waive the application in whole or in part, of subsection (a) if the President certifies to the Congress that the President has determined that the waiver is necessary to meet emergency humanitarian needs or to achieve a negotiated settlement of the conflict in Bosnia-Herzegovina that is acceptable to the parties.

(d) EXPANDED AUTHORITY.—Section 660(b) of the Foreign Assistance Act of 1961 is amended—

(1) in paragraph (3), by striking "or";

(2) in paragraph (4), by striking the period at the end thereof and inserting "; or";

(3) adding the following new paragraphs:

"(5) with respect to assistance, including training, relating to sanctions monitoring and enforcement;

"(6) with respect to assistance provided to reconstitute civilian police authority and capability in the post-conflict restoration of host nation infrastructure for the purposes of supporting a nation emerging from instability, and the provision of professional public safety training, to include training in internationally recognized standards of human rights, the rule of law anti-corruption, and the promotion of civilian police roles tha support democracy.".

And the Senate agree to the same.

Amendment numbered 135:

That the House recede from its disagreement to the amend ment of the Senate numbered 135, and agree to the same with a amendment, as follows:

In lieu of the matter stricken and inserted by said amendmen insert: *tactically or strategically, with the Khmer Rouge in thei military operations, or to the military of any country which th President determines is not taking steps to prevent a pattern practice of commercial relations between its members and tl Khmer Rouge*; and the Senate agree to the same.

Amendment numbered 140:

That the House recede from its disagreement to the amen ment of the Senate numbered 140, and agree to the same with amendment, as follows:

Restore the matter stricken by said amendment, amended read as follows: , *Estonia, Latvia, and Lithuania*; and the Sena agree to the same.

Amendment numbered 142:

That the House recede from its disagreement to the amen ment of the Senate numbered 142, and agree to the same with amendment, as follows:

Restore the matter stricken by said amendment, amended read as follows: *: Provided, That not to exceed $750,000 may made available to carry out the provisions of section 316 of Pub. law 96–533*; and the Senate agree to the same.

Amendment numbered 144: