Case Number: 2009-0528-F-2

FOIA MARKER

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	POTUS to ROK President Kim (2 pages)	06/12/1995	P1/b(1)
002. letter	ROK President Kim to POTUS (2 pages)	06/17/1995	P1/b(1)
003. paper	Confidential Minute to the Agreed Framework (3 pages)	10/21/1994	P1/b(1)
004. notes	handwritten, re oil shipments (3 pages)	01/06/1889	P1/b(1)
005a. memo	information, Anthony Lake to POTUS re letter (1 page)	06/26/1995	P1/b(1)
005b. letter	ROK President Kim to POTUS [duplicate of 002] (2 pages)	06/17/1995	P1/b(1)
006a. email	James Baker to Daniel Poneman re The Letter (1 page)	06/07/1995	P1/b(1)
006b. draft	letter, Secretary Christopher to FM Gong (1 page)	06/06/1995	P1/b(1)
007. paper	Confidential Minute to the Agreed Framework [duplicate of 003] (3 pages)	10/21/1994	P1/b(1)
008. notes	handwritten, re financing (5 pages)	07/26/1995	P1/b(1)
009. list	re North Korea Meeting [Personally Identifiable Information] (1 page)	00/00/1995	b(6)
010. email	Richard Clarke to Anthony Lake et al re Arms Exports (1 page)	05/17/1995	P1/b(1)

COLLECTION:

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

FOLDER TITLE:

North Korea [2]

2009-0528-F
kc1442

RESTRICTION CODES

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P1 National Security Classified Information [(a)(1) of the PRA]
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RR. Document will be reviewed upon request.

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File
North
Korea

UNCLASSIFIED

PREC: RUSH

CATEGORY: FINANCIAL

NWSID: J0394597

SOURCE: DOW/Japanese

j0206
Text of joint statement on U.S.-N. Korea nuclear accord<
KUALA LUMPUR, June 13 -- <
The following is the text of a joint statement released Tuesday by the United States and North Korea on their agreement on the issue of supplying modern nuclear power reactors.<
JOINT U.S.-DPRK PRESS STATEMENT<
KUALA LUMPUR, JUNE 13, 1995<
The delegations of the United States of America (U.S.) and the<
Democratic People's Republic of Korea (DPRK) held talks in Kuala<
Lumpur from May 19 to June 12, 1995, with respect to implementation<
of the U.S.-DPRK Agreed Framework of Oct. 21, 1994.<
Both sides reaffirmed their political commitments to implement<
the U.S.-DPRK Agreed Framework, and with particular regard to<
facilitating the light-water reactor (LWR) project as called for in<
the Agreed Framework, decided as follows:<

-I-<

The U.S. reaffirms that the letter of assurance from the U.S.<
president dated Oct. 20, 1994, concerning the provision of the LWR<
project and interim energy alternatives continues in effect.<
The Korean Peninsula Energy Development Organization (KEDO),<
under U.S. leadership, will finance and supply the LWR project in<
the DPRK as called for in the Agreed Framework. As specified in the<
Agreed Framework, the U.S. will serve as the principal point of<
contact with the DPRK for the LWR project. In this regard, U.S.<
citizens will lead delegations and teams of KEDO as required to<
fulfill this role.<

-II-<

The LWR project will consist of two pressurized light-water<
reactors with two coolant loops and a generating capacity of<
approximately 1,000 MW(e) each. The reactor model, selected by<
KEDO, will be the advanced version of U.S.-origin design and<
technology currently under production.<

-III-<

The Commission for External Economic Relations, representing<
the DPRK government, and KEDO will conclude a supply agreement at<
the earliest possible date for the provision of the LWR project on a<
turnkey basis. On the basis of this statement, the DPRK will meet<
with KEDO as soon as possible to negotiate the outstanding issues of<
the LWR supply agreement.<
KEDO will conduct a site survey to identify the requirements for<

KEDO will conduct a site survey to identify the requirements for<
construction and operation of the LWR project. The costs of this<
site survey and site preparation will be included in the scope of<
supply for the project.<

KEDO will select a prime contractor to carry out the project.<
A U.S. firm will serve as program coordinator to assist KEDO in<
supervising overall implementation of the LWR project= KEDO will<
select the program coordinator. A DPRK firm will enter into<
implementing arrangements as necessary to facilitate the LWR<
project.<

-IV-<

In addition to the LWR project, the two sides decided to take<
the following steps toward implementation of the Agreed Framework.<

Experts from the two sides will meet in the DPRK as soon as<
possible in June to agree on a schedule and cooperative measures for<
phased delivery of heavy fuel oil in accordance with the Agreed<
Framework. KEDO will begin immediately to make arrangements for an<
initial delivery of heavy fuel oil, subject to conclusion of the<
above agreement.<

The U.S.-DPRK Record of Meeting of Jan. 20, 1995, on safe<
storage of spent fuel will be expeditiously implemented. In this<
regard, a U.S. team of experts will visit the DPRK as soon as<
possible in June to begin implementati

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

4654

June 21, 1995

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: DANIEL PONEMAN

FROM: ROBERT LITWAK RL

SUBJECT: Letter from President Kim Young Sam

Attached at Tab I is a proposed memorandum to the President that details the contents of President Kim's June 17 response to the President's June 12 letter.

Concurrences by: RL for Stanley Roth

RECOMMENDATION

That you sign the attached memorandum at Tab I.

Attachments
Tab I Proposed Memorandum to the President
Tab A June 17 Response from President Kim to the President
Tab B June 12 Presidential Letter to President Kim

~~CONFIDENTIAL~~
Declassify on: OADR

~~CONFIDENTIAL~~

DECLASSIFIED E.O. 13526
White House Guidelines,
September 11, 2006
By ____ NARA, Date 03\18\15
2009-0528-F

File
North
Korea

UNCLASSIFIED

PREC: RUSH

CATEGORY: FINANCIAL

NWSID: J0394597

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DATE SENT: Oct 24, 94

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FROM: E. Cummings | L/PM | 6429 | MS
(Name) | (Office Symbol) | (Room No.) | (Bldg.)

TO: James E.Baker | NSC | 348 | OEOB
(Name) | (Office Symbol) | (Room No.) | (Bldg.)

PART V

DATE RECEIVED: ____________

IDENTIFICATION ____________

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U.S.-DPRK AGREED FRAMEWORK FOR RESOLVING THE NUCLEAR ISSUE

The attached package includes: (1) the Agreed Framework between the U.S. and the DPRK, signed October 21, 1994, in Geneva; (2) a Confidential Minute, signed the same day, which should be treated as confidential for classification purposes; and (3) a letter of assurance from President Clinton to the DPRK's Supreme Leader, Kim Jong-Il, which was delivered in Geneva in connection with the signing. These documents create a framework of political decisions and practical actions to be taken by each side in order to resolve the nuclear issue in North Korea.

AGREED FRAMEWORK BETWEEN
THE UNITED STATES OF AMERICA AND
THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

Geneva, October 21, 1994

Delegations of the Governments of the United States of America (U.S.) and the Democratic People's Republic of Korea (DPRK) held talks in Geneva from September 23 to October 21, 1994, to negotiate an overall resolution of the nuclear issue on the Korean Peninsula.

Both sides reaffirmed the importance of attaining the objectives contained in the August 12, 1994 Agreed Statement between the U.S. and the DPRK and upholding the principles of the June 11, 1993 Joint Statement of the U.S. and the DPRK to achieve peace and security on a nuclear-free Korean peninsula. The U.S. and the DPRK decided to take the following actions for the resolution of the nuclear issue:

I. Both sides will cooperate to replace the DPRK's graphite-moderated reactors and related facilities with light-water reactor (LWR) power plants.

1) In accordance with the October 20, 1994 letter of assurance from the U.S. President, the U.S. will undertake to make arrangements for the provision to the DPRK of a LWR project with a total generating capacity of approximately 2,000 MW(e) by a target date of 2003.

-- The U.S. will organize under its leadership an international consortium to finance and supply the LWR project to be provided to the DPRK. The U.S., representing the international consortium, will serve as the principal point of contact with the DPRK for the LWR project.

-- The U.S., representing the consortium, will make best efforts to secure the conclusion of a supply contract with the DPRK within six months of the date of this Document for the provision of the LWR project. Contract talks will begin as soon as possible after the date of this Document.

-- As necessary, the U.S. and the DPRK will conclude a bilateral agreement for cooperation in the field of peaceful uses of nuclear energy.

2) In accordance with the October 20, 1994 letter of assurance from the U.S. President, the U.S., representing the consortium, will make arrangements to offset the energy foregone due to the freeze of the DPRK's graphite-moderated reactors and related facilities, pending completion of the first LWR unit.

-- Alternative energy will be provided in the form of heavy oil for heating and electricity production.

-- Deliveries of heavy oil will begin within three months of the date of this Document and will reach a rate of 500,000 tons annually, in accordance with an agreed schedule of deliveries.

3) Upon receipt of U.S. assurances for the provision of LWR's and for arrangements for interim energy alternatives, the DPRK will freeze its graphite-moderated reactors and related facilities and will eventually dismantle these reactors and related facilities.

-- The freeze on the DPRK's graphite-moderated reactors and related facilities will be fully implemented within one month of the date of this Document. During this one-month period, and throughout the freeze, the International Atomic Energy Agency (IAEA) will be allowed to monitor this freeze, and the DPRK will provide full cooperation to the IAEA for this purpose.

-- Dismantlement of the DPRK's graphite-moderated reactors and related facilities will be completed when the LWR project is completed.

-- The U.S. and the DPRK will cooperate in finding a method to store safely the spent fuel from the 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

4) As soon as possible after the date of this document U.S. and DPRK experts will hold two sets of experts talks.

   -- At one set of talks, experts will discuss issues related to alternative energy and the replacement of the graphite-moderated reactor program with the LWR project.

   -- At the other set of talks, experts will discuss specific arrangements for spent fuel storage and ultimate disposition.

II. The two sides will move toward full normalization of political and economic relations.

1) Within three months of the date of this Document, both sides will reduce barriers to trade and investment, including restrictions on telecommunications services and financial transactions.

2) Each side will open a liaison office in the other's capital following resolution of consular and other technical issues through expert level discussions.

3) As progress is made on issues of concern to each side, the U.S. and the DPRK will upgrade bilateral relations to the Ambassadorial level.

III. Both sides will work together for peace and security on a nuclear-free Korean peninsula.

1) The U.S. will provide formal assurances to the DPRK, against the threat or use of nuclear weapons by the U.S.

2) The DPRK will consistently take steps to implement the North-South Joint Declaration on the Denuclearization of the Korean Peninsula.

3) The DPRK will engage in North-South dialogue, as this Agreed Framework will help create an atmosphere that promotes such dialogue.

IV. Both sides will work together to strengthen the international nuclear non-proliferation regime.

1) The DPRK will remain a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and will allow implementation of its safeguards agreement under the Treaty.

2) Upon conclusion of the supply contract for the provision of the LWR project, ad hoc and routine inspections will resume under the DPRK's safeguards agreement with the IAEA with respect to the facilities not subject to the freeze. Pending conclusion of the supply contract, inspections required by the IAEA for the continuity of safeguards will continue at the facilities not subject to the freeze.

3) When a significant portion of the LWR project is completed, but before delivery of key nuclear components, the DPRK will come into full compliance with its safeguards agreement with the IAEA (INFCIRC/403), including taking all steps that may be deemed necessary by the IAEA, following consultations with the Agency with regard to verifying the accuracy and completeness of the DPRK's initial report on all nuclear material in the DPRK.

Robert L. Gallucci

Head of the Delegation of the United States of America, Ambassador at Large of the United States of America

강석주

Kang Sok Ju

Head of the Delegation of the Democratic People's Republic of Korea, First Vice-Minister of Foreign Affairs of the Democratic People's Republic of Korea

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THE WHITE HOUSE

WASHINGTON

October 20, 1994

Excellency:

I wish to confirm to you that I will use the full powers of my office to facilitate arrangements for the financing and construction of a light-water nuclear power reactor project within the DPRK, and the funding and implementation of interim energy alternatives for the Democratic People's Republic of Korea pending completion of the first reactor unit of the light-water reactor project. In addition, in the event that this reactor project is not completed for reasons beyond the control of the DPRK, I will use the full powers of my office to provide, to the extent necessary, such a project from the United States, subject to approval of the U.S. Congress. Similarly, in the event that the interim energy alternatives are not provided for reasons beyond the control of the DPRK, I will use the full powers of my office to provide, to the extent necessary, such interim energy alternatives from the United States, subject to the approval of the U.S. Congress.

I will follow this course of action so long as the DPRK continues to implement the policies described in the Agreed Framework Between the United States of America and the Democratic People's Republic of Korea.

Sincerely,

Bill Clinton

His Excellency Kim Jong Il
Supreme Leader of the
Democratic People's Republic of Korea
Pyongyang

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With Copter Pilot's Return, U.S. Will Send Oil to North Korea

By ERIC SCHMITT
Special to The New York Times

WASHINGTON, Jan. 5 — Less than a week after North Korea's release of a downed American helicopter pilot, the Defense Department said today that it would begin shipping oil to the country as part of a deal aimed at ending the North's nuclear weapons program.

That the Pentagon is paying $4.7 million to buy and ship the first 13.5 million gallons of oil to North Korea has angered many Republicans, who have criticized the Clinton Administration for propping up a rogue regime.

The accord requires North Korea to freeze and ultimately to dismantle its weapons-grade nuclear program in exchange for $4 billion in economic aid from the United States, Japan and South Korea.

Seeking to blunt Congressional opposition, a senior Defense Department official told reporters today that the Clinton Administration was satisfied that North Korea was so far complying with its commitment to open its existing nuclear complexes to inspection and to store and eventually ship its spent fuel rods, which could be used to make weapons, out of the country.

If that changes, the official said at a briefing, the United States and its allies will halt the shipments of heating oil and ultimately abandon a plan to build two major reactors for North Korea that cannot produce weapons-grade fuel.

The Pentagon official, who spoke on condition of anonymity, said the Clinton Administration chose to negotiate with North Korea last year rather than risk war. Tensions between the two countries reached a critical point last June when the United States threatened to seek international economic sanctions against the North.

Because the North said it would view sanctions as an act of war, the official said, the United States also took steps to increase the combat readiness and power of American and South Korean forces on the Korean peninsula.

"It is safe to say that it is the closest we have come to facing a major military confrontation, possibly with the exception" of the recent deployment of American troops to Kuwait to counter an Iraqi troop buildup, the senior Pentagon official said. "We faced a real possibility of military operations."

Although North Korea later acceded to the nuclear accord, Pentagon officials acknowledged that they have little insight as to who is actually running the country.

North Korea's new leader, Kim Jong Il, has made few public appearances since his father and predecessor, Kim Il Sung, died last July. The country's official Communist Party newspaper, Rodong Sinmun, reported this week that villagers were searching for wild ginseng to help cure Mr. Kim, who has been rumored to suffer from diabetes, kidney or liver problems.

North Korea's delay last month in returning Chief Warrant Officer Bobby Hall, the pilot whose helicopter was shot down after straying into the North's territory, threatened to imperil the nuclear accord.

Mr. Hall confirmed today that his captors coerced him into signing a six-page statement conceding the flight was an "illegal intrusion." Interviewed on the television program "CBS This Morning," he said the statement was "what they dictated me to write down."

Pentagon officials said that merchant ships would deliver the heating oil — the first of three shipments over the next 22 months — to North Korea before Jan. 21.

Company News:
Tuesday through Saturday,
Business Day

File: => North Korea

Talking Points

Title VII -- Authorization for Implementation of the U.S.-DPRK Agreed Framework

-- We oppose this amendment because it infringes on the President's authority to conduct Foreign Relations and would interfere with the implementation of the U.S.-DPRK Agreed Framework.

-- Section 704, Normalization of Diplomatic Relations, sets conditions that are inconsistent with the President's Constitutional authority to normalize relations with the DPRK at the time and in the manner he deems most advantageous to the U.S. We oppose this provision due to the serious on Constitutional issues it raises.

-- Regarding Section 705, Normalization of Economic Relations, we need clarification. It appears this section would permit partial lifting of the economic embargo on North Korea without imposing conditions, and would require that the cited conditions be met only for final, complete termination of sanctions. However, if the section would constrain our ability to undertake gradual sanctions removal, it would impair the President's ability to implement the Agreed Framework.

-- Section 706, Restriction on Petroleum Shipments, would require North Korea to comply fully with its IAEA safeguards agreement before any additional heavy oil could be shipped to North Korea. This requirement is flatly inconsistent with the Agreed Framework.

-- Section 707, IAEA Safeguards Requirement, describes one of the conditions -- full compliance with IAEA safeguards -- that must be met in order to normalize diplomatic relations (section 704) and deliver heavy oil (section 706). As previously noted, we oppose this condition in the context of diplomatic relations based on Constitutional concerns, and we oppose it in the context of heavy oil deliveries because it is inconsistent with the Agreed Framework.

  -- Section 707 could serve as a prerequisite for delivering heavy oil if it were changed to require that the DPRK "maintain the freeze on its gas graphite-moderated nuclear reactors and related facilities."

-- Section 708, Additional Requirements, creates conditions concerning confidence-building measures, MIAs, terrorism, human rights, and missile exports. While these issues are all relevant to the President's decisions concerning further progress in diplomatic and economic relations with the DPRK, writing them into law would be tantamount to the U.S. rewriting the Agreed Framework. It would make implementation of the Agreed Framework more difficult and, in particular, would weaken our arguments whenever the DPRK attempts to create new conditions on its compliance.

-- Section 709, Nuclear Non-proliferation Requirements, creates some of the same problems as the previous two sections in that it adds explicit new legal conditions to further progress in diplomatic and economic relations with the DPRK.

-- Section 712, Certification and Reporting Requirements, would create a new and burdensome reporting requirement. At a minimum, such reports should be required only at one-year intervals.

  -- In addition, several items are labeled "certifications," but there are no apparent consequences for noncertification. These provisions should be "statements" or "reports."

Drafted: EAP/K: RAChristenson
SEKGEN 2182

Cleared: S/AL:NRasmussen
L:JHergen/NHighsmith
EAP:DBrown

~~CONFIDENTIAL~~
NSC/RMO PROFILE

RECORD ID: 9504654
RECEIVED: 16 JUN 95 16

TO: LAKE

FROM: LITWAK
PONEMAN

DOC DATE: 16 JUN 95
SOURCE REF:

KEYWORDS: NON PROLIFERATION
HS

KOREA SOUTH

North Korea

PERSONS:

SUBJECT: PRES LTR TO PRES KIM OF SOUTH KOREA

ACTION: NOTED BY PRESIDENT   DUE DATE: 20 JUN 95   STATUS: C

STAFF OFFICER: LITWAK   LOGREF:

FILES: PA   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
		LITWAK
		NSC CHRON
		PONEMAN
		ROTH

COMMENTS:

DISPATCHED BY ______ DATE ______ BY HAND W/ATTCH

OPENED BY: NSDRS   CLOSED BY: NSMEC   DOC 1 OF 1

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RECORD ID: 9504654

ACTION DATA SUMMARY REPORT

DOC	ACTION OFFICER	CAO	ASSIGNED	ACTION REQUIRED
001	LAKE	Z	95062611	FWD TO PRESIDENT FOR INFORMATION
001		X	95070314	NOTED BY PRESIDENT

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National Security Council
The White House

PROOFED BY:		LOG #	4654
URGENT NOT PROOFED:		SYSTEM	PRS NSC INT
BYPASSED WW DESK:		DOCLOG MC	A/O

	SEQUENCE TO	INITIAL/DATE	DISPOSITION
Harmon	1		
Dohse			
Sens			
Soderberg		Copy ✓	
Berger	2		
Lake			
Situation Room			
West Wing Desk	3	MC 6/26	D
Records Mgt.			

A = Action   I = Information   D = Dispatch   R = Retain   N = No Further Actic

cc:

COMMENTS:

Exec Sec Office has diskette ____

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005a. memo	information, Anthony Lake to POTUS re letter (1 page)	06/26/1995	P1/b(1)

COLLECTION:

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

FOLDER TITLE:

North Korea [2]

2009-0528-F
kc1442

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
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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]
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005b. letter	ROK President Kim to POTUS [duplicate of 002] (2 pages)	06/17/1995	P1/b(1)

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006a. email	James Baker to Daniel Poneman re The Letter (1 page)	06/07/1995	P1/b(1)

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Mary Derosa (Legal Advisor)
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North Korea [2]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006b. draft	letter, Secretary Christopher to FM Gong (1 page)	06/06/1995	P1/b(1)

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

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North Korea [2]

2009-0528-F
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File - N.K.

U.S.-DPRK AGREED FRAMEWORK FOR RESOLVING THE NUCLEAR ISSUE

The attached package includes: (1) the Agreed Framework between the U.S. and the DPRK, signed October 21, 1994, in Geneva; (2) a Confidential Minute, signed the same day, which should be treated as confidential for classification purposes; and (3) a letter of assurance from President Clinton to the DPRK's Supreme Leader, Kim Jong-Il, which was delivered in Geneva in connection with the signing. These documents create a framework of political decisions and practical actions to be taken by each side in order to resolve the nuclear issue in North Korea.

AGREED FRAMEWORK BETWEEN
THE UNITED STATES OF AMERICA AND
THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

Geneva, October 21, 1994

Delegations of the Governments of the United States of America (U.S.) and the Democratic People's Republic of Korea (DPRK) held talks in Geneva from September 23 to October 21, 1994, to negotiate an overall resolution of the nuclear issue on the Korean Peninsula.

Both sides reaffirmed the importance of attaining the objectives contained in the August 12, 1994 Agreed Statement between the U.S. and the DPRK and upholding the principles of the June 11, 1993 Joint Statement of the U.S. and the DPRK to achieve peace and security on a nuclear-free Korean peninsula. The U.S. and the DPRK decided to take the following actions for the resolution of the nuclear issue:

I. Both sides will cooperate to replace the DPRK's graphite-moderated reactors and related facilities with light-water reactor (LWR) power plants.

1) In accordance with the October 20, 1994 letter of assurance from the U.S. President, the U.S. will undertake to make arrangements for the provision to the DPRK of a LWR project with a total generating capacity of approximately 2,000 MW(e) by a target date of 2003.

-- The U.S. will organize under its leadership an international consortium to finance and supply the LWR project to be provided to the DPRK. The U.S., representing the international consortium, will serve as the principal point of contact with the DPRK for the LWR project.

-- The U.S., representing the consortium, will make best efforts to secure the conclusion of a supply contract with the DPRK within six months of the date of this Document for the provision of the LWR project. Contract talks will begin as soon as possible after the date of this Document.

-- As necessary, the U.S. and the DPRK will conclude a bilateral agreement for cooperation in the field of peaceful uses of nuclear energy.

2) In accordance with the October 20, 1994 letter of assurance from the U.S. President, the U.S., representing the consortium, will make arrangements to offset the energy foregone due to the freeze of the DPRK's graphite-moderated reactors and related facilities, pending completion of the first LWR unit.

-- Alternative energy will be provided in the form of heavy oil for heating and electricity production.

-- Deliveries of heavy oil will begin within three months of the date of this Document and will reach a rate of 500,000 tons annually, in accordance with an agreed schedule of deliveries.

3) Upon receipt of U.S. assurances for the provision of LWR's and for arrangements for interim energy alternatives, the DPRK will freeze its graphite-moderated reactors and related facilities and will eventually dismantle these reactors and related facilities.

-- The freeze on the DPRK's graphite-moderated reactors and related facilities will be fully implemented within one month of the date of this Document. During this one-month period, and throughout the freeze, the International Atomic Energy Agency (IAEA) will be allowed to monitor this freeze, and the DPRK will provide full cooperation to the IAEA for this purpose.

-- Dismantlement of the DPRK's graphite-moderated reactors and related facilities will be completed when the LWR project is completed.

-- The U.S. and the DPRK will cooperate in finding a method to store safely the spent fuel from the 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

4) As soon as possible after the date of this document U.S. and DPRK experts will hold two sets of experts talks.

-- At one set of talks, experts will discuss issues related to alternative energy and the replacement of the graphite-moderated reactor program with the LWR project.

-- At the other set of talks, experts will discuss specific arrangements for spent fuel storage and ultimate disposition.

II. The two sides will move toward full normalization of political and economic relations.

1) Within three months of the date of this Document, both sides will reduce barriers to trade and investment, including restrictions on telecommunications services and financial transactions.

2) Each side will open a liaison office in the other's capital following resolution of consular and other technical issues through expert level discussions.

3) As progress is made on issues of concern to each side, the U.S. and the DPRK will upgrade bilateral relations to the Ambassadorial level.

III. Both sides will work together for peace and security on a nuclear-free Korean peninsula.

1) The U.S. will provide formal assurances to the DPRK, against the threat or use of nuclear weapons by the U.S.

2) The DPRK will consistently take steps to implement the North-South Joint Declaration on the Denuclearization of the Korean Peninsula.

3) The DPRK will engage in North-South dialogue, as this Agreed Framework will help create an atmosphere that promotes such dialogue.

IV. Both sides will work together to strengthen the international nuclear non-proliferation regime.

1) The DPRK will remain a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and will allow implementation of its safeguards agreement under the Treaty.

2) Upon conclusion of the supply contract for the provision of the LWR project, ad hoc and routine inspections will resume under the DPRK's safeguards agreement with the IAEA with respect to the facilities not subject to the freeze. Pending conclusion of the supply contract, inspections required by the IAEA for the continuity of safeguards will continue at the facilities not subject to the freeze.

3) When a significant portion of the LWR project is completed, but before delivery of key nuclear components, the DPRK will come into full compliance with its safeguards agreement with the IAEA (INFCIRC/403), including taking all steps that may be deemed necessary by the IAEA, following consultations with the Agency with regard to verifying the accuracy and completeness of the DPRK's initial report on all nuclear material in the DPRK.

Robert L. Gallucci

Head of the Delegation of the United States of America, Ambassador at Large of the United States of America

강석주

Kang Sok Ju

Head of the Delegation of the Democratic People's Republic of Korea, First Vice-Minister of Foreign Affairs of the Democratic People's Republic of Korea

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. paper	Confidential Minute to the Agreed Framework [duplicate of 003] (3 pages)	10/21/1994	P1/b(1)

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

FOLDER TITLE:
North Korea [2]

2009-0528-F
kc1442

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THE WHITE HOUSE

WASHINGTON

October 20, 1994

Excellency:

I wish to confirm to you that I will use the full powers of my office to facilitate arrangements for the financing and construction of a light-water nuclear power reactor project within the DPRK, and the funding and implementation of interim energy alternatives for the Democratic People's Republic of Korea pending completion of the first reactor unit of the light-water reactor project. In addition, in the event that this reactor project is not completed for reasons beyond the control of the DPRK, I will use the full powers of my office to provide, to the extent necessary, such a project from the United States, subject to approval of the U.S. Congress. Similarly, in the event that the interim energy alternatives are not provided for reasons beyond the control of the DPRK, I will use the full powers of my office to provide, to the extent necessary, such interim energy alternatives from the United States, subject to the approval of the U.S. Congress.

I will follow this course of action so long as the DPRK continues to implement the policies described in the Agreed Framework Between the United States of America and the Democratic People's Republic of Korea.

Sincerely,

Bill Clinton

His Excellency Kim Jong Il
Supreme Leader of the
  Democratic People's Republic of Korea
Pyongyang

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008. notes	handwritten, re financing (5 pages)	07/26/1995	P1/b(1)

COLLECTION:

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

FOLDER TITLE:

North Korea [2]

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LWR SCENARIOS: U.S. LEGAL REQUIREMENTS

NOTE: Set forth below are the legal requirements for U.S. participation under several possible scenarios for supply of a light-water reactor to the DPRK. The details of these legal requirements are described in the attachment.

I. U.S. Performance Guarantee

Project Description: The U.S. would not provide equipment, construction services, or financing. It would actively promote the project by seeking to arrange suppliers and financing. It would guarantee that, in the event the reactor project is terminated, the U.S. would ensure provision of the reactor.

- Agreement for Cooperation: Because the U.S. might have to supply the reactor or major reactor components in order to make good on its guarantee, **the DPRK would have to accept as a condition of the guarantee that it would "enter into an agreement for nuclear cooperation in the event that the U.S. had to supply the reactor or major components thereof."**

  - A sample agreement for cooperation, tailored to the DPRK, should be attached to the guarantee letter in order to set the bounds of this condition. We will have to explain the agreement for cooperation, as some of its requirements will probably put off the DPRK initially.

  - We could negotiate the agreement before the guarantee is triggered so that the Congressional review period of 90 continuous session days would not delay carrying out work under the guarantee.

  - This approach could lead to contentious negotiations with the DPRK and contentious Congressional review of an agreement that ultimately may not be needed. Moreover, work would probably not be delayed anyway since the U.S. would take some time to get the project going.

  - Congressional review could be avoided if the reactor were provided under an IAEA project agreement (which, pursuant to the U.S.-IAEA agreement for cooperation, would incorporate the same requirements as would be required of a U.S.-DPRK agreement for cooperation). The DPRK would have to rejoin the IAEA under this option.

- Minor Components: If the U.S. had to provide minor components in order to make good on its guarantee, the DPRK would have to agree to safeguards, peaceful use, and no retransfer without U.S. consent. Safeguards and peaceful use will already be a condition of the guarantee, and the

DPRK will have already consented to the concept of no retransfer in connection with the draft agreement for cooperation. Therefore, no action would be needed prior to the need to export the components.

- Technology: If the U.S. had to provide technology or other assistance requiring Energy Department authorization in order to make good on its guarantee, the steps already agreed to by the DPRK as a condition of the guarantee would probably provide a sufficient basis for the findings needed to authorize such assistance.

  -- In addition, we would have to determine whether the primary supplier would be using U.S. technology, in which case U.S. reexport restrictions might apply.

- Nuclear Trade Sanctions: The relevant departments and agencies could begin the preliminary evaluations needed to support a waiver of nuclear trade sanctions under section 129 of the Atomic Energy Act. Actual processing of the waiver would not be necessary until the guarantee was triggered. In the meantime, we presumably would be developing a record of DPRK compliance with the conditions of the guarantee. (The waiver would be subject to Congressional review for 60 days of continuous session.)

- Trading With the Enemy Act: Similarly, no specific steps would have to be taken under the Trading With the Enemy Act (TWEA) until actual transactions by U.S. persons with the DPRK were contemplated. However, it would be prudent to consult fully with Treasury's Office of Foreign Assets Control (OFAC) and Commerce so that any eventual transactions could be approved efficiently.

- Terrorism Controls: As with TWEA, no specific steps would have to be taken before the guarantee was triggered, but consultations with the Commerce Department would be prudent.

- Liability: Liability will pose a significant obstacle to U.S. contractors' involvement in the project. The U.S. should begin to evaluate the steps that would be necessary to meet contractors' concerns with a project in North Korea.

- Environment: Preliminary environmental evaluations should begin, to the extent possible, before the guarantee is triggered.

- Indemnification: If the ROK is the primary supplier of the reactor, we should consider obtaining an **indemnification pledge** so that the cost of any replacement reactor would be borne by the ROK. (Such indemnification is probably beyond the capability of the Russians.)

II. "Best Efforts" Guarantee

Project Description: The U.S. would not provide equipment, construction services, or financing. It would actively promote the project by seeking to arrange suppliers and financing. The "guarantee" would not legally commit the U.S. to provide a replacement reactor in the event the reactor project was terminated.

- -- The President could provide a political commitment to "use the full powers of his office" to ensure the supply of the LWR to the DPRK.
- -- Alternatively, the U.S. could provide a binding guarantee to "seek" to ensure the supply of the LWR, without undertaking to pay for a replacement.

- o Agreement for Cooperation: Since the U.S. would not be obliged to provide the reactor or any major components, even under the guarantee, an agreement for nuclear cooperation under section 123 of the Atomic Energy Act would not be required.
- o Minor Components: Similarly, no prior steps would be required for possible minor component exports under the guarantee.
- o Technology: The same would be true for possible transfers of nuclear technology (but we would still have to determine if U.S. technology was being used by the ROK or Russia).
- o Nuclear Trade Sanctions: No prior steps would be necessary, but it would be prudent to begin section 129 evaluations.
- o Trading With the Enemy Act: No prior steps would be necessary, but it would be prudent to consult with OFAC and Commerce.
- o Terrorism Controls: No prior steps would be necessary, but it would be prudent to consult with the Commerce Department.
- o Liability: Liability issues should be examined as early as possible.
- o Environment: Environmental evaluations should begin as early as possible.
- o Indemnification: An indemnification pledge from the primary supplier would be useful, but not as critical given the qualifications to this "guarantee."

III. U.S.-ROK Joint Venture

A. Venture Accompanied by Binding Guarantee

Project Description: The ROK would provide the reactor, the construction services, and financing. The U.S. would provide certain project management services and would deal with the DPRK. It would also guarantee to the DPRK that, in the event the reactor project is terminated, the U.S. would ensure provision of the reactor.

- Agreement for Cooperation: An agreement for nuclear cooperation would not be required.
  - The Atomic Energy Act provides that such activities may take place pursuant to an agreement for cooperation. Congress might expect negotiation of an agreement for cooperation due to the sensitivity of this case. However, an agreement for cooperation is not required.
  - However, the DPRK would have to accept as a condition of the guarantee that it would "enter into an agreement for nuclear cooperation in the event that the U.S. had to supply the reactor or major components thereof" under the guarantee.
- Minor Components: If the U.S. were to provide minor components either as part of the primary project or in order to make good on its guarantee, the DPRK would have to agree to safeguards, peaceful use, and no retransfer without U.S. consent. As previously noted, the DPRK would have already agreed to these concepts in the guarantee letter.
- Technology: The U.S. joint venture partner would have to obtain a **specific authorization** from the Department of Energy to engage in the North Korea project. Congress would have no statutory role in this process.
  - The steps agreed to by the DPRK as a condition of the guarantee might provide a sufficient basis for the findings needed to authorize such participation.
  - The U.S. firms participation could be approved incrementally, with broader activities being linked to DPRK nonproliferation actions.
  - In addition, we would have to determine if U.S. technology was being used by the ROK.
- Nuclear Trade Sanctions: A waiver of sanctions under section 129 of the Atomic Energy Act would not be required (though the appropriate evaluations could begin in case nuclear exports from the U.S. were ultimately required under the guarantee).

- o <u>Trading With the Enemy Act</u>: The U.S. joint venture partner would have to obtain a **license from OFAC** for all of its transactions with the DPRK. Congress would have no statutory role in this licensing process. Consultations with OFAC would be advisable at the earliest opportunity.

- o <u>Terrorism Controls</u>: It would be prudent to consult with the Commerce Department to make sure that any exports anticipated by the U.S. joint venture partner pursuant to Commerce license could in fact be approved without delay.

- o <u>Liability</u>: Liability would pose a significant obstacle to U.S. contractors' involvement as joint venture partners.

  -- Since the purpose of U.S. participation in the joint venture is primarily to make the proposal more palatable to the DPRK, **the ROK should be asked to hold the U.S. joint venture partner harmless for liability incurred in connection with the project.**

- o <u>Environment</u>: Environmental evaluations likely would not be required for U.S. participation in the joint venture (absent U.S. component exports).

- o <u>Indemnification</u>: The U.S. should obtain from the ROK an **indemnification pledge** so that the cost of any replacement reactor would be borne by the ROK. If the ROK wants this business, it should be willing to hold the U.S. harmless against the costs of its failure to perform.

B. <u>**Venture Accompanied by "Best Efforts" Guarantee**</u>

<u>Project Description</u>: The ROK would provide the reactor, the construction services, and financing. The U.S. would provide certain project management services and would deal with the DPRK. We would also guarantee that, in the event the reactor project is terminated, the U.S. would "seek" to ensure -- or use the full powers of the President to ensure -- the provision of the reactor to the DPRK. This "guarantee" would <u>not</u> legally commit the U.S. to provide a replacement reactor.

- o <u>Agreement for Cooperation</u>: An agreement for nuclear cooperation would <u>not</u> be required, nor would the DPRK have to accept in principle the terms of the agreement for nuclear cooperation.

- o <u>Minor Components</u>: If the U.S. were to provide minor components either as part of the primary project or in connection with its "guarantee," the DPRK would have to agree to safeguards, peaceful use, and no retransfer without U.S. consent.

- Technology: As in the previous scenario, the U.S. joint venture partner would have to obtain a **specific authorization** from the Department of Energy (and we would have to determine if U.S. technology was being used by the ROK).

- Nuclear Trade Sanctions: A waiver of nuclear trade sanctions under section 129 of the Atomic Energy Act would not be required (though the appropriate evaluations might begin in case we ultimately chose to export components under the "guarantee").

- Trading With the Enemy Act: The U.S. joint venture partner would have to obtain a **license from OFAC.**

- Terrorism Controls: No advance steps would be necessary in connection with U.S. terrorism controls, but again, it would be prudent to consult with the Commerce Department.

- Liability: Liability would still pose a significant obstacle to U.S. contractors' involvement as joint venture partners.

  -- Again, we should seek from the ROK a commitment to **hold the U.S. joint venture partner harmless** for liability incurred in connection with the project.

- Environment: Environmental evaluations likely would not be required for U.S. participation in the joint venture (absent U.S. component exports).

- Indemnification: The U.S. could obtain from the ROK a pledge to indemnify the U.S. in the event of nonperformance, but it would not be essential since the U.S. would not be legally bound to provide a replacement reactor.

IV. **U.S. as General Contractor**

Project Description: The legal issues under this approach would be roughly the same as under the U.S.-ROK joint venture scenario, assuming the general contractor would be a U.S. firm (the USG should not undertake such an effort itself). As in the joint venture scenario, this approach could be backed by a political commitment or a binding guarantee from the USG.

- Agreement for Cooperation: The need for an agreement for cooperation (or an IAEA project agreement) might be greater since the U.S. firm would be directly responsible for completion of the project and might want the option of U.S. supply in the event that foreign equipment suppliers did not perform.

- o <u>Indemnification</u>: Under this approach, unlike the joint venture scenarios, a U.S. general contractor might not be able to obtain liability indemnification from its subcontractors -- even if ROK subcontractors would be performing most of the work.

V. **Financial Guarantee**

- o <u>Project Description</u>: The U.S. would not provide equipment, construction services, or financing. It would actively promote the project by seeking to arrange suppliers and financing. It would guarantee repayment of the loan (i.e., stand behind the DPRK if it fails to repay the lender -- most likely Japan or the ROK). This approach would address the financial risk involved in the project, but not the risk of nonperformance by the primary supplier.
- o <u>Agreement for Cooperation</u>: Unnecessary.
- o <u>Minor Components</u>: No steps necessary.
- o <u>Technology</u>: No steps necessary (but we would have to determine if U.S. technology was being used by the primary supplier).
- o <u>Nuclear Trade Sanctions</u>: No waiver necessary.
- o <u>Trading With the Enemy Act</u>: All necessary approvals would have to be obtained from OFAC and Commerce pursuant to TWEA.
- o <u>Terrorism Controls</u>: No steps necessary.
- o <u>Environment</u>: Environmental documentation likely would not be required.
- o <u>Liability</u>: Liability concerns would be virtually removed.
- o <u>Indemnification</u>: An indemnification pledge from the primary supplier would be advisable (particularly if the ROK were carrying out the project).

Drafted by: L/PM - Newell Highsmith

ATTACHMENT: U.S. LEGAL REQUIREMENTS

Atomic Energy Act: Agreement for Cooperation

- The U.S. cannot transfer an LWR, major reactor components, or nuclear fuel to the DPRK until it has entered into an agreement for nuclear cooperation pursuant to section 123 of the Atomic Energy Act. (Major components are pressure vessels, primary coolant pumps, fuel charging or discharging machines, and control rods.)

  -- In addition, a waiver of nuclear trade sanctions under section 129 of the Atomic Energy Act would be required, as well as the necessary licenses from the Nuclear Regulatory Commission, the Treasury Department (under the Trading With the Enemy Act), and the Commerce Department (terrorism controls). These requirements are discussed in subsequent sections.

- In order to enter into an agreement under section 123, the DPRK will have to agree to the following:

  -- A guarantee that it will maintain IAEA **safeguards** in perpetuity on items subject to the agreement.

  -- A requirement, as a condition of continued U.S. nuclear supply, that it will maintain **full-scope IAEA safeguards**.

  -- A provision permitting the United States to apply **fall-back safeguards** (i.e., U.S. inspections) in the DPRK in the event IAEA safeguards cannot be effectively applied.

  -- A **peaceful use guarantee** (i.e., the DPRK will not use items subject to the agreement for any nuclear explosive device, for research on or development of any such device, or for any other military purpose.

  -- A U.S. right to cease cooperation and **require the return** of items subject to the agreement if the DPRK detonates a nuclear explosive device or terminates or abrogates a safeguards agreement with the IAEA.

  -- A guarantee that it will maintain adequate **physical security** with respect to items subject to the agreement.

  -- A U.S. right of prior **consent** before the DPRK may **retransfer** to a third country items subject to the agreement.

  -- A guarantee that it will not **reprocess, enrich, or alter in form or content** nuclear material subject to the agreement.

-- A U.S. right to approve in advance storage facilities for separated plutonium, uranium 233, and highly enriched uranium subject to the agreement (though it is not anticipated that the DPRK would possess such materials).

-- A prohibition on the transfer of sensitive nuclear technology and restricted data under the agreement.

-- A guarantee that all key conditions and controls will remain in force in perpetuity with respect to items subject to the agreement, even if the agreement expires or is terminated.

o This agreement would have to be submitted to Congress for a review period of 90 continuous session days. Congress could disapprove the agreement during that time by joint resolution (which the President could veto, requiring a 2/3 majority for override).

-- Congress has never disapproved a nuclear cooperation agreement, but in the case of U.S.-China agreement, it imposed stringent conditions on the commencement of exports pursuant to the agreeement (which have never been met).

-- In this case, the LWR agreement will already impose stringent nonproliferation conditions on the DPRK, which might satisfy Congress's concerns. **However, Congress likely would reject the agreement if the DPRK had not yet allowed special inspections to take place.**

o An agreement for cooperation does not commit the United States to any specific exports or other activities, but rather establishes a framework of conditions and controls to govern subsequent transactions, if any.

-- We might mollify Congressional concerns by proposing an agreement for cooperation with the DPRK that would permit <u>only</u> this one reactor project (i.e., any additional cooperation would require amendment of the agreement, which Congress would again review for 90 continuous session days).

o Even with an agreement in force, significant exports made pursuant to it require a license from the U.S. Nuclear Regulatory Commission.

o <u>IAEA Project and Supply Agreement</u>: The U.S. could supply a reactor to the DPRK **through** the IAEA, subject to the U.S.-IAEA agreement for cooperation.

-- This approach would not require an agreement for cooperation between the U.S. and the DPRK (though the DPRK would have to agree to the same requirements in its project agreement with the IAEA and the U.S.).

-- Congress would not have a role in approving a project agreement (as would be the case with an agreement for cooperation).

-- The DPRK would have to rejoin the IAEA to become eligible for such a project.

Atomic Energy Act: Export of Minor Components

- An agreement for nuclear cooperation is not needed for exports of minor reactor components (basically, all nuclear reactor components other than pressure vessels, primary coolant pumps, fuel charging or discharging machines, and control rods).

  -- For export of a minor component, section 109(b) of the Atomic Energy Act requires guarantees from the recipient government that (1) safeguards will be applied to the item, (2) the item will be used exclusively for peaceful purposes, and (3) the item will not be retransferred without U.S. consent.

Atomic Energy Act: Technology Transfers

- An agreement for nuclear cooperation is not needed for a transfer of nuclear technology to the DPRK. (Technology would include everything from a reactor design to reactor safety knowhow. It would include any transfer of information or knowhow, including during consultations, seminars, exchanges, studies, evaluations, etc. It does not include "public information" -- i.e., information available to the public in books, periodicals, electronic media, public libraries, open meetings, etc.)

- The basic requirement for a transfer of nuclear technology to the DPRK would be issuance of a specific authorization by the Department of Energy based on a finding that the transfer "will not be inimical to the interest of the United States." This finding would require the concurrence of State and consultation with Defense, ACDA, Commerce, and the Nuclear Regulatory Commission.

  -- Neither an agreement for cooperation nor full-scope safeguards is strictly required, though effective full-scope safeguards is typically an important factor in the finding of noninimicality.

- If another country were supplying the reactor, we would have to determine whether the reactor incorporated U.S. technology, in which case reexport controls might apply. The U.S. does not typically obtain reexport consent rights in connection with nuclear technology transfers, but it has done so in a few cases.

<u>Atomic Energy Act: Nuclear Trade Sanctions</u>

- The U.S. could not transfer an LWR, major reactor components, nuclear fuel, or minor reactor components unless the President <u>waived</u> the prohibition in section 129 on such trade.

- Section 129 prohibits such nuclear trade on two grounds that are applicable to the DPRK: (1) where a nonnuclear-weapon state has materially violated an IAEA safeguards agreement; and (2) where a nonnuclear-weapon state has "engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such activities."

  -- The stringent nonproliferation commitments in the LWR agreement could form the basis for a determination by the President that the DPRK had taken sufficient steps to terminate its proliferant activities, thereby avoiding sanctions under the second provision cited above.

- Either provision could be waived if the President determined that cessation of nuclear trade "would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security."

  -- This waiver determination would have to be submitted to Congress for 60 days of continuous session before it took effect.

  -- Congress could disapprove the waiver during that time by joint resolution or other enactment (which the President could veto, requiring a 2/3 majority for override).

<u>Trading With the Enemy Act</u>

- The President has exercised his authority under TWEA to ban all trade and financial transactions with North Korea absent a license from the Treasury Department's Office of Foreign Asset Controls (OFAC). (For exports of Commerce-controlled items, OFAC defers to Commerce's decision on issuing an export license.)

- OFAC could issue the required license, or the President could relax the ban. Neither action would require Congressional consent or consultation.

EAA Terrorism Controls

- The DPRK was designated a "terrorist country" in 1988 for purposes of the terrorism controls in the Export Administration Act. It therefore is subject to an outright ban on exports of munitions list items, as well as a requirement of an individual validated licenses for some other items.

- Prior to the export of an item, the Secretary of State would have to determine whether the item "could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism."

  -- If the item could not make such a contribution, Commerce could issue an individual validated license for its export.

  -- If the item could make such a contribution, Commerce could still issue an individual validated license, but only after providing 30 days advance notice to Congress.

- The criteria for removing a country from the terrorist list are demanding and would be difficult to meet in the case of the DPRK (e.g., a Presidential certification that there has been a fundamental change in the leadership and policies of the country, that the country is no longer supporting acts of terrorism, and that the government has provided assurances that it will not support terrorist acts in the future).

Liability for Accidents

- U.S. firms have been somewhat reluctant to participate in efforts to improve the safety of Russian reactors due to their concern that they would be targeted in the event of a nuclear accident.

- The same concern would likely exist in this case whether U.S. firms were involved in a Russian or South Korean reactor project. (Even with a U.S. reactor, there might be concerns that North Korean operators could not be relied upon to operate the reactor properly.)

- Accordingly, if U.S. firms were to participate, there would probably have to be arrangements to ensure that such firms were not exposed to unlimited liability.

-- One step might be for the DPRK to adhere to the Vienna Convention on Civil Liability for Nuclear Damage.

-- A U.S. firm in a joint venture with South Korean firms might seek an **indemnification agreement** from those firms.

Environmental Requirements

- The National Environmental Policy Act (NEPA) would not apply to this overseas project.

- Instead, E.O. 12114 covers major Federal actions with environmental effects abroad.

- The "Federal action" in this case would be the government approvals necessary for U.S. participation in the reactor project.

- If the USG were approving the **export of reactor components**, the appropriate environmental documentation likely would be required.

  -- This requirement would not apply if the approval action were taken either (1) by the President, or (2) at the direction of the President or a Cabinet officer when the national security is involved.

- If the Department of Energy were approving the **participation of U.S. firms** in the North Korean reactor project, environmental documentation likely would not be required.

  -- The procedures adopted to implement E.O. 12114 focus on the provision of a "physical project" and exempt actions taken under section 57 of the Atomic Energy Act, which includes DOE approval of nuclear-related activities overseas.

Drafted by: L/PM - Newell Highsmith

GUARANTEE LETTER

- Attached are four options for guarantee letters.

  -- **Option 1** would establish a political obligation rather than a legal obligation. It might be offered to back up a U.S.-ROK joint venture fully funded by the ROK.

  -- **Option 2** would establish a legal obligation, but the guarantee of project performance would not include provision of a replacement reactor. It, too, probably would not be sufficient except in connection with a U.S.-ROK joint venture fully funded by the ROK.

  -- **Options 3 and 4** would establish legally binding guarantees that would have to be submitted for Congressional approval due to Anti-Deficiency Act requirements. (In making good on such a guarantee, the U.S. could not export a reactor from the U.S. except in accordance with U.S. law. See paper on legal requirements for U.S. supply.)

- Most of this paper will discuss the obstacles to options 3 and 4, which attempt to meet the DPRK's request for a legally binding U.S. guarantee that the DPRK will receive a light-water reactor (LWR).

- U.S. performance of such a "guarantee" could involve (1) securing the contractor's performance through diplomatic means, (2) securing the performance of another party through diplomatic means, or (3) providing resources to ensure performance by the contractor, another party, or a U.S. contractor. The first two alternatives are within the President's existing powers. Only the third alternative raises issues of Anti-Deficiency Act compliance and Congressional approval.

Anti-Deficiency Act:

- A substitute U.S. reactors would likely cost over $3 billion. The U.S. might be faced with such an outlay after having already expended funds on the first project in an effort to secure performance by the primary supplier.

- Congress would not likely appropriate funds to cover such a guarantee.

- The Anti-Deficiency Act prohibits any government official from (1) making an "obligation exceeding an amount available in an appropriation or fund," or (2) involving the USG in "a contract or obligation for the payment of money before an appropriation is made unless authorized by law."

o Therefore, any binding guarantee will have to be approved by Congress in advance or will have to be expressly subject to the availability of appropriated funds.

-- The preferred option for Anti-Deficiency Act purposes would be a clause concerning availability of funds.

-- However, since such a clause likely would not be acceptable to North Korea, we would want instead to seek Congressional approval of a signed agreement <u>before</u> the agreement entered into force.

-- Even for this approach, an estimate of the cost of guaranteeing performance might be required, and Congress and the Congressional Budget Office might seek a significant **budgetary offset**.

-- The Congressional approval might read as follows (in order of preference for Anti-Deficiency Act purposes):

<u>ALTERNATIVE</u>: "The Congress hereby approves the agreement between the United States and the Democratic People's Republic of Korea, signed in Geneva on ________________, and authorizes its implementation notwithstanding any provisions of law relating to contracts."

Come back to authzn

<u>ALTERNATIVE</u>: "The Congress hereby approves the agreement between the United States and the Democratic People's Republic of Korea, signed in Geneva on ________________, and authorizes its implementation. There are authorized to be appropriated such funds as may be necessary for such implementation."

Congress authorizes such funds as may be necessary.

<u>ALTERNATIVE</u>: "The Congress hereby approves the agreement between the United States and the Democratic People's Republic of Korea, signed in Geneva on ________________, and authorizes its implementation."

subject to availability of approp. funds.

Clear not appropriate if authorized. authorizes appropriation authorizing implementation

Having committed to do anything without an authorization.

o Since the lender (the ROK or Japan) would be at risk for nonpayment of the loan by North Korea, the U.S. risk would be limited to nonperformance of the reactor supply contract, and that risk might be relatively small if U.S. and/or ROK firms were responsible for the contract.

-- That risk might be lowered even further by an indemnification agreement with the U.S./ROK contractor in the event of the contractor's nonperformance.

<u>Privileged Attorney-Client Communication</u>

- Loan Guarantee: Guaranteeing North Korean repayment of its loan would be a less exotic commercial arrangement, and the potential liability for the U.S. would be capped by the value of the loan.

  -- However, a loan guarantee might not satisfy North Korea in that it protects them only against financial impediments to project completion, not political impediments. In addition, it would shift the risk of DPRK nonpayment from the lender to the U.S., and that risk may exceed the risk of nonperformance.

Binding Guarantee Without Congressional Approval

- We continue to explore statutory exceptions that might allow us to make a binding guarantee without Congressional approval, notwithstanding the Anti-Deficiency Act.

  -- Public Law 85-804 (50 USC 1431) provides that the President may authorize any agency engaged in national defense functions to enter into contracts and to make advance payments "without regard to the provisions of law relating to" government contracting whenever the President deems that such action would facilitate the national defense.

  -- Section 162 of the Atomic Energy Act (42 USC 2202) provides that "the President may, in advance, exempt any specific action of the [Department of Energy] in a particular matter from the provisions of law relating to contracts whenever he determines that such action is essential in the interest of the common defense and security."

  -- Section 633(a) of the Foreign Assistance Act (22 USC 2393(a)) provides that, "whenever the President determines it to be in furtherance of the purposes of [the FAA], the functions authorized under this Act may be performed without regard to such provisions of law regulating . . . contracts and the expenditure of funds of the United States Government as the President may specify."

  -- [Would an indemnification agreement with the ROK eliminate the need for appropriated funds under the Anti-Deficiency Act?]

- The third statutory exception -- under the Foreign Assistance Act -- was intended to free overseas procurement from contract law provisions better suited to domestic procurement.

  - This exception was intended to facilitate overseas procurement in connection with foreign assistance activities. It could not easily be stretched to cover a performance guarantee for a DPRK reactor project.

  - In addition, this exception has typically been exercised to exempt _all_ FAA actions from specified laws, not to facilitate particular transactions (as would be the case with the DPRK reactor project).

- The other two statutory exceptions -- national defense and Atomic Energy Act -- were intended primarily to facilitate defense-related procurement. (For example, the national defense exception has been used to justify indemnification clauses for contractors in U.S. nuclear weapons programs without regard to the availability of appropriated funds.)

  - Guaranteeing the DPRK reactor project would not readily fit into this mold because it would not facilitate a _U.S._ procurement.

  - Nonetheless, since these exceptions are not expressly limited to U.S. procurement contracts, an argument could be made that the USG can enter into a contract as guarantor where the completion of that contract would "facilitate the national defense" or "is essential in the interest of the common defense and security."

- Using one of these statutory exceptions might prompt Congress to retailate by curtailing the availability of that exception.

- Congress might also view the unorthodox use of these exceptions as an effort to undermine Congress's Constitutional role with respect to both the approval of international agreements and the appropriation of funds. The result might be more confrontational than simply submitting the guarantee letter for Congressional approval.

Determining Compliance with Reciprocal Commitments

- The U.S. and North Korea will have highly subjective determinations to make as to the other party's compliance with its commitments under the agreement.

  -- For example, North Korea might cite delays in reactor construction to argue that the U.S. has not met its guarantee obligation, thereby releasing North Korea from its nonproliferation commitments under the agreement.

  -- Conversely, the U.S. and North Korea could have a dispute as to whether North Korea has met its obligation to comply with the NPT and IAEA safeguards, particularly in view of the history of disagreement over the scope of IAEA safeguards.

- The North Korean safeguards obligation and the U.S. guarantee are not readily susceptible to objective compliance criteria (though verification is easier with some other obligations, such as spent fuel transfer, no reprocessing, no refueling, and no reactor or reprocessing construction).

Signing the Guarantee

- With each of these guarantee options, we have the issue of who should sign the letter.

- A letter from Clinton to Kim would certainly be most satisfactory to the DPRK, but EAP has noted political difficulties with Clinton sending a letter to the head of a terrorist state with which we do not maintain diplomatic relations.

Limiting Scope of Guarantee

- The letters refer to reactors "designed" to provide 1000 MWe. This formulation is intended to protect the U.S. from guaranteeing that the reactors (particularly if they are Russian) will fully meet specifications. If the DPRK chooses Russian reactors, the DPRK should bear the risk of poor Russian quality.

[NOTE: None of these options are precisely modeled on the guarantee letter signed by President Carter in connection with the Camp David peace accords. The Carter letter was treated as a legally binding "sole" executive agreement and was reported to Congress as such under the Case Act. It was not submitted to the Senate for advice and consent or subject to other Congressional approval. In consultations with Congress, we apparently took the position that the U.S. was legally bound by the commitments to (1) consult in the event of a violation of the peace accords, (2) conduct aerial monitoring, and (3) use utmost efforts to obtain from the Security Council the establishment of the multinational force. However, the key commitment for our purposes -- that "the President will be prepared to take those steps necessary to ensure the establishment and maintenance of an acceptable alternative multinational force" -- may have been treated more equivocally. Some historic documents suggest that it was deemed not to be an obligation of the United States to provide the force, only an obligation of the President to "be prepared" to do so. The caveat at the beginning of the letter "subject to United States Constitutional processes" also was relied upon to explain why Congressional approval was not required. In the end, U.S. participation in the MFO was authorized by statute. L has serious reservations as to whether the language "will be prepared to" would be adequate in this case to convert the performance guarantee into a "best efforts" pledge not requiring the approval of Congress.]

Attachments: Options 1-4

Drafted: L/PM - Newell Highsmith SELOESN 2795

OPTION 1

[OPTION 1 would represent only a political commitment from President Clinton. It would not require Congressional approval and would not violate the Anti-Deficiency Act.

Advantage: We would not have to go to Congress.

Disadvantage: We would have to admit to the DPRK that it is not legally binding. This Administration might renege on its pledge, or it might end before the reactor facility is completed.]

TEXT

I wish to confirm to you that **I will exert my utmost efforts** to facilitate arrangements for the construction within North Korea by [Russia/South Korea/United States] of a light-water nuclear power reactor facility designed to provide approximately 1000 MWe. This effort will include arranging for financing by [Japan][South Korea][a consortium consisting of Japan, South Korea, etc.]. **I guarantee** that, in the event that this reactor project is terminated on grounds for which North Korea is not responsible, **I will use the full powers of my office** to ensure the supply to North Korea of a light-water reactor facility designed to provide approximately 1000 MWe, including if necessary the provision of such a facility from the United States.

I provide these assurances on the understanding that: (1) the DPRK will remain a party to the Treaty on the Non-Proliferation of Nuclear Weapons and will comply fully with that Treaty; (2) the DPRK will comply fully with its obligations under the DPRK-IAEA safeguards agreement; (3) the DPRK will comply fully with the terms of the Joint Declaration on the Denuclearization of the Korean Peninsula; (4) the DPRK will transfer all spent fuel from its 5MW nuclear reactor to ____________ within ___ months of the entry into force of this agreement; (5) the DPRK will not refuel its 5MW reactor at any time; (6) the DPRK will cease all further construction on the reactor(s) at ________________ and the radiochemical laboratory at _________________ and will not construct any reactors or laboratories of these types in the future.

OPTION 2

[OPTION 2 would be treated as a "sole" executive agreement. It would not require Congressional approval or violate the Anti-Deficiency Act. The obligations to exert utmost efforts to arrange a reactor project and to "seek to ensure" the provision of a replacement reactor would be legally binding, but would be within the existing authority of the President. This formulation would not bind the U.S. to provide or pay for a replacement reactor, thereby avoiding Anti-Deficiency Act problems. To meet its obligations, the U.S. could be required to issue any necessary export licenses, negotiate an agreement for nuclear cooperation, etc., but not provide funding.

Advantage: We would not have to go to Congress.

Disadvantage: We would have to admit to the DPRK that the "guarantee" portion of the agreement does not bind the U.S. to provide a reactor, but only to seek to arrange for a reactor to be provided.]

TEXT

I wish to confirm to you that **the United States** will exert its utmost efforts to facilitate arrangements for the construction within North Korea by [Russia/South Korea/United States] of a light-water nuclear power reactor facility designed to provide approximately 1000 MWe. This effort will include arranging for financing by [Japan][South Korea][a consortium consisting of Japan, South Korea, etc.]. In the event that this reactor project is terminated on grounds for which North Korea is not responsible, **the United States shall seek** to ensure the supply to North Korea of a light-water reactor facility designed to provide approximately 1000 MWe, including if necessary the provision of such a facility **from** the United States.

This offer and guarantee is subject to the following conditions: (1) the DPRK shall remain a party to the Treaty on the Non-Proliferation of Nuclear Weapons and shall comply fully with that Treaty; (2) the DPRK shall comply fully with its obligations under the DPRK-IAEA safeguards agreement; (3) the DPRK shall comply fully with the terms of the Joint Declaration on the Denuclearization of the Korean Peninsula; (4) the DPRK shall transfer all spent fuel from its 5MW nuclear reactor to ____________ within ___ months of the entry into force of this agreement; (5) the DPRK shall not refuel its 5MW reactor at any time; (6) the DPRK shall cease all further construction on the reactor(s) at ________________ and the radiochemical laboratory at __________________ and shall not construct any reactors or laboratories of these types in the future.

OPTION 3

[OPTION 3 would legally bind the U.S. to provide a replacement reactor, if necessary. We would need to seek Congressional approval in order not to run afoul of the Anti-Deficiency Act. An entry-into-force provision would allow for referral to Congress. U.S. supply of the reactor pursuant to the guarantee would be conditioned on conclusion of an agreement for nuclear cooperation.

Advantage: Comes closest to meeting the demands of the DPRK.

Disadvantage: Subject to the whims of Congress.]

TEXT

I wish to confirm to you that the United States will exert its utmost efforts to facilitate arrangements for the construction within North Korea by [Russia/South Korea/United States] of a light-water nuclear power reactor facility designed to provide approximately 1000 MWe. This effort will include arranging for financing by [Japan][South Korea][a consortium consisting of Japan, South Korea, etc.]. **The United States guarantees** that, in the event that this reactor project is terminated on grounds for which North Korea is not responsible, the United States will take those steps necessary to ensure the supply to North Korea of a light-water reactor facility designed to provide approximately 1000 MWe, including if necessary the provision of such a facility **by** the United States.

This offer and guarantee is subject to the following conditions: (1) the DPRK shall remain a party to the Treaty on the Non-Proliferation of Nuclear Weapons and shall comply fully with that Treaty; (2) the DPRK shall comply fully with its obligations under the DPRK-IAEA safeguards agreement; (3) the DPRK shall comply fully with the terms of the Joint Declaration on the Denuclearization of the Korean Peninsula; (4) the DPRK shall transfer all spent fuel from its 5MW nuclear reactor to ____________ within ___ months of the entry into force of this agreement; (5) the DPRK shall not refuel its 5MW reactor at any time; (6) the DPRK shall cease all further construction on the reactor(s) at ________________ and the radiochemical laboratory at ________________ and shall not construct any reactors or laboratories of these types in the future. **In addition, in the event that the U.S. must supply a light-water reactor or major components thereof pursuant to this letter, such supply shall be conditioned on the DPRK agreeing to enter into an agreement for nuclear cooperation in substantially the form attached hereto.**

This offer and guarantee shall enter into force upon further notification from the United States that we have completed our domestic approval process.

OPTION 4

[OPTION 4 is different from Option 3 only in that it requires a response from the DPRK.

Advantage: Legally binds the DPRK as well.

Disadvantage: We would have to ensure that the DPRK's response did not attempt to modify the terms of the agreement.]

TEXT

I wish to confirm to you that the United States will exert its utmost efforts to facilitate arrangements for the construction within North Korea by [Russia/South Korea/United States] of a light-water nuclear power reactor facility designed to provide approximately 1000 MWe. This effort will include arranging for financing by [Japan][South Korea][a consortium consisting of Japan, South Korea, etc.]. The United States guarantees that, in the event that this reactor project is terminated on grounds for which North Korea is not responsible, the United States will take those steps necessary to ensure the supply to North Korea of a light-water reactor facility designed to provide approximately 1000 MWe, including if necessary the provision of such a facility by the United States.

This offer and guarantee is subject to the following conditions: (1) the DPRK shall remain a party to the Treaty on the Non-Proliferation of Nuclear Weapons and shall comply fully with that Treaty; (2) the DPRK shall comply fully with its obligations under the DPRK-IAEA safeguards agreement; (3) the DPRK shall comply fully with the terms of the Joint Declaration on the Denuclearization of the Korean Peninsula; (4) the DPRK shall transfer all spent fuel from its 5MW nuclear reactor to ____________ within ___ months of the entry into force of this agreement; (5) the DPRK shall not refuel its 5MW reactor at any time; (6) the DPRK shall cease all further construction on the reactor(s) at ________________ and the radiochemical laboratory at _________________ and shall not construct any reactors or laboratories of these types in the future. In addition, in the event that the U.S. must supply a light-water reactor or major components thereof pursuant to this letter, such supply shall be conditioned on the DPRK agreeing to enter into an agreement for nuclear cooperation in substantially the form attached hereto.

If you agree to these terms, I propose that this letter and your favorable response shall constitute an agreement between our countries, which shall enter into force upon further notification between us that we have completed our respective domestic approval processes.

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
009. list	re North Korea Meeting [Personally Identifiable Information] (1 page)	00/00/1995	b(6)

COLLECTION:

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

FOLDER TITLE:

North Korea [2]

2009-0528-F
kc1442

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]

[009]

NORTH KOREA MEETING

(b)(6)

Roberts, Lisa, Treasury, 622-1983
Highsmith, Newell, State, Stolz
Mary Ann Sullivan, DOE, 586-6732
Joann Williams, DOE, (b)(6)
Teresa Roseborough, Justice, 514-3694
John McNeill, OSD, 703/695-2604
Kevin Sandkuhler, JCS/J-5/WTC, 703/614-6632
Dennis Foreman, Treasury, 622-0283
Walter Dellinger, DOJ - 514-2051
Alan Kreczko, NSC
Steve Aoki, NSC
James Baker, NSC
Steve Aitkens, OMB - 54728

Mary Beth West, State, (b)(6)
Haddad, Richard
Hart, Rosemary (b)(6) 514-2027 (OLC)

Please File

~~3119~~

North Korea

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

May 17, 1995

[redacted]

ACTION

MEMORANDUM FOR ANTHONY LAKE

FROM: DANIEL PONEMAN

SUBJECT: Presidential Waiver of Statutory Restrictions on U.S. Assistance to Korean Peninsula Energy Development Organization/KEDO

You will recall that Principals approved State reprogramming of $4 million for initial KEDO expenses.

State l~~awyers~~ believes that the best way to overcome the many legislative prohibitions or restrictions on assistance to North Korea is through exercise of the President's waiver authority under Section 614 of the Foreign Assistance Act. This provision gives the President ~~broad and flexible~~ authority to redirect foreign assistance funds, ~~provided he gives Congress~~ a written statement of justification. Since 614 authority has not been delegated, ~~White House~~ the Pres. & [illegible] approval is required, and as a matter of practice, 15 days advance consultations with specific committees ~~at least 15 days~~ are required prior to exercise of this authority. ~~to proceed down this route~~ written consultations e.

Secretary Christopher and Wendy Sherman concur in going forward with a 614 waiver. Gallucci reports that preliminary soundings on the Hill indicate that Congressional committee staff would prefer that we use 614 authority (which requires notification to the Hill and by tradition a 15-day waiting period) rather than other authorities in the Foreign Assistance Act (which do not require Congressional consultations). Moreover, the Draft Helms ~~legislation on~~ Foreign Assistance Act amendments as currently drafted would require use of a special authority such as Section 614 to provide assistance to KEDO.

Nonetheless, there is a potential for controversy. Congress objected to DOD's use of emergency authority for fuel purchases to fund the heavy oil shipments to the DPRK, and responded by curbing that authority (Bill Danvers: can you help on the detail? Did they kill the E&E authority?). We have been told in the past that the Hill will strip 614 out of the FAA if it believes we are abusing it in controversial cases. [Dick Clarke: anything to add here?]

Because KEDO is identified with the LWR project, it is likely to be more controversial on the Hill than the spent fuel treatment.

[illegible] to determine that it [illegible] Security [illegible] important [illegible] [illegible]

Gordon Adams has no objections to this approach.

Concurrences by: Richard Clarke, Bill Danvers, Stanley Roth, Alan Kreczko

RECOMMENDATION

Sign memo to President

That you authorize Andrew Sens to sign a memorandum concurring in State's proposed memorandum of justification (Tab A) and Congressional notification (Tab B) of a 614 waiver.

Approve _____ Disapprove _____

Attachments

Tab I	Proposed Sens-Brill Memorandum	
	Tab A	Proposed Memorandum of Justification
	Tab B	Proposed Wendy Sherman Letter
Tab II	Incoming Correspondence	

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

MEMORANDUM FOR KENNETH BRILL
Executive Secretary
Department of State

SUBJECT: Presidential 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 Memorandum of Justification at Tab A (as modified) and Letter of Notification (Tab B) to the Congress in respect of the proposed reprogramming of State funds for KEDO ~~air~~ in support of the U.S.-DPRK Agreed Framework.

Andrew D. Sens
Executive Secretary

Attachment
Tab A Memorandum of Justification
Tab B Letter of Notification

OMB Chngs

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

We propose that $4.0 million in FY 1995 International Organizations and Programs (IO&P) funds be reprogrammed to provide the start-up costs of 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. In order to make these funds available for such purposes, the President would exercise his authority under section 614(a)(1) of the Foreign Assistance Act of 1961, as amended to authorize such a contribution without regard to applicable statutory restrictions. This would make possible the provision of a voluntary contribution to KEDO without regard, inter alia, to sections 307, 620A, 620(f), and 620(t) of the Act, which prohibit U.S. assistance, either directly or indirectly, to the DPRK.

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. agreed to "organize under its leadership an international consortium to finance and supply the LWR [light-water reactor] project to be provided to the DPRK." In order to meet this pledge, the U.S. has agreed with South Korea (ROK) and Japan on the creation of an international organization (KEDO) to implement the reactor project and other projects called for in the Agreed Framework, such as the supply of alternative energy, the transfer of spent fuel out of the DPRK for ultimate disposition, and the dismantlement of the DPRK's graphite-moderated reactor program. U.S.
The U.S. will organize ~~[illegible]~~ KEDO, ~~while~~ the ROK and Japan will play ~~[illegible]~~ roles.
and [illegible] leading

KEDO is envisioned 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 establishment 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.

United States Department of State

Washington, D.C. 20520

DRAFT

Dear Mr. Speaker:

I 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 $4.0 million in FY 1995 International Organizations and Programs (IO&P) funds for a U.S. contribution to the Korean Peninsula Energy Development Organization (KEDO), without regard to provisions of law within the scope of that section.

This letter also serves as notification pursuant to section 634A of the Act, and section 515 of the FY 1995 Foreign Operations, Export Financing, and Related Programs Appropriations Act, for the reprogramming of such IO&P funds.

The funds will be used to provide for the start-up and related FY 1995 costs of 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. Under the Agreed Framework, the U.S. agreed to "organize under its leadership an international consortium to finance and supply the LWR (light-water reactor) project to be provided to the DPRK." In addition, KEDO will implement the reactor project and other projects called for in the Agreed Framework, such as the supply of alternative energy, the transfer of spent fuel out of the DPRK for ultimate disposition, and the dismantlement of the DPRK's graphite-moderated reactor program.

The United States, Japan and South Korea have already made significant progress in establishing KEDO, and have agreed to play a leading role in the international organization. The Republic of Korea will play the central role in financing and constructing KEDO's reactor project -- estimated to cost approximately $4 billion. Japan will play a significant role in financing that project and has already announced a contribution of $3 million for the initial site survey.

The Honorable
Newt Gingrich,
Speaker,
House of Representatives.

In addition, the trilateral partners recently co-hosted a KEDO preparatory conference in New York for the purpose of providing information to various countries about KEDO and to seek their participation in the organization. Over twenty countries from Europe, Asia and the Middle East attended. Immediately following the conference, Australia, New Zealand and Canada applied for membership. Australia has already pledged to contribute $ 5 million, and New Zealand pledged $325,000. Canada is expected to announce its contribution in the near future. In the coming weeks, we expect the majority of countries who attended the New York meeting to seek membership in KEDO. Those countries will provide political, monetary, and/or in-kind support for KEDO and its projects.

As described in more detail in the attached memorandum of justification, we believe that the use of these funds in the manner described will make an important contribution in carrying out the terms and conditions of the Agreed Framework and in achieving our highest priority nuclear non-proliferation objectives.

Sincerely,

Wendy R. Sherman
Assistant Secretary
Legislative Affairs

Enclosure:
Memorandum of Justification

United States Department of State

Washington, D.C. 20520

April 25, 1995

UNCLASSIFIED

MEMORANDUM FOR ANDREW D. SENS
EXECUTIVE SECRETARY
NATIONAL SECURITY COUNCIL

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

KEDO is the international consortium established to implement key elements of the Agreed Framework signed between the United States and the DPRK on October 21, 1994. 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. KEDO's central task is to oversee the financing and construction of the light-water reactor (LWR) project in North Korea and to provide heavy oil to the DPRK if North Korea fulfills its obligations under the Agreed Framework.

Under the Agreed Framework, the U.S. agreed to "organize under its leadership an international consortium to finance and supply the LWR [light-water reactor] project to be provided to the DPRK." During the negotiations, the U.S. indicated to Japan and the Republic of Korea (ROK) that the U.S. would provide the initial start-up costs of KEDO, and thereafter would share the annual operating costs of KEDO equally with those governments. The actions proposed in this memorandum would initiate the process for making these start-up funds available.

KEDO was established formally at the March 8-9 KEDO preparatory conference in New York. The conference was attended by twenty countries, and three countries - Australia, New Zealand, and Canada - applied for membership immediately following the conference. We expect additional memberships and financial contributions within the next month. Stephen Bosworth, former U.S. Ambassador to the Philippines, has been named Executive Director, and two Deputy Directors - one Japanese and one South Korean - have been named as well.

To provide this contribution to KEDO, we intend to reprogram $4.0 million in FY 1995 International Organizations and Programs (IO&P) funds from balances withheld as the proportionate U.S. share of assistance to Cuba, Libya, Burma and other countries - including North Korea. Use of these funds will not have an adverse impact on this account or the organizations funded by this account.

In order to provide assistance to KEDO, it is necessary to waive a number of legal restrictions on assistance to the DPRK, including sections 307, 620A, 620(f) and 620(t) of the Foreign Assistance Act of 1961, as amended (FAA). Section 614(a)(1) of the FAA provides the means for overcoming legal restrictions on providing such assistance. The provision authorizes the President, inter alia, to furnish assistance under the FAA "without regard to any" provision of the FAA, or any law authorizing or appropriating funds under the FAA. Thus, the President's determination under section 614 would be framed to waive those restrictions within the scope of section 614(a)(1) that could otherwise affect our ability to provide assistance to KEDO.

Before exercising section 614(a)(1) authority, the President must consult with, and provide a written policy justification to, the Appropriations Committees, the Senate Foreign Relations Committee, and the House International Relations Committee. Subsequently, if Congressional consultations do not indicate a contrary course of action, the President must 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." As a matter of practice, we will wait 15 days after such notification has been provided before actually furnishing any assistance.

Given the political environment surrounding the negotiation of the Agreed Framework and recent statements made by the North Koreans, we expect delays in getting Congressional approval for these reprogrammings. However, after the Congress has had the opportunity to examine the Framework Agreement in detail, and as more countries become participants in KEDO, we expect opposition to diminish substantially.

Accordingly, we recommend that the President authorize consultations with, and the furnishing of a justification to, Congress. If the results of these consultations do not suggest a different course of action, we will recommend that the President sign a FAA Section 614 Determination exercising his authorities as described above.

Kenneth C. Brill
Executive Secretary

Attachments:
Tab A - Memorandum of Justification
Tab B - Draft Letter of Notification

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

We propose that $4.0 million in FY 1995 International Organizations and Programs (IO&P) funds be reprogrammed to provide the start-up costs of 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. In order to make these funds available for such purposes, the President would exercise his authority under section 614(a)(1) of the Foreign Assistance Act of 1961, as amended to authorize such a contribution without regard to applicable statutory restrictions. This would make possible the provision of a voluntary contribution to KEDO without regard, inter alia, to sections 307, 620A, 620(f), and 620(t) of the Act, which prohibit U.S. assistance, either directly or indirectly, to the DPRK.

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. agreed to "organize under its leadership an international consortium to finance and supply the LWR [light-water reactor] project to be provided to the DPRK." In order to meet this pledge, the U.S. has agreed with South Korea (ROK) and Japan on the creation of an international organization (KEDO) to implement the reactor project and other projects called for in the Agreed Framework, such as the supply of alternative energy, the transfer of spent fuel out of the DPRK for ultimate disposition, and the dismantlement of the DPRK's graphite-moderated reactor program. The U.S. will organize and lead KEDO, while the ROK and Japan will play central roles.

KEDO is envisioned 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 establishment 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 will be located in New York and will be directed by an Executive Board consisting of representatives of the original member countries -- the U.S., Japan, and the ROK. Other countries may become involved in KEDO activities as members serving on advisory committees for the projects in which they have an interest. The day-to-day operations of KEDO will be directed by an Executive Director, who will be an American citizen, assisted by two Deputy Directors (one from Japan and one from the ROK). KEDO will seek 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 of approximately thirty people to administer projects being performed by contractors.

The $4.0 million requested for reprogramming would provide the start-up costs of KEDO. It includes the FY 1995 costs for: 1) office space, including one-time start-up costs for furniture, telephone sets, computers and other equipment necessary for the normal operation of an office; 2) employee remuneration for a staff of thirty professionals, including an Executive Director and two deputy directors, and support personnel; and 3) consulting costs for a program coordinator responsible for oversight of the light water reactor project and legal services.

For: assistance ... [illegible]

SEC. 606. RESTRICTIONS ON ASSISTANCE TO NORTH KOREA AND THE KOREAN ENERGY DEVELOPMENT ORGANIZATION.

Funds made available under any provision of law may be used to provide assistance to North Korea or the Korean Energy Development Organization only if—

(1) such assistance is provided under the same terms and conditions that govern the provision of assistance to North Korea or the Korean Energy Development Organization under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), including—

(A) the requirement that the congressional committees specified in section 634A of such Act (22 U.S.C. 2394) be notified pursuant to that section in the case of any reprogramming of funds; and

(B) the requirement that a special authority, such as section 614 of such Act (22 U.S.C. 2364), be used to waive the application of provisions of law subject to such special authority that would otherwise restrict or prohibit the provisions of such assistance; and

(2) in the case of assistance to the Korean Energy Development Organization, North Korea fulfills the oral commitments made to the United States in

Geneva, Switzerland, in October 1994 to accept a South Korea-model light water reactor and to agree to the central role of South Korea in financing the reactor project and overseeing the construction of the reactor project.

SEC. 607. PROHIBITION ON FUNDING BURMA BY THE UNITED NATIONS DEVELOPMENT PROGRAM.

(a) PROHIBITION ON ASSISTANCE FOR BURMA.—None of the funds made available for the United Nations Development Program (UNDP) shall be available for programs and activities in or for Burma.

(b) CERTIFICATION REQUIREMENT FOR PAYMENTS TO UNDP.—None of the funds made available for the United Nations Development Fund (UNDP) for fiscal years 1996 and 1997 shall be disbursed until the President certifies in writing to the Congress that the United Nations Development Program has terminated its activities in and for Burma.

TITLE VII—SPECIAL AUTHORITIES AND GENERAL PROVISIONS

CHAPTER 1—SPECIAL AUTHORITIES

SEC. 701. PRESIDENTIAL CONTINGENCY FUND.

Section 451 of the Foreign Assistance Act of 1961 is amended to read as follows:

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

Jamie

May 17, 1995

ACTION

MEMORANDUM FOR ANTHONY LAKE

FROM: DANIEL PONEMAN

SUBJECT: Presidential Waiver of Statutory Restrictions on U.S. Assistance to Korean Peninsula Energy Development Organization/KEDO

You will recall that Principals approved State reprogramming of $4 million for initial KEDO expenses.

State lawyers believe that the best way to overcome the many legislative prohibitions or restrictions on assistance to North Korea is through waiver under Section 614 of the Foreign Assistance Act. This provision gives the President broad and flexible authority to redirect foreign assistance funds, provided he gives Congress a written statement of justification. Since 614 authority has not been delegated, White House approval is required to proceed down this route.

Secretary Christopher and Wendy Sherman concur in going forward with a 614 waiver. Gallucci reports that preliminary soundings on the Hill indicate that Congressional committee staff would prefer that we use 614 authority (which requires notification to the Hill and by tradition a 15-day waiting period) rather than other authorities in the Foreign Assistance Act (which do not require Congressional consultations).

Nonetheless, there is a potential for controversy. Congress objected to DOD's use of emergency authority for fuel purchases to fund the heavy oil shipments to the DPRK, and responded by curbing that authority (Bill Danvers: can you help on the detail? Did they kill the E&E authority?). We have been told in the past that the Hill will strip 614 out of the FAA if it believes we are abusing it in controversial cases. [Dick Clarke: anything to add here?]

Because KEDO is identified with the LWR project, it is likely to be more controversial on the Hill than the spent fuel treatment.

Gordon Adams has no objections to this approach.

Concurrences by: Richard Clarke, Bill Danvers, Stanley Roth, Alan Kreczko

RECOMMENDATION

That you authorize Andrew Sens to sign a memorandum concurring in State's proposed memorandum of justification (Tab A) and Congressional notification (Tab B) of a 614 waiver.

Approve _____ Disapprove _____

Attachments

Tab I	Proposed Sens-Brill Memorandum	
	Tab A	Proposed Memorandum of Justification
	Tab B	Proposed Wendy Sherman Letter
Tab II	Incoming Correspondence	

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

MEMORANDUM FOR KENNETH BRILL
Executive Secretary
Department of State

SUBJECT: Presidential 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 Memorandum of Justification at Tab A (as modified) and Letter of Notification (Tab B) to the Congress in respect of the proposed reprogramming of State funds for KEDO ~~air~~ support of the U.S.-DPRK Agreed Framework.

Andrew D. Sens
Executive Secretary

Attachment
Tab A Memorandum of Justification
Tab B Letter of Notification

OMB chngs

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

We propose that $4.0 million in FY 1995 International Organizations and Programs (IO&P) funds be reprogrammed to provide the start-up costs of 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. In order to make these funds available for such purposes, the President would exercise his authority under section 614(a)(1) of the Foreign Assistance Act of 1961, as amended to authorize such a contribution without regard to applicable statutory restrictions. This would make possible the provision of a voluntary contribution to KEDO without regard, inter alia, to sections 307, 620A, 620(f), and 620(t) of the Act, which prohibit U.S. assistance, either directly or indirectly, to the DPRK.

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. agreed to "organize under its leadership an international consortium to finance and supply the LWR [light-water reactor] project to be provided to the DPRK." In order to meet this pledge, the U.S. has agreed with South Korea (ROK) and Japan on the creation of an international organization (KEDO) to implement the reactor project and other projects called for in the Agreed Framework, such as the supply of alternative energy, the transfer of spent fuel out of the DPRK for ultimate disposition, and the dismantlement of the DPRK's graphite-moderated reactor program. U.S. The U.S. will organize ~~and lead~~ KEDO, ~~while~~ and the ROK and Japan will play ~~[illegible]~~ leading roles.

KEDO is envisioned 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 establishment 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.

United States Department of State

Washington, D.C. 20520

DRAFT

Dear Mr. Speaker:

I 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 $4.0 million in FY 1995 International Organizations and Programs (IO&P) funds for a U.S. contribution to the Korean Peninsula Energy Development Organization (KEDO), without regard to provisions of law within the scope of that section.

This letter also serves as notification pursuant to section 634A of the Act, and section 515 of the FY 1995 Foreign Operations, Export Financing, and Related Programs Appropriations Act, for the reprogramming of such IO&P funds.

The funds will be used to provide for the start-up and related FY 1995 costs of 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. Under the Agreed Framework, the U.S. agreed to "organize under its leadership an international consortium to finance and supply the LWR (light-water reactor) project to be provided to the DPRK." In addition, KEDO will implement the reactor project and other projects called for in the Agreed Framework, such as the supply of alternative energy, the transfer of spent fuel out of the DPRK for ultimate disposition, and the dismantlement of the DPRK's graphite-moderated reactor program.

The United States, Japan and South Korea have already made significant progress in establishing KEDO, and have agreed to play a leading role in the international organization. The Republic of Korea will play the central role in financing and constructing KEDO's reactor project -- estimated to cost approximately $4 billion. Japan will play a significant role in financing that project and has already announced a contribution of $3 million for the initial site survey.

The Honorable
Newt Gingrich,
Speaker,
House of Representatives.

In addition, the trilateral partners recently co-hosted a KEDO preparatory conference in New York for the purpose of providing information to various countries about KEDO and to seek their participation in the organization. Over twenty countries from Europe, Asia and the Middle East attended. Immediately following the conference, Australia, New Zealand and Canada applied for membership. Australia has already pledged to contribute $ 5 million, and New Zealand pledged $325,000. Canada is expected to announce its contribution in the near future. In the coming weeks, we expect the majority of countries who attended the New York meeting to seek membership in KEDO. Those countries will provide political, monetary, and/or in-kind support for KEDO and its projects.

As described in more detail in the attached memorandum of justification, we believe that the use of these funds in the manner described will make an important contribution in carrying out the terms and conditions of the Agreed Framework and in achieving our highest priority nuclear non-proliferation objectives.

Sincerely,

Wendy R. Sherman
Assistant Secretary
Legislative Affairs

Enclosure:
Memorandum of Justification

9506891 3119

United States Department of State

Washington, D.C. 20520

April 25, 1995

UNCLASSIFIED

MEMORANDUM FOR ANDREW D. SENS
EXECUTIVE SECRETARY
NATIONAL SECURITY COUNCIL

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

KEDO is the international consortium established to implement key elements of the Agreed Framework signed between the United States and the DPRK on October 21, 1994. 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. KEDO's central task is to oversee the financing and construction of the light-water reactor (LWR) project in North Korea and to provide heavy oil to the DPRK if North Korea fulfills its obligations under the Agreed Framework.

Under the Agreed Framework, the U.S. agreed to "organize under its leadership an international consortium to finance and supply the LWR [light-water reactor] project to be provided to the DPRK." During the negotiations, the U.S. indicated to Japan and the Republic of Korea (ROK) that the U.S. would provide the initial start-up costs of KEDO, and thereafter would share the annual operating costs of KEDO equally with those governments. The actions proposed in this memorandum would initiate the process for making these start-up funds available.

KEDO was established formally at the March 8-9 KEDO preparatory conference in New York. The conference was attended by twenty countries, and three countries - Australia, New Zealand, and Canada - applied for membership immediately following the conference. We expect additional memberships and financial contributions within the next month. Stephen Bosworth, former U.S. Ambassador to the Philippines, has been named Executive Director, and two Deputy Directors - one Japanese and one South Korean - have been named as well.

To provide this contribution to KEDO, we intend to reprogram $4.0 million in FY 1995 International Organizations and Programs (IO&P) funds from balances withheld as the proportionate U.S. share of assistance to Cuba, Libya, Burma and other countries - including North Korea. Use of these funds will not have an adverse impact on this account or the organizations funded by this account.

In order to provide assistance to KEDO, it is necessary to waive a number of legal restrictions on assistance to the DPRK, including sections 307, 620A, 620(f) and 620(t) of the Foreign Assistance Act of 1961, as amended (FAA). Section 614(a)(1) of the FAA provides the means for overcoming legal restrictions on providing such assistance. The provision authorizes the President, inter alia, to furnish assistance under the FAA "without regard to any" provision of the FAA, or any law authorizing or appropriating funds under the FAA. Thus, the President's determination under section 614 would be framed to waive those restrictions within the scope of section 614(a)(1) that could otherwise affect our ability to provide assistance to KEDO.

Before exercising section 614(a)(1) authority, the President must consult with, and provide a written policy justification to, the Appropriations Committees, the Senate Foreign Relations Committee, and the House International Relations Committee. Subsequently, if Congressional consultations do not indicate a contrary course of action, the President must 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." As a matter of practice, we will wait 15 days after such notification has been provided before actually furnishing any assistance.

Given the political environment surrounding the negotiation of the Agreed Framework and recent statements made by the North Koreans, we expect delays in getting Congressional approval for these reprogrammings. However, after the Congress has had the opportunity to examine the Framework Agreement in detail, and as more countries become participants in KEDO, we expect opposition to diminish substantially.

Accordingly, we recommend that the President authorize consultations with, and the furnishing of a justification to, Congress. If the results of these consultations do not suggest a different course of action, we will recommend that the President sign a FAA Section 614 Determination exercising his authorities as described above.

Kenneth C. Brill
Executive Secretary

Attachments:
Tab A - Memorandum of Justification
Tab B - Draft Letter of Notification

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

We propose that $4.0 million in FY 1995 International Organizations and Programs (IO&P) funds be reprogrammed to provide the start-up costs of 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. In order to make these funds available for such purposes, the President would exercise his authority under section 614(a)(1) of the Foreign Assistance Act of 1961, as amended to authorize such a contribution without regard to applicable statutory restrictions. This would make possible the provision of a voluntary contribution to KEDO without regard, inter alia, to sections 307, 620A, 620(f), and 620(t) of the Act, which prohibit U.S. assistance, either directly or indirectly, to the DPRK.

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. agreed to "organize under its leadership an international consortium to finance and supply the LWR [light-water reactor] project to be provided to the DPRK." In order to meet this pledge, the U.S. has agreed with South Korea (ROK) and Japan on the creation of an international organization (KEDO) to implement the reactor project and other projects called for in the Agreed Framework, such as the supply of alternative energy, the transfer of spent fuel out of the DPRK for ultimate disposition, and the dismantlement of the DPRK's graphite-moderated reactor program. The U.S. will organize and lead KEDO, while the ROK and Japan will play central roles.

KEDO is envisioned 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 establishment 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 will be located in New York and will be directed by an Executive Board consisting of representatives of the original member countries -- the U.S., Japan, and the ROK. Other countries may become involved in KEDO activities as members serving on advisory committees for the projects in which they have an interest. The day-to-day operations of KEDO will be directed by an Executive Director, who will be an American citizen, assisted by two Deputy Directors (one from Japan and one from the ROK). KEDO will seek 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 of approximately thirty people to administer projects being performed by contractors.

The $4.0 million requested for reprogramming would provide the start-up costs of KEDO. It includes the FY 1995 costs for: 1) office space, including one-time start-up costs for furniture, telephone sets, computers and other equipment necessary for the normal operation of an office; 2) employee remuneration for a staff of thirty professionals, including an Executive Director and two deputy directors, and support personnel; and 3) consulting costs for a program coordinator responsible for oversight of the light water reactor project and legal services.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
010. email	Richard Clarke to Anthony Lake et al re Arms Exports (1 page)	05/17/1995	P1/b(1)

COLLECTION:

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

FOLDER TITLE:

North Korea [2]

2009-0528-F
kc1442

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]