

FOIA MARKER

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Folder Title:

North Korea [3]

Staff Office-Individual:

Legal Advisor-Derosa, Mary

Original OA/ID Number:

3500

Row:	Section:	Shelf:	Position:	Stack:
39	5	11	1	V

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Legislative Referral Memorandum re Energy Qs and As on North Korea Nuclear Agreement (partial) (1 page)	05/02/1995	P3/b(3)
002. draft	re employment agreement for KEDO Executive Steven Bosworth (7 pages)	04/00/1995	b(6)
003. email	James Baker to Steven Aoki re KEDO (1 page)	03/03/1995	P1/b(1)
004a. memo	Robert Gallucci to Secretary of State re Circular 175 (4 pages)	02/00/1995	P1/b(1)
004b. memo	Memorandum of Law re Circular 175 (6 pages)	02/00/1995	P1/b(1)
005a. fax	cover sheet, Hoinkes to Kreczko (1 page)	02/13/1995	P1/b(1)
005b. memo	Mary Hoinkes to distribution (not listed) re treaty (4 pages)	02/13/1995	P1/b(1)
005c. cable	re treaty extension (1 page)	02/10/1995	P1/b(1)
006. report	re North Korea (4 pages)	01/23/1995	P1/b(1)
007a. fax	cover Marten to Poneman re North Korea (1 page)	01/13/1994	P1/b(1)
007b. memo	action, Anthony Lake to POTUS re North Korea (4 pages)	01/13/1994	P1/b(1)
008a. fax	cover LtCol Lepper to Ed Cummings et al re draft legal memo (1 page)	12/20/1994	P1/b(1)

COLLECTION:

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

FOLDER TITLE:

North Korea [3]

2009-0528-F

kc1443

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]
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- 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]
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008b. draft	memo, Lt Col Lepper to Legal Counsel of the Chairman, Joint Chiefs of Staff (3 pages)	12/19/1994	P1/b(1)
009. notes	Summary of Conclusions, Meeting of NSC Deputies (2 pages)	12/23/1994	P1/b(1)

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eap/k

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

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

DATE:

6/20

TO:

NSC-ROB/LHWK (456-9780)

MESSAGE:

US-DPRK Joint Statement

Text -

as requested

Jo:

Please give
AK a copy FYI
and file
North Korea.

TX

TO: Jamie Baker

Attached is a copy of
the Kuala Lumpur
text.

**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 DPRK-U.S. Agreed Framework of October 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 October 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 1,000MW(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 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.

- 2 -

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 towards 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 DPRK-U.S. Record of Meeting of January 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 implementation.

6/12/95

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9503273
RECEIVED: 01 MAY 95 11

TO: SENS

FROM: PETERSON, R

DOC DATE: 26 APR 95
SOURCE REF: 1095

KEYWORDS: NON PROLIFERATION
NUCLEAR ENERGY
LEGISLATIVE REFERRAL

KOREA NORTH
Q+A

JRB

PERSONS:

SUBJECT: ENERGY Q & A ON NORTH KOREA NUCLEAR AGREEMENT

*Please file
North Korea*

ACTION: PREPARE MEMO SENS TO PETERSON

DUE DATE: 02 MAY 95 STATUS: S

STAFF OFFICER: PONEMAN

LOGREF:

FILES: WH

NSCP:

CODES:

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

FOR ACTION
PONEMAN

FOR CONCURRENCE
ANDREASEN
AOKI
DANVERS
KRECZKO
LITWAK
ROTH

FOR INFO
BELL
PIFER
SESTAK
WALES

COMMENTS: URGENT - DUE TUE 2 MAY

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSDRS

CLOSED BY:

DOC 1 OF 1

UNCLASSIFIED

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[001]

3273

URGENT

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

LRM NO: 1095

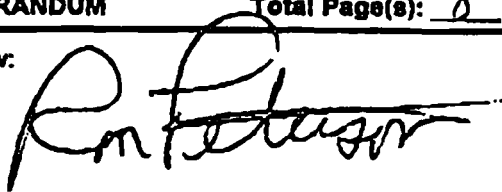
FILE NO: 41

4/28/95

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): 8

TO: Legislative Liaison Officer - See Distribution below:
FROM: Ron PETERSON (for)
Assistant Director for Legislative Reference
OMB CONTACT: Annette ROONEY 395-7300
Legislative Assistant's line (for simple responses): 395-8194



SUBJECT: ENERGY Qs and As on North Korea Nuclear Agreement

DEADLINE: Tuesday, May 02, 1995

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Follow-up questions from the January 19th, S. Energy hearing.

DISTRIBUTION LIST:

AGENCIES:

234-US Arms Control & Disarmament Agency - Barbara Starr - (202) 647-8478

(b)(3)

325-DEFENSE - Samuel T. Brick, Jr. - (703) 697-1305

249-National Security Council - Andrew D. Sens - (202) 456-9221

227-Nuclear Regulatory Commission - Trip Rothschild - (301) 415-1611

225-STATE - Julia C. Norton - (202) 647-4463

EOP:

J. Nix

G. Bennethum

**RESPONSE TO
LEGISLATIVE REFERRAL MEMORANDUM**

LRM NO: 1095

FILE NO: 41

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter.

Please include the LRM number shown above, and the subject shown below.

TO: Annette ROONEY 395-7300
Office of Management and Budget
Fax Number: 395-5691
Branch-Wide Line (to reach legislative assistant): 395-6194

FROM: _____ (Date)

_____ (Telephone)

SUBJECT: ENERGY Qs and As on North Korea Nuclear Agreement

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur
_____ No Objection
_____ No Comment
_____ See proposed edits on pages _____
_____ Other: _____
_____ FAX RETURN of _____ pages, attached to this response sheet

QUESTIONS FROM SENATOR MURKOWSKI

Question 4. With regard to the Light Water Reactors (LWRs), the agreement specifies that the South Korean LWRs are based on U.S.-licensed technology. What is your legal interpretation of the ability of the South Koreans to export that reactor technology to North Korea?

- a. Will they require specific approval? Who grants that approval and what form will it take? Will Congress be consulted?

answer: The contract of a U.S. nuclear supplier with its South Korean licensee requires that the licensee obtain the U.S. firm's permission for any export using the U.S. firm's technology and that all such transfers comply with U.S. export control laws and regulations. Before it could give permission for the South Korean licensee to provide components based on U.S.-supplied technology to North Korea, the U.S. firm would require the specific authorization of the Secretary of Energy under DOE regulations 10 CFR Part 810. To grant this authorization, the Secretary must have the concurrence of the Department of State and must have consulted the Departments of Defense and Commerce, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission.

There is no legal requirement for Congressional approval of individual export authorizations, but the Executive Branch considers Congressional views in making policy decisions.

Prepared by: Ken Ames
Office: NN-42
Office phone: 586 0900
Home phone: 703 904 9590
Date: March 5, 1995, revised April 7, 1995
Coordinated with: Anatoli Welibozkiy, DOE NN-43
Gary Samore, Dept. of State

Asst. Sec. initials: *JMA*

QUESTIONS FROM SENATOR MURKOWSKI

Question 4. With regard to the Light Water Reactors (LWRs), the agreement specifies that the South Korean LWRs are based on U.S.-licensed technology. What is your legal interpretation of the ability of the South Koreans to export that reactor technology to North Korea?

b. Will we have to have a formal agreement for nuclear cooperation? At what point would that agreement for nuclear cooperation have to be in place?

answer: No. A formal agreement for nuclear cooperation would only be required if nuclear reactors, sensitive nuclear technology or major nuclear components were to be exported directly from the United States to North Korea. A formal agreement for cooperation is not required for the transfer of reactor technology, including light water reactors (LWRs), because the technology is subject to DOE Part 810 Authorization and not subject to NRC license which does require a nuclear cooperation agreement.

Prepared by: Ken Ames
Office: NN-42
Office phone: 586 0900
Home phone: 703 904 9590
Date: March 5, 1995, revised April 7, 1995
Coordinated with: Anatoli Welihozkiy, DOE NN-43
Gary Samore, Dept. of State

Asst. Sec. initials: *JA*

2

04/20/00 10:00 202 000 0407 JUL 01 11

QUESTION FROM CHAIRMAN MURKOWSKI

Question 4:

With regard the Light Water Reactors (LWRs), the agreement that the South Korean LWRs are based on U.S.-licensed technology. What is your legal interpretation of the ability of the South Koreans to export that reactor technology to North Korea?

d. How realistic is the completion date of 2003 for both the LWRs?

Answer:

The agreed framework identifies 2003 as a target date to provide the Light Water Reactors (LWRs) to the Democratic People's Republic of Korea (DPRK). This target date is achievable assuming the completion of the LWR Supply Contract with the DPRK in 1995 and site preparations and construction beginning in 1996.

A typical construction schedule for a two-unit nuclear plant targets a five- to six-year period between construction start and fuel load for the first unit and an additional one to one-and-a-half years for the second unit. Recent construction periods in the United States, however, have been significantly longer due to intervenor and regulatory delays.

The South Koreans have been building nuclear plants since 1971 with the construction time for completed plants averaging 68 months (or five years, eight months) for the first unit and an additional nine months to complete the second unit. Construction time is considered to be from the

4

QUESTIONS FROM SENATOR MURKOWSKI

Question 4. With regard to the Light Water Reactors (LWRs), the agreement specifies that the South Korean LWRs are based on U.S.-licensed technology. What is your legal interpretation of the ability of the South Koreans to export that reactor technology to North Korea?

- e. Will we have to have a formal agreement for nuclear cooperation in place to meet our requirements to the supply of these LWRs? If so, at what point would such an agreement have to be in place?

answer: If the reactors were to be supplied directly by the United States, a formal agreement would be required. But since it is planned that they will not be U.S. exported reactors, but will be supplied by the Korean Energy Development Organization (KEDO), a formal agreement will not be required.

Prepared by: Ken Ames
Office: NN-42
Office phone: 586 0900
Home phone: 703 904 9590
Date: March 5, 1995, revised April 7, 1995
Coordinated with: Anatoli Welihozkiy, DOE NN-43
Gary Samore, Dept. of State

Asst. Sec. initials: *JMF*

6

QUESTIONS FROM SENATOR JOHNSTON

Question 1. Section 123 of the Atomic Energy Act of 1954 prohibits the United States from cooperating with any nation on nuclear matters until the two nations have entered into an "agreement for cooperation" that meets certain conditions. This restriction applies to the transfer of nuclear reactors, reactor fuel, and even certain information.

(c) Does section 123 apply regardless of whether the United States exports U.S. materials and technology to North Korea directly or by way of South Korea?

Answer: No. The contract of a U.S. nuclear supplier with its South Korean licensee requires that the licensee obtain the U.S. firm's permission for any export using the U.S. firm's technology and that all such transfers comply with U.S. export control laws and regulations. Before a U.S. firm could give permission for the South Korean licensee to provide components based on U.S.-supplied technology to North Korea, it would need the specific authorization of the Secretary of Energy under DOE regulations 10 CFR Part 810. To grant this authorization, the Secretary must have the concurrence of the Department of State and have consulted the Departments of Defense and Commerce, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission.

Prepared by: Ken Ames
Office: NN-42
Office phone: 586-0900
Home phone: 703-904-9590
Date: April 21, 1995
Coordinated with: Anatoli Welihozkiy, DOE NN-43
Gary Samore, Dept. of State

Asst. Sec. initials:

for *JMA* *7*

United States Department of State



Washington, D.C. 20520

FACSIMILE TRANSMISSION COVER SHEET

DATE 4-7-95 PAGES TRANSMITTED: 8 (including cover)TO: Fax Number: 456-9180Addressee: Steve AokiOrganization: NSCTelephone: 456-9181FROM: Julie K. HerrFax Number: (202) 736-7115*Telephone: (202) 647-6902 State Dept. Legal Adviser

Description/Message/Comments

Attached is a proposed Employment Agreement for the prospective Executive Director of KEDO, Steve Bosworth. Please review and call me (202-647-6902) with comments/clearance by C.O.B. on Monday, April 10. We must get the Agreement to Bosworth by Tuesday, if at all possible, for his review before he starts a two-week trip to Asia. We have not yet given the draft agreement to the ROK or Japan for comments and clearance.

Thanks very much for the quick turnaround. Please feel free to call with questions.

Julie Herr

*Note: The information contained in this facsimile message is intended only for the use of the individuals to whom it is addressed.

This telefax transmitter is not equipped to handle classified material. It is "unattended" and will receive documents 24 hours a day.

27-KREKES

Comments/
clearance -JLH
PHE

DF

File North Korea

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JB
North
2. Korea

AMENDMENT NO. _____

Calendar No. _____

Purpose: To restrict the availability of funds for North Korea.

IN THE SENATE OF THE UNITED STATES—104th Cong., 1st Sess.

H.R. 889

Making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. MURKOWSKI
(for himself and Mr. DOLE)

Viz:

1 On page 25, between lines 4 and 5, insert the follow-
2 ing:

3 SEC. 110. None of the funds appropriated or other-
4 wise made available by this or any other Act may be obli-
5 gated or expended for assistance to or programs in the
6 Democratic People's Republic of Korea, or for implemen-
7 tation of the October 21, 1994, Agreed Framework be-
8 tween the United States and the Democratic People's Re-

S.L.C.

O:\RYN\RYN95.252

1 public of Korea, unless specifically appropriated for that
2 purpose.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To limit countries that are eligible to receive assistance through emergency and extraordinary expenditures of the Department of Defense.

IN THE SENATE OF THE UNITED STATES—104th Cong., 1st Sess.

H.R. 889

Making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HELMS

Viz:

1 At the appropriate place in the bill, insert the follow-

2 ing new section:

3 SEC. ____ LIMITATION ON EMERGENCY AND EXTRAOR-

4 DINARY EXPENDITURES.

5 (a) IN GENERAL.—Section 127 of title 10, United

6 States Code, is amended—

7 (1) in subsection (a)—

1 (A) in the first sentence, by inserting "(ex-
2 cept as provided in subsection (d))" after "ex-
3 pense"; and

4 (B) in the second sentence, by inserting
5 "(except as provided in subsection (d))" after
6 "proper"; and

7 (2) by adding at the end the following new sec-
8 tion:

9 "(d) The authority of subsection (a) shall not apply
10 to the provision of assistance, including the donation, sale,
11 or financing for sale, of any item, to a foreign country
12 that is ineligible under the Foreign Assistance Act of 1961
13 or the Arms Export Control Act to receive any category
14 of assistance."

15 (b) EFFECTIVE DATE.—The amendments made by
16 subsection (a) shall apply to ^{incurred} ~~expenditures~~ ^{incurred} on or
17 after the date of enactment of this Act.

Withdrawal/Redaction Marker

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OA/Box Number: 3500

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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]
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

WASHFAX RECEIPT
DEPARTMENT OF STATE

'95 FEB 28 AIO:27

B

S/S #

MESSAGE NO. 018102 CLASSIFICATION ~~Confidential~~ No. Pages 20
FROM: Mr. Newell Highsmith L/EM 647-7838 6429
(Officer name) (Office symbol) (Extension) (Room number)
MESSAGE DESCRIPTION Circular 175 Memorandum

<u>TO: (Agency)</u>	<u>DELIVER TO:</u>	<u>Extension</u>	<u>Room No.</u>
<u>NSC</u>	<u>Dan Poneman</u>	<u>456-9181</u>	

FOR: CLEARANCE ☐ INFORMATION ☐ PER REQUEST ☐ COMMENT ☒

REMARKS: _____

State wants to move this
forward tomorrow.

S/S Officer: _____

Substance is OK -
would appreciate your review for legal
issues.

Steve Duker

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS
Initials: AD Date: 05/19/15
2009-0528-F

UNCLASSIFIED w/CONFIDENTIAL ATTACHMENTFAX TRANSMITTAL

TO: NSC - Dan Poneman (^{classified} FAX ~~456-8180~~)

FROM: State/L - Newell Highsmith *NLH*

No. Pages: 20 (including cover)

Attached is the Circular 175 memorandum and accompanying memo of law seeking authorization to sign the agreement establishing KEDO. It is the same as the version circulated and cleared in December, but with the actual negotiated text. Please pass a copy to OMB/GC for clearance on the C175 memo of law.

UNCLASSIFIED w/CONFIDENTIAL ATTACHMENT

Under
Sanger init.

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Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004a. memo	Robert Gallucci to Secretary of State re Circular 175 (4 pages)	02/00/1995	P1/b(1)

COLLECTION:

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

FOLDER TITLE:

North Korea [3]

2009-0528-F
kc1443

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.

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b(1) National security classified information [(b)(1) of the FOIA]
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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]

AGREEMENT ON THE ESTABLISHMENT OF
THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION

The Government of the United States of America, the Government of Japan, and the Government of the Republic of Korea:

Affirming the objective of an overall resolution of the North Korean nuclear issue, as referred to in the Agreed Framework Between the United States of America and the Democratic People's Republic of Korea, signed in Geneva on October 21, 1994 (hereinafter referred to as "the Agreed Framework");

Recognizing the critical importance of the nonproliferation and other steps that must be taken by North Korea, as described in the Agreed Framework, as a condition of implementation of the Agreed Framework;

Bearing in mind the paramount importance of maintaining peace and security on the Korean Peninsula;

Wishing 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, and the Statute of the International Atomic Energy Agency; and

Convinced of the need to establish an organization, as contemplated in the Agreed Framework, to coordinate cooperation among interested parties and to facilitate the financing and execution of projects needed to implement the Agreed Framework;

Have agreed as follows:

ARTICLE I

The Korean Peninsula Energy Development Organization (hereinafter referred to as "KEDO" or "the Organization") is established upon the terms and conditions hereinafter set forth.

⑥

-2-

ARTICLE II

(a) The purposes of the Organization shall be to:

- (1) provide for the financing and supply of a light-water reactor (hereinafter referred to as "LWR") project in North Korea (hereinafter referred to as "the DPRK"), consisting of two reactors of the Korean standard nuclear plant model with a capacity of approximately 1,000 MW(e) each, pursuant to a supply agreement to be concluded between the Organization and the DPRK;
- (2) provide for the supply of interim energy alternatives in lieu of the energy from the DPRK's graphite-moderated reactors pending construction of the first light-water reactor unit; and
- (3) provide for the implementation of any other measures deemed necessary to accomplish the foregoing or otherwise to carry out the objectives of the Agreed Framework.

(b) The Organization shall fulfill its purposes with a view toward ensuring the full implementation by the DPRK of its undertakings as described in the Agreed Framework.

ARTICLE III

In carrying out these purposes, the Organization may do any of the following:

- (a) Evaluate and administer projects designed to further the purposes of the Organization;
 - (b) Receive funds from Members of the Organization or other states or entities for financing projects designed to further the purposes of the Organization, manage and disburse such funds, and retain for Organization purposes any interest that accumulates on such funds;
 - (c) Receive in-kind contributions from Members of the Organization or other states or entities for projects designed to further the purposes of the Organization;
 - (d) Receive funds or other compensation from the DPRK in payment for the LWR project and other goods and services provided by the Organization;
- 

-3-

- (e) Cooperate and enter into agreements, contracts, or other arrangements with appropriate financial institutions, as may be agreed upon, for the handling of funds received by the Organization or designated for projects of the Organization;
- (f) Acquire any property, facilities, equipment, or goods necessary for achieving the purposes of the Organization;
- (g) Conclude or enter into agreements, contracts, or other arrangements, including loan agreements, with states, international organizations, or other appropriate entities, as may be necessary for achieving the purposes and exercising the functions of the Organization;
- (h) Coordinate with and assist states, local authorities and other public entities, national and international institutions, and private parties in carrying out activities that further the purposes of the Organization, including activities promoting nuclear safety;
- (i) Dispose of any receipts, funds, accounts, or other assets of the Organization and distribute the proceeds in accordance with the financial obligations of the Organization, with any remaining assets or proceeds therefrom to be distributed in an equitable manner according to the contributions of each Member of the Organization, as may be determined by the Organization.
- (j) Exercise such other powers as shall be necessary in furtherance of its purposes and functions, consistent with this Agreement.

ARTICLE IV

(a) Activities undertaken by the Organization shall be carried out consistent with the Charter of the United Nations, the Treaty on the Nonproliferation of Nuclear Weapons, and the Statute of the International Atomic Energy Agency.

(b) Activities undertaken by the Organization shall be subject to the DPRK's compliance with the terms of all agreements between the DPRK and KEDO and to the DPRK acting in a manner consistent with the Agreed Framework. In the event that these conditions are not satisfied, the Organization may take appropriate steps.

-4-

(c) The Organization shall obtain formal assurances from the DPRK that nuclear materials, equipment, or technology transferred to the DPRK in connection with projects undertaken by the Organization shall be used exclusively for such projects, only for peaceful purposes, and in a manner that ensures the safe use of nuclear energy.

ARTICLE V

(a) The original members of the Organization shall be the United States of America, Japan, and the Republic of Korea (hereinafter referred to as the "original Members").

(b) Additional states that support the purposes of the Organization and offer assistance, such as providing funds, goods, or services to the Organization, may, with the approval of the Executive Board, also become members of the Organization (hereinafter jointly with the original Members referred to as "Members") in accordance with the procedures in Article XIV(b).

ARTICLE VI

(a) The authority to carry out the functions of the Organization shall be vested in the Executive Board.

(b) The Executive Board shall consist of one representative of each of the original Members.

(c) The Executive Board shall select a Chair from among the representatives serving on the Executive Board for a term of two years.

(d) The Executive Board shall meet whenever necessary at the request of the Chair of the Executive Board, the Executive Director, or any representative serving on the Executive Board, in accordance with rules of procedure it shall adopt.

(e) Decisions of the Executive Board shall be made by a consensus of the representatives of all the original Members.

(f) The Executive Board may approve such rules and regulations as may be necessary or appropriate to achieve the purposes of the Organization.

(g) The Executive Board may take any necessary action on any matter relating to the functions of the Organization.

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-5-

ARTICLE VII

- (a) The General Conference shall consist of representatives of all the Members.
- (b) The General Conference shall be held annually to consider the annual report, as referred to in Article XII.
- (c) Extraordinary meetings of the General Conference shall be held at the direction of the Executive Board to discuss matters submitted by the Executive Board.
- (d) The General Conference may submit a report containing recommendations to the Executive Board for its consideration.

ARTICLE VIII

- (a) The staff of the Organization shall be headed by an Executive Director. The Executive Director shall be appointed by the Executive Board as soon as possible after this Agreement enters into force.
- (b) The Executive Director shall be the chief administrative officer of the Organization and shall be under the authority and subject to the control of the Executive Board. The Executive Director shall exercise all the powers delegated to him or her by the Executive Board and shall be responsible for conducting the ordinary business of the Organization, including the organization and direction of a headquarters and a staff, the preparation of annual budgets, the procurement of financing, and the approval, execution and administration of contracts to achieve the purposes of the Organization. The Executive Director may delegate such powers to other officers or staff members as he or she deems appropriate. The Executive Director shall perform his or her duties in accordance with all rules and regulations approved by the Executive Board.
- (c) The Executive Director shall be assisted by two Deputy Executive Directors. The two Deputy Executive Directors shall be appointed by the Executive Board.
- (d) The Executive Director and the Deputy Executive Directors shall be appointed for terms of two years and may be reappointed. They shall be nationals of the original Members. The terms of employment, including salaries, of these officers shall be determined by the Executive Board. The Executive Director and the Deputy Executive Directors may be removed prior to the expiration of their terms by a decision of the Executive Board.



-6-

(e) The Executive Director shall have the authority to approve projects, execute contracts, and enter into other financial obligations on behalf of the Organization within the guidelines adopted by the Executive Board and the limits of the approved budget, provided that the Executive Director shall obtain the prior approval of the Executive Board for projects, contracts, or financial obligations that exceed a specified value, which shall be determined by the Executive Board based on the need for effective and efficient operation of the Organization.

(f) The Executive Director shall establish staff positions and terms of employment, including salaries, subject to the approval of the Executive Board. The Executive Director shall appoint qualified personnel to such staff positions and dismiss personnel as necessary, in accordance with rules and regulations to be approved by the Executive Board. The Executive Director shall seek to appoint a staff in which the nationals of the original Members are fairly represented, paying due regard to the importance of securing the highest standards of integrity, efficiency, and technical competence.

(g) The Executive Director shall report to the Executive Board and the General Conference on the activities and finances of the Organization. The Executive Director shall promptly bring to the notice of the Executive Board any matter that may require Executive Board action.

(h) The Executive Director, with the advice of the Deputy Executive Directors, shall prepare rules and regulations consistent with this Agreement and the purposes of the Organization. The rules and regulations shall be submitted to the Executive Board for its approval prior to implementation.

(i) In the performance of their duties, the Executive Director and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action that might reflect on their position as international officials responsible only to the Organization. Each Member undertakes to respect the exclusively international character of the responsibilities of the Executive Director and the staff and not to seek to influence them in the discharge of their responsibilities.

ARTICLE IX

(a) The Executive Board shall establish Advisory Committees to provide advice to the Executive Director and the Executive Board, as appropriate, on specific projects being carried out by the Organization or proposed to be carried out by the

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-7-

Organization. Advisory Committees shall be established for the light-water reactor project, the project for the provision of interim energy alternatives, and such other projects as the Executive Board may determine.

(b) Each Advisory Committee shall include representatives of the original Members and other Members that support the project for which the Advisory Committee was established.

(c) The Advisory Committees shall meet at such times as they may determine.

(d) The Executive Director shall keep the Advisory Committees fully informed of matters pertinent to their respective projects, and the Executive Board and Executive Director shall give due consideration to the recommendations of the Advisory Committees.

ARTICLE X

(a) The budget for each fiscal year shall be prepared by the Executive Director and shall be approved by the Executive Board. The Organization's fiscal year shall be from January 1 to December 31.

(b) Each Member may make voluntary contributions to the Organization by providing or making available such funds as it deems appropriate. Such contributions may be made directly to the Organization or by paying the Organization's contractors. Contributions shall be made by cash deposit, escrow, letter of credit, promissory note, or by such other legal means and in such currency as may be agreed between the Organization and the contributor.

(c) The Organization may seek contributions from such other public or private sources as it deems appropriate.

(d) The Organization shall establish an account or accounts to receive funds from Members or other sources, including independent accounts for those funds to be reserved for specific projects and the administration of the Organization. Interest or dividends accruing on such accounts shall be reinvested for activities of the Organization. Excess funds shall be distributed as set forth in Article III(i).

ARTICLE XI

(a) Members may make available to the Organization or its contractors goods, services, equipment, and facilities that may be of assistance in achieving the purposes of the Organization.

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-8-

(b) The Organization may accept from such other public or private sources as it deems appropriate any goods, services, equipment, and facilities that may be of assistance in achieving the purposes of the Organization.

(c) The Executive Director shall be responsible for valuing in-kind contributions to the Organization, whether direct or indirect. Members shall cooperate with the Executive Director in the valuation process, including by providing regular reports of in-kind contributions and access to records necessary to verify the value of such contributions.

(d) In the event of a dispute concerning the value of an in-kind contribution, the Executive Board shall review the matter and render a decision.

ARTICLE XII

The Executive Director shall submit to the Executive Board for its approval an annual report on the activities of the Organization, which shall include a description of the status of the LWR project and other projects, a comparison of planned activities to completed activities, and an audited statement of the Organization's accounts. Upon the approval of the Executive Board, the Executive Director shall distribute the annual report to the Members. The Executive Director shall submit to the Executive Board such other reports as may be required by the Executive Board.

ARTICLE XIII

(a) To carry out its purposes and functions, the Organization shall possess legal capacity and, in particular, full capacity to: (1) contract; (2) lease or rent real property; (3) acquire and dispose of personal property; and (4) institute legal proceedings. Members may accord the Organization such legal capacity in accordance with their respective laws and regulations where necessary for the Organization to carry out its purposes and functions.

(b) No Member shall be liable, by reason of its status or participation as a Member, for acts, omissions, or obligations of the Organization.

(c) Information provided to the Organization by a Member shall be used exclusively for the purposes of the Organization and shall not be publicly disclosed without the express consent of that Member.

(d) Implementation of this Agreement in the Members' territories shall be in accordance with the laws and regulations, including budgetary appropriations, of such Members.

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-9-

ARTICLE XIV

- (a) This Agreement shall enter into force upon signature by the original Members.
- (b) States approved by the Executive Board for membership in accordance with Article V(b) may become Members by submitting an instrument of acceptance of this Agreement to the Executive Director, which shall become effective on the date of receipt by the Executive Director.
- (c) This Agreement may be amended by written agreement of the original Members.
- (d) This Agreement may be terminated or suspended by written agreement of the original Members.

ARTICLE XV

A Member may withdraw from this Agreement at any time by giving written notice of withdrawal to the Executive Director. The withdrawal shall become effective ninety days after receipt of the notice of withdrawal by the Executive Director.

DONE at _____, this _____ day of _____, 1995, in three copies in the English language.

For the Government of the
United States of America:

For the Government of Japan:

For the Government of the
Republic of Korea:

14

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004b. memo	Memorandum of Law re Circular 175 (6 pages)	02/00/1995	P1/b(1)

COLLECTION:

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

FOLDER TITLE:

North Korea [3]

2009-0528-F
kc1443

RESTRICTION CODES

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

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Package Subject: for clearance

Item Title: read first

ALAN

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File
N. H. Korea

As part of the implementation of the Agreed Framework, the USG will begin sending Amcit technicians, under DOE contract, to the North Koreans nuclear facilities in Yongbyon in late April. These technicians, in shifts, will stay until late 1995 engaged primarily in putting the plutonium-laden spent fuel from North Korea's nuclear reactors into steel canisters for shipment out of the country at a later date. Since the U.S. Liaison Office will not yet be open, these Amcits, sent to North Korea by the USG, will not have consular protection. To overcome this, in February during a trip to Pyongyang, we asked North Korea to agree to Sweden becoming the protecting power for the U.S. in North Korea until USLO Pyongyang opened. Since Sweden has no diplomats resident in Pyongyang, the German Interests Section, which does have people in Pyongyang and is also under the Swedish flag, would act as the executive agent for Sweden in protecting U.S. interests. We had prior Swedish and German concurrence to this arrangement.

On February 16 the North Korean Mission to the UN informed us that North Korea was willing to agree to the arrangement, but wanted its UN Mission to have consular rights until the North Korean liaison office opened in Washington. Since this is basically a reciprocal of what the North Koreans will give us (the real reciprocal would be a protecting power in D.C., but the North Koreans have too much pride and too few friends for such an arrangement), and we need some protection for our people, we want to agree to the North Korean suggestion. This would be minus visa and passport rights, of course.

Request your clearance on the attached letter to the North Koreans.

Any chance of getting
your comments by
ROB today.

Stanley

March xx, 1995

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

Dear Mr. Pak:

This is further reply to the message conveyed to us by Mr. Han Song Ryol on February 16, 1995 in response to issues I raised on my recent trip to Pyongyang.

The U.S. appreciates that the DPRK recognizes the U.S. need to provide interim consular protection services for American nationals until the U.S. liaison office is opened in Pyongyang, and that the DPRK is willing to agree to our proposal to have Sweden as a protecting power for the U.S., with the German Interest Section as the executive agent for Sweden. The U.S. also recognizes the need for the DPRK to provide the same interim consular protection for DPRK citizens in the U.S., until the DPRK liaison office opens in Washington, that the German Interests Section will carry out for American nationals.

In accordance with your suggestion of February 16, the U.S. is therefore willing to grant to the DPRK Permanent Mission to the United Nations in New York the right to carry out consular protection services throughout the United States to persons who have entered the U.S. on DPRK travel documents.

Since the German Interests Section will not have the right to issue U.S. visas or passports, visa issuance rights shall not be extended to the DPRK U.N. Mission. The U.S. will, however, authorize the DPRK U.N. Mission's consular protection authority to extend to the issuance of replacement passports for DPRK citizens who have lost their passports, but not to the issuance of new passports.

Upon your confirmation of this arrangement, we will take steps to initiate it.

Sincerely,

Lynn Turk
Bureau of East Asia and
Pacific Affairs, Coordinator
for U.S.-DPRK Affairs

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY
Bureau of Nonproliferation and Regional Arms Control
ACDA/NP/NPT

Fax: 202 647-1321
Tel: 202 647-1300

320 21st Street, NW
Washington, DC 20451

File -
NPT

FAX MESSAGE

Date: _____ Page 1 of _____

To: STEVE AOKI Fax: 456-9180
NSC Tel: 456-9181

From: Fax: 202 647-1321

Subject: _____

PLEASE CALL 456-9181 for Pick-Up!

RC - PLS
pass comments
to Buckholz
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February 10, 1995

TO: DISTRIBUTION

FROM: ACDA/NP/NPT - Frank Bu~~ch~~holz (647-2376)

SUBJECT: NPT Talking Points

Please find attached condensed unclassified generic talking points on NPT extension which have been updated. These talking points are for the use of senior officials in their discussions on NPT extension.

Most of the points have been cleared before and should pose no problem. Please phone your clearances to me at the above number by 3:00 pm today.

DISTRIBUTION:

PM/NE - Jack Ebetino
PM/IAEA - Linda Gallini
EUR/RPM - Rebecca Joyce
IO/UNP - Rick Ruebensaal
T - John Barker
P - David Hale
S/P - Gale Mattox
DOE/OAC - Ira Goldman
OSD/ISP - Amanda Dory
OJCS - COL Pat Shannahan
NRC - Karen Henderson
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ACDA/NP - Larry Scheinman
ACDA/GC - Mary Lib Hoinkes
ACDA/MA - Catherine Magraw
SEA/SN - Lynn Rusten
EAP/RSP - Allan Jury
ARA/PPC - James Habron
NEA/RA - Libby Ward
SA/RA - John Erath
AF/RA - Scott Fisher

As he said in the State Union address,
General NPT
Talking Points

-- President Clinton is committed to make every effort to secure the indefinite extension of the NPT in 1995 without conditions at the NPT Review and Extension Conference in April/May 1995.. He believes strongly that this is the outcome which will best ensure that the important benefits the NPT makes to regional and international security will remain strong and intact. *will lead the charge*

-- There are more than 170 parties to the NPT, including all five declared nuclear weapon states -- US, UK, Russia, France and China. More countries have joined the NPT than have joined any other arms control treaty in history; this reflects the widespread and consistent appeal of the goals and objectives of the NPT.

-- The NPT is the only nuclear nonproliferation agreement that is global in scope, and as such, it serves as the principal international legal and political barrier to the spread of nuclear weapons. It is also the legal basis for IAEA fullscope safeguards agreements, the duration of which are tied to the NPT's duration.

-- The NPT reflects an international norm of nonproliferation that has helped to isolate states outside the regime who have persisted in their efforts to acquire nuclear weapons. It provides a basis upon which the international community can act when faced with direct challenges to the NPT and to the nonproliferation norm.

-- The NPT has proven its value to the international community in recent years. The Treaty formed the basis for Security Council action against Iraq and helped defuse a dangerous situation in North Korea. The Treaty also provided a means by which South Africa could terminate its nuclear weapons program and helped resolve the status of the former Soviet Union's nuclear weapons in Belarus, Ukraine and Kazakhstan.

-- Without the NPT, states would be free of any legal restraints on their nuclear activities, and mutual suspicion and regional tensions would greatly increase.

-- There is no NAM NPT extension position. The six Central American states, the Philippines, the Pacific Island states, the CSCE states, Japan, South Korea, Australia, New Zealand, Mongolia, Afghanistan, and Dominica have all publicly endorsed indefinite extension.

*What abt Cambodia?
Nicaragua?
Haiti?
Senegal?*

-2-

The NPT: Essential for Arms Control Measures

-- The NPT is the only global treaty requiring all its parties, non-nuclear weapon states and nuclear weapon states alike, to make good faith efforts to achieve nuclear disarmament. A strong and durable NPT is essential to maintain a stable strategic environment for further arms control measures.

-- The United States takes its Article VI commitments very seriously. We believe that the accomplishments to date in the arms control area demonstrate ~~a good faith effort in this regard.~~ For example:

-- The U.S. has reduced non-strategic nuclear force warheads by 90 percent. Strategic warheads have been reduced by 47 percent, a figure which will be 71 percent by 2003 with the implementation of START II.

-- The U.S. is dismantling up to 2000 nuclear weapons per year which represents the maximum rate that is technically and physically possible.

-- The INF Treaty, signed in 1987 by the United States and the former Soviet Union, eliminated an entire category of nuclear delivery systems by banning all ground-launched intermediate and short range missiles. All destruction required by the Treaty was completed by 1991.

-- The START I Treaty, which entered into force on December 5, 1994, is an equitable and effectively verifiable agreement that reduces the number of strategic nuclear delivery vehicles and the warheads on them. Overall strategic nuclear forces will be reduced by 30-40 percent, with a reduction of as much as 50 percent in the most threatening systems, a total of over 9,000 weapons.

-- The U.S. and Russia are committed to seek ratification of START II in 1995. This Treaty will reduce strategic forces on both sides to no more than 3,500 warheads -- a two-thirds reduction in strategic forces from pre-START I levels. In addition, the most destabilizing strategic weapons systems--multiple warhead ICBMs--will be eliminated.

-- The U.S. and Russia are discussing adapting nuclear postures to current circumstances, including the possibility, after ratification of START II, of further reductions and limitations affecting remaining nuclear forces.

Shd track
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that fact.

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*Don't
Pre
Maurice*

-- The U.S. has made significant progress in other areas to meet its NPT obligations. For example, we are negotiating a CTBT, ~~we are seeking to update and harmonize security assurances among the permanent members of the UN Security Council and we are discussing an agreement that would ban the production of fissile material for nuclear explosives.~~

1- The United States remains committed to successful conclusion of a Comprehensive Test Ban Treaty. To improve our chances for success, the U.S. has extended the moratorium on U.S. nuclear tests until a CTB Treaty enters into force, on the assumption that a treaty will be signed before September 30, 1996, and subject to the same understandings that govern our current moratorium. The U.S. has also dropped its proposal for a 10-year withdrawal provision.

The NPT: A Foundation for Peaceful Nuclear Cooperation

-- The NPT is the only treaty that recognizes "the inalienable right" of all Parties to the Treaty to develop nuclear energy for peaceful purposes without discrimination in conformity with their obligations not to acquire nuclear explosive devices.

-- Without the NPT and the safeguards regime established by it, confidence by states in the peaceful use of nuclear cooperation would be undermined and trade and technical assistance in the nuclear field would be negatively affected.

-- The United States believes that NPT parties should receive preference in areas of international nuclear cooperation and has had a long-standing policy to that end.

-- The United States and other supplier states have provided a vast amount of assistance in this area to developing NPT states over the life of the Treaty. The United States alone has donated tens of millions of dollars in nuclear assistance to NPT parties.

4-

Kreayles to
Clear

1995: A Singular Opportunity for NPT Extension

-- By the terms of the Treaty, 1995 represents in effect the only opportunity that the parties have to give the NPT an indefinite extension that is legally-binding on every member without the need to go back to Parliaments for ratification of Treaty amendments. The 1995 Extension and Review Conference must take a decision on NPT extension. Any attempt to recess the Conference will call into question the Parties' commitment to the Treaty and weaken the Treaty's effectiveness in preventing the spread of nuclear weapons.

-- The NPT provides for only one extension conference and a choice of three extension options: indefinite extension, extension for a fixed period, or for fixed periods.

-- We believe that a fixed period extension of the NPT would terminate the Treaty. Such a fixed period extension would throw the future of the Treaty into doubt and the Treaty would expire unless, by that time, parties had agreed to amend the Treaty.

-- Any proposal for extending the treaty for fixed periods could create uncertainty about the Treaty's future, negatively affect our mutual efforts to pursue nuclear disarmament measures, discourage future adherence to the Treaty, and limit peaceful nuclear cooperation.

If Asked re Discriminatory Nature of the Treaty

-- The NPT reflects the reality of the time in which it was negotiated. By 1968, five states had acquired and exploded nuclear devices. The NPT's primary objective was to prevent the further proliferation of nuclear weapons. Hence, the NPT established different obligations for nuclear weapon and non-nuclear weapon states.

--- We believe these obligations are balanced. For example, non-nuclear weapon states are obligated not to acquire nuclear weapons, while nuclear weapon states are obligated to make efforts to reduce their nuclear arsenals.

-- Because the sole purpose of the NPT safeguards system is to deter the diversion of nuclear material from peaceful purposes to possible nuclear weapon programs, such safeguards are required in non-nuclear weapon states, but not in nuclear weapon states. The U.S. and other nuclear weapon states have, however, entered into voluntary safeguards agreements with the IAEA.

-5-

Regional Talking Points

Europe

-- At the CSCE Budapest Summit meeting, the participating states endorsed and encouraged universal adherence to the NPT and agreed that the NPT should be indefinitely and unconditionally extended.

Middle East

-- The U.S. continues to fully support universal adherence to the NPT. We believe that the NPT promotes global stability and peace, particularly in the Middle East.

-- The U.S. believes that an NPT of unlimited duration is in the interest of the entire Middle East and will better attract the adherence of states still outside the regime than would a Treaty with a limited future.

-- We do not believe that NPT extension should be linked to whether other states join the Treaty or to a specific timeframe for achieving our broadly supported nonproliferation goals in the Middle East.

-- The NPT provides the legal and political foundation from which to challenge Iran and Iraq's nuclear activities. Failure to extend the Treaty would significantly erode our ability to contribute to a secure environment in the Middle East.

-- The U.S. strongly supports a nuclear weapon free zone in the Middle East as long as it conforms to long-standing U.S. criteria.

Africa

-- The NPT provides a framework in which to address regional proliferation problems and promotes regional stability. In Africa, South Africa's adherence to the NPT helped to open a security dialogue with other African states and to pave the way for the negotiation of an African Nuclear Weapon Free Zone Treaty.

-- The U.S. supports the concept of an African Nuclear Free Zone. and hopes to support the final text of the Treaty.

South Asia

-- We share concerns about the threat of nuclear proliferation in South Asia. Over the past four years, we and other states have encouraged India and Pakistan to take steps to cap, roll back, and eventually eliminate their nuclear weapon capabilities, as an important means to reduce bilateral tensions.

-6-

-- In response to these efforts, India and Pakistan have taken a number of small but concrete steps to enhance confidence and security in the region. Both countries are actively involved in negotiation of a CTBT in Geneva. Their participation in the Treaty is a goal of the U.S. and many other states involved in the negotiations. India, at least, also supports efforts to negotiate a fissile material cut-off agreement.

-- We believe that India's and Pakistan's willingness to consider such steps is due in no small measure to the overwhelming international support for nuclear nonproliferation norms established by the NPT and its 170 plus parties.

Southeast Asia

-- As the North Korean situation demonstrates, the NPT is crucial not only for global security, but for stability and confidence in Asia. The NPT provides a valuable yardstick by which the action of both parties and non-parties may be judged and appropriate action taken by the international community.

-- The NPT would both complement and supplement a Southeast Asian Nuclear Weapon Free Zone. The United States is prepared to consider positively such a zone as long as it conforms to long-standing U.S. criteria.

South America and the Caribbean

-- The NPT both complements and supplements the Treaty of Tlatelolco which does not impose any of the NPT's Article IV's obligations on nuclear supplier states or Article VI's broad obligations on nuclear weapon states.

South Pacific

-- The NPT both complements and supplements Treaty of Rarotonga which establishes a South Pacific Nuclear Free Zone.

-- The U.S. is prepared to sign the protocols to the SPNFZ once a CTBT is concluded.

3. Le présent Traité entrera en vigueur après qu'il aura été ratifié par les Etats dont les gouvernements sont désignés comme dépositaires du Traité, et par quarante autres Etats signataires du présent Traité, et après le dépôt de leurs instruments de ratification. Aux fins du présent Traité, un Etat doté d'armes nucléaires est un Etat qui a fabriqué et a fait exploser une arme nucléaire ou un autre dispositif nucléaire explosif avant le 1^{er} janvier 1967.

4. Pour les Etats dont les instruments de ratification ou d'adhésion seront déposés après l'entrée en vigueur du présent Traité, celui-ci entrera en vigueur à la date du dépôt de leurs instruments de ratification ou d'adhésion.

5. Les gouvernements dépositaires informeront sans délai tous les Etats qui auront signé le présent Traité ou y auront adhéré de la date de chaque signature, de la date de dépôt de chaque instrument de ratification ou d'adhésion, de la date d'entrée en vigueur du présent Traité et de la date de réception de toute demande de convocation d'une conférence ainsi que de toute autre communication.

6. Le présent Traité sera enregistré par les gouvernements dépositaires conformément à l'article 102 de la Charte des Nations Unies.

ARTICLE X

1. Chaque Partie, dans l'exercice de sa souveraineté nationale, aura le droit de se retirer du Traité si elle décide

que des événements extraordinaires, en rapport avec l'objet du présent Traité, ont compromis les intérêts suprêmes de son pays. Elle devra notifier ce retrait à toutes les autres Parties au Traité ainsi qu'au Conseil de sécurité de l'Organisation des Nations Unies avec un préavis de trois mois. Ladite notification devra contenir un exposé des événements extraordinaires que l'Etat en question considère comme ayant compromis ses intérêts suprêmes.

2. Vingt-cinq ans après l'entrée en vigueur du Traité, une conférence sera convoquée en vue de décider si le Traité demeurera en vigueur pour une durée indéfinie, ou sera prorogé pour une ou plusieurs périodes supplémentaires d'une durée déterminée. Cette décision sera prise à la majorité des Parties au Traité.

ARTICLE XI

Le présent Traité, dont les textes anglais, russe, français, espagnol et chinois font également foi, sera déposé dans les archives des gouvernements dépositaires. Des copies certifiées conformes du présent Traité seront adressées par les gouvernements dépositaires aux gouvernements des Etats qui auront signé le Traité, ou qui y auront adhéré.

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

February 7, 1995

MEMORANDUM

TO: Distribution

FROM: ACDA/GC - Mary Elizabeth Hoinkes *MEH*

SUBJECT: NPT: Article X

As you all know, I have had difficulty with the argument you have advanced in support of your conclusion that there could be more than one opportunity for the Parties to select an indefinite extension. In connection with your suggestion that the word "fixed" does not modify the word "periods" in Article X (2), I think you may be interested in the French text, a copy of which is attached.

SUBJECT: Legal Analysis of Extension Options

The Non-Proliferation IWG requested an inter-agency legal review of extension options for the NPT. The following analysis has been prepared by the NSC, in coordination with the legal offices of ACDA, State, DOD, and JCS.

Article X(2) of the NPT provides: "Twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the Parties to the Treaty."

CONCLUSIONS

1. The treaty provision requires a decision by a majority of the parties to the NPT, not a majority of those present and voting.
 2. As to indefinite extension, the treaty provision is clear cut: a majority of the Parties can bind all the parties to a permanent treaty, from which a party can extricate itself only by withdrawal.
 3. The situation is similarly clear with respect to a single fixed-term extension. At the end of the period the treaty will terminate.
 4. The provision regarding extension for "periods" is not so straightforward. Article X(2) clearly permits a decision in 1995 to extend the treaty for several distinct periods, at the end of which the treaty would terminate. It does not, however, indicate the means by which the decision to move (or not) from one fixed period to another would be taken at the expiration of a given fixed period. The 1995 conference would, therefore, need to define a mechanism for parties to approve or disapprove moving to a subsequent fixed period.
- Some commentators have argued that Article X(2) only permits a disapproval mechanism, so that the NPT would be extended each period unless such extension was disapproved. Agency counsel believe that Article X(2) does not dictate this result and that requiring affirmative approval to move to the next extension period would also be legally permissible.

5. Agency counsel disagree on whether Article X(2) would permit the 1995 extension conference to "replicate" itself at a future time -- by deciding to extend the NPT, e.g. for another 25 years, at which point a conference would decide by majority vote whether to extend the NPT indefinitely, or for a fixed period or periods. Agency counsel agree that the resolution of this issue turns primarily on a textual analysis of Article X(2), as nothing in the negotiating record or ratification record addresses the question specifically.

- ACDA/GC believes that by its terms, Article X(2) provides only one opportunity for indefinite extension, at the 25-year review conference. ACDA/GC believes that if that option is not now chosen, the conference must extend the NPT for either a fixed period or periods. ACDA believes the reference to "periods" in Article X(2) means successive "fixed" periods, and cannot reasonably be construed to include one or more fixed periods followed by an indefinite period. ACDA/GC notes that several European countries have taken the position that the 1995 conference can not replicate the options provided in Article X(2) and that most commentators also endorse this position.
- State, OSD, JCS and NSC legal believe that there is sufficient room for argument that the policy makers can reasonably choose to advance the legal position that Article X(2) permits replication. They believe that such a reading is consistent with an extension of the NPT for "periods", as permitted by Article X(2), by reading the term "periods" to include both fixed and indefinite periods. By authorizing extension of the NPT for successive periods, Article X(2) contemplated holding subsequent conferences to decide whether to extend the NPT. "Replication" is consistent with this approach and opens up no new options for treaty extension not presented now by Article X(2). While Article X(2) requires the 1995 conference to decide whether extension will be indefinite, for a fixed period or for periods, it does not necessarily need to be read to preclude the 1995 conference from "delegating" part or all of that decision to a later conference. Preserving for later decision, if necessary, the option of indefinite extension would be consistent with the view apparently shared by the original parties to the NPT that the Treaty would be indefinitely extended when conditions became more favorable.
- All counsel caution that because the "replication" option is not mentioned explicitly in Article X(2), it is subject to challenge as beyond the range of options available under Article X(2). In this regard, there would be some risk that

should a majority agree to replicate the 1995 Conference called for in Article X(2), some in the minority might claim that the majority had amended the Treaty without going through the required amendment process. For support, they could cite the published views of American and foreign commentators. Moreover, moving beyond an option explicitly endorsed in Article X(2) could encourage others to put forward formulas not found in Article X(2) which we might find objectionable.

6. Whether the 1995 conference could make a subsequent decision to move from one fixed period to the next subject to substantive conditions is also debatable. (For example, could the 1995 conference establish multiple five-year extensions, but determine now that movement from the first period to the next requires the conclusion of a CTBT?) Again, nothing in the negotiating or ratification record resolves this issue.

- On the one hand, nothing in Article X(2) explicitly rules out such conditions. Arguably, by permitting fixed periods, Article X(2) leaves discretion to the 1995 Conference to determine not only the procedure for moving from one period to another, but also substantive conditions.
- On the other hand, it can be argued that Article X(2) contemplates only straightforward decisions on the duration of the NPT and that introducing a substantive condition is inconsistent with the certainty concerning the status of the Convention that the drafters of Article X(2) wanted. (Since any substantive condition is open to interpretation, the minority opposing extension of NPT could challenge the effectiveness of a majority vote, by arguing that notwithstanding the majority vote, the substantive condition had not been fulfilled and the extension was therefore invalid. For example, in the hypothetical above, even if a majority of countries were satisfied that a CTBT had been concluded and therefore were to extend the NPT, a minority country could argue that because the CTBT did not reach hydronuclears, the substantive precondition for extending the NPT -- conclusion of a CTBT -- had not been met and the extension was invalid.)
- Agency counsel believe that the "no substantive conditions permitted" argument is the better interpretation. However, counsel also agree that the issue is sufficiently debatable that policymakers could choose to advance the position that appropriate substantive conditions are permissible. (NOTE: In the event that policymakers want to leave open the possibility of substantive conditions, we should not concede that all types of substantive conditions would necessarily

be permissible. Certain conditions may be so vague as to be unworkable, or so unrelated to the subject of the NPT as to be nongermane. Other conditions may constitute a change to the terms of the NPT which should only be made by amendment.)

- Counsel note that even if we were to advance the position that substantive standards cannot be set as preconditions for subsequent extensions, that de facto result cannot be precluded. The 1995 conference could adopt a resolution expressing its sense that decisions on future extensions should take into account whether a CTBT has been concluded. Or, the NAM could reach an informal understanding to that effect. Counsel agree that the third option, that of more than one fixed period, carries with it the inherent possibility of conditioning (whether expressly or not) future extension votes or progress toward disarmament.

7. If the 1995 conference is unable to reach a decision, for whatever reason, the Treaty will continue in force. Counsel believe this position is generally accepted by other states. Moreover, since the conference is charged with a precise task, it cannot close until it has accomplished that task. In the event of deadlock, lack of quorum, or whatever, it thus might recess, but it could not be deemed to have concluded its business until one of the three treaty-permitted extension options has been endorsed.

- Counsel believe this position, which is reflected in the draft rules of procedure for the conference, is also generally accepted. However, as a practical matter, if the conference is recessed for any substantial period of time, there is increasing likelihood of questions being raised about the status of the NPT regime.

Drafted by: Alan Kreczko, NSC/LA

Cleared by: Mary Lib Hoinkes, ACDA/GC
Ed Cummings, State/L/PM
Steve Lepper, OCJCS/JCS
Dick Haddad, DOD/OSD/GC (IA&I)

AK

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005a. fax	cover sheet, Hoinkes to Kreczko (1 page)	02/13/1995	P1/b(1)

COLLECTION:

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

FOLDER TITLE:

North Korea [3]

2009-0528-F
kc1443

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]
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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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005b. memo	Mary Hoinkes to distribution (not listed) re treaty (4 pages)	02/13/1995	P1/b(1)

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005c. cable	re treaty extension (1 page)	02/10/1995	P1/b(1)

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006. report	re North Korea (4 pages)	01/23/1995	P1/b(1)

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U.S. Prepares Oil Shipment For N. Korea

Transfer Connected To Nuclear Accord

By R. Jeffrey Smith
Washington Post Staff Writer

The Defense Department announced yesterday that North Korea's recent release of a downed U.S. pilot and its compliance with the preliminary terms of a nuclear accord warrant the transfer of 50,000 tons of oil to that country later this month.

The \$4.5 million shipment, to be paid out of emergency Pentagon funds, is the first step to be taken by the United States under the nuclear accord reached in October. North Korea has already done its part by halting construction of some nuclear facilities and freezing all activity at others, the department said.

Arrangements for the oil shipment were put on hold briefly while North Korea detained Army Chief Warrant Officer Bobby Hall after downing his helicopter on Dec. 17 during a training flight that U.S. officials said inadvertently strayed over the North Korean border.

But Hall's release on Dec. 30 "removed a shadow over this agreement," a senior defense official told reporters yesterday on condition he not be named.

A delay in the shipment during Hall's detention added roughly \$300,000 to the cost, a spokesman for the South Korean firm supplying the oil told the Associated Press in Seoul yesterday. But the Pentagon said the extra cost was no more than \$50,000. The Honam Oil firm is to load the oil onto several tankers in coming days and deliver it to a North Korean port around Jan. 20, one day ahead of the six-month deadline spelled out by the accord.

Although U.S. law blocks all trade with North Korea, the shipment was authorized as a one-time exception by a Treasury Department license. The Defense Department, which already spends more than \$2 billion annually to help deter a North Korean attack on South Korea, wound up footing the oil bill because it had the funds on hand and no U.S. allies agreed to contribute on such short notice, officials

around Jan. 20, one day ahead of the six-month deadline spelled out by the accord.

Although U.S. law blocks all trade with North Korea, the shipment was authorized as a one-time exception by a Treasury Department license. The Defense Department, which already spends more than \$2 billion annually to help deter a North Korean attack on South Korea, wound up footing the oil bill because it had the funds on hand and no U.S. allies agreed to contribute on such short notice, officials said.

By using funds already approved by Congress, the administration also has been able to circumvent a formal vote on the accord at a moment when many Republican lawmakers are expressing doubts about it. Congress will not have an opportunity to weigh in until later this year, when the two Appropriations committees will be asked to approve the reprogramming of some Energy Department funds to help pay for storing some spent fuel rods withdrawn from a North Korean reactor.

"We are making progress on putting together a consortium" of countries to fund future oil shipments that could total 4 million tons, as well as fund two new Western-style nuclear reactors to be constructed in North Korea at a cost of roughly \$4 billion, the defense official said.

"That in itself is a mind-boggling complexity," the official added, referring to U.S. efforts to reach an accord with Japan and South Korea. The two countries have committed themselves to providing the funds but continue to haggle with each other and with Washington about key details, including the circumstances surrounding eventual North Korean repayment.

But the official said the Pentagon expects the oil expenditure this month will be its last under the North Korea deal. He also said that the oil picked cannot be used "as motor fuel for vehicles or military hardware" in the energy-starved communist state.

The oil is to be delivered on Chinese and Liberian tankers to the port of Songbon in the northeast corner of the country, near an idle, oil-fired power plant that could use it to generate heat and electricity for surrounding villages. But Pentagon officials said it could also be diverted to help heat the North Korean nuclear complex at Yongbyon, north of the country's capital.

The oil is meant to compensate North Korea for freezing the operations of a nuclear reactor at Yongbyon.

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007a. fax	cover Marten to Poneman re North Korea (1 page)	01/13/1994	P1/b(1)

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

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007b. memo	action, Anthony Lake to POTUS re North Korea (4 pages)	01/13/1994	P1/b(1)

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RR. Document will be reviewed upon request.

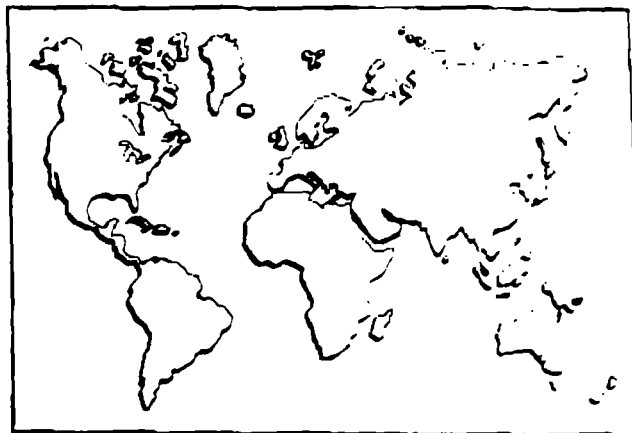
Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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- b(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]

① JB - chat in cable
how go out?
② File - N. Korea

**Department of State
Office of the Legal Adviser**

**FAX
COVERSHEET**



FROM: Steve Solomon

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

TO: ARAN KRECKO

Ph#

Fax#

Comments:

LATEST DRAFT OF CABLE ON
LEGAL STATUS OF U.S. PILOT IN N.K.

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

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12/27/94 647-7838 SELPM 6008
IO:GWARD

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L:MMATHESON P:DHAE S/AL:GSAMORE
PRM:PLYNCH JCS:SLEPPER EAP/K:DBROWN
DRL:MMARTINEZ IO/UNP:CRUEBENSAAL T:TBUCKLEY +

IMMEDIATE GENEVA

IMMEDIATE SECDEF WASHDC//USDP/HRA, SEOUL IMMEDIATE,
USMISSION USUN NEW YORK IMMEDIATE

E.O. 12356: N/A

TAGS: PINS, PREL, MOPS, ICRC

SUBJECT: LEGAL STATUS OF U.S. PILOT IN NORTH KOREA AND
APPLICATION OF THE GENEVA CONVENTIONS

1. SUMMARY AND ACTION REQUEST: MISSION IS REQUESTED TO
DELIVER A DIPLOMATIC NOTE TO THE ICRC {1} STATING THE USG
VIEWS ON THE LEGAL STATUS OF THE U.S. PILOT BEING HELD IN
NORTH KOREA AND THE APPLICABILITY OF THE GENEVA CONVENTION
RELATIVE TO THE TREATMENT OF PRISONERS OF WAR OF AUGUST
12, 1949 {GPW} TO THIS SITUATION AND, {2} REQUESTING ICRC
EFFORTS TO ENSURE THAT THE U.S. PILOT IS TREATED IN A
MANNER CONSISTENT WITH NORTH KOREA'S GPW OBLIGATIONS.
PLEASE REQUEST THAT THE ICRC TREAT THIS MATTER WITH THE
UTMOST DISCRETION. END SUMMARY.

2. BEGIN TEXT:

{COMPLEMENTARY OPENING} ON BEHALF OF THE SECRETARY OF
STATE, THE MISSION HAS THE HONOR TO REFER TO THE FOLLOWING.

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ON DECEMBER 17, 1994 A U.S. ARMY HELICOPTER ON A LOCAL ORIENTATION MISSION STRAYED INTO NORTH KOREAN AIRSPACE. PRESS REPORTS FROM NORTH KOREA INDICATED THAT THE HELICOPTER WAS SHOT DOWN BY NORTH KOREAN FORCES. THE CREW INCLUDED TWO U.S. ARMY WARRANT OFFICERS. WHILE NORTH KOREA HAS RETURNED THE REMAINS OF ONE OF THE PILOTS, IT CONTINUES TO HOLD THE OTHER U.S. PILOT.

THE UNITED STATES TAKES THE VIEW THAT THE GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR OF AUGUST 12, 1949 {GPW} IS APPLICABLE IN THESE CIRCUMSTANCES AND, ACCORDINGLY, THE U.S. ARMY HELICOPTER PILOT MUST BE RELEASED AND REPATRIATED WITHOUT DELAY, PURSUANT TO ARTICLE 118 OF THE GPW. FURTHER, ALL PROTECTIONS OF THE GPW ARE APPLICABLE, INCLUDING VISITS BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS {ICRC}

SPECIFICALLY, NORTH KOREA, AS A PARTY TO THE 1949 GENEVA CONVENTIONS, IS BOUND BY COMMON ARTICLE 2, WHICH EXTENDS THE GPW TO "ALL CASES OF DECLARED WAR OR OF ANY OTHER ARMED CONFLICT WHICH MAY ARISE BETWEEN TWO OR MORE OF THE HIGH CONTRACTING PARTIES . . ." THE INDIVIDUAL IN QUESTION WAS TAKEN PRISONER BY THE USE OF ARMED FORCE BY NORTH KOREA. SINCE THE UNITED STATES, AS A MEMBER OF THE UNITED NATIONS FORCES IN KOREA, IS STILL OPERATING IN KOREA PURSUANT TO THE ARMISTICE OF JULY 27, 1953, WHICH SUSPENDED THE ACTIVE HOSTILITIES OF THE KOREAN ARMED CONFLICT, THIS INDIVIDUAL IS A MEMBER "OF THE ARMED FORCES OF A PARTY TO THE CONFLICT" PURSUANT TO ARTICLE 4{1} OF THE GPW. HE IS, THEREFORE, SUBJECT TO THE PROTECTIONS OF THE GPW, INCLUDING THE REQUIREMENT, IN ACCORDANCE WITH ARTICLE 118 OF THE GPW, FOR IMMEDIATE RELEASE UNDER THE CURRENT CIRCUMSTANCES.

FURTHERMORE, THIS INDIVIDUAL IS ENTITLED TO ALL THE PROTECTIONS OF THE GPW INCLUDING, QUARTERS, FOOD, CLOTHING, AND HUMANE TREATMENT; VISITS BY THE ICRC; AND PROTECTION FROM EXPLOITATION.

THE UNITED STATES REQUESTS THE ASSISTANCE OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS IN ENSURING THAT THE U.S. PILOT IS TREATED IN A MANNER CONSISTENT WITH NORTH KOREA'S OBLIGATIONS UNDER THE GPW AND RELEASED WITHOUT DELAY. THE EFFORTS OF THE ICRC IN THIS REGARD ARE DEEPLY APPRECIATED.

COMPLIMENTARY CLOSING.

YY

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L/PM: NHIGHSMITH
L/EAP: JHERGEN
DAJA-IO: HPARKS
OSD/HRA: JCHARME
PM/ISP: RCARTY
H: WDAVIS
G: AJOYCE
NSC: AKRECZKO
4

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COPY

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

December 18, 1994

Statement by the President

We have been informed by the Government of the Democratic Republic of North Korea, through Congressman Bill Richardson who is in Pyongyang, that one of the pilots of the U.S. Army helicopter that strayed into North Korean airspace on December 16 -- Chief Warrant Officer David Hilemon of Clarksville, TN -- was killed in the downing of the helicopter. North Korean officials have told Congressman Richardson that the other crewman -- Chief Warrant Officer Bobby Hall of Brooksville, FL -- is alive and reportedly uninjured. Our thoughts and prayers are with the families of both of these dedicated aviators.

Congressman Richardson, who has been in continuing contact with Secretary of State Warren Christopher during this period, has at my instructions told the North Korean Government that we want prompt access to Chief Warrant Officer Hall and his return to a U.S. facility along with the remains of Chief Warrant Officer Hilemon. We are using all available channels to press for an early resolution of this matter.

This tragic loss of life was unnecessary. Our primary concern now is the welfare of Chief Warrant Officer Hall and his return along with the body of Chief Warrant Officer Hilemon. Congressman Richardson, who has worked tirelessly to resolve this matter over the past two days, is staying in North Korea for now and will remain in constant contact with North Korean officials on our behalf.

FAX TRANSMITTAL

of pages 4

J. BAKER

From

Phone #

Fax #

Fax #

December 20, 1994

NSN 7540-01-317-7366

FORM-101

GENERAL SERVICES ADMINISTRATION

UNCLASSIFIED6-9251

TO: L -- Mr. Matheson
L/PM -- Mr. Cummings
L/EAP -- Mr. Hergen
L/PM -- Mr. Highsmith
EAP/K -- Mr. Brown
S/AL -- Mr. Samore
DRL -- Ms. Martinez
PRM -- Ms. Lynch
PM/ISP -- Mr. Carty
T -- Mr. Buckley
G -- Ms. Joyce
H -- Mr. Davis
IO/UNP -- Mr. Snyder
OSD/GC -- Mr. Dalton
OSD/HRA -- Ms. Charme
JCS -- Mr. Lepper
NSC -- Mr. Baker
DOJ/OLC -- Mr. Koffsky

FROM: L/PM -- Steve Solomon

SUBJECT: Legal Status of U.S. Pilots Held in North Korea and
Application of the Geneva Conventions

The North Korean's continuing refusal to release the U.S. personnel they are holding led to interagency discussions yesterday among lawyers on the legal status of both soldiers. There was general agreement that the Geneva Convention on POWs is applicable and that, therefore, North Korea is under a legal obligation to release and repatriate these personnel "without delay."

The attached draft cable provides a diplomatic note to the ICRC setting out this view and seeking their assistance in ensuring the proper treatment of the u.s. pilots, whatever their physical status.

Your views would be appreciated. In order to have the note presented in Geneva tomorrow, we are asking for **comments/clearance by 3:00 p.m., today, Tuesday, December 20, 1994.** (Phone: 202-647-7838/Fax:202-736-762).

Thanks very much.

Attachments: As stated.

#6009

OUTGOING TELEGRAM

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DEPARTMENT OF STATE

AUTH	_____	DRAFT	_____
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L/PM:SSOLOMON:SAS
12/20/94 647-7838 SELPM 6008
IO: JSNYDER

L/PM:ECUMMINGS
L:MMATHESON
PRM:PLYNCH
DRL:MMARTINEZ

DOJ/OLC:DKOFFSKY
S/AL:GSAMORE
EAP/K:DBROWN
T:TBUCKLEY +

IMMEDIATE

GENEVA

IMMEDIATE SECDEF WASHDC//USDP/HRA, SEOUL IMMEDIATE,
USMISSION USUN NEW YORK IMMEDIATE

E.O. 12356: N/A

TAGS: PINS, PREL, MOPS, ICRC

SUBJECT: LEGAL STATUS OF U.S. PILOTS IN NORTH KOREA AND
APPLICATION OF THE GENEVA CONVENTIONS

1. SUMMARY AND ACTION REQUEST: MISSION IS REQUESTED TO
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VIEWS ON THE LEGAL STATUS OF THE U.S. PILOTS BEING HELD IN
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EFFORTS TO ENSURE THAT THE U.S. PILOTS ARE TREATED IN A
MANNER CONSISTENT WITH NORTH KOREA'S GPW OBLIGATIONS. END
SUMMARY.

2. BEGIN TEXT:

{COMPLEMENTARY OPENING} ON BEHALF OF THE SECRETARY OF
STATE, THE MISSION HAS THE HONOR TO REFER TO THE FOLLOWING.

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THE UNITED STATES TAKES THE VIEW THAT THE GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR OF AUGUST 12, 1949 (GPW) IS APPLICABLE IN THESE CIRCUMSTANCES AND, ACCORDINGLY, THE U.S. ARMY HELICOPTER PILOTS MUST BE RELEASED AND REPATRIATED WITHOUT DELAY, PURSUANT TO ARTICLE 118 OF THE GPW. FURTHER, ALL PROTECTIONS OF THE GPW ARE APPLICABLE, INCLUDING VISITS BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)

SPECIFICALLY, NORTH KOREA, AS A PARTY TO THE 1949 GENEVA CONVENTIONS, IS BOUND BY COMMON ARTICLE 2, WHICH EXTENDS THE GPW TO "ALL CASES OF DECLARED WAR OR OF ANY OTHER ARMED CONFLICT WHICH MAY ARISE BETWEEN TWO OR MORE OF THE HIGH CONTRACTING PARTIES . . ." THE PERSONNEL IN QUESTION WERE TAKEN PRISONER BY THE USE OF ARMED FORCE BY NORTH KOREAN. SINCE THE UNITED STATES, AS A MEMBER OF THE UNITED NATIONS FORCES IN KOREA, IS STILL OPERATING IN KOREA PURSUANT TO THE ARMISTICE OF JULY 27, 1953, WHICH SUSPENDED THE KOREAN ARMED CONFLICT, THESE PERSONNEL ARE "MEMBERS OF THE ARMED FORCES OF A PARTY TO THE CONFLICT" PURSUANT TO ARTICLE 4(1) OF THE GPW. THEY ARE, THEREFORE, SUBJECT TO THE PROTECTIONS OF THE GPW, INCLUDING THE REQUIREMENT, IN ACCORDANCE WITH ARTICLE 118 OF THE GPW, FOR IMMEDIATE RELEASE UNDER THE CURRENT CIRCUMSTANCES.

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FURTHERMORE, THESE PERSONNEL ARE ENTITLED TO ALL THE PROTECTIONS OF THE GPW INCLUDING, QUARTERS, FOOD, CLOTHING, AND HUMAN TREATMENT; VISITS BY THE ICRC; PROTECTION FROM EXPLOITATION; AND, IF THE REPORTS ARE CORRECT THAT ONE OF THESE INDIVIDUALS IS NOW DECEASED, THE PARTICULAR PROTECTIONS AFFORDED BY ARTICLES 120 AND 121.

THE UNITED STATES REQUESTS THE ASSISTANCE OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS IN ENSURING THAT THESE PERSONNEL ARE TREATED IN A MANNER CONSISTENT WITH NORTH KOREA'S OBLIGATIONS UNDER THE GPW AND RELEASED WITHOUT DELAY. THE EFFORTS OF THE ICRC IN THIS REGARD ARE DEEPLY APPRECIATED.

Terrible
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COMPLIMENTARY CLOSING.

44

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L/PM: NHIGHSMITH
L/EAP: JHERGEN
OSD/GC: HDALTON
JCS: SLEPPER
DOD/JA: HPARKS
OSD/HRA: JCHARME
PM/ISP: RCARTY
H: WDAVIS
G: AJOYCE
NSC: JBAKER
4

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Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008a. fax	cover LtCol Lepper to Ed Cummings et al re draft legal memo (1 page)	12/20/1994	P1/b(1)

COLLECTION:

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

FOLDER TITLE:

North Korea [3]

2009-0528-F
kc1443

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)]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008b. draft	memo, Lt Col Lepper to Legal Counsel of the Chairman, Joint Chiefs of Staff (3 pages)	12/19/1994	P1/b(1)

COLLECTION:

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

FOLDER TITLE:

North Korea [3]

2009-0528-F
kc1443

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TO: AGENCIES

FROM: ITOH

DOC DATE: 03 JAN 95
SOURCE REF:

KEYWORDS: KOREA NORTH
SOC

DC

PERSONS: HALL, BOBBY

SUBJECT: SUMMARY OF CONCLUSIONS FOR 23 DEC DC MTG ON NORTH KOREA

JB
Please File
North Korea

ACTION: ITOH SGD MEMO TO AGENCIES

DUE DATE: 27 DEC 94 STATUS: C

STAFF OFFICER: PONEMAN

LOGREF:

FILES: IFM

NSCP:

CODES:

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FOR CONCURRENCE

FOR INFO

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DANVERS
DARBY
~~KREGZKO~~
NSC CHRON
PONEMAN
ROTH
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DECLASSIFIED E.O. 13526
White House Guidelines,
September 11, 2006

By *MB* NARA, Date *03/19/15*
2009-0528-F

COMMENTS:

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MB

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DOC 2 OF 2

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DATE 03 JAN 95

SUBJECT: SUMMARY OF CONCLUSIONS FOR 23 DEC DC MTG ON NORTH KOREA

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COL ROBERT P. MCALEER DEPARTMENT OF DEFENSE ROOM 3E880 PENTAGON WASHINGTON, DC 20301-1000	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>VIA FAX</u>
MS. ANN LAVIN DEPARTMENT OF ENERGY EXECUTIVE SECRETARIAT ROOM 7E054 1000 INDEPENDENCE AVE, SW WASHINGTON, DC 20585	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>VIA FAX</u>
DR. GORDON M. ADAMS OFFICE OF MANAGEMENT & BUDGET ROOM 238 OLD EXECUTIVE OFFICE BLDG WASHINGTON, DC 20503	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>1</u>
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White House Guidelines,
September 11, 2006

By W NARA, Date 03/19/15
2009-0528-F

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PAGE 01 OF 02 PAGES

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SUBJECT: SUMMARY OF CONCLUSIONS FOR 23 DEC DC MTG ON NORTH KOREA
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JOINT CHIEFS OF STAFF
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WASHINGTON, DC 20318-0001

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MS. BARBARA STARR
ARMS CONTROL & DISARMAMENT AGENCY
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WASHINGTON, DC 20451

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TOTAL: 4
(PAGES INCLUDING COVER)

FROM: NSC WEST WING DESK
(NAME)

(202) 456-9425
(PHONE NUMBER)

WH SITROOM
(ROOM NO.)

MESSAGE DESCRIPTION: SUMMARY OF CONCLUSIONS FOR 23 DEC DC MEETING ON

NORTH KOREA

NSC LOG # 21499

<u>TO (AGENCY)</u>	<u>DELIVER TO</u>	<u>DEPT/ROOM NO.</u>	<u>PHONE NUMBE</u>
STATE	EXECUTIVE SECRETARY		
ACDA	EXECUTIVE SECRETARY		
DOD	EXECUTIVE SECRETARY		
JCS	SECRETARY		
CIA	EXECUTIVE SECRETARY		
ENERGY	DIRECTOR, EXECUTIVE SECRETARIAT		

REMARKS:

DECLASSIFIED E.O. 13526

White House Guidelines,

September 11, 2006

By CW NARA, Date 03/19/15
2009-0528-F

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21499

NATIONAL SECURITY COUNCIL
WASHINGTON D.C. 20506

January 3, 1995

MEMORANDUM FOR

MR. LEON FUERTH
Assistant to the Vice President
for National Security Affairs

DR. GORDON M. ADAMS
Associate Director for National
Security and International
Affairs
Office of Management and Budget

MR. KENNETH C. BRILL
Executive Secretary
Department of State

MR. DOUGLAS F. GARTHOFF
Executive Secretary
Central Intelligence Agency

COL. ROBERT P. MCALEER
Executive Secretary
Department of Defense

COLONEL T.R. PATRICK
Secretary
Joint Chiefs of Staff

MS. ANN LAVIN
Director, Executive Secretariat
Department of Energy

MS. BARBARA STARR
Executive Secretary
Arms Control and Disarmament
Agency

SUBJECT: Deputies Committee Meeting on North Korea (U)

Attached is the Summary of Conclusions for the Deputies Committee meeting on North Korea held Friday, December 23, 1994. (S)



William H. Itoh
Executive Secretary

Attachment
Tab A Summary of Conclusions

DECLASSIFIED E.O. 13526
White House Guidelines,
September 11, 2006

By  NARA, Date 03/19/15
2009-0528-F

~~SECRET~~

Declassify on: OADR

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TAB A

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
009. notes	Summary of Conclusions, Meeting of NSC Deputies (2 pages)	12/23/1994	P1/b(1)

COLLECTION:

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

FOLDER TITLE:

North Korea [3]

2009-0528-F
kc1443

RESTRICTION CODES

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