Case Number: 2009-0528-F-2

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

May 16, 1996

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: DANIEL PONEMAN

FROM: GARY SAMORE GS

SUBJECT: Presidential 614 Determination on U.S. Assistance to the Korean Peninsula Energy Development Organization (KEDO)

The attached memorandum to the President recommends that he invoke his waiver authority under Section 614 of the Foreign Assistance Act to expend up to $22 million for the 1996 U.S. contribution to KEDO.

On the basis of consultations with Congress, State reports no objections to the use of the President's 614 waiver authority to fund KEDO, but Republican Staff of the Senate Appropriations Subcommittee believe that we should have also submitted a reprogramming notification for a portion of the funds, and say that they will try to legislate a reprogramming requirement for the FY97 contribution to KEDO. We are working with State to obtain Congressional support for the full $25 million requested for KEDO in the President's FY97 budget and to avoid any additional restrictions. Representative Callahan also sent a letter to the President encouraging us to press other countries more energetically for contributions to KEDO (which we are doing).

Concurrences by: (Bill Danvers, Jamie Baker, Sandy Kristoff) GS for

RECOMMENDATION

That you forward the Presidential Determination to the President.

Attachments
Tab I Memorandum for the President
- Tab A Presidential 575 Determination and Justification
- Tab B Presidential 614 Determination and Justification
- Tab C Burns-Sens Memorandum of May 14, 1996 with attachments

Attachment
Tab A Presidential 575 Determination and Justification
Tab B Presidential 614 Determination and Justification
Tab C Burns-Sens Memorandum of May 14, 1996 with attachments

THE WHITE HOUSE

WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: ANTHONY LAKE
JOHN HILLEY

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

Purpose

To invoke Presidential waiver authority under Section 614 of the Foreign Assistance Act in order to provide the FY96 U.S. contribution to KEDO.

Background

On April 4, 1996, you made three determinations required under Section 575 of the Foreign Operations Appropriations Act to provide U.S. funds to KEDO (Tab A), and you authorized the Department of State to notify Congress and conduct consultations with the appropriate committees regarding the use of Presidential waiver authority under Section 614 of the Foreign Assistance Act to expend up to $22 million of the FY96 International Organizations and Programs Account as the 1996 U.S. contribution to KEDO.

On May 14, 1996, the Department of State officially notified the NSC that the Congressional consultations have been completed and that no Members of Congress object to use of the 614 waiver for this purpose. By signing the attached Presidential Determination at Tab B, you will invoke 614 waiver authority and authorize release of the FY96 U.S. contribution to KEDO, which will be used primarily by KEDO to purchase heavy fuel oil for North Korea.

RECOMMENDATION

That you sign the Presidential Determination at Tab B.

cc: Vice President
Chief of Staff

Attachment

Tab A Presidential 575 Determination and Justification

Tab B Presidential 614 Determination and Justification

Tab C Burns-Sens Memorandum of May 14, 1996 with attachments

TAB A

THE WHITE HOUSE

WASHINGTON

April 4, 1996

Presidential Determination
No. 96-21

MEMORANDUM FOR THE SECRETARY OF STATE

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

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

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

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

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

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

William J. Clinton

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

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

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

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

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

The justification for these determinations is set forth below.

(a) - Designation of ROK Company

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

On June 13, 1995, in Kuala Lumpur, the United States and the DPRK issued a joint statement providing that KEDO will select both the LWR reactor model and the prime contractor to carry out the project. (These points were confirmed in the LWR

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

(b) - DPRK Maintenance of the Freeze

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

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

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

first LWR unit is completed, the IAEA will have oversight over the dismantlement of the DPRK's nuclear facilities which will be completed when the second LWR unit is completed.

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

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

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

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

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

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

-- shall use nuclear energy solely for peaceful purposes;

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

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

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

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

taking all steps that may be deemed necessary by the IAEA with regard to verifying the accuracy and completeness of the DPRK's initial report on all nuclear material in the DPRK, the DPRK has not only gone beyond its NPT and IAEA safeguards obligations but also is taking steps related to the inspection objectives set forth in the Denuclearization Declaration.

TAB B

Presidential Determination
No. ______________________

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Use of International Organizations and Programs Account Funds for the U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO)

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

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

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

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

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

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

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

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

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

TAB C

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XR 9605515, 9603673

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United States Department of State

Washington, D.C. 20520

UNCLASSIFIED

May 14, 1996

MEMORANDUM FOR ANDREW D. SENS
EXECUTIVE SECRETARY
NATIONAL SECURITY COUNCIL

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

The President signed Presidential Determination 96-21 on April 4, 1996, pertaining to the U.S. contribution to the Korean Peninsula Energy Development Organization (KEDO). Furthermore, the President authorized the Department of State to consult with and provide a written justification to the appropriate committees of Congress in preparation for the President exercising his authority under section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, ("the Act") to permit the U.S. contribution to KEDO.

The State Department has consulted the appropriate committees of Congress concerning the President's proposal to exercise his authority under section 614 of the Act to waive numerous prohibitions in the Act and in the current Foreign Operations Appropriations Act, 1996 (P.L. 104-107), to permit the U.S. contribution to KEDO. Consultations with majority and minority staff of the House International Relations Committee, the Senate Foreign Relations Committee, and the House Foreign Operations Appropriations Subcommittee have identified no opposition to this proposed action. Democratic staff of the Senate Foreign Operations Appropriations Subcommittee also support the proposed use of section 614. Republican staff of this Appropriations Subcommittee have no objection to proceeding on policy grounds but firmly believe we should have submitted a reprogramming notification for a portion of the funds. State Department officials disagree.

The Department of State has concluded these consultations and recommends that the President sign the Presidential Determination invoking his authority under section 614 to permit the U.S. contribution to KEDO.

William J. Burns
Executive Secretary

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

MEMORANDUM FOR THE SECRETARY OF STATE

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

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

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

H

United States Department of State

Washington, D.C. 20520 9603673

March 12, 1996

UNCLASSIFIED

MEMORANDUM FOR ANDREW D. SENS
EXECUTIVE SECRETARY
NATIONAL SECURITY COUNCIL

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

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

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

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

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

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

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

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

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

William Burns
Executive Secretary

Attachments:

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

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

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

MEMORANDUM FOR THE SECRETARY OF STATE

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

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

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

Draft
To be sent to Chairs of Appropriations Committees following receipt of Presidential determination:

Dear Mr. Chairman:

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

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

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

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

A copy of this Determination and the Justification for it are enclosed. The President will submit the report required under the heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act, 1996 (P.L. 104-107), in accordance with the schedule specified in that Act.

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

The Honorable
_________________, Chairman,
Committee on _______________

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

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

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

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

Progress has been made in securing additional members and contributions for KEDO and its activities, although much work remains to be done. Over the past year, the three Executive Board members have approached more than thirty-five

countries from Europe, Asia, Latin America and the Middle East to ask their support for the organization. In 1995, we were able to recruit four new members for KEDO -- Australia, New Zealand, Canada and Finland -- as well as to raise funds from a total of ten countries. So far, in 1996, France, Argentina and Indonesia have indicated that they will join KEDO. France, Argentina, Norway, and Germany have pledged additional funding for the organization. We look forward to additional pledges to join KEDO and contribute to the organization over the coming year.

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

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

Sincerely,

Wendy R. Sherman
Assistant Secretary
Legislative Affairs

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

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

Dear Mr. Chairman:

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

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

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

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

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

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

The Honorable
_______________, Chairman,
Committee on _______________

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

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

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

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

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

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

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

Sincerely,

Wendy R. Sherman
Assistant Secretary
Legislative Affairs

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

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

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

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

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

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

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

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

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

MEMORANDUM FOR THE SECRETARY OF STATE

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

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

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

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

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

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

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

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

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

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

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

The justification for these determinations is set forth below.

(a) - Designation of ROK Company

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

On June 13, 1995, in Kuala Lumpur, the United States and the DPRK issued a joint statement providing that KEDO will select both the LWR reactor model and the prime contractor to carry out the project. (These points were confirmed in the LWR

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

(b) - DPRK Maintenance of the Freeze

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

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

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

first LWR unit is completed, the IAEA will have oversight over the dismantlement of the DPRK's nuclear facilities which will be completed when the second LWR unit is completed.

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

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

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

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

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

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

-- shall use nuclear energy solely for peaceful purposes;

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

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

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

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

taking all steps that may be deemed necessary by the IAEA with regard to verifying the accuracy and completeness of the DPRK's initial report on all nuclear material in the DPRK, the DPRK has not only gone beyond its NPT and IAEA safeguards obligations but also is taking steps related to the inspection objectives set forth in the Denuclearization Declaration.

Drafted: EAP/K/AF: VECarotenuto/WAHyde/JGoldstein 1/29/96
SEKAFF 275 7-1868

Cleared: EAP/K/AF: JWit
S/P: DEBrown
PM/NE: ABurkart
PM/RNP: JMDeThomas
P: DRussel
T: JBarker
OMB: JNix
OSD: THarvey
JCS: LMiles
NSC: GSamore
L/PM: NHighsmith/PClayman
H: CRaether/KMcCormick

THE WHITE HOUSE

WASHINGTON

May 15, 1996

Dear Representative Callahan:

Thank you for your letter concerning funding for the Korean Peninsula Energy Development Organization (KEDO), which is responsible for implementing key elements of the 1994 U.S.-North Korea Agreed Framework. I appreciate your support for the Administration's funding requests for KEDO.

I believe that the Agreed Framework has already greatly increased the security of the American people. That benefit grows with each passing day that North Korea -- under international monitoring -- refrains from producing or separating plutonium that could be used in nuclear weapons. Today, American experts are in North Korea recanning spent fuel containing five to six bombs-worth of plutonium for eventual shipment out of the country.

In addition, the Agreed Framework has opened the door to address other vital American interests on the Korean peninsula, such as my joint proposal with President Kim Young Sam for four-party peace talks, U.S.-North Korea talks on controlling ballistic missiles and efforts to recover American MIAs from the Korean War.

As Secretary Christopher informed Congress in January 1995, we anticipate that the United States will contribute approximately \$20-\$30 million annually to KEDO to help fund heavy fuel oil purchases, the light-water reactor project and KEDO's administrative expenses. As you point out, we have had to devote a larger portion of our contribution than we originally anticipated to heavy fuel oil purchases, but the overall amount we are requesting for KEDO has not changed from the original \$20-\$30 million figure per year. The Administration has requested \$25 million for KEDO in FY97; most of this will likely be spent on heavy fuel oil.

We are intensifying our efforts to increase international support for KEDO, especially for the heavy fuel oil fund. As you may be aware, approximately \$38 million has been raised for KEDO from 20 countries, including Japan, the Republic of Korea, New Zealand, Australia, Canada, the UK, the Netherlands, France, Germany, Malaysia, Singapore, the Philippines, Thailand, Brunei and Argentina. As for certain Middle East countries, they already contribute significantly to other important U.S. foreign policy interests, such as in Bosnia. Nonetheless, KEDO needs additional international support, and I have been, and will remain, personally involved in this effort.

For these reasons, I hope that you will support the Administration's request for KEDO funding in FY97. In my judgment, the $25-$30 million is a very modest and worthwhile investment in our national security. That conclusion is not affected by changing proportions of expenditures within that total. Finally, I can assure you that maintaining the level of the overall U.S. contribution to our original pledge will strengthen my efforts to expand the level of international support for KEDO.

I look forward to continuing to work with you on this issue.

Sincerely,

Bill Clinton

The Honorable Sonny Callahan
House of Representatives
Washington, D.C. 20515

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9603358
RECEIVED: 15 MAY 96 09

TO: SENS

FROM: BURNS, W

DOC DATE: 14 MAY 96
SOURCE REF: 9608130

KEYWORDS: NUCLEAR ENERGY
KOREA
FOREIGN ASSISTANCE
PD

PERSONS:

SUBJECT: PRES ACTION REQUIRED TO MAKE US CONTRIBUTION TO KOREAN PENINSULA ENERGY DEVELOPMENT ORGAN / KEDO FM PD 96-21

ACTION: PREPARE MEMO FOR LAKE   DUE DATE: 18 MAY 96   STATUS: S

STAFF OFFICER: SAMORE   LOGREF: 9601690

FILES: WH   NSCP: CODES:

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

FOR ACTION	FOR CONCURRENCE	FOR INFO
SAMORE	FAIRFAX	ANDREASEN
	KRECZKO	APPEL
	KRISTOFF	BELL
	SIMON	CLARKE
		LORIN
		PONEMAN
		RAGAN
		SCHWARTZ
		SESTAK

COMMENTS: ______

DISPATCHED BY ______ DATE ______ BY HAND   W/ATTCH

OPENED BY: NSDRS   CLOSED BY: DOC 1 OF 1

UNCLASSIFIED

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S/S 9608130
XR 9605515, 9603673

United States Department of State

Washington, D.C. 20520

UNCLASSIFIED

May 14, 1996

MEMORANDUM FOR ANDREW D. SENS
EXECUTIVE SECRETARY
NATIONAL SECURITY COUNCIL

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

The President signed Presidential Determination 96-21 on April 4, 1996, pertaining to the U.S. contribution to the Korean Peninsula Energy Development Organization (KEDO). Furthermore, the President authorized the Department of State to consult with and provide a written justification to the appropriate committees of Congress in preparation for the President exercising his authority under section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, ("the Act") to permit the U.S. contribution to KEDO.

The State Department has consulted the appropriate committees of Congress concerning the President's proposal to exercise his authority under section 614 of the Act to waive numerous prohibitions in the Act and in the current Foreign Operations Appropriations Act, 1996 (P.L. 104-107), to permit the U.S. contribution to KEDO. Consultations with majority and minority staff of the House International Relations Committee, the Senate Foreign Relations Committee, and the House Foreign Operations Appropriations Subcommittee have identified no opposition to this proposed action. Democratic staff of the Senate Foreign Operations Appropriations Subcommittee also support the proposed use of section 614. Republican staff of this Appropriations Subcommittee have no objection to proceeding on policy grounds but firmly believe we should have submitted a reprogramming notification for a portion of the funds. State Department officials disagree.

The Department of State has concluded these consultations and recommends that the President sign the Presidential Determination invoking his authority under section 614 to permit the U.S. contribution to KEDO.

William J. Burns
Executive Secretary

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

MEMORANDUM FOR THE SECRETARY OF STATE

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

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

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

Drafted:H:CRaether 5/10/96
HSTAFF 4382

Cleared:H:BLarkin
EAP/K:JWit
L/PM:NHighsmith
S/RPP:TBuckley
T:JBarker
P:DRussell

mfr

United States Department of State

Washington, D.C. 20520 9603673

March 12, 1996

UNCLASSIFIED

MEMORANDUM FOR ANDREW D. SENS
EXECUTIVE SECRETARY
NATIONAL SECURITY COUNCIL

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

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

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

UNCLASSIFIED

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

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

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

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

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

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

William Burns
Executive Secretary

Attachments:

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

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

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

MEMORANDUM FOR THE SECRETARY OF STATE

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

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

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

Draft
To be sent to Chairs of Appropriations Committees following receipt of Presidential determination:

Dear Mr. Chairman:

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

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

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

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

A copy of this Determination and the Justification for it are enclosed. The President will submit the report required under the heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act, 1996 (P.L. 104-107), in accordance with the schedule specified in that Act.

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

The Honorable
_________________, Chairman,
Committee on _______________

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

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

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

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

Progress has been made in securing additional members and contributions for KEDO and its activities, although much work remains to be done. Over the past year, the three Executive Board members have approached more than thirty-five

countries from Europe, Asia, Latin America and the Middle East to ask their support for the organization. In 1995, we were able to recruit four new members for KEDO -- Australia, New Zealand, Canada and Finland -- as well as to raise funds from a total of ten countries. So far, in 1996, France, Argentina and Indonesia have indicated that they will join KEDO. France, Argentina, Norway, and Germany have pledged additional funding for the organization. We look forward to additional pledges to join KEDO and contribute to the organization over the coming year.

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

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

Sincerely,

Wendy R. Sherman
Assistant Secretary
Legislative Affairs

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

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

Dear Mr. Chairman:

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

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

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

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

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

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

The Honorable
________________, Chairman,
Committee on ______________

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

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

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

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

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

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

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

Sincerely,

Wendy R. Sherman
Assistant Secretary
Legislative Affairs

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

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

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

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

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

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

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

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

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

MEMORANDUM FOR THE SECRETARY OF STATE

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

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

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

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

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

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

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

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

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

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

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

The justification for these determinations is set forth below.

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

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

On June 13, 1995, in Kuala Lumpur, the United States and the DPRK issued a joint statement providing that KEDO will select both the LWR reactor model and the prime contractor to carry out the project. (These points were confirmed in the LWR

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

(b) - DPRK Maintenance of the Freeze

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

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

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

first LWR unit is completed, the IAEA will have oversight over the dismantlement of the DPRK's nuclear facilities which will be completed when the second LWR unit is completed.

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

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

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

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

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

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

-- shall use nuclear energy solely for peaceful purposes;

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

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

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

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

taking all steps that may be deemed necessary by the IAEA with regard to verifying the accuracy and completeness of the DPRK's initial report on all nuclear material in the DPRK, the DPRK has not only gone beyond its NPT and IAEA safeguards obligations but also is taking steps related to the inspection objectives set forth in the Denuclearization Declaration.

Drafted: EAP/K/AF: VECarotenuto/WAHyde/JGoldstein 1/29/96
SEKAFF 275 7-1868

Cleared: EAP/K/AF: JWit
S/P: DEBrowr
PM/NE: ABurkart
PM/RNP: JMDeThomas
P: DRussel
T: JBarker
OMB: JNix
OSD: THarvey
JCS: LMiles
NSC: GSamore
L/PM: NHighsmith/PClayman
H: CRaether/KMcCormick

May 16, 1996

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: DANIEL PONEMAN

FROM: GARY SAMORE

SUBJECT: Presidential 614 Determination on U.S. Assistance to the Korean Peninsula Energy Development Organization (KEDO)

The attached memorandum to the President recommends that he invoke his waiver authority under Section 614 of the Foreign Assistance Act to expend up to $22 million for the 1996 U.S. contribution to KEDO.

On the basis of its consultations with Congress, State reports no objections to the use of the President's 614 waiver authority to fund KEDO, but Republican Staff of the Senate Appropriations Subcommittee believe that we should have also submitted a reprogramming notification for a portion of the funds, and say that they will try to legislate a reprogramming requirement for the FY97 contribution to KEDO. We are working with State to obtain Congressional support for the full $25 million requested for KEDO in the President's FY97 budget and to avoid any additional restrictions. Rep. Callahan also sent a letter to the President encouraging us to press other nations for contributions to KEDO.
more energetically

Concurrences by: Bill Danvers, Jamie Baker, Sandy Kristoff

RECOMMENDATION

That you forward the Presidential Determination to the President.

Attachments
Tab I Memorandum for the President
Tab A Presidential Determination
Tab B Burns-Sens Memorandum of May 14, 1996 with attachments

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: ANTHONY LAKE
JOHN HILLEY

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

Purpose

To invoke Presidential waiver authority under Section 614 of the Foreign Assistance Act in order to provide the FY96 U.S. contribution to KEDO.

Background

On April 4, 1996, you authorized the Department of State to notify Congress and conduct consultations with the appropriate committees regarding the use of Presidential waiver authority under Section 614 of the Foreign Assistance Act to expend up to $22 million of the FY96 International Organizations and Programs Account as the 1996 U.S. contribution to KEDO.

On May 14, 1996, the Department of State officially notified the NSC that the Congressional consultations have been completed and that no Members of Congress object to use of the 614 waiver for this purpose. By signing the attached Presidential Determination at Tab A, you will authorize the expenditure of these funds, which will be used primarily by KEDO to purchase heavy fuel oil for North Korea.

However, Rep. Callahan did write to you urging us to press other nations more energetically for contributions to KEDO.

RECOMMENDATION

That you sign the Presidential Determination at Tab A.

Attachment
Tab A Presidential Determination
Tab B Burns-Sens Memorandum of May 14, 1996 with attachments

cc: Vice President
Chief of Staff

TAB A

Presidential Determination
No. ____________________

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Use of International Organizations and Programs Account Funds for the U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO)

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

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

Dear Representative Callahan:

Thank you for your letter concerning funding for the Korean Peninsula Energy Development Organization (KEDO), which is responsible for implementing key elements of the 1994 U.S.-North Korea Agreed Framework.

I believe that the Agreed Framework has already greatly increased the security of the American people. That benefit grows with each passing day that North Korea -- under international monitoring -- refrains from producing or separating plutonium that could be used in nuclear weapons. Today, American experts are in North Korea recanning spent fuel containing five to six bombs-worth of plutonium for eventual shipment out of the country.

In addition, the Agreed Framework has opened the door to address other vital American interests on the Korean peninsula, such as the recent proposal by myself and President Kim Young Sam for four-party peace talks, U.S.-North Korea talks to control ballistic missiles, and efforts to recover American MIAs from the Korean War.

With respect to funding, as Secretary Christopher informed Congress in January 1995, we anticipate that the United States will contribute approximately \$20-\$30 million annually to KEDO to help fund heavy fuel oil purchases, the light-water reactor project, and KEDO's administrative expenses. As you point out, we have had to devote a larger portion of our contribution than we originally anticipated to heavy fuel oil purchases, but the overall amount we are requesting for KEDO has not changed from the original \$20-\$30 million figure every year. The Administration has requested \$25 million for KEDO in FY97; most of this will likely be spent on heavy fuel oil.

I agree that we need to intensify our efforts to increase international support for KEDO, especially for the heavy fuel oil fund. As you may be aware, approximately \$38 million has been raised for KEDO from 20 countries, including Japan, the Republic of Korea, New Zealand, Australia, Canada, the UK, the Netherlands, France, Germany, Italy, Finland, Norway, the

European Union, Indonesia, Malaysia, Singapore, the Philippines, Thailand, Brunei, and Argentina. With regard to certain Middle East countries, they already contribute significantly to other important U.S. foreign policy interests, such as in Bosnia. Nonetheless, KEDO needs additional international support, and I have been -- and will remain -- personally involved in this effort.

For these reasons, I hope that you will support the Administration's request for KEDO funding in FY97. In my judgment, the $25-$30 million is a very modest -- and worthwhile -- investment in our national security. That conclusion is not affected by changing proportions of expenditures within that total. Finally, I can assure you that maintaining the level of the overall U.S. contribution to our original pledge will strengthen my efforts to expand the level of international support for KEDO.

I look forward to continuing to work together on this issue.

Sincerely,

The Honorable Sonny Callahan
House of Representatives
Washington, D.C. 20510

Davis, William K.

From: Fairfax, Kenneth J.
To: Blacker, Coit D.; Pifer, Steven K.; Poneman, Daniel B.; Reed, George A.; Samore, Gary S.
Cc: /N, NonRecord at A1; @RUSSIA - Russia/Ukraine; @NONPRO - Export Controls; @LEGISLAT-Legislative Affairs; @DEFENSE - Defense Policy; @GLOBAL - Global Affairs
Subject: Read-Out on Nunn-Lugar II [UNCLASSIFIED]
Date: Monday, May 06, 1996 6:47PM

FYI: Based on my conversation with one of Nunn's staffers, it appears to me that Nunn-Lugar II is shaping up to be much less than it was originally billed to be. Rather than a recasting of the original Nunn-Lugar program, NL2 is a one-shot supplemental bill that provides additional funding in a number of areas on a one-time-only basis. While the funding could be used over multiple years, NL2 itself is not currently a recurring event.

I had a long chat with on staffer and flipped through a draft of the document that Nunn's and Lugar's staffs are working on based on instructions from the Senators. Here's how it shapes up:

POLICY GUIDANCE

The bill directs the Administration to appoint a "Czar" to cover WMD smuggling/proliferation, international organized crime, money laundering, etc. The rationale for this czar sounds very similar to TL's description of our need to battle "the nexus." This Czar is envisioned as someone to coordinate between Nonpro, Defense, and Global here in the NSC and to be the ultimate authority on interagency decisions. The target grade is somewhere between a Senior Director and SRB.

The bill addresses some of the problems that have arisen due to strings on CTR money. It allows the money to be used outside the "nuclear 4," allows direct contracting with Russian and other local entities, and encourages "innovative contracting" techniques to get the job done.

On the HEU deal, wording in the law will specifically provide the Administration with the right to change executive agents is needed. (Envisioned as a threat to keep USEC in line.)

DOLLARS AND SENSE

For all of the $$ amounts listed below, the legislation provides this money IN ADDITION to all other funding contained in other bills & programs. The amounts currently envisioned are:

To DoD for DoD-MoD cooperation on warhead security: + $30 million

To DOE cooperation on secure transportation of fizz mat: + $10 million

To ? for a "proliferation center" that will report to the czar and will be used to involve private, academic and other persons in the process of addressing nuclear and WMD smuggling: $10 million

To DOE for improving security of Russian Naval Fuel: + $5 million

To DOE for MPC&A Efforts: + $30 million

To DOE to support implementing transparency-related activities in Russia (such as Aries pit-to-PuO2 conversion facility, "lab-to-lab" transparency experiments, etc.) $8 million

To DOE for converting Russia's Pu production reactors: $80 million

To the Industrial Partnering Program (IPP): + $15 million

To DOE for an "MPC&A-type program" for Chem-Bio security improvement measures: $30 million

To State for the ISTC: $8 million

To Customs for developing interdiction programs in the NIS, etc.: $15 million

To DOE for joint U.S./Russian development of new tools for detecting proliferation-related activities: $15 million.

Congress of the United States
House of Representatives
Committee on Appropriations
Washington, DC 20515–6015

May 6, 1996

MAY 6 1996

President William J. Clinton
The White House
Washington, D.C.

Dear Mr. President:

I know you are quite busy, but I wanted to draw your attention to an issue which is a good example of the unnecessary problems which sometimes arise between Capitol Hill and the White House.

As you know, one of my jobs here is to chair the Appropriations subcommittee on foreign aid. I've likened it to changing the diapers on a baby--its a dirty job but it has to get done. My job is actually a pretty simple one; I have to cut the budget, but I try and do it as fairly as I can and with as much deference as possible to your presidential responsibility over the conduct of our foreign policy.

The issue of concern to me is your funding request for KEDO, the organization you set up to administer the North Korean nuclear agreement. This is still a pretty controversial agreement among some of my colleagues here in the Congress but in last year's bill we were able to manage these concerns without controversy. We provided you with all the money you requested for administrative expenses and heavy fuel for North Korea.

The sore point here is that we were told last year that the US would contribute $10,000,000 of the $50,000,000 annual cost for heavy fuel oil. The other $40,000,000 would come from other countries in an "Operation Tin Cup" that you would spearhead. We thought that was a good idea and we even approved an extra $9,000,000 for heavy fuel because we were told that you were having a hard time getting other countries to contribute to the startup of the heavy fuel oil fund.

This year, however, it appears the bureaucracy has just pocketed the temporary help we gave you last year and is even asking for $8,000,000 over that. What was originally described as a $10,000,000 per year commitment for heavy fuel oil is now rapidly approaching $30,000,000. They tell us you are still having a hard time raising funds from other nations. Mr. President, we are spending nearly $3,000,000,000 a year to help protect South Korea, so I don't see why wealthy countries in the Middle East and Europe can't come up with the remaining $40,000,000 needed to buy heavy fuel oil.

This bothers me further because the money we will use to pick up this fundraising shortfall will come out of an account which also funds UNICEF, the IAEA and some other worthwhile programs. Like the rest of the foreign aid budget, this account is also being cut. I don't think we want to squeeze these important programs because some of our friends and allies won't help share the burden in North Korea.

Finally, Mr. President, I'll admit I'm also a little annoyed by the fact that some of your staff suggest that if we don't provide this extra money, we will be to blame for the failure of the North Korea agreement. I think your original plan to provide $10,000,000 a year and raise the rest from the international community is the right way to go on this and you have my strong support on both accounts. But letting other countries off the hook and asking the American taxpayer to make up the difference is unacceptable to me, no matter what your staff says.

I appreciate you bearing with me on this. I don't intend to release this letter and you don't need to respond to it. I would however appreciate it if you would look into it.

Sincerely,

Sonny Callahan

Chairman

OFFICE OF LEGISLATIVE AFFAIRS

FAX COVER SHEET

NOTE: **THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL AND INTENDED FOR THE RECIPIENT ONLY.**

Putting in system now
CB

DATE: 5/6/96

TO: Gordie Bendick

FAX#: 6-9170

FROM: Christopher Walker
456-7500 (TEL) 456-6221 (FAX)

RE: Gordon,

Let's get a response to this one out in 48 hours if possible. Callahan is hot on this one.

Page 1 of 3

If there are any problems with this transmission, please call (202) 456-7500.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release May 1, 1996

STATEMENT BY THE PRESS SECRETARY

North Korea Nuclear Fuel

After several months of close technical cooperation, nuclear experts from the United States and North Korea have begun the canning operation required for safe and secure storage of spent nuclear fuel in North Korea, pending its ultimate removal from North Korea under the terms of the October 21, 1994, U.S.-DPRK Agreed Framework. The canning operation marks a significant step in the implementation of the Agreed Framework, which requires the freeze and eventual dismantlement of North Korea's dangerous nuclear program. The Department of Energy is responsible for implementing the canning operation, which is proceeding under IAEA monitoring.

# # #

N. Korea (by Samore)
4/22/96

Spent Fuel Canning

-- Oct. 1994 Agreed Framework provides plan for freeze and eventual dismantlement of North Korean nuclear weapons program in exchange replacement energy in form of HFO and two 1,000 MW(e) light water nuclear power reactors.

-- Key element is storage and removal of spent fuel from the 5 MW reactor because fuel contains 25-30 kg of pu, enough for half dozen weapons.

-- Fuel in form of 8,000 rods unloaded in April-May 1994 and placed in storage ponds at Yongbyon.

-- Agreed Framework calls for U.S. and DPRK to cooperate in interim storage of this fuel in North Korea and ultimate removal from North Korea once deliver begins of key nuclear components for the first LWR unit.

-- It will be at least five years before this removal can begin, but fuel cannot remain stored in pond during that period because water corrodes magnesium-zirconium cladding, creating radiological hazard.

-- Solution worked out by U.S. and DPRK in early 1995 was to store fuel in stainless steel cans filled with inert gas, pending removal from DPRK. Operation underway.

Four reasons why must finish canning operation:

1. Avoid reprocessing - most important, without stable form of storage, North Koreans would probably be forced to reprocess the fuel (i.e. separate pu from fission waste).

2. Facilitate freeze verification - by sealing in cans, facilitates IAEA efforts to monitor freeze and ensure that DPRK doesn't covertly reprocess.

3. Facilitate NPT compliance - by slowing corrosion, facilitates eventual IAEA measurements of fuel rods to help reconstruct operating history of 5 MW reactor and determine past pu production.

4. Facilitate shipping - cans required for eventual removal from North Korea.

United States Department of State

Washington, D.C. 20520

APR 17 1996

Dear Mr. Speaker:

On April 4, 1996, the President signed Presidential Determination No. 96-21 regarding the U.S. contribution to the Korean Peninsula Energy Development Organization (KEDO). The President has determined and certified pursuant to the requirements under the heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act for FY 1996 that:

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

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

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

A copy of this Determination and the Justification for it are enclosed. The President will submit the report required under the heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act, 1996 (P.L. 104-107), in accordance with the schedule specified in that Act.

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

The Honorable
Newt Gingrich, Speaker
House of Representatives.

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

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

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

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

Progress has been made in securing additional members and contributions for KEDO and its activities, although much work remains to be done. Over the past year, the three Executive Board members have approached more than thirty-five

countries from Europe, Asia, Latin America and the Middle East to ask their support for the organization. In 1995, we were able to recruit four new members for KEDO -- Australia, New Zealand, Canada and Finland -- as well as to raise funds from a total of ten countries. So far, in 1996, France, Argentina and Indonesia have indicated that they will join KEDO. In addition, France, Argentina, Norway, and Germany have pledged additional funding for the organization. In March 1996, the European Union announced a contribution to KEDO of over $6 million as a first step towards what we anticipate will be further support. We expect additional pledges to join KEDO and contribute to the organization over the coming year from other countries.

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

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

Sincerely,

Barbara Larkin

Barbara Larkin
Acting Assistant Secretary
Legislative Affairs

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

THE WHITE HOUSE

WASHINGTON

April 4, 1996

Presidential Determination
No. 96-21

MEMORANDUM FOR THE SECRETARY OF STATE

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

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

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

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

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

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

William J. Clinton

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

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

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

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

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

The justification for these determinations is set forth below.

(a) - Designation of ROK Company

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

On June 13, 1995, in Kuala Lumpur, the United States and the DPRK issued a joint statement providing that KEDO will select both the LWR reactor model and the prime contractor to carry out the project. (These points were confirmed in the LWR

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

(b) - DPRK Maintenance of the Freeze

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

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

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

first LWR unit is completed, the IAEA will have oversight over the dismantlement of the DPRK's nuclear facilities which will be completed when the second LWR unit is completed.

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

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

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

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

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

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

-- shall use nuclear energy solely for peaceful purposes;

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

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

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

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

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

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

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

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

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

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

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