

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the Clinton Presidential Library Staff.

Folder Title:

North Korea, November 1993 [3]

Staff Office-Individual:

Nonproliferation and Export Controls-Aoki, Steven

Original OA/ID Number:

283

Row:	Section:	Shelf:	Position:	Stack:
41	5	5	2	v

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. paper	re Part I Summary of Objectives (3 pages)	05/00/1993	P1/b(1)
001b. paper	re Part II Objectives and Procedures (4 pages)	05/00/1993	P1/b(1)
001c. paper	re Part III Inducements and Strategy (5 pages)	05/00/1993	P1/b(1)
001d. timeline	re US DPRK Dialogue (1 page)	05/00/1993	P1/b(1)
001e. paper	re US DPRK Talks (2 pages)	05/00/1993	P1/b(1)
001f. paper	re draft protocol summary (1 page)	05/00/1993	P1/b(1)
001g. paper	re draft protocol text (2 pages)	05/00/1993	P1/b(1)
002. memo	action, Daniel Poneman to Anthony Lake re North Korea (2 pages)	10/29/1993	P1/b(1)
003a. fax	cover re complex (1 page)	11/05/1993	P1/b(1)
003b. memo	re complex (1 page)	11/05/1993	P1/b(1)
003c. paper	re complex (1 page)	11/05/1993	P1/b(1)
004a. fax	cover re complex (duplicate of 003a) (1 page)	11/05/1993	P1/b(1)
004b. memo	re complex (duplicate of 003b) (1 page)	11/05/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

North Korea, November 1993 [3]

2009-0528-F

kc1547

RESTRICTION CODES

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

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004c. paper	re complex (duplicate of 003c) (1 page)	11/05/1993	P1/b(1)
005a. memo	action, Steven Aoki to Anthony Lake re Principals Meeting (1 page)	11/09/1993	P1/b(1)
005b. form	scheduling request re principals meeting (1 page)	11/09/1993	P1/b(1)
006. paper	re North Korea (3 pages)	11/09/1993	P1/b(1)
007. report	re North Korea (5 pages)	10/20/1993	P1/b(1)
008a. memo	information, Steven Aoli to Anthony Lake re Principals Meeting (3 pages)	04/23/1993	P1/b(1)
008b. talking points	re North Korea (1 page)	04/23/1993	P1/b(1)
008c. paper	re North Korea (4 pages)	04/23/1993	P1/b(1)
008d. paper	re North Korea (9 pages)	04/23/1993	P1/b(1)
009. memo	Mary Hoinkes to Deputies Group re Implications (9 pages)	04/14/1993	P1/b(1)
010. memo	Barbara Starr to William Itoh re Legal Memorandum (1 page)	04/14/1993	P1/b(1)

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001a. paper	re Part I Summary of Objectives (3 pages)	05/00/1993	P1/b(1)

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OA/Box Number: 283

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001b. paper	re Part II Objectives and Procedures (4 pages)	05/00/1993	P1/b(1)

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Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

North Korea, November 1993 [3]

2009-0528-F
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001c. paper	re Part III Inducements and Strategy (5 pages)	05/00/1993	P1/b(1)

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National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

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001d. timeline	re US DPRK Dialogue (1 page)	05/00/1993	P1/b(1)

COLLECTION:

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National Security Council
Steven Aoki (Nonproliferation and Export Controls)
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001e. paper	re US DPRK Talks (2 pages)	05/00/1993	P1/b(1)

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Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001f. paper	re draft protocol summary (1 page)	05/00/1993	P1/b(1)

COLLECTION:

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National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

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001g. paper	re draft protocol text (2 pages)	05/00/1993	P1/b(1)

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~~SECRET~~
NSC/RMO PROFILE

RECORD ID: 9308489
RECEIVED: 29 OCT 93 15

*Copy to SA
original to me*

TO: LAKE

FROM: PONEMAN

DOC DATE: 29 OCT 93
SOURCE REF:

KEYWORDS: KOREA NORTH
NUCLEAR WEAPONS

NON PROLIFERATION
IAEA

PERSONS:

SUBJECT: NORTH KOREA - STATE OF PLAY

ACTION: LAKE APPROVED RECOM

DUE DATE: 02 NOV 93 STATUS: C

STAFF OFFICER: PONEMAN

LOGREF:

FILES: PA

NSCP:

CODES:

DOCUMENT DISTRIBUTION

FOR ACTION

FOR CONCURRENCE

FOR INFO
NSC CHRON
PONEMAN

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

By (U) NARA, Date 06/30/15
2009-0528-7

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSASK

CLOSED BY: NSJDA

DOC 1 OF 1

~~SECRET~~

~~SECRET~~

RECORD ID: 9308489

ACTION DATA SUMMARY REPORT

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 LAKE
001

Z 93103010 FOR DECISION
X 93110109 LAKE APPROVED RECOM

~~SECRET~~

National Security Council
The White House

rec'd 10-30
JUL 9 AM
10/30

PROOFED BY: WA LOG # 8489
URGENT NOT PROOFED: _____ SYSTEM PRS NSC INT
BYPASSED WW DESK: _____ DOCLOG WA A/O _____

	SEQUENCE TO	HAS SEEN	DISPOSITION
DepExecSec	<u>1</u>	<u>WA</u>	
ExecSec			
Staff Director			
D/APNSA	<u>2</u>	<u>WA</u>	
APNSA	<u>3</u>	Natl Sec Advisor has seen	
Situation Room			
West Wing Desk	<u>4</u>	<u>WA</u>	<u>WA</u>
NSC Secretariat	<u>5</u>		

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

cc: VP McLarty Other _____

Should be seen by: _____
(Date/Time)

COMMENTS:

cc: WA

BY OCT 30 8:50

Withdrawal/Redaction Marker

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002. memo	action, Daniel Poneman to Anthony Lake re North Korea (2 pages)	10/29/1993	P1/b(1)

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RR. Document will be reviewed upon request.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003c. paper	re complex (1 page)	11/05/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

North Korea, November 1993 [3]

2009-0528-F
kc1547

RESTRICTION CODES

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

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004a. fax	cover re complex (duplicate of 003a) (1 page)	11/05/1993	P1/b(1)

COLLECTION:

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National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004b. memo	re complex (duplicate of 003b) (1 page)	11/05/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004c. paper	re complex (duplicate of 003c) (1 page)	11/05/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

North Korea, November 1993 [3]

2009-0528-F
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~~SECRET~~

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

21266

November 10, 1993

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: DANIEL PONEMAN *DP*

FROM: STEVE AOKI *SA*

SUBJECT: Principals' Meeting on North Korea -- November 12, 1993 -- 4:00 p.m. - 5:00 p.m.

Tony:
Apparently same thing
pc not yet ripe. We
are not persuaded.
Da

Attached at Tab I is a proposed meeting notice for the Principals' meeting on North Korea. An agenda for the meeting is at Tab A.

Concurrence by: *SA* Sandra Kristoff

RECOMMENDATION

That you authorize William Itoh to sign the memorandum at Tab I and approve the Agenda at Tab A.

Approve _____ Disapprove _____

Attachments

Tab I Memorandum for Signature
Tab A Agenda

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

By *clw* NARA, Date *06/30/15*
2009-0528-F

~~SECRET~~

Declassify on: OADR

~~SECRET~~

~~SECRET~~

~~SECRET~~

21266

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

MEMORANDUM FOR

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

MR. MARC GROSSMAN
Executive Secretary
Department of State

COLONEL ROBERT P. MCALEER
Executive Secretary
Department of Defense

MR. JOHN A. LAUDER
Executive Secretary
Central Intelligence Agency

AMB. RICK INDERFURTH
Office of the Representative
of the U.S. to the UN
U.S. Department of State

COLONEL T. R. PATRICK
Secretary
Joint Chiefs of Staff

MS. BARBARA STARR
Executive Secretary
Arms Control and Disarmament
Agency

SUBJECT: Meeting of the Principals on North Korea (C)

A Principals' meeting will be held on Friday, November 12, 1993, from 4:00 p.m. to 5:00 p.m. in the White House Situation Room. Attendance will be limited to principal plus one. (C)

State will circulate a paper separately. An agenda is attached at Tab A. (C)

William H. Itoh
Executive Secretary

Attachment
Tab A Agenda

DECLASSIFIED E.O. 13526
White House Guidelines,
September 11, 2006
By 10 NARA, Date 06/30/15
2009-0528-F

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Declassify on: OADR

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NATIONAL SECURITY COUNCIL PRINCIPALS' COMMITTEE MEETING

DATE: November 12, 1993
LOCATION: SITUATION ROOM
TIME: 4:00 p.m. - 5:00 p.m.

NEXT STEPS ON NORTH KOREA

Agenda

- I. Introduction NSC
- II. Intelligence Update CIA
- III. Diplomatic Update State
- IV. Security Situation Defense
- V. Strategy and Options State
 - A. Moving to a comprehensive approach
 - B. Bringing pressure to bear on North Korea
 - C. Congressional/public diplomacy
- VI. Discussion All Participants
- VII. Conclusion NSC

DECLASSIFIED E.O. 13526

White House Guidelines,

September 11, 2006

By CU NARA, Date 01/30/15

2009/0528-F

UNCLASSIFIED

The following paragraph is the text of the U.S. negative security assurance. It has been publicly delivered on numerous occasions since its first issuance in 1978, including in the statement of ACDA Director Lehman to the Fourth Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons on August 21, 1990.

The United States will not use nuclear weapons against any non-nuclear weapon state party to the NPT or any comparable internationally binding commitment not to acquire nuclear explosive devices, except in the case of an attack on the United States, its territories or armed forces, or its allies, by such a state allied to a nuclear weapon state or associated with a nuclear weapon state in carrying out or sustaining the attack.

SEEAPGEN 7190 1/15/92
drafted: EAP/K: NSHastings
cleared: OES/NTS: ABurkart
S/NP: GSamore

UNCLASSIFIED

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Tony Sandy:
Just received,
not yet read.
Thought you shd
have before PC.
You may recall
Kanter was the
US interlocutor in
the last Administration's
high-level meeting
with DPRK.

Dan

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THE FOREIGN POLICY

ISSUE 13-14

PHOTOCOPY
PRESERVATION

THE PROGRAM

We do not know what the program is for
but from the fact that it is a
national program we can assume it is for

the present
grade
began

the North Koreans a peaceful way out. But it does reflect our firm view that a nuclear-armed North Korea would be an intolerable threat to the security of Asia and beyond. Firm action now by these and other concerned nations can avoid two worse choices: a nuclear-armed North Korea or drastic actions to prevent it.

Military Actions: We should look for steps that make clear our determination to deny North Korea a nuclear weapons capability. We also should look for measures that reassure Seoul we have no intention of provoking a North Korean military response, while at the same time making clear our unshakable commitment to the successful defense of South Korea, starting with Seoul. Finally, we should not treat decisions about near-term military steps--including Exercise Team Spirit--simply as bargaining chips to be played or traded in an effort to affect the tactical state of play.

We should implement promptly two military actions which are specifically designed to support the strategy outlined above. One would be a multilateral naval exercise off the coast of North Korea to signal to Pyongyang a capability and determination to enforce economic sanctions should they be imposed. To underscore that this is an *international* effort to stop the North Korean nuclear program, as many countries as possible should be encouraged to participate (particularly South Korea, Japan, Russia and China). A second would be a joint U.S.-ROK exercise to strengthen the defense of Seoul, emphasizing capabilities such as ground-based air defenses that Pyongyang should not regard as provocative.

Exercises such as these would be intended to signal the international community's willingness to move from talk to action while consideration of economic sanctions continues, as well as its resolve to respond to any North Korean military provocation. To make clear that they are not simply bargaining chips, neither exercise should be tied to or conditioned on near-term North Korean actions. Both instead should be conducted as soon as possible and without reference to the state of play on the nuclear issue. At the same time, we should make clear that the need for such exercises (including Exercise Team Spirit) and other military deployments in the future would depend on progress in strengthening security on the Korean peninsula and reducing threats to peace and security in Northeast Asia.

Economic Actions: Surrounded by the Asian economic miracle, North Korea is steadily descending into economic crisis. At least some elements of the leadership understand that the worsening domestic situation and the accelerating gap between North and South increasingly will threaten Pyongyang's political and economic survival. We should use the leverage provided by its desperate straits to help persuade Pyongyang to abandon its nuclear program.

Specifically, we should begin now to design a package of sanctions centered on cutting off North Korean imports of oil. Although oil makes up only about 10 percent of total North Korean energy consumption, it is critical to its military forces, to its coal mining industry (which in turn provides about 75 percent of North Korea's energy needs), and other key sectors of the economy. Oil imports already are down by about one-third to one-half from the mid-1980s. As the regime surely must understand, further significant reductions in oil imports would cripple, if not strangle, the already faltering North Korean economy, with unpredictable, but surely serious, political consequences.

If the prospect of an oil cutoff is to be truly credible, however, Chinese cooperation would be indispensable. Beijing accounts for about two-thirds of North Korea's current oil imports, most of which are delivered via pipeline. Should it so decide, Beijing could easily provide *all* of North Korea's current oil needs, even if a naval blockade cuts off tankers delivering oil from other suppliers.

We should urge China to join in an international effort steadily to reduce North Korea's oil imports. At a minimum, we should ask China not to replace oil imports from other suppliers that were cut off by a naval blockade or other actions. Put simply, with Beijing's support, manipulation of oil imports could prove to be an important source of leverage. Without that cooperation, economic measures virtually are certain to be ineffective and to leave more forceful actions as the only alternative.

A PROPITIOUS TIME TO ACT

The Chinese do not need to be convinced that a North Korean nuclear capability would be a serious threat to their interests. They do remain to be persuaded, however, that the North Korean nuclear problem requires urgent action rather than what the Chinese call "patient talk;" that we have in mind a strategy that can succeed with their active involvement but will fail without it--leaving only worse and starker alternatives; and that their cooperation will redound to their benefit rather than to their detriment. As the UN resolution suggests, this will be an uphill effort: China was one of only nine countries which abstained on the UN resolution. The seriously strained relations between the United States and China is an added complication.

At the same time, however, U.S.-PRC cooperation on this issue could add a strategic dimension--grounded in a serious dialogue about mutual security interests and concerns--that would benefit the U.S.-Chinese relationship more generally. Framing a discussion of the North Korean issue, this strategic dialogue--rather than the current agenda of bilateral issues and irritants--should be the centerpiece of the meeting between President Clinton and Chinese President Jiang Zemin scheduled for later this month in Seattle. The Seattle meeting should be preceded by a serious intelligence exchange in which the U.S. side

The Forum for International Policy
Issue Brief

November 1993
Number: 93-6

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undertakes to explain all the reasons why we are convinced that the North Korean nuclear problem not only is serious, but requires urgent action.

The objective in Seattle is not to ignore our bilateral differences with China but to find common ground on an issue of mutual importance that transcends the bilateral issues. If this goal can be achieved, it would hold the promise of reversing North Korea's march toward nuclear weapons, of putting a key bilateral relationship on a new, stronger footing, and of providing a more constructive framework for tackling bilateral problems.

The importance of dealing firmly with the North Korean issue is profound. The Cold War may be over but, as North Korea demonstrates, we continue to live in an age that poses real questions of nuclear war and peace. The United States must lead the international community's response to this crisis. For its approach to succeed, it must have the clear support of Congress and the American people. The President therefore needs to explain to the American people--promptly and persistently--what is at stake and what the United States must and will do.

Principal Authors

Arnold Kanter is a Senior Associate with the Forum for International Policy. During the Bush Administration, he was Under Secretary of State for Political Affairs and Senior Advisor for Defense Policy at the National Security Council.

Stephen Hadley is a Senior Associate with the Forum for International Policy. He has served as Assistant Secretary of Defense for International Security Policy and has also served on the National Security Council staff. He is currently a partner of the law firm Sneed and Gardner.

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The Forum for International Policy
Issue Brief

November 1993
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005a. memo	action, Steven Aoki to Anthony Lake re Principals Meeting (1 page)	11/09/1993	P1/b(1)

1

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

North Korea, November 1993 [3]

2009-0528-F
kc1547

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005b. form	scheduling request re principals meeting (1 page)	11/09/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006. paper	re North Korea (3 pages)	11/09/1993	P1/b(1)

COLLECTION:

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National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. report	re North Korea (5 pages)	10/20/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

North Korea, November 1993 [3]

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NSC/RMO PROFILE

RECORD ID: 9320370
RECEIVED: 16 APR 93 12

TO: LAKE

FROM: AOKI
PONEMAN

DOC DATE: 23 APR 93
SOURCE REF:

KEYWORDS: KOREA
PC

KOREA NORTH
AGENDA

PERSONS:

SUBJECT: LAKE BRIEFING MEMO - PC MTG ON 24 APR RE NORTH KOREA

ACTION: NOTED BY LAKE

DUE DATE: 20 APR 93 STATUS: C

STAFF OFFICER: AOKI

LOGREF:

FILES: IFM O

NSCP:

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

By W NARA, Date 06/30/15
2009-0528-F

COMMENTS:

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DOC 5 OF 5

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008a. memo	information, Steven Aoli to Anthony Lake re Principals Meeting (3 pages)	04/23/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

North Korea, November 1993 [3]

2009-0528-F
kc1547

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008b. talking points	re North Korea (1 page)	04/23/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

North Korea, November 1993 [3]

2009-0528-F
kc1547

RESTRICTION CODES

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

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PRINCIPALS' MEETING

NORTH KOREA
Saturday, April 24, 1993
White House Situation Room

AGENDA

- I. Introduction Anthony Lake
- II. Current Situation CIA
- III. Diplomatic Strategy State
- IV. Elements of Bilateral Approach to the North . . State
- V. Security Considerations Defense
- VI. Discussion All Participants
- VII. Conclusion Anthony Lake

DECLASSIFIED E.O. 13526
White House Guidelines,
September 11, 2006
By (W) NARA, Date 06/30/15
2009-0528-F

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008c. paper	re North Korea (4 pages)	04/23/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

North Korea, November 1993 [3]

2009-0528-F
kc1547

RESTRICTION CODES

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

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RR. Document will be reviewed upon request.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008d. paper	re North Korea (9 pages)	04/23/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

North Korea, November 1993 [3]

2009-0528-F
kc1547

RESTRICTION CODES

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
009. memo	Mary Hoinkes to Deputies Group re Implications (9 pages)	04/14/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

North Korea, November 1993 [3]

2009-0528-F
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
010. memo	Barbara Starr to William Itoh re Legal Memorandum (1 page)	04/14/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 283

FOLDER TITLE:

North Korea, November 1993 [3]

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BRIEFING MEMORANDUM

UNITED STATES ARMS CONTROL
AND DISARMAMENT AGENCY



MAR 29 P2:05

DIRECTOR

March 29, 1993

MEMORANDUM

TO: The Acting Director

FROM: GC - Mary Elizabeth Hoinkes, Acting *M. Hoinkes*

SUBJECT: Whether a Party's Right to Withdraw from the Treaty on Non-Proliferation of Nuclear Weapons is Within its Sole and Absolute Discretion

ISSUE: Can a case be made that a party's right to withdraw from the Treaty on Non-Proliferation of Nuclear Weapons (the "NPT") is not within its sole and absolute discretion?

INTRODUCTION: Some legal opinion holds that a party's right to withdraw from the NPT is absolute or virtually so--that only the withdrawing party may make the necessary decision required by Article X, 1. of the NPT and that once such a decision is made, all that remains is the procedural question of whether the notice of withdrawal was proper in form and correctly delivered. Nonetheless, a case can be made that there is at least an implicit right held by the UN Security Council and/or the parties to review the stated purposes for the withdrawal, and that any withdrawal--as with almost every action taken under a treaty--must meet a basic test of good faith in order to be effective.

APPLICABLE TREATY PROVISION:

ARTICLE X, PARAGRAPH 1.

Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

ANALYSIS: That the right to withdraw is not within the sole and absolute discretion of the withdrawing party is suggested by the very complexity of Article X, 1. Having placed conditions on the right to withdraw, the Treaty requires their fulfillment before withdrawal can occur. If ease of withdrawal (and minimal scrutiny by the other parties) was being sought, Article X, 1. would read roughly as follows: "if a party decides that extraordinary events related to the subject matter of the treaty have jeopardized its supreme interests, it shall, as an exercise of its national sovereignty, have the right to withdraw by giving three months prior notice to all other parties." This is in fact a paraphrase of the withdrawal provision of the Limited Test Ban Treaty (the "LTBT"), which was concluded some five years before the NPT.

The drafters of the NPT could have used the LTBT language, but did not. A fair conclusion would be that their intent was to require something more than that required by the LTBT. What was added, of course, is the requirement that the withdrawal notice specify the extraordinary events the withdrawing party "regards" as having jeopardized its supreme interests. Unless this was done for purely informational or cosmetic purposes, it seems fair to conclude that something more is implied for NPT withdrawal. Article 31 of the 1969 Vienna Convention on the Law of Treaties requires that a treaty "be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose" (emphasis added). Thus it seems safe to conclude that the enhanced notice provision of the NPT was put there for a reason, and that it ought not be glossed over as mere decoration.

The precise wording of Article X, 1. is critical, particularly the relationship of the word "decides" to the rest of the paragraph. The decision that is clearly a subjective one, within the sole prerogative of the withdrawing party, is not whether "extraordinary events" have occurred (i.e. whether a particular fact pattern constitutes "extraordinary events"). Instead, the decision to be made by the withdrawing party is whether extraordinary events have jeopardized its supreme interests. In other words, the withdrawing party may indeed have sole and absolute discretion as to whether its supreme interests are being jeopardized, but the withdrawing party does not, alone, make the decision that any given fact pattern constitutes "extraordinary events related to the subject matter of [the] Treaty." That this is so under the NPT seems much more likely because of the additional requirement in NPT that the withdrawing party identify the extraordinary events before the eyes of the world. Requiring such publicizing of the purported extraordinary events almost seems to beg review of some kind by the other parties--if no review was intended, there would seemingly be little if any need for the withdrawing party to give any explanation, except, perhaps, to satisfy the curiosity of future

academics.

Also of considerable significance is that the notice identifying the purported extraordinary events goes not only to the other parties but to the UN Security Council as well. If there were no intended purpose in informing this body, presumably the requirement would not have been added. In this case, a logical explanation of such purpose results from the relationship between the parties and the International Atomic Energy Agency (the "IAEA"), the IAEA, of course, being absolutely integral to the operation of the NPT. The IAEA has a close relationship with the United Nations. Assuming an allegation of misconduct by the IAEA proffered by a treaty party as "extraordinary events" justifying withdrawal, who better than the UN Security Council to bring the IAEA to task, if such is appropriate, and eliminate the "extraordinary events?"

Thus, there would seem to be a dual purpose behind the enhanced withdrawal provisions for the NPT: first, to enable review of whether particular facts do indeed constitute "extraordinary events related to the subject matter of [the] treaty," and second, to enable the UN Security Council, if indeed there are such events, to attempt to eliminate them and thereby remove any need for an aggrieved party to withdraw from the treaty. Viewed in this context, the additional NPT withdrawal language seems highly meaningful.

Another aspect of "extraordinary events" is based on the doctrine of pacta sunt servanda, set forth in Article 26 of the 1969 Vienna Convention on the Law of Treaties: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." This would seem to suggest that even if the withdrawing party were the sole determiner of whether a particular fact pattern constitutes "extraordinary events," such a determination, to have validity, must be made in good faith.

For example, what if a party attempted to withdraw from the NPT by citing the occurrence of a lunar eclipse, or a loss by its national soccer team, or even something entirely non-factual, as being "extraordinary events, related to the subject matter of the Treaty [that] have jeopardized [its] supreme interests"? To be sure, there is much subjectivity involved in all of the Article X, 1. process, but surely there must be some things--some distortions, trivialities, or outright frauds--that would not constitute "extraordinary events" determined on the basis of good faith. Acknowledgment of this leads compellingly to the conclusion that the other NPT parties have at least an implied right to review whether a cited fact pattern meets a minimal good faith test for designation as "extraordinary events." Such a review would presumably be absolutely minimal; the good faith test ought to be easy to meet; but there can and indeed must be at least some right on the part of the other parties to review if

not the question of whether "extraordinary events" jeopardize a state's supreme interests, then surely the question of whether a particular fact pattern is in fact "extraordinary events related to the subject matter of [the] Treaty."

North Korea's withdrawal notice to the UN Security Council, in pertinent part, reads as follows:

The United States together with south Korea has resumed the "Team Spirit" joint military exercises, a nuclear war rehearsal, threatening the DPRK, and instigated some officials of the IAEA Secretariat and certain member States to adopt an unjust "resolution" at the meeting of the IAEA Board of Governors on February 26, 1993 demanding us to open our military sites that have no relevance at all to the nuclear activities, in violation of the IAEA Statute, the Safeguards Agreement and the agreement the IAEA had reached with the DPRK.
(verbatim rendering of North Korean original)

Passing over the question of whether any of the foregoing jeopardizes the supreme interests of North Korea, are any of the foregoing "extraordinary events related to the subject matter of [the] Treaty?" Assuming, arguendo, that good faith is the only test by which the other parties could attempt to review the North Korea decision, even then there would seem to be serious deficiencies. As for the "Team Spirit" joint military exercises, is there any evidence whatsoever that they are "a nuclear war rehearsal threatening [North Korea]" or that they are related to the subject matter--nuclear non-proliferation--of the NPT? If not, good faith would seem to be lacking.

Similarly, an IAEA inspection request to North Korea is part of the very substance of the NPT, part of the bargain and covenant made by that state when it joined the regime. North Korea can hardly cite performance under the treaty as being in any way "extraordinary;" good faith is lacking. Absent good faith, there would seem to be serious doubt that the ("factual") events cited by North Korea are "extraordinary events" for purposes of Article XI, 1. If they are not such events, then North Korea's attempt to withdraw is invalid.

CONCLUSION: A case can be made that a party's right to withdraw from the NPT is not within its sole and absolute discretion. If such right were meant to be absolute, or virtually so, the NPT could have used the language of the LTBT. Instead, by requiring there to be a recital by the withdrawing party of "extraordinary events related to the subject matter of [the] Treaty," the NPT impliedly grants the other parties some right of review. Even if the decision as to whether "extraordinary events" jeopardize a party's supreme interests is within the sole discretion of that state, the language of Art. X, 1. is far less clear than the

withdrawing party has the sole and absolute say as to whether any given factual pattern is in fact "extraordinary events." The close relationship between the UN Security Council, a designated recipient of the withdrawal notice, and the IAEA further suggests intent by the drafters that there be at least some review by the other parties of part or all of the withdrawal decision. The good faith standard, generally regarded as a basic part of customary international law and practice, would not be an unreasonable basis for such review.

SUMMARY OF LEGAL ISSUES CONCERNING
THE DPRK'S WITHDRAWAL FROM THE NPT

- o On March 12, 1993 North Korea gave notice to the Security Council of its intent to withdraw from the NPT. The Treaty, however, makes this notice effective three months after both the Security Council and all the parties to the Treaty receive notice. Because it is not clear when (and perhaps that) all the parties have been separately notified, it is possible that the withdrawal notice will not become effective on June 12.
- o ACDA/GC believes an argument can be made that the DPRK has "acted in bad faith, and that withdrawal must meet a basic test of good faith in order to be legally effective."
- o L strongly counsel against making such an argument:
 - The U.S. has taken the view that a withdrawal clause of this kind is essentially self-judging and, even assuming there is a measure of second-guessing, the North Korean rationale is likely to be seen by most NPT parties as sufficient.
- o A departure from the self-judging approach would also have significant implications for U.S. interests:
 - virtually identical withdrawal clauses appear in our other arms control agreements, including START and the ABM Treaty (which reciprocally determine our own right to withdraw);
 - many agreements, including for example GATT, also have reservations or exceptions for "national security" which we consider to be self-judging and have on occasion invoked; and
 - the Senate might well question the consistency of such a position with Secretary Rogers' representations to the SFRC in hearings for the Senate's advice and consent to NPT ratification that withdrawal is "a unilateral decision" that is "not subject to contest."
- o L notes, however, the parties may still question or disagree with the justifications the DPRK has offered, and these arguments could form the political basis for sanctions at the Security Council.

- o NPT withdrawal will terminate the DPRK-IAEA fullscope safeguards agreement.
 - However, an argument might be advanced by the IAEA (although the IAEA may well resist doing so) that the DPRK remains required to comply with the special inspection request made by the IAEA while the agreement was in force.
 - The IAEA itself could also take further sanctions against the DPRK, such as suspending its membership or denying technical assistance, regardless of whether the NPT withdrawal is effective or the DPRK is still required to comply with the special inspection request.
 - The 1977 safeguards agreement for a Russian-supplied reactor and uranium will continue in force, although this agreement provides no special inspection rights.
- o UN Security Council mandatory sanctions are legally available based on a finding of a threat to international peace and security, and this finding could lawfully be made regardless of whether the DPRK's NPT withdrawal is effective or the DPRK is in breach of a legal obligation.
- o Options for additional unilateral U.S. sanctions, given the extensive current sanctions regime, are limited.
- o Also, a claim that the DPRK has breached the Armistice Agreement's ban on the introduction of new weapons would be difficult to maintain, since both sides have essentially treated this provision as inoperative and there would be a question whether indigenous development of a weapon would constitute "introduction into Korea" under the Armistice Agreement.

LEGAL ISSUES CONCERNING
THE DPRK'S WITHDRAWAL FROM THE NPT

Withdrawal

- o Article X of the NPT provides for withdrawal as follows:

Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

- o Because this provision requires North Korea to notify both the Security Council and all the parties to the NPT, there is some uncertainty concerning when withdrawal is effective.

- The DPRK notified the Security Council on March 12 of its intention to withdraw (citing, inter alia, "Team Spirit" and unwarranted IAEA requests for special inspections at the behest of "third parties" as the extraordinary events triggering its right to withdraw).
- We have been unable to determine whether all parties have received the required notice, which the NPT's negotiating history indicates must be in writing.
- Accordingly, it is possible that, contrary to widespread opinion, the three months-notice period will not end on June 12.
- The NPT does not appear to provide a mechanism for resolving this uncertainty.

- o ACDA/GC believes that an argument can be made that the DPRK has "acted in bad faith, and that withdrawal must meet a basic test of good faith in order to be legally effective."

- o L believes it is doubtful a persuasive legal argument can be made substantively challenging the DPRK's exercise of its right of withdrawal.

- By its terms, Article X allows a state to withdraw if "it decides," and the U.S. has taken the view that a withdrawal clause of this kind is essentially self-judging (although, in theory, one might contest the most transparent failure to cite even arguably "extraordinary events," such as references to fictional events or plainly irrelevant matters).

- o A departure from that approach in this case would have significant implications for U.S. interests:
 - virtually identical withdrawal clauses appear in our other arms control agreements, including START and the ABM Treaty (which reciprocally determine our own right to withdraw);
 - many agreements, including for example GATT, also have reservations or exceptions for "national security" which we consider to be self-judging and have on occasion invoked;
 - Russia and China would almost certainly challenge any assertion that a withdrawal decision could be legally questioned (although the U.K. may not); and
 - the Senate might well question the consistency of such a position with Secretary Rogers' representations to the SFRC in hearings for the Senate's advice and consent to NPT ratification that withdrawal is "a unilateral decision" that is "not subject to contest." (See attachment, excerpting the relevant testimony.)
- o Even if we advanced the view that NPT parties could, in some extreme cases, reject a party's assertion that an event is "extraordinary" or "related the subject matter" of the NPT, it would appear unpersuasive to make this claim in this case.
 - In particular, the IAEA's request for special inspections (and perhaps also Team Spirit) are likely to be seen by most NPT parties both as extraordinary and related to the subject matter of the NPT.
- o Nonetheless, as a political matter, the parties can question or disagree with the justifications the DPRK has offered.

Continuing IAEA Safeguards Rights

- o Once the DPRK's withdrawal becomes effective, it is no longer bound by the NPT not to manufacture a nuclear explosive device, and its NPT fullscope safeguards agreement verifying this undertaking terminates.
 - Termination of the agreement would eliminate the IAEA's right to make new requests for special inspections at undeclared DPRK nuclear facilities.

- o It is possible to argue, however, that North Korea is still obligated to fulfill the specific request made while the fullscope safeguards agreement remained in force for a special inspection.
 - However, it is unlikely the IAEA Secretariat would take the position that it retains a continuing right to secure the DPRK's compliance, and questionable whether support for this proposition could be secured at the IAEA Board of Governors.
 - Advancing such an argument could have reciprocal implications for U.S. duties after withdrawal from arms control treaties having inspection regimes.
- o On the other hand, once the NPT safeguards agreement terminates, the IAEA would assert that its earlier facility-specific safeguards agreement with the DPRK continues. (One was concluded in 1977 for a Russian-supplied reactor and related nuclear material.)
 - The IAEA's normal practice is, with the agreement of a new NPT party, to suspend the operation of any existing safeguards agreements while the NPT safeguards agreement is in force.
 - The 1977 agreement expressly bars use of the Russian reactor or material for military or nuclear explosive purposes.
 - However, the inspection rights under this agreement would not extend to undeclared nuclear facilities that were the subject of IAEA request for special inspection.

IAEA Sanctions

- o Pursuant to paragraph 18 of the DPRK-IAEA NPT safeguards agreement, on February 25, 1993, the IAEA Board of Governors determined that it was "essential and urgent" that the DPRK allow access to two sites requested by the IAEA pursuant to its special inspection authority under that safeguards agreement.
- o In the face of the DPRK's refusal to permit the special inspection, on April 1, 1993, the Board adopted a resolution reporting the DPRK's noncompliance to the Security Council and General Assembly of the U.N., as required by Article XII.C. of the IAEA Statute. (The resolution includes, pursuant to paragraph 19 of the agreement, a finding that the IAEA is unable to verify non-diversion of nuclear material.)

- The Board may also have had a sufficient basis to determine that past DPRK reprocessing campaigns outside of safeguards may have violated the DPRK's pre-NPT safeguards agreement, but no explicit finding on this point was made.
- The DPRK's failure to apply safeguards on all its nuclear facilities also violates article III(4) of the NPT, and the IAEA (and/or the Security Council) could make such a finding as well.
- o The Board could take additional measures under Article XII of the Statute, including: the curtailment or suspension of IAEA assistance to the DPRK; a call for the return of materials or equipment made available to the DPRK (if any); or the suspension of the DPRK's exercise of the privileges and rights of membership in the IAEA (the DPRK has not withdrawn from membership).
- Even after the DPRK's withdrawal becomes effective, the Board could take these steps with respect to North Korean actions while still an NPT party.
- o Although the fullscope safeguards agreement's arbitration clause is expressly inapplicable to disputes concerning paragraph 19 (including IAEA reports to the Security Council and IAEA sanctions), Article XVII of the Statute provides for reference to the ICJ of disputes concerning interpretation or application of the Statute. (The U.S. is a party to the Statute without reservation.)

UN Security Council Options

- o Although the NPT does not suggest an effective remedy for these violations, there does not appear to be any barrier to the parties seeking any relief available under international law, including action by the Security Council.
- The UN Charter sets out the options for Council action, which generally range from recommendations to binding decisions relating to economic or diplomatic sanctions through the use of military force. In addition, the Charter provides for suspension or even expulsion of member states from the UN.
- The Security Council could impose mandatory sanctions on the DPRK under Chapter VII (Article 41) of the UN Charter if it determined that there was a threat to international peace and security. Such a determination might be based upon a cumulative evaluation of DPRK actions indicating that the DPRK is engaging in activities that threaten the peace.

- The Council could consider a range of sanctions. A possible strategy could link sanctions to the issues faced by connecting them to North Korea's nuclear program, or it could impose more comprehensive embargoes, or reduce or cut-off air and sea transport and diplomatic relations. (A decision requiring North Korea to comply with the IAEA special inspection request would also be possible.)
- As an alternative to binding sanctions, the Council could also consider imposing voluntary or non-binding sanctions.
- The Security Council's power to determination under Chapter VII that North Korea's action constitutes a threat to international peace and security is not limited by whether the DPRK's notice of withdrawal has become effective, nor whether the DPRK is in continuing breach of any legal obligation.
- The Security Council's practice in this area is discussed further in the attached memorandum.

U.S. Sanctions

- o Comprehensive sanctions already exist on virtually all U.S. trade and investment with North Korea, and there are very few areas in which these sanctions can be tightened. There is a general embargo on trade, financial and property transactions.
 - Some licenses are currently granted on a case-by-case basis for humanitarian goods, and some very minor exceptions from the embargo also exist for items such as baggage of persons travelling to North Korea.
- o There are also in effect missile proliferation sanctions, shipping restrictions and sanctions flowing from North Korea's designation as a "terrorist country."
- o Comprehensive restrictions are also in place if bilateral or multilateral assistance for North Korea were contemplated.

Armistice

- o The U.S. should not seek to assert that North Korean actions are evidence of an attempt to violate the 1953 Korean Armistice Agreement.

- o Paragraph 13.d of the Armistice calls on both armies not to introduce into Korea "reinforcing combat aircraft, armored vehicles, weapons, and ammunition," unless they are replacing worn out or destroyed equipment "on the basis of piece-by-piece of the same effectiveness and the same type," but this provision has become inoperative through practice by both armies.
 - The Neutral Nations Supervisory Commission, which is charged under paragraph 13.d with monitoring the movement of such materiel, is also no longer permitted effectively to carry out this task.
 - Moreover, there may be a question whether development of a domestic weapon would be considered "introduction into Korea" under paragraph 13.d.

Attachments

1. Excerpts from NPT ratification SFRC hearings
2. UN Security Council Options Paper

EXCERPTS FROM SFRC NPT HEARING

In Senate hearings on the NPT, the withdrawal provision was discussed as follows:

Senator JAVITS: Now, the technical provision which is article X, I am very interested in because I think that is the real safeguard in this treaty in terms of the national security of the United States - the right to pull out on rather short notice. That says each party shall, exercising its national sovereignty, have the right to withdraw from the treaty if it decides that extraordinary events related to the subject matter of this treaty have jeopardized the supreme interests of its country. That is a completely unilateral decision, is it not?

Secretary ROGERS: That is right.

Senator JAVITS: And not subject to contest?

Secretary ROGERS: That is right.

Hearings on the Treaty on the Nonproliferation of Nuclear Weapons (Part 2), Committee on Foreign Relations, U.S. Senate, at 367 (Feb. 18 and 20, 1969). After further discussion, Secretary Rogers insisted that a decision to withdraw would not be taken lightly and that the terms of the withdrawal provision would have to be met:

Senator JAVITS: And we would endeavor to hold the Soviet Union to the same standard?

Secretary ROGERS: Well, we would --

Senator JAVITS: And it should really be honestly something that they could claim, with at least some color of plausibility, represented a jeopardy to the supreme interests of their country?

Secretary ROGERS: Yes. . . .

Thus, the U.S. view has been that a state's reasons for withdrawal from the NPT can be questioned, if at all, on only the most limited grounds.

UN SECURITY COUNCIL OPTIONS FOR ADDRESSING NORTH KOREA

SUMMARY

The Security Council has authority to act in response to North Korea's actions if it determines that such actions create a threat to or breach of international peace and security. The UN Charter sets out the options for Council action, which generally range from recommendations to binding decisions relating to economic or diplomatic sanctions through the use of military force. In addition, the Charter provides for suspension or even expulsion of member states from the UN.

BACKGROUND

On March 12, 1993, North Korea provided a statement to the Security Council of its intent to withdraw from the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Article X of the NPT provides that notice of such withdrawal be made to all other Parties to the Treaty and to the Security Council three months in advance. North Korea provided notice of its withdrawal to the United States on April 1, 1993 and we understand that notice also has been given to the U.K. and France. We do not know to what extent North Korea has provided notification to other states party to the NPT.

Article III(1) of the NPT requires non-nuclear weapon states to undertake safeguards in agreement with the IAEA. The NPT safeguards agreement (paragraph 25) between the DPRK and the IAEA provides that it remains in force as long as the DPRK is party to the NPT. Paragraph 19 of the IAEA-DPRK safeguards agreement states that, if the IAEA Board of Governors finds that the Agency is not able to verify that there has been no diversion of nuclear material required to be safeguarded under this Agreement to nuclear weapons or other nuclear explosive devices, the Board may make a report as provided for in article XII.C. of the IAEA Statute. Article XII.C., in turn, provides that the Board of Governors report any noncompliance with a safeguards agreement to the UN Security Council and General Assembly.

On February 25, 1993, the IAEA Board of Governors determined that the DPRK allow access to two sites requested by the IAEA pursuant to its special inspection authority. The DPRK refused to give IAEA inspectors access to these sites. Accordingly, on April 1, 1993, the Board adopted a resolution reporting the DPRK's noncompliance to the UN Security Council and General Assembly, as required by Article XII.C. of the IAEA Statute.

The Security Council adopted a Presidential Statement on April 8, 1993 indicating its concern at the situation and welcoming efforts aimed at resolving the situation, in particular, continued consultations between the IAEA and the DPRK. Following is a discussion of the range of possible Security Council options in response to the recent actions of the DPRK and the IAEA.

ANALYSIS

While the Security Council could take action before North Korea's withdrawal from the NPT becomes effective, it need not do so. Assuming that the Council is proceeding as authorized under the UN Charter, we do not consider the DPRK's notification of withdrawal from the NPT to be a violation of the Treaty or per se a threat to international peace and security. Rather, we would look to its non-compliance with its obligations under the safeguards agreement with the IAEA (which noncompliance remains a fact even after withdrawal from the treaty), in combination with several other factors present in the overall situation, to provide the basis for Security Council action.

I. Settlement by peaceful means.

First and foremost, the Security Council, where possible, seeks solutions to disputes by peaceful means, for example, through negotiations or mediation. The Security Council may investigate the situation and make recommendations. Recommendations could address any matter.

II. Sanctions.

If the Council determines that a threat to or breach of the peace exists, it may under Chapter VII recommend or require member states to impose sanctions. Recommendations are not binding on states. Article 39 of the UN Charter provides that:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 41 of the UN Charter provides that:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions and it may call upon Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

1. Mandatory Sanctions

The Security Council could impose mandatory sanctions on the DPRK under Chapter VII (Article 41) of the UN Charter if it determined that there was a threat to international peace and security. Such a determination might be based upon a cumulative evaluation of DPRK actions that indicate that the DPRK is engaging in activities that threaten the peace, including: violations of the NPT; noncompliance with its NPT safeguards agreement with the IAEA; continuation of a suspected clandestine nuclear weapons program, particularly in view of the NPT and safeguards violations; and the overall situation in the region, taking into account the history of hostilities between the North and the South and the current legal state of war between the two.

The Security Council has imposed mandatory sanctions in connection with the situations in Rhodesia, South Africa, Liberia, Mozambique, Iraq, Libya, Somalia, and the former Republic of Yugoslavia. While the finding of a threat to international peace and security has varied in connection with the circumstances of each of these situations, in both the South Africa and Iraq situations the Council has addressed nuclear weapons concerns, although in each instance within a much broader context.

In 1977, the Security Council, acting under Chapter VII, specifically determined that South Africa's actions, including its military build-up and persistent acts of aggression against neighboring states constituted a threat to international peace and security. It imposed an embargo on arms and related materiel and in the process, specifically prohibited states from any cooperation with South Africa in the manufacture and development of nuclear weapons after noting its grave concern that South Africa was at the threshold of producing nuclear weapons (Resolution 418, November 4, 1977).

In 1991, the Security Council, again acting under Chapter VII, condemned Iraq's non-compliance with its obligations under Resolution 687 (the cease-fire resolution) relating to the destruction of Iraq's weapons of mass destruction. The Council also condemned Iraq's non-compliance with its safeguards agreement with the IAEA as a violation of its obligations under the NPT. It demanded that Iraq, among other requirements, provide full disclosure of its weapons programs, allow for inspections by the IAEA and the Special Commission, and halt all nuclear activities, including those relating to the peaceful uses of nuclear energy, until the Council determined that it was in full compliance with that resolution, the cease-fire resolution and its safeguards agreement with the IAEA (Resolution 707, August 15, 1991).

Were the Security Council to determine that North Korea's actions constitute a threat to international peace and security, it could consider a range of sanctions. A possible strategy could link sanctions to the issues faced by connecting them to North Korea's nuclear program. For example, sanctions could be formulated to prohibit the supply of any materials or assistance having potential application to nuclear weapons as was done in regard to South Africa or it could bar all cooperation on nuclear matters as was done in regard to Iraq. The Council could also impose a more comprehensive embargo, for example, against the import or export of arms or related materials, or target key imports or exports; or bar all imports or exports (with the possible exception of food, medicine and humanitarian goods).

The Council could also take measures cutting off or limiting air and sea transport, as well as reducing or cutting off diplomatic relations. For example, in the Libya situation, the Council, in addition to imposing an arms embargo, barred air travel to and from Libya, banned the export of all aircraft and aircraft components to Libya, barred all services, new insurance contracts, and payment of claims on existing contracts for Libyan aircraft, and limited diplomatic relations in response to Libya's refusal to comply with Council demands with respect to the bringing to justice those responsible for the 1988 and 1989 bombings of U.S. and French airliners.

2. Voluntary Sanctions

As an alternative to mandatory sanctions, the Security Council could also consider voluntary or non-binding sanctions. Again, the Council could consider a range of complete or partial sanctions as noted above. As would be expected in the case of imposing voluntary sanctions, they would be effective only if key states were prepared to carry them out.

III. Use of Force.

If the Council deems appropriate, it may authorize the use of the force necessary to restore international peace and security (e.g., Iraq/Kuwait) or determine that UN itself will use such measures (e.g., Somalia).

IV. Suspension/Expulsion.

The UN Charter provides that the Security Council may recommend that a member state against which preventive or enforcement action has been taken be suspended from the exercise of the rights and privileges of membership by the General Assembly (art. 5), or it may recommend to the General Assembly that a member state be expelled from the UN for persistently violating UN Charter principles (art. 6). Alternatively, the Security Council acting with the General Assembly, might simply suspend North Korea's right to participate in the work of the General Assembly, as was recently done in regard to the Federal Republic of Yugoslavia.

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