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A Legal Interpretation of North Korea's Nuclear Program

Justin Farber

The devastating display of nuclear weapons' destructive ability in World War II by the United States led other capable countries to follow suit in developing comparable nuclear technologies. The arms race and Cold War between the Union of Soviet Socialist Republics and the United States that ensued were by no means unexpected given the tense geopolitical setting of the time. This, among other factors outside the scope of this paper, led to the creation of the International Atomic Energy Agency (IAEA) as well as a landmark international agreement entitled the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Over time, additional states signed onto these agreements; by December of 1985, the Democratic People's Republic of Korea (DPRK, North Korea) had signed onto both.<sup>1</sup> Unfortunately, and contrary to global efforts to foster and maintain a world that exclusively uses nuclear energy for peaceful purposes, North Korea has frequently failed to follow the terms of these agreements. After a decade long series of negotiations and attempted diplomatic settlements, North Korea officially withdrew from the NPT in April of 2003.<sup>2</sup> This unprecedented maneuver took place in a very murky pond of international law.

The intent of this paper is to clear the water by analyzing these matters in a legal framework and determine the legality of North Korea's actions regarding two specific treaties: the IAEA Statute and the NPT. In the first section, this paper will examine and explore the requirements and restrictions the NPT and the IAEA have on their member states and assess North Korea's status regarding these agreements. After addressing this, the second section of this paper will analyze North Korea's withdrawal from the Nuclear Non-Proliferation Treaty and determine the legality of this maneuver. Finally, the third section will attempt to determine if the legality of North Korea's actions has shaped its behavior by reviewing the enforcement

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<sup>1</sup> Masahiko Asada, "Arms Control Law in Crisis? A Study of the North Korean Nuclear Issue," *Journal of Conflict and Security Law* 9, no. 3 (2004): 332.

<sup>2</sup> Asada, "Arms Control," 342.

mechanisms set up by these agreements and the effectiveness of the enforcement mechanisms used.

### **1. NPT and IAEA Requirements and Restrictions and North Korea's Status**

As the saying goes, with great power comes great responsibility. Nuclear technology may be the most immense power, both in terms of warfare and energy, so it follows that states that possess nuclear technology must invest great attention to this responsibility. Nuclear technology, if handled poorly or with malicious intent, can devastate large populations and environments. This has been repeatedly demonstrated in nuclear testing sites, nuclear power plant meltdowns and in the two bombs used against Japan in 1945. It then follows that in order to both protect their own country's security and maintain global security, state leaders should know which states, or non-states for that matter, have nuclear technology and what it is being used for.

This concept of nuclear security and transparency was ultimately embodied in two key entities: the Nuclear Non-Proliferation Treaty and the International Atomic Energy Agency. The NPT underwent a signing ceremony in 1968. By 1970, a sufficient number of parties had voted to activate the treaty. Currently, the NPT has 189 states parties. The IAEA is an even older institution created in 1957 following the suggestion of U.S. President Dwight D. Eisenhower in 1953.<sup>3</sup> This agency was designed to facilitate the peaceful and productive use of nuclear technology to provide nations, both first-world and developing, with access to safe nuclear energy and prohibit the use of nuclear technology for military purposes. The IAEA has standards for safety and conducts typical inspections of member states' nuclear facilities to ensure that they are up to code and are being used solely for the purpose of energy production.

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<sup>3</sup> David Fischer, "History of the International Atomic Energy Agency: The First Forty Years," *International Atomic Energy Agency*, (1997): 1.

Additionally, this agency, though independent of the United Nations, reports to the UN General Assembly and UN Secretariat for matters of security and appropriate scientific recommendations.

While the acts of becoming a party to the NPT and IAEA Statute may be interpreted as partial sacrifices of sovereignty for states, the benefits of enhanced global security and technology seem to make up for these losses. For rational leaders, these are rational agreements with tangible benefits. Then again, the weapon-state/non-weapon state status of NPT signatories (which will be discussed below) changes the cost/benefit analysis for different states. Still, with few exceptions, states party to these agreements generally have not experienced problems fulfilling their obligations. North Korea, unfortunately, is one of the exceptions.

### **1.1 Requirements and Restrictions**

Policy makers worldwide have been concerned with the capability and objectives of North Korea's nuclear program since North Korea displayed interest in developing such a program in 1965. In fact, it was the international community's concern over North Korea's nuclear ambition that resulted in North Korea initially signing onto the NPT. Even though North Korea had willingly and independently become a member of the IAEA in 1974, other states wanted it under the NPT regime and acted accordingly.<sup>4</sup> The Soviet Union lured North Korea into the treaty by structuring a deal in which they would provide North Korea with a light-water nuclear reactor under the condition that the state acceded to the treaty.<sup>5</sup> Since North Korea became a party to these agreements, the international community, particularly the western-state-subset of the international community, has been concerned over the state's

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<sup>4</sup> Asada, "Arms Control," 332.

<sup>5</sup> Asada, "Arms Control," 332.

nuclear program's legality as well. To accurately assess these notable concerns, we must first achieve an understanding of what the IAEA and NPT agreements require from their member states and then conclude whether or not North Korea has abided by the terms of the agreements. To do this, tests of legality will first be formed in this sub-section (1.1) and later, violations of these tests by North Korea, if any, will be highlighted and analyzed in the following sub-section (1.2).

We will first assess the requirements of members of the IAEA, as defined in the Statute of the IAEA. The text of the statute not only outlined member states' and the agency's responsibilities, but it also gave birth to the agency itself. Article 12 of this lengthy text is of significance to the purpose of this paper in that it outlines the agreed upon safeguards. Section A of the article begins, "With respect to any Agency project, or other arrangement where the Agency is requested by the parties concerned to apply safeguards, the Agency shall have the following rights and responsibilities."<sup>6</sup> The "or other arrangement" clause is significant in that it grants the agency powers over any nuclear project a signatory requests. Seven parts listing said rights and responsibilities follow this statement. In Part 1 the agency is granted power "to examine the design of specialized equipment and facilities."<sup>7</sup> Part 6 grants the agency the power "to send into the territory of the recipient State or States inspectors...who shall have access at all times to all places and data and to any person...to determine whether there is compliance with the undertaking against use in furtherance of any military purpose."<sup>8</sup> Parts 2-5 list various other agency responsibilities such as overseeing nuclear facilities and materials, maintenance records and chemical waste management. It is clear that the agency has the right to send in personnel to fully inspect nuclear facilities in all member states if another member

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<sup>6</sup> International Atomic Energy Agency, *Statute of the IAEA*, IAEA, Vienna, 1990.

<sup>7</sup> Ibid.

<sup>8</sup> International Atomic Energy Agency, *Statute of the IAEA*, IAEA, Vienna, 1990.

state requests. Even if personnel are refused entry, it is without doubt that the agency has the right to oversee the specifics of any member-state-owned nuclear facility granted a request by a member state. Therefore, the first test of legality is: if North Korea, as a signatory of the IAEA Statute, ever refused inspectors entry into any area of any nuclear facility, it was acting in violation of international law.

Moving on to the NPT, this treaty text divides the signing parties into two independent groups with corresponding responsibilities and mandates: nuclear weapon states and non-nuclear weapon states. Despite India, Pakistan and Israel having known nuclear abilities, only five states (United States, Russia, China, United Kingdom and France) are and ever have been nuclear weapon states parties. The remaining 184 parties, including North Korea, are defined as non-nuclear-weapon states. The treaty consists of eleven articles, three of which are of pertinent importance when questioning North Korea's legal status. The first is Article 2, which reads, "Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer...of nuclear weapons...not to manufacture or otherwise acquire nuclear weapons... and not to seek or receive any assistance in the manufacture of nuclear weapons."<sup>9</sup> Simply put, under this article North Korea agreed not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices. Therefore, the second test of legality is simple: if North Korea, as a signatory of the NPT, ever pursued the acquirement of nuclear weapons in any way, it would violate international law.

Next, we go to Article 3, Section I, of the treaty, which reads, "Each non-nuclear-weapon State Party to the treaty undertakes to accept safeguards, as set forth in an agreement...in accordance with the Statute of the IAEA and the Agency's safeguards system...for the exclusive purpose of verification of the fulfillment of its obligations assumed

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<sup>9</sup> United Nations, *Treaty Series*, vol. 729-12, p. 171.

under this Treaty.”<sup>10</sup> Simply put, this section of the treaty states that members must create an agreement with the IAEA and abide by IAEA safeguards. For IAEA member states, this was somewhat repetitive but nonetheless emphasized the importance of these safeguards and may serve to provide additional means of enforcement if they are violated. The agreement created between the DPRK and the IAEA in connection with the NPT fulfilled the previously discussed IAEA guidelines and provided specific details to the agreement. Now then, the third test of legality comes to light: if North Korea, as a signatory of the NPT, ever violated IAEA safeguards as defined by its agreement with the IAEA, it would have been acting in violation of international law under the NPT (and the IAEA as well for that matter). Finally, Article 10, which defines how a party can withdraw from the treaty, is also relevant but will be discussed independently in Section II of this paper.

## **1.2 North Korea's Status**

To recall, the first test of legality questioned whether or not North Korea ever denied access to personnel sent by the IAEA to fully inspect its nuclear facilities. Here, we can see that North Korea did turn away inspectors and undoubtedly did violate international law. This took place following the discovery of inconsistencies between the information reported by North Korea to the IAEA and the information observed during ad hoc inspections by IAEA personnel.<sup>11</sup> Several attempts at settling the discrepancies through various forms of communication failed to resolve the issue.<sup>12</sup> IAEA inspectors also wanted access to additional sites near North Korea's declared nuclear facilities but North Korea, claiming that they were non-nuclear military sites, refused to allow further inspection.<sup>13</sup> This was legitimate since,

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<sup>10</sup> United Nations, *Treaty Series*, vol. 729-12, 172.

<sup>11</sup> Asada, “Arms Control,” 334.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*



during ad hoc inspections, granting inspectors access to non-nuclear sites is not required. In response, IAEA Director General Hans Blix requested a special inspection of the disputed facilities under Article 73 of North Korea's Safeguards Agreement with the IAEA, which grants IAEA the right to inspect undeclared locations.<sup>14</sup> North Korea denied this request even though it was obligated to allow it. The IAEA Board of Governors then issued a resolution on February 9<sup>th</sup> 1993, which called upon North Korea to allow the inspection; the DPRK responded negatively.<sup>15</sup> This information also determines whether North Korea passes the third test of legality set forth. By denying IAEA inspectors' entry into the country's nuclear facilities in 1993 under the terms of the country's Safeguards Agreement with the IAEA, North Korea undoubtedly violated this provision of the NPT. By refusing to allow inspectors into the facilities in question, North Korea violated international treaty law under both the IAEA Statute and North Korea's Safeguards Agreement with the IAEA, which is considered part of the NPT.

Next, in order to judge whether or not North Korea is guilty of violating the second test of legality, it must be determined whether or not it pursued the acquisition of nuclear weapons. This issue proves easy to settle as well even though North Korea initially attempted to defend itself on the matter. In October of 2002, U.S. Assistant Secretary of State James Kelly questioned North Korean officials regarding evidence that indicated that North Korea possessed a facility for further uranium enrichment that would allow for the development of nuclear weapons; the officials reportedly responded confirming the facility's existence.<sup>16</sup> North Korean Deputy Foreign Minister Kang Sok Joo admitted that the DPRK had been pursuing the

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid, 334-335.

<sup>16</sup> US State Department, "Press Statement by Richard Boucher, Spokesman: North Korean Nuclear Program," 16 October 2002.

development of nuclear weapons through the process of further uranium enrichment.<sup>17</sup> In response to these reported allegations, the DPRK issued a press release stating that the claims lacked evidence, that the statement by Kang Sok Joo had not been made, and claiming that the United States had fabricated the conversation.<sup>18</sup> The international community largely ignored these defensive claims and found the evidence against North Korea to be sufficient. In January of 2003, within a year of these allegations being made, North Korea announced its withdrawal from the NPT.<sup>19</sup> As for settling the question of whether or not the DPRK had pursued the acquisition of nuclear weapons while a party to the NPT, the answer became even more clear in October of 2006 when North Korea demonstrated its nuclear weapon program's ability with its first nuclear test explosion.<sup>20</sup> The test explosion indicated that an enrichment program must have been in place for some time. Additionally, unnamed US, DPRK and Pakistani officials have stated that North Korea was part of a nuclear-materiel-for-missiles deal with Pakistan in pursuit of nuclear weapons technology that began as early as 1993.<sup>21</sup> This information indicates another violation of the NPT and helps to explain the ability of the DPRK's nuclear program. North Korea undoubtedly and undeniably fails the second test of legality set forth since it clearly pursued the acquisition of nuclear weapon technology while it was a party to the NPT.

## 2. North Korea's Withdrawal

As previously mentioned, in 2003 North Korea became the first and only member state to withdraw from the NPT. This unprecedented move quickly became the focus of the

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<sup>17</sup> Asada, "Arms Control," 331.

<sup>18</sup> Ibid, 340.

<sup>19</sup> Ibid, 341.

<sup>20</sup> Dingli Shen, "Can Sanctions Stop Proliferation?," *The Washington Quarterly* 31, no. 3 (2008): 94.

<sup>21</sup> Chaim Braun and Christopher Chyba, "Proliferation Rings New Challenges to the Nuclear Nonproliferation Regime," *International Security* 29, no. 2 (2004): 12.

international community in forums such as the United Nations. The reason for this is that the legality of this withdrawal was extremely questionable. Such legality depends on what circumstances would allow North Korea to legally withdraw from its signed-on obligations. Then, an assessment as to whether or not these circumstances existed at the time of withdrawal is appropriate.

Article 10 Section 1 of the NPT defines the conditions under which a state can withdraw from the agreement. “Each Party shall...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...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.”<sup>22</sup> Section 1 of the article is straightforward, short and to the point. While these features are often good characteristics of contractual agreements, they can also be problematic. Short agreements typically fail to define what occurs in unique circumstances. When an instance takes place that is not addressed by the agreement, the ambiguity of the text is revealed and differing opinions on the matter emerge.

This very problem seems to be part of the case with North Korea’s withdrawal from the treaty. North Korea claims to have withdrawn legally under Article 10 of the treaty. However, issues of interpreting the treaty text and the time intervals set up by the treaty for withdrawal will play a role in determining the legality of said maneuver. Additionally, North Korea’s Agreed Framework with the United States also plays a role since it is crucial to understanding the context of the whole ordeal. Exploring the series of events as they occurred is necessary in order to comprehend the legality of North Korea’s actions.

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<sup>22</sup> United Nations, *Treaty Series*, vol. 729-12, p. 175.

Following the IAEA's request for special inspections of facilities that were declared to be non-nuclear military buildings and North Korea's refusal to allow them, North Korea initially announced its withdrawal from the treaty on March 12, 1993.<sup>23</sup> In accordance with Article 10, Section 1, the state included "a statement of the extraordinary events it regards as having jeopardized its supreme interests" in its submission to the United Nations Security Council.<sup>24</sup> The extraordinary events the statement cited included the continuation of special joint military exercises in 1993, passage of the resolution the IAEA that attempted to force North Korea's compliance with special inspections, and finally that IAEA officials were not impartial to the matter and were against the fulfillment of North Korea's supreme interests.<sup>25</sup> The DPRK complained that IAEA officials were relentlessly attempting to gain access to its facilities but ignored the DPRK's request to further inspect US nuclear bases.<sup>26</sup> From the perspective of other NPT member states, these complaints are arguably not extraordinary events that jeopardized North Korea's supreme interests. However, the treaty states that the *withdrawing country* must view the events to be extraordinary and jeopardizing. In this light, the event of hail could be sufficient reason for withdrawal if a country considers hail to be an extraordinary event that has jeopardized its supreme interests. Not all states may agree that the events in North Korea's statement are jeopardizing North Korea's interests. However, their opinions do not matter in terms of the treaty text. Therefore, North Korea's initial 1993 withdrawal announcement was legally sound.

North Korea's initial withdrawal announcement would have taken effect three months after the statement was issued on June 12<sup>th</sup> of 1993. During this three-month period, several

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<sup>23</sup> Asada, "Arms Control," 335.

<sup>24</sup> United Nations, *Treaty Series*, vol. 729-12, p. 175.

<sup>25</sup> Asada, "Arms Control," 335.

<sup>26</sup> *Ibid.*

states and bodies exerted great effort in negotiating with the DPRK regime in order to retain North Korea as a party to the treaty and prevent it from being legally able to pursue a nuclear weapons program. Nearly all of these efforts proved to be unproductive. The United States made the final attempt to convince North Korea not to withdraw and succeeded.<sup>27</sup> This success came with little time to spare; it was not until June 11<sup>th</sup> of 1993, the day before the withdrawal would have gone into effect, that the United States and North Korea issued a Joint Statement preventing the state from withdrawing.<sup>28</sup> This document declared that North Korea “has decided unilaterally to suspend as long as it considers necessary the effectuation of its withdrawal.”<sup>29</sup> The wording of this suspension is important and comes into play later on. Instead of terminating its notice of withdrawal, North Korea suspended it. This would indicate the notice could be reinstated. Yet, examination of the treaty text provides no definition of a suspended notice of withdrawal. It does not state that suspensions of withdrawals are allowed or explain how long one can remain valid.

Therefore, interpretations of the ambiguous treaty text are the only way of sorting this matter out. The obvious and most logical interpretation would be to simply not allow the suspension of withdrawal statements, only revocation. This interpretation, however, became illegitimate when the international community allowed North Korea’s suspension of its withdrawal. After North Korea announced its intent to withdraw, the international community had three months to convince North Korea not to. On the day before North Korea’s withdrawal would take effect, United States policymakers reached agreement with North Korean

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<sup>27</sup> Asada, “Arms Control,” 335.

<sup>28</sup> *Ibid.*

<sup>29</sup> Joint Statement of the Democratic People’s Republic of Korea and the United States of America’, New York, 11 June 1993.

policymakers to suspend its withdrawal notice. This suspension was allowed since it stood as the only preferential alternative to the effectuation of the withdrawal notice.

North Korea's interpretation of its suspension was significantly more colorful. It believed that it could suspend its withdrawal at any point, wait one additional day (the remainder of the three-month notification of withdrawal period), and officially no longer be party to the treaty. This interpretation is problematic since it allows any country to issue a statement of withdrawal, wait one day short of three months, suspend it, and then reinstate it whenever best suits their interest with practically no intermittent period. This possibility undermines the purpose and intent of Article 10 Section 1. With practically no required intermittent period following the reinstatement of a country's notice of withdrawal, there is no time for negotiation with the country over its decision and no time for other countries to reevaluate their geopolitical position in a world in which a given state is no longer party to the treaty and no requirement for a country to provide an updated statement describing the events leading to its withdrawal.

North Korean officials also believed that the suspension of their withdrawal gave their country a special status under the NPT.<sup>30</sup> This special status, they contended, allowed them to refuse to allow inspections under the Safeguards Agreement and choose which facilities could be inspected.<sup>31</sup> This makes little to no sense since the Safeguards Agreement is an independently signed treaty between the DPRK and the IAEA that was created under the requirement of the NPT, not part of the NPT text itself. Articles 11, 12 and 13 of the agreement list the circumstances under which the agreed upon safeguards are terminated. They include the complete consumption or dilution of nuclear-material within the country, complete transfer of

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<sup>30</sup> Asada, "Arms Control," 336.

<sup>31</sup> Ibid.

nuclear-material out of the country, or under agreed-upon circumstances in which the state's nuclear-material is used for non-nuclear activities.<sup>32</sup> The articles do not allow for the termination of safeguards given the suspension of a withdrawal from the NPT, actual withdrawal from the NPT or even mention anything close to a withdrawal in nature. North Korean officials did not seem to rely on the text of the state's signed agreements when construing their meaning, but instead they seem to have only taken the state's best interests into account. North Korea's interpretation of the treaty text unquestionably conflicts with the spirit and intent of the NPT. The DPRK regime interpreted the texts in ways that prohibited the achievement of the treaty's intent in order to maintain sovereignty and secrecy over their nuclear program. Therefore, a more a strict interpretation of the treaty must be used when judging legality.

The next substantial development was the creation of the Agreed Framework developed and signed by the United States and North Korea. This paper served as a temporary settlement of the nuclear issue. In it, North Korea agreed to freeze its nuclear program, dismantle parts of it, and abide by certain restrictions while the United States agreed to stop pursuing the placement of international sanctions against North Korea for violating its NPT agreement, provide North Korea with a light-water nuclear reactor and even 500,000 tons of heavy oil per year to cover the energy lost from the disassembled nuclear reactors.<sup>33</sup> The document also reinforced North Korea's Safeguards Agreement with the IAEA and the NPT. Specifically, it required the DPRK to "come into full compliance with its safeguards agreement...[when] a significant portion of the LWR project is completed, but before delivery of key nuclear

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<sup>32</sup> International Atomic Energy Agency, *Agreement of 30 January 1992 between the Government of the Democratic People's Republic of Korea and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*, IAEA, Vienna, 1992.

<sup>33</sup> Asada, "Arms Control," 338.

components.”<sup>34</sup> This deal ended problems and concerns for the time being by giving North Korea additional incentives to abide by international agreements it had already signed and pausing efforts to fully enforce the terms of North Korea's Safeguards Agreement with the IAEA.

As the project neared completion in 2000, the terms of the Agreed Framework indicated that North Korea was obligated to fully comply with the Safeguards Agreement and allow for complete inspections. From 2000 to 2002 IAEA and US officials worked towards seeing that this would happen and withheld the key nuclear components of the reactor preventing its completion.<sup>35</sup> As previously mentioned, in September of 2002 the existence of North Korea's uranium enrichment facilities became apparent and international outrage ensued. Shortly after, North Korea announced that it was lifting the freeze on its nuclear program put in place by the Agreed Framework and expelled IAEA inspectors.<sup>36</sup> On January 10, 2003, North Korea reinstated, or revoked the suspension of, its notice of withdrawal from the NPT noting that it would no longer be a party to the treaty as of January 11<sup>th</sup> of 2003.<sup>37</sup>

In assessing the legality of North Korea's “second withdrawal” from the NPT we must address the NPT text and then look towards the text of the Agreed Framework if it is necessary. North Korea maintained that only one additional day was necessary in order to withdraw due to its 1993 announcement and the several days that preceded the country's suspension of it. As discussed above, North Korea's interpretation of the text is highly questionable seeing as the text fails to mention the possibility of suspensions of and reinstatements of notices of withdrawal. Thus, a strict textual interpretation of the treaty will be

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<sup>34</sup> Ibid.

<sup>35</sup> Ibid, 340.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid, 341.



used in determining its legality relative to the NPT text. Through this perspective, the suspension of North Korea's 1993 notice of withdrawal was the equivalent of a termination of the notice of withdrawal. Therefore, on January 10<sup>th</sup> North Korea would have needed to meet the two criteria for withdrawal outlined by the treaty: 1) submit a new statement describing the extraordinary conditions justifying its withdrawal, which it did, and 2) wait another three months until officially being withdrawn from the treaty.<sup>38</sup> Since it met the former condition, even under this interpretation, North Korea would have become legally withdrawn from the treaty three months following the January announcement on April 10, 2003.

In hopes of washing away the ambiguity of Article 10's meaning there have since been international discussions aimed at clarification. In 2007, states met during NPT PrepCom, a conference aimed at reviewing the NPT, and discussed various interpretations and potential addendums to the treaty.<sup>39</sup> In the 2009 NPT PrepCom, states continued supporting various interpretations of the article including more strict interpretations that would not allow violators of the treaty to withdraw.<sup>40</sup> While these conferences did produce some new incentives for parties not to withdraw from the agreement, they failed to produce a new legally binding document that better defines the conditions of Article 10.<sup>41</sup> Regardless of these new developments, such an agreement would not affect North Korea's legal status under the NPT without North Korea's signature.

This examination of the NPT, however, does not settle the issue given the existence of the Agreed Framework. Article 4, Section 1 of this treaty states, "The DPRK will remain a

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<sup>38</sup> Asada, "Arms Control," 341.

<sup>39</sup> Jenny Nielsen, "Interpreting the withdrawal clause of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT): options within the 2010 NPT review cycle," *International Journal of Nuclear Law* 2, no. 2 (2008): 111.

<sup>40</sup> Zoryana Vovchok, "The Role of the United Nations Security Council in the Strengthening of the Withdrawal Clause of the Treaty on the Non-Proliferation of Nuclear Weapons" (PhD diss., University of Trento, 2010).

<sup>41</sup> Vovchok, "The Role of the UNSC," 2010.

party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).”<sup>42</sup> Here, we see that by withdrawing from the NPT, North Korea was in direct violation of international law in respect to the Agreed Framework. Staying party to the treaty was one of the key responsibilities North Korea had agreed to in this document. After the United States had fulfilled nearly all of its responsibilities outlined by the treaty, North Korea directly violated Article 4. The text of the Agreed Framework does not outline any scenario in which the responsibilities agreed to are nullified and most certainly required North Korea to remain a member of the NPT at least until the light-water reactor was finished.

### **3. Enforcement**

North Korea blatantly failed to uphold these treaties concerning the country's nuclear policy. The purposes of these treaties were largely to encourage the use of nuclear technology for peaceful, productive purposes and prevent nuclear proliferation and the creation of additional nuclear weapon states. Contrary to these objectives, North Korea has exploited these agreements in order to derive technological and geopolitical benefits from them without abiding by their terms. Acting in such a manner not only serves to undermine North Korea's international reputation and relationships, but also warrants repercussions. An assessment of the enforcement mechanisms set up by these agreements and the execution of these mechanisms thus far will prove valuable in understanding the effectiveness of international treaty law.

#### **3.1 Enforcement as Defined by Treaty Texts**

In the IAEA Statute, a few mechanisms of enforcement are outlined. The first is found in Article 3, Section C: “In carrying out its functions, the Agency shall not make assistance to

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<sup>42</sup> International Atomic Energy Agency, *Agreed Framework Between the United States of America and the Democratic People's Republic of Korea*, IAEA, Geneva, 1994.

members subject to any political, economic, military, or other conditions incompatible with the provisions of this Statute.”<sup>43</sup> In Article 12, Section A, Part 7, it clarifies, “In the event of non-compliance and failure by the recipient State or States to take requested corrective steps within a reasonable time, to suspend or terminate assistance and withdraw any materials and equipment made available by the Agency or a member in furtherance of the project.”<sup>44</sup> These two excerpts define a quid pro quo method of enforcement: if a state behaves and follows the provisions agreed to, it will be able to receive assistance and materials. Also, the treaty establishes in Article 17, Section A that “any question or dispute concerning the interpretation or application of this Statute which is not settled by negotiation shall be referred to the International Court of Justice in conformity with the Statute of the Court, unless the parties concerned agree on another mode of settlement.”<sup>45</sup> Finally, the treaty states in Article 19, Section B that “a member which has persistently violated the provisions of this Statute or of any agreement entered into by it pursuant to this Statute may be suspended from the exercise of the privileges and rights of membership by the General Conference acting by a two-thirds majority of the members present and voting upon recommendation by the Board of Governors.”

North Korea’s Safeguards Agreement with the IAEA defines its method of enforcement in two parts. First, Article 19 states that in an instance where the agency cannot confirm that a state’s nuclear program meets the defined safeguards, it can use the methods outlined in Article 12 of the agency’s Statute (explained above).<sup>46</sup> Next, Article 22 states that other instances concerning disputes that prove unable to be settled by other means will be subject to an

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<sup>43</sup> International Atomic Energy Agency, *Statute of the IAEA*, IAEA, Vienna, 1990.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> International Atomic Energy Agency, *Agreement between the DPRK and IAEA*, 1992.

arbitration procedure.<sup>47</sup> However, the texts of both the NPT and Agreed Framework fail to define specific mechanisms of enforcement. Since both treaties are closely tied to the IAEA Safeguards Agreement, violations of the former are likely to be violations of the latter and are then subject to the same means of enforcement. Additionally, these treaties rely on traditional means of enforcement of international law such as sanctions.

### **3.2 Enforcement Thus Far**

In an effort to make North Korea comply with its agreements, the IAEA, NPT states and the US have withheld benefits these agreements provide to North Korea in various instances. However, these withholdings have been temporary and frequently modified in the several series of negotiations that have taken place. At various times since 1993, especially since the DPRK's official withdrawal in 2003, the IAEA has not supplied the state with assistance in further developing its nuclear program. This, aside from the exceptions provided by negotiations, aligns with the terms of the IAEA Statute and Safeguards Agreement. A similar mechanism of enforcement occurred in November of 2002 when the United States responded to North Korea's violation of the Agreed Framework by announcing that it was suspending its fuel oil deliveries to North Korea as required by the treaty.<sup>48</sup> However, in terms of modifying the state's behavior, this form of enforcement has been poorly executed and ineffective.

The most prevalent technique for attempting to persuade North Korea to abide by the terms of its signed agreements and provide settlement to its violations has been through negotiations. While the historic details of these negotiations are long and cumbersome to sort through, it can be stated that they follow a generic, ineffective model. First, negotiations are

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<sup>47</sup> Ibid.

<sup>48</sup> Barry Carter, Philip Trimble and Allen Weiner, *International Law* (New York: Aspen, 2007), 1120.

chiefly characterized by states, such as the US, offering the DPRK incentives to comply with its IAEA obligations, halt parts of its nuclear program, and/or rejoin the NPT. These negotiations are often fruitless. When an agreement is made, the DPRK typically fails to abide by the terms set forth for a substantial period of time, if ever, and violates the agreement. Then, a new series of negotiations takes place and the cycle repeats. North Korea continues its nuclear program, reaps advantages from making agreements not to, and later intentionally violates these agreements. In short, negotiation has failed to achieve substantial concessions from North Korea. At times, this dispute settlement technique has arguably served to enhance North Korea's covert nuclear program.

The IAEA board has used its authority to report instances of significant non-compliance to the United Nations Security Council (UNSC). Since the UNSC is the international body responsible for the maintenance of international peace and security, this is logical. In order to punish North Korea via the placement of sanctions or international restraints on the country, the decision to do so must be made by the UNSC after being recommended by the IAEA. These enforcements have been difficult to achieve given China's ability to veto actions in the UNSC. In 1993, when the IAEA referred North Korea's noncompliance to the terms of the NPT, China refused to endorse steps that would potentially lead to the use of force against North Korea or prevent the state from withdrawing.<sup>49</sup> Again, in 2003 when North Korea re-announced its withdrawal from the treaty, China stood as the only Security Council member blocking the use of force and instead advocated negotiation.<sup>50</sup> Without getting into the international politics of the situation, it can simply be stated that

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<sup>49</sup> George Bunn and John B. Rhinelander, "NPT Withdrawal: Time for the Security Council to Step In," *Arms Control Today* 35, no. 4 (2005): 18.

<sup>50</sup> *Ibid.*

China's relationship with North Korea has greatly weakened the effectiveness of the UNSC in enforcing the NPT.

The only times when sanctions have been placed on North Korea as a result of its nuclear program occurred after the country performed nuclear test launches. In 2006 the UNSC, China included, voted to place sanctions against North Korea in UNSC Resolution 1718.<sup>51</sup> This resolution condemned North Korea's nuclear test, prohibited further tests and put various economic restrictions on the rogue state. Unfortunately, these sanctions proved ineffective; in April of 2009 North Korea tested a second nuclear device.<sup>52</sup> Following this, sanctions against the country were tightened. North Korea responded by refusing to take part in further negotiations, testing another nuclear device on May 25 and then testing various missiles.<sup>53</sup> It seems as if sanctions against North Korea produce results which are opposite of those desired: the further violation of international agreements and the continuance of the development of its nuclear program.

#### **4. Closing Thoughts**

In light of the fact that North Korea is prone to violations of international agreements, it is disturbing to see that both negotiations with and sanctions against the country appear to be ineffective. The situation at hand is even more unsettling given the DPRK's aggressive reaction following the tightening of these actions in 2009. If negotiations with the country and sanctions against the state are unable to bring the state into long-term compliance with international law, future prospects for settlement of international law violations appear to be grim. The apparent problem in current negotiations may be that, as a nuclear power, North

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<sup>51</sup> Miroslav Nincic, "Getting What You Want: Positive Inducements in International Relations," *International Security* 35, no. 1 (2010): 156.

<sup>52</sup> Nincic, "Getting What You Want," 156.

<sup>53</sup> *Ibid.*

Korea is somewhat immune to threats, real or perceived, from the international community. North Korea is now negotiating from an elevated position; the international community's demands are effectually little more than requests.

Further negotiations could potentially be considered successful if additional concessions are made to North Korea and the international community simply allows the state to act outside of international law. Such a success would be of little benefit. Given the effort exerted and level of secrecy maintained by North Korea to develop its nuclear program, it is unlikely that North Korea will abandon it. So, it seems that the only remaining option to bring North Korea into true compliance with its agreements is a form of more aggressive coercion, potentially military in nature. This option, of course, is extremely unfavorable since it could have devastating global impacts due to North Korea's nuclear ability. Unfortunately, the international community has been and continues to be unable to convince North Korea to conform to the regulations of international law. Whatever the reason for this inability, North Korea's complete disregard of international treaty law serves to undermine the legitimacy of international law as a whole. Furthermore, it highlights the necessity for alternative, ideally peaceful, enforcement mechanisms in international law.

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