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Negotiating with Deity: Strategies and Influences Related to Recent North Korean Negotiating Behavior

Jesse D. Steele¹

I. INTRODUCTION

As images of nuclear missiles flash across television screens and news reports containing indiscernible Asian writing warn of conflict on the other side of the world, this article addresses one of the single greatest threats to global stability—the North Korean Nuclear Weapons Crisis—and assesses the negotiation strategies that have brought the world to its current situation. By looking at the historical negotiation tactics that have been utilized by each of the parties involved, particularly in light of societal norms and cultural influences, one can ascertain a great deal of insight regarding each party's respective strategies and objectives. This insight gleaned through hindsight provides both the luxury of seeing the ramifications of past decisions and the onus of harnessing such information in order to make wise strategic decisions in the future.

When North Korea began developing nuclear weapons, the United States convinced them to stop and had them sign a sheet of paper saying so.² Once the United States discovered that North Korea was still developing nuclear weapons, the rest of the world got involved and convinced North

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2. See Eric Yong-Joong Lee, *The Six-Party Talks and the North Korean Nuclear Dispute Resolution Under the IAEA Safeguards Regime*, 5 ASIAN-PAC. L. & POL'Y J. 101, 107 (2004) (introducing the Agreed Framework reached between the United States and North Korea, in which Pyongyang agreed to abandon its development of nuclear weapons); *infra* note 166 and accompanying text (providing details regarding the establishment of the Agreed Framework and the subsequent events undertaken by each party); Agreed Framework Between the United States of America and the Democratic People's Republic of Korea, Oct. 21, 1994, U.S.-N. Korea, 34 I.L.M. 603, available at <http://www.kedo.org/pdfs/AgreedFramework.pdf> [hereinafter Agreed Framework] (containing the actual text agreed upon by the United States and North Korea).

Korea to sign another sheet of paper.³ A year later, North Korea detonated a nuclear weapon.⁴ Then, the parties signed some more papers.⁵ Through all of the posturing and negotiating, both verbal and physical, what has the world learned from and communicated to Kim Jong-Il (김정일) once the dust settles on the nuclear test site in North Korea? Possibly more important, does the person occupying the opposite side of the negotiation table genuinely believe that he is deity and is, thus, not bound by paper in the first place?

The first section of this article describes the negotiation history, both action-oriented and discussion-oriented, that has led to the current state of affairs. The second section assesses the strategies that underlie each of the implemented tactics and analyzes the consequences of such strategic choices. Lastly, the third section of this article discusses Kim Jong-Il's delusion of deity and how it has possibly influenced North Korean negotiation behavior.

II. NEGOTIATION HISTORY

A long and complex series of negotiations has led each of the parties involved in this nuclear conflict to its current respective position. These negotiations historically have taken both a physical form, forcefully negotiating through action, and a verbal form, persuasively negotiating through discussion. Careful analysis of each of these tactical choices, including the timing of the choices and the manner in which each was engaged, is critical in order to fully understand each party's underlying negotiation strategy.

3. See *infra* note 166 and accompanying text (outlining the series of events after the Agreed Framework that led up to the agreement reached in fourth round of talks in 2005—"September Agreement"); Ja Young Elizabeth Kim, *The Agreement After the Six-Party Talks: Are There No Alternatives to the "Modified" Version of the 1994 Geneva Agreed Framework?—An Analysis of the Newly-Adopted Framework and Its Significance for the Nuclear Proliferation Issues Relating to North Korea*, 21 TEMP. INT'L & COMP. L.J. 177, 194 (2007) (referring to the September Agreement, which again promised the abandonment of a nuclear North Korea).

4. See *infra* note 166 and accompanying text (referring to the North Korean nuclear test on October 9, 2006); John R. Crook, *Contemporary Practice of the United States Relating to International Law*, 101 AM. J. INT'L L. 478, 499 (2007) (stating that the detonation of a nuclear device by North Korea proved that its nuclear weapons program was in violation of the September Agreement).

5. See *infra* note 166 and accompanying text (referring to the U.N. Security Council Resolution 1718 on October 14, 2006); S.C. Res. 1718, U.N. Doc. S/RES/1718 (Oct. 14, 2006), available at <http://www.state.gov/p/eap/rls/ot/76180.htm> (containing the actual text of the resolution sanctioning North Korea and condemning their nuclear endeavors).

A. Physical Negotiation: Action Punctuated by Discussion (1994 – 2003)

After a relatively short but tumultuous history of North Korea possessing nuclear power capabilities, focus quickly shifted to the possibility of Kim Il-Sung's (김일성) regime using such power for the production of nuclear weapons.⁶ After hiding nuclear waste structures, denying inspections, and withdrawing from the Treaty of Non-Proliferation of Nuclear Weapons (NPT), the global community, represented by the International Atomic Energy Agency (IAEA), realized that the situation was of grave importance.⁷ The situation, which constituted the first North Korean nuclear crisis, "aroused shock waves, which reverberated throughout the world."⁸ In order to prevent further continuation down the destructive spiral, former U.S. President Jimmy Carter visited Pyongyang (평양) on behalf of the United States and began negotiations that resulted in an "Agreed Framework," seemingly suspending nuclear weapons development.⁹

Under the Agreed Framework, North Korea agreed to freeze its nuclear reactors, while remaining a party to the NPT and permitting regular inspections of its reactors in order to ensure compliance.¹⁰ In turn, the

6. Lee, *supra* note 2 (describing the history leading up to the Agreed Framework). "These reactors had no real capacity to provide electricity but could produce uranium that might be enriched to make nuclear weapons." Robert H. Mnookin, *When Not to Negotiate: A Negotiation Imperialist Reflects on Appropriate Limits*, 74 U. COLO. L. REV. 1077, 1097 (2003).

7. Lee, *supra* note 2, at 103-04. North Korea has, in fact, denied inspections many times throughout history. *Id.* The specific denial referenced here was in regard to a 1993 request to inspect certain facilities deemed suspicious by a U.S. intelligence satellite. *Id.* at 104-05. "[T]he IAEA's Director General Han Blix formally demanded a 'special inspection' by March 25, 1993 of the two facilities suspected to be storing nuclear waste." *Id.*

8. *Id.* at 105.

9. *Id.* at 107.

In his visit to Pyongyang in June 1994, President Carter discussed this crisis with Kim Il-Sung and brought conciliatory messages. Following Carter's initiative, North Korea and the United States opened diplomatic negotiations. After three months of highly charged talks, the two sides reached an accord called the "Agreed Framework" in Geneva on October 21, 1994. On November 4, 1994, the UN Security Council asked the IAEA to carry out the tasks assigned to it in the Agreed Framework and, a week later, the IAEA Board of Governors authorized the Director General to do so.

Id.

10. Agreed Framework, *supra* note 2, at 605. "[T]he DPRK will freeze its graphite-moderated reactors and related facilities and will eventually dismantle these reactors and related facilities." *Id.* Also, "[u]pon conclusion of the supply contract for the provision of the LWR project, ad hoc and

United States agreed to replace the reactors with light-water reactor power plants (LWR) and to reduce trade barriers with the impoverished country.¹¹ The United States, South Korea, and Japan, under the name of the Korean Peninsula Energy Development Organization (KEDO), also agreed to deliver temporary energy until the completion of the first LWR.¹²

Things progressed as promised until 1998, when U.S. intelligence found a subterranean facility in North Korea that had the capability to be used in furtherance of nuclear weapon development in direct violation of the Agreed Framework.¹³ Within days, North Korea test-fired the Taepo Dong-1 missile over Japan.¹⁴ Tensions continued to rise until 2002 when President Bush branded North Korea as part of an “axis of evil” during his State of the Union speech.¹⁵ North Korea responded by addressing this statement as “little short of a declaration of war” and by pledging to “mercilessly wipe out the aggressors.”¹⁶ Shortly thereafter, North Korean officials admitted possession of nuclear weaponry during a meeting with the U.S. Ambassador.¹⁷ Through this statement, North Korea admitted that it violated the Agreed Framework, which was already starting to wear thin.¹⁸

routine inspections will resume under the DPRK’s safeguards agreement with the IAEA with respect to the facilities not subject to the freeze.” *Id.* at 606.

11. *Id.* at 604-05. “Both sides will cooperate to replace the DPRK’s graphite-moderated reactors and related facilities with light-water reactor (LWR) power plants.” *Id.* at 604. Also, “[t]he two sides will move toward full normalization of political and economic relations.” *Id.* at 605.

12. Lee, *supra* note 2, at 110-11 (specifying that “KEDO was to deliver interim energy until the first LWR was completed” and “carry out other measures deemed necessary for the attainment of the purposes of the Agreed Framework”). Although KEDO involved three different countries, the United States was considered the major proponent and the organization headquarters was located in New York at the following address: Korean Peninsula Energy Development Organization, 600 3rd Avenue, 12th Floor, New York, NY 10004. See Agreed Framework, *supra* note 2. More information about the KEDO organization can be ascertained by visiting the following site: <http://www.kedo.org>.

13. Morse Tan, *The North Korean Nuclear Crisis: Past Failures, Present Solutions*, 50 ST. LOUIS U. L.J. 517, 532-33 (2006). Based upon this breach of the Agreed Framework, KEDO stopped the oil shipments and LWR plans that they had undertaken in good faith. *Id.* at 533.

14. Kim, *supra* note 3, at 192.

15. Peter Carlson, *Sins of the Son: Kim Jong Il's North Korea Is in Ruins, But Why Should That Spoil His Fun?*, WASH. POST, May 11, 2003, at D1, available at <http://www.washingtonpost.com/ac2/wp-dyn/A40505-2003May10?language=printer>. President Bush followed this assertion by stating that the regime was “arming with missiles and weapons of mass destruction.” *Id.*

16. *Id.* This is an example of the action-twisting, North Korean negotiating style later discussed. See *infra* note 114 and accompanying text.

17. Tan, *supra* note 13, at 533. However, this admission was later denied by North Korean officials. *Id.*

18. Kim, *supra* note 3, at 180.

The aforementioned actions began the unraveling process of what was thought to have been a binding agreement but in actuality was proved to be far from binding. Due to the breach of the Agreed Framework, KEDO suspended energy shipments to North Korea and the LWR project.¹⁹ In turn, North Korea purged all outside inspectors from its soil and announced the resumption of construction and operation of all its nuclear facilities,²⁰ which have the capacity of producing dozens of nuclear warheads each year.²¹ The United States then instituted a “Tailored Containment” policy, requiring North Korea to scrap its nuclear program before further bilateral negotiations between the two countries would resume.²²

Japan’s approach differed markedly by attempting to negotiate with North Korea in a step-by-step manner but simultaneously expressing distrust by launching two satellites that enabled independent monitoring of North Korea, constructing a new intelligence headquarters, and initiating acquisition of antimissile systems.²³ This negotiation tactic appeared to be met with a modicum of success. Kim Jong-Il apologized to the Prime Minister of Japan for previously kidnapping Japanese citizens in order to train North Korean spies, an extremely sore spot within the history of the two countries, and a definite stumbling block in previous negotiation attempts.²⁴ Still, the countries’ pledges to “sincerely tackle outstanding

19. Tan, *supra* note 13, at 533. This action was taken by the United States as a reactionary measure to a perceived breach of contract. *Id.* However, North Korea viewed this U.S. action as the true first breach of contract and used the action to justify its assertion that “it must develop and produce nuclear weapons as a deterrent against potential American aggression.” *Id.*

20. *See id.* (articulating North Korea’s justification for such a move as needed protection against the United States).

21. Erik Raines, *North Korea: Analyzing the “New” Nuclear Threat*, 12 CARDOZO J. INT’L & COMP. L. 349, 366 (2004). The danger in this not only lies in the possibility of North Korea using such weapons, but also, given North Korea’s poor economy, “the potential risk of North Korea selling nuclear weaponry to rogue states or terrorists with money to spend presents an extremely ominous scenario.” *Id.*

22. Richard P. Cronin, *The North Korean Nuclear Threat and The U.S.–Japan Security Alliance: Perceived Interests, Approaches, and Prospects*, 29 FLETCHER F. WORLD AFF., Winter 2005, at 52-53.

23. *Id.* at 53-54. The Japanese government has taken a different approach and has sought “to draw North Korea into step-by-step negotiations aimed at gradually persuading Kim Jong-[I] that he has more to gain from taking his country out of its isolation and becoming part of the global economy than from maintaining his nuclear weapons program.” *Id.* at 53.

24. Edward Kim, *Give Violence a Chance*, CHOSUN J., Sept. 17, 2002, <http://www.chosunjournal.com/2002/09/17/give-violence-a-chance> (last visited Oct. 9, 2008). “[I]f anything, th[is] [apology] was a double-insult toward South Korea’s president. For one thing, Kim Jong[-]Il has offered no apology to South Korea for the North’s kidnapping of South Koreans,

problems based upon their mutual trust in the course of achieving the normalization” dissolved amidst increasing tensions with all other parties involved.²⁵

During this period, with the mindset that China exerted a large amount of influence over North Korea, the United States repeatedly requested that China leverage itself against the rogue nation.²⁶ Accordingly, Chinese officials warned North Korea not to act in a way that would strain U.S.–China relations.²⁷ In order to drive this warning home, China temporarily flexed its muscle and briefly closed its oil pipeline to North Korea for three days.²⁸ This sent a clear message to the North Koreans that they needed to “behave.”²⁹

All the while, South Korea’s Presidents, Kim Dae-Jung (김대중) and Roh Moo-Hyun (노무현), attempted to maintain stability on the Korean peninsula via the “Sunshine” and “Peace and Prosperity” policies, respectively.³⁰ Under these past two left-leaning presidents, South Korea failed to raise human rights violations out of fear of angering Pyongyang and pushed for wider communication channels, culminating in a dramatic meeting with Kim Jong-Il on North Korean soil in 2007.³¹ Such a

hundreds more than the Japanese victims, or for that matter, for the bombings of South Korean airlines. And to add insult to injury, Kim Jong[-]Il was able to garner an apology from Koizumi for Imperial Japan’s atrocities committed during World War II, a stronger apology than any South Korean president has been able to obtain from Tokyo thus far.” *Id.*

25. Cronin, *supra* note 22, at 61-63. The “outstanding problems” referred to here are the issues involving the previously mentioned kidnap victims, along with the overarching nuclear and weaponry issues. *Id.* at 62.

26. John S. Park, *Inside Multilateralism: The Six-Party Talks*, WASH. Q., Autumn 2005, at 75, 83.

27. *Id.*

28. The oil pipeline that was temporarily closed in March of 2003 ran from the Daqing oilfields in China to North Korea. *Id.*

29. *Id.* However, such an ultimatum could easily backfire. Attempts to force a particular action out of North Korea cannot cross the threshold of becoming too forceful and risk undermining the stability of the rogue regime. *Id.* at 83-84.

30. *Id.* at 80. The reason behind such policies is a desire to avoid national insecurities due to an immediate onslaught of North Korean defectors. *Id.* “Seoul seeks to avoid the massive costs that a rapid reunification with Pyongyang would entail and instead achieve a gradual integration and reunification of the two Koreas through South Korean direct investment and growing inter-Korean trade.” *Id.*

31. *S. Korean President-Elect Indicates Tougher Stance on North*, INT’L HERALD TRIB., Dec. 20, 2007, available at <http://www.ihl.com/articles/ap/2007/12/20/asia/AS-POL-SKorea-Presidential-Election.php>. However, South Korea has recently elected a new president, who does not share his predecessors’ fear. *Id.* President-elect Lee Myung-bak recently said that he will not withhold criticism of North Korea’s regime, “ending a taboo by a decade of liberal South Korean leaders who have aggressively sought closer ties with Pyongyang.” *Id.*

disposition toward the North also bolstered its trade status with North Korea to number two, only surpassed by China.³²

On other fronts, North Korea labeled the Tailored Containment policy of the United States as “hostile” and finally withdrew from the NPT in January of 2003.³³ It also levied an ultimatum of its own, requiring the United States to agree to a nonaggression pact before it would consider dismantling its nuclear weapons program.³⁴ Against this backdrop of events, the second North Korean nuclear crisis arose.

B. Verbal Negotiation: Discussion Punctuated by Action (2003 – 2007)

“The Bush Administration’s unyielding refusal to engage in bilateral negotiations with North Korea caused speculation that the entire situation could continue to spiral out of control.”³⁵ In an attempt to prevent unbridled escalation between the United States and North Korea, Chinese officials convened a “face-saving trilateral meeting in Beijing,” involving the United States, North Korea, and China.³⁶ These meetings produced sparse results and the United States insisted that the nuclear issue was a “neighborhood problem” that should involve every country that had a vested interest in the Korean peninsula being a nuclear-free zone.³⁷ In order to keep open communication channels with Washington and hopefully to elicit a more positive response from North Korea, the talks were expanded to include Japan, South Korea, and Russia, in addition to the prior three members.³⁸

These “Six-Party Talks” contained largely the same rhetoric as each party had previously expressed, the only difference being that every party

32. *Id.*

33. Lee, *supra* note 2, at 115.

34. Raines, *supra* note 21, at 373. Such an ultimatum was levied in response to the United States’ precondition that Pyongyang completely and verifiably dismantle its nuclear weapons program before negotiations can resume. *Id.*

35. Park, *supra* note 26, at 76.

36. *Id.* This meeting was held in Beijing, China on April 23, 2003. *Id.* See also Lee, *supra* note 2, at 117.

37. Park, *supra* note 26, at 76.

38. *Id.* None of the six-party talks have produced progress of substance because the United States and North Korea still maintain their deep mistrust for one another, along with their rigid negotiation strategies and objectives. *Id.* “Compounding this mistrust are other stumbling blocks in the form of divergent policy constraints, both perceived and actual.” *Id.*

was now sitting together around a hexagonal table.³⁹ That arrangement lasted until the fourth round of talks in September 2005 when North Korea agreed to abandon its nuclear weapons program (the September Agreement).⁴⁰ However, this success was short-lived due to the fact that North Korea would not remain on its best behavior.⁴¹

In the same month as the September Agreement, United States authorities discovered that North Korea was using a Chinese bank, Banco Delta Asia in Macao, to launder money and had Chinese officials freeze over \$25 million of involved funds.⁴² Then, in 2006, North Korea shocked the world when it detonated a nuclear device, proving that its nuclear weapons program was alive and strong.⁴³ In the wake of this startling development, the United Nations (U.N.) Security Council unanimously adopted Resolution 1718 on North Korea, demanding abandonment of all nuclear weapons programs and instituting harsh economic sanctions.⁴⁴

After the Six-Party Talks resumed, the Bush Administration “reali[zed] its containment policy was not working and it was time to start negotiating seriously with a regime it once included in an ‘axis of evil.’”⁴⁵ Since this foreign policy shift, the prospects for North Korean nuclear disarmament

39. Lee, *supra* note 2, at 117. During this meeting, both the United States and North Korea clarified their positions on the nuclear issue. *Id.* However, this clarification merely reaffirmed that the respective parties continued to hold mutually irreconcilable positions. *Id.* “North Korea’s objective was to construct a new level of relations leading to the normalization of ties with the United States, and to obtain economic rewards for giving up its nuclear program.” *Id.* at 117-18. This is another example of the prevalent North Korean negotiating style discussed later in the text. See *infra* note 114 and accompanying text.

40. Kim, *supra* note 3, at 194. “Under the September 19, 2005 agreement . . . North Korea committed to abandon its nuclear weapons programs.” *Id.* However, North Korea did not do so in blatant terms. The September Agreement included the following language: “[T]he parties ‘expressed their respect and agreed to discuss, at an appropriate time, the subject of the provision of a light-water reactor to the DPRK.’” *Id.* (citing Press Release, Ministry of Foreign Affairs of People’s Republic of China, Joint Statement of the Fourth Round of the Six-Party Talks, § 1, cl. 6 (Sept. 19, 2005), available at <http://www.state.gov/r/pa/prs/ps/2005/53490.htm>).

41. See John R. Crook, *Contemporary Practice of the United States Relating to International Law*, 101 AM. J. INT’L L. 185, 217 (2007). In October of 2006, the U.N. Security Council unanimously adopted economic sanctions against North Korea (Security Council Resolution 1718) after it detonated a nuclear explosion. *Id.* at 218.

42. Crook, *supra* note 4, at 500. “The United States in late March 2007 agreed to the release of the funds to an account in the Trade Bank of the Bank of China, where they would be used by North Korea for ‘humanitarian and educational’ purposes. However, as of the date of this writing (April 2007), the funds have not been transferred.” *Id.*

43. *Id.*

44. S.C. Res. 1718, *supra* note 5; see also Crook, *supra* note 41, at 118.

45. Anna Fifield, *North Korea: Pyongyang Plays Tactics*, FIN. TIMES, Oct. 23, 2007, at South Korea—Special Report 1, available at http://www.ft.com/cms/s/0/faf1630e-811f-11dc-9f14-0000779fd2ac,dwp_uuid=f78e936e-811d-11dc-9f14-0000779fd2ac.html?nclck_check=1.

have dramatically done an about-face.⁴⁶ In 2007, during the third round of the fifth phase of talks, North Korea agreed to disable its nuclear reactors and to verifiably declare the entirety of its atomic programs by the end of the year.⁴⁷ In return, the regime was to be removed from the U.S. terrorism blacklist and to be compensated with one million tons of heavy oil to be used for energy purposes.⁴⁸ As North Korea began to disable its nuclear facilities and allow inspectors in to monitor progress, the global community released a sigh of relief.

C. Looking Into the Future: Repeating the Past

As this article is being written, the words “North Korea” are running across the news ticker on virtually every major media outlet.⁴⁹ The December 31, 2007 deadline to provide a complete list of its nuclear arms programs has passed, and North Korea has yet to deliver on its promise.⁵⁰ Pyongyang says that it has drawn up the list and notified the six-parties as it was required to do, but none of the other six parties has received the list.⁵¹ North Korea also issued a statement saying, “[We] will further strengthen our war deterrent capabilities in response to U.S. attempts to initiate nuclear war.”⁵² However, the United States, along with the other Six-Party powers,

46. *Id.* In fact, “[t]oday, the prospects for a nuclear weapons-free North Korea have never looked so good.” *Id.*

47. *N. Korea: U.S. Not Delivering Aid*, CNN.COM, Jan. 4, 2008, <http://edition.cnn.com/2008/WORLD/asiapcf/01/04/nkorea.nuclear.ap/index/html> (last visited Jan. 4, 2008).

48. Yoo Choonsik & Jon Herskovitz, *Nuclear Declaration Submitted, Says North Korea*, REUTERS INDIA, Jan. 4, 2008, available at <http://in.reuters.com/article/worldNews/idINIndia-31250020080104>.

49. See *supra* notes 47-48; Yoo Choonsik & Jon Herskovitz, *U.S. Says Still Waiting for N. Korean Nuclear Inventory*, REUTERS INDIA, Jan. 4, 2008, available at <http://in.reuters.com/article/worldNews/idINIndia-31253220080104>.

50. Choonsik & Herskovitz, *supra* note 49. According to Gordon Johndroe, a White House representative, “[u]nfortunately, we have not yet received a complete and correct declaration and we urge North Korea to deliver one soon so that we can all get the benefits offered in the six-party process.” *Id.*

51. *Id.* When “[a]sked why North Korea would make a public assertion that all of the other five negotiating partners knew to be false, [a State Department spokesman] said: ‘They’re engaging the international media in their own way. It’s just all part of the diplomatic process – you have private dialogue and you also have private statements.’” *Id.*

52. Choonsik & Herskovitz, *supra* note 48. “The North, with one of the world’s largest standing armies, usually threatens to bolster its deterrent, often taken to be a reference to its nuclear arsenal, when it feels international powers are not treating it properly.” *Id.*

reacted mildly and urged North Korea to fulfill the declaration promise soon.⁵³ Only the future will tell if the peaceful developments of the 2007 agreement will come to fruition or if the past will repeat itself.⁵⁴

III. UNDERLYING NEGOTIATION STRATEGY

Negotiation strategies are not stand-alone constructs but are carefully interwoven systems of initiations and responses related to the information, either verbal or physical, exchanged between negotiation counterparts. Therefore, it is crucial to know the negotiation strategies of each of the parties involved and to scrutinize those strategies in order to have an accurate big-picture understanding of the situation. Once this contextual understanding is ascertained and assessed, it provides a foundation to analyze potential influences upon each strategy.

A. United States: "Axis of Evil" & "Tailored Containment"

i. "Axis of Evil"

It has been alleged that, "[f]or the past fifty years, North Korea has lied, broken its word, and pushed tensions to the brink of war, and negotiations with this country have routinely been unproductive, if not outright failures."⁵⁵ It is this type of thinking that may have spurred President Bush to brand North Korea as part of an "axis of evil" during his State of the Union speech in 2002.⁵⁶ In an effort to strike fear in the heart of Kim Jong-Il and to make it known that such behavior would not be tolerated, President Bush denounced the regime in some of the harshest terms possible in front of the entire world.⁵⁷

However, this acute personal attack may have inadvertently had the opposite effect. By naming North Korea as an evil empire in such a public

53. Choonsik & Herskovitz, *supra* note 49.

54. *See infra* note 166 and accompanying text.

55. Tan, *supra* note 13, at 519. *See infra* note 166 and accompanying text, for a chronological list of past negotiation behavior, specifically the past fifteen years and the events surrounding the Six-Party talks in Beijing.

56. Carlson, *supra* note 15.

57. Kim, *supra* note 24. According to Kim, in addition to the "Axis of Evil" comment, President Bush's related "credible threat of violence . . . put the fear of God into the Dear Leader." *Id.* The result of which was the groundbreaking apology by Kim Jong-Il to the Japanese government for the historical kidnappings, which was previously discussed in Section II(a). *See id.*

forum, President Bush forced Pyongyang into a corner.⁵⁸ “Those three words—’axis of evil’—may have [had] more of a bombshell impact on Kim Jong-Il’s anger and mentality, and his perception toward the [Bush] administration than anything else.”⁵⁹ In addition to whatever motivations North Korea previously had, it now also desires revenge for losing face in front of the rest of the globe and will seek to discredit the United States in whatever way possible to detract from the message of its accusers.⁶⁰

By using the word “evil” in relation to the United States’ negotiation counterpart, President Bush did not leave much room for dialogue or discussion.⁶¹ As succinctly stated by a presidential scholar in relation to this North Korean nuclear crisis, “How do you negotiate with evil?”⁶² This glorified name-calling effectively closed down already strained communication channels without achieving any possible objective that may have been intended.⁶³

Since this incident, the United States’ tone has shifted.⁶⁴ President Bush has adopted a more conciliatory tone and has ceased using such harsh

58. Interview with Hyo Young Kang, Member, Advisory Council on Democratic and Peaceful Unification of Korea (Dec. 10, 2007) (transcript of interview on record with the author). Mr. Kang currently holds the position of senior foreign counsel at Yulchon Attorney at Law in Seoul, South Korea, and “practices primarily in the areas of finance and international capital markets law. Before joining Yulchon, he was a partner at Allen & Overy in Hong Kong and head of their Korea practice. In addition to over ten years working at Allen & Overy, he also worked at Kim & Chang in Seoul for nearly seven years.” Yulchon Attorneys at Law: Professionals, http://www.yulchon.com/lawyer_en/lawyer_view.asp?pf_id=91&jaso=10&cate=&search_type=&search_word= (last visited Oct. 9, 2008). Holding a B.S. degree from Duke University, and a J.D. degree from Georgetown University Law Center, Mr. Kang speaks both English and Korean, and is admitted to the respective bar organizations of Maryland (USA), Hong Kong, and England and Wales. *Id.* Further information about Mr. Hyo Young Kang is available on the Yulchon Attorneys at Law website. *See id.* Special thanks to Mr. Kang for participating in this interview and sharing his insight on this important issue.

59. *The Many Faces of Kim Jong-Il*, CNN.COM, Apr. 19, 2004, <http://edition.cnn.com/2004/WORLD/americas/04/16/kim/> (last visited Oct. 9, 2008) (quoting Kongdan Oh of the Brookings Institution).

60. Kang, *supra* note 58.

61. Mnookin, *supra* note 6, at 1105. After branding a country as “Evil,” negotiating with them “could also be perceived as ‘doing business with the devil.’” *Id.* at 1104. North Korea undoubtedly has a terrible human rights record and the totalitarian regime stifles its impoverished people. *Id.* at 1104-05. “Doing a deal with such a regime, quite apart from imposing domestic political costs given Congressional hostility to North Korea, might be seen by some as morally dubious.” *Id.* at 1105.

62. *Id.* (quoting Davis Houck, a professor at Florida State University).

63. Kang, *supra* note 58.

64. Sung-Yoon Lee, *The Mythical Nuclear Kingdom of North Korea*, 29 FLETCHER F. WORLD AFF., Summer 2005, at 139.

language, most notably in the State of the Union Address in 2005.⁶⁵ This shift has at least deprived North Korea of the ability to claim that a “hostile” stance is being held by the United States, a potential reason for refusing to return to the discussion table.⁶⁶ However, the United States has not completely abandoned such tactics, as witnessed by Secretary of State Condoleezza Rice labeling the regime as an “outpost of tyranny.”⁶⁷

ii. “Tailored Containment”

A party’s reputation plays a key role in its ability to truly negotiate effectively.⁶⁸ In fact, because its reputation can even provide increased power before the party ever comes to the negotiation table, it is of the utmost importance to protect a pristine reputation.⁶⁹ Therefore, one of the foremost concerns in the eyes of the United States is protecting the reputation that it

65. *Id.*

The 2005 State of the Union Address has now come and gone, and in his speech Bush exercised restraint and chose not to use any inflammatory rhetoric against North Korea. Compared to what he had to say about Iran, the other of the two remaining “axis-of-evil” charter states, Bush’s comments on North Korea were measured to the point of insipid: “We are working closely with governments in Asia to convince North Korea to abandon its nuclear ambitions.”

Id.

66. *Id.* Since removing itself from the Six-Party Talks’ fourth round, North Korea has given many reasons for postponing the continuation of negotiations; however, one of them was not, and could not have been, hostility on behalf of the United States. *Id.* These reasons were:

[F]irst, it said that it would wait for the outcome of the U.S. presidential election in November; second, it would wait until the formation of Bush’s second-term North Korea policy team; third, that it would wait until the State of the Union Address to ascertain whether the United States would negotiate in good faith.

Id.

67. Lee, *supra* note 64. North Korea has also demanded an apology for this “outpost of tyranny” comment made by Secretary of State Rice. *Id.*

68. Charles A. Goldstein & Sarah L. Weber, *The Art of Negotiating*, 37 N.Y.L. SCH. L. REV. 325, 328 (1992).

69. *Id.* However, the opposite is not necessarily true, and the United States should keep this in mind when negotiating with North Korea. *Id.*

[Y]ou should never underestimate your opponent, whatever his or her reputation may be. Preconceived notions about your opponent based on the opinions of others can prove very dangerous. They may lead you to fail to perceive opportunities when you can gain significant advantages in the deal, or—worse—to assume inappropriately aggressive stances, thus killing the deal.

Id.

[Vol. 9: 1, 2008]

PEPPERDINE DISPUTE RESOLUTION LAW JOURNAL

abides by the agreements it makes and unwaveringly expecting its counterpart to do so as well.⁷⁰

The United States' perceived attitude of North Korea, viewed as regularly not keeping its word, testing missiles, and resuming nuclear weapon development, causes many people to question the worth of expending so much energy in a presumably futile endeavor.⁷¹ Many Americans view North Korea as incapable of negotiating because it "acts and speaks in a crazy and irrational manner" regarding its nuclear weapons program.⁷² Upon this framework, the Bush Administration announced its policy of Tailored Containment, mandating a precondition that North Korea must discontinue all nuclear development before the United States will resume negotiations.⁷³

It is apparent that President Bush and his governmental officials worried about the precedent that would be set by continued negotiations with the regime.⁷⁴ The United States' standpoint was that such actions could not only "encourage nuclear blackmail by other rogue nations" but also could encourage other nations that were hostile to the United States to begin developing nuclear weapons in hopes of later being compensated by the United States for discontinuance of that development.⁷⁵ In such a case, some believed that negotiation would send an inappropriate message that would essentially make the overall situation worse.⁷⁶

In relation to North Korea specifically, the strategy that was adopted held that past misbehavior would not be rewarded.⁷⁷ The United States believed that, throughout past dealings, Pyongyang had consistently attempted to create new friction and, then, had subsequently extracted

70. Mnookin, *supra* note 6, at 1104. "Administration officials have suggested that a new deal with the North Koreans would send a message that we are willing to pay twice for the same promise." *Id.*

71. See Kim, *supra* note 3, at 196; Mnookin, *supra* note 6, at 1103-04.

72. Tan, *supra* note 13, at 533 n.138.

73. Cronin, *supra* note 22, at 53.

74. Mnookin, *supra* note 6, at 1104.

75. *Id.* "Successfully facing down North Korea would send a message that the world will not tolerate nuclear blackmail. Failing to do so will send a very different message to rogue states—that if you don't want to be treated like Iraq, get your bomb before facing off against Washington." David E. Sanger, *The World: Next Question: How to Stop Nuclear Blackmail*, N.Y. TIMES, Mar. 9, 2002, <http://query.nytimes.com/gst/fullpage.html?res=9B05E7DB1E3FF93AA35750C0A9659C8B63>.

76. See Mnookin, *supra* note 6, at 1104.

77. Mnookin, *supra* note 6, at 1104.

additional concessions in order to take deescalating measures that it had already agreed to take.⁷⁸ According to former Secretary of State Colin Powell, negotiation with North Korea after its flaunting of prior agreements would equate to “appeasing misbehavior.”⁷⁹ Essentially, it was thought that continued negotiations with Pyongyang would have indicated that the United States was “willing to pay twice for the same promise.”⁸⁰

However, even though hindsight does not necessarily indicate for sure, this strategy may have also inadvertently played into North Korea’s hand.⁸¹ Harvard Law School Program on Negotiation’s Robert Bordone and Albert Chang state that “[t]he decision to play chicken with the North Koreans in 2003 gave them precisely what they wanted—plenty of time to develop their own nuclear capabilities.”⁸² Since then, the administration has continued to reject proposals of bilateral talks based upon this strategy but has accepted multilateral talks, which get North Korea back to the table and cut its nuclear development time without sacrificing the United States principle of not rewarding bad behavior.⁸³ Also, such a strategy may provide North Korean authorities with a face-saving opportunity to reach further agreements.⁸⁴

78. Lee, *supra* note 64, at 140.

79. *Id.* (citing U.S.: *North Korea Must Reverse Course*, CHI. TRIB., Dec. 31, 2002, Redeye Edition, at 4).

80. Mnookin, *supra* note 6, at 1104.

81. See Robert C. Bordone & Albert Chang, *Real Superpowers Negotiate*, WASHINGTONPOST.COM, Oct. 26, 2006, http://www.pon.harvard.edu/news/2006/news_bordone.wash.post.php (last visited Oct. 9, 2008). “As an initial gut reaction to abhorrent North Korean behavior in 2003, this response may have been understandable. But from a perspective of accomplishing the goal of denuclearizing North Korea, this policy continues to be a demonstrable failure.” *Id.*

82. *Id.* In fact, the authors go as far as labeling this strategy as a “silly game” that yields inferior results, compared to “listening and talking—at bilateral, multilateral, and second-track levels.” *Id.*

83. *Id.* It is further suggested that this is not good enough and virtually every avenue of “talks” should be engaged. *Id.*

[T]here is no reason that bilateral and multilateral talks cannot co-exist. The Administration should continue to encourage coordinated Six Party Talks but also engage with North Korea on a one-on-one basis at the track-II diplomatic level. This way, the U.S. leverages Chinese and South Korean support on North Korea while still engaging with Pyongyang in a direct dialogue. Bilateral talks would also show our partners in China and South Korea that we are responsive to their preferences for a more diplomatic approach.

Id. Compare Bordone & Chang, *supra* note 81 (suggesting that bilateral negotiations between the U.S. and North Korea would show diplomacy), with Mnookin, *supra* note 6, at 1104 (suggesting that bilateral negotiations between the U.S. and North Korea would show weakness).

84. Bordone & Chang, *supra* note 81. Simultaneously, such a face-saving move for the North Koreans could assist the United States in saving face with the global community in regard to its reputation for frequently overlooking diplomacy. *Id.*

B. South Korea: "Sunshine Policy"

Because South Korean president Roh Moo-Hyun has primarily been concerned with maintaining stability and security on the Korean peninsula, he implemented a "Peace and Prosperity Policy," piggybacking on his predecessor's "Sunshine Policy."⁸⁵ As virtually the same plan with merely two different names, both policies engaged North Korea, largely refrained from criticizing its abundant human rights infractions, and bolstered South Korea's trade status with its northern neighbor.⁸⁶ South Korean officials have made it very clear that the strategy behind such policies has been directed mainly at preventing a sudden regime collapse, which would result in millions of northern refugees flooding South Korea.⁸⁷

As intended, the regime has yet to suddenly collapse. However, possibly unintended, this strategy has encouraged Kim Jong-Il and his North Korean policies.⁸⁸ Some people allege that the left-of-center South Korean government seems as if it is more interested in placating North Korea than changing it.⁸⁹ "At times the South Korean president even sounds like an official spokesperson for the Kim regime, undermining the whole process of the Six-Party Talks and its stated goal: that the five nations gathered to persuade the North Korean regime will 'not tolerate' a nuclear North Korea."⁹⁰

Based upon the recent South Korean presidential elections of December 2007, the negotiation strategy of South Korea will likely shift to a much tougher stance.⁹¹ President-elect Lee Myung-Bak (이명박) has stated that

85. Park, *supra* note 26, at 80.

86. *Lee to Toughen Stance on North Korea*, CNN.COM, Dec. 20, 2007, http://edition.cnn.com/2007/WORLD/asiapcf/12/19/skorea.election/index.html?eref=edition_asia (last visited Oct. 9, 2008).

87. John Gittings & Oliver Burkeman, *Bush Seeks to Turn Screw on N. Korea: 'Tailored Containment' Policy*, DAWN, Dec. 31, 2002, <http://www.dawn.com/2002/12/31/int13.htm> (last visited Oct. 9, 2008); see also *S. Korean President-Elect Indicates Tougher Stance on North*, *supra* note 31.

88. Gittings & Burkeman, *supra* note 87; see also *S. Korean President-Elect Indicates Tougher Stance on North*, *supra* note 31 (discussing the economic trade benefits for North Korea that have arisen out of these policies and how they encourage continuation of the same behavior).

89. Lee, *supra* note 64, at 140.

90. *Id.* Because of this, South Korea is very rarely considered by the major denuclearization parties as a possible catalyst for bringing about any major changes within the stalemate with Pyongyang. *Id.*

91. *Lee to Toughen Stance on North Korea*, *supra* note 86. "Lee pledged to work for a nuclear-free Korean peninsula and strengthen Seoul's alliance with the United States. 'The most

he does not plan to refrain from criticizing North Korea's egregious human rights violations, as his predecessors have strategically done.⁹² He said, "If we try to point out North Korea's shortcomings, with affection, I think that would make North Korean society healthier."⁹³ Also, he plans on only opening up normal trade with the regime once it disarms, aligning with United States strategy.⁹⁴

C. China: "Mediator"

It is readily apparent that, by sharing a geographical border, large trade agreements, and a Communist ideology with Kim Jong-II, China is in a unique position to facilitate negotiations between North Korea and the rest of the world or, at least, to wield a modicum of influence over the otherwise uncontrollable nation.⁹⁵ At a time when the United States and North Korea came to a stalemate over bilateral talks, China intervened and created a face-saving opportunity for discussions to be held in a trilateral setting.⁹⁶ Later, it went further to acclimate the United States' desire to get the entire "neighborhood" involved and hosted the Six-Party Talks in Beijing.⁹⁷

However, the level of China's altruism is up for debate. According to Chinese officials, the strategy of assuming the mediator role arose from a strong belief that "dialogu[ing] and practic[ing] more patience [will] ensure

important thing is for North Korea to get rid of its nuclear weapons,' he said[.]” *Id.*; see also *S. Korean President-Elect Indicates Tougher Stance on North*, *supra* note 31 (stating that President Lee does not fear offending the North, as prior presidents have avoided).

92. *S. Korean President-Elect Indicates Tougher Stance on North*, *supra* note 31. Mr. Lee has been recorded saying in a news conference, “I think unconditionally avoiding criticism of North Korea would not be appropriate” *Lee to Toughen Stance on North Korea*, *supra* note 86.

93. *S. Korean President-Elect Indicates Tougher Stance on North*, *supra* note 31; see also *Lee to Toughen Stance on North Korea*, *supra* note 86.

94. *S. Korean President-Elect Indicates Tougher Stance on North*, *supra* note 31. Not only has Mr. Lee aligned with U.S. strategy, but he has also become quite friendly with U.S. leaders. *Id.* “Lee spoke by phone with U.S. President George W. Bush, pledging to strengthen relations with Washington and to work together to resolve the standoff over North Korea’s nuclear programs” *Id.*

95. See *Park*, *supra* note 26, at 82. The importance of sharing a geographical border is at least two-fold, if not more. *Id.* Not only is it important for normal, positive neighborly relations, such as commerce and trade, but also, “[s]hould the nuclear crisis spiral out of control and lead to an armed confrontation between North Korea and the United States, Beijing is concerned about the prospect of U.S. forces on its border and a flood of North Korean refugees streaming into northern China.” *Id.* at 83.

96. *Id.* at 76.

97. *Id.* The six parties that were involved in the Six-Party Talks held in Beijing were: North Korea, the United States, China, South Korea, Japan, and Russia. *Id.*; see also *infra* note 166 and accompanying text (showing a timeline of the events surrounding the Six-Party talks).

that the Korean peninsula is free of nuclear weapons.”⁹⁸ But, many others believe that the Chinese involvement is more of a calculated step towards achieving global influence and economic gain. A primary objective of China is to drastically increase its per capita gross domestic product, and by gaining the favor of many international superpowers through assisting in mediation, China can foster increased foreign investment into its country.⁹⁹ Concurrently, China can possibly use this opportunity to gain global power and influence, while simultaneously furthering its position of eventually turning North Korea into a satellite nation.¹⁰⁰

D. North Korea: “Appeasing Misbehavior”

It is a common allegation that even a cursory glance at North Korea’s past negotiation strategies, both through discussion and action, shows that it is commonplace for one thing to be said and another thing to be done.¹⁰¹ According to this view, lying, deception, and broken promises by North Korea are not isolated instances but are truly the standard mode of operation.¹⁰² In fact, “it is half expected that [North Korea] will take the action that is in its best interest at any given time,” regardless of what has been previously promised.¹⁰³

In general, Pyongyang negotiators view negotiations as “war by other means.”¹⁰⁴ As is the case with many other Communist countries, North

98. Park, *supra* note 26, at 84. Sha Zukang, a former Chinese arms control ambassador, made the following statement: “Dialogue and consultation is the best way to reach consensus on problem matters. We should recognize that North Korea has legitimate security concerns. We need to continue the dialogue and practice more patience to ensure that the Korean peninsula is free of nuclear weapons.” *Id.*

99. *Id.* at 81-82. A major factor involved in Chinese policy decisions is the concept of “xiaokang,” which embodies the desire for the vast majority of Chinese people to maintain a middle-class lifestyle. *Id.* at 82. One “objective of xiaokang is to attain a \$3,000 per capita gross domestic product by 2020.” *Id.* In order for this objective to be accomplished, there must be political and economic stability in the region. *Id.* at 81-82.

100. Kang, *supra* note 58.

101. See *infra* note 166 and accompanying text.

102. Tan, *supra* note 13, at 536; see also *infra* text accompanying note 112 (providing the five steps involved in North Korean negotiation strategy, clearly identifying examples of lying, deception, and broken promises).

103. Kang, *supra* note 58.

104. SCOTT SNYDER, NEGOTIATING ON THE EDGE: NORTH KOREAN NEGOTIATING BEHAVIOR 14 (1999).

Korea considers negotiations to be simply another battlefield.¹⁰⁵ Negotiators seek not to be “compromisers” but consider themselves to be “fighters.”¹⁰⁶ Therefore, negotiation takes on a militaristic quality in the sense that negotiators focus solely upon full achievement of their goals.¹⁰⁷ Negotiators push mightily for concessions from their opposition and are more than willing to threaten violence if they do not receive those concessions or if their opposition dares to request reciprocal behavior.¹⁰⁸ Eventually, if negotiators ever run into a situation where it becomes apparent their opposition will not acquiesce to their demands, North Korean strategy mandates that they suspend talks and walk away from the table.¹⁰⁹ In their mindset, negotiators view concession to be synonymous with defeat.¹¹⁰

If this is truly the mindset of North Korean authorities, it seems odd that they would even enter into negotiations in the first place. However, based on North Korean indoctrination, “the purpose of holding dialogue is to bide time and weaken [their] enemies, as well as to obtain favorable international opinion. Furthermore, it can be considered a revolutionary offensive tactic for driving the enemy into a corner.”¹¹¹ According to Admiral C. Turner Joy, author of *How Communists Negotiate*, “Communists are not embarrassed in the least to deny an agreement already reached, [and they]

105. Song Jong-hwan, *North Korean Negotiating Behavior: A Cultural Approach*, 15 E. ASIAN REV. 87, 95 (2003). The North Korean negotiators involved are extremely learned in the revolutionary negotiation styles of other Communist countries, such as China and the Soviet Union. *Id.* “It is clear that North Korea still follows the teachings of Lenin and Mao Tse-Tung.” *Id.* at 92.

106. *Id.* at 95.

107. *Id.* Because North Koreans adhere to a warrior mentality, they argue that “the goal of negotiations is complete victory,” and “[their mentality] regards any compromise or contract with the counterpart as either a defeat or as an unfinished task.” *Id.*

108. *Id.* Although past behavior has indicated a willingness, and even a propensity, to behave in this manner, it has not always been deemed the wisest choice strategically, and thus, has not been employed. *Id.* The factor that determines which move would be most prudent is the overriding philosophy behind North Korea negotiation: power politics. *Id.* As an extrapolation:

The North employs different tactics against the U.S. and South Korea. Their tactics also vary, depending on the counterpart’s stance. Since the North proceeds on the basis of power, any courtesies or polite words from the South result in more extreme demands by the North. Conversely, more inflexibility from the South elicits more courteous negotiation behavior from the North.

Id. at 96.

109. *Id.* Suspension will usually be predicated upon an “outside directive.” *Id.*

110. *Id.* at 97. This is shown by Pyongyang’s history of incessantly pushing an identical proposal without concession and quibbling over even the most miniscule variances: “Even when they are forced to reach a compromise with their counterparts, they try to emphasize the legitimacy of their original proposal and conceal their concession.” *Id.*

111. Jong-hwan, *supra* note 105, at 92. This quote was given by Kim-II-Sung himself, while ordering the military to dig tunnels into the demilitarized zone that could later be used for infiltration into South Korea. *Id.* at 91-92.

[Vol. 9: 1, 2008]

PEPPERDINE DISPUTE RESOLUTION LAW JOURNAL

simply state that your interpretation is an incorrect one.”¹¹² Thus, in the mind of North Koreans, negotiation is simply “a means to an end: Revolution.”¹¹³

The pattern of “brinkmanship” or “negotiating on the edge” that North Korea generally employs follows five steps:

(1) escalate the crisis; (2) use it to gain bargaining leverage to get the desired parties (most particularly the United States) to the table; (3) as a result of the crisis, to come to an agreement, which (4) gives North Korea benefits, which it swallows; and then (5) not abide by its promises, break the agreement, and create another crisis – thus starting the cycle again.¹¹⁴

Such a strategy calls for North Korea to attempt to spin the situation in a way that makes an unaware onlooker think the opposition is to blame. For example, North Korean officials attempted to blame the United States during a public announcement in which North Korea stated that it possessed nuclear weapons:

The U.S. disclosed its attempt to topple the political system in the DPRK at any cost, threatening it with a nuclear stick. This compels us [sic] to take a measure to bolster its nuclear weapons arsenal in order to protect the ideology, system, freedom and democracy chosen by its people.¹¹⁵

112. SNYDER, *supra* note 104, at 11. This is merely one of many tactics frequently used in Communist-influenced negotiation techniques. Others include:

[A]ttempts to ‘load’ the agenda in order to create a context for one-sided concessions, psychological warfare conducted through incidents away from the negotiating table, delaying progress in order to wear down the opponent, making minimal commitments while extracting maximal concessions, dishonoring commitments already made, maintaining a veto in practice over the enforcement of agreements, raising ‘red herrings’ in the course of negotiations, denying or distorting the truth, pocketing concessions instead of offering an equal concession in turn, and agreeing to an item in principle and later applying a different interpretation to its content or significance.

Id.

113. Jong-hwan, *supra* note 105, at 92.

114. Tan, *supra* note 13, at 536 (citing SNYDER, *supra* note 104, at 68-96). See *infra* note 164 and accompanying text, for a list of the events surrounding the Six-Party talks in Beijing, which give historical examples of these five steps.

115. Lee, *supra* note 64, at 130. U.S. Secretary of State, Condoleeza Rice, described this assertion by North Korea as “ridiculous” and stated that “the United States has no war plans against North Korea presently. These recent accusations amount to nothing more than the continued spewing of the North Korean propaganda machine and the lineup of lies that it regularly puts forth to its populace.” Tan, *supra* note 13, at 537.

This is a frequent strategy taken by North Korea, which has one of the largest armies in the world, and such threats usually emerge when it feels as if it is not being treated appropriately.¹¹⁶

In further illumination, “North Korea ma[de] demands on the United States for ‘direct talks’ and a ‘non-aggression pact’ in order to create the illusion that it is pursuing peace and diplomacy while a hostile America goes on spurning its well-intended overtures.”¹¹⁷ Since the outset of the Six-Party Talks, North Korea wanted direct access to United States decision makers, through bilateral negotiations, because it viewed the United States as the only major contender on the issue of maintaining a nuclear-free Korean peninsula.¹¹⁸ This is compatible with the general principle that Korean culture seeks to exclude intermediaries and go straight to the entity that possesses final, binding authority.¹¹⁹ The fact that North Korea viewed the United States, above South Korea, as such a binding authority, may be indicative of its assessment of both the United States and South Korean negotiation strategies.

Applying all of these principles to the current situation, many believe that Pyongyang’s current cooperative stance is primarily tactical.¹²⁰ One reason for this strategy could be the fact that the recent South Korean presidential elections were approaching.¹²¹ North Korea likely desired to give off the impression that it was being cooperative in order to gain the election of another South Korean official with a “Sunshine Policy” bent.¹²²

116. Choonsik & Herskovitz, *supra* note 48.

117. Lee, *supra* note 64, at 136. Even if the United States were to abandon the multi-party talks in pursuit of direct talks per the request of Pyongyang, the odds are that the situation would become worse, rather than better. *See id.* “In any exclusive bilateral setting, North Korea will make false accusations, unreasonable demands, and create the impression that the inflexible position of the United States is the chief obstacle to reaching a negotiated settlement.” *Id.*

118. Lee, *supra* note 2, at 120.

119. Interview with Jae-Woo Lee, Director, Korean Commercial Arbitration Board Deputy (Sept. 24, 2007) (transcript of interview on record with the author). Mr. Lee is a member of the International Cooperation department of the KCAB, the FTA Monitoring Centre, and was particularly helpful in explaining the Korean legal system’s treatment of international affairs. More information about the Korean Commercial Arbitration Board can be seen on their website: <http://www.kcab.or.kr>. Special thanks to Mr. Lee for participating in this interview and sharing his insight on this important issue.

120. Fifield, *supra* note 45.

121. *Id.* Paik Jin-hyun, one of Seoul National University’s international relations professors, stated, “I think that North Korea’s recent willingness to co-operate is very much tactical, especially with the South Korean election coming in December . . . By holding the summit, the North Koreans were trying to create the impression among South Koreans that it is co-operating and will continue to do so if they continue with engagement.” *Id.*

122. *See id.*

Another reason for this strategy is North Korea's desire to reach a new level of relations, in further pursuit of normalization with the United States, in order to gain large economic rewards in exchange for abdicating its nuclear program.¹²³ North Korea wields its potential as a nuclear threat in order to prevent military attacks and to force the world into high-level negotiations.¹²⁴ If Kim Jong-Il can achieve his objective of trading assurances that he will discontinue his nuclear weapon development, he may be able to receive enough economic benefits and security guarantees that his regime can continue into the foreseeable future.¹²⁵

The negotiation strategy of North Korea, in an action-oriented sense, became interwoven with that of the remaining five parties with regard to one specific point of verbal agreement: Yongbyon (영변). From the North Korean standpoint, following through with the verbal commitment of disabling the Yongbyon nuclear reactor was deemed to be an appropriate tactic in February of 2007. In the eyes of the remaining five parties, the disablement of the nuclear facilities caused North Korea, at least temporarily, to be unable to continue nuclear weapons development.¹²⁶ Further, they believed that even if North Korea were to restart the facility's operations, its development would be delayed two to three years.¹²⁷

IV. KNOWING YOUR NEGOTIATION COUNTERPART

Delusion of Deity: An Unspoken Influence upon North Korean Negotiation Strategy

123. Lee, *supra* note 2, at 118. Once again, this is an example seeking compensation for ceasing bad behavior, a frequent tactic used in brinkmanship style negotiations. See Tan, *supra* note 13, at 536.

124. See Raven Winters, Note, *Preventing Repeat Offenders: North Korea's Withdrawal and the Need for Revisions to the Nuclear Non-Proliferation Treaty*, 38 VAND. J. TRANSNAT'L L. 1499, 1508 (2005). This assertion is based upon the fact that the North has previously engaged in the exact same behavior in the past, resulting in the "Agreed Framework." See *id.*

125. Katy Oh & Ralph Hassig, *Kim Jong-il Through the Looking Glass*, in DPRK BRIEFING BOOK (2003), available at <http://www.nautilus.org/DPRKBriefingBook/negotiating/ProfileofKimJong-il.html> (last visited Oct. 9, 2008). In fact, the author goes on to say that success in this objective could allow Kim Jong-Il to rule for as long as the regime of his father, Kim Il-Sung. *Id.*

126. Fifield, *supra* note 45. According to Mr. Ralph Cossa, head of the Pacific Forum of the Centre for Strategic and International Studies, "[w]ith the disabling of the Yongbyon facilities, North Korea will be unable to produce more weapons-grade plutonium. This is a major step forward." *Id.*

127. Kang, *supra* note 58.

When foreigners study Korean culture, they are often surprised to learn the extent to which Kim Jong-Il deifies his father and himself, along with the extent to which his leadership rests on such propaganda.¹²⁸ Such information can lend interesting insight into the mindset behind North Korean negotiation strategy. When applying this unique deity doctrine to particular strategic steps taken by the Kim Jong-Il regime, North Korean reasoning becomes slightly less puzzling.

The official North Korean myth of Kim Jong-Il holds that he was born upon the top of a Korean mountain peak next to the heavens and that the earth celebrated this joyous occasion.¹²⁹ Simultaneously, the heavens parted with a double rainbow, a new star began to blaze, and a flying swallow greeted the divine newborn.¹³⁰ Such miracles heralded the cataclysmic birth of a “general who w[ould] rule all the world.”¹³¹ Upon viewing these wonders, a soldier carved a message into a nearby tree: ““Oh, Korea, I announce the birth of the Star of Paekdu.””¹³² Further, Kim Jong-Il’s presence is said to cause snow to melt and trees to instantaneously bloom.¹³³ Also, he allegedly injects himself with blood from virgins in order to retain his youth, authored a book almost every single day while he was in college, and shot a hole-in-one on his first venture to the golf course.¹³⁴ Since his youngest days, Kim Jong-Il grew up hearing everyone around him telling him that he was “the son of God.”¹³⁵ His father (the “Great Leader”) gave him the title “Dear Leader” and addressed him as “a genius of 10,000 talents.”¹³⁶

128. See Lee, *supra* note 64, at 129. The amount to which the North Korean public adheres to Kim Jong-Il’s deification attests to the high caliber of the Pyongyang propaganda machine, “which apparently remains effective despite churning out chimerical tales . . .” *Id.*

129. *Id.* at 125-26; see also *The Many Faces of Kim Jong-Il*, *supra* note 59.

130. Lee, *supra* note 64, at 125-26. Actually, western historians assert that Kim Jong-Il was born in a Siberian army camp, “where his father, Kim Il Sung, and his tiny band of communist guerrillas had fled to escape the Japanese.” Carlson, *supra* note 15.

131. Carlson, *supra* note 15.

132. *Id.*

133. *Id.* These far-fetched assertions have emerged from the cloud of fairy-tales that surrounds Kim Jong-Il. “[T]he truth is hard to locate, lost in the thicket of official North Korean mythology and the wild rumors spread by the South Korean media.” *Id.*

134. Carlson, *supra* note 15. The truth, distinctly in contrast to the myths that abound, is that Kim Jong-Il is a “pudgy 5-foot-3-inch Stalinist who wears elevator shoes and a puffy pompadour in an unsuccessful attempt to gain stature.” *Id.* He also has a keen liking of cartoons, “kitschy artifice,” and, most of all, himself. *Id.*

135. *The Many Faces of Kim Jong-Il*, *supra* note 59. This stands in shocking contrast to the vast majority of North Koreans, who grew up destitute, if they were lucky enough to have enough sustenance to survive. *Id.*

136. Carlson, *supra* note 15.

In fact, such mythology stems directly from the deification of Kim Jong-Il's father and dictatorial predecessor, Kim Il-Sung. North Korean people venerated Kim Il-Sung and placed him on a pedestal with "godlike stature."¹³⁷ During his lifetime, the Great Leader supposedly defeated Japanese colonial forces almost single-handedly.¹³⁸ When he passed away, thousands of cranes allegedly descended from heaven in order to retrieve his body.¹³⁹ However, "the birds couldn't take him away because they saw that all North Koreans cried and screamed and pummeled their chests and pulled out their hair."¹⁴⁰ Moved by such an outpouring of affection, the cranes let the body remain in his \$900 million palace, deemed a "heavenly palace built on earth."¹⁴¹ To this day, the mummified body of Kim Il-Sung reigns as "President for Eternity."¹⁴²

North Korean citizens are not allowed to practice any religion aside from the Kim family cult.¹⁴³ This cult is unprecedented, holding that "[Kim Jong-Il] and his father are like God and Jesus Christ."¹⁴⁴ Kim Il-Sung instituted an elaborate religious doctrine, creating a North Korean Holy Trinity comprised of himself, his mother, and his son, the "Dear Leader."¹⁴⁵ Also, as an act of social responsibility, the entire North Korean race is required to willingly sacrifice its life for its "Dear Leader," should he deem it necessary.¹⁴⁶

North Korea's penchant for lying is not limited to the international community but is exercised rampantly through the flow of controlled

137. *Id.*

138. Lee, *supra* note 64, at 125.

139. Carlson, *supra* note 15.

140. *Id.*

141. *Id.* The \$900 million palace referred to here is Kim Sung-Il's Kumsusan Palace and it is now the site which holds the Great Leader's mummified corpse under glass. *Id.*

142. *Id.* Despite this fact and despite the holding that the practice of the Greek Orthodox religion is strictly forbidden, Kim Jong-Il has still built an elaborate Russian, Greek Orthodox-style church, merely for his personal pleasure. *Id.*

143. Oh & Hassig, *supra* note 125.

144. Carlson, *supra* note 15.

145. Anne Penketh, *God is Dead. Long Live Kim Il Sung*, THE INDEP., Sept. 17, 2004, <http://www.independent.co.uk/news/world/asia/god-is-dead-long-live-kim-il-sung-546564.html> (last visited Oct. 9, 2008).

146. Oh & Hassig, *supra* note 125. The Dear Leader's commands to his people regarding self-sacrifice stem from his personal fear regarding his own safety. *Id.* Not only is the entire population commanded to be a buffer between the leader and an attacker, but the most loyal of his military soldiers have been recruited as special, personal guards. *Id.*

information to its own people.¹⁴⁷ Its propaganda machine has functioned for so long that it is virtually impossible to decipher what is myth and what is reality.¹⁴⁸ The North Korean people have been indoctrinated with these “facts” their entire life, to the point where questioning the validity of them seems unthinkable.¹⁴⁹

In light of the negotiation strategies of Pyongyang that the global community has already witnessed, observers must ponder how such indoctrination at home affects North Korea’s interactions abroad. “North Korea’s behavior regarding nuclear weapons has led many American sources—ranging from scholars and politicians to comedians and talk show hosts—to suggest that North Korea acts and speaks in a crazy and irrational manner.”¹⁵⁰ To the contrary, many North Koreans believe that Kim Jong-Il is actually a “very bright, very daring, very bold dictator who knows how to control his society and act strategically to shock” his people and the globe.¹⁵¹ His mysteriousness is a source of “leverage and power.”¹⁵² He is manipulating the traditional leader-worshipping Korean culture, and who is to say he has not even bought into it himself.¹⁵³

Perhaps the most important tool to possess before entering a negotiation is an understanding of the opponent.¹⁵⁴ With this in mind, it would be valuable to know if one party approaches the negotiation table holding the belief that he is god or the son of god, or, at the very least, that he is justified in indoctrinating his entire population to believe that he is deity in some capacity. It would be difficult for a dictator to be revered as god by an entire

147. Tan, *supra* note 13, at 536. “North Korea pumps a steady stream of lies to its own populace.” *Id.*

148. See *The Many Faces of Kim Jong-Il*, *supra* note 59; see also Carlson, *supra* note 15.

149. See *The Many Faces of Kim Jong-Il*, *supra* note 59. U.S. diplomats have even been quoted as labeling Kim Jong-Il as a “madman.” See Laura McClure, *Understanding Kim Jong Il*, SALON.COM, Jan. 10, 2003, <http://dir.salon.com/story/news/feature/2003/01/10/korea/index.html> (last visited Oct. 9, 2008).

150. Tan, *supra* note 13, at 533.

151. McClure, *supra* note 149 (quoting Dr. Kongdan Oh, coauthor of “North Korea Through the Looking Glass”). This is another way that Kim Jong-Il’s negotiation style resembles other famous dictators. *Id.* “In that sense he’s no different from a person like Stalin or Saddam Hussein, and in many ways he’s actually been more successful.” *Id.*

152. *The Many Faces of Kim Jong-Il*, *supra* note 58 (quoting Han S. Park, Director, University of Georgia’s Center for the Study of Global Issues). The reasoning behind such assertion involves the thinking that the maintenance of uncertainty directly translates into increased power, which, in my analysis, is debatable. See *id.*

153. McClure, *supra* note 149. “[Kim Jong-Il] can combine an olden-days Confucian style mindset, where the ruler is always respected and regarded to be almost a different species, with the traditional Korean mindset, which is very much a father-worshipping, leader-worshipping culture, and he’s manipulating that kind of mentality.” *Id.*

154. Goldstein & Weber, *supra* note 68, at 329.

population of people for his entire lifetime, then, expect to be comfortable being treated as a peer—or in all actuality an “evil” tyrant—by his new negotiation partners. At the absolute minimum, such an expectation would affect his negotiation style.

A fundamental consideration of a party as it enters into a negotiation is autonomy,¹⁵⁵ and this is the exact capacity that a sincerely believed delusion of divinity affects. A party postures itself through assertions, offers, and counter-offers based upon how much independence it has, its relative bargaining position, and its perceived ability to make decisions.¹⁵⁶ If that party perceives itself as god, it naturally will assume that it commands the greatest level of independence, possesses an ideal bargaining position, and has a superior level of decision-making ability. Therefore, the party no longer feels bound by anything asserted by its inferior negotiation counterpart or even by any kind of humanity-wide common moral code.

Abstractly, if people sincerely believe they are deity in the flesh, their moral compasses shift from standards commonly held throughout the rest of humanity to a more egocentric system. If they are god, they can—and by definition have the right to—choose who lives and dies.¹⁵⁷ Starving an entire race of people in order to have funds for elaborate self-celebration—much less lying, breaking promises, and continuing nuclear weapons development for global economic blackmail (as seen in recent North Korean history)—shifts from being a humanitarian atrocity to a divine strategic choice.¹⁵⁸

From a Western mindset, many people find this absurd and can hardly believe that, even if the entire North Korean population has been duped by this dictator, Kim Jong-Il could sincerely believe and act from such a paradigm.¹⁵⁹ If this paradigm is boiled down to the lowest common denominator, it shows that Kim Jong-Il is a spoiled tyrant who has been

155. *Id.* at 332. This assertion is derived from the basic principle that parties enter a negotiation process at the most fundamental level because they perceive themselves as having some level of power derived from any number of sources, and that level of power can be used to influence the outcome of the particular situation. *Id.* Whatever “bargaining chips” a party possesses will be used to that party’s advantage. *Id.*

156. *Id.* Leverage is a critical principle that is involved in every negotiation. *Id.* “Usually one side will have more bargaining chips than the other and will seek to take advantage of that fact.” *Id.*

157. See Oh & Hassig, *supra* note 125 (referring to the example of the Dear Leader instructing the general population to be willing to sacrifice its life for his own, as an act of social responsibility).

158. See *infra* note 166 and accompanying text.

159. See Kang, *supra* note 58.

venerated as being divine by his own people for a long time.¹⁶⁰ If that is true, at the very least, public disrespect will not be tolerated, as was seen by Pyongyang's response to being branded as "evil."¹⁶¹ Also, the request that North Korea cease production of nuclear weapons is stated as seeking the greater good of all humanity but is heard as an undermining question from a lesser authority to North Korea's autonomy in the decision to continue an action that it has already deemed appropriate. Further, Pyongyang perceives talking about such an undermining assertion as a viable option, only to the extent that it reveals to the world who is "truly" in power.¹⁶²

Based upon such a premise, and getting to the heart of the global community's problems today, this mindset by the Dear Leader filters all the way down to undermine the very foundation of any agreement that can be reached. Aside from the aforementioned Communist-style strategic reasons for agreement violation,¹⁶³ if a leader in this position has an inflated perception of his own autonomy, belittles outside authority, and deems that moral codes are not applicable to him, then the natural conclusion is that he believes he is not bound by any agreement he makes or any paper he signs. These papers merely become vehicles to extract as much benefit for himself as he can, and to appease foreign meddlers while he continues his self-sanctioned behavior. Consequently, it is not surprising that the Agreed Framework of 1994 deteriorated amidst opportunistic lies and broken promises.¹⁶⁴ With this in mind, the world watches its television screens with little hope as the deadline for the September Agreement comes and goes without promises being fulfilled.

160. See Lee, *supra* notes 128-29 and accompanying text (describing the alleged official account of the divine birth of the Dear Leader); *supra* note 135 and accompanying text (indicating that Kim Jong-Il was revered as "the son of god" since birth); *supra* note 149 and accompanying text (showing that the North Korean people have been systematically indoctrinated in the deity of Kim Jong-Il and his father throughout their entire lives).

161. See *infra* note 166 and accompanying text; *supra* note 16 and accompanying text (showing that North Korea responded by classifying this statement as "little short of a declaration of war" and pledged to "mercilessly wipe out the aggressors").

162. See *supra* notes 105-109 and accompanying text (articulating the extent to which North Korea, following the example of Communist countries generally, views negotiations as a different form of battle).

163. See Jong-hwan, *supra* note 105 (indicating that North Korea has studied and utilized the negotiation strategy of other Communist countries); see also Jong-hwan, *supra* note 111 and accompanying text (quoting Kim Il-Sung as saying that such a negotiation strategy is used to "bide time," "weaken our enemies," "obtain favorable international opinion," and "drive the enemy into a corner").

164. See *infra* note 166 and accompanying text (reflecting the series of events that proved to be the unraveling of the Agreed Framework); Tan, *supra* note 13 (indicating that the event which began the unraveling process of the Agreed Framework was when U.S. intelligence discovered a large underground facility that had the capability to support nuclear weapon development).

Some scholars believe that the Dear Leader's "god-ship" only applies to his relationship with the North Korean people, while others fear that such delusions have seeped into other international affairs.¹⁶⁵ Regardless, the existence of the delusion of deity that Kim Jong-Il holds is undeniable, and at the very least, it should be considered when attempting to understand influences upon North Korea's nuclear negotiation strategy. It has likely played a strong but unspoken role in the difficulties experienced thus far and will continue stealthily in the future.

APPENDIX: EVENTS SURROUNDING THE SIX-PARTY TALKS IN BEIJING¹⁶⁶

DATE	NUCLEAR STANDOFF
October 21, 1994	"Agreed Framework" reached between North Korea and United States in Geneva, Switzerland.
Mid-August, 1998	United States intelligence discovers nuclear facility.
August 24, 1998	North Korea fired Taepo Dong-1 missile over Japan.
January 29, 2002	President Bush's State of the Union speech branded North Korea as part of an "axis of evil."
October 4, 2002	North Korea acknowledged its nuclear weapons development program to Ambassador James Kelly.
November 14, 2002	KEDO announced the discontinuance of heavy oil supply to North Korea.
December 12, 2002	The United States declared the nullification of the Geneva Agreed Framework with North Korea.
December 27, 2002	North Korea purged the IAEA inspectors from its territory.
December 29, 2002	The United States adopted a 'tailored

165. Kang, *supra* note 58.

166. Lee, *supra* note 2, at 107-16 (discussing the events surrounding the Six-Party Talks); Tan, *supra* note 13, at 532-33 (discussing the discovery of Agreed Framework violations); Cronin, *supra* note 22, at 54; Kim, *supra* note 3, at 194; Crook, *supra* note 41, at 217; *N. Korea: U.S. Not Delivering Aid*, *supra* note 47.

	containment' policy against North Korea.
January 10, 2003	North Korea withdrew from NPT.
March, 2003	Japan launched two monitoring satellites, constructed a new intelligence headquarters, and initiated acquisition of anti-missile systems.
April 14, 2003	North Korea announced its acceptance of new multilateral talks for resolution of nuclear problem.
April 23, 2003	Trilateral Talks (DPRK, United States, China) in Beijing.
August 1, 2003	North Korea agreed to participate in Six-Party Talks.
August 27-29, 2003	First Round of Six-Party Talks in Beijing, China.
September 19, 2005	"September Agreement" where NK committed to abandon its nuclear weapons program.
September, 2005	China freezes laundered North Korean funds.
October 9, 2006	North Korea detonates nuclear explosion.
October 14, 2006	UN Security Council Resolution 1718.
February, 2007	North Korea begins to disable its nuclear facilities.
December 31, 2007	North Korea misses deadline to declare nuclear programs, issues statement regarding "strengthening war deterrent capabilities."