

9-1-2015

Stopping the Madman: Lessons from the Kaesong Industrial Complex

Sei Hee Park

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Recommended Citation

Sei Hee Park, *Stopping the Madman: Lessons from the Kaesong Industrial Complex*, 15 Pepp. Disp. Resol. L.J. 639 (2015)
Available at: <http://digitalcommons.pepperdine.edu/drlj/vol15/iss3/8>

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Stopping the Madman

PEPPERDINE DISPUTE RESOLUTION LAW JOURNAL

Stopping the Madman: Lessons from the Kaesong Industrial Complex

Sei Hee Park*

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I. INTRODUCTION

On April 9, 2013, the Democratic People’s Republic of Korea (North Korea) unilaterally pulled its 53,000 workers from the Kaesong Industrial

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Complex (KIC),¹ effectively shutting down the complex, which had been jointly run with the Republic of Korea (South Korea) since 2002.² North Korea initially took a very hard stance against South Korea, refusing to accept even the minimum humanitarian aid needed for the KIC workers.³ North Korea then blamed South Korea for the closure of the KIC, despite its unilateral action in shutting down the complex, and refused to allow tenant companies to take out their raw materials and finished products from the KIC, increasing the tension between the countries.⁴ Finally, after seven rounds of inter-Korean negotiations, North and South Korea reached an agreement to reopen the complex.⁵ On August 14, 2013, steps were taken to restart operations at the KIC by creating a joint committee and four sub-committees to give each government “an equal say in the running of the

*Juris Doctor Candidate 2015, Pepperdine University School of Law. This article was originally written in Fall 2013 and reflects the situations present during that time.

1. *Koreas Agree to Reopen Joint Factory Park Next Week*, YONHAP NEWS AGENCY, Sept. 11, 2013, <http://english.yonhapnews.co.kr/national/2013/09/11/8/0301000000AEN20130911001653315F.html>. Other known spellings of the complex name include Kaeseong, Gaesung, or Gaeseong. Kaesong was one of three special economic zones (in addition to Shinuiju and Kungangsan) that North Korea designated in order to open doors to foreign investment and improve the economic downfall in the country. Jeehye You, *Legislative Reform of the Kaesong Industrial Complex in North Korea*, 29 UCLA PAC. BASIN L.J. 36, 42 (2011).

2. Gi-Hyoung Oh, *The Legal Framework of the Gaesung Industrial Complex*, 5 J. KOR. L. 21 (2005). North Korea first prohibited South Korean workers to enter the KIC on April 3, 2014, then tentatively suspended the KIC on April 8, until finally removing its workers on April 9. *Unification Spokesperson's Statement on the Gaeseong Industrial Complex (GIC)*, MINISTRY OF UNIFICATION (April 25, 2013), <http://eng.unikorea.go.kr/content.do?cmsid=1834&mode=view&page=5&cid=31637>.

3. *Unification Spokesperson's Statement on the Gaeseong Industrial Complex*, *supra* note 2.

4. *Unification Spokesperson's Statement Regarding the Current Status on the Korean Peninsula and the Gaeseong Industrial Complex(GIC)*, MINISTRY OF UNIFICATION (May 19, 2013), <http://eng.unikorea.go.kr/content.do?cmsid=1834&mode=view&page=5&cid=31642>.

5. *Rebirth of Factory Park*, KOR. TIMES, Sept. 12, 2013, http://koreatimes.co.kr/www/news/opinion/2013/09/137_142702.html.

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complex that was previously overseen by a North Korean governing body.”⁶ The committees reached a deal on September 11, 2013 after overnight negotiations, agreeing to resume operations at the KIC.⁷ The shutdown lasted 161 days.⁸

The agreement to reopen the KIC came amidst North Korea’s postponement of family reunions scheduled for the end of September, which “dampened hopes for improved inter-Korean ties after recent moves by both Koreas to ease tensions created by the North’s nuclear test in February and threats of war last spring.”⁹ The fact that the newly restarted operations at the KIC were not affected by the postponement of the family reunions demonstrates that, despite the complicated and tense relationship that exists between North and South Korea, the two governments may be able to civilly negotiate and resolve the issues they believe are important. The key issue during the KIC negotiations was determining how to fully prevent unilateral shutdowns of the KIC in the future.¹⁰ Despite some tension over this issue, the two Koreas eventually agreed that operations at the KIC should not be

6. *Koreas Working on Details for Complete Reopening of Kaesong Complex*, YONHAP NEWS AGENCY, Sept. 10, 2013, <http://english.yonhapnews.co.kr/national/2013/09/10/43/0301000000AEN20130910001151315F.html>.

7. *Rebirth of Factory Park*, *supra* note 5.

8. *Id.*

9. Choe Sang-Hun, *North Korea Postpones Family Reunion Program*, N.Y. TIMES, Sept. 21, 2013, http://www.nytimes.com/2013/09/21/world/asia/north-korea-postpones-family-reunion-program.html?_r=0.

10. *ROK Government’s Explanation on the 6th Inter-Korean Working-Level Talks on Gaeseong Industrial Complex*, MINISTRY OF UNIFICATION (Aug. 6, 2013), <http://eng.unikorea.go.kr/content.do?cmsid=1834&mode=view&page=4&cid=31651>. “North Korea proposed a new clause, which state[d] that ‘North Korea will not unilaterally prohibit the entry of South Korean workers to the GIC or withdraw North Korean workers *only if* South Korea promises not to use inappropriate political rhetoric and pledges not to pose military threats against North Korea.’” *Id.* (emphasis added). South Korea refused to accept this clause, seeking North Korea’s agreement to “not take unilateral measures that discourage the normal operation of the GIC . . . under any circumstance.” *Id.* (emphasis added).

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stopped again regardless of the inter-Korean situation,¹¹ demonstrating that at least on paper they were willing to treat the KIC as an independent issue from other inter-Korean conflicts and issues. While North Korea's unpredictable attitude prevents South Korea from fully trusting the North's promises, by separating the different issues on the table and finding a way to protect the South from unnecessary harm, South Korea may be able to find a way to continue to work with North Korea in resolving other conflicts between the two nations.

Resolving the KIC conflict may be a sliver of hope in what has been a tense and rocky relationship between the two Koreas. The negotiations that arose out of the KIC conflict can be a helpful case study to observe how South Korea can continue to improve its relations with the highly irrational North Korea. Despite other inter-Korean tensions and North Korea's erratic behavior in unilaterally shutting down the KIC for five months, South Korea was able to find a way to negotiate the reopening of the KIC and make amendments to the existing KIC legislation. These observations can also be applied to resolve conflicts between other nations or parties—in cases where there is an imbalance of power and a strong sense of unpredictability on one side.

11. *Two Koreas Agree to Reopen Kaesong Industrial Complex*, YONHAP NEWS AGENCY, Aug. 14, 2013, <http://english.yonhapnews.co.kr/northkorea/2013/08/14/78/0401000000AEN20130814010600315F.html>; *Agreement on Normalization of the Gaeesong Industrial Complex*, MINISTRY OF UNIFICATION (Aug. 16, 2013), <http://eng.unikorea.go.kr/content.do?cmsid=1834&mode=view&page=3&cid=31653> [hereinafter *Agreement on Normalization*]. The unofficial translation of the initial agreement posted by South Korea's Ministry of Unification states the first clause:

South and North Korea agreed that a temporary suspension of the GIC caused by the withdrawal of workers and disapproval of entry should not occur again. *Without being affected by any political situation*, South and North Korea must guarantee normal operation of the GIC, including South Korean workers' entry into North Korea, North Korean workers' regular working hours, and protection of company assets.

Id. (emphasis added).

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Section I briefly introduces the Kaesong Industrial Complex, and its closure and reopening. Section II looks at the history of North and South Korea that has set up the current tension between the nations. Section III highlights the significance of the KIC to the two Koreas' relationship. Section IV then explores North Korea's behavior over the years, intertwining discussion of Thomas Schelling's "Madman Theory" to describe North Korea's growing unpredictability and irrationality. Section V provides suggestions for how South Korea can appease North Korea's erratic behavior, as exemplified by their actions during the KIC negotiations. Section VI concludes.

II. HISTORY OF THE TWO KOREAS

North and South Korea have a very unique relationship—one not often seen in the global context—that stems from the initial division of the country along the 38th parallel in the aftermath of World War II (WWII).¹² Korea had been under Japan's colonial rule since 1910, and when Japan was defeated in WWII, the USSR and the United States agreed to temporarily divide Korea along the 38th parallel under a "trusteeship" to prepare and ease Korea into an independent state.¹³ However, conflicting opinions between the USSR and the United States resulted in the South and North having separate elections and setting up separate governments, making the temporary division of Korea permanent and fueling what would become the Korean War.¹⁴ Unfortunately, the Korean War did not provide a resolution

12. Rowena Hammal, *Destined to Fail? How the Division of Korea led to the Korean War*, HISTORY REV., Sept. 2010, available at <http://www.historytoday.com/rowena-hammal/destined-fail-how-division-korea-led-korean-war-0>.

13. *Id.*

14. *Id.* Efforts were initially made by the United Nations as well to pave way for a single Korean government, but were rejected by the North, which began to set up its own regime amidst the growth of political factions. INSTITUTE OF UNIFICATION EDUCATION, MINISTRY OF UNIFICATION,

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for the separated Koreans. It instead ended with a ceasefire sixty years ago, as the two sides signed an Armistice Agreement instead of a formal peace treaty on July 27, 1953,¹⁵ once again confirming the division of the two Koreas.¹⁶

Initially after the Korean War, the North Korean economy grew quickly under its first leader, Kim Il-sung, resulting in a higher gross national product (GNP) than South Korea until the early 1970s.¹⁷ However, famines began to affect North Korea in the 1990s, killing almost two million people.¹⁸ Thus, there was a great need for North Korea to get international support to save its people and revive its economy.¹⁹ North Korea received food aid from South Korea and the global community, which helped prevent another famine as bad as the one in the 1990s, and North Korea developed three special economic zones—Shinuiju, Kungangsan, and Kaesong—to provide financial support for the country through foreign investment.²⁰

UNDERSTANDING NORTH KOREA 26 (2012), *available at* <http://eng.unikorea.go.kr/content.do?cmsid=1820> (accessed by clicking on the download link). In 1950, the North invaded the South, starting the Korean War that lasted three years. *Id.* at 27.

15. INSTITUTE OF UNIFICATION EDUCATION, *supra* note 14, at 147.

16. Eun-jung Kim, *Poland Promises to Continue Armistice Monitoring Mission*, YONHAP NEWS AGENCY, July 27, 2013, <http://english.yonhapnews.co.kr/fullstory/2013/07/27/73/4500000000AEN20130727002100320F.HTML>.

17. You, *supra* note 1, at 40.

18. *Id.* South Korea's Institute for Unification Education published in 2012:

North Korea's food production plunged below 4 million tons per year . . . due to the reduction of aid from socialist countries and barter trade, decline in raw materials for agriculture due to economic hardship, and a series of natural disasters. . . . [During] the worst years of the famine, food production barely reached 3.54 million tons on average. This decline in yield resulted in a shortfall of an average of 1.64 million tons to the amount needed for the already-reduced ration system.

INSTITUTE OF UNIFICATION EDUCATION, *supra* note 14, at 189.

19. You, *supra* note 1, at 41-42.

20. *Id.* at 42; *see supra* text accompanying note 1.

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While the country's economic state was faltering, North Korea developed its military power and has advocated a "military-first policy" since 1998.²¹ Indeed, North Korea has initiated 120 provocations since June 1950 against South Korea, the United States, and Japan, "rang[ing] from multiple assassination attempts on South Korean presidents, to the infiltration of thousands of armed agents involved in kidnapping and terrorism, from the mid-air bombing of a South Korean Boeing 707 passenger plane in 1987 to the capture of the U.S.S. Pueblo, a surveillance ship."²² North Korea developed nuclear weapons and conducted nuclear tests "to secure military superiority over others, to have an effective bargaining chip, and to promote internal unity."²³ Efforts were made in 2003 to put a stop to North Korea's nuclear program through the Six Party Talks²⁴ that included North and South Korea, the United States, China, Japan, and Russia.²⁵ However, the talks proved to be futile when North Korea walked away in 2009 and refused to continue negotiations.²⁶

21. INSTITUTE OF UNIFICATION EDUCATION, *supra* note 14, at 106.

22. Morse Tan, *The North Korean Nuclear Crisis: Past Failures, Present Solutions*, 50 ST. LOUIS U. L. J. 517, 522-23 (2006).

23. INSTITUTE OF UNIFICATION EDUCATION, *supra* note 14, at 132.

24. Multilateral talks were held between the six nations, and bilateral talks were held between North Korea and the United States in order to disable North Korea's nuclear facilities in exchange for a normalization of relations. *Id.* at 83. However, North Korea continued to carry out nuclear tests without much indication that they would follow through with the agreement to denuclearize their state. *Id.* at 84.

25. Jayshree Bajoria & Beina Xu, *The Six Party Talks on North Korea's Nuclear Program*, COUNCIL ON FOREIGN RELATIONS (Sept. 30, 2013), <http://www.cfr.org/proliferation/six-party-talks-north-koreas-nuclear-program/p13593>.

26. *Id.* The UN Security Council designated three North Korean companies for sanctions after the North launched a long-range missile on April 5, 2009, and in response, North Korea stated that it would no longer participate in the Six Party Talks. INSTITUTE OF UNIFICATION EDUCATION, *supra* note 14, at 84. The new sanctions included imposing stronger regulations against North Korea, such as "reinforcing cargo inspection at sea, intensified financial and banking control, and extended arms

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Since then, North Korea has continued to demonstrate its militant power. On March 26, 2010, the *Cheonan*, a South Korean warship, exploded and sank, killing forty-six sailors,²⁷ which South Korea has blamed on a torpedo fired by North Korea.²⁸ On November 23, 2010, North Korea “fired over 170 shells onto and around South Korean civilian installations on Yeonpyeong Island, killing two civilians and two South Korean marines . . . and injuring forty-four islanders and servicemen.”²⁹ In response, South Korea enacted sanctions on North Korea that ended all inter-Korean exchanges except for the KIC.³⁰

III. THE SIGNIFICANCE OF THE KAESONG INDUSTRIAL COMPLEX

Amidst these uneasy inter-Korean relations, the KIC surprisingly managed to remain in operation until North Korea pulled its workers in April 2013.³¹ It is quite notable that the KIC managed to withstand intense

embargo.” *Id.* Bilateral talks with the United States continued, but without much success. *Id.* at 84-85.

27. You, *supra* note 1, at 37.

28. INSTITUTE OF UNIFICATION EDUCATION, *supra* note 14, at 71; CNN Library, *North Korea Fast Facts*, CNN (Dec. 20, 2014), <http://www.cnn.com/2013/10/29/world/asia/north-korea-fast-facts/>.

29. You, *supra* note 1, at 38; *see also* INSTITUTE OF UNIFICATION EDUCATION, *supra* note 14, at 71.

30. Min-uck Chung, *Seoul Considers Lifting NK Sanctions*, KOR. TIMES, Nov. 1, 2013, http://www.koreatimes.co.kr/www/news/nation/2013/11/485_145439.html. The international community also enacted strong sanctions against North Korea, “worsen[ing] the regime’s isolation.” INSTITUTE OF UNIFICATION EDUCATION, *supra* note 14, at 71. “[T]he United States and Japan lent active support to South Korea’s stance[,] . . . strongly condemn[ing] North Korea, [and] rendering their support both to joint investigations and sanctions against it, in addition to urging the UN Security Council and other international organizations to issue condemnations of its behavior.” *Id.* at 72. Japan also reinforced their own bilateral sanctions against North Korea, by prohibiting all exports to North Korea. *Id.* at 89.

31. *Unification Spokesperson’s Statement on the Gaeseong Industrial Complex*, *supra* note 2.

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conflict and tension between the two Koreas, which shows the great potential for the KIC to act as a central piece for the two countries to build better relations and potentially pave the road to reunification.³²

The power of the KIC probably rests in the important economic role that it plays for North Korea. The KIC “offers potentially 200,000 jobs and enables the North to ‘sell not only raw and supplementary materials, but also impose transportation fees, taxes and collect foreign currency as well.’”³³ It provides great financial support for the weak North Korean economy. The KIC can act as a stepping stone for North Korea to reach out to foreign investors, build new relationships with other governments, and improve its reputation in the international community.

The KIC also benefits South Korea by providing a cheap labor force for South Korean companies in close proximity to Seoul.³⁴ South Korean businesses have found more success at the KIC as compared to around 40% of South Korean companies whose plants have been unsuccessful in China.³⁵ Thus, since both countries have a need for the KIC and each is gaining value from the complex, focusing on the Koreas’ relationship and negotiations surrounding the operations of the KIC will be a helpful point of discussion to determine how South Korea can and should respond to North Korea’s unpredictable behaviors.

Even though technically remaining at war, the Korean governments have managed to co-exist and negotiate over the last fifty years on issues

32. The Kaesong Industrial Complex is one of the few “symbols of inter-Korean economic cooperation” that exists in the midst of a very delicate relationship. Oh, *supra* note 2, at 40. As such, despite being jointly operated, North Korea’s ability to unilaterally shut down the KIC provides an interesting backdrop on which to examine inter-Korean relations and the balance of power between the two governments.

33. You, *supra* note 1, at 43.

34. *Id.* The KIC is only thirty-seven miles from downtown Seoul and provides a cost-efficient alternative for South Korean companies than their plants in other countries, such as China. *Id.* at 43-44.

35. *Id.* at 44.

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ranging from North Korea's use of nuclear weapons to organizing family reunions for those separated by the Korean War. However, maintaining a stable relationship has not been easy, particularly because North Korea's irrational threats and actions—such as the recent shutdown of the KIC—make it difficult for South Korea to maintain any particular policy towards North Korea.

North Korea was able to easily shutdown the KIC due to flaws in the original KIC legislation, which left South Korea, its businesses, and its people unprotected from North Korean control over the KIC.³⁶ There were insufficient regulations regarding real estate, personal safety, criminal investigation, and litigation processes.³⁷ There was no definition of the legal grounds for arrest or search of foreigners, which allowed the general North Korean laws to apply.³⁸ The original KIC legislation ultimately gave North Korea full control over the complex, despite being “jointly run” with the South.³⁹

There were other problems with the legislation over the language of some of its provisions, particularly the one dispute resolution provision.⁴⁰ The language of article 46 (the dispute resolution provision) does not clearly define the procedures or explain the process for choosing a dispute

36. *Id.* at 39-40.

37. *Id.* at 52.

38. *Id.* at 52-53.

39. *Id.* at 57.

40. *Id.* at 60. Article 46 of the KIC Act states:

Any disagreement arising over the development and management of the [KIC] or business operations in the [KIC] shall be settled through consultation among the parties concerned. If the dispute cannot be settled through consultation, the parties may rely on commercial dispute settlement procedures agreed upon by the North and South, an arbitration procedure, or court proceedings.

Kaesong Industrial Zone Act, Art. 46, available at <http://www.unikorea.go.kr/cwsboard/board.do?mode=download&bid=1021&cid=18617&filename=18617201405141121367251.pdf> (accessed by downloading pdf document).

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resolution method, which can cause North and South Korea to have differing interpretations.⁴¹ However, since the North Korean Supreme People's Assembly (SPA) Presidium has the ultimate authority to interpret the legislation, decisions will likely favor North Korea.⁴² In addition, there are jurisdictional issues. Specifically, the South Korean Supreme Court does not view North Korea as a legally independent nation, whereas North Korea views the South as an insurgency; yet, the international community views them as two independent nations.⁴³ Thus, this poses a huge question of which law should be applied.

However, during the negotiations to reopen the KIC, steps were taken to resolve some of the problems of the original legislation by forming a joint committee and setting up a joint secretariat to work between the two sides.⁴⁴ This would allow for more balanced control over the KIC and reduce the North's unilateral power, which was what caused the shutdown. The initial agreement to normalize operations also addressed concerns of safety, improving communication systems within the KIC and customs clearance for South Koreans entering and exiting the KIC.⁴⁵ Unfortunately, while work has resumed at the KIC, North Korea has not acted quickly on the agreed-upon terms and has failed to meet for the required subcommittee talks,⁴⁶ thereby shedding light on what appears to be a more complicated

41. You, *supra* note 1, at 60.

42. *Id.* at 61. "Interpretation of this [Kaesong Industrial Zone] Act shall be conducted by the Presidium of the Supreme People's Assembly." Kaesong Industrial Zone Act, Addenda Art. 3, *supra* note 40.

43. You, *supra* note 1, at 62.

44. *N. Korea Mum on Kaesong Subcommittee Talks*, YONHAP NEWS AGENCY, Oct. 31, 2013, <http://english.yonhapnews.co.kr/national/2013/10/31/53/0301000000AEN20131031008100315F.html>.

45. *Agreement on Normalization*, *supra* note 11.

46. *N. Korea Mum on Kaesong Subcommittee Talks*, *supra* note 44.

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process of fully restoring the KIC, let alone gaining international support and investment in the complex.

Restoring the KIC and ensuring safe and secure operations is highly important because it is currently the only clear sign of inter-Korean cooperation in the midst of repeated North Korean attacks against South Korea. Thus, a positive outcome to the KIC conflict can provide guidance and hope for resolving other inter-Korean issues.

An examination into the bargaining strategies of both North and South Korea is necessary to reveal the complicated and intertwined issues that make up the inter-Korean relationship. A greater understanding of each country's negotiation policies and the leverage that each side holds will help shed light on better ways to relieve the tension between the two Koreas and deter North Korea from its unpredictable and irrational threats and actions.

IV. THE RISE OF THE "MADMAN"

A. *What is the "Madman Theory"?*

Nobel Prize winner Thomas Schelling is credited for his work in developing the "Madman Theory," particularly in his book *The Strategy of Conflict*.⁴⁷ He described that "a party can strengthen its position by overtly worsening its own options, that the capability to retaliate can be more useful than the ability to resist an attack, and that uncertain retaliation is more credible and more efficient than certain retaliation."⁴⁸ Schelling further explained that "in a bargaining or competitive situation one economic agent's framework for rationality is not always necessarily another's."⁴⁹

47. See generally THOMAS SCHELLING, *THE STRATEGY OF CONFLICT* (1980).

48. *Press Release*, NOBELPRIZE.ORG (Oct. 10, 2005), http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/2005/press.html.

49. Jeffrey Kimball, *Did Thomas C. Schelling Invent the Madman Theory?*, GEORGE MASON UNIVERSITY HISTORY NEWS NETWORK (Oct. 24, 2005), <http://hnn.us/article/17183>.

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Therefore, an individual—or in this case, a nation like North Korea—can act in a way that appears irrational to South Korea or the international community because their framework for rationality may be different. If North Korea is consciously “using [its] unconventional behavior as part of a conscious bargaining or competitive strategy, then [its] so-called irrationality is effectively rational in relation to the game’s ‘payoffs.’”⁵⁰ Whether North Korea has adopted this type of thinking and is carrying out purposefully in its behavior, or is simply acting unpredictably because it does not know how else to behave, the impulsive actions nonetheless are creating a deterrent effect on South Korea and the international community.⁵¹ They are unable to easily respond because they recognize that North Korea does not react in rational ways.⁵²

As Michael Kinsley explains in his *Washington Post* column, “[m]adness can be wickedly rational. If one of . . . two folks on [a] cliff can convince the other that he is just a bit nuts, that makes his threat to drag them both off the cliff much more plausible.”⁵³ North Korea has built a reputation of being “nuts” at least in the sense that its behavior is not similar to that of most other nations. Thus, the threats that North Korea makes cannot help but have more credibility, and South Korea cannot help but react in response. Both South Korea and other nations must believe North

50. *Id.*

51. “Kim Jong-un likely knows this vulnerability . . . [and is] play[ing] on such fears and employ[ing] a strategy of limited attacks/provocations and peace offensives to extract as much as possible [from South Korea].” Sung-Yoon Lee, *The Boy Who Would Be King: Can Kim III Last?*, THE NATIONAL BUREAU OF ASIAN RESEARCH (Dec. 28, 2011), <http://www.nbr.org/research/activity.aspx?id=194#.Uw-zCfdUXt>.

52. South Korea’s “preference has been to play defense against Pyongyang’s offense and forgo the right to play offense.” *Id.* As such, the North has always been the first to provoke the South with missiles or nuclear tests, and “has faced no negative repercussion for such acts . . . [instead receiving] new and bigger concessions” from South Korea. *Id.*

53. Michael Kinsley, Op-Ed., *A Nobel Laureate Who’s Got Game*, WASH. POST, Oct. 12, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/11/AR2005101101336.html>.

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Korea's threats because of the thought that North Korea "just might be lunatic enough to go over the edge deliberately."⁵⁴

Jonathan Schell notes in his article in *The Nation* that "North Korea has rediscovered the Madman Theory with a vengeance."⁵⁵ The three generations of its leaders—and particularly the current leader Kim Jong-un—have developed a reputation that they are capable of acting irrationally and impulsively. As a result, North Korea's threats "display . . . the 'rationality of irrationality' more clearly than anyone has done before, since the United States [and South Korea] ha[ve] indeed been deterred (at least so far) by its threats."⁵⁶ Thus, North Korea's irrationality becomes one of its biggest leverages against South Korea, as it freely adds and takes away bargaining chips on the table with its unexpected provocations.

The Madman Theory is not only limited to the North Korean leaders. Former U.S. President Richard Nixon also adopted a similar "Madman" strategy in his foreign policy stance.⁵⁷ He wanted to make the Soviet leaders "think that [he] was quite literally emotionally unstable and disjointed" by sending bombers and then suddenly bringing them back.⁵⁸ This outwardly irrational behavior, which was actually internally rationalized with an underlying goal of forcing the other side's hand, proved to be successful for the Nixon administration.⁵⁹

54. Jonathan Schell, *Letter from Ground Zero*, NATION, June 2, 2003, available at <http://www.thenation.com/article/letter-ground-zero-3>.

55. *Id.*

56. *Id.*

57. Marwan Sinaceur, *Madness and the Delicate Art of Exercising Power in Negotiating*, INSEAD (July 8, 2013), <http://knowledge.insead.edu/leadership-management/organisational-behaviour/madness-and-the-delicate-art-of-exercising-power-in-negotiating-2532>.

58. *Id.*

59. *Id.*

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As INSEAD⁶⁰ assistant professor Marwan Sinaceur found in his studies, a portrayal of emotional inconsistency and unpredictability will cause the other side to feel more uncertain and lose a sense of control, which most people do not appreciate.⁶¹ As a result, they will likely choose to make concessions to settle the situation.⁶² This is the underlying concept behind the Madman Theory—it gives the more unpredictable side an advantage in its interactions with its counterpart by making the other side feel more insecure.

Whether it was by chance or on purpose, North Korea has become a “madman.” It is difficult to fully predict how the North Korean government will react or what other attacks it may initiate. While it may be impossible to fully understand the logic behind every decision that North Korea makes, it may be possible to reduce the amount of “madness” that North Korea expresses.

B. Who is the “Madman”?

North Korea has had three generations of dictators ruling the country thus far, starting with Kim Il-sung, Kim Jong-il, and currently Kim Jong-un.⁶³ Each of the three leaders has his own distinct personality and varying policies towards South Korea and the international community, but in general, hostility and a sense of unpredictability has remained constant. However, the level of impulsive behavior seems to be most heightened with the current North Korean leader.

60. INSEAD is “one of the world’s leading and largest business schools” with campuses in Europe, Asia, and Abu Dhabi, and partnerships with various prestigious American business schools. *Who We Are*, INSEAD, http://about.insead.edu/who_we_are/index.cfm (last visited Feb. 16, 2014).

61. Sinaceur, *supra* note 57.

62. *Id.*

63. See Ken Gause, *Leadership Transition in North Korea*, COUNCIL FOR FOREIGN RELATIONS (Jan. 2012), <http://www.cfr.org/north-korea/leadership-transition-north-korea/p27071>.

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When Kim Jong-un came into power in December 2011, he was only twenty-nine years old,⁶⁴ with very little preparation to take on the role of a nation's leader.⁶⁵ North Korean leaders were in the midst of training Kim Jong-un and transitioning him into a position of power,⁶⁶ but Kim Jong-il's earlier-than-expected death sped up the process.⁶⁷ As a result, Kim Jong-un did not receive training similar to the training his father received for almost two decades, or obtain the type of publicity and status that his father gained.⁶⁸ Thus, "Kim Jong-un [was] strongly motivated to establish himself as a leader in his own right . . . [by] resort[ing] to calculated provocations against risk-averse neighbors."⁶⁹ As such, the attacks against the *Cheonan* and Yeonpyeong Island "served . . . [as an] opportunity for the regime to build a narrative around Kim Jong-un's military leadership."⁷⁰

Further, at the time of Kim Il-sung's death, Kim Jong-il inherited the nation with some hope of improved diplomatic relations with foreign governments and a more stable economy.⁷¹ However, Kim Jong-un inherited a nation with a worse economic state and less power and control

64. *Id.*

65. David Schlangen & Allen Wagner, *The Impacts of North Korea's Leadership Transition*, NAT'L BUREAU ASIAN RES. (Jan. 24, 2012), <http://www.nbr.org/research/activity.aspx?id=198#.Uw-pjvldUXt>.

66. "Kim Jong-il promoted both his sister . . . and [his son] Kim Jong-un to the rank of four-star general even though neither had served a single day in the military." *Political Change in the DPRK, An Interview with Stephen Haggard & Daniel Pinkston*, 12 ASIA POLICY 131, 132, http://www.nbr.org/publications/asia_policy/Free/AP12_F_NKoreaQA.pdf.

67. Gause, *supra* note 63. Kim Jong-il died "long before he was able to fully groom his son and heir." Lee, *supra*, note 51.

68. Schlangen & Wagner, *supra* note 65.

69. Lee, *supra* note 51.

70. *Political Change in the DPRK*, *supra* note 66, at 136.

71. Schlangen & Wagner, *supra* note 65.

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over its people.⁷² Thus, Kim Jong-un's young age, lack of experience, and weakened economic and societal conditions could not help but fuel a growing sense of tension and unpredictability in his behavior and policies.

His behavior even affected North Korea's relationship with its closest ally, China, when he disregarded the Chinese leader's message not to launch a ballistic missile in April 2013.⁷³ With one decision, a relationship that had been "as close as 'lips and teeth'" weakened.⁷⁴ Kim Jong-un was unable to maintain the close relationship that his father had with China.⁷⁵ Jane Perlez reports in her *New York Times* article that these strained relations "could be a result of the significant age differences between the inexperienced Mr. Kim and the much older Chinese leaders."⁷⁶ Kim Jong-un's erratic behavior thus cannot help but suggest that he was rushed into power without sufficient preparation and training on how best to maintain North Korea's relations with foreign powers, and perhaps can illustrate his growing sense of urgency to act provocatively to threaten other nations and induce concessions in order to maintain his grip of power.

In December 2013, more evidence of Kim Jong-un's erratic behavior was shown, when reports stated that he had his uncle Jang Song Taek executed for trying to overthrow the government, with state media

72. *Id.* "The acute economic disparity alone—per capita income in the South more than 40 times that in the North—gives the North Korean leadership cause for permanent neurosis." Lee, *supra* note 50.

73. Jane Perlez, *North Korean Leader, Young and Defiant, Strains Ties with Chinese*, N.Y. TIMES, Apr. 13, 2013, <http://www.nytimes.com/2013/04/14/world/asia/kim-jong-un-tests-relations-with-china.html?r=0>.

74. *Id.*

75. *Id.* Kim Jong-il was very active in his efforts to retain a good relationship with China. INSTITUTE OF UNIFICATION EDUCATION, *supra* note 14, at 92. When China joined in sanctions against North Korea after its nuclear tests, Kim Jong-il made four trips to China within the span of a year to show his desire to mend relations and continue working together. *Id.*

76. Perlez, *supra* note 71.

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describing Jang as “despicable human scum.”⁷⁷ Jang had been a prominent figure in North Korea and regarded as the second-most powerful individual who played a large role in Kim Jong-un’s rise to power.⁷⁸ As a result, Jang’s execution and the publicizing of his death can be perceived as Kim Jong-un’s desperate display of authority. Since Kim Jong-un is the third-generation leader, there is growing difficulty for him to maintain the loyalty of North Korea’s elites who have weaker links to him than to the first or second leaders.⁷⁹ It is becoming harder “to control the population through fear . . . [with] more and more North Korean elites . . . join[ing] the tens of thousands of ordinary citizens who have fled the country.”⁸⁰ Thus, much of Kim Jong-un’s external provocations and threats against other countries appear to stem from a domestic interest in reiterating a sense of fear and dominance over the North Korean people.

In addition to Kim Jong-un’s own personal traits and factors influencing the nation’s unpredictability, there is also the underlying fact that North Korea is very secluded and has no strong allies. Due to the weakened relationship between North Korea and China in the spring after Kim Jong-un’s defiance of the Chinese leader,⁸¹ North Korea has backed itself into a corner without much support. Since North Korea is outnumbered, it needs to find a way to exert its power against the international community—particularly South Korea and the United States—to continue to prove (both to foreign governments and its own people) that it is still a powerful state

77. Jethro Mullen, *North Korea’s Kim Jong Un Lauds Purge of Executed Uncle Jang Song Thaek*, CNN (Jan. 1, 2014), <http://www.cnn.com/2013/12/31/world/asia/north-korea-kim-jong-un-speech/>.

78. *Id.*

79. Lee, *supra* note 50.

80. *Id.*

81. *See supra* text accompanying notes 73-76.

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and will not be bullied.⁸² As a result, the development of nuclear weapons in the nation can be seen as part of the country's strategy to try to protect itself.

This understanding of Kim Jong-un and North Korea's current state help to rationalize the bizarre behavior of North Korea: the recent attacks on South Korea, the cancellation of the scheduled family reunions, and the unilateral closure and reopening of the KIC. It is acting in these unpredictable ways to protect itself and maintain command. North Korea acts in ways it deems necessary to trigger a particular response from South Korea to show that it is capable of carrying out its threats and to instill a sense of fear in the domestic and international community. This behavior can be described as the Madman Theory, or also the "rationality of irrationality."⁸³

V. STOPPING THE "MADMAN"

"For 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."⁸⁴ How, then, can South Korea and the international community stop this "madman"?

A. Development of South Korean Policies Towards North Korea

The KIC was established during an era of South Korea's Sunshine Policy from 1998 to 2008.⁸⁵ During this period, South Korea emphasized

82. Tan, *supra* note 22, at 519. "Analysts attribute North Korea's desire for weapons to several factors, such as deterrence against a perceived Western threat, a bargaining chip to gain political and economic advantages, or as a natural extension of the national ideology." *Id.*

83. Kimball, *supra* note 49.

84. Tan, *supra* note 22, at 519.

85. Donald Kirk, Op-Ed., *The Sunset of South Korea's 'Sunshine Policy'*, L.A. TIMES, Aug. 20, 2009, <http://articles.latimes.com/2009/aug/20/opinion/oe-kirk20>.

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cooperation with North Korea, allowing tensions to ease.⁸⁶ However, amid the growing public discontent with South Korea's appeasements to the North, the revelation of North Korea's continuing nuclear programs, and the North's attacks on South Korea, combined with the transition of South Korean leadership to the more conservative Lee Myung-bak administration in 2008, the Sunshine Policy ceased.⁸⁷ When President Park Geun-hye was running for the presidency after the Lee administration, she emphasized desires to improve relations with North Korea by adopting "the strongest elements of both the hardline and engagement policies" of her predecessors to deal with North Korea.⁸⁸ However, the change in North Korean leadership to Kim Jong-un and the attacks by the North on the *Cheonan* and *Yeonpeong* have caused her to take a more cautious approach. Currently, Park's administration has adopted a "Trust-Building Process" as its North Korean policy.⁸⁹ The three key objectives are: (1) to improve inter-Korean ties; (2) to establish peace on the Korean peninsula; and (3) to lay the groundwork for unification.⁹⁰ The underlying long-term vision of the current administration is unification of the two Koreas.⁹¹

86. *Id.* South Korean President Kim Dae Jung even won a Nobel Peace Prize in 2000 for implementing the Sunshine Policy. *Id.*

87. *Id.*; *South Korea Formally Declares End to Sunshine Policy*, VOICE OF AMERICA (Nov. 17, 2010), <http://www.voanews.com/content/south-korea-formally-declares-end-to-sunshine-policy--108904544/130750.html>; Ihn-hwi Park, *The Park Geun-hye Presidency and the Future of the U.S.-South Korea Alliance*, COUNCIL ON FOREIGN RELATIONS (Mar. 2013), <http://www.cfr.org/south-korea/park-geun-hye-presidency-future-us-south-korea-alliance/p30183>.

88. Park, *supra* note 87.

89. *Trust-Building Process Policy, Major Objective*, MINISTRY OF UNIFICATION, <http://eng.unikorea.go.kr/content.do?cmsid=1782> (last visited Jan. 24, 2015); *Minister Ryoo Talks about Trust-Building Process*, MINISTRY OF UNIFICATION (Sept. 11, 2013), <http://eng.unikorea.go.kr/content.do?cmsid=1832&mode=view&page=15&cid=31066>.

90. *Minister Ryoo Talks about Trust-Building Process*, *supra* note 89.

91. *See also Vision Statement*, MINISTRY OF UNIFICATION, <http://eng.unikorea.go.kr/content.do?cmsid=1773> (last visited Jan. 24, 2015).

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As evidenced by the KIC shutdown, giving North Korea too much free reign will tie South Korea's hands, making it very difficult for it to do anything until North Korea chooses to yield on something. When North Korea says "no," there seems to be no way to get around that wall. North Korea similarly refused to proceed with the family reunions that had been scheduled for the fall of 2013.⁹² Thus, South Korea needs to find a way to respond to North Korea's unilateral provocations to even out this power imbalance and show that North Korea cannot keep behaving erratically to obtain concessions. While the reforms in the KIC legislation and the new agreements for a joint-committee to oversee the KIC are helpful steps in that direction, North Korea's failure to carry out all of the terms is evidence that a new agreement alone is not strong enough to establish South Korea's power or to pressure North Korea into following the agreement terms.

B. Maintaining Composure and Balancing Interests

While it is certainly important to ensure that appropriate legislations and policies are in place, South Korea cannot rely on those alone to protect itself from the North's irrationality. South Korea needs to maintain composure and not get caught up in North Korea's unpredictable and impulsive actions.

92. North and South Korea finally held two rounds of family reunions in February 2014—the reunions that were originally scheduled for September 2013. Hyung-jin Kim, *As Tearful Korean Reunions End, More Seem Unlikely*, STRIPES KOREA, Feb. 26, 2014, <http://korea.stripes.com/news/tearful-korean-reunions-end-more-seem-unlikely>. The initial efforts to hold reunions in 2013, the cancellation, and the new efforts to schedule reunions in 2014 demonstrate once again the inconsistency of North Korea's behavior and the difficulty for other nations to predict North Korea's actions. Yet, even this set of reunions almost did not happen due to North Korea's threats to cancel because of joint military drills between the United States and South Korea. *Id.* The drills were not canceled, with both South Korea and the United States viewing the family reunions as "a purely humanitarian issue" and not intertwined with political issues, which North Korea was attempting to do. Paula Hancocks et al., *North and South Korea Hold First Family Reunion in Three Years*, CNN (Feb. 21, 2014), <http://www.cnn.com/2014/02/20/world/asia/koreas-reunion/>.

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The goal of North Korea's "madman" behavior is to push South Korea to make certain concessions—decisions that will be in North Korea's favor. As such, South Korea needs to maintain objectivity in its interactions with North Korea, make sure to look carefully at the particular issue at hand, and make decisions that will help to resolve that individual issue without making unnecessary concessions or reaching other unrelated agreements.⁹³

Particularly with the KIC, South Korea needs to recognize the importance of the KIC to the North Korean economy and use that as leverage. The KIC provides jobs to North Koreans, and currently employs 53,000 North Koreans for around \$160 per month, which is a generous sum for North Koreans.⁹⁴ Thus, the KIC is a "source of much-needed hard currency" for North Korea.⁹⁵ South Korea also supplies electricity to the complex to ensure that there will not be any blackouts,⁹⁶ thereby shouldering much of the necessary operating costs and burdens. Thus, since the KIC is

93. North Korea seems to have wanted "to use the reunions as a way to win political and humanitarian concessions from the conservative government of South Korean President Park Geun-hye During the more liberal South Korean government rule that ended six years ago, Seoul rewarded Pyongyang with rice and fertilizer shipments for arranging the family reunions." Kim, *supra* note 92. While South Korea seems "unlikely to approve big aid shipments for more reunions unless North Korea also takes serious nuclear disarmament measures," South Korea has offered to send vaccines after North Korea reported its first outbreak of foot-and-mouth disease since January 2012, which would be South Korea's first direct government-level aid shipment to North Korea since all aid ended in 2010. *Id.* It appears that the Park administration is trying to show that they are not willing to reward North Korea for agreeing to the reunions (which would continue to feed the "Madman"), but at the same time trying to ease tensions and improve relations by showing a gesture of aid.

94. Andrew Salmon, *Inside North Korea: Could the Kaesong Complex Give Hope for the Future?* TELEGRAPH (London), Dec. 24, 2013, <http://www.telegraph.co.uk/news/worldnews/asia/northkorea/10535828/Inside-North-Korea-Could-the-Kaesong-complex-give-hope-for-the-future.html> [hereinafter *Inside North Korea*].

95. Ju-min Park & Hyun Young Yi, *A Week after Purge, Business as Usual at N. Korean Factory Park*, REUTERS, Dec. 19, 2013, <http://uk.reuters.com/article/2013/12/19/uk-korea-north-kaesong-idUKBRE9B10C820131219>.

96. *Inside North Korea*, *supra* note 94.

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important to North Korea, there is likely some kind of limit to its erratic behavior when dealing with the KIC. Despite holding out for 160 days, North Korea eventually did agree to reopen the KIC, indicating that there is some need or desire on its part to continue operations at the KIC.

On the other hand, the KIC is also beneficial to South Korea. With the complex located only thirty-seven miles from downtown Seoul, the KIC is a convenient and cost-efficient source of labor for South Korean companies.⁹⁷ Businesses investing in the KIC are profiting more than their counterparts that are investing in Chinese plants.⁹⁸ The complex is also important to South Korea because “Kaesong represents the South’s only economic foothold inside its estranged neighbour.”⁹⁹ The KIC provides the South’s only link into North Korea as of now, which could become a key component in future Korean reunification. However, because the KIC is also of value to South Korea, it needs to be careful that the North does not use the importance of the KIC to the South as leverage against it.

C. Using Outside Leverage

While bilateral negotiations between the South and North were effective in restarting operations at the KIC, there may be times when direct negotiations become difficult and yield no results. At this point, South Korea needs to use its greatest leverage—its support from the United States and the international community—in protecting itself from North Korea’s irrational behavior. “One way to equalize or exceed the power of a stronger party is to form an alliance with others who share an interest in working

97. You, *supra* note 1, at 43.

98. *Id.* at 44.

99. Andrew Salmon, *A Glimpse Inside Kaesong, North Korea’s Curious Capitalist Outpost*, S. CHINA MORNING POST, Dec. 21, 2013, <http://www.scmp.com/news/asia/article/1386568/glimpse-inside-kaesong-north-koreas-curious-capitalist-outpost>.

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against the stronger party.”¹⁰⁰ While it is debatable that North Korea is the “stronger” party, its madman qualities certainly create a deterring effect against South Korea. Thus, if South Korea can build relationships with others who also have an interest in North Korea, then that joint power could create more effective leverage.

For example, getting foreign businesses to invest in the KIC will inevitably cause foreign governments to grow an interest in what goes on in the KIC and in North Korea. An increase in foreign investment in Kaesong may be a starting point to ensure that North Korea does not unilaterally shutdown the KIC in the future. This can shift a bilateral relationship between the North and South into a multilateral relationship, creating more accountability and layers of protection for South Korea against the North’s rash actions. Further, if North Korea fails to meet certain terms of the KIC legislation or agreements, there are consequences that North Korea will face from the multiple governments, not just from South Korea, reducing the likelihood of the North’s erratic behavior.

Unfortunately and ironically, the uncertainty of the KIC’s future, particularly because the complex is operated in North Korea, poses difficulty in attracting foreign investors. Recently, foreign investors have had opportunities to visit and tour the complex.¹⁰¹ However, “concerns about transport, lengthy customs processes and communications” prevents potential investors from willingly initiating operations at the KIC.¹⁰² Visits into the KIC require a three-day notice, and there is no internet or mobile access in the complex.¹⁰³ There is a lack of transparency and accountability,

100. Robert S. Adler & Elliot M. Silverstein, *When David Meets Goliath: Dealing with Power Differentials in Negotiations*, 5 HARV. NEGOT. L. REV. 1, 105 (2000).

101. *Inside North Korea*, *supra* note 94.

102. *Id.*

103. Salmon, *supra* note 99.

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which is not a great selling point for foreign investors.¹⁰⁴ Even South Korean investment in the KIC is currently static.¹⁰⁵

Thus, South Korea needs to first stabilize operations at the KIC and demonstrate that South Korean companies are benefiting from the complex, then assist North Korea's bids to foreign investors. The KIC is an expensive "symbol of reconciliation and peace" because the South needs to do everything for North Korea to ensure that the KIC continues to operate smoothly.¹⁰⁶ However, South Korea needs to recognize that its own investment and the investment of foreign companies in the KIC will be highly beneficial not only to North Korea, but also to the South as it can neutralize the rocky relationship that it has with North Korea.

On the flip side, South Korea needs to convince foreign investors to choose the KIC over other similar labor sources despite South Korea's own underlying political goal to maintain and improve its relationship with the North through the KIC.¹⁰⁷ South Korea needs to show that it can minimize North Korea's unpredictability and reduce risk so that the international community will be interested in investing even though the KIC is an inter-Korean symbol for potential reunification. Investors need to trust that they will not be used merely as pawns in aiding the Koreas' relationship, but will also benefit from their investments in the complex.

D. Creating a Unified Front

While the participation of the international community is crucial for South Korea in maintaining its power against North Korea, past attempts at multilateral negotiations through the Six Party Talks proved to be

104. *Id.*

105. *Inside North Korea, supra* note 94.

106. Salmon, *supra* note 99.

107. *Inside North Korea, supra* note 94.

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unsuccessful. The Six Party Talks halted when North Korea refused to continue participating, and instead lashed out by firing torpedoes and shells in South Korean waters.¹⁰⁸ North Korea's erratic behavior during negotiations and impulsive actions make it difficult for the remaining parties to figure out North Korea's true motivating factors.¹⁰⁹ However, the failure of the Six Party Talks likely does not rest with North Korea alone. Each of the governments involved "placed their own immediate priorities and concerns above the collective need to halt North Korea's nuclear program,"¹¹⁰ making it difficult for them to have a fully unified front against North Korea.

This lack of a unified front from the global community continues to this day. China "believe[s] that maintaining the status quo on the [Korean] peninsula is advantageous to its own economic development and national security."¹¹¹ Thus, while it does condemn North Korea's missile launches and nuclear tests, it is more passive in sanctioning North Korea.¹¹² Japan, on the other hand, takes a harder stance against North Korea, supporting South Korea's and the United States' implementation of sanctions.¹¹³ The United States has responded to North Korea with strong condemnation of North

108. You, *supra* note 1, at 37.

109. Bajoria & Xu, *supra* note 25.

110. *Id.*

111. INSTITUTE OF UNIFICATION EDUCATION, *supra* note 14, at 94.

112. *Id.*

China has its own internal divisions on North Korea policy. On the one hand, [it] values North Korea as a buffer state. . . . On the other hand, there are Chinese analysts who see North Korea as an anachronism and even a potential threat to core Chinese interests. . . . But in the end *the Chinese are most concerned about stability on their border*. . . . Beijing is *unlikely to exert strong pressure* to bring North Korea around. . . . In effect, China is pursuing its own variant of the Sunshine Policy, deepening North Korea's dependence on China in the process.

Political Change in the DPRK, *supra* note 66, at 138 (emphasis added).

113. INSTITUTE OF UNIFICATION EDUCATION, *supra* note 14, at 90.

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Korean actions, eventually even suspending food aid.¹¹⁴ It is particularly vocal against North Korea's nuclear programs and unwillingness to disarm according to agreements made,¹¹⁵ and "is skeptical about sitting down for talks in the absence of any sign that they will be meaningful."¹¹⁶ Generally, Chinese and Russian opinions conflicted with those of the United States and Japan, particularly with regard to the *Cheonan* and Yeonpyeong incidents. These differences likely arose out of "conflicting interests of the concerned parties in regard to the competition for influence in Northeast Asia."¹¹⁷

However, recognition of these conflicting interests can guide South Korea and other nations in their approach to renegotiating and normalizing relations with North Korea. It is clear that pushing North Korea onto the ledge can lead to dangerous results as it will fuel more of North Korea's irrational behavior, such as pulling out of the Talks and attacking South Korea. Thus, ganging up against North Korea with numbers will not be the best approach. At the same time, there needs to be a clear understanding that while various governments may have particular priorities and interests, they are unified in their stance against North Korea's irrationality. With that understanding, they can then apply a healthy amount of pressure to convince North Korea that there will be consequences for its actions.

E. Separating the Issues

Thus, applying these principles to the KIC, South Korea cannot make outrageous threats because North Korea may unilaterally shut down the

114. *Id.* at 85.

115. *Id.* at 83-84. "[T]he Obama administration made it clear that without the North's complete dismantlement of nuclear weapons and clearing of all suspicions, a normalization of relations would be impossible." *Id.* at 84. "In his State of the Union address in 2002, President Bush condemned North Korea . . . as constituting an 'axis of evil.'" *Id.* at 77.

116. *Political Change in the DPRK*, *supra* note 66, at 138.

117. INSTITUTE OF UNIFICATION EDUCATION, *supra* note 14, at 72.

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complex again, nor can they mix up their priorities in dealing with North Korea. While South Korea has many issues that it wants to resolve—denuclearizing North Korea, proceeding with the family reunions, preparing for a potential unification—it needs to recognize that when dealing with North Korea over the KIC, it must solely focus on improving operations at the KIC, and not get lost amidst the other issues at hand. Since the current policy is the Trust-Building Process with an underlying desire for unification, it is appropriate to recognize the potential tool that the KIC can play in aiding future inter-Korean relations. However, South Korea has to continue to ensure that the KIC is dealt with as a separate issue, just as it separated the family reunions from the joint military training held by South Korea and the United States, despite North Korea's efforts to try to lump them together as one issue to use the reunions as a leverage in ceasing the military trainings.¹¹⁸

Normalizing operations at the KIC and improving the KIC are important and urgent goals, as this ties in with the Park administration's North Korean policy of trust-building, and can be a practical application of this policy. The family reunions were also part of this, but they have more of a personal effect on the families that participated. However, the KIC has economic value to both Koreas, and thus, the impact of an improved KIC can be felt more greatly on both sides of the 38th parallel. And an effective resolution to the KIC can be seen as hope for future joint projects between the Koreas as symbols of small-scale unifications to hopefully lead to greater measures for inter-Korean unification.

VI. CONCLUSION

North Korea's policies are the epitome of the Madman Theory, and the recent conflict over the KIC provides a framework to analyze how North

118. See *supra* text accompanying note 92.

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Korea is using its erratic behavior to pose an almost unstoppable threat against South Korea. However, the new agreement reached by the two Koreas to resume operations at the KIC amidst other conflicts demonstrates that there may be room for the governments to overcome impasse on other issues in the future as well. The critical point, however, will rest with South Korea and whether it can find a way to resist being swept up by the North's unpredictable actions, but instead remain objective and use its power and leverage to counter the North's irrationality. Then, the KIC may no longer be a mere symbol of cooperation, but an actual tool in aiding inter-Korean unification.