

# FROM SUNSHINE TO STORM CLOUDS: AN EXAMINATION OF SOUTH KOREA'S POLICY ON NORTH KOREA

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## I. INTRODUCTION

As I am writing this note, The Democratic People's Republic of Korea (North Korea)<sup>1</sup> is once again in the news after North Korean Leader Kim Jong-un executed his uncle for attempting to “grab the supreme power of the party and state by employing all the most cunning and sinister means and methods.”<sup>2</sup> North Korea has maintained a significant place in the world spotlight, and with a young leader and such political instability,<sup>3</sup> it will likely remain in the spotlight for a long time. Considering the prominence of North Korea in the world's spotlight, this

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1. Throughout this note, I will refer to the Democratic People's Republic of Korea as North Korea.

2. *Traitor Jang Song Thaek Executed*, KCNA (Dec. 13, 2013), <http://kcna.co.jp/item/2013/201312/news13/20131213-05ee.html>. The special military tribunal which examined Jang's alleged crimes issued a decision which referred to Jang as a “anti-party, counter-revolutionary factional element and despicable political careerist and trickster.” *Id.*

3. See, e.g., Malcom Cook, *North Korea's unstable stability*, ALJAZEERA (Dec. 23, 2011), <http://www.aljazeera.com/indepth/opinion/2011/12/20111222103516777902.html> (suggesting that “[t]he most likely outcome of the . . . change in leadership in North Korea is a more unstable North Korea that continues to rely on nuclear weapons and a close if awkward relationship with China”); see also Stephen Bosworth & Robert Gallucci, *Reasons to Talk to North Korea*, N.Y. TIMES (Oct. 27, 2013), [http://www.nytimes.com/2013/10/28/opinion/reasons-to-talk-to-north-korea.html?\\_r=0](http://www.nytimes.com/2013/10/28/opinion/reasons-to-talk-to-north-korea.html?_r=0) (suggesting that the current relationship between the U.S. and North Korea is “unstable, and that matters will only get worse if not addressed directly”).

note will focus on the policy of North Korea's immediate neighbor, and one of the United States' closest allies – The Republic of Korea.<sup>4</sup>

This note's focus is on South Korea's North Korea policy, and the major events that have occurred throughout the two Korea's relationship. It will begin by examining the inter-Korean relationship from 1948 – 1988, as well as each respective administration's North Korea Policy. In order to gain a better understanding of the legal relationship between the two Koreas, this note will examine the Constitution of the South Korea, the 1953 Armistice Agreement, and subsequent agreements between the two Koreas. Focus will then shift to Kim Dae-jung's Sunshine Policy, which resulted in the famous meeting between President Kim and Kim Jong-il, and it will also look at President Roh Moo-hyun's Peace and Prosperity policy. It will further examine the eventual "multilateralization" of inter-Korean relations. This note will examine the sharp change in North Korea policy that came with the Lee Myung-bak Administration's hardline Mutual Benefits and Common Prosperity Policy. Finally, after a thorough review of the previous North Korean policies, focus will shift to current president Park Geun-hye who has taken a strong stance on North Korea while remaining markedly different from her predecessor. Ultimately, this note will come to a conclusion about (1) how the future of inter-Korean relations should be shaped, and (2) what the South Koreans and the western world can expect from President Park's North Korea policy.

## II. HISTORY OF NORTH KOREAN POLICY

### A. The Constitution of the Republic of Korea

Before looking into the history of South Korea's North Korean policy, it is worth emphasizing the importance of unification for Korea.<sup>5</sup> To

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4. Throughout this note, I will refer to the Republic of Korea as South Korea.

5. Professor Jeong-ho Roh notes that at a constitutional level, the two Koreas do not recognize themselves as separate states, but rather as one country. Jeong-ho Roh, *The Legal and Institutional Approach to Inter-Korean Relations*, in INTER-KOREAN RELATIONS: PROBLEMS AND PROSPECTS 160, 161 (Samuel S. Kim ed., 2003). For example, the territorial clause of the South Korean constitution stipulates that "the

illustrate the importance of unification, one should first look to South Korea's current constitution.<sup>6</sup> The first paragraph of the Constitution of the Republic of Korea (South Korean Constitution) states:

We, the people of Korea, proud of a resplendent history and traditions dating from time immemorial, upholding the cause of the Provisional Republic of Korea Government . . . having assumed the mission of democratic reform and *peaceful unification of our homeland* and having determined to consolidate national unity with justice, humanitarianism and brotherly love.<sup>7</sup>

The South Korean Constitution makes the mission of peaceful unification a mandatory and affirmative one: "The Republic of Korea *shall seek unification* and *shall formulate* and *carry out a policy of peaceful unification* based on the principles of freedom and democracy."<sup>8</sup>

The reason for focusing on each administration since the two Koreas were first created is that the President and executive branch of South Korea are responsible for shouldering this mission: "[t]he President *shall* have the duty to *pursue sincerely the peaceful unification* of the homeland," and "[e]xecutive power shall be vested in the Executive Branch and headed by the president."<sup>9</sup> In fact, the South Korean Constitution requires the President to give the following oath in his inauguration: "I do solemnly swear before the people that I will faithfully execute the duties of the President by observing the Constitution, defending the state, *pursuing the peaceful unification of the homeland*, promoting the freedom and welfare of the people and endeavoring to

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territory of the Republic of Korea shall extend to the Korean peninsula and its surrounding islands." *Id.* Additionally, the North Korean constitution stipulates that "the Democratic People's Republic of Korea is an independent socialist state representing the interest of all Korean People." *Id.*

6. The current version of South Korea's constitution was amended in 1988, and since the original 1948 constitution, the document has been amended eight times. This note will highlight each major amendment to the South Korean constitution to illustrate changing ideals regarding unification.

7. DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] pmb1. (S. Kor.) [hereinafter 1988 Constitution] (emphasis added).

8. *Id.* art. 4 (emphasis added).

9. *Id.* art. 66 (emphasis added).

develop national culture.”<sup>10</sup> The fact that pursuing the peaceful unification of the homeland is listed right between defending the state and promoting the freedom and welfare of the people shows where unification lies amongst the country’s priorities.

A further reason for the focus on each administration’s North Korean policy is that, in addition to the President having the duty of seeking peaceful unification, the South Korean Constitution (1) allows the president to “submit important policies relating to . . . unification,” and (2) allows the executive branch to establish an “Advisory Council on Democratic and Peaceful Unification . . . to advise the President on the formulation of peaceful unification policy.”<sup>11</sup> In short, the South Korean President determines North Korean policy, and unlike the United States, the South Korean President serves for one term of five years,<sup>12</sup> and is therefore much less controlled by popular opinion once elected. It is with this background of the South Korean Constitution that this note begins its look through the North Korean policies and inter-Korean relations experienced during the tenure of each South Korean President since the two Koreas were created.

### B. Post War Korea & The 1953 Military Armistice Agreement

The 38<sup>th</sup> parallel was decided by the United States and the Soviet Union to be the dividing line between the two Koreas (much to the dislike of the Korean people) after Korea was liberated from the rule of Japan at the end of World War II.<sup>13</sup> It is important to take note of the fact that there was not a single Korean person involved in this discussion of where to split up the country.<sup>14</sup> Lack of focus on or knowledge of the

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10. *Id.* art. 69 (emphasis added).

11. *Id.* arts. 72 & 92.

12. *Id.* art. 70. Please note, however, that the single five year term has only been a part of the South Korean constitution since 1987; Presidents Rhee and Park Chung-hee were in power for 12 and 20 years, respectively.

13. Sung-Yoon Lee, *Nuclear Diplomacy vis-à-vis the DPRK: A Dead-End Street*, 27 FLETCHER F. WORLD AFF. 151, 152-53 (Fall/Summer 2003).

14. *Id.* This “Korean decision” by two non-Korean countries perhaps foreshadowed the future light in which inter-Korean problems were to be solved.

Country was commonplace for the United States,<sup>15</sup> and this lack of knowledge was likely of great importance and effect in the consequences of the Korean peninsula during the 1900s.<sup>16</sup> Post World War II, the Soviets chose the young Kim Il-sung to lead North Korea and the United States chose 70-year-old Dr. Syngman Rhee to head South Korea.<sup>17</sup> After three years of being under U.S. control, a constituent assembly was convened pursuant to an election to draft a Korean constitution in May of 1948.<sup>18</sup> The Constitution, due in part to the advocacy by President Rhee, contained a presidential and parliamentary component.<sup>19</sup> In 1950, with the support of Stalin and Mao, Kim Il-sung and North Korea invaded South Korea amidst election tensions.<sup>20</sup> After three years of fighting, the war came to an end, and representatives of the UN, the Korean People's Army, and the Chinese People's Volunteers signed a Military Armistice Agreement in 1953 (Armistice Agreement) agreeing to a cessation of hostilities on the Korean peninsula and the separation of the two Koreas along the 38<sup>th</sup> parallel.<sup>21</sup>

The Armistice Agreement requires a closer look because it remains, more or less, the sole document responsible for ending the hostilities of

15. During a 1945 meeting concerning the Korean Peninsula, then U.S. Secretary of State, Edward Stettinius asked a subordinate to inform him where Korea was located. DON OBERDORFER, *THE TWO KOREAS: REVISED AND UPDATED A CONTEMPORARY HISTORY* 5 (Basic Books, 2001) (1997).

16. See Balbina Hwang, *Reviving the Korean Armistice: Building Future Peace on Historical Precedents*, 6 KEI ACAD. PAPER SERIES 6, at 3 (June 2011). Even more offensive is than the 1945 Secretary of State not knowing where Korea was located on a map, is the fact that after the Russo-Japanese war, Secretary of War Taft approved of Japan's control over the Korean peninsula in the Taft-Katsura Agreement signed on the 27<sup>th</sup> of July, 1905. *Id.* at 2. Eventually, Japan's control of Korea became codified in the Treaty of Portsmouth, "for which Theodore Roosevelt would be awarded the Nobel Peace Prize as a peacemaker." *Id.* at 2-3.

17. OBERDORFER, *supra* note 15, at 8.

18. Chi Young Pak, *The Third Republic Constitution of Korea: An Analysis*, W. POL. Q., Vol. 21, No. 1, 110, 110 (Mar. 1968).

19. *Id.* at 110-11.

20. *Id.*; S.C. Res 82 ¶ 1, U.N. Doc. S/Res/82 (June 25, 1950). Additionally Kim Il Sung claimed the invasion to be for the purpose of "liberat[ing] the south." Lee, *supra* note 13, at 153.

21. Military Armistice in Korea and Temporary Supplementary Agreement, July 27, 1953, 4 U.S.T. 234 [hereinafter Armistice Agreement].

the Korean War. The purpose of the Armistice Agreement was to achieve “a complete cessation of hostilities and of all acts of armed force in Korea until a final peaceful settlement is achieved.”<sup>22</sup> However, in the 60 years since the Armistice Agreement came into force, there has been no such “peaceful settlement” to replace the Armistice Agreement.<sup>23</sup> Another important feature of the Armistice Agreement concerns the actual signatories of the Agreement; the original signatories include the general of the North Korean Army and a lieutenant-general of the United States signing in his capacity as a senior delegate of the United Nations Command Delegation.<sup>24</sup> South Korea was not a signatory to the Armistice Agreement as President Rhee refused to sign the document due to his disagreement of dividing Korea at the 38<sup>th</sup> parallel.<sup>25</sup> This has had a significant impact on the “multilateralization” of inter-Korean issues in the 61 years since the signing of the Armistice Agreement, as North Korea, a party to the agreement, “equates the United States as its negotiating partner and as a proxy in its relations with South Korea regarding the resolution of . . . inter-Korean relations.”<sup>26</sup>

The Armistice Agreement also established a Demilitarized Zone (DMZ),<sup>27</sup> which was to serve as a four kilometer “buffer zone to prevent the occurrence of incidents which might lead to a resumption of hostilities.”<sup>28</sup> In addition to the separation of the two Koreas, the Armistice Agreement also established the Military Armistice Commission (MAC), which was designed “to supervise the implementation of this Armistice Agreement and to settle through

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22. *Id.* at pmb1.

23. Roh, *supra* note 5, at 159.

24. Armistice Agreement, *supra* note 21, art. XI. In a supplemental agreement dealing with prisoners of war, among other items, Kim Il-sung signed the document in his capacity as the Supreme Commander of the Korean People's Army along with the Commander of the Chinese People's Volunteers and the Commander-in-Chief of the UN Command. *Id.* at supp.

25. Hwang, *supra* note 16, at 5.

26. Roh, *supra* note 5, at 160.

27. The DMZ, as noted by many, is ironically one of the most heavily militarily fortified borders in the world today. *See, e.g., id.* at 4.

28. Armistice Agreement, *supra* note 21, art. I.

negotiations any violations of this Armistice Agreement,”<sup>29</sup> and the Neutral Nations Supervisory Commission (NNSC), which was designed to monitor and investigate prohibited military actions within the DMZ, and report to the MAC their findings.<sup>30</sup>

Another important and dangerous feature of the Armistice Agreement concerns “[t]he absence of a maritime demarcation line.”<sup>31</sup> The Armistice Agreement mentions five “coastal islands” near the land border of the two Koreas that were to be under United Nations Command (UNC) control.<sup>32</sup> Despite mentioning specific islands that were to be under control of UNC, there is no exact maritime border given by the Armistice Agreement.<sup>33</sup> The reason for the lack of a present maritime border is because during the negotiations surrounding the Armistice Agreement the two sides could not agree to an exact maritime border.<sup>34</sup> The issue of a maritime border was deferred to a later date, and the UNC established a *de facto* Northern Limit Line (NLL), which has been the source of many “deadly incidents.”<sup>35</sup>

The Armistice Agreement, while not a permanent peace treaty, was still successful in ending serious conflicts and preventing a major war;<sup>36</sup> however, in the immediate aftermath of the Korean War there was little

29. *Id.* art. II, ¶ 24.

30. *Id.* art. II, ¶ 41. Each side of the agreement was allowed to nominate two nations to serve in the NNSC. North Korea selected Poland and Czechoslovakia, two former communist nations, whereas the U.N. selected Sweden and Switzerland. *Id.* art. II, ¶ 37.

31. Hwang, *supra* note 16, at 5.

32. Armistice Agreement, *supra* note 21, art. II, ¶ 13b. One of the five coastal islands mentioned in the Armistice Agreement is Yeonpyeong Island, which was subjected to a 2011 shelling by North Korea. *See infra* notes 189-94.

33. Hwang, *supra* note 16, at 5.

34. *Id.*

35. *Id.*

36. However, it should be noted that North Korea has unilaterally declared the Armistice Agreement “null and void” on multiple occasions, most recently in 2013. *See, e.g., Important Measures to Defend Nation’s Sovereignty, Dignity and Country’s Supreme Interests: CPRK, KCNA* (Mar. 8, 2013), <http://www.kcna.co.jp/item/2013/201303/news08/20130308-01ee.html>. On March 8, 2013, North Korea “abrogate[d] all agreements reached on nonaggression” between the two Koreas, nullified the 1992 Joint Declaration on the denuclearization of the Korean peninsula, and ultimately declared that the Armistice Agreement is “totally invalid.” *Id.*

conversation between the two Koreas as one of the main consequences of the war was the “hardening of ideological and political lines between [North Korea and South Korea].”<sup>37</sup> The South Korean Constitution was amended two additional times during Rhee’s tenure in order to allow Rhee to be reelected and “perpetuate [his] personal powers.”<sup>38</sup> South Korea generally became corrupt and continually dictatorial, and eventually a 1960 student-led revolution led to President Rhee being forced out of office.<sup>39</sup>

### C. North Korea Policy under Park Chung-hee and Chun Doo-hwan

After Rhee was forced out of office, the Constitution was amended again, and the Constitution of the Second Republic was adopted.<sup>40</sup> This version of the Constitution was designed to address the weaknesses of the original constitution, and it created “a Constitutional Court, neutralized the national police,” and allowed for “laws designed to punish anti-democratic elements.”<sup>41</sup> The Constitution of the Second Republic placed all of the important constitutional powers in the National Assembly and created a weakened executive position, which was filled by Dr. John M. Chang.<sup>42</sup> However, the weakness of the executive position and the scattering of political parties created a “shaky government,” and eventually the military seized control of the Country in May of 1961.<sup>43</sup>

It was Major-General Park Chung-hee who seized control of the government in the coup,<sup>44</sup> and nearly two years after Park seized control

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37. OBERDORFER, *supra* note 15, at 10.

38. Pak, *supra* note 18, at 111-12.

39. OBERDORFER, *supra* note 15, at 10. Rhee went into voluntary exile in Hawaii and died in 1965 at the age of 90. *Syngman Rhee: First president of South Korea*, CNNFYI.COM,

<http://edition.cnn.com/fyi/school.tools/profiles/Syngman.Rhee/frameset.exclude.html> (last visited Jan. 1, 2014).

40. Pak, *supra* note 18, at 112.

41. *Id.*

42. *Id.*

43. *Id.*

44. OBERDORFER, *supra* note 15, at 10.

of the Country, elections were held in 1963 in which Park was elected President and a new National Assembly was elected.<sup>45</sup> One month after the National Assembly was elected, another constitutional amendment was passed creating what is known as the Third Republic of Korea.<sup>46</sup> The Constitution of the Third Republic of Korea created a stronger, and potentially authoritarian, executive position due to the perceived failures of the previous constitution, and was largely a return to the 1948 Constitution that existed during the Rhee regime.<sup>47</sup>

When Park Chung-hee took control of the country, his past ties to communism<sup>48</sup> created fear in Washington and hope for new dialogue in Pyongyang.<sup>49</sup> This hope caused Kim Il-sung to dispatch a trusted aid to meet with Park; however, instead of meeting with North Korea's aid, Park had the aid executed.<sup>50</sup> As South Korea became more economically stable<sup>51</sup> and grew ties with the United States and Japan, Kim Il-sung grew convinced that the best way to bring about reunification was via unconventional war.<sup>52</sup> This unconventional war characterized much of the North-South interaction during the Park regime: in January of 1968, a 31-man North Korean unit attempted to storm the Blue House<sup>53</sup> to "cut

45. Pak, *supra* note 18, at 113; Jinwung Kim, A HISTORY OF KOREA: FROM "LAND OF THE MORNING CALM" TO STATES IN CONFLICT 435 (Indiana University Press 2012).

46. *Id.*

47. *Id.*

48. See DAVID T. JOHNSON & FRANKLIN E. ZIMMING, THE NEXT FRONTIER: NATIONAL DEVELOPMENT, POLITICAL CHANGE, AND THE DEATH PENALTY IN ASIA 157 (Oxford University Press, 2009) (noting that Park Chung Hee was actually sentenced to death by President Rhee for a role in an army revolt, and that his brother was killed for his role in a communist uprising).

49. OBERDORFER, *supra* note 15, at 10.

50. *Id.*

51. Don Oberdorfer, in illustrating the economic difficulties that South Korea experienced after the war, described his first impressions of Busan, South Korea as "miserable and pathetic." *Id.* at xi.

52. DANIEL P. BOLGER, SCENES FROM AN UNFINISHED WAR: LOW-INTENSITY CONFLICT IN KOREA, 1966-1969 3 (1991), available at <http://usacac.army.mil/cac2/cgsc/carl/download/csipubs/ScenesFromanUnfinishedWar.pdf>.

53. The Blue House, literally the "pavilion of blue tiles," is the home of the President of the Republic of Korea. See [www.president.go.kr](http://www.president.go.kr).

off the head of Park Chung Hee,"<sup>54</sup> and just a few days later North Korea captured the USS *Pueblo*.<sup>55</sup>

### *1. The 1972 Joint Statement & The Yusin Constitution*

There was some positive interaction, however, between the two Koreas under Park Chung-hee. In 1971, members of the two Korean Red Cross Societies proposed meetings between high-ranking officials from the two Koreas.<sup>56</sup> Early in 1972, the Deputy Director of the Korean Central Intelligence Agency (KCIA) was taken to Pyongyang to meet with a high-ranking North Korean official, marking the first occasion for a South Korean official to go to Pyongyang for talks.<sup>57</sup> Then in late April, the head of the KCIA went to Pyongyang, was awakened in the middle of the night, and taken to meet Kim Il-sung.<sup>58</sup> The meeting was considered a success,<sup>59</sup> and it led to the issuance of a 1972 Joint Statement where *peaceful reunification* was finally made a goal for both Koreas, which was signed by the KCIA head and Kim Il-sung himself.<sup>60</sup>

This 1972 Joint Statement served to shape the relationship of the two Koreas going forward. The two countries agreed upon the following

54. BOLGER, *supra* note 52, at 62. The attempt failed because the unit divulged their plans when attempting to "indoctrinate" some South Korean woodsmen who later informed the police of the attack. *Id.* at 63. Don Oberdorfer notes that Kim Il Sung later apologized for the assassination attempt, and, while unlikely, claimed that he had no knowledge of the operation. OBERDORFER, *supra* note 15, at 24.

55. BOLGER, *supra* note 52, at 66.

56. OBERDORFER, *supra* note 15, at 14.

57. *Id.* at 15. This was an important visit, as Oberdorfer notes that the KCIA was a very powerful agency, and that the director of the KCIA was likely the second most feared government official in Korea. *Id.*

58. *Id.* at 16. This was a tremendously important meeting between the President of North Korea and the second most powerful person in South Korea. *Id.* at 23.

59. Kim Il Sung actually labeled the KCIA head "a hero" for "making the journey to the opposite camp." *Id.*

60. July 4th North-South Joint Statement, Democratic People's Republic of Korea and the Republic of Korea, July 4, 1972 [hereinafter 1972 Joint Statement] (emphasis added), *available at* [http://www2.law.columbia.edu/course\\_00S\\_L9436\\_001/North%20Korea%20materials/74js-en.htm](http://www2.law.columbia.edu/course_00S_L9436_001/North%20Korea%20materials/74js-en.htm).

three principles for reunification: (1) “the reunification must be achieved with *no reliance on external forces or interference*,” (2) “the reunification must be achieved peacefully without the use of military forces against the other side;” and (3) “both parties must promote national unity as a united people over any differences [between] ideological and political systems.”<sup>61</sup> The 1972 Joint Statement’s language that unification must be achieved with “no reliance on external forces or interference” is important because North Korea’s ultimate desire to pursue a bilateral relationship<sup>62</sup> with the United States likely added to the “multilateralization” of inter-Korean relations.

Additionally, the focus on unification that was evident in the 1972 Joint Statement also found its place in the Constitution of the Fourth Republic (Yushin Constitution) that was amended just months after the Agreement.<sup>63</sup> While it is very likely that the main goal of the Yushin Constitution was to give Park greater authoritarian control and remove the two-term limit on his presidency,<sup>64</sup> it did mark the first version of the Korean Constitution featuring the concept of a “peaceful unification.”<sup>65</sup> The Yushin Constitution also gave us the current language regarding the President’s “duty to pursue the peaceful unification of the homeland,” as well as the current concept of the president mentioning peaceful unification in the inaugural oath.<sup>66</sup>

Despite the monumental progress in the talks that gave us the 1972 Joint Statement, it was hardly smooth sailing afterwards. In 1972, future president and the voice of a large opposition, Kim Dae-jung, was kidnapped in Tokyo by the KCIA, which North Korea gave for its reason as suspending ongoing North-South talks.<sup>67</sup> Later in 1974, in another

61. *Id.*

62. *See, e.g.,* Roh, *supra* note 5, at 163 (“[A]s a party to the Military Armistice Agreement, North Korea . . . equates the United States as its negotiating partner and as a proxy in its relations with South Korea.”).

63. 1972 DAEHAN MINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] pmb., arts. 37-43, 46 (Dec. 27, 1972) (S. Kor.) [hereinafter 1972 Constitution].

64. MARK PETERSON & PHILLIP MARGUILES, BRIEF HISTORY OF KOREA 223 (2009).

65. 1972 Constitution, *supra* note 63, at pmb.

66. *Id.* at arts. 66 & 69.

67. OBERDORFER, *supra* note 15, at 42-43.

assassination attempt on President Park, Mun Se-kwang mistakenly shot the then first lady,<sup>68</sup> and South Korean investigators determined Mun, a Japanese resident, was part of a plot orchestrated by the North Korean government.<sup>69</sup> Furthermore, the murder of South Korean and American soldiers in the Joint Security Area (JSA) did not help tensions between the two Koreas.<sup>70</sup>

In 1978, a South Korean-U.S. Combined Forces Command (CFC) was created to take over duties from the UNC, which had been responsible for the defense of the South Korea since the Korean War.<sup>71</sup> This CFC consisted of a U.S. Commander-in-Chief answerable to the command authorities of the U.S. and South Korea, and a Deputy Commander from South Korea.<sup>72</sup> The shift from the UNC to the CFC was rather important since there were no Korean members in the UNC.<sup>73</sup> Shortly thereafter, U.S. President Jimmy Carter created high tension regarding the withdrawal of U.S. Soldiers from the Korean peninsula,<sup>74</sup> and President Park was met with yet another assassination attempt, this time the attempt was successful. In October 1979, President Park was shot and killed by KCIA director Kim Jae Gyu.<sup>75</sup> President Park was briefly replaced by Choi Kyu-ha pursuant to the 1972 Yusin Constitution; however, in another coup, General Chun Doo Hwan took control of the military in December of 1979.<sup>76</sup> In early 1980, amidst large numbers of student and political opposition protests demanding democracy, General Chun arrested many protesters and three powerful political figures (two future presidents and one prime minister), declared

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68. *Id.* at 47.

69. EDWARD F. MICKOLUS & SUSAN L. SIMMONS, *THE TERRORIST LIST* 166 (Praeger, 2011).

70. This was the only part of the demilitarized zone without fortifications. OBERDORFER, *supra* note 15, at 74.

71. Hwang, *supra* note 16, at 5.

72. *Id.* at 5-6.

73. *Id.*

74. *See* OBERDORFER, *supra* note 15, at 101-09.

75. *Id.* at 109-10. It should also be noted that a senior South Korean Official claimed that during President's Park's funeral, "there was not a wet eye in Seoul." *Id.* at 113.

76. *Id.* at 116-17.

martial law, and shut down all universities.<sup>77</sup> These military activities and arrests caused great unrest and further demonstration and riots in Kwangju, until the South Korean military put an end to the demonstration resulting in 240 deaths.<sup>78</sup>

General Chun instituted a new Constitution in 1980 after the military takeover, and then in early August of 1980, acting President Choi stepped down<sup>79</sup> and General Chun was elected as the first President of the Fifth Republic without opposition.<sup>80</sup> While the Yusin Constitution was amended after Chun seized power of the country, the concept of unification did not disappear; as a matter of fact, nearly the same language regarding unification appeared in the 1980 Constitution as was present in the 1972 Yushin Constitution.<sup>81</sup> Regarding inter-Korean relations under Chun, one of the first and more gruesome interactions with North Korea took place in Rangoon, Burma.<sup>82</sup> This interaction involved the bombing of the Martyr's Mausoleum before President Chun arrived, and 17 senior officials from South Korea were killed.<sup>83</sup> President Chun responded that "the killings were 'a grave provocation not unlike a declaration of war,' and warned North Korea that 'should such a provocation recur, there would be a corresponding retaliation in kind.'"<sup>84</sup> Despite a strong urge from high-ranking South Korean military officials

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77. *Id.* at 125.

78. *Id.* at 127, 129.

79. *Id.* at 132-33.

80. Dae-sook Suh, *South Korea in 1981: The First Year of the Fifth Republic*, 22 *ASIAN SURVEY* 107, 107 (Jan. 1982).

81. 1980 DAEHAN MINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] (Oct. 27, 1980) (S. Kor.) pmbl., arts. 38 & 44 [hereinafter 1980 Constitution]. One of the big changes regarding unification was with the National Council for Unification. 1972 Constitution, *supra* note 63, ch. 3. In Yushin Constitution, Chapter 3 consisted of a very thorough instruction regarding the National Council for Unification and its duties and form. *Id.* This section was not entirely present in the 1980 Constitution; however, the 1980 Constitution still allowed for a similar council to be established that would focus on reunification. 1980 Constitution, *supra*, art. 68.

82. OBERDORFER, *supra* note 15, at 140-41.

83. DICK K. NANTO, CONG. RESEARCH SERV., RL30004, NORTH KOREA: CHRONOLOGY OF PROVOCATIONS, 1950-2003 8 (2003), available at <http://www.fas.org/man/crs/RL30004.pdf>.

84. *Id.*

to carry out a punitive response, President Chun demonstrated restraint and took no retaliatory counteractions.<sup>85</sup> Around the same time of the bombing, North Korea proposed through China that it was open to three-way talks with South Korea and the United States in an effort to bring peace to the Korean peninsula.<sup>86</sup> However, neither the United States nor South Korea was keen to the idea at the time the talks were proposed.<sup>87</sup>

There also was more peaceful interaction during Chun's tenure as president, and this took place when North Korea offered food support to the South after strong rains and landslides left hundreds dead and hundreds of thousands homeless; this was the first time since the end of the Korean War that North Korean trucks entered the south carrying supplies.<sup>88</sup> In the mid 1980s the two Koreas held 13 public meetings, and over 60 people were allowed to cross the border to visit family members.<sup>89</sup> There was also something referred to as "secret diplomacy" where President Chun authorized a government official to meet in secret with North Korean officials.<sup>90</sup> Chun authorized his liaison in the secret diplomacy to inform the North Korean Officials that Chun was willing to meet Kim Il-sung in North Korea, South Korea, or other countries.<sup>91</sup> However, this remained the high point in potential hope for a face-to-face meeting of the two Korean leaders as talks failed following a North Korean proposal for a nonaggression agreement, which was largely unacceptable for South Korea.<sup>92</sup>

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85. OBERDORFER, *supra* note 15, at 143.

86. *Id.* at 144.

87. *Id.* at 147.

88. *Id.* at 148. The offer for help from North Korea was likely given in order to demonstrate its superiority over those in South Korea. *Id.*

89. *Id.*

90. *Id.* at 150.

91. *Id.*

92. *Id.* at 151-52. North Korea requested that the U.S.-South Korea joint military exercise be called off, which was unacceptable for South Korea. *Id.* at 152. The joint exercise involved 200,000 South Korean and U.S. forces just south of the DMZ. *Id.*

## 2. *The Origins of North Korea's Nuclear Program*<sup>93</sup>

After desiring to develop a nuclear infrastructure of its own, in late 1985, North Korea succeeded in getting the Soviet Union to supply it with four light-water nuclear power reactors.<sup>94</sup> In response to pressure from the United States, the Soviet Union conditioned the supply of the nuclear reactors upon North Korea joining the Nuclear Non-Proliferation Treaty (NPT), and before the agreement was made, North Korea joined the NPT.<sup>95</sup> Pursuant to the NPT, the International Atomic Energy Agency (IAEA) is the body responsible for creating a framework of safeguards designed to monitor the flow of nuclear materials.<sup>96</sup> Under the NPT, North Korea “agreed not to receive or manufacture nuclear weapons and to accept international inspection of all its nuclear facilities to verify that weapons were not being produced,” and North Korea’s accession to the NPT created “legal justification for intervention by the United States, the

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93. The origins of North Korea’s nuclear program actually dates back to World War II when Japan was pursuing a nuclear program in the northern part of its then Korean colony. *Id.* at 251. After World War II, The Soviet Union began mining materials in the North to further its nuclear program. *Id.* at 252. After the end of the Korean War, the Soviet Union and North Korea made agreements to cooperate in nuclear research, and this led to some North Korean scientists working at a Soviet nuclear research center. *Id.* The Soviet Union also provided North Korea with a “small experimental nuclear reactor” placed in Yongbyon, North Korea; this reactor was placed under inspection by the International Atomic Energy Agency (IAEA). *Id.* Then once in the 60’s and once in the 70’s, Kim Il Sung reportedly, and ultimately unsuccessfully, requested Chinese aid in its quest for its own nuclear weapons. *Id.* at 252-253. Ultimately, it is believed that North Korea launched its own program around 1979; U.S. intelligence cameras eventually photographed this reactor in 1982. *Id.* at 253.

94. *Id.* The goal of the NPT is “to achieve . . . the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament.” Treaty on the Non-Proliferation of Nuclear Weapons pmbl., July 1, 1968, 21 U.S.T. 483 [hereinafter NPT]. Currently there are 190 nations party to the NPT. *Status of the NPT*, UNODA, <http://disarmament.un.org/treaties/t/npt>.

95. OBERDORFER, *supra* note 15, at 254.

96. NPT, *supra* note 94, at pmbl. More specifically, each party “undertake[s] to cooperate in facilitating the application of International Atomic Energy Agency [IAEA] safeguards on peaceful nuclear activities.” *Id.*

United Nations, and the international community generally to curb North Korea's Nuclear Program."<sup>97</sup>

In late 1987, President Chun, having promised to serve only one presidential term and amidst more democracy protests, began to plan for his succession.<sup>98</sup> Chun announced that General Roh Tae-woo, a long-time friend and associate of President Chun, would be his party's candidate in the coming election.<sup>99</sup> Shortly thereafter, the current version of South Korea's constitution, with no changes to the goal of unification, was adopted by a national referendum,<sup>100</sup> and in December of 1987, Roh

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97. OBERDORFER, *supra* note 15, at 253.

98. *Id.* at 162-63.

99. *Id.* at 166. With the election, however, there was a serious issue of a constitutional revision to be dealt with; the opposition party and the ruling party could not agree on an outline for a revised constitution—would there be a parliamentary system or a presidential system with a direct election? Han Sung-Joo, *South Korea in 1987: The Politics of Democratization*, 28 *ASIAN SURV.*, 1, 52, 54 (Jan. 1988). Due to the difficulty in negotiating with the opposition party over a constitutional revision, President Chun made a “grave” choice to suspend all such talks. *Id.* at 53. However, political unrest continued to grow, and amidst widespread demonstrations demanding democracy, President Chun decided to meet with Kim Young-sam, officially chosen as the opposition party's candidate, to inform Kim Young-sam that he would “allow” resumption of the constitutional revision talks. *Id.* at 54. Kim Young-sam, instead, demanded that the government should agree to an immediate national referendum so that the public could choose between the parliamentary and presidential systems. *Id.* Despite being a close associate of President Chun, Roh surprised many by campaigning on freedom of expression for the press, autonomy for universities, and amnesty for Kim Dae-jung (which was very surprising as President Kim was actually sentenced to death under the Chun administration). OBERDORFER, *supra* note 15, at 172; *Kim Dae-jung – Biographical*, NOBELPRIZE.ORG, [http://www.nobelprize.org/nobel\\_prizes/peace/laureates/2000/dae-jung-bio.html](http://www.nobelprize.org/nobel_prizes/peace/laureates/2000/dae-jung-bio.html) (last visited Jan. 8, 2014). Furthermore, Roh's eight-point proposal included a “speedy amendment” to allow for direct presidential elections, and considering President Chun was effectively backed into a corner, this proposal was promptly accepted by Chun. Han, *supra*, at 54. This turn of events caused General Roh to be “acclaimed as a hero by many Koreans.” OBERDORFER, *supra* note 15, at 172.

100. Han, *supra* note 99, at 55. The 1988 Constitution is still in force today, and, as mentioned earlier in the note, it gives the President the affirmative duty of seeking “peaceful unification.” 1988 Constitution, *supra* note 7, art. 72.

Tae-woo was elected as the President of South Korea with 36% of the popular vote.<sup>101</sup>

#### D. North Korea Policy under Roh Tae-woo and Kim Young-sam

As the first President of the Sixth republic, and having the duty of seeking peaceful unification pursuant to the current constitution, President Roh's policy towards North Korea involved improving relations with socialist nations and allies of North Korea in order to compete with North Korea and cause them to be more cooperative; this policy was labeled *Nordpolitik*.<sup>102</sup> After Roh officially declared *Nordpolitik* as his North Korea policy, Kim Il-sung responded that Roh's policy was intended to permanently split up the country.<sup>103</sup> President Roh sought help from the United States and Japan, and focused on four nations (six including the two Koreas) to improve relations with North Korea: The United States, Japan, China, and the Soviet Union.<sup>104</sup> Roh, as the first South Korean president to address the UN General Assembly, pledged never to use force against North Korea, and, in very much keeping with constitutional mandate regarding peaceful unification and with recommendations of the Armistice Agreement, to seek to replace the Armistice Agreement with a peace treaty.<sup>105</sup> Additionally, under *Nordpolitik*, many South Korean business leaders became aware of potential business benefits that would come with improved relations with North Korea.<sup>106</sup>

At the time, Roh's *Nordpolitik* had proved successful, and it helped to create a direct channel for diplomatic business between North Korea and the United States.<sup>107</sup> Additionally, under Roh, South Korea and the

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101. *Id.* at 178. Kim Young-sam and Kim Dae-jung (two future presidents) split the popular vote. *Id.*

102. LIBRARY OF CONGRESS, AREA HANDBOOK SERIES, SOUTH KOREA: A COUNTRY STUDY 252 [hereinafter AREA HANDBOOK SERIES], available at <http://lcweb2.loc.gov/frd/cs/krtoc.html>.

103. OBERDORFER, *supra* note 15, at 188-89.

104. See AREA HANDBOOK SERIES, *supra* note 102, at 261.

105. *Id.* at 255.

106. *Id.* at 261.

107. See OBERDORFER, *supra* note 15, at 196.

Soviet Union experienced improved relations with the Roh Administration approving visits by Kim Young-sam and Kim Dae-jung, both future presidents and influential politicians at the time, to Moscow; South Korea and Moscow were natural partners due to South Korea's good technology, consumer goods, a thriving economy, and the overall proximity between the two countries.<sup>108</sup> Due to this improved relationship between Seoul and Moscow, as one author put it, "the Soviet Union was transformed . . . from godfather, superpower guarantor, and economic benefactor of North Korea to partner . . . and client of South Korea."<sup>109</sup> Eventually Soviet leader Mikhail Gorbachev met with President Roh in 1990, and Roh welcomed Soviet efforts to help bring peace to the Korean peninsula.<sup>110</sup> However, when the Soviets attempted to pass on Roh's message of requesting reduced military confrontation on the Korean peninsula, it was not well received by North Korea.<sup>111</sup> The goals of *Nordpolitik* were responsible for the continued "multilateralization" of inter-Korean relations, and unfortunately may have been responsible for some deterioration of the Armistice Agreement; "in April of 1991, [North Korea] declared the NNSC<sup>112</sup> defunct . . . [as the] nominated countries associated with North Korea were no longer communist nations."<sup>113</sup> The MAC, on the other hand,

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108. AREA HANDBOOK SERIES, *supra* note 102, at 256.

109. OBERDORFER, *supra* note 15, at 197.

110. *Id.* at 212.

111. *Id.* In fact, North Korea referred to Roh's message as "an unbelievable concentration of lies and slander." *Id.* Additionally, *Nordpolitik* brought improved relations with China, albeit not to the extent of the development in South Korean-Soviet relations, and the two nations began to trade actively. AREA HANDBOOK SERIES, *supra* note 102, at 259. Chinese trade with South Korea grew from \$19 million in 1979 to \$1.3 billion in 1988, while Chinese trade with North Korea fell far behind. OBERDORFER, *supra* note 15, at 240.

112. Armistice Agreement, *supra* note 21, ¶ 41.

113. Hwang, *supra* note 16, at 4. After the split of Czechoslovakia, North Korea refused to acknowledge the Czech Republic as its replacement, and it ejected the Polish delegation and has since boycotted NNSC activities. *Id.*

remains active, but has seen its importance shrink since its creation in 1953.<sup>114</sup>

### 1. *The Emergence of North Korea's Nuclear Program*

Pursuant to the NPT, North Korea was given eighteen months to sign a safeguards agreement with the IAEA, but due to certain bureaucratic mishaps, North Korea received an additional eighteen months, and by December 1988, North Korea was without an accord and still without the reactors it had originally sought from the Soviet Union.<sup>115</sup> Later in 1989, U.S. satellites had generated pictures that worried American officials about the continuing development of North Korea's nuclear facilities at Yongbyon.<sup>116</sup> In similar fashion to Roh's *Nordpolitik*, the American government decided to seek cooperation from other major powers in order to "build international pressure against North Korea to force them to . . . sign a safeguards agreement permitting inspections."<sup>117</sup>

Amidst mounting tensions over North Korea signing a safeguards agreement, North Korea held strong to its position that it would not permit IAEA inspections while there was a threat of a U.S. nuclear attack with weapons stationed in South Korea.<sup>118</sup> As a result, in the spring of 1991, U.S.-South Korea discussions over what to do with the U.S. nuclear weapons in South Korea commenced; however, despite the possibility of removing U.S. nuclear weapons from the Korean peninsula being used as a bargaining chip in negotiations with North Korea, the discussions concluded without a formal agreement.<sup>119</sup> In August of 1991, the U.S. announced, due to the beginnings of the dissolution of the Soviet Union, the removal of nuclear weapons from all U.S. forces worldwide.<sup>120</sup> When the U.S. finally removed the last American nuclear

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114. *Id.* Between 1953 and 1991, the MAC met 459 times, but the general meetings were suspended when North Korea boycotted the MAC due to South Korean general being appointed to the Chief Representative Position. *Id.*

115. OBERDORFER, *supra* note 15, at 254-55.

116. *Id.* at 255.

117. *Id.* at 256.

118. *Id.* at 256-57.

119. *Id.* at 258-59.

120. *Id.* at 259.

weapons from the Korean peninsula, North Korea was allowed to inspect the U.S. base in South Korea where the weapons used to be stored; this compromise was a breakthrough, which generated a lot of progress in inter-Korean relations.<sup>121</sup>

## *2. The Bilateral Agreements of the Early 90s*

Towards the end of the Roh Administration, a summit between the leaders of the two Koreas was an important goal.<sup>122</sup> In October of 1991, after America's decision to remove its nuclear weapons from the peninsula, the two Koreas made noteworthy progress in the Agreement on Reconciliation, Nonaggression, and Exchanges and Cooperation between the North and South (1991 Agreement).<sup>123</sup> This groundbreaking 1991 Agreement involved the two Koreas agreeing to respect one another's political systems, not to slander or interfere with the internal politics of one another, to endeavor to replace the armistice with a peace agreement, and to create a South-North liaison office and political committee to bring about successful implementation of the agreement.<sup>124</sup> Additionally, in the 1991 Agreement, the two Koreas agreed not to use force with one another, but to resolve all disputes peacefully through negotiations.<sup>125</sup> Regarding unification, the 1991 Agreements notes that the "inter-Korean relations, 'not being a relationship as between states, is a special one constituted temporarily in the process of unification.'"<sup>126</sup> Also noteworthy is the language that the two countries "shall together endeavor[]r to transform the present state of armistice into a firm state of peace between the two sides and shall abide by the present . . . Armistice

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121. *Id.* at 259-60.

122. *Id.* at 261.

123. *See* Agreement on Reconciliation, Nonaggression, and Exchanges and Cooperation between the South and North, S. Kor.-N.Kor., Dec. 13, 1991 [hereinafter 1991 Agreement], *available at* [http://www2.law.columbia.edu/course\\_00S\\_L9436\\_001/North%20Korea%20materials/oree91.html](http://www2.law.columbia.edu/course_00S_L9436_001/North%20Korea%20materials/oree91.html).

124. *Id.* arts. 1-3, 5, 7.

125. *Id.* art 10.

126. Roh, *supra* note 5, at 161 (quoting 1991 Agreement, *supra* note 123, pmb.).

Agreement until such a state of peace is realized.”<sup>127</sup> The 1991 Agreement marked the first time since the Armistice Agreement that the two Koreas had both called for adherence to the Armistice Agreement.<sup>128</sup> However, there was nothing regarding North Korea’s nuclear program to be found in the 1991 Agreement, and this was quite troubling to the international community considering that North Korea had not reached a safeguards agreement with the IAEA since it acceded to the NPT in 1985.<sup>129</sup>

The nuclear issue was soon dealt with in late December of 1991,<sup>130</sup> when North Korea gave clearance for inspection of their nuclear program as well as for a bilateral nuclear accord (1992 Accord), which was signed in January of 1992, to be worked out with South Korea.<sup>131</sup> Under the 1992 Accord that was finally worked out between the two Koreas, South Korea agreed to cancel a joint South Korea-U.S. military exercise in exchange for North Korea’s willingness to allow foreign inspectors to look into its nuclear facilities.<sup>132</sup> Moreover, both countries agreed “not to ‘test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons,’ and not to ‘possess nuclear reprocessing and uranium enrichment facilities,’” and both sides also agreed to inspections of facilities by the other side.<sup>133</sup> Sadly, this agreement would not be the end of struggle regarding nuclear facilities and North Korean Policy.<sup>134</sup> Citing

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127. 1991 Agreement, *supra* note 123, art. 5.

128. Roh, *supra* note 5, at 162.

129. OBERDORFER, *supra* note 15, at 253-54.

130. *Id.* at 260.

131. *Id.* at 263.

132. *Id.* at 264. It is important to remember that pursuant to the NPT, North Korea was required to work out an agreement with the IAEA. NPT, *supra* note 94, art. III. Considering that it had been nearly seven years since acceding to the NPT without signing an agreement with the IAEA, the nuclear issue was of tremendous importance at the time.

133. OBERDORFER, *supra* note 15, at 264. *See also* Joint Declaration of the Denuclearization of the Korean Peninsula (1992) [hereinafter 1992 Accord], *available at* [http://www2.law.columbia.edu/course\\_00S\\_L9436\\_001/North%20Korea%20materials/koreadenuclearization.htm](http://www2.law.columbia.edu/course_00S_L9436_001/North%20Korea%20materials/koreadenuclearization.htm).

134. According to a South Korean General present at the negotiations of the 1992 Accord, it was believed that South Korea pushed North Korea too hard in the

the absence of meaningful improvement of North-South relations, South Korea and the US resumed the planned military exercises that they previously cancelled to accommodate North Korea, and North Korea responded by cancelling ongoing North-South contacts.<sup>135</sup>

### *3. The 1992 IAEA Inspections*

Despite no deal worked out between North Korea and the IAEA pursuant to the NPT, the IAEA had actually been inspecting the small research reactor, supplied by the then Soviet Union, since 1977; however, the inspectors had only been allowed to inspect the small research reactor and not the entirety of the growing complex.<sup>136</sup> In a visit to North Korea in May of 1992, the IAEA discovered that the facility had grown to an “imposing” size, and was nearly 80% complete.<sup>137</sup> During this visit, North Korea presented the IAEA with a small vial of plutonium produced in its facility which suggested the capability of producing a larger quantity and raised questions over whether North Korea “had squirreled some away.”<sup>138</sup> This inspection led the IAEA to realize that North Korea required far more thorough inspections.<sup>139</sup>

As President Roh’s authority began to wane with his term coming to a close, the coming presidential election gave rise to debate over future inter-Korean relations, and in early October, South Korea and the U.S. announced intentions to resume preparations for a joint U.S.-South Korea Team Spirit military exercise.<sup>140</sup> North Korea referred to resumption of preparations for the joint military exercises as a “criminal

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negotiations, and this caused one North Korean general to exclaim, “this is your agreement, *not* our agreement.” OBERDORFER, *supra* note 15, at 264.

135. *Id.* at 272-73.

136. *Id.* at 268.

137. *Id.* at 269.

138. *Id.*

139. *Id.* at 270.

140. *Id.* at 272. This is likely because Kim Young-sam feared that “continuation of the North-South euphoria of earlier months would benefit . . . Kim Dae Jung, who was shaping up as . . . his principal competitor . . .” *Id.* The preparations of the joint military actions were rather perplexing since the cancellation of the 1992 exercise was highly important in bringing about the IAEA inspections of Yongbyon. *Id.* at 272-73.

act' designed to 'put the brakes on North-South relations,'" and eventually hinted that it might refuse to allow IAEA inspections.<sup>141</sup> Eventually, the IAEA obtained permission to visit two apparent nuclear sites at Yongbyon, where U.S. satellites had photographed the construction.<sup>142</sup> One of the nuclear sites was a two-story complex; however, when IAEA inspectors arrived, only the top floor was visible, and North Korea claimed the lower floor did not exist.<sup>143</sup> After months of contention, the IAEA desired a special inspection of these two suspected nuclear sites, but North Korea responded that there could be no inspection of non-nuclear facilities as that "might jeopardize [North Korea's] supreme interests"; this was a clear reference to Article X, the escape clause of the NPT.<sup>144</sup> In February of 1993, the IAEA board demanded that North Korea permit inspection of the two suspected nuclear sites, and because of Chinese requests, provided North Korea with one month to comply.<sup>145</sup> Right in the middle of this quickly deteriorating inter-Korean state of affairs, Kim Young-sam was elected to be the next South Korean president,<sup>146</sup> and North Korea "switch[ed] to a state of readiness of war" in response to the U.S.-South Korea military exercises, and in March of 1993 announced that it was withdrawing from the NPT.<sup>147</sup>

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141. *Id.* at 273.

142. *Id.* at 274-75.

143. *Id.*

144. *Id.* at 276; NPT, *supra* note 94, art. X ("Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country.").

145. OBERDORFER, *supra* note 15, at 277-78.

146. *Id.* at 279.

147. *Id.* (internal quotations omitted). Pursuant to Article X of the NPT, North Korea stated the joint exercises violated the 1992 Joint Accord, and that the IAEA demand was designed to disarm and dismantle North Korea's socialist society. *Id.* at 280.

#### 4. 1993 Bilateral Negotiations Between the U.S. and North Korea

In June of 1993, officials from the U.S. and North Korea began negotiations in the wake of North Korea's withdrawal from the NPT, and with only ten days before the withdrawal became effective.<sup>148</sup> The U.S. assured North Korea "against 'the threat of use of force, including nuclear weapons' and against 'interference in each other's internal affairs,'" and both sides eventually agreed to a joint statement which prevented North Korea's withdrawal from the NPT, but ultimately did not solve any of the ongoing IAEA inspection difficulties.<sup>149</sup> If grading these negotiations under a rubric based on North Korea negotiating bilaterally with the U.S., then North Korea was very successful in the outcome of these negotiations.<sup>150</sup>

Responding to these bilateral U.S.-North Korea negotiations, newly elected president, Kim Young-sam, voiced criticism over the negotiation process.<sup>151</sup> Regarding President Kim's North Korea policy, he stated in his inaugural address that he would meet with Kim Il Sung at any time or place and that "no ally can be more valuable than national kinship,"<sup>152</sup> however, the Kim Young-sam Administration was widely thought of as "confus[ed] regarding its North Korean policy."<sup>153</sup> Moreover, it became clearer that public opinion was a driving force behind President Kim's North Korean policy.<sup>154</sup>

In continued talks, North Korea announced that it was willing to switch its nuclear development program to light-water reactors (LWRs)

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148. *Id.* at 284.

149. *Id.* at 285.

150. *Id.* at 287.

151. *Id.* Newly elected President Kim Young-sam voiced his criticism over the negotiation process claiming that North Korea was merely "buy[ing] time to finish their project" and that the U.S. was being "led on by North Korea." *Id.* (internal quotations omitted).

152. *Id.*

153. Kibum Han, *North Korea's South Korea Policy: An Evaluation of Determining Variables and Prospects for 2012*, 20 INT'L J. KOREAN UNIFICATION STUD. 27, 36 n.11 (2011).

154. OBERDORFER, *supra* note 15, at 288.

supplied by the international community.<sup>155</sup> The U.S. eventually agreed to “support the introduction of LWRs and . . . explore with [North Korea] ways in which LWRs could be obtained,” but the U.S. conditioned this on being part of a “final resolution” regarding North Korea’s nuclear program.<sup>156</sup> Eventually, IAEA inspectors were allowed to return to Yongbyon in August, but they were not permitted to perform the desired special inspections of the two suspected nuclear sites which the IAEA had continuously demanded the opportunity to inspect.<sup>157</sup>

In October of 1993, negotiations between the U.S. and North Korea continued, and North Korea claimed that it would submit to regular IAEA inspections and discuss the “special inspections” demanded by the IAEA in return for an end to the U.S.-South Korea military exercises, lifting of American economic sanctions, and continued bilateral negotiations.<sup>158</sup> A month later, the U.S. gave North Korea its deal which included a resumption of IAEA inspections and continued inter-Korean dialogue in exchange for the cancellation of the 1994 U.S.-South Korea joint military exercise and continuing bilateral talks between the U.S. and North Korea.<sup>159</sup> After this “package deal” appeared in the news, President Kim Young-sam again voiced his disapproval,<sup>160</sup> and expressed that it appeared that the United States was accommodating North Korea without having South Korea involved in the negotiation process;<sup>161</sup> North Korea’s success in getting bilateral negotiations with the United States did not appear to please Kim Young Sam and South Korea. Negotiations regarding North Korea’s nuclear program began to prove difficult, and it

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155. *Id.* at 289. LWRs are more complex reactors than the ones previously in possession by the North; they were also far more efficient. *Id.*

156. *Id.* at 291.

157. *Id.* at 292.

158. *Id.* at 293.

159. *Id.* at 295.

160. President Kim Young-sam did not like the fact that South Korea was not the dominant force in North Korean policy, and resented the concept of the “package deal” which was something that political rival Kim Dae-jung had publically supported; “[i]f [Kim Dae-jung] was for it, Kim Young-sam was automatically against it.” *Id.* at 295-96.

161. *Id.* This was a surprise to most Americans as it was expected that President Kim would simply put his stamp of approval on the negotiations. *Id.*

became apparent that North Korea, South Korea, the U.S., and the IAEA all had to be present for talks to succeed.<sup>162</sup>

### *5. The Nuclear Crisis of 1994*

As North Korea suffered its fourth year of consecutive economic decline, the negotiation climate became quite stale.<sup>163</sup> North Korea, after the imposition of an IAEA deadline for inspections, accepted minimum conditions for resumption of inspections,<sup>164</sup> and eventually the United States and North Korea agreed to minimum conditions for resuming nuclear inspections, cancellation of a 1994 joint military exercise, and a renewal of inter-Korean talks.<sup>165</sup> However, things quickly went downhill, and the IAEA ordered their inspectors home without completion of their work.<sup>166</sup> After negotiations broke down in further North-South conversations, a high-ranking official exclaimed that, "Seoul is not far from here . . . [I]f a war breaks out, it will be a sea of fire," which began a downward spiral in North-South relations.<sup>167</sup> Based on surveillance of North Korea's nuclear facilities in 1989, the CIA estimated approximately eight thousand irradiated fuel rods from North Korea's reactor at Yongbyon could have been fabricated into plutonium, which meant that North Korea "had the makings of a bomb."<sup>168</sup> In addition to the unloading of the fuel rods, two significantly larger reactors were nearing completion, and North Korea promised to allow IAEA inspections subject to, of course, further agreements.<sup>169</sup> Despite talks of refueling its original nuclear reactor, North Korea decided to defuel the

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162. *Id.* at 297.

163. *See id.* at 297-301.

164. *Id.* at 301-02. Although it refused to issue visas to the IAEA inspectors unless "a number of preconditions were met." *Id.* at 302.

165. *Id.* at 302-03.

166. *Id.* at 303. The IAEA concluded that the legal justifications offered by North Korea in refusing "sophisticated measurements" in the plutonium reprocessing plant were designed actually to pressure South Korea over the exchange of envoys. *Id.*

167. *Id.* at 304.

168. *Id.* at 306-07. However, there were some that believed this number was likely a scare tactic, and a "worst case scare-nario." *Id.* at 307.

169. *Id.* at 308.

reactor at an early date, and because of sparring over inspection procedures, the removal of the fuel rods took place without IAEA observation, and it was discovered that North Korea possessed a second homemade defueling machine; further IAEA actions “got nowhere.”<sup>170</sup>

Because of North Korea’s extremely noncommittal behavior, there was a push for strong economic sanctions to which Kim Il-sung responded, “[S]anctions mean war, and there is no mercy in war.”<sup>171</sup> War preparations began as the military escalation continued; however, the incredibly prohibitive cost of a war in Korea eventually pushed the U.S. back towards the diplomacy track.<sup>172</sup> While sanctions became a distinct possibility, it was Russia that advocated for an inter-Korean conference with the U.S., Japan, China, the U.N. and the IAEA; no immediate conference took place, but Russia insisted on one before economic sanctions.<sup>173</sup> China was also against sanctions, but warned North Korea that it may not be able to successfully veto U.N. sanctions due to the ever-strengthening international support for sanctions; additionally in June of 1994, the IAEA board voted to suspend its \$500,000 worth of assistance to North Korea’s nuclear program, which had the effect of an international sanction.<sup>174</sup>

These increased tensions possessed the potential for military escalation, and it was due to these tensions that former U.S. President Carter planned a visit to Kim Il-sung.<sup>175</sup> By the time that President Carter arrived in Pyongyang, North Korea began to demonstrate signs of concession;<sup>176</sup> however, South Korean President Kim Young-sam was opposed to Carter’s visit as he stated that it “could help [North Korea] pursue ‘stalling tactics.’”<sup>177</sup> At the end of the U.S.-North Korea talks between Carter and Kim Il-sung, Kim Il-sung agreed to leave IAEA

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170. *Id.* at 309.

171. *Id.* at 311.

172. *Id.* at 315.

173. *Id.* at 318.

174. *Id.* at 320-21.

175. *Id.* at 317-18.

176. This meeting with President Carter was a huge deal for North Korea, as it had long attempted to form a direct relationship with the U.S., a direct party to the Armistice Agreement unlike South Korea. *See id.* at 326-27; *see also* Roh, *supra* note 5, at 164.

177. OBERDORFER, *supra* note 15, at 323.

inspectors and monitoring equipment in place and Carter promised his “support” for North Korea acquiring LWRs.<sup>178</sup>

### *6. The Passing of Kim Il-sung and Ascension of Kim Jung-il*

After the Carter visit, with the plans for U.S. military reinforcement and economic sanctions dropped, there was once again hope in the North-South relationship, and Kim Il-sung was preparing for a summit with President Kim Young-sam.<sup>179</sup> However, just a couple of weeks before the planned July 25<sup>th</sup> summit, Kim Il-sung died at the age of 82, and the summit never took place.<sup>180</sup> After condolences were sent to North Korea from the Clinton Administration, there were none that followed from the Kim Young-sam Administration, and the Kim Young-sam Administration, furthermore, blocked plans by the public to send condolences to North Korea for the passing of Kim Il-sung.<sup>181</sup> Inter-Korean relations did not improve with the ascension of Kim Jong-il. Kim Young-sam lost popularity because he was perceived as being manipulative in North Korea's request for food aid,<sup>182</sup> and later spoke out against food aid for North Korea because North Korea poured all of its money into its military.<sup>183</sup>

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178. *Id.* at 329. President Carter believed that North Korea would have preemptively gone to war if sanctions were passed while the U.S. was engaging in military exercises with an increased presence in the peninsula. *Id.*

179. *Id.* at 333-38.

180. David E. Sanger, *Kim Il Sung Dead at 82; Led North Korea 5 Decades; Was Near Talks With South*, N.Y. TIMES (July 9, 1994), <http://www.nytimes.com/1994/07/09/world/kim-il-sung-dead-at-age-82-led-north-korea-5-decades-was-near-talks-with-south.html?pagewanted=all&src=pm>.

181. OBERDORFER, *supra* note 15, at 344.

182. *Id.* at 373.

183. *Id.* at 373-74.

### 7. *The 1994 Agreed Framework Between the U.S. and North Korea*

In August of 1994, U.S.-North Korea nuclear negotiations finally resumed, and early indications pointed to a potential agreement.<sup>184</sup> Since the idea of freezing its current nuclear program in exchange for modern LWR reactors had already been agreed to, talks focused on the previously irradiated fuel rods, the reprocessing facility capable of extracting plutonium from those rods, and the highly important and sensitive IAEA “special inspections” of the two alleged nuclear sites.<sup>185</sup> Eventually, in October of 1994, the U.S. and North Korea reached an agreement that consisted of North Korea allowing the “special inspections” when a substantial percentage of the components for the LWRs had been shipped, and South Korea agreed to pay the majority of the costs for providing the LWRs despite not being present at the negotiations.<sup>186</sup> After another statement of disapproval regarding the negotiation process by President Kim Young-sam, the negotiations finally concluded with North Korea agreeing to engage in inter-Korean dialogue.<sup>187</sup>

The product of the years of previous negotiations was titled the “Agreed Framework Between the United States of America and the Democratic People’s Republic of Korea” (1994 Agreed Framework). In the 1994 Agreed Framework, the U.S. agreed to (1) arrange the supply of LWRs to North Korea, and (2) offset any losses sustained by North Korea due to the “freezing” of its nuclear program.<sup>188</sup> North Korea, under the 1994 Agreed Framework agreed to (1) cooperate with IAEA

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184. *Id.* at 351.

185. *Id.*

186. *Id.* at 354. President Kim Young-sam once again voiced disapproval over the negotiations and threatened to “denounce” the U.S.-North Korea agreement; luckily he was convinced not to do so. *Id.* at 355-56.

187. *Id.* at 356.

188. Agreed Framework Between the United States of America and the Democratic People’s Republic of Korea, U.S.-N. Kor., Oct. 21, 1994, art. I [hereinafter 1994 Agreed Framework], available at [http://www2.law.columbia.edu/course\\_00S\\_L9436\\_001/North%20Korea%20materials/agreedframework.htm](http://www2.law.columbia.edu/course_00S_L9436_001/North%20Korea%20materials/agreedframework.htm).

inspections throughout the entire process, (2) remain a part of the NPT, and (3) engage in further inter-Korean dialogue.<sup>189</sup> Further, both sides generally agreed to continue political relations and to honor previously made agreements.<sup>190</sup> This deal, while viewed as a huge success in North Korea,<sup>191</sup> left a sour taste in the mouth of South Korea, which despite being a “great ally and [close] friend” of the U.S., was completely uninvolved in the deal.<sup>192</sup> In March of 1995, the Korean Peninsula Energy Development Organization (KEDO) was established.<sup>193</sup> After difficulties emerged in supplying the LWRs in April of 1995, North Korea threatened to abandon the 1994 Agreed Framework, and an agreement was eventually reached in which KEDO would finance and supply the LWRs.<sup>194</sup>

In a turn of events in 1996, North Korea announced that it would unilaterally withdraw from the Armistice Agreement, and claimed that it would do so because South Korea was transporting troops and heavy weapons into the DMZ,<sup>195</sup> and introducing armed soldiers and vehicles into the JSA.<sup>196</sup> Pursuant to the constitution, President Kim convened a National Security Council meeting, and in September, Korea experienced a “nationwide manhunt” after a disabled submarine was found off the east coast of South Korea.<sup>197</sup> After the manhunt, President Kim announced that the presence of the submarine infiltrators constituted an “armed provocation” and ended South Korea’s involvement in KEDO.<sup>198</sup> President Kim demanded an apology from North Korea for the submarine incursion before he would resume South Korea’s involvement

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189. *Id.* arts. I, III-IV.

190. *Id.* art III-IV.

191. OBERDORFER, *supra* note 15, at 357.

192. *Id.* at 358.

193. *Id.* at 366.

194. *Id.* at 369.

195. This act, if true, would violate the Armistice Agreement. Armistice Agreement, *supra* note 21, § 13a.

196. OBERDORFER, *supra* note 15, at 387-88.

197. *Id.* 25 North Koreans and 13 South Korean military personnel and civilians were killed in the ensuing battle. *Id.*

198. *Id.* at 389.

in KEDO or provide any aid to North Korea.<sup>199</sup> North Korea also announced that it would not resume talks with South Korea until South Korea apologized for its failure to send condolences after the passing of Kim Il-sung.<sup>200</sup> During a meeting with then U.S. Secretary of State, Madeline Albright, President Kim gave assurances that no military action would be taken without full coordination with the U.S.<sup>201</sup> North Korea later expressed “deep regret” regarding the submarine incursion, and both Koreas backed off of their earlier hardline stances.<sup>202</sup>

#### E. Kim Dae-jung and Roh Moo-hyun: The Sunshine Policy & Peace and Prosperity

The North-South relations continued in a state of constant flux until Kim Dae-jung, the longtime opposition leader, was elected and exhibited a very different North Korea policy than did his predecessor, the first President Kim.<sup>203</sup> President Kim Dae-jung announced the Sunshine Policy,<sup>204</sup> as his policy on North Korea.<sup>205</sup> The Sunshine Policy had four main objectives: (1) to “encourage[] allies . . . to actively engage North Korea;” (2) to “address[] North Korea’s economic and humanitarian needs rather than respond[] to its strengths;” (3) to concentrate on solvable problems and revisit more difficult problems after substantial progress is made; and (4) to use both “dialogue and deterrence.”<sup>206</sup> In focusing on North Korea’s areas of need, special attention was paid to the massive gap in trade volume that existed between the two Koreas—

199. *Id.*

200. Roh, *supra* note 5, at 170.

201. OBERDORFER, *supra* note 15, at 392.

202. *Id.* at 392-93. Unfortunately, however, the LWR project an KEDO were ultimately unsuccessful, and North Korea eventually announced in 2009 that it would build its own indigenous LWR. Choe Sang Hun, *Progress Is Cited on New Reactor in North Korea*, N.Y. TIMES (Aug. 21, 2012).

203. OBERDORFER, *supra* note 15, at 407.

204. The name of this policy alone is very much evocative of the President’s constitutional mandate to seek *peaceful* unification.

205. Sung Chul Yang, *South Korea’s Sunshine Policy: Progress and Predicaments*, 25 FLETCHER F. WORLD AFF. 31, 31 (2001).

206. *Id.* at 31-33.

\$1.48 billion for North Korea and over \$260 billion for South Korea—and to its shortage of food, energy, and hard currency.<sup>207</sup> The Sunshine policy was designed to “promote[] peace and mutual prosperity,” and move away from past strategies where dialogue stopped whenever there was a conflict between the two countries.<sup>208</sup> Moreover, the Sunshine Policy involved “maintaining a strong defense posture based on its military alliance with the United States . . . [and helping to] create an environment in which North Korea can feel safe in opening up and pursuing political and economic reforms.”<sup>209</sup> Overall, the basic idea behind the Sunshine Policy was that continued economic relations and general interactions between the two Koreas would lead to a better inter-Korean relationship, and therefore would make it less likely that either side would resort to military force.<sup>210</sup> As a result of this striking change in North Korea policy, by 2001, South Korea had become the third biggest trading partner of North Korea, and tourism and humanitarian aid to North Korea had greatly increased, as did contacts between the two Koreas.<sup>211</sup>

### *1. The 2000 Summit Between Kim Jong-il and Kim Dae-jung*

However, perhaps the largest and most monumental development between the two Koreas since the end of the Korean War occurred in June of 2000: the summit between the leaders of the two Koreas, Kim Dae-jung and Kim Jung-il. In early 2000, there were increased signals that North Korea wanted to move towards cooperation, and Kim Dae-jung’s response was that South Korea would respond as soon as North Korea responded to the South Korea’s efforts of peace.<sup>212</sup> President Kim Dae-jung made it one of his top priorities to have a summit with Kim Jung-il, and in April an agreement was reached for a North-South

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207. *Id.* at 32.

208. *Id.*

209. *Id.* at 33. It should also be noted that one of the central premises of the Sunshine Policy was North Korea’s transformation into a market state. *Id.*

210. *Id.*

211. *Id.* at 33-34.

212. OBERDORFER, *supra* note 15, at 426.

Summit to be held in June.<sup>213</sup> On June 13, President Kim Dae-jung was greeted in North Korea on a red carpet by Kim Jong-il with a “warm two-handed handshake and words of welcome.”<sup>214</sup> President Kim Dae-jung received a very impressive and special greeting, and at the end of their summit, the two leaders issued a joint declaration.<sup>215</sup> The Joint Declaration (June 15 Joint Declaration) involved the two leaders agreeing to (1) solve the issue of reunification independently, (2) recognize the differences between the two governments, (3) solve humanitarian issues, such as reuniting families and having communists serve prison time in South Korea, (4) cooperate economically and stimulate interaction through “civic, cultural, sports, health, environmental and other fields,” and (5) hold future talks designed to implement these agreements.<sup>216</sup> More importantly, North Korea still views the “[b]y our nation itself” nature of the June 15 Joint Declaration as *the* cornerstone of its unification policy.<sup>217</sup>

Another achievement, or controversy depending on the individual one speaks with, of the Kim Dae-jung regime was the founding of the Kaesong Industrial Complex (KIC). The KIC development first began in 1998 on an initiative lead by the Hyundai Group, and its goals were to (1) create an industrial park where “South Korean businesses could manufacture products using North Korean labor,” (2) “provide an opening for North Korea to liberalize and reform its economy,” and (3) “ease tensions across the DMZ.”<sup>218</sup> The KIC was very important for

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213. *Id.* at 428.

214. *Id.* at 430.

215. *Id.* at 430-31.

216. *South-North Joint Declaration*, U.S.. INST. OF PEACE (June 15, 2000) [hereinafter *June 15 Joint Declaration*], available at [http://www.usip.org/sites/default/files/file/resources/collections/peace\\_agreements/n\\_sko\\_rea06152000.pdf](http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/n_sko_rea06152000.pdf).

217. *June 15 Declaration, Guidelines for Korea's Reunification*, KCNA (June 12, 2013) [hereinafter *Guidelines for Korea's Reunification*], <http://www.kcna.co.jp/item/2013/201306/news12/20130612-17ee.html>. North Korea highlighted the “brisk dialogues and contacts that began to resume between the [two Koreas]” as well as the reconnection of the roads and airways that had been long severed. *Id.*

218. MARK E. MANYIN & DICK K. NANTO, CONG. RESEARCH SERV., RL34093, THE KAESONG NORTH-SOUTH KOREAN INDUSTRIAL COMPLEX 5 (2011), available at

North Korea as well, as they were in “desperate need of hard currency.”<sup>219</sup> While the KIC began as a private endeavor, it remains very much supported by the South Korean government.<sup>220</sup> Generally, the Sunshine Policy saw tremendous success in its dealings with North Korea; from the time of the summit until 2005, there were 124 meetings and 14 rounds of Cabinet-level talks, whereas after the Korean War there were no meetings until 1971.<sup>221</sup> From 1971, there was an average of 12 meetings a year; North-South contact under President Kim Dae-jung practically doubled.<sup>222</sup> Trade, overland routes between the two Koreas, reunited family members, and tourism to North Korea all increased under the Kim Dae-jung Administration.<sup>223</sup>

However, despite all of the positivity that came from the Sunshine Policy, the developments relating to the security realm were rather uninspiring.<sup>224</sup> The lack of North Korean response to all of President Kim Dae-jung’s actions became a source of great political polarization, and in fact, the number of South Koreans that supported the Sunshine Policy in August of 2000 was 87 percent compared to 34 percent by June of 2001.<sup>225</sup> It seemed to be the case that North Korea very much wanted aid from and trade with the South; however, it became clear that North Korea did not wish to actually implement the agreements made at the summit.<sup>226</sup> Despite President Kim Dae-jung winning the Nobel Peace Prize<sup>227</sup> for his work with North Korea, the Sunshine Policy was not

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<http://www.fas.org/sgp/crs/row/RL34093.pdf>.

219. Pierce Lee, *Rules of Origin and the Kaesong Industrial Complex: South Korea's Uphill Battle Against the Principle of Territoriality*, 39 N.C. J. INT'L L. & COM. REG. 1, 7-8 (2013).

220. See, e.g., Gaeseong Gonggeop Jigu Jiweonaegwanhan Beopyul [Kaesong Industrial Zone Support Act] Act No. 10189, Mar. 26, 2010 (S. Kor).

221. Choong Nam Kim, *The Roh Moo Hyun Government's Policy Toward North Korea* 7 (E.-W. Ctr., Working Paper No. 11, 2005).

222. *Id.*

223. *Id.* at 7-8.

224. *Id.* at 8.

225. *Id.*

226. *Id.*

227. Kim Dae-jung – Facts, Nobelprize.org, [http://www.nobelprize.org/nobel\\_prizes/peace/laureates/2000/dae-jung-facts.html](http://www.nobelprize.org/nobel_prizes/peace/laureates/2000/dae-jung-facts.html). While

entirely favored in the U.S.; the U.S. wanted to see more work done relating to North Korea's nuclear ambitions, whereas South Korea was focused on reconciliation.<sup>228</sup> Additionally, the hardline policy of American President George W. Bush, some South Koreans felt, was having an adverse effect on the positive traction that the two Koreas had gained under President Kim Dae-jung.<sup>229</sup>

In 2002, President Roh Moo-hyun was elected to replace President Kim Dae-jung in the midst of anti-American demonstrations in Korea, and President Roh controversially expressed that he might favor neutrality if war broke out between North Korea and the United States.<sup>230</sup> While President Roh continued the Sunshine Policy that was employed by his predecessor, Roh's policy was actually termed as the "Peace and Prosperity Policy."<sup>231</sup> President Roh promised to maintain the Sunshine Policy while seeking permanent peace on the peninsula and promoting common prosperity in Asia.<sup>232</sup> President Roh's Peace and Prosperity Policy involved a three-point approach: (1) resolve North Korea's nuclear crisis in the short term; (2) bring lasting peace to the peninsula in the midterm; and (3) build a Northeast Asian economic hub in the long-term.<sup>233</sup> However, the Roh Administration was tasked in dealing with yet another North Korean Nuclear Crisis as North Korea began removing all international monitoring equipment from its nuclear reactor, and tensions

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President Kim Dae-jung took the constitutional mandate of peaceful unification seriously, it should be remembered that not all Nobel Peace Prize winners are universally celebrated. *See, e.g.,* Hwang, *supra* note 16, at 2-3.

228. Kim, *supra* note 221, at 9.

229. *Id.* at 10. Considering the state of North Korea's nuclear program and the amount of tension that existed throughout this mid 90s, this positive traction was quite the accomplishment. The accomplishment is even more astonishing considering that as soon as Kim Dae-jung took office North Korea's ballistic missile test over Japan in August of 1998. *See* OBERDORFER, *supra* note 15, at 410-14. To transform the environment from one on with extraordinary tension and one on the brink of war, to one focused on peace and with a continued inter-Korean relationship was a remarkable accomplishment.

230. Kim, *supra* note 221, at 12.

231. *Id.*

232. *Id.* at 12-13.

233. *Id.* at 14.

were high considering that it was possible that North Korea would soon be a target of America in its war against terrorism.<sup>234</sup>

## *2. North Korea Withdraws from the NPT & The Emergence of the Six Party Talks*

Unfortunately for President Roh Moo-hyun, his term as president commenced with the “evolving second North Korean nuclear crisis.”<sup>235</sup> The 1994 Agreed Framework had all but collapsed, KEDO had suspended heavy fuel deliveries to North Korea, and North Korea as a result, “withdrew from the NPT, removed the seals and IAEA monitoring equipment, . . . and restarted [its] reactor.”<sup>236</sup> North Korea cited multiple reasons for its withdrawal including KEDO’s<sup>237</sup> decision to suspend supply of heavy fuel deliveries, the Bush Administration’s “policy to crush [North Korea] with force of arms” and its labeling North Korea as being in the “axis of evil.”<sup>238</sup> North Korea, however, ultimately left the door open for future methods of ensuring only peaceful purposes of its nuclear program.<sup>239</sup>

After North Korea withdrew from the NPT, trilateral talks were held between North Korea, China, and the U.S. to deal with, yet again, North Korea’s nuclear program.<sup>240</sup> It was the American stance at the time that a mere “freezing” of North Korea’s nuclear program was insufficient; thus, the U.S. and President Bush called for North Korea to “completely dismantle its nuclear weapons program,” and ultimately, the trilateral

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234. *Id.* at 13.

235. *Id.*

236. *Id.* This was a huge set back to deal with considering the years that it took for North Korea and the U.S. to come to the 1994 Agreed Framework. See OBERDORFER, *supra* note 15, at 351-59.

237. North Korea actually labeled this as the U.S.’s decision. See KCNA ‘Detailed Report’ Explains NPT Withdrawal, KCNA (Jan. 22, 2003), <http://www.fas.org/nuke/guide/dprk/nuke/dprk012203.html>.

238. *Id.*

239. *Id.* And, of course, this was conditioned on reciprocal U.S. actions.

240. *North Korea Nuclear Chronology*, NUCLEAR THREAT INITIATIVE 162 (last updated Feb. 2011) [hereinafter NTI], [http://www.nti.org/media/pdfs/north\\_korea\\_nuclear.pdf?\\_=1316543714](http://www.nti.org/media/pdfs/north_korea_nuclear.pdf?_=1316543714).

talks were unsuccessful.<sup>241</sup> In May of 2003, President Bush and President Roh both agreed nuclear weapons in North Korea would not be tolerated and sought the elimination of North Korea's nuclear weapon program through peaceful, international cooperation.<sup>242</sup> With this desire of international cooperation, Russia, Japan, and South Korea were added to the earlier trilateral talks, and the Six-Party Talks were born.<sup>243</sup> Talks ultimately did not progress as the U.S. held strong to its position of a *full* dismantling of North Korea's nuclear weapons program before any non-aggression agreement was entered into between the U.S. and North Korea.<sup>244</sup> It was not until September 2005 that the Six-Party talks produced a 2005 Joint Statement whereby North Korea agreed to suspend its nuclear weapon program, the U.S. and South Korea agreed not to deploy nuclear weapons on the peninsula, and the remaining parties agreed to supply North Korea with energy aid.<sup>245</sup>

Despite the agreements in the 2005 Joint Statement, implementation of the agreements proved difficult, and later the U.S. designated a prominent bank as a "money laundering pawn for North Korea" and prevented U.S. financial institutions from doing business with the bank.<sup>246</sup> As the negotiation climate continued to grow stale, and without an agreement on how to implement the 2005 Joint Statement, North Korea announced that it planned to conduct a nuclear test in October of 2006.<sup>247</sup> North Korea cited "the extreme threat of a nuclear war and [the threat of] U.S. sanctions and pressure" as its reason for the test, and on

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241. *Id.* See also *id.* at 178 (Showing that the Bush Administration would only participate in further trilateral talks "if the talks [were] immediately followed by multilateral talks that incorporate[d] South Korea, Japan, and possibly Russia.").

242. *Id.* at 169.

243. See, e.g., Joseph Kahn, *U.S. Set to Take a Hard Line in Talks on Korean Arms*, N.Y. TIMES (Aug. 27, 2003), available at <http://www.nytimes.com/2003/08/27/world/us-set-to-take-a-hard-line-in-talks-on-korean-arms.html>.

244. NTI, *supra* note 240, at 188-89.

245. See Joint Statement of the Fourth Round of the Six-Party Talks, Sept. 19, 2005 [hereinafter 2005 Joint Statement], available at <http://www.state.gov/p/eap/regional/c15455.htm>. The agreement was phrased as "commitment for commitment, action for action." *Id.*

246. NTI, *supra* note 240, at 64.

247. *Id.* at 32.

October 9, 2006, despite the objections of the U.N. Security Council, North Korea conducted an underground nuclear test<sup>248</sup> that sent “major shockwaves [] domestically and internationally.”<sup>249</sup> The U.N. Security Council quickly passed a resolution condemning the test, demanded that North Korea refrain from conducting further nuclear tests and rejoin the NPT, and encouraged the resumption of the Six-Party Talks.<sup>250</sup> After the nuclear test and the following U.N. Security Resolution, the Six-Party talks resumed, and ultimately an Implementation Agreement was reached regarding the earlier 2005 Joint Statement.<sup>251</sup>

### *3. The 2007 Summit Between Kim Jong-il and Roh Moo-hyun*

Despite the international tensions regarding North Korea's withdrawal from the NPT, President Roh, consistent with the constitutional mandate, still sought reconciliation and peace on the Korean peninsula first and foremost.<sup>252</sup> While Roh had been observed as inexperienced in foreign policy issues, it was clear that his North Korea policy was an extension of his domestic policies.<sup>253</sup> It proved difficult for President Roh to be successful in his interactions with the U.S., who urged South Korea to be strong in their talks regarding North Korea's nuclear issues and to effectively use the Sunshine Policy and increase interaction and communication between the two Koreas at the same time.<sup>254</sup> In the early stages of the Roh Administration's tenure, it appeared that the conservative policies of the Bush Administration and the liberal policies of the Roh regime were incompatible and did not progress North-South

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248. *Id.*

249. Robert Gallucci, *Nuclear Shockwaves: Ramifications of the North Korean Nuclear Test*, ARMS CONTROL ASS'N (Nov. 27, 2006), [http://www.armscontrol.org/act/2006\\_11/Gallucci](http://www.armscontrol.org/act/2006_11/Gallucci).

250. S.C. Res. 1718, ¶¶ 1-4, 13, U.N. Doc. S/RES/1718 (Oct. 14, 2006).

251. Initial Actions for the Implementation of the Joint Statement, Feb. 13, 2007 [hereinafter 2007 Implementation Agreement], *available at* [http://www.mofa.go.jp/region/asia-paci/n\\_korea/6party/action0702.html](http://www.mofa.go.jp/region/asia-paci/n_korea/6party/action0702.html).

252. Kim, *supra* note 221, at 13.

253. *Id.* at 15.

254. *Id.*

relations as much as hoped.<sup>255</sup> President Roh claimed that the relationship between the U.S., Japan, and South Korea had ceased to be a positive impact in the role of inter-Korean relations, and he believed that it was very important to establish an independent foreign policy from the U.S. and to build a self-reliant military.<sup>256</sup> Roh additionally believed that China was a suitable alternative to the U.S. as a partner in the Korean peninsula because of shared and overlapping interests.<sup>257</sup> Later in 2006, the U.S. and South Korea reached an agreement for the future wartime operational control of the military to be shifted from the U.S. to South Korea (commonly referred to as the OPCON transfer), which would abolish the prior created CFC and establish separate South Korean and U.S. military commands.<sup>258</sup>

In July of 2007, the two Koreas happily arranged a summit between Kim Jung-il and President Roh for late August.<sup>259</sup> The Summit was agreed to despite protests from the conservative party that Roh, as a lame duck president, would not be able to make a lasting deal with Kim Jong-il.<sup>260</sup> The Summit was postponed until October due to severe floods in North Korea; however, on October 2, the second consecutive South Korean president flew to North Korea for a Summit with leader Kim Jong-il.<sup>261</sup> Like President Kim Dae-jung before him, Kim Jong-il met President Roh upon his arrival in Pyongyang, with albeit a slightly less warm reception, and the two leaders eventually worked out and signed an

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255. *Id.* at 22.

256. *Id.* at 23-24.

257. *Id.* at 24.

258. Hwang, *supra* note 16, at 6. However, this has yet to occur as the originally scheduled date of the transfer, April 2012, was postponed until December 2015. As of January 2014, this has yet to happen, and current President Park Geun-hye has requested an “indefinite delay in the transition.” See Lee Chi-dong, *Pentagon wants ‘conditions-based’ OPCON transfer to Korea, official says*, YONHAP, (Jan. 29, 2014), <http://english.yonhapnews.co.kr/full/2014/01/29/26/1200000000AEN20140129000200315F.html>.

259. Aidan Foster-Carter, *North Korea-South Korea Relations: Summit Success?*, 3 COMP. CONNECTIONS: Q. E-JOURNAL ONE. ASIAN BILATERAL REL. 1, 1-2 (2007).

260. *Id.* at 2.

261. *Id.* at 4-5.

eight-point agreement.<sup>262</sup> The Agreement was a substantial one that focused on creating a permanent peace between the two Koreas, and it contained the statement that the two Koreas “have agreed that their highest authorities will meet frequently for the advancement of relations between the two sides.”<sup>263</sup> This agreement, just like the June 15 Joint Declaration, is still very much important to the unification policy of North Korea as it stated in a 2013 press release, “[i]f the present [S]outh Korean authorities truly want detente and improved [N]orth-[S]outh relations, they should take practical steps to implement the June 15 Joint Declaration and the October 4 [Joint] Declaration.”<sup>264</sup> Most South Koreans found the summit useful, despite the near-absence of the nuclear issue, but it ultimately did not help to keep the ruling party in charge in the 2007 elections.<sup>265</sup>

#### F. Lee Myung-bak: Mutual Benefits and Common Prosperity

Amidst a growing concern regarding the efficacy of the Roh Administration’s North Korea Policy, in 2008 the people of South Korea elected President Lee Myung-bak who ran on a platform of change.<sup>266</sup> President Lee ran in opposition of the Sunshine Policy, under which the previous two administrations had provided nearly \$3 billion in aid to North Korea.<sup>267</sup> President Lee and his administration believed that the recent Kim and Roh Administrations were merely appeasing North Korea by refraining from focusing on North Korea’s history of human rights violations and its growing nuclear program.<sup>268</sup> The Sunshine

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262. *Id.* at 5-6. See Declaration on the Advancement of South-North Korean Relations, Peace and Prosperity, October 4, 2007 [hereinafter October 4 Joint Declaration], available at [http://www.usip.org/sites/default/files/file/resources/collections/peace\\_agreements/n\\_sko\\_real10042007.pdf](http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/n_sko_real10042007.pdf).

263. Foster-Carter, *supra* note 259, at 6.

264. *Guidelines for Korea’s Reunification*, *supra* note 217.

265. See Foster-Carter, *supra* note 259, at 9.

266. Alisher Khamidov, *The Lee Myung-bak Revolution: Explaining Continuity and Change in South Korea’s Foreign Policy*, SAIS US-Kor. Y.B. 23, 23-24 (2008).

267. *Id.* at 26.

268. *Id.*

Policy, according to the Lee Administration, focused too much on a continued aid-economic relationship with North Korea considering that North Korea continued nuclear tests, ignored requests for returning South Korean detainees, and “maintained a belligerent rhetoric” regarding events on the Korean peninsula.<sup>269</sup>

### *1. Mutual Benefits and Common Prosperity Overview*

Despite recent and substantial success in inter-Korean social and economic relationships, it became increasingly clear that North Korea’s nuclear strategy had become the means for its survival.<sup>270</sup> In order to address North Korea’s growing nuclear program, the Lee Administration developed as its North Korea policy, Mutual Benefits and Common Prosperity.<sup>271</sup> The policy included a broad Vision and Guiding Principles as well as some Major Tasks.<sup>272</sup> The Major Tasks included: (1) promoting inter-Korean dialogue with sincerity, (2) establishing peace on the Korean peninsula, (3) expanding economic cooperation for mutual benefits and common prosperity, (4) expanding cultural and social exchange, and finally (5) solving humanitarian issues<sup>273</sup>—all of which were at least facially consistent with the constitutional mandate of seeking peaceful unification. However, as is usual with foreign policy statements, they appear rather positive and broad at first glance; it was very clear that the Lee Administration’s policy was much stronger than that of the previous two administrations.

There were two broad aims in the Lee Administration’s policy: it would provide aid to North Korea by improving North Korea’s “diplomatic relations with the United States in the process of denuclearization” and by facilitating the development of North Korea,

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269. *Id.* at 27.

270. Jung-Ho Bae, *Myung-bak Lee Administration’s North Korean Policy and the Inter-Korean Relations*, in *THE U.S.-ROK ALLIANCE IN THE 21<sup>ST</sup> CENTURY* 46 (Korea Institute for National Unification, 2009).

271. Booklet *Policy of Mutual Benefits and Common Prosperity*, Korean Institute for National Unification, at 2 [hereinafter *Lee Policy*].

272. *Id.* at 12-27.

273. *Id.* at 20-37.

South Korea will also “advance its own economic development.”<sup>274</sup> The Lee Administration sought to exhibit a “pragmatic and result-oriented” attitude towards North Korea; in fact, the Lee Administration preferred to be labeled as pragmatic despite their membership in the South Korean conservative political party.<sup>275</sup>

The Lee Administration labeled as one of their tools for the Policy of Mutual benefits and Common Prosperity as “Vision 3000 thru Denuclearization and Openness;” Vision 3000 was designed to deal with the economic difficulties that North Korea was experiencing, which the Lee Administration believed was a large reason for North Korea’s instability.<sup>276</sup> The Lee Administration focused on actually getting North Korea to use capitalism,<sup>277</sup> similar to earlier socialist countries, and for the North Korea’s GNP to reach \$3,000.<sup>278</sup> The Vision 3000 plan relies on continuing the Six Party talks so that North Korea can gain and improve diplomatic ties with countries such as Japan and the United States.<sup>279</sup> Denuclearization was absolutely central to the Lee Administration: “[t]he Vision 3000 thru Denuclearization and Openness Plan was not developed under the assumption that North Korea would first [denuclearize] and [then] open, but rather [was] a policy to encourage these processes.”<sup>280</sup>

Regarding the necessity of diplomatic ties with the United States, the Lee Administration operated under the idea that North Korea would not be able to modernize without positive diplomatic relations with the

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274. Bae, *supra* note 270, at 49.

275. Khamidov, *supra* note 266, at 25-26.

276. SUH JAE JEAN, *THE LEE MYUNG-BAK GOVERNMENT’S NORTH KOREA POLICY: A STUDY ON ITS HISTORICAL AND THEORETICAL FOUNDATION* (Korea Institute for National Unification, 2009) at 3, 11-12.

277. This represented an incredibly profound departure from nearly all of the prior agreements between the two Koreas where both sides agreed to acknowledge and accept each other’s political and ideological differences. *See, e.g.*, 1972 Joint Statement, *supra* note 60; 1991 Agreement, *supra* note 123; June 15 Joint Declaration, *supra* note 216; and October 4 Joint Declaration, *supra* note 262.

278. SUH, *supra* note 276, at 12.

279. *Id.*

280. *Id.* at 13.

United States.<sup>281</sup> The \$3,000 GNP goal was made under the belief that this level of GNP would be the level required for North Korea to maintain an independent economy, and the level necessary for the emergence of a middle class.<sup>282</sup> The Vision 3000 Plan involved three main focus areas: (1) parallelism of denuclearization and inter-Korean development, (2) increased foreign investment upon denuclearization, and (3) the realization of some important platforms of Lee's presidential campaign.<sup>283</sup> Once again, since it is difficult to determine whether a particular policy is the correct approach by simply looking at the words, it is important to look at what took place during the life of the Lee Administration and to determine what events and changes are attributable to the administration's North Korean policies.

## *2. Important Events During the Tenure of the Lee Administration*

Early in Lee's presidency, President Lee told North Korea that the "only [means with which] to stabilize its regime, maintain peace and achieve economic prosperity [are to give] up its nuclear program."<sup>284</sup> In addition to encouraging North Korea to give up its nuclear program, the President *demande*d that North Korea return South Korean POWs.<sup>285</sup> North Korea responded to these suggestions and demands by claiming that the Lee Administration was violating the June 15 Joint Declaration<sup>286</sup> and the October 4 Declaration,<sup>287</sup> and labeled Lee as a "traitor" and his

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281. *Id.* at 16. There is the possibility that previous failures to create such relationships may have been attributable to North Korea's lack of modernization. *Id.*

282. *Id.* at 17.

283. *Id.* at 17-18. The important campaign platforms included promotion of North Korean export communities, creation of an industrial workforce, financing of international cooperation funds, the building of an inter-Korean highway to connect to peninsula to the rest of Asia, and to restore and ensure the North Korean people's basic human rights. *Id.* at 17 n.3.

284. Khamidov, *supra* note 266, at 31.

285. *Id.*

286. *See* June 15 Joint Declaration, *supra* note 216.

287. *See* October 4 Joint Declaration, *supra* note 262.

administration as a “‘racketeer’ operation.”<sup>288</sup> In addition, North Korea expelled a South Korean official from North Korea and prevented entry to two other South Korean officials.<sup>289</sup> It was clear from early on that the Lee Administration embodied a grand departure from Sunshine diplomacy.

Later in 2008, a South Korean tourist in Mount Keumkang<sup>290</sup> was shot dead by North Korean soldiers, and the Lee Administration suspended all tours to Mt. Keumgang after being denied the opportunity to investigate the incident.<sup>291</sup> In a continued escalation, North Korea announced a suspension of tourist travel to Kaesong, expelled hundreds of South Korean workers from the KIC, and directly blamed President Lee for the deteriorating state of inter-Korean relations.<sup>292</sup> The downward spiral that 2008 demonstrated continued into the early months of 2009, and the failure of Six-Party talks in 2008 cast a lot of doubt regarding Lee’s Vision 3000.<sup>293</sup> Additionally, negative references to President Lee in North Korean publications in early 2009 increased from the previous year, and this was highly indicative of the President’s *popularity* in North Korea.<sup>294</sup>

In March of 2009, tensions again were increased when South Korea did not respond to North Korean demands calling for the cancellation of joint U.S.-South Korea military exercises, and North Korea predicted an imminent war.<sup>295</sup> North Korea then cut its military hotline with South Korea and detained (as opposed to deporting) a South Korean KIC

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288. Khamidov, *supra* note 266, at 31.

289. *Id.*

290. Tourism to Mount Keumkang was an important product of the Sunshine Policies, and likely a large source of income in North Korea. *See* Kim, *supra* note 221, at 7-8.

291. Khamidov, *supra* note 266, at 32.

292. *Id.*

293. Paul Elliot, *Inter-Korean Relations in 2009: Sources of a Slow Reapproachment*, 2009 SAIS US-KOR. Y.B. (Johns Hopkins University) 29, 30.

294. *Id.* at 30. The South Korean Ministry of Unification (MOU) keeps tabs on the number of negative references to the South Korean president by North Korean publications. The MOU, in this interesting statistic, noted that the number of negative Lee references in early 2009 was 9.9 per day compared to the 7.6 per day in 2008. *Id.*

295. *Id.*

worker who encouraged a North Korean female to defect to South Korea.<sup>296</sup> Additionally, despite international protests, North Korea launched a long-range missile, in an effort to send a satellite into orbit and conducted a nuclear test, both of which severely damaged any trust that existed in South Korea.<sup>297</sup> In May of 2009, the Lee Administration announced that South Korea would endorse the Proliferation Security Initiative (PSI), a multinational effort aimed at preventing the trafficking of nuclear weapons,<sup>298</sup> and North Korea labeled this a “declaration of war” and again voided the Armistice Agreement.<sup>299</sup> Despite the alarming increase in tension, North Korea reduced its criticism of the Lee Administration and KIC travel restrictions, which encouraged South Korea to allow NGO aid to North Korea to continue.<sup>300</sup> Additionally, after the passing of former president Kim Dae-jung, Kim Jong-il forwarded condolences to the South Korean people.<sup>301</sup> Inter-Korean relations in 2009 continued to improve: an increase in inter-Korean trade was demonstrated, KIC contracts were renewed, and South Korea gave North Korea aid in fertilizer during negotiations over family reunions.<sup>302</sup>

### 3. *The Sinking of the Cheonan and Shelling of Yeonpyeong Island*

The state of inter-Korean relations dramatically worsened when, in March of 2010, the South Korean naval vessel, the *Cheonan* sank just

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296. *Id.* at 30-31. See also, William J. Broad, *North Korean Missile Launch Was a Failure, Experts Say*, N.Y. TIMES (Apr. 5, 2009).

297. Elliot, *supra* note 293, at 31.

298. *ROK Endorses Proliferation Security Principles*, U.S. DEP'T OF STATE, (May 26, 2009), <http://www.state.gov/r/pa/prs/ps/2009/05/123842.htm> (“PSI participants commit to undertake measures to interdict illicit transfers of WMD-related items, exchange relevant information, and strengthen national legal authorities.”).

299. Elliot, *supra* note 293, at 31.

300. *Id.* at 29.

301. *Id.* This is distinguished from North Korea’s nuclear test after the passing of President Roh Tae-woo earlier in the year, and from the Kim Young-sam administration prohibiting condolences to North Korea on the passing of Kim Il-sung. *Id.* at 31; OBERDORFER, *supra* note 15, at 344.

302. Elliot, *supra* note 293, at 33-34.

south of the NLL.<sup>303</sup> While at the time of the sinking there was no official conclusion as to who or what was responsible for the sinking, South Korea, supported by experts from the United States, Australia, the United Kingdom, and Sweden, reported in September that “[t]he [South Korean] Navy ship *Cheonan* was sunk by a North Korean torpedo attack while conducting a normal mission in the vicinity of [Baekryeong] Island.”<sup>304</sup> Despite the fact that North Korea denied such involvement, the United Nations condemned the sinking of the *Cheonan*, expressed concern over the findings of the ROK-lead Investigation Group, and urged both Koreas to fully adhere to the Armistice Agreement.<sup>305</sup> The sinking of the *Cheonan* constituted an entirely different act of North Korean hostility, and it was the first act of this magnitude since North Korean terrorists<sup>306</sup> bombed KAL flight 858 more than 20 years ago.<sup>307</sup> Unfortunately, South Korea convinced neither Russia nor China of North Korea’s guilt in the torpedo attack, and therefore, the sinking of the *Cheonan* remained “a crime and an obstacle.”<sup>308</sup> Due to the failure in convincing Russia and China of North Korea’s culpability, crafting a proper response was difficult; the Lee Administration relied on naval exercises and placed a ban on trade with North Korea.<sup>309</sup> Eventually, however, tensions began to

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303. Report: *South Korean Navy Ship Sinks*, CNN (Mar. 26, 2010), <http://www.cnn.com/2010/WORLD/asiapcf/03/26/south.korea.ship.sinking/>.

304. Brad Lendon, *S. Korea’s final report confirms Cheonan was sunk by N. Korean torpedo*, CNN (Sep. 3, 2010), <http://www.cnn.com/2010/WORLD/asiapcf/09/13/south.korea.cheonan.report/>.

305. Press Release, Security Council, Security Council Condemns Attack on Republic of Korea Naval Ship ‘Cheonan’, Stresses Need to Prevent Further Attacks, Other Hostilities in Region, U.N. Press Release SC/9975 (July 9, 2010).

306. ‘87 Blast Claimed by North Korean, N.Y. TIMES (Mar. 8, 1989), <http://www.nytimes.com/1989/03/08/world/87-blast-claimed-by-north-korean.html>.

307. Victor Cha, *The Sinking of the Cheonan*, Center for Strategic & Int’l Stud. (Apr. 22, 2010), <http://csis.org/publication/sinking-cheonan>. The United States also determined that this terrorist attack was likely one engineered by North Korea. See SEC State, Approved Press Guidance on Kal 858 2 (1988), *available at* <http://www.state.gov/documents/organization/190927.pdf>.

308. Aidan Foster-Carter, *South Korea-North Korea Relations: Picking Up the Pieces*, 3 COMP. CONNECTIONS: Q. E-JOURNAL ONE. ASIAN BILATERAL REL. 1, 1 (2010).

309. *Id.* at 2-3 (stating that the ban was largely without meaning as the KIC was exempted).

lessen, and talks resumed with focus on family reunions and the resuming tourism to Mt. Keumgang.<sup>310</sup> These tensions continued to lessen until November of 2010.

Just two months after North Korea introduced Kim Jong-un<sup>311</sup> as the successor to his father Kim Jong-il, North Korea “fired scores of artillery shells at [Yeonpyeong] Island”<sup>312</sup> and killed two soldiers and wounded three civilians in “the first attack on a civilian area since the Korean War.”<sup>313</sup> The attack came at the beginning of a military exercise, in which North Korea accused South Korea of firing into their territorial waters.<sup>314</sup> One of the North Korean gunmen responsible for the shelling was quoted:

Fire burned in our eyes when we saw [South Korean] artillery shells fall into our territorial waters. We poured our merciless thunderbolt of revenge on them. When we saw the first shell hit the enemy’s radar post and several pillars of fire soar there, shouts of ‘Hurrah’ celebrated our victory . . . .<sup>315</sup>

It was assumed that North Korea was escalating tensions to coincide with the succession of then General Kim Jong-un.<sup>316</sup> Regardless of the

310. *Id.* at 4.

311. Kim Jong-un was introduced by North Korea as a four-star general and the successor to his father on September 28, 2010—“nice work for a lad aged no more than 28” as Aidan Foster-Carter put it. *Id.* at 5.

312. Jack Kim & Lee Jae Won, *North Korea Shells South in Fiercest Attack in Decades*, REUTERS (Nov. 23, 2010), <http://www.reuters.com/article/2010/11/23/us-korea-north-artillery-idUSTRE6AM0YS20101123>.

313. Mark McDonald, ‘Crisis Status’ in South Korea After North Shells Island, N.Y. TIMES (Nov. 23, 2010), [http://www.nytimes.com/2010/11/24/world/asia/24korea.html?pagewanted=1&\\_r=0&src=mv](http://www.nytimes.com/2010/11/24/world/asia/24korea.html?pagewanted=1&_r=0&src=mv) (stating that Yeonpyeong Island is two miles from the NLL, which North Korea does not recognize, and just eight miles from the North Korean coast).

314. McDonald, *supra* note 313.

315. Aidan Foster-Carter, *South Korea-North Korea Relations: Playing with Fire*, 4 COMP. CONNECTIONS: Q. E-JOURNAL ONE REL. 1, 2 (2010).

316. *North Korea: The Risks of War in the Yellow Sea*, INT’L CRISIS GROUP (Dec. 23, 2010), <http://www.crisisgroup.org/en/regions/asia/north-east-asia/north-korea/198-north-korea-the-risks-of-war-in-the-yellow-sea.aspx>.

reason for the shelling of Yeonpyeong, the end of 2010 came with President Lee being under political fire, and the current North Korean policy did not seem to be working.<sup>317</sup>

#### 4. *The Passing of Kim Jong-il and Ascension of Kim Jong-un*

Much of 2011 experienced President Lee being viewed as a lame duck president, with whom therefore negotiations would not prove beneficial, and eyes were already turning towards the 2012 election where current President Park Geun-hye was viewed as the favorite.<sup>318</sup> Park Geun-hye presented a somewhat softer stance on North Korea.<sup>319</sup> President Lee seemed content to wait for a regime change thinking that the change in leadership would be necessary to improve the inter-Korean relations.<sup>320</sup> On December 17, 2011, President Lee appeared to get his wish of a regime change when Kim Jong-il died of a heart attack.<sup>321</sup> After the passing of Kim Jong-il, and unlike President Kim Young-sam, the Lee Administration offered condolences to the North Korean people (not to the government), and it allowed the widow of Kim Dae-jung and Hyun Jeong-eun, the chair of the Hyundai Group responsible for development of the KIC, to travel to North Korea to give their condolences.<sup>322</sup>

317. Foster-Carter, *supra* note 259, at 7-8.

318. Aidan Foster-Carter, *South Korea-North Korea Relations: A Turning Point?*, 2011 COMP. CONNECTIONS: TRIANUAL E-JOURNAL ON E. ASIAN BILATERAL RELATIONS, Sept. 2011, at 3-5.

319. See Park Geun-Hye, *A New Kind of Korea: Building Trust Between Pyongyang and Seoul*, FOREIGN AFFS., (Sept. 2011), <http://www.foreignaffairs.com/articles/68136/park-geun-hye/a-new-kind-of-korea>.

320. Aidan Foster-Carter, *South Korea-North Korea Relations: Not Getting Better*, 2011 COMP. CONNECTIONS: TRIANUAL E-JOURNAL ON E. ASIAN BILATERAL REL. (CENTER STRATEGIC & INT'L STUD.) Vol. 1, at 2.

321. *North Korean leader Kim Jong Il dead after heart attack, state media reports*, CNN (Dec. 19, 2011), <http://www.cnn.com/2011/12/18/world/asia/north-korea-leader-dead/>.

322. Aidan Foster-Carter, *South Korea-North Korea Relations: A New Era?*, 2011 COMP. CONNECTIONS: TRIANUAL E-JOURNAL ON E. ASIAN BILATERAL RELATIONS, Jan. 2012, at 8. These two widows were allowed to travel to North Korea because North Korea sent them condolences when their husbands passed away. *Id.*

In addition to North Korea being hesitant in dealing with a lame duck president, in early 2012, a large-scale anti-Lee campaign was undertaken, and it featured continuous verbal attacks against President Lee.<sup>323</sup> In a continued “e-war” between the two Koreas, North Korea escalated tensions with the Lee Administration by posting some violent political cartoons to their official websites where they likened him to a rat; one such cartoon was titled “Myung Bak Strangled to Death.”<sup>324</sup> North Korea also threatened to attack the “paid conservative media” of South Korea as well.<sup>325</sup> At the end of President Lee’s term in office, most Koreans viewed his North Korean policies as a failure.<sup>326</sup> Much of the progress in North-South relations that had been generated under the previous two administrations (despite the lack of progress in denuclearization) had been shattered.<sup>327</sup> Is the policy of the Lee Administration to blame for this? It is not the purpose of this note to assign blame solely to the Lee Administration for the worsening of the North-South relationships from 2007 through 2012; however it is clear that a change in policy was required.

### III. THE PARK GEUN-HYE ADMINISTRATION

In late 2012, Park Geun-Hye was elected as the first female president of South Korea; she is the daughter of former President-Dictator Park Chung-hee, who ruled South Korea in the 1960’s and 70’s. Park was first

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323. Aidan Foster-Carter, *South Korea-North Korea Relations: Plumbing the Depths*, 2012 COMP. CONNECTIONS: TRIANUAL E-JOURNAL ON E. ASIAN BILATERAL RELATIONS, May 2012, at 1. These attacks included such headlines as “Let Us Cut Off Windpipes of the Lee Myung Bak-led Swarm of Rats!” and “Let Us Shower the Lee Myung Bak-led Swarm of Rats with the Fire of Retaliation!” *Id.* It is pretty clear that President Lee remained quite unpopular in North Korea.

324. *Id.* at 6. The cartoons were quite awful; this note cannot describe them as sufficiently as required. See Chad O’Carroll, 8 *KCNA Cartoons: Lee Myung-Bak*, NKNEWS.ORG (Apr. 24, 2012), [http://www.nknews.org/2012/04/8-leemyungbak\\_cartoons/](http://www.nknews.org/2012/04/8-leemyungbak_cartoons/).

325. Foster-Carter, *supra* note 323, at 7.

326. Andrei Lankov, *Previewing Park’s New North Korea Policy*, NAT’L INT. (May 7, 2013), <http://nationalinterest.org/commentary/previewing-parks-new-north-korea-policy-8434>.

327. *Id.*

elected to public office in 1998; however, sympathy for losing both of her parents to assassins' bullets likely played a role at first.<sup>328</sup> Eventually though, Park Geun-hye began to take the political world by storm and earned the nickname "Election Queen" when she was elected to head the conservative Grand National Party in 2004.<sup>329</sup> Self-discipline and authority became two things that Park was known for, and it is said that she has a strong aura around her as the daughter of a former president.<sup>330</sup> While some claim that President Park can be "uncommunicative" and exhibit "iciness"<sup>331</sup> at times, it will be very interesting to see how her strength and focus on trust plays out in the current administration's dealings with North Korea.

#### A. Park's *Trustpolitik*

The World received its first glimpse of what Park Geun-hye Administration's stance on North Korea might look like from an article she wrote in 2011. Trust was the most common word in her article when she wrote that "[a] lack of trust has long undermined attempts at genuine reconciliation between North and South Korea."<sup>332</sup> She noted that any confidence or trust that existed was lost after the shelling of Yangpyeong Island and the sinking of the *Cheonan*,<sup>333</sup> and the recent purge of Kim Jong-un's uncle and high-ranking government official, Jang Song Thaek,<sup>334</sup> is highly unlikely to help in rebuilding trust.

President Park was elected despite an opposing party that ran advocating a deeper return to the Sunshine Policy of the Kim Dae-jung

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328. Seong Yeon-cheol, *The Origins and Style of Park Geun-hye*, HANKORYEH, [http://www.hani.co.kr/arti/english\\_edition/e\\_20national/564102.html](http://www.hani.co.kr/arti/english_edition/e_20national/564102.html).

329. *Id.*

330. *Id.*

331. *Id.*

332. Park, *supra* note 319.

333. *Id.*

334. Gi-Wook Shin & David Straub, *Jang Song-taek Purge Further Undermines North Korea's Foreign Relations*, EAST ASIA F., (Feb. 12, 2014), <http://www.eastasiaforum.org/2014/02/12/jang-song-taek-purge-further-undermines-north-koreas-foreign-relations/>.

Administration.<sup>335</sup> Under the Park Administration, there will likely be no return to the Sunshine Policy; it is Park's position that South Korea should adopt *trustpolitik* as its policy and should establish mutually binding expectations based on international norms.<sup>336</sup> Park wrote that *trustpolitik* should consist of two separate and coexisting prongs: "first, North Korea must keep its agreements made with South Korea and the international community to establish a minimum level of trust, and second, there must be assured consequences for actions that breach the peace."<sup>337</sup> Both of these requirements seem in keeping with the constitutional mandate requiring the President to seek peaceful unification. According to President Park, a new policy is needed, one that takes into account public consensus and remains constant throughout political transitions.<sup>338</sup> On paper, one can see a difference between the Lee and Park policies.

In Park Geun-hye's 2011 article, she acknowledged that should North Korea "[take] steps toward genuine reconciliation, then [South Korea] should match its efforts."<sup>339</sup> The word trust was mentioned with a higher frequency than the word nuclear, and trust is definitely the focal point of her North Korean Policy. While Park aimed for a policy that fell between the Sunshine Policy and that of the Lee Administration, it is clear that she would require affirmative steps from North Korea, such as North Korea "reaffirming its commitment to existing agreements" (likely referring to previous Joint Declarations and the Armistice Agreement) before South Korea would be ready to talk.<sup>340</sup> Like President Lee, Park's idea of a proper North Korea policy also focused on denuclearization; in a section of her article titled "Bringing Pyongyang Into the Fold," Park specifically focused on the need of North Korea to "dismantle [its] nuclear program," and wrote that "[u]nder no circumstances can South

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335. Aidan Foster-Carter, *South Korea-North Korea Relations: Will "Trustpolitik" Bring a Thaw?*, 2012 COMP. CONNECTIONS: TRIANUAL E-JOURNAL ON E. ASIAN BILATERAL RELATIONS, Jan. 2013, at 1.

336. Park, *supra* note 319.

337. *Id.*

338. *Id.*

339. *Id.*

340. *Id.*; SUH, *supra* note 276.

Korea accept the existence of a nuclear-armed North Korea.”<sup>341</sup> North Korea even questioned whether Park’s policy is any different from the Lee administration’s policy when it asked “[i]s [her] call for ‘scrapping nuclear program first’ different from the [Lee Myung-bak] watchwords of ‘no nukes, opening and 3000 dollars’?”<sup>342</sup>

The new Park Administration brings along with it hope (and also anxiety) for progress in the North-South relation, and despite Park’s membership in the same political party as President Lee, Park’s policy does *aim* at falling somewhere in the middle of the policies employed by the prior three administrations.<sup>343</sup> In order to make a prediction of how Park’s *Trust Politik* will work in the North-South relationship, a mere dissection of words from articles and policies will not be sufficient. The remaining portion of this note will focus on the events from the first calendar year of Park’s presidency in order to (1) determine where Park’s policy lies in relation to past administrations’ policies and (2) predict how Park’s policy will affect the North-South relationship in the future.

#### B. The 2013 North Korean Aggression

In December of 2012, just before Park was elected President and despite being banned by UN Sanctions from such activity, North Korea launched a satellite on a long-range rocket, which brought much condemnation from the international community.<sup>344</sup> According to Japan, South Korea, and the United States, the launch constituted “a test of technology that could one day deliver a nuclear warhead capable of hitting targets as far away as the continental United States,” whereas North Korea claimed that it was merely launching a weather satellite.<sup>345</sup>

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341. Park, *supra* note 319.

342. Foster-Carter, *supra* note 259, at 2. Despite the doubts from North Korea, Park has not yet required that North Korea switch to capitalism. See Roh, *supra* note 5, at 170; see also OBERDORFER, *supra* note 15, at 392.

343. Lankov, *supra* note 326.

344. Jack Kim & Mayumi Negishi, *North Korea Rocket Launch Raises Nuclear Stakes*, REUTERS (Dec. 12, 2012), <http://www.reuters.com/article/2012/12/12/us-korea-north-rocket-idUSBRE8BB02K20121212>.

345. *Id.*

In addition to the United Nations and the countries that historically have been positioned against similar North Korean acts, China also expressed “deep concern” prior to the scheduled launch.<sup>346</sup> The United Nations passed a strong Resolution in January, about a month before President Park took office, which condemned the launch of the satellite, confirmed previous existing sanctions, and put in place travel bans and asset freezes on four North Korean individuals and six organizations/corporations.<sup>347</sup> As per usual, after such Security Council measures, North Korea was intent on demonstrating that “it would not be cowed,”<sup>348</sup> and this appeared to be the case as the *Rodong Sinmun*<sup>349</sup> published an article writing that a nuclear test was the “demand of the people,” and reports of imminent nuclear tests were common throughout the news.<sup>350</sup>

Just two weeks before the official inauguration of President Park, in spite of the U.N. sanctions already in place, North Korea conducted its third nuclear test, successfully detonating a nuclear device in a northeastern province.<sup>351</sup> On February 25, 2013, President Park was inaugurated in Seoul, and urged that North Korea “[abandon] its nuclear ambitions.”<sup>352</sup> Park further emphasized North Korea’s nuclear capabilities in her speech by stating that “North Korea’s recent nuclear test is a challenge to the survival and future of the Korean people, and there should be no mistake that the biggest victim will be none other than

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346. *Id.*

347. S.C. Res. 2087, ¶¶ 12-13, Annex I-II, U.N. Doc. S/RES/2087 (Jan. 22, 2013). It is important to note that the passing of this resolution was unanimous, and that both Russia and China are members of the U.N. Security Council. *See* <http://www.un.org/en/sc/members/>.

348. Aidan Foster-Carter, *South Korea-North Korea Relations: Curtains for Kaesong?*, 2013 COMP. CONNECTIONS: TRIANUAL E-JOURNAL ON E. ASIAN BILATERAL REL. (CENTER STRATEGIC & INT’L STUD.) Vol. 1, at 2.

349. The *Rodong Sinmun* is a prominent North Korean newspaper. *See generally* <http://www.rodong.rep.kp/en/>.

350. *North Korea “Ready for Nuclear Test”*, NKNEWS.ORG (Jan. 28, 2013), <http://www.nknews.org/2013/01/north-korea-ready-for-nuclear-test/>.

351. *North Korea Conducts Successful Nuclear Test*, NKNEWS.ORG (Feb. 12, 2013), <http://www.nknews.org/2013/02/breaking-north-korea-tests-nuclear-device/>.

352. *New President Inaugurated in Seoul*, NKNEWS.ORG (Feb. 26, 2013), <http://www.nknews.org/2013/02/tensions-rise-as-both-koreas-hold-military-exercises/>.

North Korea itself.”<sup>353</sup> President Park also put her military on high alert the day after her inauguration.<sup>354</sup> On March 7, 2013, the U.N. Security Council passed another resolution in response to the nuclear tests, which further increased sanctions with a focus on bulk cash transfers.<sup>355</sup> North Korea again dismissed the U.N. sanctions as “a U[.]S[.] plot,” and also angrily protested the joint U.S.-South Korea military exercises, *Key Resolve* and *Foal Eagle*.<sup>356</sup> The *Rodong Sinmun* called the military exercises “‘extremely perilous provocation for nuclear preemptive strike’, and said that the situation ‘may bring about an all-out war.’”<sup>357</sup>

In early March, North Korea yet again declared that the Armistice Agreement was nullified,<sup>358</sup> and later entered a state of war.<sup>359</sup> In a statement made by the Korea Central News Agency (KCNA), North Korea announced that “[i]f the U.S. and the South Korean puppet group perpetrate a military provocation for igniting a war against the DPRK (North Korea) in any area... it will not be limited to a local war but develop into an all-out war, a nuclear war.”<sup>360</sup> In addition to entering a state of war, North Korea, without notice, refused entry into the KIC to South Korean vehicles and personnel.<sup>361</sup> South Korean workers in the KIC were permitted to leave to South Korea, but few did so out of fear

353. *Id.*

354. *Tensions Rise as Both Koreas Hold Military Exercises*, NKNEWS.ORG (Feb. 25, 2013), <http://www.nknews.org/2013/02/new-president-inaugurated-in-seoul-north-korea-tops-agenda/>.

355. S.C. Res. 2094, ¶¶ 11, 14, Annex I-II, U.N. Doc. S/RES/2094 (Mar. 7, 2013).

356. Foster-Carter, *supra* note 348, at 2-4.

357. *North Korea Conduct Successful Nuclear Test*, *supra* note 351. However, it should be noted that North Korea is informed in advance of where and when the exercises will take place, so it is hardly provocation for a preemptive nuclear strike. Foster-Carter, *supra* note 348, at 2-3.

358. Choe Sang-hun, *North Korea Declares 1953 War Truce Nullified*, N.Y. TIMES (Mar. 30, 2013), [http://www.nytimes.com/2013/03/12/world/asia/north-korea-says-it-has-nullified-1953-korean-war-armistice.html?\\_r=0; Important Measures](http://www.nytimes.com/2013/03/12/world/asia/north-korea-says-it-has-nullified-1953-korean-war-armistice.html?_r=0; Important Measures), *supra* note 36.

359. *North Korea Enters “State of War”*, NKNEWS.ORG (Feb. 25, 2013), <http://www.nknews.org/2013/03/north-korea-enters-state-of-war/>.

360. *Id.* It is worth noting that North Korea referred to Kim Jong-un as “the greatest-ever commander” as the time for a “do-or-die final battle” came near. Foster-Carter, *supra* note 348, at 4.

361. *Id.* at 5.

they would not be able to return.<sup>362</sup> Finally, on April 8, North Korea announced that (1) it would withdraw all employees from the KIC, and that it would (2) temporarily suspend all operations until it determined whether or not to close the KIC.<sup>363</sup> With the closing of the KIC, a product of the Sunshine Era and a great source of income and investment for North Korea, tensions regarding the possibility of war continued to heighten; the North Korean military even confirmed that it had been given “final approval for a nuclear strike.”<sup>364</sup>

This characteristic North Korean saber-rattling changed course mid-2013 when North Korea both invited South Korean firms in the KIC to actually come and inspect the factories and officially proposed inter-Korean talks regarding the KIC.<sup>365</sup> North Korea also proposed talks regarding the Mt. Keumkang tourist site, another product of the Sunshine Era.<sup>366</sup> Before the talks took place, there were some hiccups involving who would be sent to represent the respective countries.<sup>367</sup> Talks continued in early July, and North Korea attempted to speed up talks to a rapid reopening of the KIC; however, the Park Administration, true to its policy, insisted “there [are] lessons to be learned, principles to [be agreed upon], and priorities to set if inter-Korean trust and cooperation [is] to be rebuilt and go forward.”<sup>368</sup> At first, the Park Administration’s negotiation strategy appeared rather risky, but it did work; North Korea called for

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362. *Id.* at 6.

363. *Id.* Despite claims of the KIC being a sole source of income for North Korea, North Korea claimed that the KIC being open at all was “their act of charity, based on compatriotic feeling for the *minor enterprises and poor people in south Korea.*” *Id.* (emphasis added).

364. Luke Herman, *North Korean Military “Has Approval” to Launch Nuclear Attacks on U.S.*, NKNEWS.ORG (Apr. 3, 2013), <http://www.nknews.org/2013/04/north-korean-military-has-approval-to-launch-nuclear-attacks-on-u-s/>.

365. Aidan Foster-Carter, *South Korea-North Korea Relations: Second Chance for Trustpolitik?*, 2013 COMP. CONNECTIONS: TRIANUAL E-JOURNAL ON E. ASIAN BILATERAL REL., Sept. 2013, at 2.

366. *Id.*

367. *Id.* at 3. According to Foster-Carter, President Park was criticized as overly formalistic when she took slight at whom North Korea was sending to the talks; in retrospect North Korea “meant business” with the talks, and Park’s actions risked jeopardizing potential progress. *Id.*

368. *Id.* at 5.

further talks, and the two sides agreed to reopen the KIC in a five-point agreement.<sup>369</sup> South Korea did quite well in the Agreement in getting North Korea to agree to language such as “[t]he two Koreas will not make Kaesong suffer again from the stoppage of the complex by such things as restrictions on passage and the withdrawal of the workforce,” as well as to the creation of an inter-Korean committee on the KIC.<sup>370</sup> In September, the two Koreas agreed to restore their military hotline, which would be active 24 hours a day,<sup>371</sup> and agreed to reopen the KIC.<sup>372</sup>

Despite the reopening of the KIC, there was no progress made in family reunions, as North Korea insisted on family reunions in tandem with reopening tourism to Mt. Keumkang.<sup>373</sup> South Korea, despite tentatively agreeing to talks on Mt. Keumkang earlier in the summer, appeared unwilling to do so now, and likely, President Park “[wanted] to build trust one step at a time.”<sup>374</sup> Relations between the two Koreas regressed as 2013 came to an end with North Korea demanding South Korean KIC firms pay taxes for 2013, despite previously agreeing otherwise, and with increased North Korean insults towards President Park.<sup>375</sup> In fact, one North Korea commentator wisely noted that North Korea “[has] a long way to go to convince South Korea” that they have changed and to provide the Park Administration the trust that it requires.<sup>376</sup> This statement turned out to be very true, and the events surrounding the execution of Jang Song Thaek are a perfect illustration of just how far North Korea and Kim Jong-un have to go.<sup>377</sup>

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369. *Id.*

370. *Id.* at 5-6.

371. Chad O’Carroll, *Two Koreas restore military hotline*, NKNEWS.ORG (Sept. 6, 2013), <http://www.nknews.org/2013/09/two-koreas-restore-military-hotline/>.

372. Chad O’Carroll, *Two Koreas agree to reopen Kaesong complex next week*, NKNEWS.ORG (Sept. 11, 2013), <http://www.nknews.org/2013/09/two-koreas-agree-to-open-kaesong-industrial-complex-next-week/>.

373. Aidan Foster-Carter, *South Korea-North Korea Relations: Will a “Good Season” Ever Come?*, 2013 COMP. CONNECTIONS: TRIANUAL E-JOURNAL ON E. ASIAN BILATERAL REL., Jan. 2014, at 2.

374. *Id.*

375. *Id.* at 1, 5. North Korea referred to Park’s father, Park Chung-hee, as a traitor, and referred to the Park administration as “political prostitutes.” *Id.* at 5.

376. Foster-Carter, *supra* note 259, at 9.

377. *Traitor Jang Song Thaek Executed*, *supra* note 2.

## IV. CONCLUSION AND EXPECTATIONS

It is clear that the Armistice Agreement is either dying or on its last legs, as North Korea has unilaterally either cancelled or threatened to cancel it multiple times.<sup>378</sup> Despite the Armistice Agreement being designed with the goal of arriving at a quickly agreed-upon peace agreement to supplant it,<sup>379</sup> it has more-or-less survived for 60 years, and we have not had a large-scale war between the two Koreas since its creation. While no permanent treaty has yet been created to replace the Armistice Agreement, the two Koreas accomplished such bilateral agreements as the 1972 Joint Statement, the 1991 Agreement, the 1992 Accord, the June 15 Joint Declaration, and the October 4 Declaration, which all emphasize the importance of unification.<sup>380</sup> Additionally, peaceful unification has remained present in the South Korean Constitution<sup>381</sup> as a presidential mandate since 1972.<sup>382</sup>

Another, perhaps unintentional, byproduct of the Armistice Agreement is the multilateral nature of inter-Korean relations.<sup>383</sup> One inference that can easily be drawn from the Six-Party Talks of the 2000's is that the state of inter-Korean relations is of large importance to the major powers of the world. However, it is the position of this note that the "multilateralization" of inter-Korean relations has been and will continue to be an impediment to inter-Korean progress. It is true that

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378. See, e.g., *Important Measures*, *supra* note 36.

379. Armistice Agreement, *supra* note 21, pmbl.

380. See 1972 Joint Statement, *supra* note 60; 1991 Agreement, *supra* note 123; 1992 Accord, *supra* note 133; June 15 Joint Declaration, *supra* note 216; and October 4 Joint Declaration, *supra* note 262.

381. 1988 Constitution, *supra* note 7, art. 72.

382. The fact that the 1972 Constitution was largely a product of Park Chung-hee's military takeover of South Korea in the early 60s is not controlling considering that unification as a goal remained in the 1980 Constitution as well as the current Constitution. See generally 1980 Constitution, *supra* note 81; 1988 Constitution, *supra* note 7.

383. See Roh, *supra* note 5, at 163 ("The unintended role of the United States on the Korean peninsula as both the umpire and the sheriff has inevitably institutionalized and reinforced the notion of the 'multilateralization' of inter-Korean relations, making purely bilateral relations [between the two Koreas] impracticable without reference to other powers in the region.").

North Korea has long equated the United States as its “negotiation partner” in inter-Korean issues,<sup>384</sup> and pursued a bilateral relationship with the United States; however, the two Koreas have agreed to “resolve the question of [unification] independently”<sup>385</sup> pursuant to “the spirit of ‘by-the-Korean-people-themselves,’”<sup>386</sup> and this bilateral relationship gives the two Koreas their best chance at peace and eventual unification.

The ultimate failure of the Six-Party Talks is illustrative of the unworkability of the “multilateralization” of inter-Korean relations. The Six-Party Talks arose after North Korea announced its withdrawal from the NPT,<sup>387</sup> and centered around North Korea’s ultimate denuclearization.<sup>388</sup> However, the Six-Party talks ultimately failed in reaching a consensus and North Korea has declared that linking unification with denuclearization would “push inter-Korean relations into a deeper abyss of confrontation and ruin.”<sup>389</sup> Additionally, U.N. involvement, whether it be sanctions<sup>390</sup> or statements<sup>391</sup> by the Security Council on North Korea, have proven to be largely ineffective in bringing about positive changes in inter-Korean relations. Additionally, simple common sense tells us that while it is difficult for any particular South Korean administration to have an effective North Korea policy, unification becomes practically impossible, as each administration is required to adapt their North Korea policy to reflect the policies of additional countries. Consider, as an example, that Kim Dae-jung’s diplomacy-based Sunshine Policy,<sup>392</sup> responsible for the first inter-

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384. *Id.*

385. June 15 Joint Declaration, *supra* note 216.

386. October 4 Joint Declaration, *supra* note 262.

387. *See* NTI, *supra* note 240, at 162.

388. *Id.* at 162, 169.

389. Elliot, *supra* note 293, at 30.

390. *See, e.g.*, OBERDOFER, *supra* note 15, at 311 (Kim Il-sung stated that “sanctions mean war, and there is no mercy in war.”).

391. North Korea announced that it would not participate in further Six-Party Talks after the U.N. Security Council condemned North Korea’s rocket launch in April of 2009. *See* Press Release, Security Council, Security Council Condemns Launch by Democratic People’s Republic of Korea; U.N. Press Release SC/9634 (Apr. 13, 2009); *DPRK Foreign Ministry Vehemently Refutes UNSC’s “Presidential Statement”*, KCNA (Apr. 14, 2009), <http://kcna.co.jp/item/2009/200904/news14/20090414-23ee.html>.

392. *See generally* Yang, *supra* note 205.

Korean presidential summit<sup>393</sup> and joint ventures such as the KIC,<sup>394</sup> coincided with U.S. President George W. Bush's more hardline denuclearization first policy, whereby President Bush labeled North Korea as a member of the "axis of evil."<sup>395</sup> Given the difficulties that arise when the United States and South Korea are not on the same page regarding North Korea, it is easy to see that getting the United States, Japan, Russia, China, South Korea, and North Korea to all be on the same page is not a realistic goal; "multilateralization" is impossibly difficult, and any hope of unification or simple improvement in inter-Korean relations requires a bilateral relationship between the two Koreas.

Regarding South Korea's North Korea policy and the bilateral relationship between the two Koreas generally, President Park's policy has proven quite strong, and thus far, consistent. Since her article in Foreign Affairs two years before she was inaugurated as president, she has emphasized the need for trust in the inter-Korean relationship. President Park focused on trust in her inauguration speech,<sup>396</sup> and the world witnessed some truth to her words during the 2013 KIC negotiations with North Korea.<sup>397</sup> It is early in Park's tenure as President, and it is likely too early to determine whether *Trustpolitik* is a success or failure in its goal of seeking peaceful unification.

There have been both instances of success and failure in Park's first year as President. Park's strategy in the KIC negotiations paid off with a successful bilateral agreement to reopen the complex.<sup>398</sup> However, the Park Administration's decision not to engage North Korea in attempting to reopen Mt. Keumgang could be seen as a mistake. While the Park Administration is proving to be "ultra-cautious," South Korean presidents only serve for five years, and "[a] snail's pace will not cut

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393. See June 15 Joint Declaration, *supra* note 216.

394. See, e.g., MANYIN & NANTO, *supra* note 218.

395. NTL, *supra* note 240, at 183.

396. *Full Text of Park's Inauguration Speech*, YONHAP NEWS AGENCY (Feb. 25, 2013), <http://english.yonhapnews.co.kr/national/2013/02/25/95/0301000000AEN20130225001500315F.HTML>.

397. Foster-Carter, *supra* note 259, at 5.

398. *Id.* at 6-7.

it.”<sup>399</sup> Despite its criticisms of being too one-sided, the success in inter-Korean relations that the Sunshine Policy brought came directly from the idea that “continued economic relations and general interactions between the two Koreas would lead to a better inter-Korean relationship, and therefore, would make it less likely that either side would resort to military force.”<sup>400</sup> The Sunshine Policy was very much in keeping with the duty of seeking peaceful unification. It is the view of this note that the ideas which the Sunshine Policy brought, and could continue to bring, improved inter-Korean relations; when two countries interact in both economic (Kaesong and Keumkang) and humanitarian (family reunions) fields on a consistent basis, an interdependence is naturally created, thus reducing the possibility of additional hostilities.

On the other hand, while the Lee Administration’s North Korea policy was viewed as a failure,<sup>401</sup> despite the events leading up to the Six-Party talks making it clear to the world that North Korea’s nuclear program needed to be monitored and that the Sunshine Policy brought a great amount of improvement in inter-Korean relations, the emergence of Kim Jong-un in North Korea has very likely created the need of a North Korea policy based on trust-building. Ultimately, it is doubtful that Kim Jong-un would begin a war with either the United States or South Korea,<sup>402</sup> but a 30-year-old leader in North Korea who recently executed his uncle is problematic, to say the least, for hopes of an improved North-South relationship.

When it comes down to it, written words on paper do not amount to effective North Korea Policy, but the words involved in *Trustpolitik* are on point. President Park wrote in 2011 that the trust between the two Koreas “virtually disappeared” after North Korea was determined responsible for sinking the *Cheonan* and shelling Yeonpyeong Island.<sup>403</sup> Trust as of early 2014 cannot have improved sufficiently since Park wrote “A New Kind of Korea” in 2011. Ultimately, important questions

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399. Foster-Carter, *supra* note 308, at 2.

400. Yang, *supra* note 205, at 33.

401. Lankov, *supra* note 326.

402. Professor Andrei Lankov talks with Tracy Bowden from Seoul, ABC (Jan. 4, 2013), <http://www.abc.net.au/7.30/content/2013/s3727471.htm>.

403. Park, *supra* note 319.

remain regarding *Trustpolitik*: will Park's iciness<sup>404</sup> or her slavish following of formalism<sup>405</sup> prove to be obstacles to peaceful unification? Or will her braveness and "cool under fire" persona<sup>406</sup> aid her in showing strength in building a lasting trust with North Korea? Predictions are difficult. Hopefully Park's policies continue to demonstrate success<sup>407</sup> and pave the way towards the possibility of a lasting peace agreement between the two Koreas and potential unification. The Armistice Agreement will turn 61 years-old this year and has been unilaterally voided by North Korea on multiple occasions, how much life does it have left in it?

## V. APPENDIX

### A. Korean Presidents: 1948-2014

1. *Dr. Syngman Rhee, 1948 – 1960*
2. *Yoon Bo-Seon, 1960 – 1962*
3. *Park Chung-hee, 1962 – 1979*
4. *Choi Kyu-ha, 1979 – 1990*
5. *Chun Doo-hwan, 1980 – 1988*
6. *Roh Tae-woo, 1988 – 1993*
7. *Kim Young-sam, 1993 – 1998*
8. *Kim Dae-jung, 1998 – 2003*
9. *Roh Moo-hyun, 2003 – 2008*
10. *Lee Myung-bak, 2008 – 2013*
11. *Park Geun-hye, 2013 - 2018*

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404. Seong, *supra* note 328.

405. Foster-Carter, *supra* note 259, at 3-4.

406. See Donald Gregg, *Park can better tackle NK issue*, KOREA TIMES (Dec. 23, 2012), [http://www.koreatimes.co.kr/www/news/nation/2012/12/116\\_127537.html](http://www.koreatimes.co.kr/www/news/nation/2012/12/116_127537.html).

407. See John Debury, *Form Controls Content: The Two Koreas Move, Washington Stands Still*, 38 NORTH (Feb. 17, 2014), <http://38north.org/2014/02/jdelury021714/>.