

Balog Dóra: International regulations in action: The DPRK's nuclear program and its challenges to the field of international law and international relations – Part II

Abstract

The paper discusses the nuclear activity of the Democratic People's Republic of Korea (DPRK) and the challenges it poses to international peace and security. As a continuation to the previous extract in which the international relations perspectives were taken into consideration and explored, thereafter the international law aspects will be introduced and scrutinized.

The first part is concerned with the international law perspective of the paper presenting the international attempts towards nonproliferation and disarmament with details on the institutions, multilateral agreements, the disarmament fora and the concept of Nuclear Weapon Free Zones established to stand up against nuclear threat and advocate for global denuclearization. Then, the sanctions regime set up by the United Nations Security Council to control and discourage nuclear activities by the DPRK will be introduced with a specific focus on each sanction imposed after each illegally conducted nuclear activity.

While the previous part of the paper aimed to suggest that despite threatening attitude, efforts are still made to normalize deteriorated diplomatic relations. This part supports the main argument of the study which entails that the current international law system is not suitable and well-structured enough for enforcing regulations and compliance to reach full denuclearization.

1. International law aspects

1.1. Regulations

In the second half of the 20th century, the rapid spread of nuclear weapons development established the stage for a counterreaction from those members of the international community who emphasized the potential dangers and promoted control over nuclear capabilities and the scope of this reaction was realized in the creation of an early framework within the field of international law that focused on nuclear proliferation and peaceful denuclearization. Even though the framework has changed over time, the main objectives remained the same if not became more direct and the community aimed at making the agreements more binding, through prioritizing international security and peace, but still considering national sovereignty.

The following section constructs the core part of the paper and it will be divided into two main parts presenting the significance and effects of nuclear institutions, treaties and agreements that have been created to tackle the possible threats posed by nuclear activity, to establish controlling schemes to limit these activities and to introduce peaceful disarmament measures. First, the institutions then the relevant international or regional treaties will be included and discussed.

1.1.1. Institutions

The following section will be dedicated to the most relevant international institutions that have been established in order to control and inspect the nuclear activities of states and to ensure that the treaties, previously signed and ratified, are being respected and obligations are followed. Furthermore, the relationship of the DPRK with these international institutions will be discussed within the subsections, respectively.

a. International Atomic Energy Agency

When it has become clear that nuclear weapons represent a new generation for weapons with the unpredictable destruction it might bring about and the fact that states can hardly defend themselves in a nuclear war: nuclear bombs cannot be eliminated without any harm done to the population or the environment. This caused the international community to stand up against nuclear weapons and their development, hence the creation of different agencies began in the 1940s. Primarily, these attempts were aimed at denuclearization and nonproliferation. The

establishment of the IAEA was among the first efforts to establish a system for nonproliferation.¹ The original idea came from the U.S. President Dwight D. Eisenhower's address delivered 8 December 1953 to the General Assembly of the UN. The initiative included the foundation of an institution that would promote nonproliferation and as a result the IAEA was established in 1957. The fundamental objective of the agency "is strongly linked to nuclear technology and its controversial applications, either as a weapon or as a practical and useful tool."² The IAEA was set up as a specialized agency within the United Nations family and it has been established to work with the Member States of the UN and other global partners in order to "promote safe, secure and peaceful nuclear technologies."³ The Statute of the IAEA was approved on 23 October 1956 with 81 nations' unanimous signature and it came into force in 1957. Article 2 of the Statute defines the objectives, stating that

"[t]he Agency shall seek to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world. It shall ensure, so far as it is able, that assistance provided by it or at its request or under its supervision or control is not used in such a way as to further any military purpose."⁴

Furthermore, the IAEA's major purpose has become to support the peaceful usage of nuclear energy and to ensure that this technology would not be exploited and used for military purposes. The approach towards this goal included research on nuclear technology, international cooperation and exchange of knowledge, as well as, through the establishment of a safeguards system (included in the Statute as well) which would entitle the Agency with certain "rights and responsibilities to the extent relevant to the project or arrangement."⁵ Over the years, the safeguards have become even more central and crucial in the prevention of nonproliferation and they are aimed to check the Member States' compliance via embedding the IAEA safeguards in legally binding agreements between the States and the IAEA. This is to ensure with legal

¹ Some significant initiatives before the foundation of the IAEA are worth mentioning: the first resolution of the UNGA, A/RES/1(I) on the *Establishment of a Commission to deal with the Problems raised by the Discovery of Atomic Energy* which emphasized the need to control the use of atomic energy so that it can be utilized for "peaceful purposes"(paragraph 5) only and the Baruch Plan, introduced in 1946 by the U.S., which proposed the establishment of an international agency for controlling atomic weapons within the United Nations (the United Nations Atomic Energy Commission - UNAEC), however due to the Soviet Union's opposition, the initiative was declined. (Lázár, 2014, 17)

² *History of the IAEA* (IAEA.org) <https://www.iaea.org/about/overview/history> (Accessed: 27 April, 2020)

³ *ibid*

⁴ *Statute of the IAEA*, 1956, article 2.

⁵ *Optcit*, article 12, part A (Agency safeguards)

measures that the States follow the obligations that they have previously committed to and provide a legal basis for proper implementation of safeguards.⁶ Obviously, creating a legal framework for these safeguards is inevitable if the IAEA wishes to meet its own objectives and maintain the legality of the requirements towards States and demand full compliance from them. Primarily, these safeguards include the Statute of the IAEA as a basic document; the obligations of the States under the Treaty on the Non-Proliferation of Nuclear Weapons (discussed later) and treaties creating nuclear-weapon-free zones (discussed later); further instruments to the safeguards, i.e. agreements, protocols and subsidiary agreements; and the decisions made by IAEA Board of Governors.⁷

Within the system of safeguards, there can be different types of safeguards agreements distinguished, namely “comprehensive safeguards agreements with non-nuclear-weapon State parties to the NPT; voluntary offer safeguards agreements with the nuclear-weapon State parties to the NPT; and item-specific safeguards agreements with non-NPT States.”⁸ As it can be seen, the abovementioned agreements have been established with the purpose of engaging as many States as possible, whether they are considered to be nuclear-weapon States or not, or whether they are parties to the NPT or not, doing so in order to broaden the scope of engagement in nonproliferation and nuclear security. The so-called Additional Protocol has been also created as a complementary agreement to provide further tools and measures for verification. Primarily, it broadens the Agency’s verification ability concerning peaceful utilization of nuclear materials and nuclear energy. The importance of verification and broadening the scope of Additional Protocols have increased during the end of the previous century because undeclared activities and utilization, from States like Iraq and the DPRK, emerged and highlighted possible weaknesses of the safeguard agreements that needed to be tackled.

Taking into account the legal framework set up by the IAEA is important, because during the period while the DPRK was engaged with the IAEA (mainly due to outside pressure), the state has failed to meet the requirements under the agreements and to maintain its commitment assigned in the safeguards agreements. Moreover, observing the interactions between the IAEA

⁶ *Safeguards legal framework* (IAEA.org) <https://www.iaea.org/topics/safeguards-legal-framework> (Accessed: 27 April 2020)

⁷ *ibid*

⁸ *ibid*

and the DPRK historically, it is visible how the attitude of the international community gradually changed towards the rogue state.

Concerning the relationship of the IAEA and the DPRK, some key events and issues need to be mentioned. Regarding its nuclear program, the DPRK signed the first IAEA safeguards agreement in 1977 for two nuclear research facilities; became party to the NPT in 1985 and signed the NPT Safeguards Agreement with the IAEA in 1992.⁹ This period displays a relative willingness from the DPRK to abide by the obligations, however, soon after things have gone awry. Shortly after the first IAEA inspections inconsistencies started to emerge between the DPRK's previous declaration and the results of the inspection including 'mismatch' between data on declared plutonium and nuclear waste, as well as, IAEA analysis which suggested the presence of undeclared plutonium in the state. In order to resolve the issue, the IAEA requested additional information and further on-site inspections on two sites allegedly connected to nuclear waste¹⁰ however, the DPRK declined these demands and due to increasing outside pressure it announced its withdrawal from the NPT in 1993. This act marked the beginning of rather hostile relations between the DPRK and the international community. Sending it to the NPT States Parties, to the NPT depositary States and to the UN Security Council, the withdrawal statement with the reasons from the DPRK's side argues that the IAEA has violated the state's 'sovereignty' and has interfered "in its internal affairs, attempting to stifle its socialism..."¹¹, moreover, serving American influence by requiring the state to open non-nuclear related military sites for inspection. The reasons for withdrawal were based on the NPT itself which allowed the Parties "the right to withdraw from the Treaty if [the state] decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country."¹² Due to negotiations with the United States, the DPRK decided to suspend its withdrawal from the NPT and as a result, the following years enabled the IAEA to conduct inspections with a limited scope and under strict rules set by the DPRK. Nonetheless, the limited inspections failed to provide the necessary assurance for the Agency on the appropriate use of nuclear technology in the DPRK. Because further inspection requests have been declined, the

⁹ *Chronology of Key Events* (IAEA.org) <https://www.iaea.org/newscenter/focus/dprk/chronology-of-key-events> (Accessed: 27 April 2020)

¹⁰ *Fact Sheet on DPRK Nuclear Safeguards* (IAEA.org) <https://www.iaea.org/newscenter/focus/dprk/fact-sheet-on-dprk-nuclear-safeguards> (Accessed: 27 April 2020)

¹¹ *Chronology of Key Events* (IAEA.org)

¹² *Treaty on the Non-Proliferation of Nuclear Weapons* (New York, 1968), article X, paragraph 2.

pressure from the IAEA continuously grew towards the DPRK and according to a resolution adopted by the IAEA Board of Governors in 1994 the DPRK maintained “to widen its non-compliance with its safeguards agreement”¹³ and included the suspension of non-medical technical assistance to the state. The DPRK responded to the resolution by announcing its withdrawal from the IAEA on 13 June 1994 and considered itself to be in a position where it is no longer affected by obligations under the Safeguards Agreement, on the contrary to the viewpoint of the IAEA which still maintained the binding nature of the Agreement.

Taking everything into account, the Agency could never put together the whole picture on the DPRK’s nuclear activity, it “has never been able to verify the completeness and correctness of the initial report”¹⁴ of the state and it could not provide reassurance regarding the peacefulness of the DPRK’s nuclear activity. Up until today, the IAEA has remained in a central position next to newly established agreements and organizations handling the situation with the DPRK as the Agency upholds its authority to continuously follow, monitor, store data and seek clarification on the nuclear activity of the DPRK in order to pursue the objectives of the IAEA and to increase its verification role in the DPRK to work towards the peaceful utilization of nuclear installations.

b. Comprehensive Nuclear-Test-Ban Treaty Organization

Another significant institution worth discussion is the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO) which has been set up with the purpose of implementing the provisions of the Comprehensive Nuclear-Test-Ban Treaty (CTBT). The organization was founded on 19 November 1996 and is made up of a plenary body with the Signatory States and the Provisional Technical Secretariat.¹⁵ Since the treaty has not been enforced, the Vienna-based organization functions as a Preparatory Commission responsible for promoting the treaty and building up the verification regime which is supposed to become operational when the treaty enters into force. The verification regime was designed to detect all kinds of nuclear explosions and is based on three pillars: International Monitoring System (IMS), On-Site Inspections and the International Data Centre. The IMS includes 337 facilities designed to monitor and detect signs of nuclear explosions on the earth using seismic,

¹³ *Fact Sheet on DPRK Nuclear Safeguards* (IAEA.org)

¹⁴ *ibid*

¹⁵ *Glossary: CTBTO Preparatory Commission* (CTBTO.org)
https://www.ctbto.org/index.php?id=280&no_cache=1&letter=c#ctbto (Accessed: 27 April 2020)

hydroacoustic, infrasound and radionuclide technologies. The On-Site Inspections are built on data prepared by the IMS since inspections can be requested to areas where the traits of suspicious nuclear explosions are detected, however, inspectors would be authorized to collect evidence from the area only if the Member State to the CTBT approves the procedures and the CTBT has entered into force. Furthermore, the International Data Centre serves as a facility where data is processed and distributed in both raw and analyzed form. For instance, when the DPRK has conducted nuclear tests, the IMS detected and stored data on the activities and forwarded the details on the location, magnitude, time and depth of the tests to the Member States of the CTBT.¹⁶

c. Disarmament fora

Taking a look at the universal disarmament attempts, it is important to discuss the fora that constitute the so-called ‘disarmament machinery’, the structure of which was established during the UNGA’s first Special Session devoted to Disarmament (SSOD) in 1978¹⁷. According to the outcome of the sessions, the framework of the fora includes the United Nations Disarmament Commission (UNDC), the UNGA First Committee and the Conference on Disarmament (CD). Besides these, the previously discussed institutions (IAEA, CTBTO) and other platforms (UNODA) complete the relatively wide scope of disarmament issues.¹⁸

UNDC was set up in 1952 by the UNGA under the authority of the SC “with a mandate to prepare proposals for a treaty for the regulation, limitation and balanced reduction of all armed forces and all armament,”¹⁹ although, it conducted substantial achievements only after 1978. It is when a successor Commission was set up as a subsidiary part of the GA with a universal membership, meaning the UN Member States were entitled to take part in the operations of the UNDC. Fundamentally, it is a deliberative body with the main task to set out recommendations, initiatives and directives regarding disarmament. Important to note that the recommendations and initiatives accepted by the UNDC form the basis of future resolutions and multilateral disarmament agreements and provide a reference framework for further debates on the issue.

¹⁶ *Who We Are: CTBTO Preparatory Commission* (CTBTO.org) <https://www.ctbto.org/specials/who-we-are/> (Accessed: 27 April 2020)

¹⁷ *Special Sessions of the General Assembly devoted to Disarmament – UNODA* (UN) <https://www.un.org/disarmament/topics/ssod/> (Accessed: 27 April 2020)

¹⁸ Horváth. 2013. 39.

¹⁹ *United Nations Disarmament Commission* (UN) <https://www.un.org/disarmament/institutions/disarmament-commission/> (Accessed: 27 April 2020)

Decision-making is based on consensus which could also contribute to the fact that the UNDC lacks taking substantive positions, as the consensus-based process might foster the diversification of state's interests.

The First Committee of the UNGA is primarily responsible for dealing “with disarmament, global challenges and threats to peace that affect the international community and [for seeking] out solutions to the challenges in the international security regime.”²⁰ Given the basic structure of the Committee, UN Member States have the opportunity to be represented and participate in and discuss their disarmament policy attitude during the Committee sessions. Furthermore, the Committee has the authority to adopt resolutions that involve recommendations that will get to the UNGA for further discussion and potential adoption.

The Conference on Disarmament (CD), set up in 1979, is currently the only permanent multilateral negotiation forum dedicated to disarmament.²¹ The number of members gradually increased and today the CD has 65 Member States - the DPRK being one of them. The CD is not a specialized agency nor an organ of the UN, however, it has a close connection with the organization and the operations of the CD intertwines with the work of the UNGA. It means that the CD proceeds the adopted agreements to the UNGA with the request to recommend those to the UN Member States for signature and ratification. The CD has a permanent agenda, known as the Decalogues and it contains all the issues that the Members address during the sessions, including nuclear weapons in all aspects, conventional weapons, reduction of military weapons and armed forces and several approaches towards disarmament.²² In spite of the great significance that the CD had on the improvement of nonproliferation efforts, namely participating in drafting the Chemical Weapons Convention and the Comprehensive Test Ban Treaty, the clash of priorities and difference in state interests came to the surface and blocked the further substantial and effective work progress of the CD. Horváth (2013) gets to the conclusion that the CD has not been making progress for almost two decades now and it is because of the rule of consensus that affects decision-making differently. Originally, it was aimed to encourage the parties to reach agreement more effectively, nonetheless by today it appears that it has

²⁰ *Disarmament and International Security* (UN) <https://www.un.org/en/ga/first/> (Accessed: 28 April 2020)

²¹ Horváth, 2013, 45.

²² *Conference on Disarmament* (NTI) <https://www.nti.org/learn/treaties-and-regimes/conference-on-disarmament/> (Accessed: 28 April 2020)

become a tool for blocking decisions from going through, since it lacks political motive.²³ Reforms or a general revival of the CD could be crucial if the international community wants to avoid walking into a new nuclear arms race, considering that besides ‘old-fashioned’ weapons, new technologies are emerging rapidly so instead of sitting around, the CD and other similar platforms must take “action to ‘alleviate tensions and take [the world] back from the nuclear brink.’”²⁴ Regarding the nuclear issue around the DPRK, during the annual session of the CD in 2017 the members discussed the missile launches of the DPRK and the sources of the conflicts in the region, moreover, the delegations repeatedly addressed and condemned the activities of the state. Based on reports, the DPRK delegates participate in the CD annual sessions, however, fail to contribute to the decision-making or the initiatives in any constructive way.

The idea to establish the UN Office for Disarmament Affairs²⁵ (UNODA) came with the Secretary-General’s initiative for a reform at the end of the 1990s. Fundamentally, the Office was set up with the objective to create a system within which “the ultimate goal of general and complete disarmament”²⁶ can be achieved through collective effort. The UNODA has a wide range of activities and responsibilities, including giving assistance through collaborating with the other institutions of the UN, for instance the First Committee or the CD. Similarly, to other organizations the UNODA encourages peaceful dialogues and maintains positive diplomatic relations between states, furthermore, it promotes preventive and post-conflict disarmament measures.

When the UN took up the idea to establish a separate segment for disarmament issues within the portfolio of the organization, they did so by carrying the profound idea that served as the basis for establishing the United Nations itself several decades ago. With the development of atomic energy and nuclear weapons and more importantly the dangers that uncontrolled use of nuclear weapons could mean for the population of the world; the UN needed to react to this matter urgently. As Secretary-General António Guterres said in 2017, disarmament still plays a crucial role in the resolution and prevention of armed conflicts, including nuclear conflicts as

²³ Horváth, 2013, 50.

²⁴ *Make progress or risk redundancy, UN chief warns world disarmament body* (UN) <https://news.un.org/en/story/2019/02/1033512> (Accessed: 27 April 2020)

²⁵ Received its current name in 2007.

²⁶ *About Us - United Nations Office for Disarmament Affairs* (UN) <https://www.un.org/disarmament/about> (Accessed: 27 April 2020)

well, and it is necessary to maintain disarmament in order to build confidence, strengthen stability and establish trust among states.²⁷

1.1.2. Treaties and agreements

The aim of the next section is to examine and evaluate the treaties and declarations that have been drafted up, signed and ratified starting from the second half of the 20th century and up until today. The listing of the treaties will follow a chronological order and some other aspects of categorization will be based on the categorization made by N. Rózsa and Péczeli (2013), since their method follows a logical order that is feasible with the intentions of this paper.

	Name	Entry into force/Status ²⁸
FIRST GENERATION	PTBT	10 October 1963
	CTBT	Not yet in force
SECOND GENERATION	NPT	5 March 1970
THIRD GENERATION	NWFZs	Individual treaties and dates
FURTHER AGREEMENTS	Joint Declaration	19 February 1992
	Agreed Framework	Signed 21 October 1994
	Six-Party Talks	First round of talks began 27 August 2003
	TPNW	Not yet in force

Table 1: List of treaties and agreements in connection with the DPRK and nuclear nonproliferation

According to N. Rózsa and Péczeli (2013), there are three generations of agreements that can be distinguished when the issue of non-proliferation is being discussed. The treaties of the first generation, also referred to as declarative treaties, are characterized by not assigning any binding aspects neither to the nuclear weapons technologies, nor to the possessing states. When drafting these treaties, the essential objective was to build a deeper trust among the states having nuclear capacity and technology.

²⁷Secretary-General's Statements (UN) <https://www.un.org/disarmament/sgstatement/> Secretary-General's Statements

²⁸ According to UNODA Treaties Database: <http://disarmament.un.org/treaties/>

a. Partial Test Ban Treaty

The bombings of Hiroshima and Nagasaki in 1945 has left the world in shock and shed the light on the unimaginable destruction that the recently developed nuclear bombs appeared to be capable of. The international community could not disregard the potential dangers that the nuclear weapons possessed²⁹, and multilateral treaties reflected the intention of the bipolar world to create a fragment within international law dealing with controlling nuclear activities and show a communal dedication towards nonproliferation and the elimination of the possible threat of nuclear weapons. The Partial Test Ban Treaty (PTBT) or officially the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, was one manifestation within the controlling mechanism drawn up with the idea of “the speediest possible achievement of an agreement on general and complete disarmament under strict international control [...] which would put an end to the armaments race.”³⁰ In spite of not being extensive, the objectives are clear, i.e. states signing the treaty commit “to prohibit, to prevent, and not to carry out any nuclear weapon test explosion, or any other nuclear explosion, at any place under its jurisdiction or control.”³¹ The treaty was officially opened for signing 5 August 1963 and the United States, the United Kingdom and the Soviet Union have been assigned as the three bailees of PTBT. According to the transcript of the treaty, entry into force happens only “after its ratification by all the Original Parties.”³² The treaty represents one of the primary steps taken by members of the international community to ease the tension caused by nuclear weapons and the necessity to achieve this goal is clearly visible by the swift response from the parties because the treaty entered into force only a couple months later, 10 October 1963. Despite the fact that the treaty officially entered into force after the signature and ratification of the three assigned states, accession for other states was open as well. At the time of writing this paper, the PTBT has 125 state parties so far³³, although it is worth mentioning that among the nuclear weapons states, the DPRK is the only state that has not signed the treaty so far. According to N. Rózsa and Péczeli (2013), one of the major incompleteness of the treaty lays behind the lack of mentioning any

²⁹ Besides the events at Hiroshima and Nagasaki, it is important to mention that during these years the world got extremely close to an actual missile war between the United States and the Soviet Union with the Cuban Missile Crisis and it served as another factor urging the creation of a treaty to ease the tension.

³⁰ *Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water* (Moscow, 1963)

³¹ Optcit, Article 1, paragraph 1.

³² Optcit, article 3, paragraph 3.

³³ *Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water – Status of the Treaty* (UNODA) http://disarmament.un.org/treaties/t/test_ban (Accessed: 28 April 2020)

particular type of international verification mechanisms.³⁴ The possible explanation refers to the concern, the data collected during verification processes to check compliance with the treaty might be used to gather intelligence on the other party's technology and that would rather increase the tension between the superpowers of the time³⁵. Even though the signature of the PTBT was a manifestation of the first real step towards a more complete test ban between superpowers, the treaty was still no more than a milestone in history and afterwards “[n]uclear weapon testing not only continued, albeit underground, but also increased greatly in number.”³⁶

b. Comprehensive Nuclear-Test-Ban Treaty

The Comprehensive Nuclear-Test-Ban Treaty³⁷ (CTBT) is a treaty which was created to “ban nuclear explosions by everyone, everywhere: on the Earth’s surface, in the atmosphere, underwater and underground.”³⁸ One of its main objectives includes making nuclear weapons development more difficult as well as preventing the radioactive damage spreading in the atmosphere, as well as to prohibit nuclear test bombings conducted with military purposes. First, countries, such as the United States, the Soviet Union and the United Kingdom made an attempt to halt nuclear test bombings by declaring a moratorium, although, due to differing state interests, the negotiations were cut off in 1980. In the 1990s, after the United States and the United Kingdom rejected an initiative from a group of developing countries, another moratorium on test bombings was declared, however, China was constantly delaying that until mid-1996. The CTBT was negotiated in Geneva between 1994 and 1996 and as a result 184 countries have signed it, among which 168 have also ratified it including France, the Russian Federation and the UK. Even though the CTBT was officially opened for signature 24 September 1996, the treaty has failed to enter into force up until today. For the CTBT to be complete and have the possibility to enter into force, 44 further countries with specific nuclear technology must sign

³⁴ N. Rózsa and Péczeli, 2013, 106.

³⁵ On the other hand, the successor of the PTBT will have a detailed Verification Regime as the representation of a possible advancement to agreements and treaties dealing with nonproliferation.

³⁶ *1963-77: Limits on nuclear testing* (CTBTO.org) <https://www.ctbto.org/the-treaty/history-1945-1993/1963-77-limits-on-nuclear-testing/> (Accessed: 28 April 2020)

³⁷ The CTBT is intertwined with the previously discussed CTBTO.

³⁸ *Who We Are: CTBTO Preparatory Commission* (CTBTO.org) <https://www.ctbto.org/specials/who-we-are/> (Accessed: 27 April 2020)

and ratify the treaty. While the DPRK³⁹, along with India and Pakistan have not signed the CTBT so far, the United States, Egypt, Iran, Israel and China have not ratified it yet.

In June 2018, some events caused a rather skeptical attitude from the international community and international relations experts, since Kim Jong-un earlier implemented a near-term moratorium on nuclear testing, ordered the closing of the Punggye-ri test site and the freezing of intercontinental ballistic missile tests. Furthermore, the intention from the DPRK to join international disarmament efforts in order to achieve a total ban on nuclear tests has also caused disbelief, because it is hardly believable that the DPRK would enter a period of voluntary denuclearization when in the past international efforts have failed to do so.

The agreements on nuclear arms control of the second generation expand their scope through vertical nonproliferation (concerning the number and quality of nuclear weapons) and horizontal nonproliferation (regarding the number of nuclear weapons states) and set an upper limit to these features. Although these agreements aim to build a deeper trust among states, to increase transparency and move towards producing less nuclear weapons, the treaties fail to address the situation of already existing nuclear weapons and their proliferation. Nonetheless, as opposed to the treaties of the previous generation, verification mechanisms and frequently scheduled inspections of party states are included in this group in order to put into force the regulations concerning nonproliferation.⁴⁰

c. Treaty on the Non-Proliferation of Nuclear Weapons

Treaty on the Non-Proliferation of Nuclear Weapons (NPT) has become a landmark international treaty which was established with the main mission to prevent nuclear weapons and nuclear technology from spreading, to promote the cooperation regarding the peaceful usage of nuclear energy, as well as, to reach the “further goal of achieving nuclear disarmament and general and complete disarmament.”⁴¹ The NPT itself was negotiated during Johnson’s presidency, alongside with the Strategic Arms Limitation Talks (SALT) with the Soviet leadership.

The presidency of Richard Nixon, between 1969 and 1974, was characterized by a series of negotiations. First, President Nixon alongside with his national security adviser and later

³⁹ The DPRK is one of the three countries that have broken the “de facto moratorium” with testing nuclear weapons.

⁴⁰ N. Rózsa and Péczeli, 2013, 117.

⁴¹ *Treaty on the Non-Proliferation of Nuclear Weapons (NPT)* (UN)
<https://www.un.org/disarmament/wmd/nuclear/npt/> (Accessed: 28 April 2020)

secretary of state Henry Kissinger, succeeded in reaching a common ground in regard of the first limitations on “strategic offensive forces”, as well as, the Anti-Ballistic Missile Treaty (ABMT) which controlled the testing and deployment of ballistic missiles on the American and Soviet sides as well. With these negotiations, it was believed that by hoping for a shared interest in the status quo, a more peaceful relationship could be obtained between the two superpowers during the period of détente. The next decades have witnessed proposals such as a strategic arms limitation framework during the Ford administration, nuclear arms control proposal and SALT II under Carter. Despite these agreements and negotiations, until 1986 the number of US and Soviet nuclear weapons was gradually increasing during the years of the Cold War. The nuclear negotiations were mainly shaped by the US-Soviet relationship; however, the preferred outcome of the agreements was mostly affected by third parties, e.g. when China successfully tested its first nuclear weapon, thus becoming the fifth nuclear weapon state in 1964.⁴² The end of the Cold War ended with three major treaties between the U.S. and the Soviet Union, which all “resulted in substantially reduced levels of nuclear weapons.”⁴³ Under pressure from the Soviet Union and in alleged exchange for two further reactors, the DPRK joined the NPT on 12 December 1985 and as a part of joining the treaty, the state seemingly accepted the obligations under the treaty.

Even though the DPRK provided the IAEA with an initial inventory of the state’s nuclear installments and details on its nuclear activity, including the existence of the Yongbyon nuclear facility, the Agency rapidly realized the non-compliance between its own findings during the primary inspections and the DPRK’s declarations. Notice from the Agency was not taken seriously and the DPRK remained secretive and refused to share further details on the development of its nuclear capabilities, including the actual amount of plutonium they had or they could produce or the progress they have made with their separation progress, or even the facts regarding the construction of nuclear facilities. As it was previously mentioned, the DPRK denied access to its nuclear facilities after the request from the IAEA to gather more information from the sites in an attempt to resolve the discrepancies and in March 1993 the DPRK has announced its withdrawal statement from the NPT, blaming the IAEA for violating sovereignty. According to the NPT, there is a period of three months until a State’s withdrawal can be

⁴² Goodby, 2015.

⁴³ *ibid*

complete, and as a result of frequent negotiations with the United States and increasing international pressure⁴⁴, the DPRK was finally persuaded to suspend its withdrawal on 11 June 1993, one day prior to the notice of withdrawal would take effect. During the following years, the United States and the DPRK conducted several rounds of negotiations that led to the signature of the Agreed Framework (discussed later). The US-DPRK agreement was used as an attempt to bring the DPRK back to compliance with its obligations, however not even the persistence of the American presidency was enough to prevent the DPRK from keeping up its non-compliance. Consequently, the DPRK announced to withdraw from the NPT on 10 January 2003 once again, due to back and forth verbal accusations between the rogue state and the United States for not abiding by the premises of the agreement, as well as repeated calls from the IAEA to cooperate and return to compliance with the safeguards agreement.

The notification on the withdrawal deepened the concern of the international community over the DPRK's commitment to nuclear activities and even former UN Secretary-General Kofi Annan expressed his regrets over the decision, highlighting "the importance of adhering to Treaties and their legal obligations in achieving international peace and security in accordance with international law [and that] the problems regarding DPRK's nuclear program must be resolved through peaceful dialogue"⁴⁵, nonetheless, this time the DPRK proceeded with the withdrawal process and left the NPT.

The fact, that the DPRK could withdraw from the NPT and could disregard the repeated demands from the IAEA to return to compliance with the obligations, question the adequacy of the system set up for nonproliferation to fulfil the fundamental ability of current international institutions to manage treaty implementation regarding nonproliferation and nuclear disarmament.⁴⁶

The group of agreements and treaties, referred to as the third-generation nonproliferation treaties, combines the characteristics of the previous generations and adds cutting measures on already developed supplies of nuclear weapons. These measures can concern selected warheads and actual weapons, or a total nuclear disarmament. The verification system poses stricter rules

⁴⁴ The IAEA brought the dispute between the DPRK and the United States to the UNSC, which in response adopted UNSC Resolution 825 calling on the DPRK "to respect its non-proliferation obligations under the NPT, and to comply with the safeguard agreement of the IAEA [and it] also encouraged all UN Member States to facilitate a solution." Lee, 2010, 803.

⁴⁵ *Chronology of Key Events* (IAEA.org)

⁴⁶ Carrell-Billiard and Wing, 32.

and the obligations taken up by the parties are taken much more seriously than in the case of the previous agreements.

d. Nuclear Weapon Free Zones

The origins of the concept of Nuclear Weapons Free Zones goes back to the late 1950s when the Rapacki Plan was introduced to the UNGA as an idea to denuclearize Central Europe with the inclusion of Poland, the Federal Republic of Germany, German Democratic Republic and Czechoslovakia. The address was followed by a memorandum with details regarding the planned nuclear weapon free region, stating that states would be prohibited from producing, possessing or stationing nuclear weapons and this decision would have been respected by nuclear weapons states as well. Nonetheless, due to the lack of support and the belief that it is necessary to deploy nuclear weapons in the region⁴⁷, the plan has fallen through and all attempts to resuscitate it has failed too. However, it had a positive impact on the perception of the issue, and it included the main criteria of NWFZs. The following table presents the general and regional NWFZs that will be discussed in this section.

General NWFZs		
Antarctic Treaty	Antarctica	23 June 1961
Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies	Outer space	10 October 1967
Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor	Sea-bed	18 May 1972
Agreement Governing the Activities of States on the Moon and other Celestial Bodies	The Moon	11 July 1984
Regional NWFZs		
Treaty of Tlatelolco	Latin America and the Caribbean	25 April 1969
Treaty of Rarotonga	South Pacific	11 December 1986
Treaty of Bangkok	Southeast Asia	27 March 1997
Treaty of Pelindaba	Africa	15 July 2009
Treaty of Semipalatinsk	Central Asia	21 March 2009

⁴⁷ In order to balance out the military arsenal of states in the Warsaw Pact and to secure the balance of power between superpowers. (Lázár, 2014, 23)

Unilateral Declaration	Mongolia	4 December 1998
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Table 2: General and regional NWFZs⁴⁸

As Lee points it out, there has been a hint in Article VII of the NPT regarding the possibility of States coming together “to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories.”⁴⁹ Prior to the extension of NWFZs to state territories, securing areas on earth that do not fall under the national sovereignty of any state, thus creating “general NWFZs”⁵⁰ took effect. This group of treaties includes the Antarctic Treaty⁵¹, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies⁵², the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor⁵³ and the Agreement Governing the Activities of States on the Moon and other Celestial Bodies⁵⁴ securing the protection of the “global common areas”.⁵⁵ Regarding the DPRK’s involvement with these agreements, it had been accessed to the Antarctic Treaty 21 January 1987 (having an observer status now) and to the Outer Space Treaty 5 March 2009, however, the state did not proceed to join neither the Sea-bed Treaty, nor the Moon Treaty.

⁴⁸ Lee, 2010, 810-812.

⁴⁹ Lee, 2010, 809.

⁵⁰ *ibid*

⁵¹ Entered into force 23 June 1961, it served as the first multilateral agreement with multiple states having interest on the territory and the parties have agreed that “Antarctica shall be used for peaceful purposes only, [...] and] any nuclear explosions [...] and the disposal there of radioactive waste material shall be prohibited.” *Antarctic Treaty* (1959) Articles I and V.

⁵² Entering into force 10 October 1967, the Outer Space Treaty declares that States Parties refrain from placing “in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner.” *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies* (1967) Article IV.

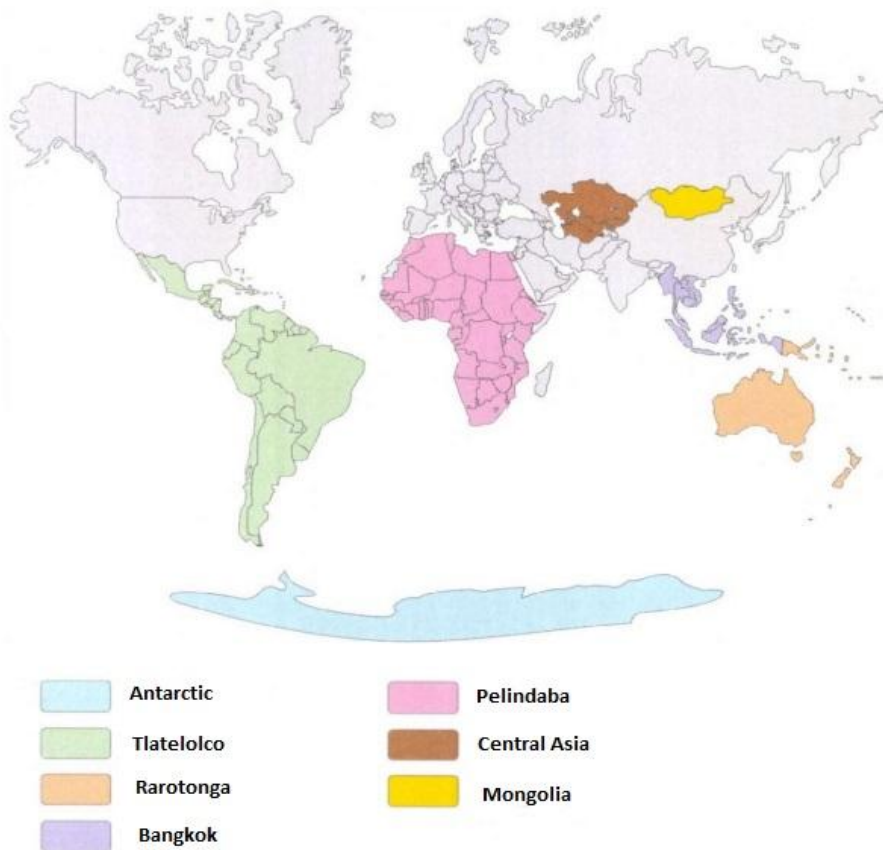
⁵³ The Treaty, entering into force 18 May 1972, prohibits States Parties to “emplant or emplace on the sea-bed and the ocean floor and in the subsoil [...] any nuclear weapons or any other types of weapons of mass destruction” in order to prevent a nuclear arms race in that region. (*Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies*, 1967, Article I.)

⁵⁴ The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies claims that “the moon shall be used [...] exclusively for peaceful purposes [and that] States Parties shall not place in orbit around or other trajectory to or around the moon objects carrying nuclear weapons or any other kind of weapons of mass destruction.” (*Agreement governing the Activities of States on the Moon and Other Celestial Bodies*, 1979, Article 3)

⁵⁵ Lee, 2010, 809.

Lifting the core concept from the Rapacki Plan and bringing it forward, other states have opened up and created regional NWFZs all over the world. According to the UNGA's definition, a NWFZ is

“[a]ny zone, recognized as such by the General Assembly of the United Nations, which group of States, in the free exercise of their sovereignty, has established by virtue of a treaty or convention whereby: (a)The statute of total absence of nuclear weapons to which the zone shall be subject, including the procedure for the delimitation of the zone, is defined; (b) An international system of verification and control is established to guarantee compliance with the obligations deriving from that statute.”⁵⁶



⁵⁶Establishment of a Commission to deal with the Problems raised by the Discovery of Atomic Energy, General Assembly, A/RES/1(I). 1975.

Table 3: Nuclear Weapon Free Zones⁵⁷

Today, there are five major regional NWFZs operating and besides those, Mongolia has declared itself as a single-State nuclear free zone and the Antarctic is considered to be a NWFZ as well. Some major contributors to the establishment of these zones have been the security policy environment in a given region, for that states might feel balanced out if they are surrounded by nuclear-weapons states; and the reoccurring efforts towards denuclearization.⁵⁸ Regarding the treaties, they include a specific protocol for the nuclear-weapon states that they have to respect given the legally binding nature of those protocols. These details oblige the nuclear-weapon states to respect the status of the zones and refrain from using nuclear weapons or threat states within the zones to use nuclear weapons against them. Nonetheless, in some cases nuclear-weapon states signed and ratified these protocols with additional conditions that reserved their right to use their nuclear arsenal in certain situations, for instance, when acting in self-defense or as a counterattack against a state that had previously attacked them.⁵⁹

The Treaty of Tlatelolco, establishing the first, Latin American NWFZ (LANWFZ), was opened for signature in 1967 and entered into force 25 April 1969 and it includes all 33 states in the region of Latin America and the Caribbean⁶⁰. With regards to the verification process, the compliance of the members of the LANWFZ is ensured through agreements with the IAEA and through the operation of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL).⁶¹ The second zone to be created was the South Pacific Nuclear Weapon Free Zone (SPNWFZ) with the Treaty of Rarotonga. The treaty entered into force 11 December 1986 after the ratification of 13 states in the region. States became concerned with the possible consequences of nuclear weapons following the bombings over Hiroshima and Nagasaki and when they realized that their region would become subject to nuclear testing and would be exposed to hazardous impacts on the environment through nuclear waste.⁶² With the

⁵⁷ N. Rózsa and Péczeli, 2013.

⁵⁸ N. Rózsa and Péczeli, 2013, 150-151.

⁵⁹ *Nuclear-Weapon-Free Zones (NWFZ) At a Glance* (Arms Control) <https://www.armscontrol.org/factsheets/nwzf> (Accessed: 28 April 2020)

⁶⁰ The states in the region became concerned about nuclear weapons following the events of the Cuban Missile Crisis of 1952.

⁶¹ *Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (LANWFZ) (Tlatelolco Treaty)* (NTI) <https://www.nti.org/learn/treaties-and-regimes/treaty-prohibition-nuclear-weapons-latin-america-and-caribbean-lanwzf-tlatelolco-treaty/> (Accessed: 28 April 2020)

⁶² *South Pacific Nuclear-Free Zone (SPNFZ) Treaty of Rarotonga* (NTI) <https://www.nti.org/learn/treaties-and-regimes/south-pacific-nuclear-free-zone-spnfz-treaty-rarotonga/> (Accessed: 28 April 2020)

Treaty of Bangkok, the regional NWFZs have expanded to the Southeast Asian part of the globe. The Southeast Asian Nuclear Weapon Free Zone (SEANWFZ) took effect 27 March 1997 involving Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.⁶³ Mainly due to the economic importance of the region on a global scale the nuclear weapon states have not signed the protocols because they wish to avoid the security assurances taking place against their influence.⁶⁴ The following zone in Central Asia (CANWFZ) includes the states of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.⁶⁵ The most recently established NWFZ on the African continent was set up with the Treaty of Pelindaba (creating the ANWFZ) through the cooperation of 40 African states.⁶⁶ Entering into force 15 July 2009, the established zone “covers the territory of the African continent, island States of the Organization of African Union (OAU) and all islands considered by the OAU in its resolutions to be part of Africa.”⁶⁷ A quite outstanding case, that actually inspired the Central Asian regions to come together and form their own NWFZ⁶⁸, is connected to the unilateral declaration of Mongolia which “declared itself a single-State NWFZ [in 1992] and was recognized as having NWFZ status by the UN General Assembly in 1998. [Furthermore,] Mongolia may provide an example that other countries can build on to develop the NWFZ concept further and make them better able to address contemporary non-proliferation challenges.”⁶⁹

The valid question emerges why not establish a NWFZ on the Korean Peninsula to tackle the problems of non-proliferation and nuclear threat and one might wonder whether it would serve as a motivating gesture for creating a NWFZ in Northeast Asia or in the Pan-Pacific region. It might come as a surprise that the DPRK was the primary party to come up with the idea of a Korean NWFZ during inter-Korean talks in 1991. From South Korea’s side, then President Rho Tae-woo reaffirmed the state’s commitment towards the denuclearization attempts

⁶³ *Treaty on the Southeast Asia Nuclear Weapon-Free Zone* (Bangkok, 1995) 191 U.N.T.S.

⁶⁴ *Southeast Asian Nuclear-Weapon-Free-Zone (SEANWFZ) Treaty (Bangkok Treaty)* (NTI) <https://www.nti.org/learn/treaties-and-regimes/southeast-asian-nuclear-weapon-free-zone-seanwfz-treaty-bangkok-treaty/> (Accessed: 28 April 2020)

⁶⁵ *Treaty on a Nuclear-Weapon-Free Zone in Central Asia* (Semipalatsk, 2006) 2970 U.N.T.S.

⁶⁶ *African Nuclear Weapon Free Zone Treaty (Treaty of Pelindaba) - Status of the Treaty* (UNODA) <http://disarmament.un.org/treaties/t/pelindaba> (Accessed: 28 April 2020)

⁶⁷ Lee, 2010, 811.

⁶⁸ *Central Asia Nuclear-Weapon-Free-Zone (CANWFZ)* (NTI) <https://www.nti.org/learn/treaties-and-regimes/central-asia-nuclear-weapon-free-zone-canwz/> (Accessed: 28 April 2020)

⁶⁹ Lee, 2010, 812.

and this mutual agreement has eventually led to the Joint Declaration of the Denuclearization of the Korean Peninsula signed in 1992. Considering the potential Korean NWFZ, the Joint Declaration could be taken as the primary step towards the establishment of the zone, however, it turned out that the two states had different ideas on the process of denuclearization: “South Korea regarded it as limited nuclear deterrence under the NPT, while [the DPRK] saw it as general and comprehensive nuclear disarmament through an NWFZ.”⁷⁰ Further steps towards denuclearization have been taken from the DPRK through the Agreed Framework, conducted with the United States in 1994 and via signing the Joint Statement in 2005.

From a geographical perspective, the zone would cover the area of the Korean Peninsula, including “all land holdings with the adjacent islands, internal waters and territorial seas.”⁷¹ As it was mentioned regarding the previous NWFZs, the nuclear-weapons states would be obliged to sign the specific protocol regarding their confirmation of the establishment of the NWFZ and with regards to their nuclear activities in the region and it is questionable whether they would contribute to the Korean NWFZ, given that they might want to hold on to their maritime influence through potential U.S. military bases on smaller islands that might fall under the territory of the newly established zone. As Lee points out, relatively strong regulation would follow including the abolishment of “already-made and stationed” nuclear arms, of using nuclear facilities for non-peaceful purposes; it would line up a series of activities that would be banned under the treaty and the inclusion of a verification system involving IAEA safeguards agreement and full inspections that would ensure that peaceful use of nuclear energy.

Another approach towards a potential NWFZ in the region is addressed by the concept of a Korea-Japan NWFZ (KJNWFZ) suggesting that the two Koreas and Japan would engage in establishing a zone within which it would be possible to reinforce nonproliferation obligations and emanate the denuclearization attempts to the territory of the DPRK as well. This engagement would be beneficial for the countries in the region, as well as the international community as the treaty would legally bind the DPRK to abide by the nonproliferation regulations, to comply with verification and inspections and outside participants would be legally prohibited from providing assistance to the DPRK nuclear weapons development. Moreover, South Korea and Japan would receive negative security assurance from the nuclear weapon states restricting those from any

⁷⁰ Optcit, 813.

⁷¹ *ibid*

nuclear attack against the states within the region. Furthermore, apart from the DPRK, South Korea and Japan have been claiming themselves to be non-nuclear-weapons states and the treaty setting up the KJNWFZ would reinforce this notion. Eliminating the risks of a potential nuclear war in Northeast Asia is crucial for maintaining regional and international security and peace and setting up a NWFZ there “could prove valuable in de-escalating regional tensions and reversing the growing trust deficit,”⁷² and could set the ground for an environment where states would have the opportunity to focus on national security policy-making without considering nuclear weapons as the primary tools to develop for securing national security.

There have been further multilateral agreements established with states and the DPRK as an extension to the already existing system aiming to promote proper utilization of nuclear energy, nonproliferation and, most importantly, peaceful denuclearization. The following agreements concern not only the DPRK, but other third parties, i.e. states that are also affected by the nuclear activity of the DPRK or even the International Court of Justice (ICJ) whose advisory opinion served as a basis for further discussions on the issue.

e. Joint Declaration on the Denuclearization of the Korean Peninsula

Following the evolution of nonproliferation issues based on the previous chapters, we arrive at the next cornerstone which was realized through the inter-Korean peace talks that had been going on during the 1990s with a major focus on denuclearization. Finally, the two states agreed to sign the treaty 20 January 1992 (entered into force 19 February 1992) in which they declared that neither state would “test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons, [furthermore, they would] use nuclear energy solely for peaceful purposes [and they would] not possess nuclear reprocessing and uranium enrichment facilities.”⁷³ The necessary verification measures would be carried out by the authorized institution and each state would be entitled to conduct inspections on a chosen territory of the other state. For the purpose of implementation the South-North Joint Nuclear Control Commission was set up, however, the Commission could not reach an agreement on a verified inspection regime and its operation has been halted in 1993.⁷⁴ Soon after the entry into force of the Joint Declaration, the DPRK

⁷² Thakur, 2017.

⁷³ Joint Declaration on The Denuclearization of The Korean Peninsula (1992)

⁷⁴ *Joint Declaration of South and North Korea on the Denuclearization of the Korean Peninsula* (NTI) <https://www.nti.org/learn/treaties-and-regimes/joint-declaration-south-and-north-korea-denuclearization-korean-peninsula/> (Accessed: 28 April 2020)

announced to withdraw from the NPT and since then the focus has been on the DPRK returning to the NPT and less emphasis placed on the Joint Declaration. With 1994, the stage was set for a DPRK and American cooperation under the Agreed Framework (discussed in the following section) which also assured the provisions of the Joint Declaration. The agreement included the DPRK's commitment towards denuclearization and fulfilling the obligations under the Joint Declaration were knitted to economic sanctions later imposed by the United States on the DPRK. Almost a decade later, the DPRK still avoided IAEA inspections and the operation of the Control Commission broke off as well.

All in all, the Joint Declaration included the core principles of what a potential NWFZ would entail and the agreement is of great importance because “it held the promise of preventing nuclear proliferation in both North and South Korea, while simultaneously preventing further stationing of nuclear weapons anywhere on the Peninsula.”⁷⁵ It was high time that the essential idea behind the treaty was addressed due to the escalating tension between the DPRK and the world, however, the details of the agreement were not enforced enough, hence the continuous dispute between the DPRK and the IAEA and the DPRK's resistance to follow the provisions gradually undermined the potential effectiveness of the declaration. Today, the Joint Declaration is mentioned in every UNSC Resolution that imposes sanctions on the DPRK calling on the state to return to and abide by the terms of the agreement.

f. Agreed Framework

Even after the conduction of the Joint Declaration, the DPRK still refused to comply with IAEA inspections which resulted in further tension between the IAEA and the DPRK⁷⁶ and after the very first announcement from the DPRK to withdraw from the NPT in March 1993, the United States stood up and began discussions with the DPRK and eventually persuaded the state to “‘suspend the effectuation’ of their withdrawal”⁷⁷. The disagreement between the DPRK and the IAEA continued and reached its peak generating a major crisis which started to be defused when former United States President Jimmy Carter intervened and visited Kim Il-sung in Pyongyang for further discussions which subsequently brought about the Agreed Framework

⁷⁵ Hayes and Hamel-Green, 2011. 113.

⁷⁶ As discussed earlier, the tensions were slightly eased when the DPRK agreed to sign and ratify the Safeguards Agreement in January 1992, however, due to serious discrepancies between the DPRK initial report and IAEA inspection results, the newly established relations have gone awry swiftly and the DPRK ended up announcing its withdrawal from the NPT and the Safeguards Agreement in 1993.

⁷⁷ Carrell-Billiard and Wing, 29.

between the two states, signed on 21 October 1994 in Geneva “to negotiate an overall resolution of the nuclear issue on the Korean Peninsula.”⁷⁸ The time when the agreement was in force and held the potential to achieve further stages towards the nonproliferation of the DPRK and the possibility of a peaceful denuclearization was between 1994 and 2002. The framework assigned certain responsibilities for each party and even though at some point the two participating states got into major disagreements, they could still make significant achievements.

According to the first item mentioned in the agreement, the two states would “cooperate to replace the DPRK’s graphite-moderated reactors and related facilities with light-water reactor (LWR) power plants.”⁷⁹ This subsequently meant that the United States was expected to provide the necessary material for the construction of the LWRs and alternative energy resources in the form of heavy oil. In exchange for which the DPRK was obliged to shut down its graphite-moderated and all other reactors and halt other construction projects and “eventually dismantle these reactors and related facilities,”⁸⁰ and the IAEA would be entitled to verify the activity freeze. The agreement not only included exact deadlines dated from the signature of the Agreed Framework until when the obligations were to be carried out, but it also referred to the “full normalization of political and economic relations [as well as working] together for peace and security on a nuclear-free Korean Peninsula [, and] work together to strengthen the international nuclear non-proliferation regime.”⁸¹ The normalization of international relations included returning to full compliance with treaties, i.e. the NPT, IAEA Safeguards Agreement, implementing the elements of the Joint Declaration and encouraging future engagement with the Republic of Korea in the form of peaceful dialogues.⁸²

Regarding the progress, the foundation of the Korean Peninsula Energy Development Organization (KEDO) involving the United States, South Korea and Japan, is significant because it is connected to the Agreed Framework in a way that it was designed to be the funding of the construction of the LWRs, agreed upon in the agreement and it entailed the financial contribution

⁷⁸ Agreed Framework between North Korea and the United States (21 October 1994)

⁷⁹ Agreed Framework between North Korea and the United States (21 October 1994) provision 1, paragraph 1.

⁸⁰ Agreed Framework between North Korea and the United States (21 October 1994) provision.1. paragraph 3.

⁸¹ Agreed Framework between North Korea and the United States (21 October 1994) provisions. 2, 3, 4.

⁸² Furthermore, the original agreement has been substituted by four additional agreements and several protocols since its adoption. Lee, 2010, 804.

from several countries as well as was assigned to deliver “interim energy until the completion of the first reactor.”⁸³

Right after concluding the Framework, both sides kicked off by following the provisions with the belief that this agreement would resolve the nuclear crisis peacefully. During the following years, the DPRK was playing by the rules, i.e. with unloading fuel rods, and sometimes engaged in a give-and-take exchange, i.e. when it announced “that it would not export missiles in return for 3 billion US dollars of financial support for three years.”⁸⁴ The next years brought about events that can be viewed as diplomatically successful, up until a point where the American foreign policy towards the DPRK has changed to “a ‘comprehensive and integrated approach,’” which were articulated at a Summit in 1999 in an agreement to lift economic sanctions and provide more food support in return for the DPRK to put an end to missile launches.⁸⁵ The cooperation between the two states was going smoothly during the Clinton administration, however, the American approach has substantially changed when George W. Bush became President in January 2001 and declared the DPRK as a part of an “axis of evil”⁸⁶ and this declaration was followed by a drastic redesign in the U.S. foreign policy towards the DPRK excluding maintaining peaceful diplomatic relations with a state that poses a great threat to international and regional peace and security.

It gave the final blow to the relations in 2002 when American intelligence gathered evidence on the DPRK secretly developing its uranium enrichment capability and with that it became clear that from the DPRK’s point of view the original idea that they had followed all along was whether the leadership could barter its completed nuclear deterrent for a peace agreement and security guarantees, as well as the lifting of economic sanctions and an economic development package delivered to the doorstep of the country while the leadership could still covertly continue the development of its nuclear capacities, and not necessarily to engage in peaceful crisis resolution. In late 2002, the DPRK indirectly confirmed the assumptions regarding its nuclear program, however, later on the confirmation has been denied. Nevertheless, the terms of the bilateral agreement have been violated and the United States promptly took measures and cut fuel supplies from the DPRK, which was followed by further political and

⁸³ Lee, 2010, 804.

⁸⁴ *ibid*

⁸⁵ Lee, 2010, 804.

⁸⁶ George Bush State of the Union Address <https://georgewbush-whitehouse.archives.gov/news/releases/2002/01/20020129-11.html> (Accessed: 28 April 2020)

economic sanctions. As a reaction to that, the DPRK has announced that due to the U.S. violating its obligations by cutting the supplies, the state would “resume operations at nuclear facilities, [...they] removed passive verification measures and told the inspectors to leave.”⁸⁷ The clash between the U.S. and the DPRK resulted in the DPRK leaving the NPT, this time without suspending its withdrawal and it was assumed that the state began reprocessing fuel rods. Both, the primary confrontational approach from the Bush administration and the often secretive behavior from the DPRK, contributed to the collapse of the Agreed Framework and got the world one step closer to a second nuclear crisis, although this was regarded as far more dangerous as “neither party could find a suitable exit from this diplomatic quagmire.”⁸⁸

g. Six-Party Talks

The year 2003 brought the possibility to renew talks with an effort to ease the tension between the parties. Both countries agreed that new negotiations should be conducted “in a more peaceful and systematic manner”⁸⁹ in resolving the previously triggered crisis. The framework for this negotiation was realized as the Six Party Talks, inviting China, the United States, Russia, Japan and the two Koreas to a hexagonal table in Beijing 2003.

Kicking off in August 2003, the talks continued in 2004 without any significant progress, mainly because the U.S and the DPRK still maintained “mutually irreconcilable positions”⁹⁰ and harshly criticized each other. Although, it seems that a solution to the conflicts was halted by the lack of cooperation between the parties, involving the other countries has appeared to be useful as they could somewhat ease the tension and resolve standoffs from one talk to the other. After three rounds of talks, the countries finally reached a milestone and on 19 September 2005 adopted the Joint Statement on the nuclear crisis which had a similar structure to the Agreed Framework and kept the initial objective, i.e. to denuclearize the Korean Peninsula in a peaceful manner. Furthermore, the declaration involved South Korea claiming not to possess any nuclear weapons on its territory and that it would revise the Joint Declaration signed in 1992. From the United States’ side, it agreed to refrain from deploying nuclear weapons on the Korean Peninsula, from attacking the DPRK with any kind of weapons. Additionally, the participating

⁸⁷ Carrell-Billiard and Wing, 30.

⁸⁸ Lee, 2010, 805.

⁸⁹ Lee, 2010, 805.

⁹⁰ Lee, 2010, 805.

countries agreed in the declaration to be providers of energy assistance to the DPRK, and in particular, that South Korea would provide an LWR to the DPRK.

The success could not be celebrated by the international community for too long, because even though the agreement has been declared progressive and effective, during 2006 the third nuclear crisis came about; once when the DPRK fired several missiles towards the East Sea of Korea in July 2006⁹¹ and when the state conducted its very first claimed nuclear test in October 2006⁹², thus revealing that the DPRK indeed possessed a nuclear weapons program. Despite the events around the nuclear tests, the Six-Party Talks continued to make an attempt and relieve the tension and with the release of the two Actions for the Implementation of the Joint Statement in 2007 under which the DPRK has agreed to close the Yongbyon facility, to invite the IAEA inspectors back in the country and allow the necessary inspections and verifications, and to follow the requirements of the Joint Statement, as well as to begin bilateral talks with the U.S. and Japan in order to reach a normalized level of diplomatic relations. In exchange for these commitments, the rest of the states agreed to provide emergency support to the DPRK in a form of heavy fuel oil. The continuation of the Action plan was adopted on 3 October 2007 and it included “more concrete measures”, i.e. the DPRK agreed to disable existing nuclear facilities and report fully on its nuclear programs. Nonetheless, the talks eventually broke down in December 2008 and resulted in the DPRK refusing free access to its nuclear facilities, conducting a second nuclear test in mid-2009 and finally leaving the talks in 2009⁹³. This period has shown that the outcomes of efforts were altering between on and off and resulted in a chess-like progress between the parties and this contributed to the difficulties in resolving the nuclear issue with the DPRK even after years of negotiations and resolutions.

Both, the Six-Party Talks and the Actions for the Implementation of the Joint Statement have presented that there was a collective attempt to improve the nonproliferation and disarmament regimes to stand up against nuclearization and misuse of nuclear weapons and to

⁹¹ After the firing, the U.S. and Japan informed the UNSC about the incident and demanded that the issue is addressed. The UNSC responded by adopting Resolution 1695 on 15 July 2005 urging the DPRK “to suspend all activities related to its ballistic missile programs and to return to the Six-Party Talks and the NPT.” (Lee, 2010, 806.)

⁹² Japan and the U.S. notified the UNSC once again, drawing attention to the seriousness of the actions of the DPRK and calling for effective action. As a response to the test, the UNSC adopted Resolution 1718 on 14 October 2006, the first among several resolutions demanding the DPRK to put an end to its nuclear weapons program and imposing economic and, later on, financial sanctions on the state with the cooperation of the UN Member States. (Lee, 2010, 806.)

⁹³ Ford, 2018, 13.

create an environment where the majority of the international community can set up a control system with the ability to react to violations and impose sanctions when deemed necessary to secure the protection of international security and peace. Taking the previous attempts into account the development of the mechanism is visible, however, the fact that more than one instances of nuclear threat from the DPRK occurred and the nuclear dispute is still a critical part of contemporary politics points to the agreement framework lacking enforcement and the fundamental binding feature without which effectiveness can be hardly achieved.

h. Treaty on the Prohibition of Nuclear Weapons

International efforts to tackle the problems with proliferation remained in focus and with time the focal points of approaching the issue have changed as well in order to discover and shed a light on new scopes of the effects of nuclear weapons. The Treaty on the Prohibition of Nuclear Weapons (TPNW)⁹⁴ serves as a great instance for a treaty that was drawn up by the Humanitarian Initiative with a focus on the humanitarian aspects of proliferation, i.e. the humanitarian consequences of a possible nuclear war and the impacts on the population, health and the environment. The movement growing out of the Initiative gained support and hopes arose towards a more solid progress regarding nuclear disarmament. Despite the high number of states endorsing the Initiative at the NPT Review Conference in 2015, they failed to agree on a final version mainly due to disagreement over the potential outcome and the desire “to shift efforts to advance the disarmament agenda to an open-ended working group (OEWG) on nuclear disarmament within the UN General Assembly.”⁹⁵ The OEWG meetings in 2016 resulted in initiatives for moving the nuclear agenda forward and the idea of a possible ban treaty turned out to be a successful proposal which was voted and forwarded as a recommendation to the UNGA for organizing a convention the following year to prohibit nuclear weapons. Obviously, states that rely on their nuclear programs did not support these initiatives, in fact the United States, France, the United Kingdom, China, Russia, Israel, India, Pakistan and the DPRK did not even attend the sessions and rejected the final report as well. Without these countries’ support and with boycotts “by all nuclear weapons possessing states, most NATO countries, and many

⁹⁴ also called Nuclear Weapon Ban Treaty

⁹⁵*Treaty on the Prohibition of Nuclear Weapons (TPNW)* (NTI) <https://www.nti.org/learn/treaties-and-regimes/treaty-on-the-prohibition-of-nuclear-weapons/> (Accessed: 28 April 2020)

military allies of nuclear weapons states”⁹⁶ and after two rounds of negotiations regarding the nuclear weapons ban, the TPNW was adopted on 7 July 2017. The legitimacy of the treaty became a subject of debate among UN Member States as advocates of the TPNW said that it represents “an important step in delegitimizing nuclear weapons and reinforcing the norms against their use”⁹⁷ while the opposing states assumed that it is a “political grandstanding” which could weaken the NPT.

Currently the treaty has 81 signatory states, among which 36 have already ratified it. According to the treaty, it will enter into force 90 days after ratification, acceptance, approval or accession has been deposited by 50 states. As opposed to previous multilateral agreements, the TPNW lacks a verification regime and instead the treaty maintains compliance with the safeguards agreements with the IAEA.

The Treaty contains the strict prohibition of developing, testing, producing, manufacturing, acquiring, possessing or stockpiling nuclear weapons or other nuclear explosive devices, furthermore, to transfer, to use or threaten to use these explosives under no circumstances.⁹⁸ Article 4 of the TPNW calls on the State Parties to remove their nuclear weapons and get rid of their nuclear weapons program as soon as possible in order to ensure reaching the stage of total elimination of nuclear weapons.⁹⁹ The TPNW has been labelled with outstanding significance among multilateral treaties regarding nuclear disarmament because it is the first one to be adopted since 1968 when the NPT was adopted. However, it cannot be denied that without the participation and influence of nuclear weapons states the TPNW cannot be taken seriously and there is hardly any chance that it would contribute to the creation of customary international law and have a long-standing effect on nuclear disarmament.

With regards to the DPRK, joining and ratifying the TPNW would be the solid basis for the road towards denuclearization. The possibility of the DPRK signing and ratifying the treaty has occurred during the U.S.-DPRK Singapore Summit in 2018 and it became an agenda point for the Inter-Korean Summits as well. From the international community's perspective, the TPNW represents the most effective way to get the Korean Peninsula closer to a full denuclearization and put an end to an era of nuclear threats and uncertainty.

⁹⁶ *ibid*

⁹⁷ *ibid*

⁹⁸ *Treaty on the Prohibition of Nuclear Weapons* (New York, 2017) Article 1.

⁹⁹ *Opt.cit.* Article 4.

1.2. Sanctions

The following section will discuss the sanctions adopted by the UNSC throughout the years as a response to the DPRK nuclear tests. Prior to scrutinizing the sanctions, however, it is important to mention that the issue of illegal nuclear testing and possible consequences have already preoccupied the attention of the United Nations, hence in the 1990s, the International Court of Justice had been asked to provide advisory opinion on the issue of legality regarding the use of nuclear weapons and whether the use of nuclear weapons would be a breach of obligations under international law. The ICJ presented its opinion in 1996 and did so while touching upon not only legal or illegal, but environmental aspects of the use of nuclear weapons as well. The ICJ highlights Article 2, paragraph 4 of the Charter which states that

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”¹⁰⁰

The right to collective self-defense is acknowledged, however, the means of weapons are not specified in the Charter, as well as, no specific weapons are prohibited under the Charter either. Nonetheless, considering the principle of proportionality under the law of self-defense the use of force is required “to meet the requirements of the law applicable in armed conflict, including, in particular, the principles and rules of humanitarian law.”¹⁰¹ This might assume that the states are left to decide what weapons they consider eligible for self-defense, however, “[a] weapon that is already unlawful *per se*, whether by treaty or custom, does not become lawful by reason of its being used for a legitimate purpose.”¹⁰² Referring to the rule of proportionality again, the Court states that the use of force, even if it involves nuclear weapons, “must [...] also meet the requirements of the law applicable in armed conflict”¹⁰³ so it can be considered legal. The very nature of nuclear weapons, *inter alia*, the high probability of devastation in case of nuclear exchanges and the potential risks accompanying the use of nuclear weapons as a form of self-defense, is considered to be important factors that states should take into account when they

¹⁰⁰ *Charter of the United Nations* (San Francisco, 1945) Article 2, paragraph 4.

¹⁰¹ *Overview of the case: Legality of the Threat or Use of Nuclear Weapons* (ICJ-CIJ) <https://www.icj-cij.org/en/case/95> (Accessed: 28 April 2020)

¹⁰² *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Report 1996, 244.

¹⁰³ *ibid*, 245.

consider using nuclear weapons as a response to threats. Moreover, in the advisory opinion the Court emphasizes the authority of the Security Council regarding the use of force and states that if a Member State decides to live up to its right to individual or collective self-defense the measures taken “shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council.”¹⁰⁴

Later on in the text, the Court has also managed to examine customary international law in order to “determine whether a prohibition of the threat or use of nuclear weapons as such flowed from that source of law”¹⁰⁵ and discussed the legality of the use of nuclear weapons under international humanitarian law and emphasized the importance of protecting civilians from any form of attack, the prohibition of developing weapons that might fail to distinguish a civilian from military targets and the avoidance of “unnecessary suffering.”¹⁰⁶ On a conclusive tone, the Court declared the issue regarding the applicability of nuclear weapons to be rather controversial and noted that the use of nuclear weapons, in their pure existence, can hardly be “reconcilable”¹⁰⁷ with the rules applied in armed conflict. The Court drew a conclusion in which they stated the following:

“[i]n view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.”¹⁰⁸

It has been proven that at the time of the advisory opinion, the system of international law was far from ready to adjust new and applicable requirements for the threat or the use of nuclear weapons in a time when the circumstances of war conflicts have changed a lot. The aforementioned advisory opinion complements the legality and the authority of the Security Council to establish a sanctions regime and adopt resolutions in order to change the undesirable behavior of rogue states, in this case, the nuclear tests of the DPRK.

¹⁰⁴ *Charter of the United Nations* (San Francisco, 1945) Article 51.

¹⁰⁵ *Overview of the case: Legality of the Threat or Use of Nuclear Weapons* (ICJ-CIJ) <https://www.icj-cij.org/en/case/95> (Accessed: 28 April 2020)

¹⁰⁶ *ibid*

¹⁰⁷ *ibid*

¹⁰⁸ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Report 1996, 266.

Regarding nonproliferation and total disarmament, there is an ongoing opposition within the United Nations. More specifically, between the members of the General Assembly and the Permanent Members of the UN Security Council (P5)¹⁰⁹. In July 2018, “over 120 countries in the United Nations voted to adopt the first-ever global treaty to ban nuclear weapons,”¹¹⁰ however, the nuclear-armed nations refused to take part in the negotiations. During the past 20 years, the NPT has been negotiated and the treaty has proceeded to become “the first multilateral legally-binding instrument for nuclear disarmament.”¹¹¹ The representatives of the P5 argued that the initiative fails to recognize the realities of the international security environment and that the ultimate prohibition is not compatible with the policy of nuclear deterrence which has contributed to maintaining peace in Europe and North Asia for the past decades. They argued that instead of providing the necessary security against threats like the DPRK-possessed nuclear program, the treaty would create more divisions and would fail to address other security challenges.

Recently, the current UN Secretary General António Guterres expressed his agreement with the adoption of the ban treaty as he believed that it represented “an important step and contribution towards the common aspirations of a world without nuclear weapons.”¹¹² He also hoped for the outcomes of the treaty to be promoting an inclusive dialogue and enhancing the renewal of an international cooperation towards nuclear disarmament. The treaty itself poses prohibition towards activities related to nuclear weapons, i.e. developing, testing, producing, manufacturing, acquiring, possessing or stockpiling nuclear weapons or devices, as well as, using or threatening to use any of these weapons. In connection with the nuclear ban treaty, the UN has decided to hold a High Level Conference (Summit) on Nuclear Disarmament with the purpose of enhancing progress toward the achievement of a nuclear weapons convention¹¹³ as well as achieving the proposed ideas that would enhance the reduction of nuclear risk, would put an end

¹⁰⁹ Usually referred to as the P5, consisting of China, France, Russia, the United Kingdom and the United States, although, often Germany is often referred to as the sixth world power.

¹¹⁰ *UN adopts global treaty banning nuclear weapons; India skips talks* (EconomicTimes.indiatimes.com) <https://economictimes.indiatimes.com/news/defence/un-adopts-global-treaty-banning-nuclear-weapons-india-skips-talks/articleshow/59502052.cms> (Accessed:28 April 2020)

¹¹¹ *ibid*

¹¹² *UN adopts global treaty banning nuclear weapons; India skips talks* (EconomicTimes.indiatimes.com) <https://economictimes.indiatimes.com/news/defence/un-adopts-global-treaty-banning-nuclear-weapons-india-skips-talks/articleshow/59502052.cms> (Accessed:28 April 2020)

¹¹³ The idea initially arose in 2013 and the Summit was supposed to take place in 2018, however, UNGA decided to postpone the conference to a later date.

to the modernization of nuclear weapons, and would address the renewal and establishment of Nuclear-Weapon-Free Zones in the Middle East and in North-East Asia.¹¹⁴

According to the backbone structure of the United Nations, the UNSC is authorized with the power to take action or any kind of measure with the purpose of maintaining or restoring international peace and security. Establishing sanctions regimes and imposing different forms of sanctions, ranging “from comprehensive economic and trade sanctions to more targeted measures such as arms embargoes, travel bans, and financial or commodity restrictions,”¹¹⁵ have served a large scale of goals, such as “to support peaceful transitions, deter non-constitutional changes, constrain terrorism, protect human rights and promote non-proliferation.”¹¹⁶

The following section will list and scrutinize the economic and financial sanctions that have been agreed upon by the UNSC unanimously, in order to make an attempt to tame the nuclear activity of the DPRK after each illegal test that have been conducted through the years. The next table contains the sanctions imposed by the UNSC resolutions with regards to the DPRK’s nuclear activity, however, it does not include the general provisions and the details concerning the monitoring mechanisms established by the provisions.

Resolution number	Date of adoption	Date of DPRK tests	Sanctions
Resolution 1718	14 October, 2006	9 October, 2006	-Member States to prevent direct, indirect supply, sale or transfer of certain goods -did not apply to financial transactions
Resolution 1874	12 June, 2009	25 May, 2009	-scope of sanctions expanded to financial transactions, technical training -expansion of arms embargo -Member States are called to inspect vessels, refrain from new commitments regarding financial and credit institutions -prohibit financial support from Member States

¹¹⁴ ‘2018 UN High-level Conference on Nuclear Disarmament’ (Unfoldzero.org) <http://www.unfoldzero.org/2018-un-high-level-conference-on-nuclear-disarmament/> (Accessed: 28 April 2020)

¹¹⁵ *Information on Sanctions* (UN) <https://www.un.org/securitycouncil/sanctions/information> (Accessed: 28 April 2020)

¹¹⁶ *ibid*

Resolution 2087	22 January, 2013	12 December, 2012	-sanctions list including individuals and entities subject to travel ban or asset freeze
Resolution 2094	7 March, 2013	12 February, 2013	-expanded list of prohibited goods, materials, items, technology, luxury goods -if DPRK-vessels deny inspection, entry to ports can be denied from Member States
Resolution 2270	2 March, 2016	6 January 2016	-ban on technical training, advice, service or assistance from Member States -ban on all arms and related material -mandatory inspection and asset freeze -expansion of sanctions list -limit placed on banking activities
Resolution 2321	30 November 2016	9 September 2016	-Member States are obliged to suspend scientific and technical collaboration -affects diplomatic relations: reduction in the number of staff, restriction on travels of DPRK government officials -ban on DPRK's export of minerals, iron, iron ore and coal -restriction on the amount of coal exports from the DPRK
Resolution 2356	2 June 2017	-	Further 14 individuals and 4 entities added to the travel ban list
Resolution 2371	5 August 2017	3 July and 28 July 2017	-the DPRK not to deploy chemical weapons -ban on export of several materials: coal, iron, iron ore, lead and lead ore -additional names and entities, materials and goods on the list -prohibition of joint ventures by the DPRK and other states

Resolution 2375	11 September 2017	2 September 2017	<ul style="list-style-type: none"> - Member States are prohibited from engaging in ship-to-ship transfers with DPRK vessels -ban oil and petroleum imports -restriction on the amount of crude oil that can be imported -ban on textile exports and overseas laborers are not provided with work -further entities, individuals on the list
Resolution 2397	22 December 2017	28 November 2017	<ul style="list-style-type: none"> - restriction on crude oil import, refined petroleum products -ban on export of food, agricultural products, machinery, electrical equipment -ban on import of earth and stone, wood, vessels -ban on seafood trade -further expansion of the sanction list -Member States are to seize and impound vessels caught smuggling

Table 4: UNSC Resolution adopted between 2006 and 2017

It is believed and confirmed that the leadership in the DPRK considers possessing and developing nuclear weapons as the sole “means to guarantee the survival of the country and [the] regime.”¹¹⁷ Presenting reasons, such as the examples of war games that the US government holds with its allies, to justify turning to nuclear strategy and, ultimately, considering nuclear weapons as effective means to “keep domestic and international enemies at bay.”¹¹⁸ Until today the response from the international community came in the form of serious condemnation, mostly in the form of economic and financial sanctions. Since 2006, when the DPRK conducted its first detected illegal underground nuclear activity, the SC has adopted nine sanctions so far, forming a new after each nuclear or missile activity of the DPRK. With the sanctions, and by increasing the severity of those, the UNSC aimed to highlight the disagreement of the international community

¹¹⁷ Albert, July 2019.

¹¹⁸ *ibid*

towards the utilization of nuclear energy and to stand up against the means that the DPRK was using its nuclear capacity for. Within the jurisdiction of the resolutions of the UNSC, the member states of the UN are entitled “to interdict and inspect [the DPRK] cargo within their territory and subsequently seize and dispose of illicit shipments.”¹¹⁹

The resolutions in general contain general provisions in which the Security Council expresses its concerns regarding the most recent activities of the DPRK and points to the importance that Member States collaborate and cooperatively reject providing (direct or indirect) financial help for the further development of DPRK’s nuclear or missile capability. The legal basis for the economic and financial sanctions imposed on the DPRK is served by Chapter VII (concerning *Action with respect to threats to the peace, breaches of the peace, and acts of aggression*), Article 41 of the Charter of the United Nations which entitles the Security Council to “decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures.”¹²⁰ Due to the clarity of the threat that the illegal nuclear and missile tests meant for international peace and security, the SC has decided to impose numerous different sanctions touching upon the “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations,”¹²¹ given that the DPRK failed to respond to the concerns and react to the consequences. After the adoption of Resolution 1718, the Security Council Sanctions Committee (1718 Committee) was established, within the framework of the monitoring mechanism, in order to monitor and review the sanctions and to monitor the potential future violations of those sanctions and make reports about the progress to the SC. In order to assist the work of the 1718 Committee, a Panel of Experts¹²² was established with Resolution 1874 in 2009 and since then its mandate has been extended annually. Based on the scope of its work, the 1718 Committee deals with taking appropriate actions reacting to alleged violations against the sanctions; collecting information from Member States regarding how those implemented the measures in their countries; considering and deciding on exemptions from the measures; expanding the travel

¹¹⁹ UN Security Council Resolutions on North Korea (Arms Control Association) <https://www.armscontrol.org/factsheets/UN-Security-Council-Resolutions-on-North-Korea> (Accessed: 28 April 2020)

¹²⁰ *Charter of the United Nations*, (San Francisco, 1945) Chapter VII, Article 41.

¹²¹ *ibid*

¹²² Consists of seven experts with the duties to assist the 1718 Committee, gather and analyze data, make recommendations and provide interim reports to the UNSC. (SC Resolution 1874 (2009))

ban list by designating individuals and entities; examining reports from Member States and the Panel of Experts; preparing reports to the UNSC every 90 days and conducting outreach activities.¹²³

Resolution 1718, the first resolution in a series of attempts to regulate and sanction the rogue state, was adopted on 14 October 2006 after the nuclear test conducted on 9 October 2006 claimed by the DPRK. The SC, on behalf of the international community, acknowledged “that the test claimed by the DPRK has generated tension in the region and beyond, and [...] that there is a clear threat to international peace and security.”¹²⁴ The SC clearly pointed out that the DPRK does not have the authority to call itself a nuclear weapon state even though the leadership of the state took it as far as amending the constitution of the country where they described the state as being “an invincible politico-ideological power, a nuclear state and an unchallengeable military power, and opened a broad avenue for the building of a powerful socialist country.”¹²⁵ In Resolution 1718, the withdrawal from the NPT, the inactivity in the Six-Party Talks and the evident neglect of the obligations under the Joint Statement are mentioned and the SC puts a great emphasis on highlighting the importance of participation in these ongoing negotiations and initiatives. The demand of the SC towards the DPRK to take responsibility for the consequences and avoid committing the same deeds against international peace and security was reaffirmed in every transcript issued on this matter and this commitment from the SC was intertwined with infinite support towards nonviolent dialogue and the belief that maintaining peaceful diplomatic relations will enable restoring peace and security on a global level.

In accordance with the Charter of the United Nations, Member States were called upon to “prevent the direct or indirect supply, sale or transfer to the DPRK [...] of any battle tanks, armored combat vehicles, large caliber artillery systems,”¹²⁶ etc. certain goods and materials, and specific luxury goods. With Resolution 1718, at first, sanctions did not apply to financial or other assets because the essential objective was to prevent further improvement of nuclear technology and not to punish the population by cutting financial resources. Nonetheless, it appeared that the sanctions have failed to reach the expected outcome as the DPRK continued to conduct illegal nuclear and missile tests throughout the following years and did so disregarding the

¹²³ *1718 Sanctions Committee, 'Work and mandate of the Committee'* (UN) <https://www.un.org/securitycouncil/sanctions/1718#background%20info> (Accessed: 28 April 2020)

¹²⁴ UN SC Resolution 1718, 2006.

¹²⁵ Preamble of the Constitution of the DPRK (1972)

¹²⁶ UN SC Resolution 1718, 2006, paragraph 8.

condemnation of the international community. As the illegal activities of the DPRK did not seem to be affected by the sanctions, the SC in further resolutions (1874 passed in 2009, 2087 and 2094 both adopted in 2013, 2270 and 2320 both passed in 2016, 2371, 2375 and 2397 passing in 2017) has drawn up a system of economic and financial sanctions while expanding or modifying the scope of it after each violation, as well as creating a sanction list of specific individuals and entities who became subject to either travel ban or asset freeze¹²⁷.

As it was mentioned before, Member States were called on to act¹²⁸ according to Article 41 and with the expansion of the sanctions it also included inspection of all kinds of cargo going to and coming from the DPRK, the prohibition of “international financial and credit institutions [...] to enter new commitments, except for humanitarian and developmental purposes,”¹²⁹ and refraining from financially supporting the DPRK. Resolution 2087 (adopted on 22 January 2013), was the first decision to include the sanctions list of individuals and entities falling under the strict obligation of specified measures. With the adoption of Resolution 2087, a so-called Implementation Assistance Notice was issued for situations where DPRK-flagged vessels refused the on-board inspection from Member States. Resolution 2094, adopted on 7 March, 2013 has a different tone because the DPRK has continuously violated the previous resolutions and the SC expressed its concern over the DPRK “abusing the privileges and immunities accorded under the Vienna Convention”¹³⁰ by neglecting the regulations and acting against the determined sanctions.

Since the date of the first UNSC resolution, several rounds of further restrictive measures and decisions have been made from targeting areas of the DPRK’s export system, affecting its import possibilities and gradually limiting its access to the international financial system. Despite the sanctions becoming harsher, it is done so with the deep belief that stricter measures would eventually bring the leadership of the rogue state to realize that stepping on the road to denuclearization and cooperating with the international community is a more plausible solution for the survival of the DPRK and better server the benefit of the people as well.

¹²⁷ The sanction list was added as an appendix to the resolutions and the new names were enclosed to the newly adopted resolutions.

¹²⁸ Even though the Member States have been repeatedly asked to cooperate and fulfill the obligations assigned by the resolutions, it is obvious that the DPRK continuously generates revenue through illegal means of trade, smuggling, etc. Furthermore, it is also widely known that the sanctions fail to fulfil their effectiveness because of certain states and companies that refuse to enforce or act according to these sanctions.

¹²⁹ Security Council Resolution 1874, 2009, paragraph 19.

¹³⁰ Security Council Resolution 2094, 2013.

2. Conclusion

Taking a closer look at cases, like this one with the DPRK, it can be concluded that even though multilateral efforts have been taken to prevent states like the DPRK from obtaining its own nuclear weapon program, it was only partially successful. After the collapse of the Agreed Framework in 2002, the short period of nuclear freeze in the DPRK, the state eventually returned to plutonium production, announced the development of its enrichment program and by today it had conducted several nuclear weapons and missile tests. It might be said that the issue was given enough attention, from the harsher economic and financial sanctions from the UNSC, but the contrary might be proven by the still existing threat from the DPRK and the absence of will to halt the tests and return to the NPT or the Safeguards agreement. Global disarmament is still a long way to be achieved in order to establish a system that is eligible for the majority and it is “equitable and nondiscriminatory”¹³¹, but still necessary compliance, effective verification and proper enforcement under an ideal agreement can be approached if previous cases are observed and lessons are deducted from experiences, such as the one with the DPRK.

Regarding the possible potential solutions for the issue we can take into consideration those treaties that already exist but due to the absence of cooperation from the necessary number of participants to ratify them, they fail to enter into force and become effective. Theoretically, if the DPRK agrees to join the CTBT then the denuclearization of the Korean Peninsula would finally begin and the possibility of a nuclear war between the two Koreas would fade even more. On the contrary, the lack of a proper definition of denuclearization leaves some doors open for the DPRK. Nonetheless, the accession to the CTBT would also provide the DPRK with some drawbacks since “the provocative nuclear testing program would be ended, including limiting the DPRK, closing off numerous opportunities for the country to qualitatively improve nuclear weapons.”¹³² Provided the fact that the state has been deprived of the option to get hold of foreign technology transfers, advances for the country and opportunities for further technological development would also be either limited or eliminated. According to Herzog, verification measures lie at the heart of nuclear arms control. That is why the controversial aftermath of the demolition of test sites in the DPRK are so significant, given that no expert observers were present, and no scientific reports have been submitted.

¹³¹ Carrell-Billiard and Wing, 32.

¹³² Herzog, 2018.

A similar scenario can be drafted up in the case of the ratification of the TPNW. If both Koreas joined the TPNW, each state would be obliged to give up some of their current systems. For instance, South Korea would need to leave the American ‘nuclear umbrella’ meaning that it would still be able to rely on American deterrence, but not nuclear deterrence.¹³³ While the DPRK would be obliged to draw up and implement a plan for the total elimination of its nuclear deterrence and would be expected to allow the proper verification and authorization by the IAEA. Altogether, these could lead to the elimination of nuclear threat on the Korean Peninsula and it would potentially lead to the normalization of the situation in the Northeast Asian region, as well for states to reconcile and put an end to regional hostility.

Another possibility is the establishment of a KJNWFZ which would create a legally binding framework for denuclearization with which the DPRK would be obliged to comply with. Regrettably, it is not likely that the DPRK would willingly join the KJNWFZ if it threatens its national sovereignty, which would likely happen since the nuclear program constitutes the important aspect of how the state positions itself in the global arena. Apart from that, the treaty establishing the zone would need to be tailored to the specificity of the region.

Personally, I think a revived agreed framework would not be well-functioning because if we consider the current administration in the United States, it does not seem to have the competence to conduct such an agreement that would be beneficial for the international community and acceptable for the DPRK, since after two rounds of talks the U.S and the DPRK failed to agree even on genuine commitments and establish solid grounds for further negotiations. I also believe that a collective approach, quite like the Six-Party Talks could be initiated, but only with cautious preparations in order to avoid overwhelming pressure which could trigger a counter-resistance in the form of a military or a nuclear attack if the leadership feels endangered. After all, the requirements seem to remain incompatible between the parties and this knot cannot be untied until a common ground is established, or until the parties are willing to compromise on certain aspects of their authority.

Drawing an inference, it seems that currently the circumstances are not appropriate enough for the creation of an effective sanctions regime that would be able to carry out its original purpose. This can be attributed with the malfunctioning of the UNSC in a sense that the

¹³³ *Koreas Summit shows the power of diplomacy* (ICAN)
https://www.icanw.org/koreas_summit_shows_the_power_of_diplomacy (Accessed: 28 April 2020)

power balance is uneven and misfitting for the relations in the 21st century. What is more, it is undeniable that the nuclear-weapons states and their potential disagreement with certain provisions of the agreements that would restrict their interests affects the outcome and efficacy of any attempt towards denuclearization, disarmament initiatives or sanctions.

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List of Abbreviations

ABMT	<i>Anti-Ballistic Missile Treaty</i>
ANWFZ	<i>African Nuclear Weapon Free Zone</i>
CANWFZ	<i>Central Asia Nuclear Weapon Free Zone</i>
CD	<i>Conference on Disarmament</i>
CTBT	<i>Comprehensive Nuclear-Test-Ban Treaty</i>
CTBTO	<i>Comprehensive Nuclear-Test-Ban Treaty Organization</i>
DPRK	<i>Democratic People's Republic of Korea</i>
IAEA	<i>International Atomic Energy Agency</i>
ICBM	<i>Intercontinental Ballistic Missile</i>
ICJ	<i>International Court of Justice</i>
IMF	<i>International Monetary Fund</i>
IMS	<i>International Monitoring System</i>
NATO	<i>North Atlantic Treaty Organization</i>
NWFZ	<i>Nuclear Weapon-Free Zone</i>
NNWS	<i>Non-Nuclear Weapon State</i>
NPT	<i>Nuclear Non-Proliferation Treaty</i>
NWS	<i>Nuclear Weapon State</i>
KJNWFZ	<i>Korea-Japan Nuclear Weapon Free Zone</i>
LANWFZ	<i>Latin American Nuclear Weapon Free Zone</i>
OAU	<i>Organization of African Unity</i>
OEWG	<i>Open-ended Working Group</i>

OPANAL	<i>Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean</i>
PTBT	<i>Partial Nuclear-Test-Ban Treaty</i>
SALT	<i>Strategic Arms Limitation Talks</i>
SEANWFZ	<i>Southeast Asian Nuclear Weapon Free Zone</i>
SPNWFZ	<i>South Pacific Nuclear Weapon Free Zone</i>
SSOD	<i>Special Session on Disarmament</i>
THAAD	<i>Terminal High Altitude Area Defense</i>
TPNW	<i>Treaty on the Prohibition of Nuclear Weapons</i>
UN	<i>United Nations</i>
UNAEC	<i>United Nations Atomic Energy Commission</i>
UNDC	<i>United Nations Disarmament Commission</i>
UNDP	<i>United Nations Development Program</i>
UNIDIR	<i>United Nations Institute for Disarmament Research</i>
UNGA	<i>United Nations General Assembly</i>
UNODA	<i>United Nations Office for Disarmament Affairs</i>
UNSC	<i>United Nations Security Council</i>
USSR	<i>United Soviet Socialist Republics</i>
KEDO	<i>Korean Peninsula Energy Development Organization</i>
LWR	<i>Light-water Reactor</i>
PRC	<i>People's Republic of China</i>
ROK	<i>Republic of Korea</i>
WMD	<i>Weapons of Mass Destruction</i>

