

The Politics of U.S.-Korea Civil Nuclear Cooperation

A Report of the CSIS Korea Chair

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Executive Summary

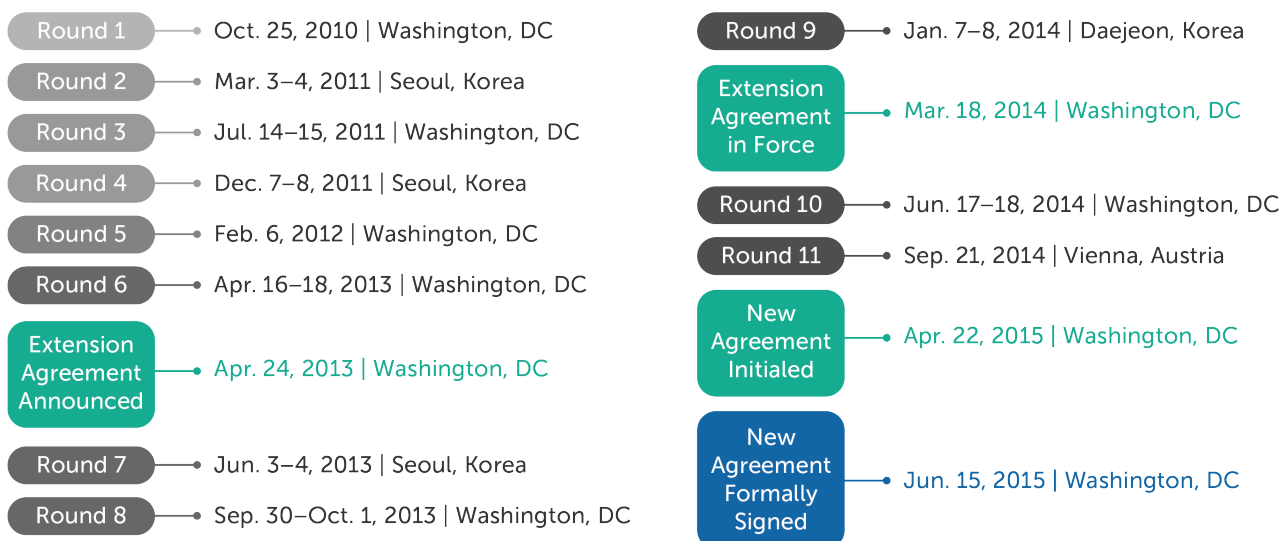
The success of the U.S.-ROK civil nuclear negotiations, concluded on June 15, 2015, was not necessarily assumed from the start. Indeed at the outset of negotiations, there looked to be very little in common on the key issues that mattered in the negotiation. The overlap in win-sets was fairly small, with a lot of room for misunderstanding and failure. However, the negotiation provided an opportunity for the two allies not only to scale up their nuclear cooperation but also to set twenty-first-century standards for the civil nuclear energy industry and the global nonproliferation regime.

The U.S.-ROK civil nuclear negotiations can be framed within four contexts, aimed at broader principles and negotiation mindsets. To be successful, any negotiation would have needed to adhere to these principles. The two countries needed to find the overlap in positions in each of these contexts. Moreover, they had to guard against outside issues that could negatively impact and throw askew the overlapping win-sets. Indeed, the outcomes of the negotiations and the factors influencing them followed these contexts fairly closely. The four framing contexts are: 1) the global context of the negotiation; 2) the context of the U.S.-ROK alliance; 3) the context of the negotiation mindset; and 4) the reverberation context for the future.

The Politics of U.S.-Korea Civil Nuclear Cooperation¹

On June 15, 2015, the governments of the United States and Republic of Korea signed a new agreement on civil nuclear cooperation. The civil nuclear negotiations commenced in October 2010 with the negotiations reaching a successful conclusion on April 22, 2015. The path forward through the negotiations, however, was not necessarily given. The 1972 Agreement for Cooperation Between the Government of the United States and the Government of the Republic of Korea Concerning Civil uses of Atomic Energy (revised May 1974) was set to expire in March 2014. And yet, at the end of 2012, not only had the two sides not reached an agreement, each side had seemingly dug into their negotiating positions with little inclination for compromise.

Timeline of for the New U.S.- R.O.K. Agreement for Peaceful Uses of Nuclear Energy²



Two years of slow talks had started to gain a sense of urgency. Given the highly complex nature of these negotiations, the two governments needed to reach some form of agreement in 2013 in order for the necessary procedures and legislative approvals to be put in place by the 2014 expiration of the original agreement. An extension agreement was ultimately reached, entering into force on March 18, 2014, and the two sides continued discussions to eventually conclude and sign an agreement in June 2015.

The reality is that any negotiation, including those for civil nuclear agreements, is not immune to the role that internal and external variables can play in shaping the win-set for an agreement. International relations theory uses the concept of “two-level games” to describe how parties to any negotiation contend not only with the constraints imposed by their negotiating counterpart but also by the constraints imposed upon them by domestic constituency and interests. Terms that may be acceptable in the negotiating room may not be acceptable for domestic audiences. The converse can also hold

¹ The findings in this report are based in part on a multiyear study conducted at CSIS, made possible with the generous support from the William and Flora Hewlett Foundation. The executive summary of this project report, originally published March 17, 2015, can be found at http://csis.org/files/publication/150317_recommendations_civil_nuclear_cooperation.pdf. Portions of this report are also cited in the forthcoming article: Victor Cha, “Reverberation and the Domestic Politics of Civil Nuclear Cooperation,” *Asian Security* 11, issue 3 (2015).

² Republic of Korea Ministry of Foreign Affairs, 언론보도해명, http://www.mofa.go.kr/news/pressexplanation/index.jsp?mofat=001&menu=m_20_40.

true. Concluding a successful negotiation requires finding the optimal “win-set,” or overlap, in these simultaneous two-level games.

The two-level game at play in international negotiations can be further complicated by “reverberations,” which can occur in any type of negotiation and may have positive or negative effects. The concept of reverberation refers to the role that external variables, such as politics, personality, goodwill, grand strategy, or security threats, can play in outlining the two-level win-set. Such external variables are not necessarily directly related to the details of the negotiations, but they can still influence their direction. For example, many critics claim the landmark U.S.-India civil nuclear deal was the result of reverberation from broader strategic desires to transform the U.S.-India relationship into a broader strategic partnership.

In the case of the U.S.-ROK civil nuclear cooperation negotiations, there is a core assumption of an interdependence in the U.S. and ROK nuclear industries that is a time-honored and organic product of years of interaction under the previous agreements (known also as 123 agreements). Given such interdependence, a failure to reach an agreement would have had a major impact on both South Korean and American nuclear industries. Not only does the Republic of Korea need access to U.S. nuclear material for its emerging role in the market as a global supplier, but U.S. reactors are built with indispensable Korean components. Interdependence between the two countries’ industries is also at play on the global level as ROK participation in the global civil nuclear energy industry benefits not just Korea, but also the United States. The UAE nuclear power plant project, for example, benefits Korea, but it is also estimated to bring significant revenue to U.S. suppliers and support several hundred jobs through engineering and fuel-service contracts.³ Moreover, in addition to the economic and industrial implications of the agreement, an inability to reach an agreement would also have been a major blow to the bilateral alliance. It could have had a political impact on the overall relationship, particularly if Koreans took offense at perceived unequal treatment among U.S. allies. This, in turn, could have potentially had a degrading impact on the U.S. “pivot strategy” in Asia.

Clearly, the negotiation had many complexities and there was no small risk of negative reverberations impacting the outcome. The overlap in win-sets was fairly small with a lot of room for misunderstanding and failure. However, the negotiation provided an opportunity for the two allies in their 62nd year of partnership to not only scale up their nuclear cooperation but also to set twenty-first-century standards for the civil nuclear energy industry and the global nonproliferation regime.

The U.S.-ROK civil nuclear negotiations can be framed within four contexts, aimed at broader principles and negotiation mindsets. Any negotiation that would have been successful would have needed to adhere to these principles. Indeed, the outcomes of the negotiations and the factors influencing them followed these contexts fairly closely. The four framing contexts are: 1) the global context of the negotiation; 2) the context of the U.S.-ROK alliance; 3) the context of the negotiation mindset; and 4) the reverberation context for the future.

The Global Context of the U.S.-ROK Civil Nuclear Negotiations

The U.S.-ROK civil nuclear agreement is set against the backdrop of a global civil nuclear regime whose standards will increasingly be defined by players with less than stellar nonproliferation records. As the U.S. footprint as a nuclear energy supplier shrinks, other suppliers like Russia and China are likely to step into the fold with less stringent nonproliferation requirements as they make nuclear deals with other countries. Without U.S. partners in this regime who will uphold U.S. standards, nonproliferation and transparency

³ Margaret Coker, “Korean Team to Build U.A.E. Nuclear Plants,” *Wall Street Journal*, December 28, 2009, <http://www.wsj.com/articles/SB10001424052748704905704574621653002992302>.

norms could erode in dangerous ways. Such a global context sets the stage for reverberation to affect U.S. attitudes toward having the Republic of Korea—an emerging global nuclear supplier—as a partner.

Therefore, the new agreement needed to advance a vision of a world in which civilian nuclear energy suppliers and demanders are responsible stakeholders and are compliant with existing international norms and rules of nuclear safety and nonproliferation.

In this regard, it is incumbent upon the Republic of Korea to be a proactive supporter of global nonproliferation. An important step forward would be the creation of a division of arms control and nonproliferation within the ROK government.

The new bilateral agreement also needed to set the highest standards in terms of transparency and verifiability that can be held up as an example to be emulated by others.

As established partners in civil nuclear energy, the United States and Korea must set ambitions with this agreement to shape the rules, rather than have them set by others in the emerging civil nuclear energy regime. Decisions taken on proliferation-sensitive activities by the United States and the Republic of Korea today will likely affect the policies in other countries.

The Alliance Context of the U.S.-ROK Civil Nuclear Negotiations

The bilateral civil nuclear agreement is important to the alliance, but it is not a core determinate of the alliance's broader dynamic. The approach to the negotiations, as well as the agreement's ratification and implementation, needs to be results-oriented, pragmatic, apolitical, and nonideological. Notions of "nuclear sovereignty" on one side or uniform "gold standards" on the other are not realistic. A failed 123 agreement would certainly not collapse the alliance, though it could do some damage and have broader negative implications for the reservoir of goodwill in the alliance relationship.

The negotiated agreement must be framed on both sides in a strategic, long-term context that manifests a deepening and multifaceted alliance relationship, rather than framed narrowly as a technical issue. U.S.-ROK civil nuclear cooperation cannot be disconnected from the broader history of cooperation in the 62-year alliance. At the same time, the terms of an agreement are set, and must be understood, inside existing nonproliferation norms. For example, comparisons to agreements with Japan are neither helpful nor useful as Japan's agreement was *sui generis*, and most likely would not be possible if it were to be negotiated today.

The Context of the Negotiation Mindset

The Republic of Korea is currently the fifth-largest producer of nuclear energy in the world and has extensive plans to significantly expand their civil nuclear program by 2030. However, as the Republic of Korea's nuclear energy production and consumption grows, its options for storing spent nuclear fuel shrink. In addition, Koreans harbor strong ambitions to become a full-service global supplier of nuclear energy. These two considerations had driven the ROK demand for U.S. advance consent in a new agreement to acknowledge the Republic of Korea's right both to enrich uranium and to reprocess U.S.-origin nuclear material.

For nonproliferation reasons, the United States has been historically opposed to allowing reprocessing and enrichment with its nuclear partners. In the case of the Republic of Korea, the United States did not demand this "gold standard," but it expressly showed disinterest in South Korean desires for a full nuclear fuel cycle.

The United States' substantive arguments for denying advance consent—almost all of which are based in concerns over the potential for nuclear proliferation—are potentially at odds with the internal politics of the U.S.-ROK relationship. The Korea alliance arguably stands as the best relationship that President Obama enjoys in Asia today and Korea is a critical ally in the United States' "pivot" or rebalance to the region as its key strategic priority for the future. The Republic of Korea has been a lead supporter of almost all of Obama's global agenda including climate change, recovery from the financial crisis, and counter-proliferation in Iran. The alliance has grown even tighter in the aftermath of major North Korean provocations in 2012. Washington-Seoul relations received a further boost with the successful conclusion of the Free Trade Agreement negotiations in 2012. With the alliance in such good standing, division over the 123 agreement potentially complicates relations at a time when the United States is pivoting to Asia, the threat from North Korea has never been more apparent, and international cooperation never more essential.

Principles for Civil Nuclear Cooperation

Given this background of the global, alliance, and negotiation contexts, defining and enlarging the overlap in the two-level game win-sets for a civil nuclear agreement would have been possible only if the two sides adhered to the following principles.

- **CREATE HIGH-LEVEL OVERSIGHT.** This agreement is too important to leave to the technocrats. The public- and private-sector stakes are large, as are the implications of the agreement's failure for the broader alliance. Higher-level policy oversight responsible for U.S.-ROK nuclear cooperation is, therefore, essential. The negotiations and the implementation of an agreement should include decisionmakers responsible for the overall relationship, and not just specialists. A useful example of such an arrangement is the Strategic Economic Dialogue created in 2006 by the United States and China at the minister level with Secretary of the Treasury Hank Paulson and Vice Premier Wu Yi to ensure high-level management of the relationship. Something similar is necessary for U.S.-ROK nuclear cooperation.
- **UTILIZE THE NEGOTIATION SPACE AFFORDED BY THE KOREANS.** During the negotiation of the agreement, the Republic of Korea stated three priorities in a new 123 agreement: 1) spent fuel management; 2) assured supply of nuclear fuel; and 3) competitiveness of export industries. As a new government took office in Seoul in 2013, it is worth noting that Seoul did not explicitly call for uranium-enrichment or plutonium-reprocessing capabilities in these priorities. President Park Geun-hye did not mention the pursuit of these capabilities as part of the ROK position. It was in this space that negotiators had to work to find an optimal win-set. As the agreement moves through the ratification processes and implementation phases, these spaces should continue to provide policymakers positive ground to move forward.
- **STICK TO THE BOTTOM LINE.** The negotiation of a new U.S.-ROK 123 agreement offers great opportunities for updated bilateral cooperation. However, the agreement's most basic goal is that it must meet the U.S. standards in place since the 1978 Nuclear Nonproliferation Act (NNPA) amended the Atomic Energy Act. Moving forward, policymakers in both countries should keep this bottom line clearly in focus.
- **FIND THE SWEET SPOT.** Given the negotiation mindsets of each side, the agreement needed to seek a creative manner in which to meet the stated priorities of the Koreans, but that also did not cross redlines for the United States. Ultimately, the negotiators were able to specific-

The Reverberation Context for Future U.S.-ROK Civil Nuclear Cooperation

A number of issues outside of the bilateral negotiation had the potential to reverberate on the agreement, either in terms of political timing or substance. As the negotiated agreement moves through ratification and implementation, such reverberation issues may still have an impact and alliance managers must pay careful attention to these.

- **A RELATIVELY UNCONTROVERSIAL AGREEMENT.** The Iran agreement has large reverberation effects that are likely to positively impact passage of the U.S.-ROK agreement in Congress. Because there is so much focus on the Iran deal, the U.S.-ROK agreement looks relatively uncontroversial by comparison which might contribute to a smoother path since Korea is a trusted, long-term alliance partner. U.S. House and Senate resolutions introduced in committee July 2015 indicates a level of congressional support of the agreement. Moreover, the timing of the agreement is favorable in that the two-year extension of the agreement will expire in early 2016, but the congressional 90-day review period runs out before then. Thus, a congressional approval decision will precede the original agreement's expiration.

However, both governments must be cautious of the degree to which the international agreement with Iran could impact South Korean attitudes on its deal with the United States. While the two agreements are not really comparable, there will be voices in Korea that might try to paint disadvantages based on simplistic comparisons. The ruling party majority in the South Korean legislature is helpful, with the next legislative elections scheduled for April 2016, though the process of political approval is still likely to meet some difficulty.

- **JAPAN.** Inevitably, comparisons with Japan are likely to arise. Such comparisons are unhelpful and simplistic. The ROK government must work hard to educate the public and the conservative Korean media about the benefits of the new 123 agreement, as well as the difficulties Japan has encountered with the Rokkasho Reprocessing Plant.
- **ROK DOMESTIC POLITICS.** The opposition party and nongovernmental organization (NGO) community in Korea could be an ally for supporters of the negotiated agreement. These groups, unlike the conservatives in South Korea, are not likely to take up the "nuclear sovereignty" banner in opposition to the agreement. Educating these constituencies on the responsible safety precautions, transparency metrics, and climate benefits of a new agreement might be useful in garnering their interest and support. The issue has not garnered a great deal of media attention thus far and remains "depoliticized," at least for the time being, in Korea. The longer this can be maintained, the less political and, thereby less difficult, moving the agreement forward becomes.
- **LEADERSHIP POPULARITY.** President Park Geun-hye was elected into office after the civil nuclear negotiators had already completed five rounds of negotiations. With a new president in office, the potential of reverberation affecting the ROK position on the 123 negotiations and the overall tenor of the alliance was strong. The new government's rhetoric and language proved to be very pragmatic.

However, as the negotiations reached a conclusion the Park government reached low popularity ratings. Such ratings could afford her less political capital to sell the deal domestically and thus impact the politics of the agreement. It will be important to emphasize the agreement as special and as one that celebrates the unique partnership between the United States and Republic of Korea.

- **NORTH KOREA.** Though North Korea has long since violated the 1992 North-South Joint Denuclearization Declaration, it is still in the Republic of Korea's interests to comply with the declaration to put continued denuclearization pressure on the North.
- **ECONOMIC FEASIBILITY OF PYROPROCESSING.** The new agreement calls for completion of the 10-year joint study on the technical feasibility, nonproliferation acceptability, and economic commercial scale variability of this new technology. Presently, it is unclear if the technology will be economically viable. This uncertainty is mainly due to the fact that the fuel produced through the pyroprocessing technique is for use in sodium-cooled fast reactors rather than the more traditional light-water reactors largely in use today. This could cause the Republic of Korea to lose interest in pyroprocessing.

However, if the Republic of Korea frames pyroprocessing in a domestic context—that is, that the public sees it as an alternative to spent fuel storage in the country—then the political incentives may outweigh the economic costs. Moreover, this dynamic could be amplified as success of the technology could afford a degree of prestige and pride on the ROK's part.

- **POTENTIALLY CREATING INCENTIVES TO CIRCUMVENT ADVANCE CONSENT.** For the time being, the new agreement addresses the differences between Seoul and Washington on the issue of advance consent and it does not afford the Republic of Korea advance consent to enrich uranium or reprocess spent fuel. This agreement puts the Republic of Korea in the category of U.S. 123 partners, including Taiwan, the United Arab Emirates (UAE), Norway, and Switzerland, that send out U.S.-origin fuel for reprocessing. But the existence of the high-level commission to discuss in the future on a case-by-case basis the granting of advance consent offers a "pathway" that might reduce the incentive for the Republic of Korea to follow the path of other 123 partners. The United States and Republic of Korea must guard against allowing such "pathways" from undermining the spirit of the agreement.
- **UNIQUE SOLUTIONS, BUT SETTING NEW PRECEDENTS.** The U.S.-ROK agreement is unique and creative in its formulation in that it complies with U.S. nonproliferation obligations, but still offers potential pathways for a case-by-case discussion on reprocessing and enrichment as discussed by a high-level bilateral commission. The nature of this commission (chaired at the level of vice-minister of foreign affairs and the deputy secretary of energy) is unique, but the issue for future 123 agreements is whether other U.S. partners will seek similar commissions to "punt" difficult issues in hopes of winning U.S. concessions down the road.

APPENDIX

U.S.–Republic of Korea Agreement for Peaceful Nuclear Cooperation⁵

The New 123 Agreement Would Strengthen the U.S.–ROK Bilateral Strategic Relationship and Enhance Cooperation for the Long Term

- The United States and the Republic of Korea have signed a successor agreement for civil nuclear cooperation, also known as a “123 Agreement.”
- The United States and the ROK have had a strong partnership in the field of peaceful nuclear cooperation for more than half a century, and the United States is pleased that the ROK has become one of the world’s leading nations in the development of peaceful uses of nuclear energy.
- The agreement would enhance the strategic relationship between the United States and the ROK across the spectrum of political, economic, energy, science, and technology issues.
- The agreement would establish a new standing, High-Level Bilateral Commission for our two governments to work together to advance mutual objectives such as addressing spent fuel management, an assured stable fuel supply, nuclear security, and enhancing cooperation between the U.S. and ROK nuclear industries.
- The new Commission would allow for deepened cooperation and more regular interaction between our two governments on the state of nuclear energy in both countries and allow us to account for new developments in technology, spent fuel management, security, and safety.
- The agreement would reinforce the importance of our ongoing Joint Fuel Cycle Study to review and identify appropriate options for addressing spent fuel management challenges, and facilitate cooperation on research and development (R&D) in this context, including R&D at specified facilities on the use of electrochemical reduction.
- The new agreement also would provide the ROK with consent to produce radioisotopes for medical and research purposes, as well as to conduct examination of irradiated fuel rods using U.S.-obligated material.
- The agreement would allow for the continuation and expansion of our robust and mutually beneficial trade relationship.
- For example, the United States supplies enrichment services to the ROK to support its fabrication of nuclear fuel, and the ROK supplies the United States with significant reactor components such as pressure vessels.
- Due to this trade relationship, the contract between the ROK and the United Arab Emirates to build four reactors has already brought hundreds of new jobs and approximately \$2 billion in additional revenue to U.S. nuclear suppliers.
- The agreement would allow this type of cooperation to continue and flourish in the future.

⁵ Bureau of International Security and Nonproliferation, U.S. Department of State, “U.S.–Republic of Korea (R.O.K.) Agreement for Peaceful Nuclear Cooperation,” fact sheet, June 16, 2015, <http://www.state.gov/t/isn/rls/fs/2015/243872.htm>.

- The agreement would be fully reciprocal, requiring the United States to undertake most of the same obligations as the ROK. The only exceptions relate to different obligations that each country has under the Nuclear Non-Proliferation Treaty.

The New 123 Agreement Would Strengthen Nonproliferation Cooperation between the United States and the Republic of Korea

- Like all our 123 agreements, this agreement contains essential provisions related to nonproliferation and nuclear security, and would thereby enhance the global nuclear nonproliferation regime.
- The terms of the U.S.-ROK 123 agreement strongly reaffirm the two governments' shared commitment to nonproliferation as the cornerstone of their nuclear cooperation relationship.
- The ROK has a strong track record on nonproliferation and the ROK has consistently reiterated its commitment to nonproliferation. It has been an extremely active partner with the United States across a wide breadth of bilateral and multilateral activities designed to ensure the implementation of the highest standards of safety, security, and nonproliferation worldwide.
- The agreement would update the nonproliferation conditions from the prior agreement and fully meet the nonproliferation requirements of Section 123 of the Atomic Energy Act, as amended by the 1978 Nuclear Non-Proliferation Act (NNPA).
- The agreement would provide for the cooperation between the United States and the ROK to be subject to the relevant IAEA safeguards requirements, assurance that all activities under the agreement will be for peaceful purposes only, and express reciprocal consent rights over any retransfers or subsequent reprocessing or enrichment of material subject to the agreement.

The ROK Is a Strong Nonproliferation Partner

- The ROK is one of the United States' strongest partners on nonproliferation and has consistently reiterated its commitment to nonproliferation.
- It is a member of the four multilateral nonproliferation regimes (Missile Technology Control Regime, Wassenaar Arrangement, Australia Group, and Nuclear Suppliers Group, for which it served as Chair in 2003-2004 and will do so again in 2016-17) and recently completed its term as chair of the Hague Code of Conduct Against Ballistic Missile Proliferation.
- The ROK became a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons on April 23, 1975, and has in force a comprehensive safeguards agreement and additional protocol with the International Atomic Energy Agency (IAEA).
- The ROK has also demonstrated its commitment to nuclear security and addressing the threat of nuclear terrorism, including through hosting the 2012 Nuclear Security Summit and being an active contributor to the Summit process, and through its leadership in the Global Initiative to Combat Nuclear Terrorism.
- The ROK has been an active participant in the Proliferation Security Initiative (PSI) since 2009, having hosted regional and global meetings and two operational exercises. It has also conducted outreach to states that have not yet endorsed PSI.

- The ROK has been a consistent advocate of nonproliferation in the IAEA Board of Governors, including support for strengthening safeguards and calling to account Iran and Syria for violations of their safeguards obligations.
- The ROK has also been a strong and close partner in addressing the security and proliferation threat posed by North Korea's nuclear and missile programs, including at the IAEA and the UN Security Council. The United States and the ROK continue to cooperate closely in our shared objective to achieve North Korea's complete, irreversible and verifiable denuclearization and to bring North Korea into compliance with its commitments under the 2005 Joint Statement of the Six-Party Talks and its obligations under the relevant UN Security Council resolutions.

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