

Learning from the Not-So-Distant Past: Using the Iranian Negotiations to Guide the Nonproliferation of North Korea

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I.	INTRODUCTION	181
II.	COMPARING IRAN BEFORE THE DEAL AND NORTH KOREA TODAY	184
	A. <i>The Economic and Political Condition of Iran Before the Joint Comprehensive Plan of Action</i>	184
	B. <i>The Current State of North Korea</i>	187
III.	OVERCOMING THE DIFFERENCES BETWEEN IRAN AND NORTH KOREA	191
IV.	OUTLINING A DEAL WITH NORTH KOREA USING THE JOINT COMPREHENSIVE PLAN OF ACTION	195
V.	CONCLUSION	199

I. INTRODUCTION

Since 1968, China, France, Russia, the United Kingdom, and the United States have attempted to monopolize and control the proliferation of nuclear weapons throughout the international community.¹ The five countries noted are the “nuclear weapon states,” which, per the 1968 Nuclear Non-Proliferation Treaty (NPT), means they are the only states that may produce nuclear weapons; the remaining parties, all 190, are prevented from producing or manufacturing any nuclear weapons.² Iran

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1. Jonathan L. Black-Branch & Dieter Fleck, *Nuclear Weapons, Non-Proliferation and Disarmament: A Comprehensive Audit of Relevant Legal Issues and International Concerns*, in *NUCLEAR NON-PROLIFERATION IN INTERNATIONAL LAW* 2-25 (Jonathan L. Black-Branch & Dieter Fleck eds., 2014).

2. *Id.*; see Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 164.

has been a member of the treaty since 1970 as a nonnuclear weapons state.³ The Democratic People's Republic of Korea (North Korea) was a member and attempted to withdraw from the agreement in 2003.⁴

The consequences of Iran as a signing party to the NPT include the country's dedication to the non-proliferation of nuclear weapons, the use of nuclear technology only for peaceful means, and the cessation of nuclear weapon production.⁵ North Korea, on the other hand, revoked its pledge of non-proliferation and its pledge to only use nuclear technology peacefully, declaring the inapplicability of the treaty and restrictions thereunder.⁶ North Korea, along with the other three unsigned nations, believes the divide between a nuclear weapon and nonnuclear weapon state creates a divide between the countries, creating "two classes of international citizen."⁷ Regardless of North Korea's status as a party to the treaty—it is debated because the withdrawal was never formally accepted—it has not stopped the United Nations (U.N.) from imposing sanctions under the NPT in an attempt to stop North Korea's ever-growing nuclear program.⁸ The U.N. Charter, chapter VII, article 41, empowers the Security Council to impose sanctions on North Korea to maintain international peace.⁹

As of late, the sanctions against North Korea have not successfully stopped the nation from proliferating nuclear weapons or testing

3. *Treaty on the Non-Proliferation of Nuclear Weapons, Status of the Treaty*, UNITED NATIONS OFF. FOR DISARMAMENT AFF., <http://disarmament.un.org/treaties/t/npt> (last visited Mar. 10, 2018).

4. SIMON CHESTERMAN ET AL., *LAW AND PRACTICE OF THE UNITED NATIONS* 298 (2d ed. 2016); *N. Korea Withdraws from Nuclear Treaty*, CNN (Jan. 10, 2003), <http://www.cnn.com/2003/WORLD/asiapcf/east/01/10/nkorea.pact/>.

5. *See Treaty on the Non-Proliferation of Nuclear Weapons*, *supra* note 2, at 167, 171; *see also* Black-Branch & Fleck, *supra* note 1, at 6-7.

6. *Treaty on the Non-Proliferation of Nuclear Weapons, Status of the Treaty*, *supra* note 3; *see* Black-Branch & Fleck, *supra* note 1, at 6-7; *see also* CHESTERMAN ET AL., *supra* note 4, at 298.

7. CHESTERMAN ET AL., *supra* note 4, at 298.

8. S.C. Res. 2397, ¶¶ 26, 28 (Dec. 22, 2017); CHESTERMAN ET AL., *supra* note 4; *see* Black-Branch & Fleck, *supra* note 1, at 3-7.

9. U.N. Charter art. 41 ¶ 1; S.C. Res. 2397, *supra* note 8, ¶ 1.

missiles.¹⁰ The five permanent members of the Security Council,¹¹ which were involved with the Iran Nuclear Deal, could take a similar approach to negotiate with North Korea.¹² A similar approach would require the Security Council to continue imposing economic sanctions against North Korea and bring it to a state of economic desperation, not dissimilar from the state of Iran before it signed the Joint Comprehensive Plan of Action (JCPOA).¹³ Member States must oblige the sanctions imposed by the Security Council to deprive North Korea of its economic needs.¹⁴ If the Security Council sanctions put North Korea in a state of desperation similar to that of Iran, the Security Council members can create a plan of action for North Korea.¹⁵ The members can model a plan after the JCPOA and learn from the failed United States and North Korea Agreed Framework of the 1990s.¹⁶ The lessons learned from Iran can be used as a means to peace with North Korea.

10. S.C. Res. 2397, *supra* note 8, ¶ 1; Carol Morello, *U.N. Imposes New Sanctions on North Korea Over Missile Tests*, WASH. POST (Dec. 22, 2017), https://www.washingtonpost.com/world/national-security/un-imposes-new-sanctions-on-north-korea-over-missile-tests/2017/12/22/0929b926-e74a-11e7-a65d-1ac0fd7f097e_story.html?utm_term=.c3d73a403937.

11. The five permanent members of the United Nations Security Council are China, France, Russian Federation, the United Kingdom, and the United States. *Current Members*, UNITED NATIONS SEC. COUNCIL, <http://www.un.org/en/sc/members/> (last visited Mar. 12, 2018).

12. Joint Comprehensive Plan of Action, July 14, 2015, 22 U.S.A. § 8513a, S.C. Res. 2231, [hereinafter JCPOA]; *Current Members*, *supra* note 11.

13. The year prior to lifting economic sanctions, Iran suffered from a shrinking economy resulting in a negative GDP because of the sanctions imposed by the Security Council and unilateral sanctions imposed by other countries and governmental organizations. *Iran GDP Annual Growth Rate*, TRADING ECON., <https://tradingeconomics.com/iran/gdp-growth-annual> (last visited Mar. 15, 2018); *Middle East: Iran, Economy*, WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/ir.html> (last visited Mar. 15, 2018).

14. Rishi Iyengar, *Report: 49 Countries Have Been Busting Sanctions on North Korea*, CNN MONEY (Dec. 6, 2017), <http://money.cnn.com/2017/12/06/news/north-korea-sanctions-countries-violation/index.html> (reporting forty-nine countries have violated the Security Council sanctions imposed upon North Korea over the last several years; over ten of the violating countries were dealing with North Korea's military, further enabling the country's nuclear program and weapons proliferation).

15. Uri Berliner, *Crippled by Sanctions, Iran's Economy Key in Nuclear Deal*, NAT'L PUB. RADIO (Nov. 25, 2013), <https://www.npr.org/2013/11/25/247077050/crippled-by-sanctions-irans-economy-key-in-nuclear-deal>; Thomas Erdbrink, *Iran Stagers as Sanctions Hit Economy*, N.Y. TIMES (Sept. 30, 2013), <http://www.nytimes.com/2013/10/01/world/middleeast/iran-stagers-as-sanctions-hit-economy.html> (evidencing the immense impact of the U.N. Security Council sanctions on the Iranian economy).

16. See JCPOA, *supra* note 12, at 2; see also Inventory of Int'l Nonproliferation Orgs. & Regimes Ctr. for Nonproliferation Stud., *US-DPRK Agreed Framework/Six Party Talks*, Oct. 21, 1994, <https://www.nti.org/media/pdfs/aptagframe.pdf>.

II. COMPARING IRAN BEFORE THE DEAL AND NORTH KOREA TODAY

A. *The Economic and Political Condition of Iran Before the Joint Comprehensive Plan of Action*

Iran, before the implementation of the JCPOA, was pushed into a state of severe economic desperation by the U.N. Security Council and other nations imposing economic sanctions.¹⁷ The state of Iran's economy, before JCPOA negotiations began, played an influential role in the international community's ability to bring Iran to the proverbial table and successfully negotiate a deal.¹⁸ Iran, at the time, was also concerned with participating in the international economy and community, further increasing Iran's willingness to negotiate.¹⁹ Finally, the United States and others strictly enforced the sanctions on Iran, ensuring the success of the sanctions.²⁰

Before negotiations of the JCPOA, Iran had numerous sanctions imposed upon it by the U.N., the European Union (EU), and the United States.²¹ The sanctions ranged from limiting imports from Iran to restricting financial institutions' ability to deal with commercial customers in Iran.²² Iran's proliferation of nuclear weapons did not go unnoticed by countries outside of the Security Council; for example, Japan felt Iran's actions regarding nuclear weapons warranted economic sanctions.²³ The scope and breadth of the sanctions imposed against Iran aided in the

17. *Sanctions Begin to Bite*, ECONOMIST: ECONOMIST HIST. ARCHIVE (Oct. 9, 2010), <http://find.galegroup.com/econ/infomark.do?&source=gale&prodId=ECON&userGroupName=tulane&tabID=T003&docPage=article&docId=GP4100909298&type=multipage&contentSet=LT O&version=1>.

18. See Ariane Tabatabai, *Negotiating the "Iran Talks" in Tehran: The Iranian Drivers that Shaped the Joint Comprehensive Plan of Action*, 24 NONPROLIFERATION REV. 225, 225-26 (2017).

19. See *id.*

20. Louis Charbonneau, *Exclusive: U.N. Experts Trace Recent Seized Arms to Iran, Violating Embargo*, REUTERS (June 27, 2015), <https://www.reuters.com/article/us-iran-sanctions-un/exclusive-u-n-experts-trace-recent-seized-arms-to-iran-violating-embargo-idUSKBN0F300H20140628>; Rick Gladstone, *U.S. Issues Penalties Over Violations of Iran Sanctions*, N.Y. TIMES (Feb. 6, 2014), <https://www.nytimes.com/2014/02/07/world/middleeast/us-issues-penalties-over-violations-of-iran-sanctions.html>; see *Sanctions*, in DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 503, 509 (Margaret S. Pickering et al. eds., 1989-90).

21. See JCPOA, *supra* note 12, Annex II.

22. Exec. Order No. 13,590, 76 Fed. Reg. 72,609 (Nov. 21, 2011); see *Sanctions Begin to Bite*, *supra* note 17.

23. See Kaori Kaneko, *Japan Lifts Nuclear Sanctions on Iran*, REUTERS (Jan. 21, 2016), <https://www.reuters.com/article/us-iran-nuclear-japan/japan-lifts-nuclear-sanctions-on-iran-idUSKCN0V003V>; see also Christopher Hobbs & Matthew Moran, *Looking Beyond a Nuclear-Armed Iran: Is Regional Proliferation Inevitable?*, 47 INT'L SPECTATOR 127, 129-32 (2012).

sanctions' effectiveness, producing the desired result: an unarmed Iran and a relatively peaceful and more stable region.²⁴

The signing parties of the JCPOA agreed to lift or reduce the impact of the sanctions in place upon certification by the International Atomic Energy Agency (IAEA) that Iran complied with the agreed-upon terms.²⁵ Many countries, not parties to the JCPOA, also lifted sanctions against Iran, further illuminating the economic impact on Iran.²⁶ However, the impact of the sanctions on the Iranian economy was clear before imposing countries lifted their sanctions in 2015.²⁷

The sanctions, while broad in scope, focused on Iranian crude oil sales because exporting crude oil is one of the most important sectors of Iran's economy.²⁸ The significant drop in Iranian crude oil exports demonstrates the effectiveness of the sanctions imposed.²⁹ Iran's exports of crude oil were reduced by nearly sixty percent, from 2.5 million barrels per day to 1.1 million barrels per day as set by the sanctions cap.³⁰ Iran's gross domestic product (GDP) dropped by nine percent reflecting the hit to one of its most important economic sectors.³¹ Further compounding Iran's struggles with crude oil sales were the sanctions restricting hard currency payments to Iran and its inability to access reserves in foreign accounts.³² All of these factors put Iran in an economically desperate situation because, short of developing an entirely new economy not dependent on crude oil and hard currency, Iran had to negotiate with the international community.³³

24. See Hobbs & Moran, *supra* note 23, at 129-132; see also William A. Kerr & James D. Gaisford, *A Note on Increasing the Effectiveness of Sanctions*, 28 J. WORLD TRADE 169, 169-71 (1994).

25. JCPOA, *supra* note 12, Sanctions § 18.

26. See Kaneko, *supra* note 23; see also Ianchovichina et al., *Lifting Economic Sanctions on Iran Global Effects and Strategic Responses* 1, 2 (World Bank Group, Working Paper No. 7549, 2016).

27. See SPECIALIST IN MIDDLE EASTERN AFFAIRS (AUTHOR NAME REDACTED), CONG. RESEARCH SERV., RS20871, IRAN SANCTIONS 38, 54-55 (2018); see also JCPOA, *supra* note 12, Implementation Plan § 34.

28. Kamiar Mohaddes & Hashem Pesaran, *One Hundred Years of Oil Income and the Iranian Economy: A Curse or a Blessing?* (CESifo Working Paper Series No. 4118, Feb. 21, 2013); see also SPECIALIST IN MIDDLE EASTERN AFFAIRS, *supra* note 27, at 20-21.

29. See SPECIALIST IN MIDDLE EASTERN AFFAIRS, *supra* note 27, at 54-57.

30. *Id.* at 57.

31. *Id.* at 56.

32. *Id.* at 58.

33. See *id.* at 58-59.

Economic desperation was not the only factor pushing Iran to the negotiating table.³⁴ While the economic impact from the international sanctions was the most visible and easily observable lever, political pressures within the country, and Iran's need to reenter the international community, played a significant role in the negotiations of the JCPOA.³⁵ Iran's nuclear program, and the sanctions resulting therefrom, isolated it from the international community both economically and politically.³⁶ The citizens of Iran suffered the most from the extreme isolation, pushing the citizens to change the regime and vote for the more liberal president, Hassan Rouhani.³⁷

The Iranian citizens' election of Rouhani successfully removed Iran from international isolation.³⁸ Rouhani, along with a team of diplomats, negotiated a deal with the P5+1 (the Permanent Five on the Security Council plus Germany) and the EU, while advocating for his country and ensuring the other parties did not bully Iran throughout the negotiations.³⁹ The political state of Iran before the election of Rouhani and the JCPOA was tense.⁴⁰ The old politics of presidents past, coupled with the crippling economic sanctions, created an unfavorable political situation for Iranian citizens as well as the politicians.⁴¹ The political and economic issues, compounded by the international isolation, forced the Iranian citizens to push for change.⁴²

34. Tabatabai, *supra* note 18, at 225-26.

35. *Id.*

36. *Id.* at 230; see Kaneko, *supra* note 23; see also Kevan Harris, *Iran's Political Economy Under and After the Sanctions*, WASH. POST (Apr. 23, 2015), https://www.washingtonpost.com/news/monkey-cage/wp/2015/04/23/irans-political-economy-under-and-after-the-sanctions/?utm_term=.6b9beace4fd2.

37. *Joint Comprehensive Plan of Action*, U.S. DEP'T STATE, <https://www.state.gov/e/eb/tfs/spi/iran/jcpoa/> (last visited Mar. 15, 2018); see Tabatabai, *supra* note 18, at 230; see also SPECIALIST IN MIDDLE EASTERN AFFAIRS, *supra* note 27, at 56; Harris, *supra* note 36.

38. See Tabatabai, *supra* note 18, at 230; see also Ianchovichina et al., *supra* note 26, at 2.

39. See Tabatabai, *supra* note 18, at 229-30; see also SPECIALIST IN MIDDLE EASTERN AFFAIRS, *supra* note 27, at 56.

40. See Clifton W. Sherrill, *Why Hassan Rouhani Won Iran's 2013 Presidential Election*, MIDDLE EAST POL'Y COUNCIL (2014), <http://www.mepc.org/why-hassan-rouhani-won-irans-2013-presidential-election>; see also *Hassan Rouhani Wins Iran Presidential Election*, BBC NEWS (June 1, 2013), <http://www.bbc.com/news/world-middle-east-22916174>; Tabatabai, *supra* note 18, at 230-31.

41. See Sherrill, *supra* note 40; see also *Hassan Rouhani Wins Iran Presidential Election*, *supra* note 40; Tabatabai, *supra* note 18, at 230-31.

42. See SPECIALIST IN MIDDLE EASTERN AFFAIRS, *supra* note 27, at 56; see also Tabatabai, *supra* note 18, at 230-31.

Iran's internal situation was a driving force behind its willingness to negotiate the JCPOA.⁴³ The United States's and the U.N.'s consistent enforcement of the sanctions imposed upon Iran helped ensure Iran would negotiate a nuclear deal.⁴⁴ The United States punished companies that violated sanctions imposed on Iran.⁴⁵ Doing so not only proved to private companies the sanctions were real with consequences, but also proved to Iran that the sanctions were not a formality.⁴⁶ Taye-Brook Zerihoun, Assistant Secretary-General for Political Affairs of the U.N., acknowledged the "required support from all Member States" to have effective sanction regimes.⁴⁷ The persistent punishment by the United States and the U.N. against violators of Iranian sanctions ensured the sanctions were effective.⁴⁸

The perfect storm of a severely depressed economic state, hard-hitting international isolation, and strictly enforced sanction regimes resulted in an Iranian state ready and willing to negotiate a nuclear deal that would end its proliferation of nuclear weapons.⁴⁹ Understanding the state of Iran before the Security Council lifted the sanctions helps explain why Iran was willing to relinquish a nuclear weapons program it had been developing for decades.⁵⁰ Once Iran's reasons for negotiating are understood, the principles can be dissected and applied to other unruly and unwilling nuclear nations, such as North Korea.⁵¹

B. The Current State of North Korea

The U.N. Security Council has imposed sanctions on North Korea for its persistent proliferation of nuclear weapons and seemingly constant

43. See Tabatabai, *supra* note 18, at 229.

44. See Gladstone, *supra* note 20; see also Charbonneau, *supra* note 20.

45. Gladstone, *supra* note 20.

46. See *id.*; see also Press Release, Security Council, Full Support of Member States Key to Effective Sanctions Regimes, Assistant Secretary-General Tells Security Council, U.N. Press Release SC/12941 (Aug. 3, 2017), <https://www.un.org/press/en/2017/sc12941.doc.htm> [hereinafter U.N. Security Council Meeting].

47. U.N. Security Council Meeting, *supra* note 46.

48. Charbonneau, *supra* note 20; Gladstone, *supra* note 20; see U.N. Security Council Meeting, *supra* note 46.

49. See Tabatabai, *supra* note 18, at 226-27, see also U.N. Security Council Meeting, *supra* note 46; JCPOA, *supra* note 12, pmb., at iii-v.

50. Jonathan Tirone, *Iran's Nuclear Program*, BLOOMBERG (Mar. 20, 2018), <https://www.bloomberg.com/quicktake/irans-uranium-enrichment>; see SPECIALIST IN MIDDLE EASTERN AFFAIRS, *supra* note 27, at 56; see also Tabatabai, *supra* note 18, at 229.

51. See David Cortright, *Dear Trump: The Iran Deal Worked. Apply the Same Approach to North Korea*, 34 NEW PERSP. Q. 19, 19 (2017).

nuclear missile testing.⁵² The most recent sanction, dated December 22, 2017, “strengthens measures regarding the supply, sale or transfer of all refined petroleum products . . . with very specific preconditions and follow-up actions required by Member States.”⁵³ The Security Council is not alone in applying sanctions on North Korea; the United States and the EU have also imposed additional sanctions on North Korea in response to its nuclear missile program.⁵⁴

The aim of the sanctions imposed on North Korea is not unlike the goal of the sanctions imposed on Iran.⁵⁵ The goal of the sanctions, from the perspective of the United States, is to eliminate North Korea’s ability to continue its nuclear program while simultaneously using diplomatic efforts to negotiate with North Korea.⁵⁶ The U.N. Security Council has similar concerns—it wants to end North Korea’s nuclear program and hopes sanctions will bring North Korea to negotiate.⁵⁷ For the United States and the U.N. to attain the shared goal of negotiating with North Korea, the sanctions must put North Korea into a state of economic and political desperation, similar to that of Iran prior to the negotiations of the JCPOA.⁵⁸

Understanding the true economic state of North Korea is difficult because of the country’s extreme isolationist policies and reputation for manipulating the information the rest of the world receives and observes.⁵⁹ Not only does the country manipulate the information the outside world

52. S.C. Res. 2397, *supra* note 8, ¶ 1; see Rodrigo Campos & Hyonhee Shin, *U.N. Security Council Imposes New Sanctions on North Korea Over Missile Test*, REUTERS (Dec. 22, 2017), <https://www.reuters.com/article/us-northkorea-missiles/u-n-security-council-imposes-new-sanctions-on-north-korea-over-missile-test-idUSKBN1EG0HV>.

53. *Security Council Resolutions, Unofficial Description, S/RES/2397 (2017)*, UNITED NATIONS SEC. COUNCIL SUBSIDIARY ORGANS, <https://www.un.org/sc/suborg/en/sanctions/1718/resolutions> (last visited Mar. 15, 2018).

54. Eleanor Albert, *What to Know About the Sanctions on North Korea*, COUNCIL ON FOREIGN REL. (Jan. 3, 2018), www.cfr.org/background/what-know-about-sanctions-north-korea.

55. See Tabatabai, *supra* note 18, at 230; see also *Sanctions, Diplomacy, and Information: Pressuring North Korea: Hearing Before the H. Comm. on Foreign Affairs*, 115th Cong. 1-2 (2017) (statement of Hon. Ed Royce, Chairman, H. Comm. on Foreign Affairs).

56. *Sanctions, Diplomacy, and Information: Pressuring North Korea: Hearing Before the H. Comm. on Foreign Affairs*, *supra* note 55.

57. S.C. Res. 2397, *supra* note 8, ¶ 1.

58. See Tabatabai, *supra* note 18, at 226-30; see also SPECIALIST IN MIDDLE EASTERN AFFAIRS, *supra* note 27, at 21; U.N. Security Council Meeting, *supra* note 46; *Sanctions Begin to Bite*, *supra* note 17.

59. Robert D. Kaplan & Abraham M. Denmark, *The Long Goodbye: The Future North Korea (Report)*, WORLD AFF. J. (2011), <http://www.worldaffairsjournal.org/print/1415>.

receives but also the information its citizens receive.⁶⁰ Iran's economic conditions were a helpful metric for evaluating its willingness to negotiate.⁶¹ North Korea's opaqueness and history of manipulating facts makes it more difficult for the international community to use the economic state as a measure for willingness to negotiate.⁶²

The difficulty of knowing the economic conditions of North Korea makes gauging the country's willingness to negotiate more difficult.⁶³ Unfortunately, what little is known about the country's economic condition is so bleak that the government may never reach a point of economic desperation like that of the Iranian government.⁶⁴ The North Korean economy has been largely closed off from the international economy for several decades.⁶⁵ The effect of the isolation has left North Korea with very few allies or trading partners.⁶⁶ Its largest trading partner, China, imports textiles, among other goods, from North Korea.⁶⁷ China purchases, or imports, over eighty percent of North Korea's exports.⁶⁸ China recently imposed more sanctions, in addition to the sanctions imposed by the U.N. and the United States, on North Korea, reducing its imports from North Korea.⁶⁹

60. *Id.*; *East & Southeast Asia: Korea, North*, WORLD FACTBOOK, https://www.cia.gov/library/publications/the-world-factbook/geos/print_kn.html (last visited Mar. 15, 2018).

61. See Tabatabai, *supra* note 18, at 225.

62. *East & Southeast Asia: Korea, North*, *supra* note 60; *Korea, North: Country Review*, COUNTRY WATCH, <http://countrywatch.com/Intelligence/CWTopic?Type=text&CountryID=91&Topic=MAOVR> (last visited Mar. 15, 2018); see also Kaplan & Denmark, *supra* note 59, at 174-75.

63. *East & Southeast Asia: Korea, North*, *supra* note 60; Anna Fifield, *Life Under Kim Jong Un*, WASH. POST (Nov. 17, 2017), <https://www.washingtonpost.com/graphics/2017/world/north-korea-defectors>; *Korea, North: Country Review*, *supra* note 62.

64. *Korea, North: Country Review*, *supra* note 62; see Tabatabai, *supra* note 18, at 226.

65. *East & Southeast Asia: Korea, North*, *supra* note 60.

66. *Id.*

67. James Doubek, *China Moves to Limit Fuel, Textile Trade with North Korea*, NAT'L PUB. RADIO (Sept. 23, 2017), <https://www.npr.org/sections/thetwo-way/2017/09/23/553087705/china-moves-to-limit-fuel-textile-trade-with-north-korea>; *North Korea*, OBSERVATORY ECON. COMPLEXITY, <https://atlas.media.mit.edu/en/profile/country/prk/> (last visited Mar. 28, 2018); Arielle Berger & Elena Holodny, *North Korea Exports \$2.83 Billion Worth of Goods—Here's Where It All Goes*, BUS. INSIDER (Oct. 4, 2017), <http://www.businessinsider.com/goods-north-korea-trade-world-imports-exports-sanctions-china-2017-10>.

68. Berger & Holodny, *supra* note 67; *North Korea*, *supra* note 67.

69. Frank Tang, *China Bans North Korean Textile Imports, to Squeeze Oil Supply in Line with UN Sanctions on Reclusive State*, S. CHINA MORNING POST (Sept. 23, 2017), <http://www.scmp.com/news/china/diplomacy-defence/article/2112516/china-limit-oil-supply-north-korea>.

The economic state of North Korea is worse off than the economic state of Iran before the relief from the sanctions, when comparing GDP.⁷⁰ Based on past experiences with Iran, the international community, especially the permanent members of the Security Council and Germany, should expect an increase in North Korea's willingness to negotiate.⁷¹ Within the last couple of months, North Korea has expressed some willingness to begin negotiations.⁷² Perhaps, the isolationist country has reached a state of economic desperation it has not experienced before because of the sanctions from across the international community.⁷³

Despite the purported willingness of North Korea to begin negotiations, it is not in quite the same position as Iran was before the JCPOA.⁷⁴ The sanctions imposed against North Korea have been consistently violated by U.N. Member States, unlike the Iranian sanctions, with fewer reports of violations, and the U.N. as well as the United States systematically punishing violators.⁷⁵ The legitimacy of the North Korean sanctions is at stake because of the violations and the less than swift response from the U.N. and the United States.⁷⁶

The lack of enforcement and the widespread violations of the North Korean sanctions put North Korea in a different position than Iran.⁷⁷ Not only does the lack of enforcement encourage countries to violate the sanctions, but also encourages North Korea, the target of the sanctions, to do the same.⁷⁸ North Korea, even after stricter sanctions were put in place, violated the terms of the sanctions.⁷⁹ North Korea's violations highlight

70. *East & Southeast Asia: Korea, North*, *supra* note 60; see Tabatabai, *supra* note 18, at 225; see also SPECIALIST IN MIDDLE EASTERN AFFAIRS, *supra* note 27, at 21.

71. See SPECIALIST IN MIDDLE EASTERN AFFAIRS, *supra* note 27, at 21; see also Tabatabai, *supra* note 18, at 225.

72. Choe Sang-Hun & Mark Landler, *North Korea Signals Willingness to 'Denuclearize,' South Says*, N.Y. TIMES (Mar. 6, 2018), <https://www.nytimes.com/2018/03/06/world/asia/north-korea-south-nuclear-weapons.html>.

73. Albert, *supra* note 54.

74. Sang-Hun & Landler, *supra* note 73; see Iyengar, *supra* note 14; see also Charbonneau, *supra* note 20; Gladstone, *supra* note 20.

75. Iyengar, *supra* note 14; see Gladstone, *supra* note 20; see also Charbonneau, *supra* note 20.

76. See Iyengar, *supra* note 14.

77. Sang-Hun & Landler, *supra* note 73; see Iyengar, *supra* note 14; see also Charbonneau, *supra* note 20; Gladstone, *supra* note 20.

78. Michelle Nichols, *Exclusive: North Korea Earned \$200 Million from Banned Exports, Sends Arms to Syria, Myanmar—U.N. Report*, REUTERS (Feb. 2, 2018), <https://www.reuters.com/article/us-northkorea-missiles-un-exclusive/exclusive-north-korea-earned-200-million-from-banned-exports-sends-arms-to-syria-myanmar-u-n-report-idUSKBN1FM2NB>.

79. *Id.*; see S.C. Res. 2397, *supra* note 8, ¶ 1.

the importance of all three factors discussed above, which brought Iran to negotiate and stop its nuclear weapons program.⁸⁰

A final factor distinguishing North Korea from Iran, and complicating the attempts at negotiations with North Korea, is the country's extreme isolationist policies and general lack of interest in international relations.⁸¹ The North Korean government, not necessarily its citizens, has consistently followed an isolationist policy in regards to international relations, or any relations for that matter.⁸² The oppressive communist regime in North Korea and its distaste for interacting internationally distinguish the country from Iran.⁸³ Iran wanted to reenter the international community, which it so desperately needed to be able to import its crude oil.⁸⁴ North Korea, on the other hand, depends on China for a majority of its economic needs.⁸⁵ Such a small dependence on outside nations creates not only an independent nation but also a government with little economic prospects to lose.⁸⁶ These tendencies prolong the length of time North Korea can afford to, and is willing to, operate under the sanction regimes, especially with its consistent violations.⁸⁷

III. OVERCOMING THE DIFFERENCES BETWEEN IRAN AND NORTH KOREA

Despite the differences between North Korea today and Iran before it signed the JCPOA, the lessons learned through negotiating with Iran can be applied to North Korea to peacefully negotiate the end of its nuclear program.⁸⁸ The successes with Iran demonstrates what can be done with

80. See *SPECIALIST IN MIDDLE EASTERN AFFAIRS*, *supra* note 27, at 38; see also Gladstone, *supra* note 20; Nichols, *supra* note 78.

81. See Fifield, *supra* note 63; see also *East & Southeast Asia: Korea, North*, *supra* note 60; *Korea, North: Country Review*, *supra* note 62.

82. Fifield, *supra* note 63; see James T. Laney & Jason T. Shaplen, *How to Deal with North Korea*, 82 *FOREIGN AFF.* 16, 18-22 (2003); see also *North Korea Events of 2016*, *HUM. RTS. WATCH* (2017), <https://www.hrw.org/world-report/2017/country-chapters/north-korea> (last visited Mar. 15, 2018).

83. See Tabatabai, *supra* note 18, at 225-26; see also *North Korea Country Profile*, *BBC NEWS*, <http://www.bbc.com/news/world-asia-pacific-15256929> (last visited Mar. 15, 2018).

84. See *SPECIALIST IN MIDDLE EASTERN AFFAIRS*, *supra* note 27, at 56-57; see also Ianchovichina et al., *supra* note 26, at 2.

85. Berger & Holodny, *supra* note 67; *North Korea*, *supra* note 67.

86. Berger & Holodny, *supra* note 67; *North Korea*, *supra* note 67.

87. Nichols, *supra* note 78.

88. See Tabatabai, *supra* note 18, at 225-26; see discussion *supra* Section II.B.

North Korea.⁸⁹ Success with Iran was determined by three factors: the economic state of the country, the country's desire to be involved with the international community, and the enforcement of the sanctions imposed.⁹⁰ Dealings with North Korea have failed concerning two of these factors: sanction enforcement and enticing North Korea to become involved with the international community.⁹¹

The U.N. Security Council and the United States are in a unique position to significantly influence the possibility of negotiations with North Korea because each has their own sanctions regime and the power and ability to enforce the sanctions.⁹² Enforcement against North Korea would legitimize the sanctions within the eyes of the international community, especially those countries currently in violation, such as Syria and Myanmar.⁹³ Enforcement also increases the effectiveness of the sanctions, as seen with the Iran sanctions.⁹⁴ Recently, India has imposed bans on trading with North Korea, signaling that the international community is ready to impose sanctions and accept the legitimacy of those sanctions.⁹⁵ Additionally, Singapore has banned imports and exports of all goods from North Korea; even goods that travel through North Korea are included in the ban.⁹⁶

The increase of enforcement and restrictions by other countries demonstrates the international consensus on sanctioning North Korea based on its nuclear behavior.⁹⁷ The United States and the U.N. must join India and Singapore in adhering to and enforcing the sanctions against those who violate, like the companies that violated the Iranian sanctions.⁹⁸

89. See SPECIALIST IN MIDDLE EASTERN AFFAIRS, *supra* note 27, at 56-57; see also Ianchovichina et al., *supra* note 26, at 2.

90. See discussion *supra* Section II.A (discussing, in detail, the three factors that ultimately led to the success of the Iran negotiations and how each factor played a specific role in getting Iran to the negotiating table).

91. Sang-Hun & Landler, *supra* note 73; see Iyengar, *supra* note 14; see also Charbonneau, *supra* note 20; Gladstone, *supra* note 20; Nichols, *supra* note 78.

92. See Gladstone, *supra* note 20; see also Iyengar, *supra* note 14; Nichols, *supra* note 78.

93. See Nichols, *supra* note 78.

94. See Gladstone, *supra* note 20; see also Charbonneau, *supra* note 20.

95. Ivana Kottasova & Sugam Pokharel, *North Korea Cut Off by 3rd Biggest Trading Partner*, CNN MONEY (May 1, 2017), <http://money.cnn.com/2017/05/01/news/north-korea-india-trade-ban/?iid=EL>.

96. Singapore Customs, Circular No: 14/2017, *Prohibition of ALL Commercially Traded Goods that are Imported, Exported, Transshipped or Brought in Transit from or to the Democratic People's Republic of Korea Through Singapore* (Nov. 7, 2017).

97. See *id.*; see also Kottasova & Pokharel, *supra* note 95.

98. See Gladstone, *supra* note 20; see also Charbonneau, *supra* note 20.

The U.N. is aware not only of the Member States violating the sanctions but also of North Korea violating the sanctions.⁹⁹ If the Permanent Members of the Security Council want an opportunity to negotiate with North Korea, the sanctions must be enforced to establish legitimacy and ensure North Korea feels the full effect of the sanctions.¹⁰⁰

In previous years, China has acted as an intermediary between North Korea and the international community.¹⁰¹ The Six-Party Talks were negotiations between China, Japan, Russia, South Korea, the United States, and North Korea after the North Korean missile testing in the early 2000s.¹⁰² During these talks, China played an integral role because of its relationship with North Korea, despite its complicated nature.¹⁰³ While the Six-Party Talks were unsuccessful at the time, the lessons learned there can influence negotiations moving forward.¹⁰⁴ China's relationship with North Korea should be leveraged but not overestimated or exploited.¹⁰⁵ China's relationship with North Korea is strained, and while the relationship can be used to help with negotiations, the international community should rely on the levers used with Iran and adapt accordingly to apply to North Korea.¹⁰⁶

The result desired from negotiations with North Korea is ending the country's use of nuclear technology for the creation of weapons or anything other than the peaceful use of nuclear technology.¹⁰⁷ The P5+1 successfully negotiated with Iran to end its nuclear weapons program, ensured only peaceful usage of nuclear technology, and quieted

99. Iyengar, *supra* note 14; Nichols, *supra* note 78.

100. See Gladstone, *supra* note 20; see also Charbonneau, *supra* note 20; Iyengar, *supra* note 14; Nichols, *supra* note 78.

101. See ANDREW SCOBELL, CHINA AND NORTH KOREA: FROM COMRADES-IN-ARMS TO ALLIES AT ARM'S LENGTH (2007); see also Michele Acuto, *Not Quite the Dragon: A 'Chinese' View on the Six Party Talks, 2002-8*, 34 INT'L HIST. REV. 1, 2-4 (2012).

102. Kelsey Davenport, *Six Party Talks at a Glance*, ARMS CONTROL ASS'N, <https://www.armscontrol.org/factsheets/6partytalks> (last updated July 2017); see John S. Park, *Inside Multilateralism: The Six-Party Talks*, 24 WASH. Q. 73, 75-77 (2005).

103. See Scobell, *supra* note 101, at 1-3; see also Davenport, *supra* note 102; Park, *supra* note 102, at 75-77.

104. See Davenport, *supra* note 102; see also Park, *supra* note 102, at 75-77, 81-83.

105. See Park, *supra* note 102, at 81-84; see also Scobell, *supra* note 101, at 7-9.

106. See discussion *supra* Section II.B; see also Kurt Campbell, *Trump's New Wrinkle Brings Promise and Risk*, TIME (2017), <http://time.com/north-korea-opinion/>; Park, *supra* note 102, at 81-84; Scobell, *supra* note 101, at 7-9.

107. See Wendy Sherman & Evans Revere, *Why We've Fallen Short and Why That's No Longer an Option*, TIME (2017), <http://time.com/north-korea-opinion/>.

international concerns surrounding a budding nuclear power.¹⁰⁸ If the United States, China, Russia, France, the United Kingdom, Germany, and any other interested nation wants to successfully negotiate with North Korea to produce a result similar to that of the JCPOA with Iran, the levers discussed earlier must be utilized.¹⁰⁹

North Korea must be brought to a state of economic desperation, to a point at which the country's leaders, not just the country's people, will be concerned enough to negotiate.¹¹⁰ North Korea must be willing to negotiate to have a successful and productive negotiation process.¹¹¹ By enforcing the sanctions and ensuring the sanction regimes constrict North Korea's economy, the U.N. and the United States may push North Korea into a position in which seeking relief from sanctions will take precedence over its "contempt for its neighbors."¹¹² The appropriate leverage of China's relationship with North Korea, and further, China's enforcement of the sanctions imposed upon North Korea, will play an important role because of China's significance in connecting North Korea to the international community.¹¹³ If North Korea can be coaxed to follow the path of Iran, negotiations to denuclearize the country can happen and may be successful.¹¹⁴

108. See JCPOA, *supra* note 12, pmb., at i-ii; see also Ianchovichina et al., *supra* note 26, at 2.

109. See JCPOA, *supra* note 12, pmb., at i-ii; see also Tabatabai, *supra* note 18, at 225-26.

110. See Sang-Hun & Landler, *supra* note 73; see also SPECIALIST IN MIDDLE EASTERN AFFAIRS, *supra* note 27, at 21; Albert, *supra* note 54; *East & Southeast Asia: Korea, North*, *supra* note 60; Tabatabai, *supra* note 18, at 225-26.

111. See Tabatabai, *supra* note 18, at 226, 230-31; see also Chris Hill, *Avoiding the Temptation to Do Nothing*, TIME (2017), <http://time.com/north-korea-opinion/>.

112. Hill, *supra* note 111 (analyzing North Korea's resistance to the international community and how that may influence North Korea's actions because its leader will not cooperate and refuses to denuclearize if for no other reason than to taunt its neighbors); see Iyengar, *supra* note 14; Sang-Hun & Landler, *supra* note 73; see also Charbonneau, *supra* note 20; Gladstone, *supra* note 20.

113. See Scobell, *supra* note 101, at 1-3 (describing and analyzing the unique and strained relationship between North Korea and China, which illustrates why the relationship should be leveraged carefully as to not disturb its delicate nature); see also Davenport, *supra* note 102; Park, *supra* note 102, at 75-77; Tabatabai, *supra* note 18, at 226-30 (noting the importance of Iran's desire to reenter the international community because it caused an internal desire to negotiate).

114. See Tabatabai, *supra* note 18, at 225-26.

IV. OUTLINING A DEAL WITH NORTH KOREA USING THE JOINT COMPREHENSIVE PLAN OF ACTION

The P5+1 and the EU signed the JCPOA with Iran on July 14, 2015, at Vienna, signifying a historic moment and creating a historic document.¹¹⁵ The JCPOA is a historic document for two reasons: first, the document is a unique international legal instrument in that it is not a treaty nor another conventional international instrument, and second, Iran signed the document and was willing to comply with the terms and the inevitable end of its nuclear weapons program.¹¹⁶ The JCPOA explicitly states that the text and the agreement “should not be considered as setting precedent for any other state or fundamental principles of international law.”¹¹⁷ The instructions in the document, however, do not state the document cannot be used as a guide or template for negotiating the denuclearization of an unruly state.¹¹⁸ Despite the Agreement’s explicit statement against it establishing an international precedent, its nature as a nonbinding treaty makes this statement curiously nonbinding; thus, the document could be used as a guide to de-escalate the situation with North Korea.¹¹⁹

Using this Agreement as a guide for negotiating with North Korea gives all parties involved a clear guide and can help manage their expectations.¹²⁰ The JCPOA is a thorough agreement, with over 100 pages of text comprising five annexes, detailing the plan of action, each party’s responsibilities under the agreement, and what dimensions of Iran’s nuclear program are included in the agreement.¹²¹ The remarkable

115. JCPOA, *supra* note 12, preface.

116. See *id.* pmbl. & general; see also Michael D. Ramsey, *Evading the Treaty Power: The Constitutionality of Nonbinding Agreements*, 11 FIU L. REV. 371, 372-74 (2016); Milena Sterio, *President Obama’s Legacy: The Iran Nuclear Agreement*, 48 CASE W. RES. J. INT’L L. 69, 69-70, 74-76 (2016).

117. JCPOA, *supra* note 12, pmbl. & general provisions, at xi.

118. *Id.*

119. *Id.*; see Ramsey, *supra* note 116, at 373-75; see also Interview by Zachary Laub with John B. Bellinger, III, Adjunct Senior Fellow for Int’l & Nat’l Sec. Law, Council on Foreign Relations (July 23, 2015) [hereinafter Interview with John B. Bellinger, III], <https://www.cfr.org/interview/how-binding-iran-deal> (discussing the ambiguous nature of the Iranian deal document because it is not technically a treaty and the implications that stem therefrom); Stephen Collinson, *Iran Deal: A Treaty or Not a Treaty, That Is the Question*, CNN POL. (Mar. 12, 2015), <https://www.cnn.com/2015/03/12/politics/iran-nuclear-deal-treaty-obama-administration/index.html>.

120. JCPOA, *supra* note 12, pmbl. & general provisions, at xi; see Sterio, *supra* note 116, at 74-79 (describing the detail and the advantages to Iran, which could be similar advantages for North Korea and guide the parties’ expectations of advantages and terms of the agreement if a similar document is drafted).

121. JCPOA, *supra* note 12, pmbl., at x-xiv; see Sterio, *supra* note 116, at 69-70.

thoroughness of the document and the effectiveness of such an approach is compounded by the step-by-step method taken throughout the document, which details each step of the plan and creates a detailed timeline for each action step.¹²² Such detail provides each party with notice for dates by which it must meet certain expectations.¹²³

The flexibility of the JCPOA makes this agreement the most attractive precedent for use with North Korea.¹²⁴ Similar to the Iranian situation, any attempted negotiations with North Korea to end its nuclear program have failed for several decades, making the current situation ever more pressing and delicate.¹²⁵ Past failures in negotiating with North Korea, along with the current escalated tensions between the President of the United States and the leader of North Korea, makes proper diplomacy, a good plan, and an outline for a proposed agreement more important now than ever.¹²⁶

Reviewing each step of the plan and the provisions of the JCPOA highlights not only its flexibility but also how the terms of such an agreement could be adapted from the JCPOA to apply to North Korea.¹²⁷ The most important piece of flexibility within the JCPOA is a third-party, neutral enforcement agency, the International Atomic Energy Agency (IAEA).¹²⁸ The use of the IAEA as a monitoring agency ensures that signing members, especially Iran, are afforded a neutral party to assess

122. JCPOA, *supra* note 12, general provisions & pmb., Implementation Plan § 34, at i-v (detailing the signing parties' "commitments" and the timeline along which each commitment should be completed); see Sterio, *supra* note 116, at 69-70; see also Diba Alemi, *The Importance of Improving the Dispute Resolution Process of Iran's Nuclear Deal*, 17 PEPP. DISP. RESOL. L.J. 91, 102 (2017) (discussing the inflexibility of the timeline of the dispute resolution process however, the implementation of the commitments are flexible); Collinson, *supra* note 119.

123. JCPOA, *supra* note 12, Implementation Plan, § 34, at i-v.

124. Cortright, *supra* note 51, at 19-21; see also Interview with John B. Bellinger, III, *supra* note 119; see also JCPOA, *supra* note 12, Implementation Plan, § 34, at i-v.

125. Simon Elegant, *Why the Six-Party North Korea Talks Failed*, TIME (Dec. 23, 2006), <http://content.time.com/time/world/article/0,8599,1572764,00.html>; see Tabatabai, *supra* note 18, at 225-30; see also SPECIALIST IN MIDDLE EASTERN AFFAIRS, *supra* note 27, at 55-59; Inventory of Int'l Nonproliferation Orgs. & Regimes Ctr. for Nonproliferation Stud., *supra* note 16.

126. Elegant, *supra* note 125; see Matt Stevens, *Trump and Kim Jong Un, and the Names They've Called Each Other*, N.Y. TIMES (Mar. 9, 2018), <https://www.nytimes.com/2018/03/09/world/asia/trump-kim-jong-un.html>; see also Cortright, *supra* note 51, at 19-20.

127. JCPOA, *supra* note 12; see Cortright, *supra* note 51, at 19-21; see also Interview with John B. Bellinger, III, *supra* note 119; Sterio, *supra* note 116, at 77-80.

128. JCPOA, *supra* note 12, pmb. & general provisions, at x, xiii; see Int'l Atomic Energy Agency [IAEA], *Protocol Additional to the Agreement Between the Islamic Republic of Iran and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*, IAEA Doc. INFCRIC/214/Add. 1, 2 (Mar. 4, 2016) [hereinafter IAEA Iran Protocol].

compliance.¹²⁹ The IAEA plays an integral role at each step of the plan—its confirmation of Iran’s compliance starts and ends the agreement and helps ensure the parties have a fair determination at each step of the procedure.¹³⁰

The JCPOA, while a flexible and new international legal instrument, is not perfect by any means, and before the P5 uses it as a template for negotiations with North Korea, one of the JCPOA’s most glaring flaws should be addressed to ensure the same mistake is not made with North Korea.¹³¹ The dispute resolution clause of the JCPOA is a more rigid portion of the agreement and is not equipped to handle disputes that could arise under the agreement.¹³² The deal, as written, has a dispute resolution process that is supposed to last for a total of thirty-five days between the three mechanisms available to a complaining party.¹³³ While the process has specific steps, is clear, and is arguably streamlined, it seems an inadequate, if not a rushed, process for dispute resolution for such a significant agreement.¹³⁴ The negotiations it took to reach the deal were difficult for all parties involved, and the dispute resolution clause seems to allow for all of the hard work to disappear if one party is in disagreement with another party under the deal.¹³⁵

The JCPOA describes the steps a signing party should take if it believes Iran is not meeting its commitments under the agreement and the

129. JCPOA, *supra* note 12, pmb1. & general provisions, at x, xiii; JCPOA, *supra* note 12, Implementation Plan; IAEA Iran Protocol, *supra* note 129, at 2.

130. The JCPOA lists the “Implementation Day” of the agreement as the date the IAEA certifies Iran has implemented the first stages of the plan and the agreement is terminated by the U.N. Security Council ten years after the Adoption Day but can be terminated earlier based on the IAEA’s reports to the signing parties. JCPOA, *supra* note 12, Implementation Plan, Annex 5, §§ 15-16.

131. See Cortright, *supra* note 51, at 19-21; see also Alemi, *supra* note 122, at 99-101.

132. Alemi, *supra* note 122, at 99-101; JCPOA, *supra* note 12, Dispute Resolution Mechanism.

133. JCPOA, *supra* note 12, Dispute Resolution Mechanism.

134. *Id.*; see Alemi, *supra* note 122, at 99-102.

135. JCPOA, *supra* note 12, Dispute Resolution Mechanism; see Alemi, *supra* note 122, at 101-05; see also Mark Landler, *Trump Abandons Iran Nuclear Deal He Long Scorned*, N.Y. TIMES (May 8, 2018), <https://www.nytimes.com/2018/05/08/world/middleeast/trump-iran-nuclear-deal.html> (detailing the withdrawal of the United States from the Joint Comprehensive Plan of Action; the withdrawal of the United States emphasizes the problems of the dispute resolution mechanisms of the Agreement discussed in the text above as well as the ability for parties to easily leave the agreement); Carol Morello & Karen DeYoung, *Historic Deal Reached with Iran to Limit Nuclear Program*, WASH. POST (July 14, 2015), https://www.washingtonpost.com/world/historic-nuclear-deal-with-iran-expected-to-be-announced/2015/07/14/5f8ddd2-29ea-11e5-a5ea-cf74396e59ec_story.html?utm_term=.4c59a3b1dbc3

steps Iran can take if it finds another party has not met its obligations.¹³⁶ First, a party, including Iran, must refer the issue to the Joint Commission, which is the “E3/EU+3 and Iran,” for review, which should take no longer than fifteen days.¹³⁷ The complaint may also be submitted to the Ministers of Foreign affairs for a “parallel” review of the issue.¹³⁸ If the complaining party is not satisfied, an Advisory Board of three members has another fifteen days to review the complaint.¹³⁹ Finally, a Joint Commission can consider the Advisory Board opinion for five days.¹⁴⁰ This process is prescribed in the JCPOA as the sole dispute-resolution mechanism for the signing parties to the agreement.¹⁴¹

The JCPOA further states that after the complaining party has exhausted all of the options described in the agreement, the party has a right to terminate its commitments under the agreement.¹⁴² This process means that Iran could, theoretically, have a legitimate means out of the deal in less than two months.¹⁴³ The detail describing the dispute resolution may not be problematic, however, the strict timeline is an issue, considering the effort it took for Iran to negotiate at all and now, after a year of negotiating, Iran, or any signing party, could leave the deal in less than two months.¹⁴⁴ While the Iranian deal is signed, the problematic dispute resolution process can be avoided in negotiations with North Korea.¹⁴⁵

The flexibility of the JCPOA makes it an ideal international agreement tool to guide an agreement with North Korea.¹⁴⁶ Because the JCPOA is not an actual treaty, it is not strictly subject to international laws, nor is it subject to domestic laws when a signing party must take action to uphold its commitments.¹⁴⁷ While the dispute resolution mechanism does not seem appropriate or adequate for the JCPOA, negotiations with North

136. JCPOA, *supra* note 12, Dispute Resolution Mechanism.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *See id.*

144. *See id.*; *see also* Alemi, *supra* note 122, at 102-04.

145. *See* Alemi, *supra* note 122, at 102-104; *see also* Cortright, *supra* note 51, at 19-21; JCPOA, *supra* note 12, Dispute Resolution Mechanism.

146. *See* Cortright, *supra* note 51, at 19; *see also* Interview with John B. Bellinger, III, *supra* note 119.

147. *See* Interview with John B. Bellinger, III, *supra* note 119; *see also* Ramsey, *supra* note 116, at 372-73.

Korea can create a different dispute resolution mechanism more suited to the needs of North Korea and other parties involved in the talks.¹⁴⁸ Finally, the flexibility may appeal to the North Korean leadership, which may prefer an agreement curated to its needs and the wants of the country, and a flexible, non-treaty, plan of action could be just the tool for the job.¹⁴⁹

V. CONCLUSION

The nonproliferation of countries deemed to be nonnuclear states has been no simple task for the international community. In 2015, the Security Council plus Germany, along with the EU, successfully negotiated an agreement with the Islamic State of Iran to end its nuclear weapons program.¹⁵⁰ The result was more than an end to the nuclear program; out of it came the JCPOA, an international agreement that is not entirely a treaty nor a contract.¹⁵¹ This new international diplomacy tool has the potential to create successful negotiating with other nonnuclear states.¹⁵²

The current situation involving North Korea's nuclear missile testing has the international community scrambling to stop North Korea's use of nuclear weapons.¹⁵³ North Korea is in a similar situation to that of Iran before it signed the JCPOA. The dealings and negotiations with Iran leading up to the JCPOA should serve as a guide to dealing with and negotiating a North Korean Plan of Action.

148. See JCPOA, *supra* note 12, Dispute Resolution Mechanism; see also Alemi, *supra* note 122, at 102-04.

149. See Collinson, *supra* note 119; see also Cortright, *supra* note 51, at 19-20.

150. See JCPOA *supra* note 12, preface.

151. See Interview with John B. Bellinger, III., *supra* note 119; see also Ramsey, *supra* note 116, at 372-73.

152. See Cortright, *supra* note 51, at 19-20.

153. S.C. Res. 2397, *supra* note 8, ¶ 1; see Campos & Shin, *supra* note 52.