

TALKING FOREIGN POLICY: NORTH KOREA SUMMIT

“Talking Foreign Policy” is a one-hour radio program, hosted by the Dean of Case Western Reserve University School of Law, Michael Scharf, in which experts discuss the important foreign policy issues. The premier broadcast (airdate: March 1, 2012) covered the controversial use of predator drones, humanitarian intervention in Syria, and responding to Iran’s acquisition of nuclear weapons. Subsequent broadcasts have covered topics such as the challenges of bringing indicted tyrants to justice, America’s Afghanistan exit strategy, the issue of presidential power in a war without end, and President Obama’s second term foreign policy team. This broadcast focused on the U.S.-North Korea Nuclear Summit.

The purpose of the radio show is to cover some of the most salient foreign policy topics and discuss them in a way that can make it easier for listeners to grasp. “Talking Foreign Policy” is recorded in the WCPN 90.3 Ideastream studio, Cleveland’s NPR affiliate. Michael Scharf is joined each session with a few expert colleagues known for their ability to discuss complex topics in an easy-to-digest manner:

- The ethicist: Shannon French, director of Case Western Reserve’s Inamori Center for Ethics and Excellence;
- The Asian Studies expert: Professor Tim Webster, the Director of East Asian Legal Studies at Case Western Reserve University;
- The international law guru: Milena Sterio, Associate Dean of The Cleveland Marshall College of Law; and
- The negotiator: Paul R. Williams, president of the Public International Law and Policy Group.

Archived broadcasts (both in audio and video format) of “Talking Foreign Policy” are available at: <https://law.case.edu/TalkingForeignPolicy>. The transcript of the May 24, 2018 broadcast appears below.

TALKING FOREIGN POLICY: NORTH KOREA SUMMIT

MAY 24, 2018 BROADCAST¹

MICHAEL SCHARF: The United States and North Korea — two countries that fought a brutal war and never made peace. No sitting U.S. President has met with his North Korean counter-part;² but a few months ago, North Korean president Kim Jong-un warned that the whole of the United States was in range of his country's nuclear weapons, and President Trump responded by calling Kim “Little Rocket Man” and threatening to annihilate his nation.³ Then, in a dramatic turnabout in March, the two leaders agreed to hold a historic Presidential Summit.⁴ But on May 24th, President Trump announced that the Summit was off.⁵ In this broadcast of *Talking Foreign Policy*, we've assembled a panel of experts on peace negotiations, national security, human rights, and Asian affairs to discuss the prospects and pitfalls for a U.S. - North Korea Summit, right after the news.

Welcome to *Talking Foreign Policy*. I'm your host Michael Scharf, Dean of Case Western Reserve University School of Law. In this broadcast, our expert panelists will be discussing the prospects for a U.S.-North Korea Summit. For our program today, we've assembled a panel of experts on peace negotiations, national security,

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1. Transcript edited and footnotes added by Cox Center Fellows Emma Lawson, Alexander Peters, Courtney Koski, and Senior Cox Center Fellow Alexandra Mooney.
 2. Robbie Gramer & Emily Tamkin, *Decades of U.S. Diplomacy with North Korea: A Timeline*, FOREIGN POLICY (Mar. 12, 2018, 6:48 PM), <https://foreignpolicy.com/2018/03/12/a-timeline-of-u-s-negotiations-talks-with-north-korea-trump-kim-jong-un-pyongyang-nuclear-weapons-diplomacy-asia-security/>.
 3. Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 30, 2017, 7:25 AM), https://twitter.com/realDonaldTrump/status/936209447747190784?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E936209447747190784&ref_url=https%3A%2F%2Fwww.latimes.com%2Fpolitics%2Fla-pol-updates-everything-president-trump-calls-kim-jong-un-little-rocket-1512093131-htlmstory.html.
 4. Gramer & Tamkin, *supra* note 2.
 5. Mark Landler, *Trump Pulls Out of North Korea Summit Meeting with Kim Jong-un*, N.Y. TIMES (May 24, 2018), <https://www.nytimes.com/2018/05/24/world/asia/north-korea-trump-summit.html>. Trump subsequently changed his mind and the Summit was held on June 11, 2018. For a summary of the Summit, see David Jackson, *US-North Korea Summit*, USA TODAY (June 12, 2018), *available* at <https://www.usatoday.com/story/news/politics/2018/06/11/singapore-donald-trump-kim-jong-un-denuclearization-summit/689817002/>.

human rights, and North Korean-U.S. diplomacy. Joining us from a studio in Washington D.C. is Dr. Paul Williams,⁶ the president of the Public International Law and Policy Group—a Nobel Peace Prize nominated NGO that has provided legal counsel in a dozen peace negotiations over the past twenty-two years.⁷ Welcome to the show Paul!

PAUL WILLIAMS: Thanks, Michael. It's my pleasure.

MICHAEL SCHARF: And in our studio in Cleveland, I'm joined by Dr. Shannon French,⁸ a former faculty member of the U.S. Naval Academy who now directs the Inamori International Center for Ethics and Excellence at Case Western Reserve University. She's also director of the nation's first ever master's program in Military Ethics.⁹ Thanks for being with us, Shannon.

SHANNON FRENCH: Thanks, Michael. Happy to be here.

MICHAEL SCHARF: Also here with me is Professor Milena Sterio,¹⁰ the Associate Dean of Cleveland Marshall College of Law and renowned international law expert. It's good to see you again, Milena.

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6. Paul Williams, Faculty, AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW, <http://www.wcl.american.edu/faculty/pwilliams/> (last visited Jan. 1, 2019). Paul R. Williams holds the Rebecca I. Grazier Professorship in Law and International Relations at American University. Professor Williams teaches at the School of International Service and the Washington College of Law and also directs the joint JD/MA program in International Relations. Prior to his arrival at American University, Paul Williams served as a Senior Associate with the Carnegie Endowment for International Peace and a Fulbright Research Scholar at the University of Cambridge.
 7. PILPG, *available at* <https://www.publicinternationallawandpolicygroup.org/> (last visited Jan. 1, 2019).
 8. Shannon E. French, Ph.D., CASE WESTERN RESERVE UNIVERSITY, <https://case.edu/inamori/about-the-center/staff/shannon-french> (last visited Jan. 1, 2019). Prior to her involvement in CWRU School of Law, Shannon French taught ethics for eleven years at the United States Naval Academy and served as Associate Chair of the Department of Leadership, Ethics, and Law.
 9. *Master of Arts in Military Ethics at Case Western Reserve University*, CASE WESTERN RESERVE UNIVERSITY, <http://militaryethics.case.edu/> (last visited Jan. 1, 2019).
 10. Milena Sterio, CLEVELAND-MARSHALL COLLEGE OF LAW, http://facultyprofile.csuohio.edu/csufacultyprofile/detail.cfm?FacultyID=M_STERIO (last visited Jan. 1, 2019). Before joining Cleveland-Marshall, Milena Sterio worked as an associate at Cleary, Gottlieb,

MILENA STERIO: It is great to be here.

MICHAEL SCHARF: And, finally, we have Professor Tim Webster,¹¹ the Director of East Asian Legal Studies at Case Western Reserve University. Welcome, Tim.

TIM WEBSTER: Thank you, Michael.

MICHAEL SCHARF: So, let's begin with a short refresher on U.S.-North Korean relations. When the Korean conflict ended in 1953, there was no peace agreement—only an armistice.¹² Milena, as an international law expert, can you tell us the implications of that?

MILENA STERIO: Sure. So, the Korean armistice agreement, which was signed in 1953, was an agreement signed by the armies of North Korea, China, and the United States, and that brought an end to the hostilities to the war that was going on in Korea at the time.¹³ However, it was not a peace treaty signed by the respected governments. Meaning that there were lots of unresolved issues that did not end with the armistice.¹⁴

MICHAEL SCHARF: And then in the aftermath, there was a massive military build-up on both sides. There were landmines placed in the demilitarized zone, and there was a lot of negative rhetoric, right?¹⁵

Steen & Hamilton in New York City and as an Adjunct Law Professor at Cornell.

11. Timothy Webster, CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW, <https://law.case.edu/Our-School/Faculty-Staff/Meet-Our-Faculty/Faculty-Detail/id/1020> (last visited Jan 1, 2019). Before joining Case, Timothy Webster was a lecturer at Yale Law School and senior fellow at its China Law Center. He has held visiting professorships at the University of Paris—Dauphine, National Taiwan University, and Southwest University of Political Science and Law (Chongqing, China).
12. *Armistice Agreement for the Restoration of the South Korean State (1953)*, OUR DOCUMENTS, <https://www.ourdocuments.gov/doc.php?flash=false&doc=85> (last visited Jan. 1, 2019).
13. *Id.*
14. *Id.*
15. Joori Roh & Josh Smith, *North, South Korea Begin Removing Landmines Along Fortified Border*, REUTERS (Sept. 30, 2018, 11:22 PM), <https://www.reuters.com/article/us-northkorea-southkorea-dmz/north-south-korea-begin-removing-landmines-along-fortified-border-idUSKCN1MB1BG>.

MILENA STERIO: Exactly, and there was supposed to be a peace treaty. The idea at the time was basically to end the conflict, sign the armistice, and then negotiate a peace treaty. The problem is that that peace treaty was never actually negotiated. So up to this date, there is no peace treaty for Korea.¹⁶

MICHAEL SCHARF: So, let's fast-forward to the year 2002. That's the year that North Korea admitted to having a nuclear weapons program, and it withdrew from the Nuclear Non-Proliferation Treaty.¹⁷ Paul, can you tell us what the significance of that would be?

PAUL WILLIAMS: Well, Michael, that was hugely significant. The Nuclear Non-Proliferation Treaty is essentially the cornerstone of global nuclear security.¹⁸ By exiting that treaty, North Korea was essentially signaling that it was going to go nuclear, so to speak; and it did.¹⁹ And by exiting the treaty, all bets for verification, for monitoring—those doors were all closed, and North Korea was essentially able to aggressively pursue its nuclear program.²⁰

MICHAEL SCHARF: Well why would it want to do that?

PAUL WILLIAMS: Deterrence? The end of the conflict between the U.S. and North Korea, as Milena had mentioned, was an armistice, it wasn't a peace deal. American troops remain in great numbers in South Korea and have engaged in annual war gaming near the border. North Korea wanted to basically have a nuclear weapons capability in order to, one, protect itself; and two, to reshape the geo-political environment on the Korean peninsula and in Asia.²¹

MICHAEL SCHARF: It turns out, it wasn't just bluffing, because in 2006, North Korea announced its first successful nuclear weapons

16. Edward Wong, *Why Is the U.S. Wary of a Declaration to End the Korean War*, N.Y. TIMES (Aug. 13, 2018), <https://www.nytimes.com/2018/08/13/world/asia/korea-peace-treaty-trump-us.html>.

17. Gramer & Tamkin, *supra* note 2.

18. Treaty on the Non-Proliferation of Nuclear Weapons, 1 July 1968, 21 U.S.T. 483, 729 U.N.T.S. 161, *available at* <https://www.un.org/disarmament/wmd/nuclear/npt/text>.

19. Gramer & Tamkin, *supra* note 2.

20. *Id.*

21. *Why Does North Korea Want Nukes*, HERITAGE (Aug. 13, 2018), <https://www.heritage.org/insider/summer-2018-insider/why-does-north-korea-want-nukes>.

test.²² And in the following years, North Korea announced a number of additional successful tests, including the underground explosion of a hydrogen bomb.²³ Then it turned to testing long-range missiles.²⁴ Milena and Paul, how did the international community respond to these developments?

MILENA STERIO: One of the things that happened is that the United Nations Security Council adopted several resolutions related to North Korea. There actually have been a total of twenty-one resolutions on North Korea since the 1950s, but nine resolutions which imposed crippling sanctions against North Korea over the past twelve years or so, the last of which was just a few months ago.²⁵ The sanctions ended up being tightened up over the years and imposed on several sectors of the North Korean economy, including on North Korean exports. And the idea, obviously, of sanctions is to try to persuade without use of force the North Korean government to cease and desist from developing a nuclear weapons arsenal.

MICHAEL SCHARF: So that was the stick. Paul, can you tell us about any carrots that were attempted?

PAUL WILLIAMS: Yeah, in addition to the sticks that Milena had mentioned, the international community launched the six-party talks—which included the United States, North Korea, South Korea, as well as China, Japan, and Russia.²⁶ And it was an off and on negotiation—and I should note that when the negotiations were off, the North Koreans were testing their nuclear weapons, their missiles, their rockets.²⁷ And in fact, just a year prior to the announcement of these talks, the North Koreans had done significant testing.²⁸ And every year since 2013, they've tested their nuclear weapons capability or further refined it, while at the same time saying they were interested in negotiations and talks to end that program.²⁹

22. Gramer & Tamkin, *supra* note 2.

23. *Id.*

24. *Id.*

25. Kelsey Davenport, *UN Security Council Resolutions on North Korea, ARMS CONTROL ASS'N* (last updated Jan. 2018), <https://www.armscontrol.org/factsheets/UN-Security-Council-Resolutions-on-North-Korea>.

26. Gramer & Tamkin, *supra* note 2.

27. *Id.*

28. *Id.*

29. Kelsey Davenport, *Chronology of U.S.-North Korean Nuclear and Missile Diplomacy: 2013*, ARMS CONTROL ASS'N (last updated Dec. 2018), <https://www.armscontrol.org/factsheets/dprkchron#2013>.

MICHAEL SCHARF: Alright. So, then after Donald Trump was elected president, the leaders of the two countries began to use ever more threatening rhetoric in their conversation over Twitter and press releases. Let me provide a few quotes to give the listening audience an idea of what I'm talking about. So first, the president of North Korea, Kim Jong-un, he said:

The whole of the US mainland is within our nuclear strike range. The nuclear button is always on my table. The US must realize that this is not a threat, but reality.³⁰

Now, Donald Trump responds:

North Korean leader Kim Jong-un just said the 'nuclear button is on his desk at all times.' Will someone from his depleted, food starved regime please inform him that I too have a button, but it is a much bigger and more powerful one than his, and my button works!³¹

Trump also said, "Kim Jong-un of North Korea, who is obviously a mad man who doesn't mind starving or killing his people, will be tested like never before!"³² And Kim responded, "I will surely and definitely tame the deranged US dotard with fire."³³ And at that point a lot of people looked up the word "dotard." [Laughter] Trump then responds, "They will be met with fire and fury like the world has never seen."³⁴ And now, let me ask the panelists, how unusual is this

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30. Bruce Harrison et al., *Kim Highlights 'nuclear button' On His Desk, Offers Olympic Talks*, NBC NEWS (Dec. 31, 2017, 9:58 PM) <https://www.nbcnews.com/news/north-korea/kim-says-north-korea-s-nuclear-weapons-will-prevent-war-n833781> (last visited Nov 4, 2018).
 31. Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 2, 2018, 7:49 PM), <https://twitter.com/realdonaldtrump/status/94835557022420992?lang=en>.
 32. Donald J. Trump (@realDonaldTrump), TWITTER (Sept. 22, 2017, 5:28 AM), https://twitter.com/realdonaldtrump/status/911175246853664768?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E911175246853664768&ref_url=https%3A%2F%2Fwww.cnn.com%2F2017%2F09%2F22%2Fpolitics%2Fdonald-trump-north-korea-insults-timeline%2Findex.html.
 33. Anna Fifield, *Kim Jong Un Calls Trump a 'mentally deranged U.S. Dotard'*, WASH. POST (Sept. 21, 2017), <https://www.washingtonpost.com/news/worldviews/wp/2017/09/21/north-korean-leader-to-trump-i-will-surely-and-definitely-tame-the-mentally-deranged-u-s-dotard-with-fire/>.
 34. Jonathan Ernst, *Trump Says North Korea Will Be Met with 'fire and fury' if it Threatens U.S.*, REUTERS (Aug. 8, 2017, 3:40 PM), <https://www.reuters.com/article/us-northkorea-missiles-usa->

kind of rhetoric to be coming from two presidents of sovereign countries in the world today? Anybody? Tim.

TIM WEBSTER: Well, from North Korea's side, it's actually pretty common. This kind of bellicose, very floral, very over the top language is just sort of de rigueur, that's the way they communicate. You can see this parodied in popular culture from *Thirty Rock*,³⁵ the great TV show with Tina Fey, to *The Interview*, a movie starring James Franco and Seth Rogan.³⁶ So, you know, it's no surprise that North Korea uses this kind of language. What is surprising and what is sort of unprecedented, is that we have an American President playing along. Usually, they say nothing, or occasionally they'll make an off the cuff insult. George Bush called Kim Jong-Il "a pygmy,"³⁷ you know, those kinds of things. But we've never seen this sort of back and forth, and of course Trump loves the drama. He loves the angst. He loves the limelight. And that's why you have this exchange of heightened and fiery rhetoric.

MICHAEL SCHARF: How dangerous do you think this is? Shannon?

SHANNON FRENCH: What bothers me is that it's so petulant and undignified, and it seems to not take into account the moral weight of the kinds of decisions that are on the table here. So, it comes across like a game with schoolboys, but the stakes are too high for that.

MICHAEL SCHARF: So, then on March 8th, in the middle of all this rhetoric, President Trump announces that he is willing to sit down with Kim Jong-un for a nuclear peace summit.³⁸ Tim, as an Asian specialist, how do you explain the sudden turnabout?

TIM WEBSTER: If you go back to the campaign trail, Trump said on a number of occasions that he would be willing to sit down and talk to Kim Jong-un.³⁹ He said he wanted to open a dialogue, he said there

trump/trump-says-north-korea-will-be-met-with-fire-and-fury-if-it-threatens-u-s-idUSKBN1AO28O.

35. *30 Rock* (Universal Media Studios & Universal Television, Seasons 5 & 6).
36. *THE INTERVIEW* (Point Grey Pictures & LStar Capital 2014).
37. Helene Cooper, *Bush Writes to North Korean Leader*, N.Y. TIMES (Dec. 6, 2007), <https://www.nytimes.com/2007/12/06/world/asia/06cnd-korea.html>.
38. Gramer & Tamkin, *supra* note 2.
39. Steven Holland & Emily Flitter, *Exclusive: Trump Would Talk to North Korea's Kim, Wants to Renegotiate Climate Accord*, REUTERS (May 17,

was no problem with that. And in making that kind of pronouncement, Trump is doing just what Obama did when Obama was a candidate in 2008.⁴⁰ Even towards the end of the Clinton administration in 2000, Clinton said, “I’m willing to go meet with Kim Jong-Il,” who was Kim Jong-un’s father. Clinton, of course sent his Secretary of State, Madeline Albright, who then met with Kim Jong-Il,⁴¹ but this would have been the first meeting between sitting presidents or sitting leaders of the two countries. So, was it a big turnabout? I think once it became clear that North Korea could actually hit the U.S. with a nuclear missile, that changed the stakes.

MICHAEL SCHARF: Shannon, how do you read it?

SHANNON FRENCH: I agree that this move is in response to some of the technological advances by North Korea, but it also shows what I would almost want to call a weird kind of optimism on the part of President Trump—that he thinks he can make some kind of dramatic change or shift that we haven’t seen in the past, precisely by doing what hasn’t been done in the past. But, it ignores the lessons of history.

MICHAEL SCHARF: And Milena, do you take this at face value? Or are you more cynical?

MILENA STERIO: You can go ahead and announce a big summit, but I think if you want to be successful, if you want to actually achieve something at that summit, almost all diplomacy experts would agree that there is a ton of work that would need to be done in advance of the summit. There is so much that would need to be pre-negotiated before the summit. So, to go ahead and announce that in two weeks the President of the United States is going to meet with the President of North Korea, it’s really posturing more than anything else. And it’s

2016, 5:03 PM), <https://www.reuters.com/article/us-usa-election-trump-exclusive-idUSKCN0Y82JO>.

40. Bryon York, *Obama, without Preconditions or Preparation*, NATIONAL REVIEW (July 23, 2008, 4:55 PM), <https://www.nationalreview.com/corner/obama-without-preconditions-or-preparation-byron-york/>.

41. Anna Fifield, David Nakamura & Seung Min Kim, *Trump Accepts Invitation to Meet with North Korean Leader Kim Jong Un*, WASH. POST (Mar. 8, 2018), https://www.washingtonpost.com/world/asia_pacific/north-korean-leader-kim-jong-un-has-invited-president-trump-to-a-meeting/2018/03/08/021cb070-2322-11e8-badd-7c9f29a55815_story.html?utm_term=.e7f7c09400ad.

unrealistic to think that in such a short time frame, you can actually achieve a true peace treaty.

MICHAEL SCHARF: So, you never really thought that the Summit was going to happen, or not on June 12 at least.

MILENA STERIO: Well I either thought it wasn't going to happen, or I thought if it does happen then nothing much will actually come out of it, and if anything Donald Trump could then say "you know, I tried. I went there and I tried, and they wouldn't agree to anything."

MICHAEL SCHARF: So then on May 24th, President Trump, perhaps predictably, sent the following message to Kim Jong-un, and of course he released it for wide publication in every newspaper around the world:

Sadly, based on the tremendous anger and open hostility displayed in your most recent statements, I feel that it is inappropriate at this time to have this long-planned meeting. Therefore, please let this letter represent that the Singapore Summit, for the good of both parties, but to the detriment of the world, will not take place.⁴²

Trump goes on to say, "You talk about your nuclear capabilities, but ours are so massive and powerful that I pray to God that they will never have to be used."⁴³ Kind of a thinly veiled threat there. Well when we return after our short break, our experts are going to tell us what they make of this latest turn of events, whether they think the summit ever will take place, and what's at stake. We'll be back in just a moment.

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MICHAEL SCHARF: Welcome back to *Talking Foreign Policy*, brought to you by Case Western Reserve University and WCPN 90.3 idea stream. I'm Michael Scharf, Dean of Case Western Reserve University School of Law. I'm joined today by famed peace negotiator, Dr. Paul Williams, military ethicist, Dr. Shannon French, international law guru, Associate Dean Melina Sterio, and an Asian Affairs expert, Professor Tim Webster. We're talking today about the prospects of a U.S.-North Korean Summit. It's really extraordinary that two countries with such acrimonious relations seem to be at the verge of

42. David E. Sanger, *Trump's Letter to Kim Canceling North Korea Summit Meeting, Annotated*, N.Y. TIMES (May 24, 2018), <https://www.nytimes.com/2018/05/24/world/asia/read-trumps-letter-to-kim-jong-un.html>.

43. *Id.*

actually holding peace talks. Let me begin with Tim Webster, and ask, assuming there is going to be a summit at some point, what would the United States be getting in return for agreeing to these talks?

TIM WEBSTER: First a word about what Kim Jung-un gets. When Donald Trump, or any other U.S. president stands next to and appears in a photo-op with the North Korean leader, that is of tremendous propaganda value for North Korea and for the idea that Kim Jung-un is of equal stature with the world's great leaders. For Trump, the U.S. has for decades tried to denuclearize the Korean Peninsula. The long-term goal of the U.S. is the complete, verifiable, and irreversible denuclearization of the peninsula.⁴⁴ Recently, Kim Jong-un had suggested that they would suspend missile launches, they would suspend nuclear tests, they would dismantle one of their nuclear test sites, which they actually did today, apparently, in view of journalists.⁴⁵ So, those were sort of steps seen as a path forward to a total denuclearization. But with the tossing out of the Summit recently, it's not clear that those will move forward. But the long-term strategy, the long-term plan of the U.S., is the complete denuclearization of the peninsula.⁴⁶

MICHAEL SCHARF: Well, earlier in the broadcast, Paul Williams was telling us that back in 2002, when North Korea decided to start engaging in the development of nuclear weapons,⁴⁷ North Korean leaders did that for their own protection. And I want to return to that thought with you, Paul. What was going on in the rest of the world that would have made North Korea feel that they needed nuclear weapons to protect themselves from the United States?

PAUL WILLIAMS: Well, I think the North Koreans have always been paranoid about their survivability. There was the end of the Cold War, there was the reduction of nuclear weapons stock piles around the globe, and there was a sense that there was a changing time and that, you know, the clock was running out for dictators like Muamar

44. David Welna, 'Complete, Verifiable, Irreversible' A Tough Goal For North Korea Summit, NPR (June 6, 2018, 5:57 PM), <https://www.npr.org/2018/06/06/617619192/complete-verifiable-irreversible-a-tough-goal-for-north-korea-summit>.

45. Reuters, *North Korea Hosts Media to See Closing of Nuclear Site*, N.Y. POST (May 23, 2018, 8:02 AM), <https://nypost.com/2018/05/23/foreign-media-journey-to-see-north-korea-dismantle-nuclear-test-site/> (last visited Nov 4, 2018).

46. Welna, *supra* note 44.

47. Gramer & Tamkin, *supra* note 2.

Gaddafi, Saddam Hussein, and Kim Jong-ill, and that if they wanted to keep their family totalitarian regime going in North Korea, they needed some kind of bargaining chip to put on the table.⁴⁸ And nuclear weapons were the most obvious.

MICHAEL SCHARF: Well, Paul, what about the rhetoric and events leading to the 2003 U.S. invasion of Iraq? Do you think those played any role?

PAUL WILLIAMS: Well, I think it was very clear at the time that the United States was willing to engage in a regime change in order to protect its strategic interests. You know there was the actions in Afghanistan,⁴⁹ the actions in Iraq,⁵⁰ there was Libya giving up its nuclear weapons around that time in exchange for economic inducements,⁵¹ and the North Koreans simply thought “we need to go nuclear in order to preserve our quote unquote ‘way of life’” as they like to call it in North Korea.

MICHAEL SCHARF: So, based on that, Paul, do you think there’s any real possibility that Kim Jong-un will actually give up all of his nuclear weapons, which seem to be not only the source of his power and security, but perhaps his very life?

PAUL WILLIAMS: No.

MICHAEL SCHARF: Care to elaborate?

PAUL WILLIAMS: Kim likes to put denuclearization on the table, and he often does that months before he conducts a dramatic test or a dramatic leap is made in their nuclear capacity. So, this whole notion of “oh we’re willing to denuclearize” came up quite often in the six-party talks.⁵² It’s one of their talking points that they use to induce

48. Erin Blakemore, *Bill Clinton Once Struck a Nuclear Deal With North Korea*, HISTORY (Apr. 17, 2018), <https://www.history.com/news/north-korea-nuclear-deal-bill-clinton-agreed-framework>.

49. *U.S. Relations with Afghanistan*, U.S. DEP’T OF STATE (July 26, 2018), <https://www.state.gov/r/pa/ei/bgn/5380.htm>.

50. Robert D. Kaplan & Rodger Baker, *Why North Korea Needs Nukes*, FORBES (Dec. 4, 2013, 12:22 PM), <https://www.forbes.com/sites/stratfor/2013/12/04/why-north-korea-needs-nukes/#3dd478237d7b>.

51. *Id.*

52. Kelsey Davenport, *The Six-Party Talks at a Glance*, ARMS CONTROL ASS’N (last updated June 2018), <https://www.armscontrol.org/factsheets/6partytalks>.

the United States. As Tim said, what does the United States want? It wants denuclearization of the Korean Peninsula. Kim says “Hey, I’ll denuclearize the Korean Peninsula, can we have a summit, can we go to Singapore, can I get a photo-op, can I get sanctions lifted, can we enter into long and tortuous negotiations which will yield me both psychological as well as economic benefit?” But, it’s going to be very, very difficult for the North Koreans to give up those weapons if they want to continue the tyrannical regime that they use to govern or oppress their people.

MICHAEL SCHARF: Well and there’s two ways that could go. One possibility is negotiations that go on and on and never bear fruit. The other is negotiations that bear fruit in terms of signing an agreement but then are cheated upon afterward. And let me ask Milena, our expert in international law, based on past precedent, such as in Iraq and Libya, how could the U.S. ensure that a deal with North Korea was verifiable? What would happen if North Korea did cheat?

MILENA STERIO: So, imagine a peace treaty, where North Korea agrees to gradually reduce and then destroy its arsenal of nuclear technology. There could be a verification inspection regime set up. It also depends if this is negotiated just between the United States and North Korea, or if there is an international organization involved. When it comes to other countries, there have been other international organizations involved in those verification inspection regimes. For example, the International Atomic Energy Agency⁵³ and the comprehensive nuclear test ban treaty organization.⁵⁴ Those organizations can send inspectors to the relevant countries, and basically engage in inspection and verification. But that requires the agreement and cooperation by the relevant countries.⁵⁵ So North Korea would have to accept those inspections, and if it cheated then sanctions could be re-imposed. If we’re talking about U.S. sanctions, then the U.S. government is obviously free to reimpose sanctions. If we’re talking about U.N. sanctions typically the Security Council would have to vote to reimpose sanctions.⁵⁶

53. *Overview*, INT’L ATOMIC ENERGY AGENCY, <https://www.iaea.org/>.

54. *Who We Are*, PREPARATORY COMMISSION FOR THE COMPREHENSIVE NUCLEAR-TEST-BAN TREATY ORG., <https://www.ctbto.org/>.

55. Joseph H. Beale, *The Jurisdiction of a Sovereign State*, 36 HARV. L. REV. 241, 245 (1923).

56. U.N. Charter art. 39-51.

MICHAEL SCHARF: Not too long ago, something like this was tried for Syria to take away its chemical weapons.⁵⁷ How well did that work?

MILENA STERIO: Right, there is precedent here. I think the North Koreans are focused not so much on Syria but on Iraq and Libya, which you already mentioned. From the North Korean perspective, they're looking at Iraq and Libya, where there was an inspection regime put in place.⁵⁸ You could make the argument that Gaddafi, the Libyan leader in 2003, really tried to respect the investigation and verification regime related to the destruction of his chemical weapons. Ultimately, that road resulted in regime change and Gaddafi's death.⁵⁹ As for Iraq, after Saddam Hussein was weakened by the Security Council obligations that Iraq undertook after the 1991 Persian Gulf War, there was the 2003 U.S. invasion, and Saddam Hussein was ultimately convicted and put to death.⁶⁰ From the North Korean perspective of looking at these precedents, I'm skeptical, like Paul, because I really don't see what's in it for them. Looking at these precedents, they might say, "Even if we agree now this might not work out for us so well."

MICHAEL SCHARF: So, in both of those cases there was U.S. use of force. You were talking about reimposition of sanctions, but shouldn't we also be talking about enforcement through force? What if North Korea cheats, the U.S. could say, "Ah we gave them the chance, we entered into this treaty. They've cheated, and now we're going to invade. Now we're going to have forcible regime change?"

MILENA STERIO: For the use of force in international law, there are basically only two situations when a country can legally use force against another sovereign country. Those two situations are: Security

57. *Russia, China block Security Council action on use of chemical weapons in Syria*, UN NEWS (Feb. 28, 2017), <https://news.un.org/en/story/2017/02/552362-russia-china-block-security-council-action-use-chemical-weapons-syria>.

58. Nigel Morris and Andrew Buncombe, *Libya Gives Up Nuclear and Chemical Weapons*, INDEPENDENT (Dec. 20, 2003), <https://www.independent.co.uk/news/world/politics/libya-gives-up-nuclear-and-chemical-weapons-83350.html>.

59. Orde F. Kittrie, *Averting Catastrophe: Why the Nuclear Proliferation Treaty is Losing its Deterrence Capacity and How to Restore It*, 28 MICH. J. INT'L L. 337, 353 (2007).

60. *This Day in History, December 13, 2003: Saddam Hussein Captured*, HISTORY, <https://www.history.com/this-day-in-history/saddam-hussein-captured> (last visited Jan. 1, 2019).

Council authorization or self-defense.⁶¹ With Security Council authorization, the problem is we're in this dynamic where Russia and China are often vetoing resolutions brought forth by the United States.⁶² With respect to North Korea, they might veto a resolution attempting to authorize the use of force against North Korea. In the other situation, self-defense, the United States would have to make the argument that North Korea, by not respecting the deal, whatever the deal is, is a threat to the United States and is about to somehow harm the United States. Then we can act in self-defense. That would have to be the legal argument.

MICHAEL SCHARF: Well, does it strengthen that legal argument to say, "Look, we tried everything. We tried negotiating a treaty, and they cheated. They've got these nuclear weapons, and we feel like our security is at stake. We've tried everything reasonable that anyone could, so now we're going to resort to force?" Does that strengthen the argument?

MILENA STERIO: If you could make the argument that North Korea was actually threatening to use nuclear weapons against the United States.

MICHAEL SCHARF: What about all those quotes I read just a moment ago?

MILENA STERIO: It depends on how seriously you're going to take those quotes. Is that just posturing or is that actual, real, threats against the United States? They're all sorts of creative self-defense arguments that have already been made by the United States. For example, with respect to the 2003 invasion of Iraq, the United States made creative, sort of anticipatory self-defense arguments based on Iraq's alleged possession of chemical weapons.⁶³ And you can certainly, you know, go there again. But, legally speaking, I think it would be a difficult argument.

MICHAEL SCHARF: So, we've been focusing on the nukes. But Paul and Tim, let me ask you—on the last broadcast of "Talking Foreign Policy," we had former Judge of the International Court of Justice, Tom Buergenthal, on the air with us. He compared North Korea to

61. U.N. Charter art. 4.

62. Alexander Benard & Paul J. Leaf, *Modern Threats and the United Nations Security Council: No Time for Complacency (a Response to Professor Allen Weiner)*, 62 STAN. L. REV. 1395, 1396 (2010).

63. Chris Bordelon, *The Illegality of the U.S. Policy of Self-Defense Under International Law*, 9 CHAP. L. REV. 111, 111-112 (2005).

Nazi Germany in terms of its human rights abuses. If you remember, he said that he was part of a recent investigation of the human rights situation in North Korea.⁶⁴ He said that the atrocities were worse than what happened to him when he was in a concentration camp during World War II in Nazi Germany. So, let me ask the two of you: should the U.S. be insisting, if we're going to have talks with North Korea, that they include the human rights record as well as nukes?

PAUL WILLIAMS: Yes. They clearly should. The Americans should be insisting that these human rights violations be included in the talks, and that mechanisms be created in order to minimize or stop these human rights violations. We're talking about mass starvation, concentration camps, extensive torture, and executions.⁶⁵ But the reality is they won't be included in the talks. The "holy grail," so to speak, of these talks is a denuclearized Korean peninsula and normalization in one of the hottest areas in which we have a strategic interest. I don't think that this administration is willing to put the human rights on the table for fear that it may scuttle a nuclear deal.⁶⁶ Although, as others have pointed out, we're not going to be able to have a long-term sustainable nuclear deal or sustainable relationship with North Korea with these ongoing starvations, mass killings, and mass torture.

MICHAEL SCHARF: But, if there was a hierarchy of U.S. national interests at play here, wouldn't you say denuclearizing North Korea is way more important than achieving human rights for the people of North Korea? That that comes into play maybe a few years down the line after we've accomplished the more important goal? Could you make that argument?

TIM WEBSTER: Sure. Certainly from an American perspective, the biggest threat is the nuclear threat. But if we're talking about the 22 million North Koreans that are living under this repressive regime, there are a separate set of strategies that need to be pursued. I would just add, and I agree with almost all that Paul said, that human

64. *Talking Foreign Policy: Jesner v. Arab Bank*, CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW (Oct. 27, 2017), <https://www.youtube.com/watch?v=oVD3Yify380&list=PLOWPmlciK6gkZI-Xfuk0oBc9a3aRX2Wmd&index=3&t=66s>.

65. Maya Salam and Matthew Haag, *Atrocities Under Kim Jong-un: Indoctrination, Prison Gulags, Executions*, N.Y. TIMES (June 11, 2018), <https://www.nytimes.com/2018/06/11/world/asia/north-korea-human-rights.html>.

66. Harold Hongju Koh, *The Foulston Seifkin Lecture: The Trump Administration and International Law*, 56 WASHBURN L.J. 413, 431 (2017).

rights isn't something that Trump has expressed much interest in.⁶⁷ Even prior presidencies, the Obama administration, the Clinton administration, and even George Bush – those were administrations that put a lot of emphasis on human rights. But if you go back and look at the agreements that they struck with North Korea, you never see the words “human rights.”⁶⁸ So, it's certainly a tool we can use, but if you go back, to echo what Paul said, when push comes to shove, what we're focused on, what we really need to prioritize is the denuclearization.

MICHAEL SCHARF: So, Shannon, you're an ethicist. How does this strike you?

SHANNON FRENCH: Well, I mean, one of the overall issues here is whether or not this is like negotiating with terrorists. And, as I think about that, and think about what's on the table here, we're talking about a bad actor who has not shown any signs of improving any of his actions. Now, we have to be realistic to some extent. There's always a point—at least, we hope there will be a point—with most rogue or even terrorist regimes where they try to make a transition to be a legitimate political power. And finding that exact moment isn't easy. And one of the trickier aspects of diplomacy is recognizing when the time is right for such a transition. Think about, for example, when the United Kingdom decided to start doing quiet negotiations with Sinn Féin and the IRA.⁶⁹ But, if you begin down that route you have to realize it can't be something that is a quick, early, public move that seems to legitimize the other party before they've begun to show improvements.⁷⁰ And frankly, if we again look at history, the better approach seems to be to bring in third parties and have some early framework done where you stand off with some moral high ground to say “I can't talk to them, obviously. But hey, my friends over here are going to quietly talk to you and see if you're serious about making real change,” and build very slowly. I worry deeply, as an ethicist, about what kind of message we might be sending, not just to North Korea, but to the entire world, if we say “Oh! You want to talk? Well bygones. We're not going to worry about anything you've done before. Let's see where we can get from this point.”

67. *Id.*

68. Gramer & Tamkin, *supra* note 2.

69. James F. Clarity, *Sinn Fein is Invited by Britain to Join New Peace Talks*, N.Y. TIMES (Aug. 30, 1997), <https://www.nytimes.com/1997/08/30/world/sinn-fein-is-invited-by-britain-to-join-new-peace-talks.html>.

70. David S. Jonas, *The New U.S. Approach to the Fissile Material Cutoff Treaty: Will Deletion of a Verification Regime Provide a Way out of the Wilderness?*, 18 FLA. J. INT'L L. 597, 646 (2006).

MICHAEL SCHARF: But at least the Trump administration's position seems to be: "We will talk, and if you do not do what we want, then we will use force," as opposed to past presidents that have said, "We will talk with you, and we will buy your cooperation with economic assistance." There were agreements that we reached with North Korea by past administrations, where we gave them billions of dollars in economic assistance in return for their promise, which they didn't keep, to get rid of the nuclear weapons.⁷¹ Which of those two approaches do you think is more ethical? One where you tell them, "behave or we will hurt you" or one where we say, "We will make your lives very, very, good if you behave?"

SHANNON FRENCH: Well, I'm not a huge fan of either, because they're both ways of negotiating with rogue or terrorist States. And I come back to the idea that they shouldn't be given a seat at the table, until they make some moves and concessions. So, all of this is backwards. We're starting with the, "If you will start to do something then these are the following consequences," instead of just saying, "We're going to sit here and wait for you to do something positive. Then, and only then, will we do anything meaningful." And I would like to say that, even as I put that out there, that I don't count as something positive some of these showy, but ultimately meaningless, moves by North Korea. Like the blowing up of these testing sites that can be reconstituted or might not be needed or were damaged anyway.⁷² That's meaningless. That doesn't impress me much.

MICHAEL SCHARF: Paul, lets return to you to talk about the full range of carrots in the U.S. arsenal of negotiations. In addition to just throwing money or threatening force, what other kinds of things are North Korea looking for with respect to a final peace negotiation?

PAUL WILLIAMS: Well, one of the things that is quite often forgotten is the North Koreans are quite interested in the reunification of the Korean Peninsula. Now, when we hear this we think, "Well, why would they be interested in reunification? That would simply be the south reincorporating the North to its dynamic capitalistic society and democratic structure." But the North actually thinks it could govern all of Korea and could incorporate the South Koreans into the

71. Glenn Kessler, *Fact-checking President Trump's Claims about the North Korea Deal*, WASH. POST (June 13, 2018), https://www.washingtonpost.com/news/fact-checker/wp/2018/06/13/fact-checking-president-trumps-claims-about-the-north-korea-deal/?utm_term=.d5db05d7e6c1.

72. *North Korea Nuclear Test Tunnels at Punggye-ri 'destroyed'*, BBC (May 24, 2018), <https://www.bbc.com/news/world-asia-44240047>.

regime structure of the North.⁷³ It's also about being a regional strategic player. At the moment, Kim is isolated. He's the one that's seen as the bad actor. But he sees a deal with the United States as a way of bringing him tremendous political power and prestige in the region. And I think that's been under appreciated. And in particular, returning to Tim's point, if he gets a summit, if he gets to sort of do the foxtrot with the United States, it's of huge value. So, you blow up a few old labs and launch platforms, you say yet again that you're going to denuclearize, and you get to go to Singapore for a summit and get a photo op. That's going to add huge domestic and regional influence for Kim. And then there's economic issues.

MICHAEL SCHARF: Tim, Paul was talking about the reunification idea. This is not just the North's idea. South Korea also very much wants reunification, isn't that correct?

TIM WEBSTER: Well, South Korea wants to reunify along the South Korean model.⁷⁴

MICHAEL SCHARF: Well, what if they decide to go ahead and negotiate a reunification structure? Could the U.S. block it? Should the U.S. block it?

TIM WEBSTER: No, the two Korean leaders could negotiate a reunification. But then they would be looking to the Americans to pay for it. It would be hugely expensive to bring the North Korean economic infrastructure into that of South Korea, and a huge drain on the South Korean economy.⁷⁵ So, we couldn't block it, but we'd have to pay for it.

MICHAEL SCHARF: Well, and then there are other aspects to this. The U.S. has a lot of troops in South Korea to protect it from the North.⁷⁶

73. Kongdan Oh, *Understanding North Korea*, BROOKINGS (Apr. 1, 2013), <https://www.brookings.edu/articles/understanding-north-korea/>.

74. Eunice Lee, *Operation 'Denuclification': A Proposal for the Reunification and Denuclearization of the Korean Peninsula*, 33 HASTINGS INT'L & COMP. L. REV. 245, 272 (2010).

75. Tom Phillips, *Costly and Complicated: Why Many Koreans Can't Face Reunification*, THE GUARDIAN (Oct. 9, 2015, 2:00 PM), <https://www.theguardian.com/world/2015/oct/09/why-many-koreans-cant-face-reunification>.

76. Tom Bowman, *Would the U.S. Withdraw Troops From South Korea?* NPR (May 31, 2018, 5:08 AM), <https://www.npr.org/sections/parallels/2018/05/31/615517016/would-the-u-s-withdraw-troops-from-south-korea>.

Would the U.S. have to pull those troops out as part of the agreement?

TIM WEBSTER: The North Koreans are very clear that they want the American troops to leave in exchange for denuclearization.⁷⁷ And the Americans are very clear that having our troops there is crucial to our military strategic interest, both on the Korean peninsula as well as in that part of Asia. It's one of those catch 22s that is exceedingly difficult to navigate during negotiations.

MICHAEL SCHARF: Well it's time for another short break. When we return, we'll talk about what the details of a negotiation between the U.S. and North Korea would look like, and what's at stake if the Summit is permanently shelved.

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MICHAEL SCHARF: This is Michael Scharf, and we're back with Talking Foreign Policy. I'm joined today by some of the foremost experts on negotiating with rogue nations. We've been talking about the prospects of a U.S.-North Korean Summit. In this final segment of our broadcast, I want to ask our experts what advice they would have for the negotiators if, there was, in fact, a North Korea summit? But before we talk about what should be on the negotiating table, I'd like to ask Asian Affairs expert, Tim Webster, who should be at the negotiating table? You had mentioned earlier that China and maybe Russia should play a part. Why?

TIM WEBSTER: I'm not sure I would say Russia. I hope Russia is not invited to the party. But I think China, as the economic, security, and military guarantor of North Korea, has to be there. North Korea doesn't exist without the economic lifeline of China. Whether you're talking about trade, loans, investment, North Korea has to have China support to survive. And I think you also need to have South Korea at the table. At the end of April, North Korea and South Korea signed something called the Panmunjom Declaration,⁷⁸ and they said "Look, going forward, these talks will either be three party—North Korea, South Korea, U.S.—or four party—North Korea, South Korea, U.S., and China." So, we need to understand that the South Koreans obviously need to have a seat at the table for this to

77. *Id.*

78. *Panmunjom Declaration for Peace*, REUTERS (Apr. 27, 2018, 6:16 AM), <https://uk.reuters.com/article/uk-northkorea-southkorea-summit-statement/panmunjom-declaration-for-peace-prosperity-and-unification-of-the-korean-peninsula-idUKKBN1HY193>.

succeed. I think what's gone unnoticed, at least in this country, is all the quiet backstage maneuvering that the current South Korean President, Moon Jae-in, has done to get us this far. So, if there is a summit it didn't come about because Trump talks big—it was made possible because South Korean President Moon Jae-in has been working like a madman. You know, go back to the Olympics and the impressive diplomatic coup de tat he pulled off by having the South and the North on the same team together, for the women's ice hockey team, and inviting North Korean leaders down to participate in the ceremonies. Those efforts I think, and even coming to Washington to council President Trump earlier this week, are what made the difference. So, South Korea, of course, needs to be at the table. It wants denuclearization as well, but as we talked about, there are a whole range of other issues South Korea would want to address in these kinds of talks.⁷⁹ I think four-party talks involving those four actors are probably the best. I think Russia is going to be a spoiler. Six-party talks also included Japan. There is a role, I suppose, for Japan here. In previous manifestations, Japan has played the role of economic advisor.⁸⁰ Japan would be there to fund the peaceful nuclear reactors that North Korea would ultimately get. But I think either three- or four-party talks are really the way to move forward on this.

MICHAEL SCHARF: So, Paul Williams in the last three years you've been shuttling back and forth to Geneva for the peace talks regarding Syria, and those peace talks are multi-party talks. Based on that experience, what can you tell our listeners about the pros and cons of bilateral talks versus the multi-party approach?

PAUL WILLIAMS: Well, bilateral talks are a lot easier, you can control half of the agenda, you can control half of the negotiations because you're one of two parties. When you need to develop a strategy, you only need to get your team to come to an agreement on that strategy which, as we've seen with the preparations for this potential summit, it's exceedingly difficult just to get your own team, your own secretary of state, your own national security advisor, to agree upon what are your priorities, what's the negotiation process going to look like. Tim's right, you do have to involve the Chinese, probably the Japanese, definitely the South Koreans, but that makes it exceedingly difficult, because it's essentially the North Koreans on one side negotiating with the four other members across the table, and that makes it much more difficult to get to "yes" and to get to "yes" effectively where your priorities are on the table, because the Chinese,

79. Suzy Kim, *Crossing Borders: A Feminist History of "Women Cross DMZ"*, 40 FLETCHER F. WORLD AFF. 133, 144 (2016).

80. Lee, *supra* note 74.

the Japanese, the South Koreans, and the Americans don't all have the same priorities.⁸¹ They do big-picture—denuclearization⁸²—but in terms of a number of the other issues, there's complete disagreement between the Americans and definitely the Chinese,⁸³ and there is even daylight between the U.S. position and that of our allies the South Koreans and the Japanese.⁸⁴ So, it's going to be complicated enough, and that only makes it more multi-dimensional.

MICHAEL SCHARF: So, when you're talking about complicated peace negotiations, how all-important do you think it is that the negotiating team have a lot of experience?

PAUL WILLIAMS: Well it's...

MICHAEL SCHARF: Do you think that's a loaded question?

PAUL WILLIAMS: That's a loaded question. This is not the same as negotiating a real estate deal. I think this is part of the dilemma that we're facing here is we have a president who is very effective at a certain type of negotiation and a certain process and that's what they've, you know, the tweets that you read earlier, the let's go mano a mano, let's meet in Singapore, let's hash something out, that's how you buy a hotel; it's not how you denuclearize a country. I think what we're going to have to have, and I think there's people on the team that can do this, is a clear set of priorities, a clear understanding of the timeline. It could take several years of intermediate steps to

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81. Jane Perlez, *Talks With North Korea? China Approves (No Matter the Outcome)*, N.Y. TIMES (Mar. 7, 2018), <https://www.nytimes.com/2018/03/07/world/asia/north-korea-china-talks.html>.
 82. Kiyoshi Takenaka & Nobuhiro Kubo, *China, Japan, and South Korea Highlight Unity Amid North Korea Moves*, REUTERS (May 8, 2018, 8:20 PM), <https://www.reuters.com/article/us-japan-summit/china-japan-and-south-korea-highlight-unity-amid-north-korea-moves-idUSKBN1IA01T>.
 83. Eleanor Albert, *The China-North Korea Relationship*, COUNCIL ON FOREIGN REL. (last updated Mar. 28, 2018), <https://www.cfr.org/backgrounder/china-north-korea-relationship>.
 84. Josh Smith, *Differing Views of 'denuclearization' Complicate North Korea Talks*, REUTERS (Mar. 28, 2018, 4:05 AM), <https://www.reuters.com/article/us-northkorea-missiles-denuclearisation/differing-views-of-denuclearization-complicate-north-korea-talks-idUSKBN1H40YI>.

denuclearize the Korean peninsula;⁸⁵ it won't happen quickly. And you're going to need a very detailed follow-on negotiation process, we keep talking about the summit, the two folks getting together and hammering something out beyond just shutting down the reactors. What do you do with the existing nuclear material and missiles, and then who's going to pay for it? The Strategic Arms Reduction Treaty with the U.S.S.R. cost the Americans two billion dollars to help the Russians get rid of some of their nuclear weapons, and it has cost another half a billion over the last ten years to monitor.⁸⁶ Are we going to pay for this?

MICHAEL SCHARF: Paul, how difficult do you think it makes for successful negotiations that the U.S. doesn't currently have an ambassador to Korea, there's no current U.S. Assistant Secretary of State for East Asia and the Pacific, there's no State Department expert on North Korea, that person just retired, I believe there's no arms control expert—a big chunk of the experts who normally would be involved in these kinds of negotiations have not been appointed.⁸⁷ How difficult is that going to make successful negotiations?

PAUL WILLIAMS: Okay, let's be honest, this is a real test of President Trump's mantra of "we've been getting it wrong before, there's a new sheriff in town, we're going to do things differently." So if you were to list off these positions to the top officials on the Trump team they'd shrug their shoulders and say "yeah, yeah, but those are the guys, those are the positions, those are the institutional interests that brought us the last twenty years of failed policy in North Korea; we need fresh ideas, we need a new dynamic, we need a new process." I think we're going to find that it's not as easy as just bringing in a new team with fresh ideas, that the depth of knowledge that's required to denuclearize the Korean peninsula is substantial, and without that knowledge, and I think this recent sort of push back or

85. Kelly Kasulis, *What it Will Take to Denuclearize North Korea*, PUB. RADIO INT'L (May 4, 2018, 7:45 AM), <https://www.pri.org/stories/2018-05-04/what-it-will-take-denuclearize-north-korea>.

86. Susan Willett, U.N. Institute for Disarmament Research, *Costs of Disarmament—Disarming the Costs: Nuclear Arms Control and Nuclear Rearmament*, U.N. Doc. UNIDIR/2003/25 (2003), available at <http://www.unidir.org/files/publications/pdfs/costs-of-disarmament-disarming-the-costs-nuclear-arms-control-and-nuclear-rearmament-306.pdf>.

87. Hyonhee Shin and David Brunnstorm, *U.S. Envoy for North Korea to Retire after Trump Rejects Unconditional Talks*, REUTERS (Feb. 26, 2018, 11:15 PM), <https://www.reuters.com/article/us-northkorea-missiles-diplomat/senior-u-s-diplomat-for-north-korea-to-retire-idUSKCN1GB0C1>.

this abrogation of the summit is an example of that, it's like, wow, this actually is more complicated than just negotiating over Twitter.

MICHAEL SCHARF: Well we do have John Bolton. Now, let me remind the listeners about John Bolton, he is someone with a lot of experience during both the senior and younger Bush administrations; he was Assistant Secretary of State for International Organizations, he was Ambassador to the United Nations, and he was Deputy Secretary of State.⁸⁸ So this is a man with a lot of experience that has now been made the new National Security Advisor to the President.⁸⁹ Any of our panelists, what do you think the entrance of John Bolton into this calculus means? Tim?

TIM WEBSTER: Sure, so another fact about John Bolton is during his time with the younger Bush administration, the U.S. presented evidence to the world that North Korea was not abiding by the framework that the Clinton administration had agreed to in 1994, and John Bolton rather triumphantly said "aha, this is the hammer I have been searching for to destroy this agreement."⁹⁰ So John Bolton is the guy on the Bush Team who killed the first North Korea deal that had been in place at that time for eight years. So you have that aspect, you also have his comments last week about aspiring to a Libya model.⁹¹ We already talked about what happened to Muammar Gaddafi earlier in the program, we don't need to revisit that, but that wasn't a particularly helpful way to advance discussions with North Korea, especially given North Korea's support for Gaddafi at the time.⁹²

MICHAEL SCHARF: In a way, you're being almost too diplomatic in describing this. I think that one could say that John Bolton's statements about the Libya model fueled the response of Kim, which

88. *John Bolton*, THE WHITE HOUSE (2018), <https://www.whitehouse.gov/people/john-r-bolton/>.

89. *Id.*

90. Ankit Panda, *John Bolton Enters the Trump Administration: What to Expect*, DIPLOMAT (Mar. 23, 2018), <https://thediplomat.com/2018/03/john-bolton-enters-the-trump-administration-what-to-expect/>.

91. CBS News, *Transcript: National Security Adviser John Bolton on "Face the Nation," April 29, 2018*, CBS (Apr. 29, 2018, 10:30 AM), <https://www.cbsnews.com/news/transcript-national-security-adviser-john-bolton-on-face-the-nation-april-29-2018/>.

92. Ian Traynor, *North Korean Nuclear Trade Exposed*, THE GUARDIAN (May 23, 2004, 9:20 PM), <https://www.theguardian.com/world/2004/may/24/northkorea.libya>.

directly led to the President's announcement on May 24th that he was pulling out of the talks.

MILENA STERIO: It started with John Bolton but then also Mike Pence had said some things about that, basically referring to the Libya Model which, from the North Korean perspective, is certainly not a good model because, again as I explained earlier, although you could make the argument that Gaddafi in 2003 agreed to a regime of inspection and verification, and perhaps even abided by the terms of that deal, ultimately there was a regime change in Libya, his regime was toppled and this resulted in his death.⁹³ So if you're North Korea you're looking at this, you see that people like John Bolton and Mike Pence are referring to this, you certainly would not be rushing to a summit in Singapore.⁹⁴

MICHAEL SCHARF: But wasn't this actually a giant misunderstanding? Pence, I think, described it one way, but that's not really what Bolton meant by the Libya model, is it?

MILENA STERIO: I think Bolton was actually referring just to the 2003 agreement where Libya actually agreed to dismantle its weapons of mass destruction.⁹⁵ So, I think Bolton was looking at it as like, this can actually be done, this was done once before and an authoritarian regime agreed to essentially destroy its arsenal.

MICHAEL SCHARF: And then it was Pence who then spun it and said this means if you don't comply, we have a regime change, and that got things off.⁹⁶

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93. Rick Noack, *How Kim-Trump Tensions Escalated: The More the U.S. Said "Libya," the Angrier North Korea Got*, WASH. POST (May 24, 2018), https://www.washingtonpost.com/news/world/wp/2018/05/24/the-more-pence-and-trump-say-libya-the-angrier-north-korea-gets/?utm_term=.884e38b5f3b3 [hereinafter *How Kim-Trump Tensions Escalated*].
94. Rick Noack, *A Timeline of North Korea's Backtracking on Denuclearization Talks*, WASH. POST (May 16, 2018), https://www.washingtonpost.com/news/world/wp/2018/05/16/a-timeline-of-north-koreas-backtracking-on-denuclearization-talks/?utm_term=.748bf94b35e2.
95. Noack, *How Kim-Trump Tensions Escalated*, *supra* note 93.
96. Sophie Tatum & James Griffiths, *Pence: North Korea Will End like Libya only if 'Kim Jong Un Doesn't Make a Deal'*, CNN (last updated May 22, 2018, 3:26 AM), <https://www.cnn.com/2018/05/21/politics/mike-pence-fox-news-north-korea/index.html>.

MILENA STERIO: Exactly, and that's when the North Korean Vice Minister for Foreign Affairs called Pence stupid and ignorant, and then this basically sparked Trump's response to say this is now cancelled.⁹⁷

PAUL WILLIAMS: Michael, if I could just jump in real quick, I think this highlights some of the concerns that those of us around the microphone have been expressing. I think Bolton made a serious effort at saying yeah, there's a Libya model; in 2003 they agreed, by 2004 the Libyans were shipping the components of their weapons program to the United States in exchange for economic inducements and economic trade,⁹⁸ and that was actually working. Completely separate from that, there was the 2011 revolution in Libya, which led to the regime change and the killing of Gaddafi by his own people. I think Bolton was essentially saying "look, if we are going to do this, here's a roadmap," and then others in the administration who didn't actually grasp what had happened in 2003-2004 heard Libya, "regime change, yeah let's go that model." And now we have, as Milena laid out, it's falling apart. Because the core team did not understand that there are two parts, that there's a Libya model for denuclearization and then there's the Libyan revolution—completely different, completely unrelated. That lack of sophistication has crippled, at least in the short-term, what was going to be a summit to denuclearize the Korean Peninsula.

MICHAEL SCHARF: But maybe not, everything the President tweets or says today doesn't mean it's going to be his position tomorrow. Paul, isn't it possible that this is just another bargaining ploy by President Trump and that we'll be back at the table maybe not on June 12th, but soon thereafter?

PAUL WILLIAMS: It's not a bargaining ploy, it's stalling for time. I think there was a realization that this is exceedingly complicated, that shockingly, our team, Team America, is not prepared for this, and that the misunderstanding and recriminations have created an opportunity to basically pause and get our act together. The North Koreans have been preparing for this bilateral engagement for a really long time. We've been preparing for two weeks, and this gives us a couple more weeks maybe to prepare and come up with an actual plan.

97. Noack, *How Kim-Trump Tensions Escalated*, *supra* note 93.

98. Barry Schweid, *Libya Ships Nuclear Parts To U.S.*, CBS (Feb. 20, 2004, 1:51 PM), <https://www.cbsnews.com/news/libya-ships-nuclear-parts-to-us/>.

MICHAEL SCHARF: Alright, so there's some optimism that this is not the end of the talks. Shannon, let me go the other route, though, with you and do a thought experiment. What do you think would happen if the talks are permanently cancelled?

SHANNON FRENCH: Well, I think first of all, as we've already experienced, we'll see a return to very angry rhetoric on both sides, but the other things that I think that will happen most likely, South Korea isn't going to just give this up, so South Korea will probably try to restart the negotiations with the North and perhaps play off what has happened with the US as a way to come closer to the North or make some arrangements there. We'll probably see more nuclear testing by Kim Jong-un as again a way of acting out in response to that, but there are other things we can expect, like a decline in U.S.-China relations, even further. And one thing that I'm aware of from my travels to Japan is there has already been a lot of increased political pressure in Japan to amp up their move towards rearming⁹⁹ and they've even started talking about how quickly could they become nuclear.¹⁰⁰ In light of that kind of a breakdown, and Japan is already feeling a sense of insecurity around whether they are truly protected anymore by the U.S., I think it would be reasonable for that worry to reemerge, that Japan is going to say, look we can't count on anyone, we need to make sure that we have that precious nuclear umbrella, too.

MICHAEL SCHARF: Well, let's take this scenario to the extreme. Shannon you're the author of a book titled *The Code of the Warrior*.¹⁰¹ Let's assume that things go off the rails completely, as Milena said there's maybe a legal argument the U.S. can make for use of force, and if we do use force, what does that kind of military engagement look like, what are the casualties likely to be?

SHANNON FRENCH: Well this is where it gets truly horrific, and I think that Secretary of Defense Mattis made the point with a single word; he said that if we got into a military conflict with North Korea it would be "catastrophic."¹⁰² But just to make that real, there are the

99. Nobuhiro Kubo & Kiyoshi Takenaka, *Japan Urges Pressure on North Korea, Military to Seek Record Defense Spending*, REUTERS (Aug. 22, 2017, 3:40 AM), <https://www.reuters.com/article/us-japan-diplomacy-minister-idUSKCN1B20N4>.

100. Liubomir K. Topaloff, *Japan's Nuclear Moment*, DIPLOMAT (Apr. 21, 2017), <https://thediplomat.com/2017/04/japans-nuclear-moment/>.

101. SHANNON E. FRENCH, *THE CODE OF THE WARRIOR: EXPLORING WARRIOR VALUES PAST AND PRESENT* (2003).

102. Dakshayani Shankar, *Mattis: War with North Korea Would Be 'Catastrophic'*, ABC (Aug. 10, 2017, 8:53 PM),

obvious targets -- barracks, troop concentrations, artillery, nuclear facilities, command and control, all of that can be predicted. But what we need to talk about is the human cost, and in late 2017, the Department of Defense itself did an estimate of what that human cost might be, and it estimated as a very conservative number around twenty to thirty thousand dead per day.¹⁰³ As high as six figures have been discussed.¹⁰⁴ There are 100,000 Americans in South Korea, both military and civilian.¹⁰⁵ So what we're talking about here in real human terms is, to make a local reference, within ten days the equivalent of the population of Cincinnati would be dead. This cannot be a light decision.

MICHAEL SCHARF: Alright, so with that in mind, I'm much more optimistic that we're going to end up seeing the two countries get back to the peace table.

SHANNON FRENCH: I certainly hope so.

MICHAEL SCHARF: This may be, as Paul said, just a stall while the U.S. gets its act together. Tim, if these talks are eventually held, what do you think the benchmarks for gauging their success should be?

TIM WEBSTER: Obviously we need to have some plan that lays out with admirable detail the steps towards complete denuclearization. That's a very long, multiple stage process, but something that spells out step-by-step, U.S. does this, North Korea does this, U.S. does this, North Korea does this, and so on and so forth. And I think the clearer the picture you have of what each step means, the likelier you are that both parties will actually fulfill that. We've had an agreement before with North Korea in 1994, as I mentioned, but immediately after it was signed, you had the Republican revolution, you had Newt Gingrich coming into town, and everybody including John McCain

<https://abcnews.go.com/Politics/mattis-war-north-korea-catastrophic/story?id=49146747>.

103. Barbara Demick, *Escalating Tension has Experts Simulating a New Korean War, and the Scenarios are Sobering*, L.A. TIMES (Sept. 25, 2017, 3:00 AM), <http://www.latimes.com/world/la-fg-korean-war-20170925-story.html>.
104. Franz-Stefan Gady, *What Would the Second Korean War Look Like?*, DIPLOMAT (Apr. 19, 2017), <https://thediplomat.com/2017/04/what-would-the-second-korean-war-look-like/>.
105. Kim Chul-Soo, *Number of US Citizens Living in South Korea Rises 30 Percent in 10 Years*, KOR. TIMES (July 2, 2015), <http://www.koreatimesus.com/number-of-us-citizens-living-in-south-korea-rises-30-percent-in-10-years/>.

criticizing Clinton for going ahead with it.¹⁰⁶ So, if we can have some agreement on what the steps will be, a timeline perhaps, or some other very clear roadmap that spells out how we get to complete denuclearization, that I think is what we should be looking for, and then, of course the other bugbear here is the implementation itself, and as Paul mentioned, it would be a many year timeline, and it's difficult, I think, for our politicians to think along those long timeframes.

MICHAEL SCHARF: Well the stakes could not be higher for the eventual U.S.-North Korea Summit, which I think we all hope will eventually take place. We need to wrap up our program now. Paul Williams, Shannon French, Milena Sterio, and Tim Webster, thank you all for providing your insights about the prospects and pitfalls for a summit between the United States and one of its oldest adversaries. I'm Michael Scharf, you've been listening to Talking Foreign Policy.

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106. *Mr. McCain's Risky Korea Strategy*, N.Y. TIMES (Oct. 27, 1994), <https://www.nytimes.com/1994/10/27/opinion/mr-mccain-s-risky-korea-strategy.html>.

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