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INTRODUCTORY NOTE TO THE UNITED NATIONS SECURITY COUNCIL RESOLUTION 1874
BY DANIEL H. JOYNER*
[June 12, 2009]
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Introduction

United Nations Security Council Resolution 1874 was adopted on June 12, 2009 in response to the nuclear weapon test conducted by the Democratic People's Republic of North Korea (DPRK or North Korea) on May 25, 2009.¹ This was the second nuclear weapon test conducted by the DPRK, its first occurring on October 9, 2006. The Security Council responded to the first nuclear test by adopting Resolution 1718 on October 14, 2006.² Resolution 1874 essentially reiterates the Security Council's condemnatory position on North Korea's nuclear tests, and further extends and supplements sanctions imposed in Resolution 1718.

Overview

Resolution 1874 represents the latest in a long line of Security Council resolutions focused on the problem of North Korea's nuclear weapons program.³ Longstanding international concern about the program had been aggravated by three principal events: North Korea's announcement on January 10, 2003 that it would withdraw from the 1968 Nuclear Non-proliferation Treaty (NPT)⁴ and two nuclear weapon tests that took place in 2006 and 2009 respectively.

Resolution 1874 must be understood within the context of North Korea's withdrawal from the NPT, and its public display of its nuclear arsenal through the tests. North Korea's withdrawal from the NPT was significant on a number of levels. It represented the first and only time a state withdrew its membership from the treaty, which is the cornerstone legal instrument in the nuclear non-proliferation normative regime. It also effectively removed any obligation on the part of North Korea with respect to conventional or customary international law that prohibits the development, possession, or proliferation of nuclear weapons.

In Resolution 1874, acting under its Chapter VII authority, the Security Council first condemned "in the strongest terms" the May 25, 2009 nuclear test, demanding that the DPRK not conduct any further tests, or launch any ballistic missile technology. These injunctions are clearly aimed at reiterating the prohibitions placed upon the DPRK by Resolution 1718, and at addressing the immediate problem of the nuclear weapons program. The Security Council then, however, focused on the more fundamental legal problem relating to the DPRK's nuclear weapons program – the current absence of international law prohibiting the DPRK from developing, possessing and producing nuclear weapons. In operative paragraphs five and six, the Security Council demanded that North Korea retract its statement of withdrawal from the NPT and "return at an early date to the NPT and International Atomic Energy Agency (IAEA) safeguards."

This demand by the Security Council is singular. First made in Resolution 1718, and later reiterated in Resolution 1874, it is the only example to the author's knowledge, where the Security Council asked a state to re-accede to a treaty from which that state had duly withdrawn according to the treaty's terms. Arguably, this request seems to cut to the heart of the principle of state sovereignty and the consensual foundations of the sources of international law. It also raises profound questions about the scope and limits of the authority of the Security Council, a subject on which the author has written more fully elsewhere.⁵

Following its demand that the DPRK rejoin the NPT, the Security Council proceeded to decide – thus using its most binding and determinative language – that the DPRK abandon its nuclear weapons and related development program, and submit itself to the terms of the IAEA safeguards agreement. The DPRK concluded a safeguards agreement with the IAEA on January 30, 1992. However, pursuant to Article 26, the agreement was to remain in force only as long as DPRK continued to be a party to the NPT.⁶ Thus, the DPRK's withdrawal from the NPT simultaneously worked as a withdrawal from its safeguards agreement with the IAEA.⁷ Operative paragraph eight of Resolution 1874 thus purports to reverse North Korea's withdrawal from both the NPT and the IAEA safeguards agreement, by commanding the state to abide by one of the central obligations of the NPT (the obligation of Non-nuclear Weapon States not to develop or possess nuclear weapons) and the terms of its IAEA safeguards agreement.

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One could argue that this decision raises similar issues about the scope and limits of Security Council authority as the demand that the DPRK rejoin the NPT. In addition, in seemingly inconsistent manner, the Security Council appears to be requiring that a particular state discontinue, possibly *in perpetuam*, the development and possession of the same weapon technologies which at least eight other states – five of whom have permanent seats on the Council itself – are known to possess.

With respect to the effectiveness of Resolution 1874, it may be useful to consider it along with other Security Council resolutions relative to the DPRK's nuclear weapons program, as well as Security Council's resolutions on Iran's nuclear program. These instruments present significant jurisprudential and legitimacy questions, including those raised herein, which are likely to undermine the effectiveness of those resolutions in influencing state behavior.⁸

On a more practical level, one could argue that the Security Council repeatedly makes demands and takes decisions regarding both states that it simply does not have the ability to enforce. This inability is due to many factors including, among others, the unwillingness of the defiant states' leaders and the political and security limitations of member states responsible for carrying out Security Council commands. This exaggeration of the Security Council authority, along with the continuing defiance by both states of the Security Council's orders as expressed through its resolutions, has led to a diminishing of the perceived credibility and effectiveness of the Security Council in the area of weapons of mass destruction and proliferation.

ENDNOTES

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| <p>1 S.C. Res. 1874, U.N. Doc. S/RES/1874 (June 12, 2009), available at http://www.mofa.go.jp/region/asia-paci/n_korea/nuclear/unsc_resolution1874.pdf.</p> <p>2 S.C. Res. 1718, U.N. Doc. S/RES/1718 (Oct. 14, 2006), available at http://www.mofa.go.jp/POLICY/un/resolution1718.pdf.</p> <p>3 See, e.g., S.C. Res. 825, U.N. Doc. S/RES/825 (May 11, 1993), available at http://www.mofa.go.jp/mofaj/Gaiko/naruhodo/data/pdf/data3-1.pdf; S.C. Res. 1695, U.N. Doc. S/RES/1695 (July 15, 2006), available at http://www.mofa.go.jp/policy/UN/disarmament/n_korea/resolution1695.pdf; S.C. Res. 1718, <i>supra</i> note 3.</p> <p>4 Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161.</p> | <p>5 See DANIEL H. JOYNER, <i>INTERNATIONAL LAW AND THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION</i> (2009). See also DAVID SCHWEIGMAN, <i>THE AUTHORITY OF THE SECURITY COUNCIL UNDER CHAPTER VII OF THE U.N. CHARTER</i> (2001).</p> <p>6 Article 26 of the DPRK's safeguards agreement provides, "This Agreement shall remain in force as long as the Democratic People's Republic of Korea is party to the Treaty [the NPT]."</p> <p>7 See Frederic Kirgis, <i>North Korea's Withdrawal from the Nuclear Nonproliferation Treaty</i>, ASIL INSIGHTS, Jan. 2003, http://www.asil.org/insigh96.cfm.</p> <p>8 See Joyner, <i>supra</i> note 3; YAEL RONEN, <i>THE IRAN NUCLEAR ISSUE</i> (2009).</p> |
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UN SECURITY COUNCIL RESOLUTION 1874 ON NON-PROLIFERATION*
[June 12, 2009]
+Cite as 48 ILM 1176 (2009)+

United Nations

S/RES/1874 (2009)*



Security Council

Distr.: General
12 June 2009

Resolution 1874 (2009)

Adopted by the Security Council at its 6141st meeting, on 12 June 2009

The Security Council,

Recalling its previous relevant resolutions, including resolution 825 (1993), resolution 1540 (2004), resolution 1695 (2006), and, in particular, resolution 1718 (2006), as well as the statements of its President of 6 October 2006 (S/PRST/2006/41) and 13 April 2009 (S/PRST/2009/7),

Reaffirming that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security,

Expressing the gravest concern at the nuclear test conducted by the Democratic People's Republic of Korea ("the DPRK") on 25 May 2009 (local time) in violation of resolution 1718 (2006), and at the challenge such a test constitutes to the Treaty on Non-Proliferation of Nuclear Weapons ("the NPT") and to international efforts aimed at strengthening the global regime of non-proliferation of nuclear weapons towards the 2010 NPT Review Conference, and the danger it poses to peace and stability in the region and beyond,

Stressing its collective support for the NPT and commitment to strengthen the Treaty in all its aspects, and global efforts towards nuclear non-proliferation and nuclear disarmament, and *recalling* that the DPRK cannot have the status of a nuclear-weapon state in accordance with the NPT in any case,

Deploing the DPRK's announcement of withdrawal from the NPT and its pursuit of nuclear weapons,

Underlining once again the importance that the DPRK respond to other security and humanitarian concerns of the international community,

Underlining also that measures imposed by this resolution are not intended to have adverse humanitarian consequences for the civilian population of the DPRK,

Expressing its gravest concern that the nuclear test and missile activities carried out by the DPRK have further generated increased tension in the region and beyond, and *determining* that there continues to exist a clear threat to international peace and security,

Reaffirming the importance that all Member States uphold the purposes and principles of the Charter of the United Nations,

Acting under Chapter VII of the Charter of the United Nations, and taking measures under its Article 41,

1. *Condemns* in the strongest terms the nuclear test conducted by the DPRK on 25 May 2009 (local time) in violation and flagrant disregard of its relevant resolutions, in particular resolutions 1695 (2006) and 1718 (2006), and the statement of its President of 13 April 2009 (S/PRST/2009/7);

* This text was reproduced and reformatted from the text available at the United Nations Security Council official website: (visited October 1, 2009) <http://www.un.org/Docs/sc/unsc_resolutions09.htm>.

2. *Demands* that the DPRK not conduct any further nuclear test or any launch using ballistic missile technology;
3. *Decides* that the DPRK shall suspend all activities related to its ballistic missile programme and in this context re-establish its pre-existing commitments to a moratorium on missile launches;
4. *Demands* that the DPRK immediately comply fully with its obligations under relevant Security Council resolutions, in particular resolution 1718 (2006);
5. *Demands* that the DPRK immediately retract its announcement of withdrawal from the NPT;
6. *Demands* further that the DPRK return at an early date to the NPT and International Atomic Energy Agency (IAEA) safeguards, bearing in mind the rights and obligations of States Parties to the NPT, and *underlines* the need for all States Parties to the NPT to continue to comply with their Treaty obligations;
7. *Calls upon* all Member States to implement their obligations pursuant to resolution 1718 (2006), including with respect to designations made by the Committee established pursuant to resolution 1718 (2006) (“the Committee”) pursuant to the statement of its President of 13 April 2009 (S/PRST/2009/7);
8. *Decides* that the DPRK shall abandon all nuclear weapons and existing nuclear programs in a complete, verifiable and irreversible manner and immediately cease all related activities, shall act strictly in accordance with the obligations applicable to parties under the NPT and the terms and conditions of the IAEA Safeguards Agreement (IAEA INFCIRC/403) and shall provide the IAEA transparency measures extending beyond these requirements, including such access to individuals, documentation, equipment and facilities as may be required and deemed necessary by the IAEA;
9. *Decides* that the measures in paragraph 8 (b) of resolution 1718 (2006) shall also apply to all arms and related materiel, as well as to financial transactions, technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such arms or materiel;
10. *Decides* that the measures in paragraph 8 (a) of resolution 1718 (2006) shall also apply to all arms and related materiel, as well as to financial transactions, technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such arms, except for small arms and light weapons and their related materiel, and *calls upon* States to exercise vigilance over the direct or indirect supply, sale or transfer to the DPRK of small arms or light weapons, and further *decides* that States shall notify the Committee at least five days prior to selling, supplying or transferring small arms or light weapons to the DPRK;
11. *Calls upon* all States to inspect, in accordance with their national authorities and legislation, and consistent with international law, all cargo to and from the DPRK, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe the cargo contains items the supply, sale, transfer, or export of which is prohibited by paragraph 8 (a), 8 (b), or 8 (c) of resolution 1718 or by paragraph 9 or 10 of this resolution, for the purpose of ensuring strict implementation of those provisions;
12. *Calls upon* all Member States to inspect vessels, with the consent of the flag State, on the high seas, if they have information that provides reasonable grounds to believe that the cargo of such vessels contains items the supply, sale, transfer, or export of which is prohibited by paragraph 8 (a), 8 (b), or 8 (c) of resolution 1718 (2006) or by paragraph 9 or 10 of this resolution, for the purpose of ensuring strict implementation of those provisions;
13. *Calls upon* all States to cooperate with inspections pursuant to paragraphs 11 and 12, and, if the flag State does not consent to inspection on the high seas, *decides* that the flag State shall direct the vessel to proceed to an appropriate and convenient port for the required inspection by the local authorities pursuant to paragraph 11;
14. *Decides* to authorize all Member States to, and that all Member States shall, seize and dispose of items the supply, sale, transfer, or export of which is prohibited by paragraph 8 (a), 8 (b), or 8 (c) of resolution 1718 or by paragraph 9 or 10 of this resolution that are identified in inspections pursuant to paragraph 11, 12, or 13 in a manner that is not inconsistent with their obligations under applicable Security Council resolutions, including resolution 1540 (2004), as well as any obligations of parties to the NPT, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 29 April

1997, and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of 10 April 1972, and *decides* further that all States shall cooperate in such efforts;

15. *Requires* any Member State, when it undertakes an inspection pursuant to paragraph 11, 12, or 13, or seizes and disposes of cargo pursuant to paragraph 14, to submit promptly reports containing relevant details to the Committee on the inspection, seizure and disposal;

16. *Requires* any Member State, when it does not receive the cooperation of a flag State pursuant to paragraph 12 or 13 to submit promptly to the Committee a report containing relevant details;

17. *Decides* that Member States shall prohibit the provision by their nationals or from their territory of bunkering services, such as provision of fuel or supplies, or other servicing of vessels, to DPRK vessels if they have information that provides reasonable grounds to believe they are carrying items the supply, sale, transfer, or export of which is prohibited by paragraph 8 (a), 8 (b), or 8 (c) of resolution 1718 (2006) or by paragraph 9 or 10 of this resolution, unless provision of such services is necessary for humanitarian purposes or until such time as the cargo has been inspected, and seized and disposed of if necessary, and *underlines* that this paragraph is not intended to affect legal economic activities;

18. *Calls upon* Member States, in addition to implementing their obligations pursuant to paragraphs 8 (d) and (e) of resolution 1718 (2006), to prevent the provision of financial services or the transfer to, through, or from their territory, or to or by their nationals or entities organized under their laws (including branches abroad), or persons or financial institutions in their territory, of any financial or other assets or resources that could contribute to the DPRK's nuclear-related, ballistic missile-related, or other weapons of mass destruction-related programs or activities, including by freezing any financial or other assets or resources on their territories or that hereafter come within their territories, or that are subject to their jurisdiction or that hereafter become subject to their jurisdiction, that are associated with such programs or activities and applying enhanced monitoring to prevent all such transactions in accordance with their national authorities and legislation;

19. *Calls upon* all Member States and international financial and credit institutions not to enter into new commitments for grants, financial assistance, or concessional loans to the DPRK, except for humanitarian and developmental purposes directly addressing the needs of the civilian population, or the promotion of denuclearization, and also *calls upon* States to exercise enhanced vigilance with a view to reducing current commitments;

20. *Calls upon* all Member States not to provide public financial support for trade with the DPRK (including the granting of export credits, guarantees or insurance to their nationals or entities involved in such trade) where such financial support could contribute to the DPRK's nuclear-related or ballistic missile-related or other WMD-related programs or activities;

21. *Emphasizes* that all Member States should comply with the provisions of paragraphs 8 (a) (iii) and 8 (d) of resolution 1718 (2006) without prejudice to the activities of the diplomatic missions in the DPRK pursuant to the Vienna Convention on Diplomatic Relations;

22. *Calls upon* all Member States to report to the Security Council within forty-five days of the adoption of this resolution and thereafter upon request by the Committee on concrete measures they have taken in order to implement effectively the provisions of paragraph 8 of resolution 1718 (2006) as well as paragraphs 9 and 10 of this resolution, as well as financial measures set out in paragraphs 18, 19 and 20 of this resolution;

23. *Decides* that the measures set out at paragraphs 8 (a), 8 (b) and 8 (c) of resolution 1718 (2006) shall also apply to the items listed in INFCIRC/254/Rev.9/Part 1a and INFCIRC/254/Rev.7/Part 2a;

24. *Decides* to adjust the measures imposed by paragraph 8 of resolution 1718 (2006) and this resolution, including through the designation of entities, goods, and individuals, and directs the Committee to undertake its tasks to this effect and to report to the Security Council within thirty days of adoption of this resolution, and further *decides* that, if the Committee has not acted, then the Security Council will complete action to adjust the measures within seven days of receiving that report;

25. *Decides* that the Committee shall intensify its efforts to promote the full implementation of resolution 1718 (2006), the statement of its President of 13 April 2009 (S/PRST/2009/7) and this resolution, through a work

programme covering compliance, investigations, outreach, dialogue, assistance and cooperation, to be submitted to the Council by 15 July 2009, and that it shall also receive and consider reports from Member States pursuant to paragraphs 10, 15, 16 and 22 of this resolution;

26. *Requests* the Secretary-General to create for an initial period of one year, in consultation with the Committee, a group of up to seven experts (“Panel of Experts”), acting under the direction of the Committee to carry out the following tasks: (a) assist the Committee in carrying out its mandate as specified in resolution 1718 (2006) and the functions specified in paragraph 25 of this resolution; (b) gather, examine and analyze information from States, relevant United Nations bodies and other interested parties regarding the implementation of the measures imposed in resolution 1718 (2006) and in this resolution, in particular incidents of non-compliance; (c) make recommendations on actions the Council, or the Committee or Member States, may consider to improve implementation of the measures imposed in resolution 1718 (2006) and in this resolution; and (d) provide an interim report on its work to the Council no later than 90 days after adoption of this resolution, and a final report to the Council no later than 30 days prior to termination of its mandate with its findings and recommendations;

27. *Urges* all States, relevant United Nations bodies and other interested parties, to cooperate fully with the Committee and the Panel of Experts, in particular by supplying any information at their disposal on the implementation of the measures imposed by resolution 1718 (2006) and this resolution;

28. *Calls upon* all Member States to exercise vigilance and prevent specialized teaching or training of DPRK nationals within their territories or by their nationals, of disciplines which could contribute to the DPRK’s proliferation sensitive nuclear activities and the development of nuclear weapon delivery systems;

29. *Calls upon* the DPRK to join the Comprehensive Nuclear-Test-Ban Treaty at the earliest date;

30. *Supports* peaceful dialogue, *calls upon* the DPRK to return immediately to the Six Party Talks without precondition, and *urges* all the participants to intensify their efforts on the full and expeditious implementation of the Joint Statement issued on 19 September 2005 and the joint documents of 13 February 2007 and 3 October 2007, by China, the DPRK, Japan, the Republic of Korea, the Russian Federation and the United States, with a view to achieving the verifiable denuclearization of the Korean Peninsula and to maintain peace and stability on the Korean Peninsula and in north-east Asia;

31. *Expresses* its commitment to a peaceful, diplomatic and political solution to the situation and welcomes efforts by Council members as well as other Member States to facilitate a peaceful and comprehensive solution through dialogue and to refrain from any actions that might aggravate tensions;

32. *Affirms* that it shall keep the DPRK’s actions under continuous review and that it shall be prepared to review the appropriateness of the measures contained in paragraph 8 of resolution 1718 (2006) and relevant paragraphs of this resolution, including the strengthening, modification, suspension or lifting of the measures, as may be needed at that time in light of the DPRK’s compliance with relevant provisions of resolution 1718 (2006) and this resolution;

33. *Underlines* that further decisions will be required, should additional measures be necessary;

34. *Decides* to remain actively seized of the matter.
