What comes first, denuclearization or a peace treaty?

Bridging the gap between the North and the U.S. on the specifics of sequencing remains a tricky prospect.

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The United States and North Korea have hit a stumbling block in negotiations. The core cause of this slowdown is a disagreement over what comes first: denuclearization or the initiation of a peace process. Confronting this source of tension is not in itself a worrying sign; it means negotiations have begun in earnest.

If it can be generally agreed that the reason for the difference in preferred sequencing lies in the lingering mistrust that the two sides harbor towards one another, there is less agreement over how to break that mistrust and make progress towards a denuclearization deal.

Secretary of State Mike Pompeo’s planned trip to Pyongyang was cancelled over this very disagreement. In a letter sent from vice chairman of the Workers’ Party Kim Yong Chol to the White House, North Korea expressed frustration that America is dragging its feet on a peace treaty.
This prompted President Trump to nix Pompeo’s trip, saying that, “We are not making sufficient progress with respect to the denuclearization of the Korean Peninsula.” This development hints at the deep and tangled implications posed by the difficult question of sequencing.

South Korean President Moon Jae-in is currently in Pyongyang trying to get the U.S. and North Korea talks back on track, saying, “If North Korea-U.S. dialogue is restarted after this visit, it would have much significance in itself.”

Earlier this month, a South Korean diplomatic trip resulted in a Kim Jong Un agreement to denuclearize and “end hostile relations” by the end of President Trump’s first term. Establishing a broad-strokes timeline is a major step, but bridging the gap between the North and the U.S. on the specifics of sequencing remains a tricky prospect.

The three camps

There are three main paradigms that encapsulate the different views on sequencing, according to Professor Jeong-ho Roh, director of Columbia University’s Center for Korean Legal Studies. These are:

- Peace first, denuclearization later,
- Denuclearization first, peace later, and
- Synchronous progress towards both.

North Korea wants peace first, denuclearization later. A recent editorial in party-run newspaper the Rodong Sinmun stated: “It is due to its nonsensical, irrational stubbornness that other issues can only be discussed after our country has completely verifiably, irreversibly dismantled our nuclear capabilities… without showing the intention to build trust including declaring the end of war.”

The Trump administration, as evidenced by the cancelled Pompeo visit, wants to see more progress first. South Korea’s policy is to push the process forward and break the impasse, seeking out middle ground and serving as a diplomatic bridge between North Korea and the U.S.

Prominent speakers — including legal scholars, economists, and policymakers — explored the pros and cons of the alternate approaches at a recent conference hosted by the Korean Legislation Research Institute and the Center for Korean Legal Studies at Columbia Law School. Speakers included Korea’s Ambassador to the United Nations Cho Tae-yul and former Ambassador Charles Kartman, appointed America’s special envoy for Korea peace talks in 1998.
North Korea wants peace first, denuclearization later | Photo: KCNA

The synchronous approach

The synchronous camp believes that the signing of a peace agreement will help foster the conditions to denuclearize North Korea.

In a speech given on August 15th, South Korean President Moon Jae-in said that when he meets with Kim Jong Un this week, “We two leaders will confirm the implementation of the Panmunjom Declaration and take an audacious step to proceed toward the declaration of an end to the Korean War and the signing of a peace treaty as well as the complete denuclearization of the Korean Peninsula.”

President Moon specifically pointed to the need to reduce mistrust and improve the relationship so that denuclearization can be “implemented with sincerity.”

South Korea’s Ambassador to the United Nations Cho Tae-yul affirmed this approach at the conference, stressing the importance of trust, reciprocity, and confidence building.

This paradigm is shared by some in the foreign policy commentariat. In an interview with The Korea Society, Ploughshares Fund Policy Director Tom Collina advocated for a “step-by-step process that is reciprocal and synchronized.”

He suggested that trade space currently exists for exchanging a ‘declaration for a declaration.’ In this scenario, the U.S. would declare an end to the war in exchange for North Korea issuing a declaration that lists its nuclear sites and production facilities.

Opponents of the synchronous camp think that the loss of leverage resulting from the adoption of a peace agreement might reduce North Korea’s incentive to denuclearize while giving it the
opportunity to continue provocative acts. But at least a portion of the disadvantages associated with the synchronous approach could be avoided, according to some legal experts.

Dr. Henri Feron, also of Columbia’s Center for Korean Legal Studies, explained that a peace treaty need not legalize North Korea’s nuclear weapons. He said it could be possible to conclude a peace agreement as a security guarantee while still maintaining sanctions as a pressure point to ensure that North Korea follows through on its commitment to denuclearize.

Feron also said that enacting a peace agreement does not legally entail dissolving the U.S.-ROK Alliance. While these matters could appear as politically linked, they are legally distinct.

Through a statement relayed by a spokesperson, President Moon also de-coupled the two, saying, “The U.S. military presence in South Korea is a matter of the U.S.-Korea alliance. It has no relevance to any peace treaty.”

Some supporters of the synchronous approach believe that eroding the underlying cause for North Korea’s militarization is in itself a worthy outcome. Ambassador Kartman said, “It looks as though we are moving towards a peace process that, to be realistic, would not itself lead to denuclearization but rather might serve to reduce the threat from a nuclear armed North Korea.”

Not everyone shares this view.

The choice of language marshaled in the drafting of the Panmunjom Declaration and Singapore Summit joint statement points to further complexities | Photo: Kevin Lim/THE STRAITS TIMES

Denuclearization first
Columbia University’s Dr. Roh, who was involved as a South Korean representative in nuclear negotiations with North Korea, argues that, from a legal perspective, it is important to first fully take stock of the new reality of a nuclear North Korea before moving forward.

Looking back at the history of agreements brokered by and about the Korean peninsula, Professor Roh contends that the efficacy of previous agreements was undercut by a tendency to put contentious matters on the back burner.

Unlike the Treaty of San Francisco that formally ended World War Two between the Allied Powers and Japan, the armistice that ended fighting in the Korean War included no definition for the legal relationships of the belligerents, nor did it create an opening for political, economic, and diplomatic relations. Further, the armistice has been called null and void by North Korea. Another peculiar aspect of the various agreements and declarations that have been signed over the years is that many exclude South Korea.

The legal framework on the Korean peninsula is thus uncertain, according to Professor Roh, and this is largely because of the unique nature of the relationship between South and North Korea, two countries that claim one another’s territory and pledge to pursue unification in their constitutions.

Seeing as the tendency to avoid contentious matters has contributed to the difficult situation on the peninsula today, Dr. Roh argues in favor of confronting issues like denuclearization up front.

Joseph Yun, former U.S. special representative for North Korea policy, agrees with this line of thinking, saying, “For me, it would be a real mistake to have a peace treaty come first, then denuclearization, because that is clearly an open admission that you’re dealing with North Korea as an acknowledged nuclear weapons state.” For Yun, this recognition hurts America and South Korea’s negotiating position.
What should we expect?

The debate between the two camps can be reduced to opposing expectations for North Korea's future behavior. To borrow terminology from the field of international relations, experts with 'realist' orientations think that the North, acting to maximize its interests in an anarchic system, cannot and should not be trusted.

Those with ‘liberal’ orientations, on the other hand, believe that trust can be gradually created, acting as the glue that binds the parties to the agreement and to one another.

It follows that, for proponents of liberalism, signing a peace treaty can facilitate denuclearization by reducing North Korea’s threat perception and increasing the mutual benefits of cooperation.

Taking the contrary position, some realists believe that North Korea’s pursuit of a peace treaty indicates the exact opposite intention. For example, RAND scholar Bruce Bennett argues that, “By insisting on a peace treaty, North Korea is probably not seeking peace, but war.” Not all opponents of the synchronous approach share this rather extreme interpretation, but many nonetheless feel that signing on the dotted line before denuclearization could be counterproductive.

Complexities

The two documents signed by America and South Korea in their bilateral summits with North Korea both contain language relevant to the peace process.

The Panmunjom Declaration states that, “South and North Korea will actively cooperate to establish a permanent and solid peace regime on the Korean Peninsula,” even giving the end of 2018 as a target date. The Singapore Summit joint statement says, “The United States and the DPRK will join their efforts to build a lasting and stable peace regime on the Korean Peninsula.”

It isn’t yet clear what form a peace process could conceivably take.

It might start with a simple declaration to the end of the war. That’s a relatively low threshold agreement, which doesn’t require ratification by the U.S. Congress or South Korea’s National Assembly.

Because of that, such an agreement could be less durable. A declaration of an end to the war might therefore be used as a stepping stone towards a treaty as part of a larger process involving layered, reciprocal exchanges.

Full fledged treaties require two thirds of the Senate and a majority of the National Assembly to approve. Acquiring this would be no small task. Such a treaty, however, could not be nullified through executive action. The Presidents of South Korea and the U.S. would also attain a more lasting solution if they invested the time and political capital necessary to ensure that their respective legislative branches buy into the process.

Another element of complexity is in deciding who the signatories for an agreement would be. The Panmunjom Declaration mentions two types of meetings: trilateral (U.S., South Korea, North Korea)
and quadrilateral (original three plus China). As members of the Six Party Talks with regional security interests, Japan and Russia could also try to get involved.

Experts with ‘realist’ orientations think that the North, acting to maximize its interests in an anarchic system, cannot and should not be trusted | Photo: KCNA

The benefits of ambiguous language

The choice of language marshaled in the drafting of the Panmunjom Declaration and Singapore Summit joint statement points to further complexities.

Whereas the Panmunjom Declaration contains the phrase: “peace regime,” “peace agreement,” and “end of war declaration,” the Singapore joint statement mentions only a “peace regime.”

The ambiguity of the phrase “peace regime” is useful because it preserves flexibility for negotiators, leaving wiggle room for lower threshold agreements like a declaration of an end to the war. Dr. Feron believes a peace regime might also refer to a political, rather than legal, arrangement, such as a regional security mechanism designed to build confidence and lower threat perceptions.

Dr. Feron also pointed out that certain English translations of the Panmunjom Declaration, such as this one carried by Reuters, omit the phrase peace agreement (평화협정) entirely.

The Korean language version says the armistice should be turned into a peace agreement and a peace regime should be established. The English language version says simply that the war should be declared over and a peace regime should be established. No mention of the phrase “peace agreement.”

The crux of the matter
Fostering the right conditions for peace is neither simple nor easy.

Although the cancellation of Secretary Pompeo’s visit seems alarming at face value, it also means that the U.S., North Korea, and South Korea are moving into the crux of the matter: how do we get over the trust gap and get into the good and hard work of denuclearization?

The conversation is upon us in earnest. And that is not a bad sign.

*Edited by Oliver Hotham*

*Featured image: Pyeongyang Press Corps*