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# The "Peace Treaty" as a U.S. Doctrinal Option and Its Application to the DPRK: A Historical and Analytic Review

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# The “Peace Treaty” as a U.S. Doctrinal Option and Its Application to the DPRK: A Historical and Analytic Review

Eric Yong Joong Lee†

Wars have made great contributions to the development of the U.S. Because the U.S. has often been victorious, achieving the purpose of their war, most wars ended with a surrender of the enemy or declaration of termination. The Americans concluded peace treaties only when they wanted to fundamentally restructure the regional order after the war or to realize their strategic interest from a broader, longer perspective in some parts of the world. This research is to analyze the peace treaties that the U.S. has signed so far or has mediated upon, searching for the possibility of making a U.S.-DPRK peace treaty. In light of the U.S. practice, the U.S.-DPRK Peace Treaty will not only be an agreement to officially terminate the Korean War, but shall be a “magna carta” for peace which is the ultimate concern of people in the Korean peninsula as well as in Northeast Asia. Time is ripe for the Trump-administration to accept “peaceful” co-existence instead of “hostile” co-existence.

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## Introduction

Wars have made great contributions to the development of the United States (“U.S.”). The Americans have experienced very few “defensive” wars in their history. In most cases, the wars were fought out of the U.S. territory and ended strategically. In history, wars start primarily as a testament to the human instinct of aggressiveness. Ending a war, however, is artificial work. Armistice is an invention of human wisdom under international law. There are several ways to terminate an armed conflict such as surrender, unilateral declaration of the end of war, peace treaty, or armistice. Because the U.S. has often been victorious by achieving the purposes of their war, most wars ended with a surrender by the enemy or a declaration of termination. However, when wars were likely to have a deep influence on the strategic interest in a region, the U.S. signed peace treaties. The peace treaties thus formed a doctrinal cornerstone of the U.S. Since the late eighteenth century, the U.S. has signed approximately twenty peace treaties, and has been involved in less than ten peace treaties by virtue of

mediation.<sup>1</sup> All these treaties have restructured the regional order, as evidenced by the Treaty of Versailles of 1919 and the San Francisco Peace Treaty of 1952.

The primary objective of this research is to analyze those peace treaties that the U.S. has so far signed or mediated, and to explore the possibilities of a peace treaty between the U.S. and the Democratic People's Republic of Korea ("DPRK"). Once concluded, the U.S.-DPRK peace treaty will be a firm and initial base of a peace regime in the Korean peninsula—one of the most critical, risky, and sensitive regions in the world. This paper is composed of five parts including a short Introduction and a Conclusion. Part two will analyze the peace treaties that the U.S. has so far signed. This part is divided into three sub-sections in accordance to the periodical evolution of history: (1) New Nation Building (1783-1848); (2) Hegemonic Expansion (1858-1921); and (3) Restructuring the Postwar World Order (1947-1990). Part three will investigate the peace treaties that the U.S. mediated in influential regions of the world like the Far East, Middle East, and Northern Ireland. Part four will discuss the legal, political, and operational matters for the expected US-DPRK peace treaty. This research will also suggest policy options for the Trump administration for peace in Northeast Asia.

## I. United States-Signed Peace Treaties

### A. New Nation Building (1783-1848)

#### 1. *Treaty of Paris (1783)*

##### Synopsis

The Treaty of Paris refers to the three definitive treaties signed on September 3, 1783, in Paris between the representatives of Great Britain on the one side and the U.S., France, and Spain on the other.<sup>2</sup> It was concluded to end the American Revolution. Through the U.S.-Britain treaty, the British Empire recognized the independence of the U.S. with generous boundaries to the South of the Mississippi River, but retained Canada.<sup>3</sup> The area south of the Ohio River was to be set up as an independent Indian state under Spanish control.<sup>4</sup> "The northern boundary would be almost the same as today."<sup>5</sup> The treaty was evaluated as being favorable for the U.S.<sup>6</sup> Britain also signed separate agreements with France and Spain, and signed provi-

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1. DEP'T ST., TREATIES IN FORCE (2017), <https://www.state.gov/s/l/treaty/tif/> [HTTPS://PERMA.CC/7879-YW9U].

2. DEP'T ST., Peace of Paris, 1783, <https://2001-2009.state.gov/r/pa/ho/time/ar/14313.htm> [http://perma.cc/ZYT5-9WPT].

3. *Id.* For details, see THOMAS PATERSON, J. GARRY CLIFFORD & SHANE J. MADDOCK, AMERICAN FOREIGN RELATIONS, VOLUME 1: TO 1920, 20 (2009).

4. The Paris Peace Treaty of Sept. 30, 1783, Gr. Brit.-U.S., Sept. 30, 1783.

5. *Id.*

6. JONATHAN R. DULL, A DIPLOMATIC HISTORY OF THE AMERICAN REVOLUTION 150 (1987).

sional agreements with the Netherlands on the territories.<sup>7</sup> It was ratified by the U.S. Congress of the Confederation on January 14, 1784.<sup>8</sup>

### Agreements

The Treaty of Paris is composed of ten (10) articles and a Preamble. Table 1 shows the crucial regulations:<sup>9</sup>

**Table 1: Regulations of the Treaty of Paris**

Articles	Regulations
Article 1	Britain acknowledges the United States (the thirteen states) to be free, sovereign, and independent
Article 2	the boundaries of the United States were established
Article 3	fishing rights were granted to American fishermen in the Grand Banks
Article 4	the lawful contracted debts were recognized to be paid to creditors on either side
Article 5	The Congress of the Confederation got the right to “earnestly recommend” to state legislatures and to “provide for the restitution of all estates, rights, and properties
Article 6	The US got the right to prevent future confiscations of the property
Article 7	Prisoners of war on both sides are to be released
Article 8	The United States was given the right of perpetual access to the Mississippi River
Article 9	Repatriation of Territories without compensation
Article 10	Ratification

### Outcomes

The Treaty of Paris enlarged the boundaries of the U.S.<sup>10</sup> Considering the population and markets growing in the trans-Appalachian region,<sup>11</sup> the British built an additional fort in Miami following the war. The matter was finally settled by the 1794 Jay Treaty.<sup>12</sup>

7. ROBERT F. RANDLE, *THE ORIGINS OF PEACE: A STUDY OF PEACEMAKING AND THE STRUCTURE OF PEACE SETTLEMENTS* 220-22 (1973); see also *Treaty of Peace between Great Britain and Spain*, Gr. Brit.-Spain, Sept. 3, 1783 (Fr.), reprinted in *EUROPEAN TREATIES BEARING ON THE HISTORY OF THE UNITED STATES AND ITS DEPENDENCIES* 158-61 (Frances G. Davenport & Charles O. Paullin eds., 1937).

8. Dwight L. Smith, *Josiah Harmar*, *Diplomatic Courier*, 87:4 PA. MAG. HIST. & BIOGRAPHY, 420, 422 (1963).

9. Paris Peace Treaty, *supra* note 4.

10. See also Charles R. Ritcheson, *The Earl of Shelbourne and Peace with America 1782-1783 Vision and Reality*, 5 INT'L HIST. REV. 339, 339 (1983).

11. *Id.* at 322.

12. Katja S. Ziegler, *Jay Treaty (1794)*, 6 MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 449-50 (R. Wolfrum ed., 2012); see John Jay's Treaty, 1794-95, U.S. DEP'T ST., OFF. HISTORIAN, <https://history.state.gov/milestones/1784-1800/jay-treaty> [<https://perma.cc/9QAJ-KR73>].

## 2. *The Convention of 1800*

### Synopsis

The Convention of 1800 (also known as Treaty of Mortefontaine) was signed on September 30, 1800 with France, to settle the Quasi-War (1798-1800) which had been caused by the XYZ Affair.<sup>13</sup> It was ratified on December 21, 1801.<sup>14</sup>

### Agreements

The Convention of 1800 is composed of twenty-seven (27) articles and a preamble. Table 2 shows noticeable regulations of the Convention.<sup>15</sup>

**Table 2: Noticeable Regulations of the Convention of 1800**

Articles	Regulations
Article I	Both sides established a firm, inviolable, and universal peace and friendship
Article II	Both sides confirmed the new alliance and trade nullifying the former agreements
Article III	Repatriation of public ships captured during the war
	The free passage for all goods and passports
Articles VI, X & XI	“Most Favored Nation” trade status
Articles VIII & IX	Individual assets would not be frozen in future conflicts
Article XXIII	That privateers would have to cover any unlawful damage inflicted in the future
Article XXVII	The US guaranteed the French, fishing rights off Newfoundland and the Gulf of Saint Lawrence

### Outcomes

The Convention of 1800 ended the hostilities with France—a major European power.<sup>16</sup> It terminated the only formal alliance the U.S. had signed.<sup>17</sup> It was nearly a century and a half later that the U.S. entered into another formal alliance with France.<sup>18</sup>

13. The XYZ Affair and the Quasi-War with France, 1798-1800, U.S. DEP'T ST., OFF. HISTORIAN, <https://web.archive.org/web/20090204234149/http://history.state.gov/milestones/1784-1800/XYZ> [https://perma.cc/C5AH-E7PQ].

14. *Id.*

15. Convention between the French Republic, and the United States of America, Fr.-U.S., Dec. 30, 1800.

16. *Id.* art. I.

17. *Id.* art. II.

18. See Paris Peace Treaty, *supra* note 7.

### 3. The Treaty of Peace and Amity (1805)

#### Synopsis

On June 4, 1805, the Treaty of Peace and Amity was signed in Tripoli by the United States of America and the Bashaw Bey and Subjects of Tripoli in Barbary.<sup>19</sup> The Treaty ended the First Barbary War (1801-05) with the Barbary States whose pirates were seizing American merchant ships and demanding tributes to the Barbary rulers.<sup>20</sup> President Thomas Jefferson had been hesitant to take military action in Tripoli.<sup>21</sup>

#### Agreements

The Treaty of Tripoli was composed of twenty (20) articles.<sup>22</sup> Table 3 highlights noticeable regulations of the Treaty of Tripoli.

**Table 3: Noticeable Regulations of the Treaty of Tripoli**

Articles	Regulations
Article 2	“The Bashaw of Tripoli shall deliver up to the American Squadron now off Tripoli, all Americans in his possession. . . and receive from the United States of American, the sum of 60,000 Dollars, as a payment for the difference between the Prisoners herein mentioned.”
Article 3	“All the forces of the United States which have been, or may be in hostility against the Bashaw of Tripoli, in the Province of Derne, or elsewhere within the Dominions of the said Bashaw shall be withdrawn therefrom. . . .”
Article 4	“[A]ny goods belonging to any Nation with which either parties are at war. . . shall pass free and unmolested. . . .”
Article 6	“Proper passports shall immediately be given to the vessels of both the contracting parties. . . .”
Articles 8, 9, 10 & 13	These articles discuss the rights of the Vessels of either party.
Articles 16, 18, 19 & 20	These articles discuss the rights of Citizens.

#### Outcomes

“The Barbary States, although they did not capture any more U.S. ships, began to resume raids in the Mediterranean, and despite punitive

19. THE BARBARY TREATIES 1786-1816: TREATY OF PEACE AND AMITY, [http://avalon.law.yale.edu/19th\\_century/bar1805t.asp](http://avalon.law.yale.edu/19th_century/bar1805t.asp) [<https://perma.cc/Y3WS-QQB5>]; see generally U.S. DEP'T ST., OFF. HISTORIAN, BARBARY WARS, 1801-1805 AND 1815-1816, <https://history.state.gov/milestones/1801-1829/barbary-wars> [<https://perma.cc/NA9H-RGBQ>].

20. Robert F. Turner, *State Responsibility and the War on Terror: The Legacy of Thomas Jefferson and the Barbary Pirates*, 4:1 CHI. J. INT'L L. 121, 136 (2003).

21. See Tom Woods, *Presidential War Powers: The Constitutional Answer*, LIBERTYCLASSROOM.COM, available at <https://www.libertyclassroom.com/warpowers> [<https://perma.cc/Y7HR-PFZS>].

22. THE BARBARY TREATIES, *supra* note 19.

British bombardments, [the Barbary states] did not end their practices until the French conquest of Algeria in 1830.”<sup>23</sup>

#### 4. *Treaty of Ghent (1814)*

##### Synopsis

The Treaty of Ghent (also called the Treaty of Peace and Amity) was signed on December 24, 1814 in Belgium<sup>24</sup> as the peace treaty to end the War of 1812 between the United States and the United Kingdom.<sup>25</sup> It was ratified by the U.S. Senate unanimously on February 16, 1815.<sup>26</sup>

##### Agreements

The Treaty of Ghent contains a preamble and eleven articles.<sup>27</sup> The Treaty restored all captured lands near Lakes Superior and Michigan, and in Maine.<sup>28</sup> Both countries promised to “use their best efforts” stop the slave trade, as well.<sup>29</sup>

##### Outcomes

The Treaty of Ghent returned all captured land so the territories of the two countries were restored back to how they existed prior to the war (a “*status quo ante bellum*”).<sup>30</sup> The Treaty also set up a boundary commission to resolve further territorial disputes, and created peace with effected Indian nations.<sup>31</sup>

#### 5. *Treaty of Campo de Cahuenga (1847)*

##### Synopsis

The Treaty of Campo de Cahuenga (also known as the Capitulation of Cahuenga) was approved by American Lieutenant-Colonel John C. Frémont and Mexican Governor Andrés Pico on January 12, 1847 to end the Mexi-

23. U.S. DEP’T ST., OFF. HISTORIAN, BARBARY WARS, 1801-1805 AND 1815-1816, *supra* note 19.

24. LIBRARY OF CONGRESS, A CENTURY OF LAWMAKING FOR A NEW NATION: U.S. CONGRESSIONAL DOCUMENTS AND DEBATES, 1774-1875, <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&file=008/llsl008.db&recNum=231> [<https://perma.cc/B4XE-KYLF>]; ENCYCLOPEDIA BRITANNICA, TREATY OF GHENT, <https://www.britannica.com/event/Treaty-of-Ghent> [<https://perma.cc/PAH6-R87Q>].

25. THE LIBRARY OF CONGRESS, PRIMARY DOCUMENTS IN AMERICAN HISTORY: TREATY OF GHENT, <http://www.loc.gov/tr/program/bib/ourdocs/Ghent.html> [<https://perma.cc/4B35-FU2M>]; see generally U.S. DEP’T ST., OFF. HISTORIAN, WAR OF 1812-1815, <https://history.state.gov/milestones/1801-1829/war-of-1812> [<https://perma.cc/RQZ4-5K46>].

26. THE LIBRARY OF CONGRESS, *supra* note 24.

27. *Id.*

28. H. Chuck, *The War of 1812 and the Treaty of Ghent*, HISTORIC INTERPRETER BLOG (Jan. 12, 2015), <https://historicinterpreter.wordpress.com/2015/01/12/the-war-of-1812-and-the-treaty-of-ghent/> [<https://historicinterpreter.wordpress.com/2015/01/12/the-war-of-1812-and-the-treaty-of-ghent/>] [<https://perma.cc/66D9-DT7G>].

29. ENCYCLOPEDIA BRITANNICA, *supra* note 24.

30. U.S. DEP’T ST., OFF. HISTORIAN, *supra* note 25.

31. *Id.*



can-American War in California.<sup>32</sup>

### Agreements

The Treaty of Campo de Cahuenga contains a preamble and seven articles.<sup>33</sup> Table 4 illustrates noticeable regulations of the Treaty.

**Table 4: Noticeable Regulations of the Treaty of Campo de Cahuenga**

Articles	Regulations
Article 3	“[N]o Californian or other Mexican citizen shall be bound to take the oath of allegiance.”
Article 4	“[A]ny Californian or other citizen of Mexico desiring is permitted to leave the country. . . .”
Article 5	“[E]qual rights and privilege are vouchsafed to every citizen of California. . . .”
Article 6	“All officers, citizens, foreigners, or others, shall receive the protection guaranteed by the second article.”

### Outcomes

Under the Treaty of Campo de Cahuenga, the United States naval forces seized and pacified the area that is present day California.<sup>34</sup>

## 6. *Treaty of Guadalupe Hidalgo (1848)*

### Synopsis

The Treaty of Guadalupe Hidalgo (officially called the Treaty of Peace, Friendship, Limits and Settlement between the United States and Mexico)<sup>35</sup> was signed on February 2, 1848 to end the Mexican-American War (1846-48).<sup>36</sup>

### Agreements

Both sides agreed to end the Mexican-American War and, thereby extended the boundaries of the United States by over 525,000 square

32. Mark J. Denger, *The Mexican War and California: The Treaty of Campo de Cahuenga*, ST. MILITARY MUSEUM (last updated June 23, 2017) <http://www.militarymuseum.org/Cahuenga.html> [<https://perma.cc/6CFF-593W>].

33. *Id.*

34. *Id.*

35. Treaty of Guadalupe Hidalgo, art. 5, Feb. 2, 1848, 9 Stat. 922; see generally TREATY OF GUADALUPE HIDALGO; Feb. 2, 1848, [http://avalon.law.yale.edu/19th\\_century/guadhida.asp](http://avalon.law.yale.edu/19th_century/guadhida.asp) [<https://perma.cc/6CFF-593W>].

36. TREATY OF GUADALUPE HIDALGO; FEB. 2, 1848, *supra* note 35; see Gov’t Accountability Office, Treaty of Guadalupe Hidalgo Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico (2004); John C. Davenport, THE U.S.-MEXICO BORDER: THE TREATY OF GUADALUPE HIDALGO 49 (2004); U.S. NATIONAL ARCHIVES & RECORDS ADMINISTRATION, TREATY OF GUADALUPE HIDALGO, [https://www.ourdocuments.gov/print\\_friendly.php?page=&doc=26&title=treaty+of+Guadalupe+Hidalgo+%281848%29](https://www.ourdocuments.gov/print_friendly.php?page=&doc=26&title=treaty+of+Guadalupe+Hidalgo+%281848%29) [<https://perma.cc/J4GF-D8VF>].

miles.<sup>37</sup> Table 5 shows noticeable regulations of the Treaty.

**Table 5: Noticeable Regulations of Treaty of Guadalupe Hidalgo**

Articles	Regulations
Article 5	Established the new US-Mexico border.
Articles 8 & 9	Discusses the safety and property rights of Mexican citizens living in the transferred territories.
Article 11	The United States agreed to prevent and punish raids by Indians into Mexico, prohibit Americans from acquiring property that was stolen in Mexico by Indians, and return Mexican captives from the Indians.
Article 12	Required the United States to pay \$15 million dollars (which is equivalent to \$410 million today).

### Outcomes

Following the Treaty of Guadalupe Hidalgo, between 1850 and 1912 the United States annexed some or entire parts of following territories: California (1850), Nevada (1864), Utah (1896), Arizona (1912), Texas (1845), Kansas (1861), Colorado (1876), Wyoming (1890), Oklahoma (1907); and New Mexico (1912).<sup>38</sup>

## B. Hegemonic Expansion (1858-1921)

### 1. *Treaty of Tianjin (1858)*

#### Synopsis

Following the First Opium War in the 1840s, the Western powers concluded a series of unequal treaties with China.<sup>39</sup> Because the Qing Government did not effectively implement these treaties, the British attacked Guangzhou and Tianjin (Second Opium War) again.<sup>40</sup> Under the most-favored-nation clause of the treaty, all foreign powers were allowed to maintain the same concessions of China that Britain had achieved.<sup>41</sup> Eventually, the U.S. signed the Treaty of Tianjin with France and Russia in 1858.<sup>42</sup>

#### Outcomes

The Treaty of Tianjin was the first U.S. treaty with China.<sup>43</sup> The U.S.

37. *Treaty of Guadalupe Hidalgo*, HISTORY.COM, <http://www.history.com/topics/treaty-of-guadalupe-hidalgo> [https://perma.cc/52KE-WZBP].

38. TREATY OF GUADALUPE-HIDALGO, (1846) [http://self.gutenberg.org/articles/eng/Treaty\\_of\\_Guadalupe-Hidalgo?View=embedded](http://self.gutenberg.org/articles/eng/Treaty_of_Guadalupe-Hidalgo?View=embedded) [https://perma.cc/NBN6-VWT6].

39. U.S. DEP'T ST., OFF. HISTORIAN, *The Opening to China Part II*, <https://web.archive.org/web/20090204235025/http://history.state.gov/milestones/1830-1860/China2> [https://perma.cc/25GG-JX32].

40. *Id.*

41. *Id.*

42. Kurt Bloch, *The Basic Conflict over Foreign Concessions in China*, 8 (10) FAR EASTERN SURVEY 111-16 (1939); see OFF. HISTORIAN, *supra* note 39.

43. See OFF. HISTORIAN, *supra* note 39.

forced China to open twenty-three (23) foreign concessions which included: the residence of foreign diplomats in Peking, the right of foreigners to travel in China, the opening of the Yangtze River to foreign navigation, permission for Christian missionaries to propagate their faith, legalization of opium importation and the coolie trade, and the opening of ten new ports to foreign trade and residence.<sup>44</sup>

## 2. *The Boxer Protocol (1901)*

### Synopsis

The Boxer Protocol<sup>45</sup> was concluded between the Western Powers and China to end the Boxer Rebellion on September 7, 1901.<sup>46</sup> The U.S. was one of the signatories.<sup>47</sup>

Agreements: Article VI of the Boxer Protocol provides:

The Emperor of China agreed to pay “an indemnity of four hundred and fifty million Haikwan taels. This sum represents the total amount of the indemnities for States, Companies, or Societies, private individuals and Chinese, referred to in Article 6 of the note of the 22nd December, 1900. . . . These 450,000,000 [taels] constitute a gold debt calculated at the rate of the Haikwan tael to the gold currency of each country [the equivalent of \$330 million].”<sup>48</sup>

### Outcomes

The Boxer Protocol provided firm foundation for the U.S. to expand into China and to defend its commercial interests. On December 28, 1908, the Americans remitted USD 11,961,121.76 of its share of the indemnity to support the education of Chinese students in the U.S. as well as the establishment of Tsinghua University.<sup>49</sup>

## 3. *Treaty of St. Germain-en-Laye (1919)*

### Synopsis

The Treaty of Saint-Germain-en-Laye was signed on September 10, 1919, between the Allied and Associated Powers of World War I on the one

44. See *Unequal Treaty: Chinese History*, BRITANNICA ENCYCLOPEDIA, <https://www.britannica.com/event/Unequal-Treaty> [<https://perma.cc/CEJ2-7CBN>]; William C. Johnstone, *International Relations: The Status of Foreign Concessions and Settlements in the Treaty Ports of China*, 31 AM. POL. SCI. REV. 942, 942-48 (1937).

45. Settlement of Matters Growing out of the Boxer Uprising: Final Protocol, <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000001-0302.pdf> [hereinafter Final Protocol] [<https://perma.cc/6P2F-TVS4>].

46. Diana Preston, *The Boxer Rebellion: the dramatic story of China's war on foreigners that shook the world in the summer of 1900* 311 (2000); see also Jonathan Spence, *The Search for Modern China* 231-35 (1991); see also Final Protocol, *supra* note 45.

47. See *Boxer Protocol 1901*, THE ENCYCLOPEDIA OF THE SPANISH AMERICAN AND PHILIPPINE-AMERICAN WARS: A POLITICAL, SOCIAL, AND MILITARY HISTORY 948-51 (Spencer C. Tucker ed., 2009, 3d ed.), <http://go.galegroup.com/ps/i.do?p=GVRL&u=cornell&id=GALE-CX2455000839&v=2.1&it=r&sid=summon&authCount=1> [<https://perma.cc/G2JG-TFNB>].

48. See Final Protocol, *supra* note 45.

49. *Id.*

side, and the Republic of German-Austria on the other.<sup>50</sup> It was not ratified by the U.S.<sup>51</sup> Instead, the U.S. independently concluded the Peace Treaty with Austria in 1921.<sup>52</sup>

#### Agreements

Article 177 required German-Austria to accept responsibility for causing the war along with the “Central Powers” (a group of nations fighting against the Allied Powers during World War I including Germany, Austria-Hungary, the Ottoman Empire, Bulgaria).<sup>53</sup> Article 88 prevents Austria from directly or indirectly compromising its independence.<sup>54</sup>

#### Outcomes

The Treaty of St. Germain-en-Laye dissolved the Austro-Hungarian Empire.<sup>55</sup> The new Republic of Austria recognized the independence of Hungary, Czechoslovakia, Poland, and the Kingdom of Serbs, Croats and Slovenes.<sup>56</sup>

### 4. *Treaty of Versailles (1919)*

#### Synopsis

The Treaty of Versailles was signed on June 28, 1919 to end the war between Germany and the Allied Powers.<sup>57</sup> It was the key to building the Versailles system—a steppingstone of the twentieth century’s global structure.<sup>58</sup>

#### Agreements

The Treaty of Versailles is one of the largest agreements comprising 440 articles (spread over fifteen parts) with a preamble, maps, and protocol. Following the treaty, Germany was to disarm,<sup>59</sup> concede substantial

50. *Treaty of Saint-Germain*, BRITANNICA ENCYCLOPEDIA (last updated May 24, 2018), <https://www.britannica.com/event/Treaty-of-Saint-Germain> [https://perma.cc/FE9Z-DURL].

51. *Id.*; see also *Allied Powers*, BRITANNICA ENCYCLOPEDIA, <https://www.britannica.com/topic/Allied-Powers-international-alliance#ref1228825> (defining the Allied Powers, who were signatories to the Treaty of Saint-Germain, exclusive of the United States) [https://perma.cc/D9CX-4WRA].

52. *Treaty of Peace between the United States and Austria*, U.S.-Austria, Aug. 24, 1921, T.S. 659.

53. *Id.*

54. *Treaty of Peace with Austria* art. 88, Sept. 10, 1919 [1920] A.T.S. 3, <http://www.austlii.edu.au/au/other/dfat/treaties/1920/3.html> [https://perma.cc/JWL3-A6D8].

55. *Treaty of St. Germain*, in *A Dictionary of Contemporary World History* (Jan Palmowski 2008).

56. *Id.*

57. See *Treaty of Versailles*, in *A Dictionary of British History* (John Cannon 2009); see also *Treaty of Versailles*, in *The Oxford Companion to United States History* (Paul S. Boyer 2004).

58. See *Treaty of Versailles*, *supra* note 57; see also *Paris Peace Conference*, in *A Dictionary of Contemporary World History* (Jan Palmowski 2008) (outlining how the Paris Peace Conference, which included the Treaty of Versailles, helped create the world structure after WWI).

59. See *Treaty of Versailles*, *supra* note 57.

territory,<sup>60</sup> and pay reparations to the “Entente powers” (The Allies of World War I against the Central Powers).<sup>61</sup> Article 231 required that “Germany accepts the responsibility of Germany and her allies for causing all the loss and damage” during the war.<sup>62</sup>

#### Outcomes

The U.S. Congress did not ratify the Treaty of Versailles because of the Republicans’ strong opposition to Wilson’s idealism.<sup>63</sup> President Wilson tried to realize his initiative through a nationwide speaking tour in the summer of 1919, but failed to refute the Irreconcilables<sup>64</sup> because on February 3, 1924 he died of a stroke.<sup>65</sup> After Wilson passed away, his successor, Republican President Warren Harding continued to oppose the creation of the League of Nations.<sup>66</sup> Instead, Harding signed the Knox-Porter Resolution to end hostilities between the U.S. and the Central Powers.<sup>67</sup> In 1921, the United States finally signed peace treaties with Austria (August 24), Germany (August 25), and Hungary (August 29).<sup>68</sup>

### 5. U.S.-Austrian Peace Treaty (1921)

#### Synopsis

The U.S. signed the peace treaty with Austria on August 24, 1921 to officially end the hostilities of World War I.<sup>69</sup> The Senate chose this alternative instead of ratifying the multilateral Treaty of Saint-Germain-en-Laye of 1919. The treaty was entered into force on November 8, 1921.<sup>70</sup>

60. *Id.* arts. 27–30.

61. *Id.* art. 231.

62. Treaty of Peace with Germany (Treaty of Versailles) art. 231, June 28, 1919, 1919 U.S.T. 7.

63. THOMAS A. BAILEY, *WOODROW WILSON AND THE GREAT BETRAYAL* 266–70 (1945); see also *Paris Peace Conference*, *supra* note 57 (noting that the U.S. did not ratify the Treaty of Versailles because of the Congress’s isolationist tendencies).

64. Woodrow Wilson, XXVIII President of U.S., Address at a Luncheon at the Hotel Portland in Portland, Oregon (Sept. 15, 1919), in S. Doc. No. 120, at 201–06, (President Wilson speaks to a luncheon audience about why the U.S. should join the League of Nations); see generally *Addresses of President Wilson; addresses delivered by President Wilson on his western tour, September 4 to September 25 1919, on the League of Nations, Treaty of peace with Germany, industrial conditions, high cost of living, race riots, etc.*, INTERNET ARCHIVE (Oct. 3, 2017), [https://archive.org/stream/addressesof-presi00wilsuoft/addressesofpresi00wilsuoft\\_djvu.txt](https://archive.org/stream/addressesof-presi00wilsuoft/addressesofpresi00wilsuoft_djvu.txt) [<https://perma.cc/2MMP-ZRCF>].

65. JOHN MILTON COOPER, JR., *WOODROW WILSON: A BIOGRAPHY* 596 (2009).

66. RALPH STONE, *THE IRRECONCILABLES: THE FIGHT AGAINST THE LEAGUE OF NATIONS* 177 (1970).

67. Kurt Wimer & Sarah Wimer, *The Harding Administration, the League of Nations, and the Separate Peace Treaty*, 29 REV. POLS. 13, 16 (1967); see also *Harding Ends War; Signs Peace Decree at Senator’s Home*, N.Y. TIMES (July 3, 1921), <http://query.nytimes.com/gst/abstract.html?res=9E01E2D71739E133A25750C0A9619C946095D6CF&legacy=true> [<https://perma.cc/5QRZ-7A8Z>].

68. Treaty of Peace Between the United States and Austria, Austria-U.S., Aug. 24, 1921, 42 Stat. 1946 [hereinafter U.S. Peace Treaty with Austria]; Treaty of Peace Between the United States and Germany, Ger.-U.S., Aug. 25, 1921, 42 Stat. 1939 [hereinafter U.S. Peace Treaty with Germany]; Treaty of Peace Between the United States and Hungary, Hung.-U.S., Aug. 29, 1921, 42 Stat. 1951 [hereinafter U.S. Peace Treaty with Hungary].

69. U.S. Peace Treaty with Austria, *supra* note 68.

70. *Id.*

## Agreements

Article 1 obliged the Austrian government to grant the U.S. government all rights and privileges enjoyed by other Allied Powers who ratified Treaty of Saint-Germain-en-Laye of 1919.<sup>71</sup> Article 2 specified which articles of the Treaty of Saint Germain-en-Laye should apply to the U.S.<sup>72</sup> Article 3 provided for the exchange of ratifications in Vienna.<sup>73</sup>

## Outcomes

The U.S.-Austrian Peace Treaty was supplemented by another treaty signed on November 26, 1924, which decided the amount of reparation to be paid by the Austrian and Hungarian governments.<sup>74</sup>

### 6. *U.S.-German Peace Treaty (1921)*

#### Synopsis

The U.S. signed a peace treaty with Germany on August 25, 1921 to end the hostilities of World War I.<sup>75</sup> The U.S.-German Peace Treaty was an alternative of the Senate to the Treaty of Versailles. It became effective on November 11, 1921.<sup>76</sup>

#### Agreements

Article 1 obliged Germany to grant the U.S. all rights and privileges enjoyed by other allied powers who had ratified the Versailles Treaty.<sup>77</sup> Article 2 specified which articles of the Versailles Treaty should apply to the US.<sup>78</sup> Article 3 provided for the exchange of ratifications in Berlin.<sup>79</sup>

#### Outcomes

The U.S.-German Peace Treaty was supplemented by another treaty on August 10, 1922 for decreasing the amount of reparations to Germany.<sup>80</sup> These treaties opened a new era for cooperation between the U.S. and Germany.

### 7. *U.S.-Hungarian Peace Treaty (1921)*

#### Synopsis

The U.S. signed a peace treaty with Hungary on August 29, 1921, to end the hostilities of World War I.<sup>81</sup> The treaty became effective on

71. *Id.* art. 1.

72. *Id.* art. 2.

73. *Id.* art. 3.

74. Agreement for the Determination of the Amounts to be paid by Austria and by Hungary in satisfaction of their Obligations under the Treaties concluded by the United States with Austria on August 24, 1921, and with Hungary on August 29, 1921 art. 1, Austria-Hung.-U.S., Nov. 26, 1924, 48 L.N.T.S. 69 (1926) [hereinafter U.S. Peace Treaty with Hungary].

75. U.S. Peace Treaty with Germany, *supra* note 68.

76. Treaty Restoring Friendly Relations, Ger.-U.S., Aug. 25, 1921, T.S. No. 658.

77. U.S. Peace Treaty with Germany, *supra* note 68, art. 1.

78. *Id.* art. 2.

79. *Id.* art. 3.

80. Claims Agreement with Germany, Ger.-U.S., art. 1, Aug. 10, 1922, 42 Stat. 2200.

81. U.S. Peace Treaty with Hungary, *supra* note 74.

December 17, 1921.<sup>82</sup>

### Agreements

Article 1 required Hungary to grant the U.S. all rights and privileges enjoyed by other Allied Powers who ratified the Treaty of Trianon.<sup>83</sup> Article 2 specified which articles of the Treaty of Trianon should apply to the U.S. Article 3 provided for the exchange of ratifications in Budapest.<sup>84</sup>

### Outcomes

The U.S. ended its state of war against the former Austro-Hungarian Empire and recognized Hungary. This treaty was supplemented by another treaty signed on November 26, 1924.<sup>85</sup>

## C. Restructuring the Postwar World Order (1947-90)

### 1. *Paris Peace Treaties (1947)*

#### Synopsis

The Paris Peace Treaties were signed on February 10, 1947.<sup>86</sup> It was the result of the Paris Peace Conference between July 29 and October 15, 1946, whose primary purpose was to build the postwar world order with the minor Axis powers.<sup>87</sup> The Allied powers (U.S., Soviet Union, UK, and France) negotiated the details of postwar peace system with Italy (although it was considered a major Axis Power), Romania, Hungary, Bulgaria, and Finland, following the end of World War II.<sup>88</sup> The U.S. did not conclude a peace treaty with Germany until 1990 when the Treaty on the Final Settlement with Respect to Germany was signed. Up until then, the Potsdam Agreement had been applied to the so-called “German Question” as an interim stage.

#### Agreements

The Paris Peace Treaties contains ninety (90) articles and seventeen (17) annexes, and includes war reparations, border changes, and political clauses.<sup>89</sup> The Treaty resulted in the fundamental change to the prewar status of Italy. First, pursuant to the treaty, Italy was to renounce all rights and titles to its colonies in Africa such as Libya, Eritrea, and Italian Somaliland.<sup>90</sup> Second, Italy abandoned all its benefits and privileges in China

82. A Treaty between the United States and Hungary, signed August 29, 1921, To Establish Securely Friendly Relations between the Two Nations The United States of America and Hungary, available at [https://wwi.lib.byu.edu/index.php/US\\_Peace\\_Treaty\\_with\\_Hungary](https://wwi.lib.byu.edu/index.php/US_Peace_Treaty_with_Hungary) [<https://perma.cc/258M-NXMR>].

83. *Id.* art. 1.

84. *Id.* arts. 2-3.

85. Agreement, Nov. 26, 1924, Aus.-Hung.-U.S., 44 Stat. 2213, 48 L.N.T.S. 70.

86. JAN PALMOWSKI, A DICTIONARY OF CONTEMPORARY WORLD HISTORY: FROM 1900 TO THE PRESENT DAY 533 (3d ed. 2008).

87. James F. Byres, U.S. Sec. of State, Report on Paris Peace Conference (Oct. 18, 1946) (transcript available at [http://avalon.law.yale.edu/20th\\_century/decade21.asp](http://avalon.law.yale.edu/20th_century/decade21.asp)) [<https://perma.cc/4FNC-X5W9>].

88. See PALMOWSKI, *supra* note 86.

89. See, e.g., Treaty of Peace with Italy art. I, II, & VI, Feb. 10, 1947, 61 Stat. 1369, 49 U.N.T.S.

90. *Id.* art. 23.

resulting from the final protocol signed in Beijing on September 7, 1901,<sup>91</sup> and agreed to cancel the Italian Concession at Tientsin.<sup>92</sup> Italy also recognized and undertook to respect the sovereignty of Albania<sup>93</sup> and Ethiopia.<sup>94</sup> This Treaty also made some changes to the frontiers between Italy,<sup>95</sup> France, and Yugoslavia.<sup>96</sup>

#### Outcomes

The Paris Peace Treaties allowed Italy, Romania, Hungary, Bulgaria, and Finland to resume their responsibilities as sovereign States in international affairs and to establish postwar relationships with neighboring countries and the Allied Powers qualify for the UN membership.

## 2. *Treaty of San Francisco (1951)*

### Synopsis

The Treaty of San Francisco was officially signed by forty-eight nations on September 8, 1951, to *de jure* settle the hostilities between Japan and the Allied Powers during World War II.<sup>97</sup> The treaty-making process was fully initiated, led, and governed by the U.S. It came into force on April 28, 1952.<sup>98</sup> The San Francisco Treaty, along with the Security Treaty signed on the same day, is said to mark the beginning of the “San Francisco System.”<sup>99</sup>

### Agreements

The San Francisco Treaty is composed of twenty-seven (27) articles.<sup>100</sup> Table 6 shows noticeable regulations of the San Francisco Peace Treaty.

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91. *Id.* art. 24.

92. *Id.* art. 25.

93. *Id.* arts. 27-32.

94. *Id.* arts. 33-38.

95. *Id.* art. 2.

96. *Id.* art. 3.

97. *Id.*

98. *Id.* at 3.

99. *Id.* at 1-4.

100. Treaty of Peace with Japan, Sept. 8, 1951, 3 U.S.T. 3169, 136 U.N.T.S. 45.



**Table 6: Noticeable Regulations of the San Francisco Peace Treaty**<sup>101</sup>

Articles	Regulations
Article 1	Declares the official termination of the state of war between Japan (a) and Allied Powers and confirms Japan's status as a sovereign State (b).
Article 2	Recognizes the independence of Korea. Japan agrees to renounce right, title and claim to the territories where it had occupied before the end of World War II including Korea, Taiwan, Kurile Islands, and to that portion of Sakhalin.
Article 5	Obliges Japan to settle its international disputes in such a manner that international peace and security, and justice, are not endangered
Article 11	Urges Japan to accept the judgments of the International Military Tribunal for the Far East and of other Allied War Crimes Courts imposed on Japan both within and outside Japan.
Article 14	Recognizes that Japan should pay reparations to the Allied Powers for the damage and suffering caused by it during the war.

### Outcomes

The San Francisco Treaty terminated the wartime system. It resulted in the so-called San Francisco System which was grounds for the U.S.-led postwar Asia-Pacific order.<sup>102</sup>

### 3. Paris Peace Accords (1973)

#### Synopsis

The Paris Peace Accords (Agreement on Ending the War and Restoring Peace in Vietnam) was concluded on January 27, 1973 to end the Vietnam War. The Agreement was signed between the representatives of the Democratic Republic of Vietnam (North Vietnam), the Republic of Vietnam (South Vietnam), and the U.S., as well as the Provisional Revolutionary Government ("PRG") that represented indigenous South Vietnamese revolutionaries.<sup>103</sup>

#### Agreements

The Paris Peace Accords includes twenty-three (23) articles.<sup>104</sup> The U.S. and North Vietnam agreed to suspend hostilities and withdraw troops (Articles 2-7), and return the captured military personnel (Article 8).<sup>105</sup> They also recognized the South Vietnamese People's Right to Self-Determination (Articles 9-14), Reunification of Vietnam (Article 15), and the Joint

101. *Id.*

102. Dower, *supra* note 100, at 1-4.

103. See Tom Valentine, *What was Paris Peace Accords?*, THE VIET. WAR (May 22, 2013), <https://thevietnamwar.info/what-was-paris-peace-accords> [<https://perma.cc/6VE9-2VW9>]; see also PALMOWSKI, *supra* note 86, at 532.

104. See Agreement on Ending the War and Restoring Peace in South Vietnam arts. 1-23, Jan. 27, 1973, DEP'T ST. BULL., Feb. 12, 1973, at 169-174 [hereinafter Paris Peace Accords].

105. *Id.* at 169-70.

Military Commission (Articles 16-19).<sup>106</sup>

#### Outcomes

The Paris Peace Accords temporarily stopped armed hostilities in Vietnam and pulled the U.S. out of Vietnam.<sup>107</sup> However, it was *not* ratified by the U.S. Senate.<sup>108</sup> As Saigon was finally seized by the North Vietnamese army on April 30, 1975, Vietnam was reunified in the end.<sup>109</sup>

#### 4. *Treaty on the Final Settlement with Respect to Germany (1990)*

##### Synopsis

The Treaty on the Final Settlement with Respect to Germany (German Unification Treaty) was signed in Moscow on September 12, 1990.<sup>110</sup> It was a legal steppingstone for the German reunification on October 3, 1990.

##### Agreements

The Treaty contains ten (10) articles.<sup>111</sup> Under the terms of the treaty, the Four Powers including the U.S. renounced all rights they formerly held in Germany, including rights to the city of Berlin.<sup>112</sup>

##### Outcomes

The treaty was the final recognition of German reunification from the four powers. All Soviet forces left Germany by 1994.<sup>113</sup> Germany had not only reduced its armed forces to no more than 370,000 personnel, but also reaffirmed its renunciation of weapons of mass destruction. It acceded the Nuclear Non-Proliferation Treaty.<sup>114</sup> In addition, Germany agreed to sign the German-Polish Border Treaty<sup>115</sup> to reaffirm the present common border under international law.

106. *Id.* at 170-73.

107. *Id.* at 169-70.

108. Andrew Glass, *Both Sides Refuse to Set Date for Vietnam Talks*, Dec. 8, 1971, POLITICO (Dec. 9, 2013, 12:02 AM), <https://www.politico.com/story/2013/12/this-day-in-politics-dec-9-1971-100838> [<https://perma.cc/L4S2-J4SL>].

109. WILLIAM E. LE GRO, *VIETNAM FROM CEASE-FIRE TO CAPITULATION* 177 (1985).

110. Treaty on the Final Settlement with Respect to Germany, Ger.-Fr.-U.S.S.R.- U.K.-U.S., Sept. 12, 1990, 29 I.L.M. 1186 (1990) [hereinafter German Unification Treaty]; see generally Frans von der Dunk & Peter Kooijmans, *The Unification of Germany and International Law*, 12 MICH. J. INT'L L. 510 (1991).

111. See German Unification Treaty, *supra* note 110, at 1188-92.

112. *Id.* at 1191.

113. See *id.* at 1190; Rick Atkinson, *Russian Troops Leave Germany*, WASH. POST (Sept. 1, 1994), [https://www.washingtonpost.com/archive/politics/1994/09/01/russian-troops-leave-germany/65e3176c-fbe6-47c4-979d-f5fdb259f6c/?utm\\_term=.C34a52ff8922](https://www.washingtonpost.com/archive/politics/1994/09/01/russian-troops-leave-germany/65e3176c-fbe6-47c4-979d-f5fdb259f6c/?utm_term=.C34a52ff8922) [<https://perma.cc/PEW9-9VPW>].

114. Treaty on the Non-Proliferation of Nuclear Weapons, Mar. 5, 1970, 21 U.S.T. 483.

115. Treaty between the Federal Republic of Germany and the Republic of Poland on the confirmation of the frontier between them, Ger.-Pol., Nov. 14, 1990, <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DEU-POL1990CF.PDF> [<https://perma.cc/MM4G-KNQR>].

## II. United States-Mediated Peace Treaties

### A. Far East: Treaty of Portsmouth (1905)

#### Synopsis

The Treaty of Portsmouth formally ended the Russo-Japanese War (1904-05).<sup>116</sup> It was signed on September 5, 1905 under the mediation of U.S. President Theodore Roosevelt.<sup>117</sup> The treaty was ratified in 1905 by both Japan (October 10)<sup>118</sup> and Russia (October 14).<sup>119</sup>

#### American Involvement

The war was not fully supported by the Russian government due to the increasing threat of revolution at home.<sup>120</sup> Also, the Japanese economy was severely strained by the war, with rapidly growing foreign debts and long supply lines.<sup>121</sup> Both sides finally recognized that prolonging the war would not benefit any of them.<sup>122</sup> In July 1904, Japan began to attempt mediation via President Theodore Roosevelt, who had publicly expressed a pro-Japanese stance.<sup>123</sup> The Katsura Taro cabinet asked Roosevelt to inter-mediate the two sides.<sup>124</sup> Roosevelt accepted the Japanese proposal because he had concerns regarding the strengthening military power of Japan and its impact on long-term American interests in Asia.<sup>125</sup> In February 1905, Roosevelt started his mission for ceasefire.<sup>126</sup> It was not until June 8, 1905 that a positive reply was delivered from Russia.<sup>127</sup> Roosevelt met the two sides at Portsmouth, New Hampshire and finally brought both sides to end hostilities.<sup>128</sup>

#### Agreements

The Treaty of Portsmouth contains fifteen (15) articles.<sup>129</sup> Table 7 shows notable regulations of the Treaty.

116. ROTEM KOWNER, *HISTORICAL DICTIONARY OF THE RUSSO-JAPANESE WAR* 15, 17-18 (2006).

117. See *The Treaty of Portsmouth and the Russo-Japanese War, 1904-1905*, U.S. DEP'T ST., OFF. HISTORIAN, <https://history.state.gov/milestones/1899-1913/portsmouth-treaty> [hereinafter *Russo-Japanese War*] [<https://perma.cc/K99E-HG3C>].

118. See *Minutes on Ratification of the Russo-Japanese Peace Treaty*, PRIVY COUNCIL, <https://www.jacar.go.jp/english/nichiro/sumitsuin.htm> [<https://perma.cc/2CGT-4FUJ>].

119. See ANTON I. DENIKIN, *THE CAREER OF A TSARIST OFFICER: MEMOIRS, 1872-1916* 153 (Margaret Patoski trans., Univ. Minn. Press 1975).

120. See KOWNER, *supra* note 116, at 16.

121. See *id.* at 17.

122. See *id.* at 17-18.

123. See *id.* at 301-02.

124. See *id.*

125. See *id.*; *Russo-Japanese War*, *supra* note 117.

126. *Id.*

127. *Id.*

128. *Id.*; see also F. De Martens, *The Portsmouth Peace Conference*, 181 N. AM. REV. 558, 641 (1905).

129. For the full text, see *Treaty of Portsmouth Ending the Russo-Japanese War*, WORLD WAR I ARCHIVE, [https://www.lib.byu.edu/index.php/Treaty\\_of\\_Portsmouth\\_ending\\_the\\_Russo-Japanese\\_War](https://www.lib.byu.edu/index.php/Treaty_of_Portsmouth_ending_the_Russo-Japanese_War) [<https://perma.cc/B2N5-4WXA>].

**Table 7: Notable Articles of the Treaty of Portsmouth**

Articles	Regulations
Article 2	Russia acknowledges Japan's political, military and economic interest in Korea.
Article 3	Both sides mutually engage to evacuate completely and simultaneously Manchuria and to restore entirely and completely all portions of Manchuria in occupation, or under the control of the Japanese or Russian troops.
Articles 5-9	Russia assigns to Japan territories, railways, traffic and properties in Manchuria.
Article 11	Russia engages to arrange with Japan for granting to Japanese subjects rights of fishery along the coasts of the Russian possession in the Japan, Okhotsk and Bering Seas.

## Outcomes

The Treaty of Portsmouth resolved hostilities in the Far East, creating peace between Russia and Japan for the next three decades.<sup>130</sup> As a result of the treaty, Japan emerged as a rising power, while Russia abandoned its expansionist policies towards the east.<sup>131</sup> Additionally, the United States annexed the Philippines and became involved in that region.<sup>132</sup>

## B. Middle East Peace Treaties

### 1. Camp David Accords (1978)

#### Synopsis

Following twelve days of secret negotiation, Egyptian President Anwar El Sadat and Israeli Prime Minister Menachem Begin signed the Camp David Accords on September 17, 1978.<sup>133</sup> The two framework agreements were signed at the White House under the United States President Jimmy Carter's mediation.<sup>134</sup>

#### American Involvement: Carter Initiative

Upon taking office in early 1977, President Carter initiated the Middle East peace process. Throughout his presidency, Carter tried to maintain a

130. *Treaty of Portsmouth*, REVOLVY, <https://www.revolvly.com/topic/Treaty%20of%20Portsmouth> [https://perma.cc/WR7C-SEZC].

131. *Russo-Japanese War*, ENCYCLOPEDIA BRITANNICA (last updated May 24, 2018), <https://www.britannica.com/event/Russo-Japanese-War> [https://perma.cc/ZAF2-DRTN].

132. KOWNER, *supra* note 116. See GEOFFREY JUKES, *THE RUSSO-JAPANESE WAR 1904-1905*, 86-90 (Oxford: Osprey 2002); see also U.S. DEP'T ST., OFF. HISTORIAN, *Japanese-American Relations at the Turn of the Century, 1900-1912*, U.S. Dep't Hist., <https://history.state.gov/milestones/1899-1913/japanese-relations> [https://perma.cc/FH37-3Q2H].

133. Camp David Accords and the Arab-Israeli Peace Process, U.S. DEP'T ST., OFF. HISTORIAN, <https://history.state.gov/milestones/1977-1980/camp-david> [https://perma.cc/FTL5-P88C].

134. *Carter Reflects on Camp David Accords*, NPR (Sept. 17, 2003, 12:00 AM), <https://www.npr.org/templates/story/story.php?storyId=1433186> [https://perma.cc/6EJ2-6JB3].

comprehensive and multilateral approach.<sup>135</sup> Carter's main terms for Middle East peace were threefold: (1) Arab recognition of Israel's right to exist in peace; (2) Israel's withdrawal from occupied territories gained by the Six-Day War; and (3) securing an undivided Jerusalem.<sup>136</sup>

The Camp David Accords were the result of the joint works between Egypt, Israel and the United States. Initially, President Carter concentrated his efforts on a comprehensive resolution of disputes between Israel and the Arab countries with a bilateral agreement. Carter presented the following five preliminary goals for Begin to achieve: (1) a comprehensive peace affecting all of Israel's neighbors; (2) peace to be based on the UN Security Council Resolution 242; (3) open borders and free trade; (4) Israel's withdrawal from occupied territories to secure borders; (5) creation of a Palestinian entity (but not an independent nation).<sup>137</sup> Ultimately, Begin accepted each goal except for the fifth.<sup>138</sup>

### Two Framework Agreements

The Camp David Accords are composed of two separate agreements: "A Framework for Peace in the Middle East" and "A Framework for the Conclusion of a Peace Treaty between Egypt and Israel."<sup>139</sup>

The first, "A Framework for Peace in the Middle East," dealt with Palestinian territories.<sup>140</sup> The framework consists of three parts. The first part of the framework was to establish an autonomous self-governing authority in the West Bank and the Gaza strip and to fully implement Resolution 242.<sup>141</sup> The Accords recognized the "legitimate rights of the Palestinian people" and the withdrawal of Israeli troops from the West Bank and Gaza,<sup>142</sup> but did not refer to Golan Heights, Syria, or Lebanon. It was not the comprehensive peace that the U.S. had in mind.<sup>143</sup> The second part of the framework dealt with Egyptian-Israeli relations.<sup>144</sup> The third part declared the "Associated Principles," which were to apply to relations

135. See *The Brookings Report on the Middle East*, 6 J. PALESTINE STUD. 195, 197 (1977). For details on Carter Initiative, see Arab-Israeli Dispute, January 1977-August 1978: Presidential Review Memorandum/NSC 3, VIII F.R.U.S. (1977-1980) 1ff (A. Howard ed., 2013), available at <https://history.state.gov/historicaldocuments/frus1977-80v08/d1> [<https://perma.cc/M2Z2-6C3Q>].

136. Camp David Accords: Jimmy Carter Reflects 25 Years Later, The Carter Center, Sept. 16, 2003, available at <https://www.cartercenter.org/news/documents/doc1482.html> [<https://perma.cc/F9PU-PAPX>].

137. GEORGE LENCZOWSKI, AMERICAN PRESIDENTS AND THE MIDDLE EAST 165 (Durham, N.C., Duke Univ. Press 1990).

138. *Id.*

139. *Camp David Accords; Sept. 17, 1978*, AVALON PROJECT, [http://avalon.law.yale.edu/20th\\_century/campdav.asp](http://avalon.law.yale.edu/20th_century/campdav.asp) [<https://perma.cc/YH48-H54V>].

140. *Jimmy Carter Presidential Library and Museum, The Framework for Peace in the Middle East*, JIMMY CARTER LIBRARY, [https://www.jimmycarterlibrary.gov/research/framework\\_for\\_peace\\_in\\_the\\_middle\\_east](https://www.jimmycarterlibrary.gov/research/framework_for_peace_in_the_middle_east) [hereinafter Framework for Peace in the Middle East] [<https://perma.cc/42PA-PLDF>].

141. *Id.*

142. *Id.*

143. KENNETH STEIN, HEROIC DIPLOMACY: SADAT, KISSINGER, CARTER, BEGIN, AND THE QUEST FOR ARAB-ISRAELI PEACE 254 (Taylor & Francis, 1999).

144. *Framework for Peace in the Middle East*, *supra* note 140.

between Israel and all of its Arab neighbors.<sup>145</sup>

The second framework (A Framework for the Conclusion of a Peace Treaty between Egypt and Israel) provided a ground for the peace treaty on the future status of the Sinai Peninsula.<sup>146</sup> Here, Israel agreed to withdraw its armed forces from Sinai and evacuate the 4500 civilian inhabitants. Under this framework, the U.S. committed to several billion dollars of annual subsidies to support Israel and Egypt.<sup>147</sup>

#### Outcomes

The Camp David Accords dissolved a united Arab front against Israel. The Accords shed light on the Palestinian question as a primary issue in the Arab-Israeli conflict.<sup>148</sup> In particular, the second framework drove Egypt and Israel to sign the 1979 Peace Treaty.<sup>149</sup> The Continuum Political Encyclopedia of the Middle East provides:

The normalization of relations [between Israel and Egypt] went into effect in January 1980. Ambassadors were exchanged in February. The boycott laws were repealed by Egypt's National Assembly the same month, and some trade began to develop, albeit less than Israel had hoped for. In March 1980 regular airline flights were inaugurated. Egypt also began supplying Israel with crude oil.<sup>150</sup>

Kenneth Stein also maintains:

The Accords were another interim agreement or step, but negotiations that flowed from the Accords slowed for several reasons. These included an inability to bring the Jordanians into the discussions; the controversy over settlements; the inconclusive nature of the subsequent autonomy talks; domestic opposition sustained by both Begin and Sadat and, in Sadat's case, ostracism and anger from the Arab world; the emergence of a what became a cold peace between Egypt and Israel; and changes in foreign policy priorities including discontinuity in personnel committed to sustaining the negotiating process.<sup>151</sup>

The UN General Assembly, however, disapproved of the first framework, because it was negotiated and signed without participation of the UN and the Palestine Liberation Organization ("PLO").<sup>152</sup> The General Assembly adopted Resolution 33/28(A), which declares that agreements were only valid if they included the Palestinian right to national independence and sovereignty.<sup>153</sup>

145. *Id.*

146. A Framework for the Conclusion of a Peace Treaty between Egypt and Israel, Isr. - Egypt, Sept. 17, 1978, 1138 U.N.T.S. 17854 [hereinafter *Conclusion*].

147. Yitzhak Benhorin, *Israel still top recipient of US foreign aid*, YNETNEWS, (Aug. 2, 2007, 7:24 AM), <http://www.ynetnews.com/articles/0,7340,L-3362402,00.html> [<https://perma.cc/MXP6-977H>].

148. See WILLIAM B. QUANDT, *Introduction*, in *THE MIDDLE EAST: TEN YEARS AFTER CAMP DAVID 8* (Quandt ed. 1998).

149. See *Conclusion*, *supra* note 146.

150. AVRAHAM SELA, *THE DECLINE OF ARAB-ISRAELI CONFLICT* 100 (1997).

151. STEIN, *supra* note 143, at 254.

152. See G.A. Res. 33/28A, ¶ 4, (Dec. 7, 1978).

153. *Id.*

## 2. Oslo Accords (1993-95)

### Synopsis

Israel and the PLO concluded the Declaration of Principles on Interim Self-Government Arrangements (Oslo Accords).<sup>154</sup> The Oslo Accords consist of two parts: Oslo I Accord, signed in Washington, D.C., in 1993<sup>155</sup> under the mediation of President Bill Clinton,<sup>156</sup> and Oslo II Accord, signed in Taba in 1995.<sup>157</sup> The Oslo Accords were followed by the Oslo [peace] process to make a peace treaty for the “right of the Palestinian people to self-determination.”<sup>158</sup>

### American Involvement

The Clinton administration mediated the secret negotiations between Israel and the PLO in Oslo.<sup>159</sup> However, the U.S. was not deeply involved in this peace process.<sup>160</sup> Instead, Clinton personally encouraged Arafat and Rabin to shake hands.<sup>161</sup>

### Oslo I Accord

The Oslo I Accord is composed of seventeen (17) articles with four (4) annexes and two (2) Agreed Minutes.<sup>162</sup> Table 8 shows structure of the Oslo I Accord.

**Table 8: The Structure of the Oslo I Accord**

<b>Annexes</b>	<b>Regulations</b>
Annex 1	Conditions of Palestinian Elections
Annex 2	Withdrawal of Israeli forces
Annex 3	Economic cooperation
Annex 4	Regional development
<b>Agreed Minutes</b>	<b>Regulations</b>
Agreed Minutes 1	General understandings
Agreed Minutes 2	Specific understandings

154. Declaration of Principles on Interim Self-Gov't Arrangements, U.N. Doc. A/48/486-S/26560 (1993) [Hereinafter *Declaration*].

155. *Id.*

156. See William Jefferson Clinton, President, United States, Address at the Israeli-Palestinian Interim Agreement Signing Ceremony delivered (Sept. 28, 1995), <http://americanrhetoric.com/speeches/OsloII/wjclintonosloII.htm> [<https://perma.cc/Q6FY-7TPC>]; See also BILL CLINTON, MY LIFE 541-45 (Justin Cooper ed., 2005).

157. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza, U.N. Doc. A/51/889-S/1997/357 (1995). [Hereinafter *Interim*] [https://web.archive.org/web/20021115180646/http://knnesset.gov.il/process/docs/heskemb\\_eng.htm](https://web.archive.org/web/20021115180646/http://knnesset.gov.il/process/docs/heskemb_eng.htm) [<https://perma.cc/D99M-H75A>].

158. See generally UN, The Right of Self-Determination of the Palestinian People (1979), [http://hrlibrary.umn.edu/Espiell\\_1978.pdf](http://hrlibrary.umn.edu/Espiell_1978.pdf) [<https://perma.cc/DC99-UR9T>].

159. See Clinton, *supra* note 156, at 541.

160. *Id.*

161. *Id.* at 543.

162. See *Declaration*, *supra* note 154.

## Oslo II Accord (Taba Agreement)

The Oslo II Accord not only declares peaceful coexistence, mutual dignity and security, but also mutually recognizes the legitimate and political rights of the parties.<sup>163</sup> Its main purpose was to establish a Palestinian Interim Self-Government Authority in the West Bank and the Gaza Strip, for a transitional period not exceeding five years.<sup>164</sup> The Oslo II Accord contains thirty-one (31) articles.<sup>165</sup> Table 9 shows the main chapters with its titles.

**Table 9: The Main Chapters of the Taba Agreement**

Chapters	Articles	Titles	Regulations
Chapter 1	Articles I-IX	The Palestinian Council	the role and powers of governing Palestinian council and committee for civil affairs and the power transfer from Israel to the Palestinian Council.
Chapter 2	Articles X-XVI	Redeployment and Security Arrangements	the redeployment of the Israel Defense Forces, roles of the Israeli Security Forces and the Israeli police, . . . the role of the Palestinian police, etc.
Chapter 3	Articles XVII-XXI	Legal Affairs	the scope of the Palestinian Council's authority and jurisdiction and the resolution of conflicts, and the legislative powers of the Council.
Chapter 4	Articles XXII-XXVIII	Cooperation	the relations between Israel and the Council
Chapter 5	Articles XXIX-XXXI	Miscellaneous provisions.	

## Outcome

Israel accepted the PLO as the representative of the Palestinians, while the PLO renounced terrorism and recognized Israel's right to exist in peace.<sup>166</sup> Both Israel and the PLO agreed to establish Palestinian Authority ("PA") that would assume governing responsibilities in the West Bank and Gaza Strip over a five-year period.<sup>167</sup> The PLO became Israel's partner for negotiations to resolve issues such as: the Israel-Palestine borders, the Israeli settlements, the status of Jerusalem, and Israel's military presence.<sup>168</sup> The Oslo Accords, however, did not create a Palestinian state.<sup>169</sup>

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163. See *Interim*, *supra* note 157.

164. *Id.*

165. *Id.*

166. U.S. DEP'T ST., OFF. HISTORIAN, *The Oslo Accords and the Arab-Israeli Peace Process*, <https://history.state.gov/milestones/1993-2000/oslo> [<https://perma.cc/K7FR-6X3M>].

167. *Id.*

168. *Id.*



## C. Northern Ireland Peace Agreement: The Belfast Agreement (1998)

## Synopsis

The Belfast Agreement (Good Friday Agreement), mandating democratic power sharing between Northern Irish parties, was signed on April 10, 1998.<sup>170</sup> It built a plan for devolved government in Northern Ireland and created Human Rights and Equality commissions.<sup>171</sup> All parties agreed to “exclusively [use] peaceful and democratic means.”<sup>172</sup>

## Background: “The Troubles” in Northern Ireland (1968-1998)

The constitutional status of Northern Ireland caused serious troubles between October 5, 1968 and April 10, 1998.<sup>173</sup> Throughout this period, two political factions clashed with each other. The unionist Protestant majority wished to remain part of the UK, while the nationalist, republican and almost entirely Catholic minority wished to become part of the Republic of Ireland.<sup>174</sup> More fundamentally, however, this was a “territorial” conflict.<sup>175</sup> Two exclusively opposite views of national identity were at the heart of this conflict.<sup>176</sup> During the Troubles, more than 3600 people were killed and about 50,000 more were physically maimed or injured.<sup>177</sup>

## Evolution

For over fifty years, up until 1968, the unionists dominated the parliament of Northern Ireland parliament.<sup>178</sup> As the unionists seriously discriminated against Catholic nationalists, serious tensions and violence flared between the two sides.<sup>179</sup> In 1969, the UK carried out a military intervention into Northern Ireland, but failed to restore social order.<sup>180</sup> In 1972, as things were deteriorating, the British finally suspended the parlia-

169. Chris Hedges, *Mideast accord: the overview; Rabin and Arafat sign accord ending Israel's 27-year hold on Jericho and the Gaza Strip*, N.Y. TIMES (May 5, 1994), <http://www.nytimes.com/1994/05/05/world/mideast-accord-overview-rabin-arafat-sign-accord-ending-israel-s-27-year-hold.html?pagewanted=all> [<https://perma.cc/9VRC-RQBP>]. For details, see Avi Shlaim, *The Oslo Accord*, 23 J. PALESTINE STUD. 24, 34 (1994); Jodi Rudoren, *What the Oslo Accords Accomplished*, N.Y. TIMES, Sept. 30, 2015, [https://www.nytimes.com/2015/10/01/world/middleeast/palestinians-mahmoud-abbas-oslo-peace-accords.html?\\_r=0](https://www.nytimes.com/2015/10/01/world/middleeast/palestinians-mahmoud-abbas-oslo-peace-accords.html?_r=0) [<https://perma.cc/T4ZS-U4YE>]; Rawan Damen, *The Price of Oslo*, AL JAZEERA, <http://interactive.aljazeera.com/aje/PalestineRemix/the-price-of-oslo.html#/14> [<https://perma.cc/G6C6-XPQH>].

170. *Good Friday Agreement*, BBC, [http://www.bbc.co.uk/history/events/good\\_friday\\_agreement](http://www.bbc.co.uk/history/events/good_friday_agreement) [<https://perma.cc/32CU-RAUW>].

171. *Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland*, U.K.-N. Ir., Apr. 10, 1998, 2114 U.N.T.S. 473, ¶¶ 5-6.

172. *Id.* ¶¶ 1, 4.

173. *The Troubles*, BBC, <http://www.bbc.co.uk/history/troubles> [<https://perma.cc/E42T-V2RS>].

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

ment of Northern Ireland and directly controlled the region.<sup>181</sup> Accordingly, the Provisional Irish Republican Army (“PIRA”), which later became the IRA, declared the “long war” to resist against the British presence in Northern Ireland.<sup>182</sup> In order to come out of the political deadlock without serious violence, the UK and the Irish governments, and three Northern Ireland political parties signed the Sunningdale Agreement in 1973.<sup>183</sup> The Agreement delegated responsibility for the internal affairs of Northern Ireland (i.e. the so called “Irish Dimension”) to the Irish government<sup>184</sup> However, the Sunningdale system collapsed in early 1974 because of the Ulster Workers Council strike.<sup>185</sup> In 1985, the Anglo-Irish Agreement was concluded to resolve the so-called “Irish question.”<sup>186</sup> It confirmed that “no Irish unification” could exist without the consent of its people.<sup>187</sup> The “long war” ended when the IRA announced a ceasefire in 1994 and entered into negotiations to end “the Troubles” and restore self-government to Northern Ireland.<sup>188</sup>

### American Involvement

Traditionally, the U.S. did not have much interest in Northern Ireland; it was the Clinton administration that began intervening into Northern Ireland from 1995.<sup>189</sup> Because the Clinton administration regarded the Northern Ireland peace process as an internal affair of the UK,<sup>190</sup> the White House’s approach to this peace process was just pragmatic. When cross-party talks began in 1996, President Clinton appointed the former U.S. Senator George Mitchell as the chair of the negotiation process for the Good Friday Agreement.<sup>191</sup> He also visited London, Belfast, Derry, and Dublin in November 1995.<sup>192</sup> His efforts promoted the British and Irish governments to reach a new intergovernmental accord.<sup>193</sup>

### Agreements

The Good Friday Agreement is composed of two documents:

1. A multi-party agreement by most of Northern Ireland’s political parties; and

181. *Id.*

182. *Id.*

183. *Id.* (explaining that the Democratic Unionist Party (DUP) was wholly opposed to Sunningdale and did not participate in the negotiations. Representatives of the “extremes”—loyalist and republican paramilitaries—were not invited).

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. Roger MacGinty, *American Influences on the Northern Ireland Peace Process*, 17 J. CONFLICT STUD. 6, 10 (1997).

190. *Id.* at 1.

191. *Id.* at 7.

192. *Id.* at 6.

193. *Id.*

2. An international agreement between the British and Irish governments (the British-Irish Agreement).<sup>194</sup>

The Agreement (reached in the multi-party negotiations) is composed of eleven (11) sections containing a group of provisions relating to various issues regarding North Island.<sup>195</sup> Sections 1 and 2 provide the Declaration of Support and Constitutional Issues.<sup>196</sup> The parties acknowledged both unionist and nationalist views as reflecting the legitimate status of Northern Ireland.<sup>197</sup> New institutions are referred to in Sections 3-5. Section 1 (Strand 1) covers democratic institutions like Assembly and Executive, while Section 3 tackles the “British-Island” issue.<sup>198</sup> Section 5 (Strand 5) discusses the British-Irish council and their inter-governmental conference.<sup>199</sup> Section 6 stipulates human rights, legislation, new institutions, the joint committee, reconciliation, economic, social and cultural rights.<sup>200</sup>

Outcome

The Good Friday Agreement was approved by voters across Ireland in two referendums held on May 22, 1998.<sup>201</sup> It shifted Northern Ireland’s political environment to a power-sharing regime accepted by the community as a whole.<sup>202</sup> All signatories to the agreement endorsed the “consent principle,” which meant that any change in Northern Ireland’s constitutional status—including the Irish unification—would happen if it was favored in separate referendums held at the same time on both sides of the border.<sup>203</sup>

#### D. Bosnia and Herzegovina: Dayton Agreement (1995)

##### Synopsis

The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) was formally signed in Paris on December 14, 1995.<sup>204</sup> These accords put an end to the Bosnian War that lasted a little over three years.<sup>205</sup>

##### American Involvement

In Dayton, the U.S. Secretary of State, Warren Christopher negotiated peace talks between the President of Serbia Slobodan Milošević, the Presi-

194. THE NORTHERN IRELAND PEACE AGREEMENT (Apr. 10, 1998), [http://peacemaker.un.org/sites/peacemaker.un.org/files/IE%20GB\\_980410\\_Northern%20Ireland%20Agreement.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/IE%20GB_980410_Northern%20Ireland%20Agreement.pdf) [<https://perma.cc/BMH2-6FS8>].

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Good Friday Agreement*, BBC HISTORY, [http://www.bbc.co.uk/history/events/good\\_friday\\_agreement](http://www.bbc.co.uk/history/events/good_friday_agreement) [<https://perma.cc/B25G-RYUL>].

202. *Id.*

203. *The Troubles*, *supra* note 173.

204. The General Framework Agreement for Peace in Bosnia and Herzegovina, Bosn. & Herz.-Croat.-Yugoslavia, Dec. 14, 1995.

205. *Id.*

dent of Croatia Franjo Tuđman, and President of Bosnia Alija Izetbegović. They finally concluded the Dayton Agreement which put an end to the Bosnian war. It was the Clinton administration's contribution to the Balkan peace.<sup>206</sup>

#### Agreements

The Dayton Agreement was to promote peace and stability in Bosnia and Herzegovina. It also hit the regional balance in and around the former Yugoslavia.<sup>207</sup> They agreed on the present political divisions of Bosnia and Herzegovina and its governance under Annex 4 of the Agreement.<sup>208</sup> A key component was the delineation of the Inter-Entity Boundary Line, which many tasks listed in the Annexes referred to.<sup>209</sup>

#### Outcome

The Dayton Agreement created the State of Bosnia-Herzegovina comprising the Federation of Bosnia-Herzegovina and the Republika Srpska.<sup>210</sup> No entities could be separated from Bosnia and Herzegovina without due process of law.<sup>211</sup> Although highly decentralized in its Entities, a central government is still working under a constitutional system.<sup>212</sup>

### III. A Way to the U.S.-DPRK Peace Treaty: Problem and Prospect

#### A. Origin and Evolution for the Armistice Regime in the Korean Peninsula

##### 1. *The Korean Armistice Agreement*

The armed hostilities of the Korean War ended with the Armistice Agreement between the UN Command (led by the U.S. forces) and the Communist side on July 27, 1953.<sup>213</sup> The armistice, however, established

206. Adriana Camisar, Boris Diechtiareff, Bartol Letica, and Christine Switzer, *An Analysis of the Dayton Negotiations and Peace Accords*, Final Research Paper of The Fletcher School of Law and Diplomacy (2005).

207. P. Cannon, *The Third Balkan War and Political Disunity: Creating A Cantonal Constitutional System for Bosnia-Herzegovina*, 5:2 J. TRANSNAT'L. L. & POL'Y 373, 395 (1996). See also Summary of the Dayton Peace Agreement on Bosnia-Herzegovina, <http://hrlibrary.umn.edu/icity/dayton/daytonsum.html> [<https://perma.cc/Y3SM-VDU8>].

208. See Annex 4, The General Framework Agreement for Peace in Bosnia and Herzegovina, <https://www.osce.org/bih/126173?download=true> [<https://perma.cc/RC5Q-2HXH>].

209. See generally General Framework Agreement for Peace in Bosnia and Herzegovina, U.N. Doc. A/50/79C (Nov. 30, 1995), [http://peacemaker.un.org/sites/peacemaker.un.org/files/BA\\_951121\\_DaytonAgreement.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/BA_951121_DaytonAgreement.pdf) [<https://perma.cc/J7WE-6XGD>].

210. *Id.*

211. *Id.*

212. *Bosnia and Herzegovina-Country Profile*, ONE WORLD NATIONS ONLINE, [http://www.nationsonline.org/oneworld/bosnia\\_herzegovina.htm](http://www.nationsonline.org/oneworld/bosnia_herzegovina.htm) [<https://perma.cc/6FC5-QD3T>].

213. The document was signed on July 27, 1953, by two delegates: U.S. Army Lieutenant General William Harrison, representing the United Nations Command, and North Korean General Nam Il, representing both the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers. Copies of the agreement were signed separately by UN General Mark W. Clark, Supreme Commander of the Korean People's Army Kim Il Sung, and Commander of the Chinese People's Vol-

only a “complete cessation of all hostilities in Korea by all armed force[s]”<sup>214</sup> in the Korean peninsula along the Demilitarized Zone (“DMZ”) that was to be enforced by the commanders of both sides. It did not mean the *de jure* end of war between the governments, but was only a cease-fire between military forces.<sup>215</sup> In the armistice, both sides did not conclude any fundamental solutions for completing the war, but reserved it to “a political conference of a higher level of both side.” Clause 60 of the Korean Armistice Agreement provides:

In order to insure the peaceful settlement of the Korean question, the military Commanders of both sides hereby recommend to the governments of the countries concerned on both sides that, within three (3) months after the Armistice Agreement is signed and becomes effective, a political conference of a higher level of both sides be held by representatives appointed respectively to settle through negotiation the questions of the withdrawal of all foreign forces from Korea, the peaceful settlement of the Korean question, etc.<sup>216</sup>

## 2. Geneva Peace Conference of 1954

The Geneva Conference took place from April 26 to July 20, 1954. The main agenda of the conference were to establish peace in both the Korean peninsula and Indochina.<sup>217</sup> According to Clause 60 of the Armistice Agreement, both sides to the Korean War had rendez-vous there, but there was limited consensus on the Korean question.<sup>218</sup> They should have focused on a “peace treaty,” but cross-fired each other with the terms of implementing the armistice.<sup>219</sup> No fruitful results were obtained in the end.

In Geneva, the South Korean representative proposed that his government be the only legitimate government in the Korean peninsula, demanded that UN-supervised elections be held in the North, argued for the Chinese withdrawal of forces, and implored for the UN forces remain as a police force.<sup>220</sup> Conversely, the North Korean representative suggested that elections be held throughout all of Korea; all foreign forces leave

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unteers Peng Dehuai Council on Foreign Relations, Korean War Armistice Agreement, <https://ourdocuments.gov/doc.php?flash=true&doc=85> [<https://perma.cc/5J75-CVWP>].

214. Korean Armistice Agreement art. II(A).

215. *Id.*

216. *Id.* ¶¶ 60.

217. See generally M.D. Donelan & M.J. Grieve, *INT’L DISPUTES* 61 (London, 1973); S.S. Goodrich, *THE NATURE AND FUNCTION OF INTERNATIONAL ORGANIZATION* 261 (Oxford Univ. Press, 2d ed. 1959); U.S. DEP’T ST. BULL., Mar. 1, 1954, 317-18.

218. See *Sound and the Fury—The 1954 Geneva Conference on Vietnam and Korea*, ASSOCIATION OF DIPLOMATIC STUDIES AND TRAINING, <http://adst.org/2015/06/sound-and-the-fury-the-1954-geneva-conference-on-vietnam-and-korea/> [<https://perma.cc/UC4S-25RP>].

219. *Id.*

220. M.P. SRIVASTAVA, *THE KOREAN CONFLICT: SEARCH FOR UNIFICATION* 69-70 (New Delhi: Prentice Hall of India, 1982); U.S. DEP’T ST., *Foreign Relations of the United States, 1952-1954*, Vol. XVI, The Geneva Conference 131-34 (Washington D. C.: U. S. Government Printing Office. 1981).

beforehand; the elections be run by an all-Korean Commission that is made up of equal parts from North and South Korea, and economic and cultural relations be increase between the North and the South.<sup>221</sup>

The Chinese delegation proposed that a group of “neutral nations” supervise the elections.<sup>222</sup> The U.S. maintained that the Soviet Union wanted to turn North Korea into a puppet state.<sup>223</sup>

On June 15, the Soviet Union and P.R. China declared to support a unified, democratic, and independent Korea. They stated that negotiations should resume at an appropriate time. Nothing was agreed between them till very the end.

### 3. *Geneva Agreed Framework (1994)*

Up until the late 1980s, the U.S. maintained a long standoff with North Korea. Such hostile relations did not give either side any chance to refer to peace treaty.<sup>224</sup> The turning point ironically came with North Korea’s nuclear crisis in 1992. When the IAEA conducted inspections of nuclear facilities in North Korea, it obtained information that North Korea was storing nuclear waste from plutonium production.<sup>225</sup> The Agency requested North Korea to reopen the two suspected sites for the special inspection by March 25, 1993.<sup>226</sup> After months of debate, North Korea declared its withdrawal from both the NPT and the Safeguard Agreement on March 12, 1993,<sup>227</sup> and from the IAEA in June 1994.<sup>228</sup>

North Korea’s action was a serious challenge to IAEA’s Safeguard, and fundamentally, the postwar non-proliferation system itself. The confrontation between the U.S. and North Korea escalated even before a military clash.<sup>229</sup> This nuclear conflict, however, was provisionally resolved by painstaking diplomatic negotiations that led to the Agreed Framework signed in Geneva on October 21, 1994.<sup>230</sup> Under the Agreed Framework, the U.S. promised to provide North Korea with the light-water reactor

221. SRIVASTAVA, *supra* note 220, at 70; U.S. DEP’T ST., *Foreign Relations of the United States, 1952-1954*, Vol. XVI, *The Geneva Conference*, at 134.

222. SYDNEY BAILEY, *THE KOREAN ARMISTICE* 167-68 (1992).

223. *Id.* at 163.

224. *United States-North Korea Relations*, WILSON CTR, <http://digitalarchive.wilsoncenter.org/collection/118/united-states-north-korea-relations> [<https://perma.cc/59BH-WH5K>].

225. Eric Yong Joong Lee, *The Six-Party Talks and the North Korean Nuclear Dispute Resolution under the IAEA Safeguards Regime*, 5 *ASIAN-PACIFIC L. & POL’Y J.* 101, 104 (2004).

226. Eric Yong Joong Lee, *The Complete Denuclearization of the Korean Peninsula*, 9 *CHINESE J. INT’L L.* 799, 803 (2010).

227. Int’l Atomic Energy Agency [IAEA], *The DPRK’s Violation of its NPT Safeguards Agreement with the IAEA*, at 1-2, *excerpted from* DAVID FISCHER, *HISTORY OF THE INTERNATIONAL ATOMIC ENERGY AGENCY* (1997), <https://www.iaea.org/sites/default/files/dprk.pdf> [<https://perma.cc/4W7Z-84AP>].

228. *Id.* at 2.

229. ERIC YONG JOONG LEE, *LEGAL ISSUES OF INTER-KOREAN ECONOMIC COOPERATION UNDER THE ARMISTICE SYSTEM* 50-51 (2002).

230. IAEA, *Agreed Framework between the United States of America and the Democratic People’s Republic of Korea*, IAEA/INFCIRC/457, at 1 (Nov. 2, 1994) [hereinafter

(“LWR”) at the expense of North Korea’s abandonment of the nuclear weapons development program under the NPT system.<sup>231</sup>

The Agreed Framework even contains significant provisions to establish a comprehensive peace regime. In Article II, the U.S. agreed to “move toward full normalization of political and economic relations” with North Korea.<sup>232</sup> The U.S. also released concrete enforcement measures so as to reduce barriers to trade and investment,<sup>233</sup> and both planned to open a liaison office in Pyongyang (the other’s capital).<sup>234</sup> In Article III (3), they further agreed to upgrade bilateral relations to an Ambassadorial level, which would be connected to concluding a peace treaty.<sup>235</sup> Unfortunately, the Agreed Framework was not fully implemented.<sup>236</sup> However, these accords were a signal of the U.S. policy shift toward North Korea in a more peaceful way.

#### 4. *The September 19 Joint Statement*

Such a peaceful way, however, dramatically changed when the Bush administration recognized North Korea as a “grave threat towards peace and security of Northeast Asia.”<sup>237</sup> Their standoff was getting serious when President Bush designated North Korea as part of an “axis of evil” with Iran and Iraq.<sup>238</sup> As North Korea indirectly acknowledged its nuclear weapons development program,<sup>239</sup> the situation was taking a turn for the worst. Responding to North Korea’s hostile action, the U.S. initiated a “tailored containment policy,” resulting in political and economic sanctions at the end of 2002.<sup>240</sup> North Korea considered it as a grave threat to its “supreme national interest.”<sup>241</sup> On January 10, 2003, North Korea finally declared its withdrawal from the NPT.<sup>242</sup>

This “game of chicken” was finally eased through the Six-Party talks. In the painstaking course of debates, the Fourth Round of the Six-Party talks released a Joint Statement which reaffirmed “the verifiable

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Agreed Framework], <https://www.iaea.org/sites/default/files/publications/documents/infircs/1994/infirc457.pdf> [<https://perma.cc/NQX6-ZUFY>].

231. *Id.* arts. I & IV.

232. *Id.* art. II.

233. *Id.*

234. *Id.*

235. *Id.*

236. Eunice Lee, *Operation ‘Denuclearization’: A Proposal for the Reunification and Denuclearization of the Korean Peninsula*, 33 HASTINGS INT’L & COMP. L. REV. 245, 257 (2010).

237. Lee, *supra* note 226, at 804.

238. George W. Bush, President, United States of America, State of the Union Address (Jan. 29, 2002), <http://georgewbush-whitehouse.archives.gov/news/releases/2002/01/20020129-11.html> [<https://perma.cc/CYC7-VNUK>].

239. Lee, *supra* note 225, at 114.

240. *Id.* at 115; Erik Raines, *North Korea: Analyzing the “New” Nuclear Threat*, 12 CARDOZO J. INT’L & COMP. L. 349, 372 n.113 (2004).

241. Lee, *supra* note 225, at 115.

242. Lee, *supra* note 226, at 805.

denuclearization of the Korean Peninsula in a peaceful manner”<sup>243</sup> on September 19, 2005.<sup>244</sup> Under Article 4, the Joint Statement advised negotiation of the “permanent peace regime on the Korean peninsula” and to “explore ways and means for promoting security cooperation in Northeast Asia.”<sup>245</sup>

### 5. *The February 13 Agreement*

The September 19 Joint Statement was a “systematic roadmap” for denuclearization.<sup>246</sup> However, it resulted in a deadlock from the beginning, mainly because the U.S. froze North Korea’s account with the Macau-based Banco Delta Asia (“BDA”) in September 2005 a reported political slush fund of the Kim Jong Il regime.<sup>247</sup> North Korea drastically counteracted to the U.S. financial sanction with a missile launch and a nuclear test in July and October 2006, respectively.<sup>248</sup>

The breakthrough of this crisis was luckily adopted at the fifth round of the Six-Party Talks held in Beijing between February 8 and 13, 2007.<sup>249</sup> The parties finally adopted the Joint Agreement for implementing the Joint Statement.<sup>250</sup> Here, the U.S. promised to resolve the frozen North Korean asset at BDA within thirty days,<sup>251</sup> while North Korea reaffirmed its commitment to a complete cessation of all nuclear programs and facilities.<sup>252</sup>

In addition to denuclearization, Article III of the February 13 Joint Agreement referred to the peace regime on the Korean peninsula. The U.S. agreed to establish working groups for normalization of the DPRK-U.S. relations; normalization of the DPRK-Japan relations; and Northeast Asia Peace and Security Mechanism.<sup>253</sup>

243. *Six-Party Talks, Beijing, China: Joint Statement of the Fourth Round of the Six-Party Talks Beijing*, art. 1, U.S. DEP’T ST. (Sept. 19, 2005), <https://www.state.gov/p/eap/regional/c15455.htm> [<https://perma.cc/DC2W-9QCJ>].

244. *Id.*

245. *Id.* art. 4.

246. SANSOO LEE, *THE FEBRUARY 13 AGREEMENT: A NEW DAWN FOR NORTH KOREA’S DENUCLEARIZATION?* 13 (2007).

247. Press Release, U.S. Dep’t of Treasury, Treasury Finalizes Rule against Banco Delta Asia: BDA Cut off from U.S. Financial System (Mar. 14, 2007), <http://www.treasury.gov/press/releases/hp315.htm> [<https://perma.cc/E6H5-YUR5>]; Lee, *supra* note 236, at 268.

248. LIU LIN, *THE NORTH KOREAN NUCLEAR TEST AND ITS IMPLICATIONS 13-14* (2006), [http://isdpc.eu/content/uploads/publications/2006\\_lin\\_the-north-korean-nuclear-test-and-its-implications.pdf](http://isdpc.eu/content/uploads/publications/2006_lin_the-north-korean-nuclear-test-and-its-implications.pdf) [<https://perma.cc/ZH4V-92TG>].

249. *Initial Actions for the Implementation of the Joint Statement*, MINISTRY FOREIGN AFF. JAPAN (Feb. 13, 2007), [http://www.mofa.go.jp/region/asia-paci/n\\_korea/6party/action/0702.html](http://www.mofa.go.jp/region/asia-paci/n_korea/6party/action/0702.html) [hereinafter *Initial Actions*] [<https://perma.cc/MZ2Z-CGJX>].

250. Eun-sook Chung, *Long-Stalled Six-Party Talks on North Korea’s Nuclear Program: Positions of Countries Involved*, 25 *KOR. J. DEF. ANALYSIS* 1, 3 (2013).

251. Bruce Klingner, *Countering Pyongyang’s Next Steps in the Six Party Process*, WEB MEMO 1 (April 30, 2007) (Heritage Found., D.C.), [http://s3.amazonaws.com/thf\\_media/2007/pdf/wm1438.pdf](http://s3.amazonaws.com/thf_media/2007/pdf/wm1438.pdf) [<https://perma.cc/7LBA-8R5Q>].

252. SANSOO LEE, *THE FEBRUARY 13 AGREEMENT: A NEW DAWN FOR NORTH KOREA’S DENUCLEARIZATION?* 18-20 (2007), [http://isdpc.eu/content/uploads/publications/2007\\_lee\\_the-february-13-agreement.pdf](http://isdpc.eu/content/uploads/publications/2007_lee_the-february-13-agreement.pdf) [<https://perma.cc/7KK7-DSXP>].

253. *Initial Actions*, *supra* note 249, at art. III, ¶¶ 2, 3, 5.



## B. Political Environment: U.S. Strategic Shift on DPRK toward Peace Treaty

Since the late 1990s, the U.S. has gradually shifted its strategic stance towards North Korea. The Clinton administration finally began conceiving a “peace regime” as a possible option for denuclearization.<sup>254</sup> This strategic shift was triggered by the former Defense Secretary, William Perry’s proposal for “A Comprehensive and Integrated Approach: A Two-Path Strategy.”<sup>255</sup> In his report titled, “Review of United States Policy toward North Korea: Findings and Recommendations,” Perry maintains:

The first path involves a new, comprehensive and integrated approach to our negotiations with the DPRK. We would seek complete and verifiable assurances that the DPRK does not have a nuclear weapons program . . . . this path would lead to a stable security situation on the Korean Peninsula, creating the conditions for a more durable and lasting peace in the long run and ending the Cold War in East Asia . . . . If the DPRK moved to eliminate its nuclear and long-range missile threats, the United States would normalize relations with the DPRK, relax sanctions that have long constrained trade with the DPRK and take other positive steps that would provide opportunities for the DPRK.<sup>256</sup>

A few more reports may be considered in this regard. First, the Philip Zelikow Report (2006) suggested a bilateral dialogue with North Korea.<sup>257</sup> In a CSIS report titled “The U.S.-Japan alliance: Getting Asia Right through 2020,” Richard Armitage and Joseph S. Nye refer to “a high probability” of a Korean reunification and “the strategic balance in Northeast Asia.”<sup>258</sup>

The Obama Administration’s North Korea policy was called “strategic patience,” which was to gradually urge North Korea in a patient attempt to return to the Six-Party Talks.<sup>259</sup> This policy, however, has not been working out since the Kim Jong Un regime tested nuclear weapons and launched ballistic missiles.<sup>260</sup> President Trump is returning back to hardline policy towards North Korea’s nuclear weapons test and missile launches because the UN sanctions are not effectively implemented.<sup>261</sup>

254. WILLIAM J. PERRY, U.S. DEP’T OF STATE, REVIEW OF THE UNITED STATES POLICY TOWARD NORTH KOREA: FINDINGS AND RECOMMENDATIONS 3, 12-13 (1999), <http://belfercenter.hks.harvard.edu/files/1997%20NKPR.pdf> [<https://perma.cc/U4B7-X23X>].

255. *Id.* at 8.

256. *Id.* at 8-9.

257. P. Zelikow, *Opinion: The Plan that Moved Pyongyang*, WASH. POST (Feb. 20, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/19/AR2007021900918.html> [<https://perma.cc/B83L-4CGV>].

258. RICHARD L. ARMITAGE & JOSEPH S. NYE, THE U.S.-JAPAN ALLIANCE GETTING ASIA RIGHT THROUGH 2020 7 (2007), [https://csis-prod.s3.amazonaws.com/s3fs-public/legacy\\_files/files/media/csis/pubs/070216\\_asia2020.pdf](https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/media/csis/pubs/070216_asia2020.pdf) [<https://perma.cc/8VTH-Z86L>].

259. EMMA CHANLETT-AVERY ET.AL. CONG. RESEARCH SERV., R41259, NORTH KOREA: U.S. RELATIONS, NUCLEAR DIPLOMACY, AND INTERNAL SITUATION 6 (2016).

260. *Id.*

261. Ashley Parker & David Nakamura, *In Hard-Line Speech, Trump Warns North Korea: ‘Do Not Underestimate Us’*, WASH. POST (Nov. 8, 2017), [https://www.washingtonpost.com/politics/trump-strikes-more-conciliatory-tone-toward-north-korea-urges-deal-to-resolve-standoff-with-united-states/2017/11/07/d7f59a6e-c3a4-11e7-a441-3a768c8586f1\\_story.html](https://www.washingtonpost.com/politics/trump-strikes-more-conciliatory-tone-toward-north-korea-urges-deal-to-resolve-standoff-with-united-states/2017/11/07/d7f59a6e-c3a4-11e7-a441-3a768c8586f1_story.html) [<https://perma.cc/9ALV-FY6F>].

President Trump tried to dismantle North Korea's nuclear program and the Kim Jong Un regime itself.<sup>262</sup> After the sixth nuclear test on September 3, 2017, President Trump referred to military option against North Korea.<sup>263</sup> However, the Trump administration should recognize that North Korea is not similar to the 1990s' former Eastern European States who collapsed like dominos following the dissolution of the Soviet Union. China is backing up North Korea because both share the same security interest in the region. Therefore, a fundamental regime change is not a possible option at this point. As a result, a more "comprehensive breakthrough measure" is needed than the Six-Party talks. It is to build a peace regime. President Trump should open the peace deal with North Korea as President Clinton tried to do.<sup>264</sup> Now is the time to think of a proper peace treaty.

### C. US-DPRK Peace Talks and Bilateral Peace Treaty

Peace treaties are officially concluded between former belligerent States under international law.<sup>265</sup> As the U.S., North Korea, and China were the official signatories of the Armistice Agreement of 1953, all three countries are entitled to be direct parties to conclude a peace treaty. South Korea will be also a party to the peace treaty as a *de facto* belligerent State of the Korean War although its military representative did not sign the document directly. Ideally, a comprehensive peace treaty between these four parties will be the best option.<sup>266</sup>

In this regard, however, North Korea has been denying the status of South Korea as a legitimate party concerning the peace talks and a following peace treaty.<sup>267</sup> North Korea is willing to bilaterally consult with the U.S. on the question of the Korean peninsula.<sup>268</sup> Considering state practices on peace treaty, the U.S. is expected to tackle each sub-issue individually step by step.<sup>269</sup> Such a grand project cannot be picked up in a package deal without expending much time. Considering the circumstances, an individual approach would be the most probable alternative at the initial stage.

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262. *Id.*

263. David E. Sanger & Choe Sang Hun, *North Korean Nuclear Test Draws U.S. Warning of 'Massive Military Response'*, N.Y. TIMES (Sept. 2, 2017), <https://nyti.ms/2x2708A> [<https://perma.cc/PSZ7-3U6T>].

264. Glenn Kessler, *History Lesson: Why Did Bill Clinton's North Korea Deal Fail?*, WASH. POST (Aug. 9, 2017), <https://www.washingtonpost.com/news/fact-checker/wp/2017/08/09/history-lesson-why-did-bill-clintons-north-korea-deal-fail> [<https://perma.cc/GG5G-VL58>].

265. Jann K. Kleffner, *Peace Treaties in*, THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 104, 104-05 (Rudiger. Wolfrum ed., 2012).

266. JAMES GOODBY, JACK N. MERRITT & DONALD GROSS, *A FRAMEWORK FOR PEACE AND SECURITY IN KOREA AND NORTHEAST ASIA* 16 (2007), [http://www.atlanticcouncil.org/images/files/publication\\_pdfs/1/070413-North\\_Korea\\_Working\\_Group\\_Report.pdf](http://www.atlanticcouncil.org/images/files/publication_pdfs/1/070413-North_Korea_Working_Group_Report.pdf) [<https://perma.cc/VA3D-BQ52>].

267. *North Korea Paper Accuses Seoul of "Denying" June 15 Joint Declaration*, BBC MONITORING ASIA PAC. June 10, 2011.

268. See Lin, *supra* note 248, at 14.

269. See GOODBY, MERRITT & GROSS, *supra* note 266, at 13-14.

Therefore, the U.S.-North Korea bilateral peace talks would be a starting point of peace-making on the Korean peninsula in order to resolve their long-pending conflicts. Priority should be placed on the nuclear issue. North Korea has been pushing for the U.S. to normalize their relations up to an ambassadorial diplomatic level as well as to support its economy including the energy sector.<sup>270</sup> The corresponding deal from the American side is the “complete, verifiable, and irrevocable denuclearization” of North Korea.<sup>271</sup> North Korea must return to the NPT, dismantle its nuclear development program, fully open its nuclear sites, and cooperate with the international community in the denuclearization process. The Nuclear-Weapons-Free Korean Peninsula plan would be the final direction.<sup>272</sup> These are the basic conditions for any further negotiations.

A peace treaty is based on peaceful relations and *vice versa*. The former is an expression of the latter in a normative way. Both are as good as the relationship between water and fish. Without one, the other is meaningless. The U.S.-DPRK peace treaty-making would thus imply that a strategic balance between the U.S. and China has already been coordinated. The former U.S. practices indicate that a peace treaty mirrors the establishment of a new regional order. The U.S.-DPRK peace treaty would be followed by a comprehensive peace treaty between the four parties of the Korean War. In this course, both North and South Korea could declare the completion of the Korean War and replace the Armistice Agreement with a comprehensive peace treaty. An individual peace treaty could be also adopted between the two Koreas with details on the peacemaking process in the Korean peninsula.

#### D. South Korea as a Party Concerned

Another question is the participation of South Korea in the peace talks. South Korea was a *de facto* and *de jure* principal belligerent State of the Korean War. Actually, North Korea’s direct approach to the U.S. denying South Korea is a strategic concern, mainly because North Korea’s main interest is to make contact with the U.S. first. If North Korea is recognized by the U.S. and can normalize bilateral relations, it does not have to ignore South Korea as a negotiating partner. The September 19 Agreement is a good example. Independent and detailed agreements should be concluded between individual parties in order to resolve the problems solely between them. The U.S. practices show that this kind of constitutional peace treaty would not consist of only one single document, but a group of accords including protocols, action plans, and declarations.<sup>273</sup> North and South Korea should address their direct issues together. South Korea-China talks are also likely to go to the same direction, given this approach.

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270. *Id.* at 7-8.

271. KOREA POLICY INST., THE CASE FOR A PEACE TREATY TO END THE KOREAN WAR 4 (2009).

272. Lee, *supra* note 226, at 812-14.

273. See, e.g., Agreed Framework, N. Kor.-U.S., art. III, ¶ 1, art. IV, ¶ 1, Oct. 21, 1994.

## E. Comprehensive Peace Treaty

As each bilateral negotiation is completed, the four parties may draft a comprehensive peace treaty. A draft of the comprehensive peace treaty would contain the legal, political and economic accords including mutual recognition of sovereignty, political reconciliation, military confidence building with disarmament, dissolution of the United Nations Command, economic exchange and cooperation, etc.<sup>274</sup> A practical model can be inferred from the 1952 San Francisco Peace Treaty and the 1990 Final Settlement with Respect to Germany.<sup>275</sup> In this situation, the 1990 Final Settlement would be more relevant because the San Francisco Peace Treaty was entirely initiated by the U.S., while the Final Settlement was a result of “Two plus Four” negotiations.<sup>276</sup> In the Final Settlement, East and West Germany consulted with France, the then Soviet Union, the UK, and the U.S. in the establishment of a unified German state.<sup>277</sup> It terminated all the “rights and responsibilities” of the four outside powers “relating to Berlin and to Germany as a whole.”<sup>278</sup> The Final Settlement contains a number of measures that are appropriate to the two Koreas, including denuclearizing the German territory, establishing stable external borders, instituting military force ceilings and Components of a Comprehensive Settlement, reductions, and reaffirming provisions of the UN Charter, the Nuclear Nonproliferation Treaty and the Conference on Security and Cooperation in Europe (“CSCE”).<sup>279</sup>

A comprehensive peace treaty of Korea could be approved by each belligerent State under the UN flag, picking up where the Korean War left off. Their approvals, however, would not be a necessary condition. A more stable means to guarantee the effectiveness of the treaty is to have it approved by the UN General Assembly as an official resolution, thereby registering it at the UN Secretariat.<sup>280</sup>

If the contents of the treaty are agreed upon, the draft text should be adopted by the consent of the parties. Then, they should establish the text as authentic and definitive by such procedures as may be provided for in the text or as agreed to otherwise.<sup>281</sup> The adoption and the authentication of the text do not, however, by themselves create any obligations for the

274. See Annex 1.

275. See Treaty on the Final Settlement with Respect to Germany of September 12, 1990, <http://usa.usembassy.de/etexts/2plusfour8994e.htm> [<https://perma.cc/9V3Z-8H89>].

276. *Id.*

277. See *id.* (noting that the non-German parties to the treaty are the U.S., UK, France, and the Soviet Union).

278. *Id.*

279. See A FRAMEWORK FOR PEACE AND SECURITY IN KOREA AND NORTHEAST ASIA: REPORT OF THE ATLANTIC COUNCIL WORKING GROUP ON NORTH KOREA 16-17 (Apr. 2007), [http://www.atlanticcouncil.org/images/files/publication\\_pdfs/1/070413-North\\_Korea\\_Working\\_Group\\_Report.pdf](http://www.atlanticcouncil.org/images/files/publication_pdfs/1/070413-North_Korea_Working_Group_Report.pdf) [<https://perma.cc/772T-YXCD>].

280. See Vienna Convention on the Law of Treaties art. 80, ¶ 1, May 23, 1969 [hereinafter VCLT].

281. *Id.* art. 10(a).

parties.<sup>282</sup> The peace treaty will finally enter into force in such manner and upon such a date as it may provide, or as soon as the consent to be bound by the treaty is expressed by the four parties.<sup>283</sup> Article 11 of the VCLT provides signatures and ratification as the most popular means of expressing consent.<sup>284</sup>

A particular question regarding the Korean peace treaty is the replacement of the current Armistice Agreement with the peace treaty.<sup>285</sup> It is an exceptional case in the U.S. peace treaty practices because such replacement processes were few.<sup>286</sup> Also, the long history of the Korean armistice is a deciding factor. Replacing the Armistice Agreement with the peace treaty will contain two steps of legal procedures that are closely connected: the first is the termination of the Armistice Agreement and the second is entering into the peace treaty.<sup>287</sup> The "termination" in the first step means fully ending the binding force of the rights and<sup>288</sup> obligations created by the Armistice Agreement.<sup>289</sup> Article 54 of the VCLT provides that a treaty may be terminated "(a) in conformity with the provisions of the treaty; or (b) at any time by consent of all the parties after consultation with the other contracting states."<sup>290</sup> Because there is no provision of termination in the Korean Armistice Agreement, the possible way to terminate it is for each party to agree and declare ending it.<sup>291</sup> The premise for termination is to guarantee North Korea's denuclearization and normalize the U.S.-DPRK relations.

The VCLT, under Article 56, paragraph 1(a) and (b), provides the implied right of denunciation of or withdrawal from a treaty.<sup>292</sup> Considering modern State practice of general armistice, the parties could invoke it because the nature of the Korean armistice has already indicated *de facto* termination of the war which will be further consummated by a final peace treaty.<sup>293</sup> Another concern with respect to termination is the 1992 Agreement on Reconciliation, Non-Aggression, Exchanges, and Cooperation between the South and the North (hereinafter Basic Agreement). As most of the provisions of the Basic Agreement are similar to those of a peace treaty, they should be incorporated into the peace treaty. Section 6, Provision 2 of the Northern Ireland Peace Agreement, *e.g.*, lays down a similar regulation: "The British Government will complete incorporation into Northern Ireland law of the European Convention of Human Rights . . . ." <sup>294</sup>

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282. See Lee, *supra* note 236, at 218.

283. See VCLT, *supra* note 280, art. 24, ¶¶ 1-2.

284. *Id.* art. 11.

285. Lee, *supra* note 236, at 219.

286. See Annex 2.

287. Lee, *supra* note 236, at 219-20.

288. *Id.* at 219.

289. *Id.*

290. See VCLT, *supra* note 280, art. 54.

291. Lee, *supra* note 236, at 219.

292. *Id.*

293. *Id.* at 220.

294. See Northern Ireland Peace Agreement § 6, ¶ 2, Apr. 10, 1998.

Once the Armistice is officially terminated, there are two ways to effectuate the peace treaty. One is to enter the peace treaty into force in a manner simultaneously replacing the Armistice Agreement; and the other is to set up an interim step before the final effectuation of the peace treaty. In the latter, the parties should define the legal state of the interim period.<sup>295</sup> The UN Security Council can ensure the positive implementation of other interested States through the endorsement of this agreement.

In practice, however, an official declaration of the replacement would be unnecessary because core accords of the individual peace treaty may have already nullified those of the Armistice Agreement. Making a peace treaty itself is to end armistice—a *de jure* situation of war.

#### F. Beyond the Peace Treaty: Peace Regime

Peace treaty is a stepping stone for building a stable peace regime (peace as a system) of the Korean peninsula, as well as Northeast Asia. A peace regime should be mutually guaranteed by four powers: the U.S., China, Russia and Japan. It could be substantiated by the final settlement of the complex legal and political issues of the Korean War. The German case (“Two plus Four” formula operation) is relevant to our consideration. At the time, East and West Germany coordinated their diverse interests with the former Allied Powers (including the U.S., Britain, France, the Soviet Union) individually and comprehensively to establish a peace regime toward a unified German State.<sup>296</sup> A similar approach like the Conference on Security and Cooperation in Europe (“CSCE”) is advisable in the Korean Peninsula, too. These efforts are reflected in Article 7(1) of the Final Settlement with respect to Germany, which terminates all the “rights and responsibilities” of the four outside powers “relating to Berlin and to Germany as a whole.”<sup>297</sup>

### Conclusion

This paper has reviewed peace treaties that were signed and mediated by the U.S., and then has examined the legal and political conditions for making the U.S.-DPRK peace treaty. Considering the many wars that the U.S. has been involved in since its very creation, its track record with peace treaties is comparatively small. Peace treaties were doctrinal measures for the U.S. The Americans concluded peace treaties only when they wanted to fundamentally restructure the regional order after a war or to realize their strategic interest from a broader and longer perspective in some part of the globe. In this course, there are three principles for the U.S. to make peace treaties. First, the U.S. has never joined the already established peace system by other powers through a peace treaty. Second, the U.S. has concluded peace treaties bilaterally rather than it being a multilateral

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295. See Lee, *supra* note 236, at 220.

296. See generally Treaty on the Final Settlement with Respect to Germany, *supra* note 275.

297. *Id.* at art. 7, ¶ 1.

effort. This is evidenced by the Treaty of Versailles (1919) and the Treaty of Saint-Gemain-en-Laye (1919). The U.S. did not ratify the Versailles treaty initiated by the European powers, but concluded an individual peace treaty with each Axis power like Austria, Germany, and Hungary. In San Francisco (1951), however, the U.S. led almost all Allied Power to adopt a single document for peace with Japan. Nevertheless, the negotiations in San Francisco were carried out individually with each contacting party. It has constructed a new regional order of the postwar period in the Asia-Pacific region called the San Francisco System. The Paris Peace Treaties (1947) are a similar example. Third, the U.S. concluded peace treaties when concrete and practical interest for the U.S. exists in that region. This principle has been found in the U.S. mediated peace treaties. If the U.S. does not conclude a peace treaty with a former belligerent State, it implies that the strategic interest with that country is not fully defined in the U.S.

Considering the U.S. practices, the U.S.-DPRK peace treaty will be the key to peacemaking in the Korean peninsula as well as in Northeast Asia. Such a peace treaty will be also a turning point of the U.S.-China relations. This research has reviewed various legal, political, and technical questions involved in drafting and signing the treaty. Now, North Korea has proposed that the U.S. conclude a bilateral peace treaty, but the U.S. has raised objections due to Kim Jong Un regime's nuclear weapon tests and missile launches.<sup>298</sup> This signifies that the U.S. does not want to recognize the changing status quo of regional politics, yet. Since the end of the Cold War, the San Francisco System has not been fully operational.<sup>299</sup> The rise of China is a critical factor that restricts American hegemony in East Asia. North Korea is manipulating this power vacuum with its nuclear weapons development program. The U.S.-DPRK peace treaty means not just the normalization of bilateral relations, but more fundamentally, the recognition of China as an equal partner in the Asia-Pacific region, which has never been imagined by the U.S. It is an irrevocable trend, however. Therefore, the peace treaty is not only an agreement to officially terminate the Korean War, but is a "magna carta" for peace regime, which is the ultimate concern of people in this region. It can be first established between the U.S. and North Korea bilaterally, and then exist as a comprehensive formula. South Korea could be a mediator in this process.

Inter-Korean relations mirror U.S.-China relations in that the U.S.-DPRK peace treaty will be a crystal ball reflecting the balance of power in Northeast Asia. The German Unification Treaty (1990) was the outcome of a power balance system established between the Allied Powers over Ger-

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298. See Elise Labott & Nicole Gaouette, *North Korea Offered—then Rebuffed Talks with the US*, CNN (Feb. 2, 2016), <https://www.cnn.com/2016/02/22/politics/north-korea-nuclear-talks-peace-treaty/index.html> [https://perma.cc/7A4C-8YEL].

299. See Kimi Hara, *Continuing Legacies of the San Francisco System: Past, Present, and Future Options*, YALE COUNCIL E. ASIAN STUD. (Feb. 5, 2016), <https://ceas.yale.edu/events/continuing-legacies-san-francisco-system-past-present-and-future-options> [https://perma.cc/YA2R-C8LR].

man territory in the post-Cold War era.<sup>300</sup> This was a symbol of the complete end of the Cold War in Europe. The Korean peninsula will be next. On July 7, 2017, South Korean President Moon Jae-In released his security doctrine in Berlin toward North Korea for engagement including a peace treaty.<sup>301</sup> Time is ripe for the U.S. under the Trump administration to accept “peaceful” co-existence instead of “hostile” co-existence.

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300. See generally Treaty on the Final Settlement with Respect to Germany, *supra* note 275.

301. See Euan McKirdy, *South Korea's Moon: I'll meet Kim 'at any time, at any place'*, CNN (July 7, 2017), <https://www.cnn.com/2017/07/07/asia/moon-jae-in-south-north-korea/index.html> [<https://perma.cc/K8ER-9XBS>].



## ANNEX 1

## DRAFT

**Agreement between the United States of America and the Democratic  
People's Republic of Korea on the Termination of the 1953 Armistice,  
Denuclearization, and Rapprochement**

**Preamble**

The United States of America ("USA") and the Democratic People's Republic of Korea ("DPRK") (hereinafter "Contracting Parties"),

*Recognizing* that peace and stability on the Korean peninsula is the foundation for the prosperity and security in Northeast Asia, and the world;

*Recalling* that the hostilities of the past decades have posed grave threats to the peaceful co-existence of States on the Korean peninsula;

*Respecting* the principle of the United Nations Charter regarding the peaceful settlement of international disputes, the spirit of the Geneva Agreed Framework, and the September 19 Joint Statement on the abandonment of the nuclear weapons development program of the DPRK in a peaceful manner;

*Reaffirming* that the denuclearization of the Korean peninsula is an indispensable requirement for the contemporary international community;

*Requiring* the termination of the 1953 Armistice and the normalization of the relationship between the Contracting Parties to establish eternal peace in this region;

HEREBY have agreed to the following provisions:

**Chapter I: Mutual Respect and Recognition****Article 1**

The Contracting Parties shall respect the sovereignty, political independence and territorial integrity of the other Party. Both parties agree not to insult or provoke each other.

**Article 2**

The Contracting Parties shall make efforts to promote peaceful exchanges and cooperation under international law.

**Chapter II: Termination of the 1953 Armistice****Article 3**

The Contracting Parties agree that the Armistice Agreement concluded on July 27, 1953 shall be terminated and immediately replaced by this Agreement effective from the date of its entry into force.

**Article 4**

The USA shall effectively disassemble the United Nations Command stationed in the Korean peninsula conclusively upon consultation with the United Nations.

**Article 5**

The Contracting Parties shall closely cooperate to maintain peaceful co-existence between them following this Agreement.

**Chapter III: Military Confidence and Disarmament****Article 6**

The Contracting Parties shall refrain from the threat or the use of force against the other Party under any circumstances. All disputes shall be resolved by peaceful means as recognized under international law.

**Article 7**

The USA shall not deploy any strategic weapons of mass destruction in the Korean peninsula and the DPRK shall discontinue the development and launch of long range missiles.

**Article 8**

1. The Contracting Parties shall not undertake any large scale military exercise in the Korean peninsula. In the interest of preventing military hostilities or surprise attacks, any troop deployment, movements of military personnel or any military training exceeding the scale agreed to by both Parties shall be reported to the other's military authority in advance.

2. To boost mutual military confidence, Contracting Parties may directly communicate with each other through any convenient or reasonable means of communication, and exchange military personnel and information without prejudice.

3. The military authorities of each Contracting Party may facilitate the exchange of liaison officers for the mutual confirmation of military confidence.

4. Contracting Parties shall consult with each other to set up the joint control of maritime areas in both the Yellow Sea and the East Sea of Korea.

#### Article 9

The Contracting Parties shall retreat the heavy weapons and military personnel which can be used for surprise attacks from the Demilitarized Zone. Both Parties shall consult with the Republic of Korea on this matter.

#### Article 10

1. The Contracting Parties shall operate a Council of Disarmament to be organized by both Parties jointly, together with the Republic of Korea, the People's Republic of China, Russia and Japan.

2. The Contracting Parties shall consult with each other for the details of military confidence building.

### **Chapter IV: Denuclearization of the Korean Peninsula**

#### Article 11

1. The DPRK shall dismantle and abandon its nuclear weapons development program in a complete, verifiable, and irreversible manner. Any experiment, test, development, storage, deployment, or use of nuclear weapons shall be prohibited in the territory of the DPRK or anywhere on the earth.

2. The DPRK shall return to the Non-Proliferation of Nuclear Weapons Treaty ("NPT") system, assuming full responsibilities and obligations therein within three months from the entry into force of this Agreement.

3. Upon the entry into force of this Agreement, the DPRK shall cooperate with the International Atomic Energy Agency ("IAEA") to facilitate and comply with safeguard inspections of the nuclear facilities in the DPRK.

4. The DPRK shall open its nuclear sites and provide access to the IAEA for inspections under Article 12(B) to the IAEA Statute and to the USA in an effort to verify the abandonment of DPRK's nuclear weapons development program.

5. The Contracting Parties shall respect the accords under the Geneva Agreed Framework and the September 11 Joint Statement for dismantling the Nuclear Weapons Development Program of the DPRK.

#### Article 12

1. The USA shall not attack, try to attack, or threaten attacking at any level, the DPRK with nuclear weapons under any circumstances.

2. The USA shall not take any action for the proliferation of nuclear weapons in the Korean peninsula including import, storage, test, deployment, operation, or transfer of nuclear weapons or any other related nuclear material with a view to use it for the military purpose.

**Article 13**

The Contracting Parties shall make a *bona fide* effort to establish a nuclear weapon free zone on the Korean peninsula.

**Chapter V: Normalization of Relationship****Article 14**

The Contracting Parties shall agree to suspend diplomatic, and political hostility toward the other Party and set up a friendly relationship based on mutual respect for state sovereignty under international law.

**Article 15**

The Contracting Parties shall establish diplomatic ties at the ambassadorial level in an expedited manner. Each Party will establish a liaison office in the other's capital city for handling practical issues, including consular affairs.

**Article 16**

The USA shall assist and support the DPRK's efforts to join regional and international organizations to fully participate in international affairs.

**Article 17**

The DPRK shall release all American citizens detained in its territory with immediate effect upon the entry into force of this Agreement, and assist the USA to excavate the remains of US military personnel.

**Article 18**

The Contracting Parties shall promote exchanges and cooperation in culture and sports.

**Chapter VI: Economic Cooperation****Article 19**

The USA shall lift with immediate effect upon the entry into force of this Agreement, economic sanctions placed against the DPRK through the United Nations Security Council Resolutions.

**Article 20**

The USA shall remove with immediate effect upon the entry into force of this Agreement its ban and any other alienating restrictions on the exports of strategic goods to the DPRK.

**Article 21**

The Contracting Parties shall promote trade and investment in the other's territory.

**Article 22**

The USA shall aid the DPRK in tackling the energy shortage of the DPRK. Details of such assistance will be negotiated between the Parties based on the Geneva Agreed Framework.

**Chapter VII: International Commission for Monitoring, Control and Supervision****Article 23**

1. The Contracting Parties shall organize an international commission for the monitoring, controlling, and supervision of the implementation of obligations undertaken by both Parties under this Agreement.

2. The international commission under Article 23(1) shall be composed of representatives of the USA, the DPRK, the Republic of Korea, the People's Republic of China, Russian Federation, and Japan under the supervision of the United Nations.

**Chapter VIII: Final Clauses****Article 24**

1. This Agreement shall enter into force on the date of ratification by both Parties.

2. The English and Korean texts of this Agreement are both original and are equally authentic, are to be deposited with both governments as well as the United Nations.

**Article 25**

Each Contracting Party shall enact all necessary domestic legislation to strictly implement the obligations undertaken in this Agreement.

**Article 26**

This Agreement may be modified by mutual accord.

DONE at *Place*, on *DD/MM/YYYY*

For the Government of the United States of America

(Signed):

For the Government of the Democratic People's Republic of Korea

(Signed):

## ANNEX 2

## Chronology of US Peace Treaties

US-signed Peace Treaties			
No	Title	Date	Opposite Parties
1	Treaty of Paris	September 3, 1783	Great Britain, France, Spain
2	The Convention of 1800	September 30, 1800	France
3	The Treaty of Tripoli	June 4, 1805	Sweden, Tripoli, Algiers, Tunis, Morocco
4	Treaty of Ghent	December 24, 1814	UK
5	Treaty of Campode Cahuenga	January 13, 1847	Mexico
6	Treaty of Guadalupe Hidalgo	February 2, 1848	Mexico
7	Treaty of Tianjin	June 13, 1858	UK, Russia, France
8	The Boxer Protocol	September 7, 1901	China
9	Treaty of St. Germain-en-Laye	September 10, 1919	Republic of German-Austria
10	Treaty of Versailles	June 28, 1919	Germany & Allied Powers
11	US-Austrian Peace Treaty	August 24, 1921	Austria
12	US-German Peace Treaty	August 25, 1921	Germany
13	US-Hungarian Peace Treaty	August 29, 1921	Hungary
14	Paris Peace Treaties	February 10, 1947	Italy, Romania, Hungary, Bulgaria, Finland
15	Treaty of San Francisco	September 8, 1951	Japan & Allied Powers
16	Paris Peace Accords	January 27, 1973	North Vietnam, South Vietnam, Provisional Revolutionary Government
17	Treaty on the Final Settlement <sup>‡</sup> with Respect to Germany	September 12, 1990	Germany
United States-mediated Peace Treaties			
No	Title	Date	Parties
1	Camp David Accords	September 17, 1978	Egypt & Israeli
2	Oslo Accord I	September 13, 1993	Israel & PLO
3	Oslo Accord II	September 28, 1995	Israel & PLO
4	Northern Ireland Peace <sup>‡</sup> Agreement (The Belfast Agreement)	April 10, 1998	UK & Northern Ireland
5	Dayton Agreement	December 14, 1995	Serbia, Croatia, Bosnia