



International Atomic Energy Agency

INFORMATION CIRCULAR

INF

INFCIRC/442

9 May 1994

GENERAL Distr.

Original: ENGLISH

**COMMUNICATION DATED 20 APRIL 1994
RECEIVED FROM THE PERMANENT MISSION OF
THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA
TO THE INTERNATIONAL ATOMIC ENERGY AGENCY**

The attached text of the Memorandum of the Foreign Ministry of the Democratic People's Republic of Korea dated 20 April 1994 is being circulated to all Member States of the Agency at the request of the Permanent Mission of the Democratic People's Republic of Korea.

Memorandum of DPRK Foreign Ministry

(Pyongyang, April 20, 1994)

The current international relations evolving over the nuclear issue on the Korean peninsula have assumed dimensions of serious confrontation. The situation has presented much greater complexity particularly after March 31 when the United Nations Security Council announced its “presidential statement” imposing unreasonable follow-on inspections on the Democratic People's Republic of Korea (DPRK).

The United States and its satellite forces have resorted to the one-track course of pressure by enjoining the safeguards agreement-bound fullscope inspections on the DPRK with disregard to the unique status of the DPRK which has temporarily suspended the effectuation of its declared withdrawal from the Nuclear Non-Proliferation Treaty (NPT/the treaty), and such an action has placed grave difficulties in the way of efforts for resolving the nuclear issue.

The nuclear issue today stands at the crossroad where the issue can be resolved through dialogue and negotiations in keeping with the DPRK's unique NPT status or the issue will remain unresolved permanently because of strong-arm actions and confrontation.

In view of the current situation, the Ministry of Foreign Affairs of the Democratic People's Republic of Korea issues this memorandum in order to shed light on the major obstacles blocking a resolution of the nuclear issue and the truth behind them.

D) The origination of the DPRK's unique NPT status and its essence

The key factor in resolving the nuclear Issue includes acceptance of the DPRK's unique status based on its temporary suspension of the effectuation of the announced withdrawal from the NPT and adoption of a step-by-step process toward a fair solution befitting the unique status.

The DPRK finds itself in a unique status of having temporarily suspended the effectuation of its announced withdrawal from the NPT.

As is known already, the DPRK Government announced its decision on March 12, 1993 to withdraw from the NPT in order to safeguard the supreme state interests in accordance with Paragraph I of Article X of the treaty. The DPRK's decision to temporarily suspend the effectuation of its withdrawal from the NPT, as contained in the June 11 1993 DPRK-USA joint statement, was a provisional measure which the DPRK undertook unilaterally on the premise that the DPRK-USA negotiations for a peaceful resolution of the nuclear issue will continue on an equal and unprejudiced basis. This bespeaks that the legal parties responsible for the suspension of the effectuation of the DPRK's withdrawal from the treaty are clearly the DPRK and the United States.

As far as the safeguards agreement is concerned, the agreement was concluded pursuant to Paragraph 4 of Article III of the NPT, and therefore the legal validity of this agreement has been as good as suspended since June 12, 1993 when the DPRK's withdrawal from the treaty was to come into force because of absence of any subsequent

particular agreement thereof between the DPRK and the International Atomic Energy Agency (IAEA/the agency). This notwithstanding, the DPRK and the IAEA have so far managed to reach bilateral agreement on the limited scope inspection activities which have been carried out accordingly. This was possible entirely thanks to the voluntary and well-intentioned steps taken by the DPRK in order to demonstrate the transparency of its nuclear activities.

- The United States and the IAEA Secretariat, too, have recognized the DPRK's unique NPT status.

At the DPRK-USA working-level contact in New York on December 10 1993, U.S. Deputy Assistant Secretary of State for East Asia and Pacific Affairs Thomas Hubbard said that "the United States understands the DPRK's unique status resulting from its temporary suspension of the effectuation of the declared withdrawal from the NPT," and that "we want the DPRK to accept technical requirements for maintaining the continuity of safeguards, not the agency's legal requirements."

Assistant Secretary of State for Political and Military Affairs, Robert L. Gallucci, head of the USA delegation to the DPRK-USA talks, addressed a message on February 2, 1994 to his DPRK counterpart; in which he said that "we understand that inspections sought by the IAEA for the continuity of safeguards are designed to ensure non-diversion of nuclear material since the previous full inspection". This is a de facto acceptance by the United States that the inspection needed for the continuity of safeguards is not routine or ad hoc inspection under the safeguards agreement but an inspection limited only to the purpose of verifying that there has been no diversion of nuclear material in the DPRK since February 1993 when the inspections required by the safeguards agreement were suspended. At the same time, this also serves as a clear evidence that the United States has accepted and respects the DPRK's current unique NPT status.

The IAEA, too, has recognized the DPRK's unique status in the practice of its inspection activities. In his March 24 1994 report to the United Nations Security Council on the results of the agency's March inspection activities in the DPRK the IAEA Director-General Hans Blix said that the DPRK says it needs only to ensure the continuity of safeguards because of its unique status, and in this sense the DPRK accepted the agency's inspections in May and August 1993 for the servicing and reloading of the surveillance equipment. This is none other than an acceptance by the IAEA itself of the DPRK's unique status. Had the IAEA Secretariat had any competent reasons or grounds to urge the DPRK to fulfill its obligations under the safeguards agreement, it would never have agreed to such an extremely limited inspection aimed only at servicing and reloading the surveillance equipment as the agency's Director-General referred to.

The same is the case with the March 1994 inspection of which the agency has made an "issue." In his above-mentioned report the agency's Director-General said that in reaching the DPRK-IAEA agreement on 15 February 1994, which became the basis for the latest inspection, "we discussed only the contents of the inspection needed, at the present juncture, for maintaining the continuity of safeguards, not the legal grounds for the inspection." In the final analysis, the IAEA Secretariat has proved by itself that it could not deny the DPRK's unique status in relations to the safeguards agreement but accepted and tolerated its unique status and, on this basis, has performed its inspection activities.

- Despite these facts, the United States and the Agency Secretariat are still talking about the "non-compliance with the safeguards agreement" and "full inspection," stressing that the DPRK should yet fully live up to its obligations under the safeguards agreement. Such an action clearly shows that they are using the safeguards agreement as a leverage for attaining their dishonest political objectives of strangling the DPRK's political system.

Masterminded by the United States, the IAEA Secretariat convened the meeting of its Board of Governors on March 21, 1994 to deal with the DPRK's so-called "nuclear issue"

and engineered the adoption by the board of a "resolution," which says that the DPRK "is in further non-compliance with its safeguards agreement by not allowing IAEA inspectors to conduct indispensable inspection activities to verify that there has been no diversion-of nuclear material."

In its "presidential statement" dated March 31, 1994, the United Nations Security Council calls upon the Democratic People's Republic of Korea to allow the IAEA inspectors to complete the inspection activities as a step in fulfilling its obligations under the safeguards agreement and in honouring non-proliferation obligations of the treaty." This is also clearly nothing but simply a demand that the DPRK agree to full implementation of the safeguards agreement. The persistency with which the United States and the IAEA have called for the DPRK's full implementation of the safeguards agreement is based on their intention to categorically negate the legality of the DPRK's current unique status and to justify their machinations of strangling the DPRK.

- Even in the light of the premise on which the safeguards agreement was approved, the legal effect of the agreement is, in fact, as good as suspended. On April 9, 1992, the Third Session of the Ninth Supreme People's Assembly of the DPRK deliberated on the safeguards agreement to be concluded between the DPRK and the IAEA and adopted and announced its resolution on "approving this agreement on the premise that none of the depositaries of the NPT will either deploy nuclear weapons on the Korean peninsula or resort to nuclear threat against us." But, the elimination of the nuclear threat by a depositary of the treaty against the DPRK-- which is included in the above-stated premise -- remains yet to be achieved, and the United States, one of the depositaries, is on the contrary further increasing its nuclear threat against the DPRK particularly by openly disclosing its intention to resume the "Team Spirit '94" joint military exercises, a nuclear test war targeting the DPRK, and massing its armed forces on and around the Korean peninsula. Such actions on the part of the United States destroy the legal basis of the DPRK's approval of the safeguards agreement and create circumstances that prevent the DPRK from implementing the safeguards agreement.

The IAEA Secretariat is a party to the safeguards agreement, but the partiality and injustice in its actions give the DPRK unambiguous grounds to withhold full implementation of the safeguards agreement. The "Vienna Convention on the Law of Treaties" provides in Paragraph I of Article 60 that "a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation whole or in part.

The IAEA Secretariat has fundamentally breached the safeguards agreement when it artificially fabricated the so-called "inconsistencies" and, on the basis of the intelligence information forged by the United States, triggered an agency "resolution" calling for "special inspection" aimed at opening up the "two military sites" of the DPRK, another party to the safeguards agreement. Therefore, it follows, as a matter of course, that the DPRK, as another party to the agreement, is entitled to the legitimate rights to suspend the effect of this agreement in whole or in part.

II) The consistent efforts by the DPRK Government for the continuity of safeguards

Despite the extraordinary situation characterized by its unilateral decision to suspend temporarily the effectuation of the announced withdrawal from the NPT, the DPRK

Government has provided its sincere cooperation in the IAEA inspection activities needed for the continuity of safeguards at its nuclear facilities, as an expression of its good will to demonstrate the transparency of the DPRK's peaceful nuclear activities.

- In keeping with its promise to the United States, the DPRK Government has placed the nuclear activities within the DPRK's territory strictly under the IAEA's surveillance.

At present, the IAEA-installed containment devices at the DPRK's five-megawatt experimental atomic power plant and the radiochemical laboratory alone include over 40 metal seals and more than 10 paper seals, gamma mappings at 20 points over 50 sheets of status change identification photographs and the spike liquid for freezing processes at five vessels, and the agency's surveillance devices installed at these facilities are six surveillance cameras, one spent fuel rod counter and three thermal luminescence detectors. This is an unquestionable evidence that the DPRK's nuclear facilities remain under the double and triple system of the IAEA's strict containment and surveillance.

In early December 1993, the spokesman of the IAEA admitted that the continuity of safeguards is maintained at the DPRK's nuclear facilities, saying that "the surveillance system is in operation with double and triple backup system of complementary facility containment and surveillance devices, and its unique character is that any malfunction of certain device falls short of determining the, interruption of the continuity". Therefore, absence of inspection cannot lead to a total impossibility of safeguards surveillance. Even at present, the surveillance cameras and containment devices installed by the IAEA still remain in place at the DPRK's nuclear facilities.

- Whenever the IAEA Secretariat proposed to send inspection teams for the purpose of maintaining the continuity of safeguards, the DPRK agreed to receive the inspection teams and allowed them to replace the tapes and accessories of the surveillance equipment, to identify the seals and to conduct the physical inventory verification activities required for the continuity of safeguards surveillance. Such sincere efforts by the DPRK resulted in successful inspections by the agency for the continuity of safeguards in May and August of 1993 when the agency inspectors serviced and reloaded containment and surveillance equipment at the five-megawatt experimental atomic power plant and the radiochemical laboratory, the two facilities to which the IAEA attach importance.

In view of the size and present conditions of the DPRK's nuclear facilities, the containment and surveillance devices installed at these major facilities alone are enough to fully verify non-diversion of nuclear material to other purposes in the DPRK.

In his telex dated September 14 1993 to the Director of the General Department of Atomic Energy of the DPRK, the IAEA Director-General pointed out that the inspection activities in May and August of 1993 helped to maintain the continuity of safeguards knowledge.

- Even in the extraordinary circumstances following its temporary suspension of the effectuation of the withdrawal from the NPT, the DPRK Government took goodwill steps of accepting the IAEA inspections necessary for the continuity of safeguards of its nuclear facilities.

Motivated by its desire to fulfil in good faith both the DPRK-USA agreed conclusions and the DPRK-IAEA agreement, the DPRK received the Agency inspection team on schedule in March of 1994 and allowed the inspection team to perform its inspection activities sufficient for maintaining the continuity of safeguards at the declared seven

facilities. These activities include the servicing and reloading of the containment and surveillance devices as well as the "verification of physical Inventory" of nuclear material. Such inspection activities have helped to fully verify non-diversion of nuclear material from the DPRK's nuclear facilities and to provide firm assurances of the continuity of safeguards.

The Russian newspaper "Pravda," dated March 29, 1994, said that the "IAEA has no evidence that north Korea has breached the international rules in the field of nuclear technology" and commented that "the inspectors did not find out anything to prove their blame for an alleged military orientation of the research work there."

South Korea's "Radio No. 1" quoted on March 16, 1994 the IAEA inspection team as reporting that during the just concluded inspection in north Korea... they carried out inspection activities including the reloading of the surveillance equipment on a more progressive scale than the previous Inspections.

On February 28, 1994, a U.S. government official told a press interview that "the infra-red photographs from the American reconnaissance satellite have revealed mostly that north Korea did not extract plutonium over the past one year."

Leonard Specter, senior researcher at the U.S. "Carnegie endowment for International peace," said that "as for my understanding, there has been no problem at the reactor. After the inspection was complete, there has been no indication that the fuel was removed," and added that "they would not have this plant opened up for the world to see, if they wanted first and foremost to try to build up their nuclear weapons program."

U.S. Assistant Secretary of State for East Asia and Pacific Affairs Winston Lord and other American officials concerned also said that "through the agency's inspection, it is almost certain that north Korea has not engaged in any further reprocessing activities since it announced its decision to pull out of the treaty."

- The restriction of the inspection of the DPRK's nuclear facilities to a limited inspection only for the continuity of safeguards is an inevitable case befitting the DPRK's unique status.

During the March 1-15, 1994 period when the inspection activities took place, the DPRK did not allow smear-taking in the glove-box area and gamma mapping for the filtering device at the radiochemical laboratory requested by the inspection team because it was an inordinate demand going beyond the scope of maintaining the continuity of safeguards.

If, at this point of time, the DPRK allowed the requested samplings and measurements unrelated to the continuity of safeguards, then the IAEA Secretariat would play on it to frame up "inconsistencies" again, as it did previously, and would complicate the matter by talking about "special inspections" and so forth. In reality, the IAEA Secretariat is now raising a hue and cry, as if the DPRK's alleged restriction of the scope of the recent inspection activities were responsible for a so-called non-implementation of the February 15, 1994 DPRK-IAEA agreement. This shows that the Agency Secretariat continues seeking its dishonest political purposes by distorting the truth in an attempt to impute all the responsibilities to the DPRK.

The Agency Secretariat's unwarranted demand for samplings and measurements at the radiochemical laboratory during the recent inspection constitutes a clear violation of the February 15, 1994 agreement designed exclusively for maintaining the continuity of safeguards. And, as for the disputed smear-taking in the glove-box area of the radiochemical laboratory, for which the Agency Secretariat insists on the "completion of

inspection," the smear-taking has no relevance at all to the continuity of safeguards but falls into the category of the verification of correctness and completeness of the initial report on nuclear material, the smear-taking in this area is directly related with the so-called "inconsistencies" which still stand unresolved between the two sides, and this is what the agency already knows well. However, the DPRK side showed highly cooperative spirit by recommending a sample-taking of the spike liquid for the inspectors to conduct an effective verification in the glove-box area and assisting them in sampling the spike liquid. Analysis of this sampled liquid alone is more than enough to determine non-diversion of nuclear material.

Despite these facts, the Agency Secretariat made an unjust and unilateral conclusion that it "remains unable to verify that there has been no reprocessing activities at the radiochemical laboratory" and referred the DPRK's "nuclear issue" to the United Nations Security Council, an action which cannot be viewed otherwise but clearly as a calculated anti-DPRK stratagem. Any inspections under the safeguards agreement will never be allowed, as long as the current situation continues with the DPRK's unique status based on its temporary suspension of the effectuation of the declared withdrawal from the NPT.

- The inspection activities that befit the DPRK's current unique status are only the inspection activities necessary for maintaining the continuity of safeguards. The case is the same with an inspection of the DPRK's normal peaceful nuclear activities.

How long the DPRK's unique status will last depends entirely on when the United States renounces its nuclear threat against the DPRK and its policy of antagonizing and strangling the DPRK and, at the same time, when the agency redresses its partiality and injustice to the DPRK. The DPRK's unique status would naturally terminate if further round of DPRK-USA talks take place and the simultaneous action steps are carried into practice with a view to resolving the nuclear Issue once and for all on the principle of the proposed package solution.

III) The injustice of applying the double standards to the DPRK's "nuclear issue"

At present, the IAEA Secretariat and the United Nations Security Council, both in support of the U.S. policy of antagonizing and strangling the DPRK, are openly applying their extremely discriminatory and prejudiced double standards to the DPRK's "nuclear Issue."

Under the U.S. manipulation, some officials of the IAEA Secretariat manoeuvred the adoption of the unjust anti-DPRK "resolutions" one after another charging the DPRK with the so-called "non-compliance with the safeguards agreement" and systematically tried to bring the DPRK's "nuclear issue" to the United Nations.

The United Nations Security Council, also under the U.S. behind-the-scenes manipulation, is used as forum for an unwarranted discussion of the DPRK's "nuclear Issue" against the purposes and principles of its charter.

International law must be applied without any prejudice to all the states, irrespective of the size of their territories or the number of their population. The international organization connives at the United States posing nuclear threat against the DPRK and instead brings unilateral pressure to bear upon the victimized DPRK. This is a clear example of application of the double standards.

- Some officials of the IAEA Secretariat are unreasonably provoking the DPRK over its peaceful nuclear activities, while conniving at the U.S.-patronized countries developing nuclear weapons.

In the practice of its inspection activities, the IAEA defends some countries using their nuclear facilities for the military purposes, saying "those are undeclared facilities," or "they are the buildings about which there is no other available information related to the existence of nuclear materials." Some officials of the IAEA Secretariat have conducted more than 100 rounds of inspections in other countries but never made an issue of the telltale nuclear weapons development programme in some of these countries. But, after six rounds of inspections only in the DPRK, they fomented suspicions about alleged "nuclear weapons development" in the DPRK and pushed through a board of governors' resolution calling for "special inspection." This is a graphic illustration of how far their double standards policy has gone against the DPRK.

On April 1, 1993 the editor of the Tanzanian newspaper "Motomoto" said that the United States feigns ignorance of the nuclear development programme in some countries, but on the other hand it "persists in its efforts to fault north Korea's alleged "nuclear development" and its declared intention to withdraw from the NPT despite its faithful implementation of the NPT obligations because, in a nutshell, that nation is regarded as a cancerous entity hampering the U.S. attempts to establish a new global order."

The Thai newspaper "Bangkok Post", dated April 15, 1993 carried an article entitled "Why nuclear arms race is based on racial discrimination?" which says the double standards are now applied clearly toward the attitude of north Korea that has expressed its displeasure over the NPT's discriminatory nature and announced its intention to withdraw from the treaty on the one hand and toward the attitude of certain countries that have acknowledged having produced nuclear bombs with equivalent fire power to that of the bomb dropped on Hiroshima, Japan, during World War II on the other.

The Russian paper "Pravda" dated March 30, 1993 also reported that "many observers are highly suspicious of the nuclear programmes of a number of countries, which remain out of sight of the United States and the IAEA," and deplored "the U.S. demand for north Korea to accept inspections of its military sites to be astonishing."

The abnormal situation is such that the nations on which sanctions should be imposed go unchallenged while pressure is imposed on an innocent nation.

- Some officials of the IAEA Secretariat connived at the nuclear weapons development programme by the U.S.-patronized countries, but in case of the DPRK, they did not hesitate to use openly the forged intelligence information and satellite photographs from a third country which are forbidden to be used for inspection activities, in a desperate attempt to create a "suspicion about the nuclear development" in the DPRK.

None of provisions in the IAEA statute and the safeguards agreement stipulates usability of a third country's intelligence information to the agency's inspection activities. However, some officials of the IAEA Secretariat have breached the IAEA statute and the safeguards agreement by systematically using the falsified intelligence information from a third country for their inspections at the DPRK's nuclear facilities. On November 16 1990, the Japanese Jiji Press disclosed that, in a bid to arouse suspicion about the DPRK's nuclear activities, the United States "adventurously faked up reconnaissance satellite photographs and circulated them among the IAEA Secretariat and the western countries" to peddle around the "suspected nuclear arms development programme" in the DPRK.

"Washington Post" dated April 27, 1993 acknowledged that "the Clinton administration provided the IAEA with photographs from the U.S. reconnaissance satellite as evidence of 'north Korea's nuclear weapons development programme.'"

The British newspaper "Daily Awaz International", dated April 4, 1994, carried an article entitled "Why Muslims should defend north Korea?" which says "when the IAEA first inspected north Korea they gave the country a 'clean bill of health'. Then the CIA laid before it some photographs taken by its spy satellites. Under IAEA rules these should not even have been considered, but, surprise surprise, the IAEA decided to ignore its own rules."

In reality, during the February 1993 meeting of the agency's board of governors, the IAEA Director-General screened the slide films of the forged satellite picture provided by the United States in an attempt to create a suspicion that certain military site in the DPRK is a "nuclear waste storage". In his address on April 14, 1993 to a conference on atomic industry in Yokohama, Japan, the IAEA Director-General even stated openly that he would "continue using the U.S. intelligence information about the two locations around Nyongbyon for the agency's inspections and go on obtaining north Korea's nuclear-related information from third countries even if north Korea may protest."

As seen in the above, the previous routine and ad hoc inspections conducted by the IAEA were not inspections aimed at verifying the correctness and completeness of the DPRK's initial report on nuclear material but they were, from the outset, the IAEA-coated U.S. inspections to fabricate pretence for strangling the DPRK on the basis of the intelligence information forged by the United States.

Moreover, some officials in the IAEA Secretariat have systematically dished out to the United States and other hostile forces the confidential information to which they had obtained access in the course of the inspections at the DPRK's nuclear facilities. These actions constitute a gross violation of the provision of the safeguards agreement on protecting secrets and other confidential information coming to their knowledge during inspections. After all, the inspections at the DPRK's nuclear facilities were, in the true sense of the word, "no-secret inspections" and "open inspections," and they were "joint inspections" and "cooperative inspections" under the "quadripartite system of coordination" of the United States, Japan, south Korea and the IAEA.

All the above-cited facts show that the double standards policy pursued by the United States and the IAEA with respect to the DPRK's nuclear issue has reached its culmination and such policy has topped the height of injustice.

As can be seen in the above, the attempts to force the DPRK to fully implement the safeguards agreement-bound obligations at the present stage are motivated by the malevolent purposes to destroy the basis of the DPRK's declaration of its decision to withdraw from the treaty in the long run, by stretching the truth to make an impression that the DPRK still remains a full state party of the NPT.

As the DPRK has stated in no uncertain terms the reasons for declaring its decision to withdraw from the NPT, unless the United States renounces its policy of hostility and nuclear threat campaign against the DPRK and unless the IAEA Secretariat redresses its partiality and injustice to the DPRK, the DPRK's reinstatement in the treaty will remain absolutely inconceivable and, therefore, full implementation of the safeguards agreement will have no sense of word at the present stage.

Inspection limited strictly to maintaining the continuity of safeguards alone is what the DPRK can accept in keeping with its unique status based on the temporary suspension of the effectuation of its announced withdrawal from the NPT and contingent on the progress of the DPRK-USA talks.

The DPRK's unique status was not of its own making intended for its selfish purposes, but it was imposed on the DPRK, against its will, by the United States and the IAEA Secretariat due to the abnormal situation resulting from their unjust actions. The DPRK sincerely wants such an extraordinary situation to be straightened out as soon as possible

and the nuclear issue to be resolved impartially. To this end, the United States and the IAEA Secretariat must clearly realize their responsibility for the origination of the nuclear issue and for its current complexity, stop resorting to the unreasonable and contradictory method of the double standards and pressure, and must seek unprejudiced and substantial ways to resolve the nuclear issue once and for all.

The current developments give serious lessons that dialogue and negotiations are the only way to attain an early resolution of the nuclear issue and to achieve detente and peace and that pressure and "sanctions" are the path of unpardonable notorious crimes of whipping up conflict and confrontation and thus blocking permanently the possibility of resolving the nuclear issue.

If the United States and the IAEA Secretariat continue to resort to unreasonable pressure campaign ignoring such lessons of history, the nuclear issue will remain unresolved indefinitely and it will only entail irretrievable consequences jeopardizing peace and security in Asia and the rest of the world.

All the facts show that if they try at the present stage to restore confidence on a step-by-step basis through inspection designed for the continuity of safeguards in line with the DPRK's current unique status and at the same time take a serious approach to the DPRK-USA talks, the matters related to the implementation of the safeguards agreement will be sorted out in due course, and eventually the nuclear issue will be resolved once and for all.