



# A look back on KEDO: the European involvement

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## Executive Summary

European engagement in the Korean Peninsula Energy Development Organization (KEDO) remains to date the most ambitious form of European Union (EU) involvement in the North Korean nuclear crisis in more than 25 years. Surprisingly, the question of European involvement in KEDO, which was effective from 1997 to 2006, hardly arises. Yet, it is a crucial experience for understanding both the current North Korean nuclear crisis and European policy in this field over the past 15 years. Widely perceived today as a “trap” for Europe, KEDO has in fact shaped European security policy in North-East Asia. The first nuclear crisis with Pyongyang in 1993-1994 brought the EU into the diplomatic process of dealing with North Korean security issues, while the second nuclear crisis in 2002-2003 pushed it back. In this respect, the experience of KEDO and the few European initiatives that accompanied it were directly responsible for the turn that European politics have taken for more than fifteen years, moving from an assumed willingness to “commit” to a more prudent practice of “conditional commitment”. That being said, it was also important for European leaders to recall at the time of their commitment that the 1994 framework agreement and KEDO would not become the relevant frame of reference for European political action, since it had been going beyond this frame of reference for several years.

## A look back on KEDO: the European involvement

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### Introduction

The European engagement in the Korean Peninsula Energy Development Organization (KEDO) remains to date the most ambitious form of European Union (EU) involvement in the North Korean nuclear crisis in more than 25 years. The European commitment took shape with the signature in July 1997 of the *“Agreement on the Terms and Conditions for the Accession of the European Atomic Energy Community (EAEC/Euratom) to KEDO”*, which entered into force on 19 September 1997. This agreement allowed Euratom to work with the three founding members (United States, Republic of Korea – ROK, Japan) to help them achieve the Organization’s objectives. The European text detailed these objectives further than Article II of the inaugural KEDO charter<sup>1</sup> had done. In particular, it was about improving nuclear safety, reducing the threat of nuclear proliferation in North Korea by providing the safest techniques. In December 2001, the EU renewed its membership for a further five years and increased its annual contribution from €15 million to €20 million.

Almost fifteen years after its collapse, KEDO is a forgotten initiative and entity. The scale of KEDO as an international phenomenon (duration, number of states involved, financial and human resources committed, objectives pursued) is surprising today in view of the Organization’s almost total oblivion thirteen years after the decision to close the mandate taken by its Board of Directors on 31 May 2006. Academic research is not interested in it. The North Korean nuclear litigation news no longer mentions it.

This means that the question of European involvement in KEDO, which was effective from 1997 to 2006, hardly arises, with the exception of a few rare academic works at the beginning of the century. Why come back to it? Because it is a crucial experience for understanding both the current North Korean nuclear crisis and European policy in this field over the past fifteen years.

Widely perceived today as a trap for Europe, KEDO has in fact shaped the EU’s European security policy in North-East Asia. This experience deserves to be put in perspective with the hindsight that time now allows.

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<sup>1</sup> Agreement on the establishment of the Korean Peninsula Energy Development Organization, 9 March 1995, New York.

The aim of this paper is to recall the context in which European leaders decided in the early 1990s to engage in KEDO, to detail the reasons why the EU took the decision to join the Organization and the form of its engagement, to assess the record of European participation by criticising the argument that KEDO has been mainly a trap for the EU.

## 1. European participation in KEDO

When Japanese diplomat Itaru Umezu was preparing his business in Tokyo to join KEDO in New York at the beginning of 1995, his colleagues joked that he was lucky enough to “*be in New York and have nothing to do*”. This jest illustrates well the state of mind of the KEDO participants at its origin, as well as the retrospective perception that one can have of the Organization without having followed the conditions of its birth, training and implementation.<sup>2</sup>

The agreement that established the Korean Peninsula Energy Development Organization (KEDO) was signed in New York between the United States, the Republic of Korea and Japan on March 9, 1995. Under the terms of Article 2, KEDO was intended to achieve three objectives: the financing and supply of two light water reactors (LWR) with a unit capacity of approximately 1000 megawatts (MW); the supply of energy alternatives to North Korean graphite reactor pending the construction of the first LWR unit; the implementation of any other measures deemed necessary to meet the first two objectives or those of the framework agreement concluded between the United States and the Democratic People’s Republic of Korea (DPRK) on 21 October 1994 in Geneva. Broadly speaking, this framework agreement was therefore the origin of KEDO, whose main function was to implement it. Officially, KEDO carried out its mission from 1995 to 2007. In fact, its lifespan was shorter: KEDO had a lifespan of ten years, from 1995 to 2005. The Organization was ruled out by Washington in September 2005, the following sixteen months consisting in liquidating current affairs and recovering what could be recovered from the Organization’s material and financial assets. About \$1.5 billion had been spent on the project, which was expected to cost nearly \$5 billion. Besides the United States, the ROK and Japan, several other countries joined the initiative as member states: New Zealand, Australia, and Canada as early as 1995; Indonesia, Chile and Argentina in 1996; Poland in 1997, the Czech Republic in 1999, and Uzbekistan in 2000. Nineteen other non-member countries contributed materially and financially.

### 1.1. American insistence

According to Michael E. Smith, who led talks with American officials at the US Delegation to the EU in Brussels at the beginning of the century, the EU’s entry into KEDO was essentially the result of an intense US lobbying campaign with the European Commission.<sup>3</sup> Any US

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<sup>2</sup> See Charles Kartman, Robert Carlin, Joel Wit, *A History of KEDO 1994 – 2006*, Center for International Security and Cooperation, Stanford, June 2012.

<sup>3</sup> Michael E. Smith, *Europe’s Foreign and Security Policy, the Institutionalization of Cooperation*, Cambridge University Press, 2004, p. 204.

senior diplomat visiting a European country between the end of 1995 and 1996 defended the project by following a quasi-commercial argument of prospecting and seeking financing.

Indeed, the question of the cost of KEDO was problematic from the very beginning. The financial question was a main key to KEDO's reading during its ten years of operation. For US Ambassador Stephen Bosworth, the Executive Director of KEDO from 1995 to 1997, *"the most difficult problem we were dealing with all the time was money, largely money for Heavy Fuel Oil (HFO) because we didn't have any. We stitched together all sorts of temporary financial arrangements: a credit line from the Japanese, supplier credits, everything you can think of."*<sup>4</sup> Funding difficulties increased with the erosion of the crisis situation in the Peninsula at the turn of the century. Indeed, the perception of an improvement weakens the argument of the Korean, Japanese and American administrations to justify the requests for annual budgetary appropriations required for the functioning and *raison d'être* of the Organization. The question arose in particular for the supply of HFO, which Seoul and Tokyo considered to be an American responsibility. However, for the Clinton administration, the securing – promised to the Japanese side – of the financing of a small part of the LWR by Congress was almost possible when the latter had a Democratic majority. This became impossible when he switched to the Republican camp, which ended Japan's supply of HFO. As detailed in a European Parliament report in 1999, *"The United States, facing Congressional opposition to any financial disbursement, has apparently only contributed to date to the supply of heavy fuel oil – around \$28 m in 1996 and again in 1997 – and to KEDO administrative costs. It does not meet the entire cost of the heavy oil – there is Congressional opposition to contend with – and substantial debts have been incurred. EU contributions to KEDO have in fact up to now been used for heavy oil supplies."*<sup>5</sup> Very clearly, the United States sought to bring the EU into the KEDO Executive Council to ensure the financing of these supplies. Within the State Department, the Office of European Affairs did not initially support the idea of urging Europeans to join, but their reluctance diminished over time. Financial considerations prevailed.

South Korean officials remained cautious. They feared that the involvement of the EU would further complicate the decision-making process within the Organization. They also feared a relative loss of power for the ROK itself, who was the main contributor to the project, and European attempts to place competing manufacturers in the project. Thus, South Korea preferred an organization that limited participation to the three initial states. On the Japanese side, some were neutral on the subject of European participation but were not in fact very favourable to it, while preferring to let the South Koreans express it. Others, for internal political reasons, wished on the contrary to enlarge the Organization as much as possible. Indeed, for Japan, the whole exercise was similar to a "checkbook diplomacy" to which the country was accustomed. It contributed to the reconstruction of Bosnia and Croatia after the Balkans conflict in Europe. His contribution to the first Gulf War in 1991 had made waves in public opinion and the government was precisely committed to giving a very multilateral turn to its own contribution to the North Korean issue.

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<sup>4</sup> Charles Kartman, Robert Carlin, Joel Wit, *op. cit.*

<sup>5</sup> European Parliament, *Report on the Agreement on terms and conditions of the Accession of the European Atomic Energy Community to the Korean Peninsula Energy Development Organisation (KEDO)* (C4-0483/97), 26 February 1999, 31 p.

Several observers of the EU-KEDO meetings in Brussels at the very end of 1996 were able to confirm that the negotiations were hard, or even blocked, between Europeans on the one hand and Koreans and Japanese on the other.

## **1.2. European objectives**

The EU's overall political objectives towards North Korea at the turn of the century were ambitious. The aim was to engage in the inter-Korean reconciliation process, increase assistance to the country in response to its efforts in the areas of human rights, non-proliferation, security issues, structural reforms of the economy, provide opportunities to increase the country's trade area, launch a technical assistance programme and support KEDO. To implement these objectives, the EU defended an approach then described as "quiet diplomacy" precisely designed not to focus on contentious security issues. At that time, the European approach was favourably perceived by Japan and South Korea and the EU was considered a significant actor in food and humanitarian aid.<sup>6</sup> In 2002, the EU insisted on its support for South Korea's "sunshine policy" of engagement with North Korea through economic assistance to the country.

Broadly speaking, the DPRK welcomed European advances in this first decade of relationship building. First, Pyongyang had a clear interest in breaking the regime's isolation. Secondly, the EU was perceived as a relatively neutral political entity with regard to security issues in North-East Asia. Under these circumstances, it was possible to envisage a mediation role for European diplomacy that could be useful if necessary. Finally, the EU had a major interest in providing food aid and increasing economic cooperation in order to get the country out of the rut it was in in the 1990s. While in 2000, North Korea accounted for 0.015 % of total European trade, EU countries accounted for nearly 25 % of North Korean trade, with Germany and the Netherlands ranking fifth and ninth respectively among the DPRK's main trading partner states. This means that trade with the EU prevented the North Korean economy from collapsing completely. EU countries therefore still had a certain weight in North Korean political and diplomatic considerations during these pivotal years for the regime's military nuclear programme.

On the European side, there were conflicting voices regarding participation in KEDO. France had an aversion to the principle of direct dialogue with the North Koreans. The Germans, like some other countries, were reserved for the idea of financing a nuclear project at a time when anti-nuclearism was gaining ground in the country's opinion as elsewhere on the continent (the Chernobyl disaster was then less than ten years old). Yet according to Bram Brands (from the European Commission), President Clinton's visit to Germany to meet Chancellor Kohl and convince him to involve the EU in KEDO was an important explanatory factor. According to Roland Tricot's testimony,<sup>7</sup> Europeans were not initially very supportive of the idea of participating financially in KEDO, but Japan's insistence was an important

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<sup>6</sup> Axel Berkofsky, *EU's Policy towards the DPRK – Engagement or Standstill?*, European Institute for Asian Studies (EIAS), BP 03/01, August 2003, 40 p.

<sup>7</sup> From 2002 to 2007, Roland Tricot was seconded from the EU as a Director at KEDO, the US-led international organization headquartered in New York in charge of managing nuclear disarmament incentives for the DPRK (Pyongyang). He first managed the public and external affairs division before becoming KEDO General Counsel in 2004 (Source: LinkedIn).

incentive, particularly because the argument convinced Parliament. The strongest support came from the Commission and the European Parliament, particularly in the person of MEP Glynn Ford. The European Parliament strongly supported KEDO in a second phase but was not very enthusiastic at first, with one third of the countries represented being openly anti-nuclear.

The reasons why the decision was finally taken in 1996 to join KEDO were threefold:

At the political and strategic level, several European leaders at that time pointed out that the relevance of an EU engagement in the initiative would be primarily symbolic: KEDO would gain credibility and confirm to North Koreans the broad international support for the initiative.<sup>8</sup> This argument was shared by most members of the KEDO Executive Council at its launch. In the words of the Organization's Executive Director, as reported by Roland Tricot:<sup>9</sup> *"the least important thing KEDO is doing is building light-water reactors"*. For him, *"[t]he issue was peace and stability."* This is why Europeans insisted from the very first negotiations with the Americans on sitting on the Executive Council. More substantially, the European assessment noted that cooperative approaches on the ground, as was the case in Europe in the 1950s and 1960s, were on the right track. The pragmatic vision of advancing political integration through the advancement of common projects was a typical European approach. Furthermore, it is worth recalling that the 1990s were the decade in Europe that saw the collapse of political walls, the opening of regimes, societies and economies, the reunification of Germany and the multiplication of states. For European observers, it seemed to be in line with History that the communist dictatorship of the DPRK would also fall, swept away by the disintegration of the communist bloc, the collapse of an economy that had hitherto been dependent on Soviet assistance, the popular aspirations that would inevitably emerge as soon as the pillars of the regime would begin to crack. The cautious optimism of the 1999 Parliament report, in particular the opening of a European engagement in KEDO for a second five-year period, was also determined by the Indian and Pakistani nuclear tests in the spring of 1998. These events alerted, among others, to the reality of nuclear proliferation in the world. The last recommendation of the 1999 parliamentary report on KEDO states that *"KEDO is essential for security and stability not only in Asia but for the rest of the world."*<sup>10</sup> The KEDO approach was therefore understood, at least by some Europeans, as a global bulwark against proliferation, nothing less. More generally, it is even more likely that for a number of European leaders of that time, participating in KEDO was a way to take advantage of a historic opportunity for North Korea: *"The state industrialisation in the DPRK, coupled with its poisoning of sources of foreign aid by ideology and action, produced the world's most autarkic economy, and one of the world's most closed societies. The KEDO Agreement is a crack in the wall of that socio-economic isolation (...)."*<sup>11</sup>

The other interest for the EU was diplomatic, in that it allowed it to assert itself collectively with Japan and South Korea, including in forums not dedicated to international security, such as the International Labour Organization for example. Moreover, joining KEDO would

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<sup>8</sup> Axel Berkofsky, *op. cit.*

<sup>9</sup> Charles Kartman, Robert Carlin, Joel Wit, *op. cit.*

<sup>10</sup> *Op. cit.*

<sup>11</sup> European Parliament, *op. cit.*

give the green light to the opening of diplomatic relations between several European countries and North Korea at the turn of the century.

Finally, many Europeans, especially in the Commission and the Parliament, saw KEDO as a commercial and industrial opportunity. While many officials were reluctant to join the initiative and sought in a very transparent way from the other partners good reasons to do so, they tried to convince themselves that one of them was to obtain contracts for the European nuclear industry and the prospects opened up by this idea triggered a real enthusiasm. For the Commission, agreeing to a EU participation in KEDO meant that the Europeans would eventually be granted contracts worth several times more than the total Euratom contribution to the project. Some sources then indicated an estimated amount of nearly \$1 billion.<sup>12</sup> In particular, the European Parliament's 1999 report previously quoted noted that according to the Commission in May 1997 "*although the exact scope and value of these contracts are still to be defined, they are expected to have a value several times higher than the total Euratom contribution*". In April 1998 it stated: "*It is estimated that the value of contracts open to competitive bidding could be as high as US \$1 bn. The Commission is examining and monitoring the system on contracts*".<sup>13</sup> In 1999, the Parliament was still asking the question of what the commercial benefit for the EU was.<sup>14</sup> In any event, South Korean company KEPCO did not control all the components and services associated with the supply of LWR. Therefore, there were opportunities for the European nuclear sector to seize. The project would give KEPCO the opportunity to work and thus get to know its European partners better in a market that would develop on the peninsula if the two Koreas were to be reunited in the foreseeable future. France and the United Kingdom then competed to be represented on the KEDO Executive Council in the same way as the EU.<sup>15</sup> The Europeans also believed that KEDO would in the future extend its scope beyond cooperation in the energy sector to include economic development programmes. The last decade of the century was marked by the opening of international markets, particularly in Asia, and Euratom's financial support to European companies was decisive for European industrial players in the sector. The "Euratom lending instrument" was established by Council Decision 77/270/Euratom of 29 March 1977. It empowered the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations in member states and in third countries. The financial ceiling and scope of the credits granted by Euratom to European firms under the "Euratom lending instrument" was set by Council Decision 77/271/Euratom of 29 March 1977. It was re-evaluated by amendments decided by the Council in the 1990s that allowed several European firms to enter the Asian market at a time when the European market was beginning to shrink. Council Decision 90/212/Euratom of 23 April 1990 increased it by 1,000 million ECU to 4,000 million ECU. In 2003, the Commission issued a *Proposal for a Council Decision amending Decision 77/271/Euratom on the implementation of Decision 77/270/Euratom empowering the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations (2003/C 45 E/23)*. The purpose was to

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<sup>12</sup> Jong Yoon Doh, "Emerging of KEDO and the EU's Accession to KEDO: in Perspective of Prisoner's Dilemma and Suasion Game", ISA 49<sup>th</sup> Annual conference, 26-29 March 2008, San Francisco, United States, p. 20.

<sup>13</sup> European Parliament, *op. cit.*

<sup>14</sup> Under the agreement between Euratom and KEDO, European companies could effectively apply for a number of contracts related to the construction of nuclear installations except for the steam supply system and the turbine generators.

<sup>15</sup> Michael E. Smith, *op. cit.*

raise the ceiling from EUR 4,000 million to EUR 6,000 million. According to the Commission, *“these new limits would ensure that Euratom loan applications in the pipeline could continue to be examined and proposed for decision of the Commission, if and when ready.”*<sup>16</sup>

That being said, the EU also remained cautious and wanted to be protected from financial liabilities beyond its formal commitment of \$15 million annually.

### **1.3. A half-hearted commitment**

It took almost two years to bring the EU into the scheme. The EU was then committing \$15 million per year for five years, which was less than KEDO had hoped for. In addition, Europeans were asking for a more important decision-making role than other parties were willing to give them. They also requested a Deputy Director on the same footing as Japan and the ROK. The EU had its place on the Executive Council, but the United States, South Korea and Japan managed to get all three to override an inadmissible European request. A protocol signed on 19 September 1997 between the three countries amended certain articles of the creation agreement. In particular, Article VI stated that *“Decisions will be made by consensus or if consensus is not achievable by majority vote”*. The EU did not receive a position of Deputy Director but obtained a “Directorate of Public Affairs” which grew a few years later to become a “Legal Affairs Division”. It was Ambassador Jean-Pierre Leng, who had retired at the time, who was recalled by the EU and appointed as the EU’s Representative on the Executive Council. He remained in his position until 2008. In the end, while the Europeans were able to join the Executive Council, they did not obtain a veto right.

Specifically, the contribution requested from the EU concerned the supply of HFO provided for in the October 1994 framework agreement. The United States covered more than three-quarters of the related cost; the EU contributed 20 %. In 1999, a European Parliament report recalled that the DPRK was supposed to reimburse the cost of supplying the two LWR reactors but not the supply of HFO by KEDO while the first of the two reactors was being built and made operational. In March 1996, the Council adopted a CFSP joint action with a contribution of 5 million ECU. Such a contribution was to be paid by the EU’s general budget. Its financial participation lasted nine years, from 1996 to 2004, concentrated mainly between 1997 and 2002. In addition, some European countries participated individually, most of them before the joint European participation, and for modest or even symbolic amounts. This was the case for Finland, which contributed less than \$100,000 per year from 1995 to 2001. The Netherlands contributed in 1995 (\$500,000) and 1996 (\$290,000). So did the United Kingdom in 1995 (\$1 million). Germany provided \$1 million in 1996, France just over \$500,000 in 1998 and Italy nearly \$2 million in 1999. On the fringe, Greece provided \$25,000 in 1996.<sup>17</sup>

<sup>16</sup> See Commission of the European Communities, *Proposal for a Council Decision amending Decision 77/271/Euratom on the implementation of Decision 77/270/Euratom empowering the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations* (2003/C 45 E/23) COM (2002) 457 final, submitted by the Commission on 6 November 2002.

<sup>17</sup> Sangtu Ko, “Vanguard of European Politics: The Role of Member States in the EU’s Foreign Policy toward North Korea”, *Journal of International and Area Studies*, vol. 15, n° 1, 2008, pp.47-59.

Euratom, through Article 101.2 of the Euratom Treaty, which provided a legal internal justification for European participation, began to finance KEDO in 1996 (\$6.2 million). The following year it joined the Executive Board and increased its funding to \$29.3 million, then \$17.6 million in 1998, \$15.5 million in 1999, \$14.2 million in 2000, another \$36 million in 2001 and then marginally so in 2002 (\$1.3 million) and 2003 (\$1 million). In total, the EU collectively contributed \$121.380 million to KEDO over nine years, representing an annual average of just under \$13.5 million, slightly less than the initial commitment.<sup>18</sup>

George W. Bush's election in 2000 marked a shift in US support for KEDO, which had already begun with the transition of Congress to the Republican camp in 1994. As early as March 2001, President Bush, at a summit with South Korean President Kim Dae Jung, expressed scepticism about diplomatic talks with the DPRK. He reversed the order of priorities by arguing that transparency efforts and acceptance of verification procedures by Pyongyang should precede any diplomatic initiative in the interests of the regime. This was the principled position of the Bush administration during the President's two terms. Following Pyongyang's recognition in October 2002 of secret efforts to develop a uranium enrichment program, KEDO's Executive Council suspended fuel oil deliveries and then reactor construction for one year in 2003 before renewing it in 2004. In January 2006 all workers at the Kumho site were fired. In the autumn of 2002, KEDO launched an "invisible slowdown" policy to reduce the pace of work at the Kumho site to a minimum. When the Kumho site was evacuated in spring 2006, more than a third of the work was completed and all the infrastructure was high. Already two years earlier, the European representative at KEDO, Ambassador Jean-Pierre Leng in an article for the *International Herald Tribune* (March 3<sup>rd</sup>, 2004), had argued that the KEDO project had gone too far and that it was not possible to abandon it altogether. One way to operate it was to designate the Kumho district as a "special economic zone" administered jointly by KEDO and the IAEA so that the LWR could supply North Korea with electricity under IAEA supervision for a period of 30 to 50 years. Thus, concerns regarding the possible use of the reactor (including plutonium extraction) by the North Korean regime would be lifted, the reactor would be useful, and the sums already committed at the time, almost \$1.5 billion, would have served some purpose.<sup>19</sup>

## 2. An opportunity or a trap?

From the mid-1990s to the end of the 2000s, the EU pursued a coherent, multidimensional policy based on diplomatic, political, financial, trade, security and strategic initiatives towards North Korea. This policy was initiated in 1995 with humanitarian assistance and then through the EU's participation in KEDO in 1997. If the American incentive to join the project was then very strong, the European decision was part of a multi-level policy drafted by the EU and which had its coherence.

However, collective memory preserves that KEDO ended *de facto* on the morning of 8 January 2006 when a final contingent of eighteen employees from the Kumho site boarded

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<sup>18</sup> *Ibid.*

<sup>19</sup> See Chang Sun Sup, "The Unfinished Project: The Significance of the LWR Project", Seoul – Washington Forum, 1-2 May 2006, 10 p.

the *Hankyoreh* for a one-way trip to the ROK.<sup>20</sup> The two LWR never came into being. The colossal sums involved in the project were never repaid. For those who retain an idea of KEDO, it was a failure. By participating in it, the EU made a mistake.

## 2.1. The “trap” argument

The EU’s participation in KEDO in 1997 marked the culmination, without any real future, of the European involvement in the North Korean nuclear issue. Yet, the establishment of diplomatic relations between the EU, EU countries (13 in total in 2003) and North Korea at the beginning of the new century was seen on the European side as an announcement of real political relations that would allow the EU to influence security issues on the peninsula, something that North Korea had always rejected since the beginning of the first nuclear crisis. The few years following the EU’s entry into KEDO therefore marked the beginning of historical *rapprochement*.

However, in 2003, after five years of political dialogue, measuring the impact of the European investment was, to say the least, difficult as negotiations with the North Korean regime had not produced any concrete results at that time.

Broadly speaking, the European initiatives of the 1990s proved unsuccessful in two ways that should not be completely confused. First, the Europeans could not influence a dynamic that led to the suspension of KEDO’s activities and its closure. Secondly, the EU’s position within KEDO did not allow it to play a decisive role or to take advantage of the frameworks put in place to defend European interests in the political and commercial spheres. Many European political leaders have mixed memories of this action, which left the Europeans, although they were members of the Organization’s Executive Council, unable to take part in the decisions. This European perception of having been present only to provide a financial contribution to an essentially American political-diplomatic initiative is still quite significant in Brussels as in several European capitals. It is probably fair to say that the EU’s place in KEDO was not well secured, explaining that Europeans felt they were second-class participants. Overall, the idea that KEDO was an unrealistic initiative whose final failure was foreseeable is now very much shared in Europe. But it remains difficult, in this argument, to distinguish the European frustration resulting from its place in the Organization from a retrospective analysis of the intrinsic limits of KEDO in the political-strategic environment of the turn of the millennium.

In any case, the failure of KEDO, the lack of North Korean engagement, the launch of the Six-Party Talks without the EU tempered the European enthusiasm that was shown in 1996-1997 by reminding Europe that its role in Korean affairs would remain limited in the future.<sup>21</sup> The European disappointment partly explains the restraint of common diplomacy towards the North Korean nuclear issue since 2003. According to a general understanding, Brussels fell into a trap because of overconfidence and a misperception of the real factors behind the North Korean military nuclear programme at the turn of the century. The analysis of the

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<sup>20</sup> Chang Sun Sup, *op. cit.*

<sup>21</sup> Axel Berkofsky, *op. cit.*

biannual reports on the implementation of the 2003 EU Non-Proliferation Strategy<sup>22</sup> since the first report in June 2004 shows a very clear willingness to suspend the EU's direct involvement in collective diplomatic efforts to resolve the nuclear crisis with the DPRK. The first five implementation reports of the Strategy do not even mention the North Korean nuclear crisis as a matter of concern. The December 2006 report is the first to address the subject with a condemnation of North Korea's first underground nuclear test two months earlier. A common position was then taken to implement the sanctions resolution unanimously adopted by the United Nations Security Council on 14 October 2006.

In any case, the thesis of KEDO as a trap for the EU is both politically false and economically fallacious. It is false because it is not possible to affirm an intention of any KEDO protagonist to trap Europeans. It is misleading because the European financial setback in this case was the most limited among the main parties to the Organization. In fact, the trap thesis reflects a European bitterness about the benefits expected from the EU's participation in KEDO, which were based on an erroneous analysis of the factors of the North Korean nuclear crisis at the time. In short, the Europeans' involvement in KEDO clearly revealed the immaturity of European diplomacy in Asia at the turn of the century.

## **2.2. The need to avoid anachronisms**

While it is tempting to criticize KEDO retrospectively as a useless and costly project that the EU should never have entered, retrospective analysis is more useful if it identifies the reasons for the final failure by avoiding anachronisms.

The previously quoted 1999 Parliament report summarises well the three reasons why the EU had to enter KEDO from a European perspective. These three reasons were security and strategic, political and diplomatic, financial and commercial: « *The Council of Ministers decided that it would be a good thing if the EU were to become a member of KEDO, partly to show, in the light of its new strategy for Asia, that it was committed to improving security in Asia (and combatting possible proliferation of nuclear weapons), partly to balance a Japanese commitment to security in Europe through Japan's aid for Bosnia-Herzegovina, and partly to enable European companies, especially those in the nuclear sector, to benefit from the contracts that KEDO would be awarding.* »<sup>23</sup> It is noteworthy that at the end of 1995, the EU had already decided to adopt a new strategy for European involvement in Asian affairs. Accession to KEDO must be seen through this prism as a very concrete way of giving substance to this new strategy: participation in KEDO was a sign of an unequivocal political will to engage further in Asian affairs as well as in fighting WMD non-proliferation worldwide. The EU therefore saw the American proposal as a timely political opportunity for an emerging, enthusiastic and ambitious common diplomacy that wanted to restore Europe's global role a few years after the end of the Cold War, of which the European continent was one of the main theatres, and which had permanently divided it. From this point of view, European participation in KEDO looked like historical revenge. Beyond the energy sector itself, taking a strong stand would be a strategic opportunity for the EU when

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<sup>22</sup> The *EU Strategy against proliferation of Weapons of Mass Destruction* was endorsed by the European Council on 9 December 2003.

<sup>23</sup> European Parliament, *op. cit.*

the two countries reunite: the infrastructural needs of the North would then be such that European companies should be well placed at the right time to benefit from these new markets. For Europeans, deciding to join KEDO was therefore a bit of a gamble on the future, based on incomplete information. As the European Parliament then noted: *“the probable political benefits accruing from the EU’s participation in KEDO, including the non-proliferation aspects, the commercial prospects, and the foreign and security policy benefits of contributing to a project in North East Asia, do outweigh the considerable technical and energy policy uncertainties which characterise the KEDO agreement.”*<sup>24</sup>

Yet these *“technical and energy policy uncertainties”* were not, as such, the only obstacles or the most decisive ones facing the Organization. With the election of George W. Bush in 2000, the American position became – and remained – that discussions on LWR would resume with the North Korean regime when it would have its nuclear weapons and related programs dismantled, fulfilled its NPT obligations under the full supervision of the IAEA, stopped challenging the global non-proliferation regime, and transferred nuclear technology abroad. In January 2004, a spokesman for the US State Department stated that the United States did *“not see a future for the light water reactor project.”*<sup>25</sup> After 2004, only the ROK tried to save the project or at least to use it to build a new diplomatic offer based on the DPRK’s energy needs. This was the significant proposal under which the ROK agreed to supply the North with 2 million kilowatts of electricity. In return, the LWR project would be abandoned and North Korea would dismantle its nuclear weapons. This proposal received the agreement of Japan and the United States and had the effect of bringing the DPRK back to the negotiating table for some time. But the South Korean public opinion had become highly doubtful about the viability of the LWR project and the government lost its support for the project (particularly following the revelation of a clandestine enrichment programme by Pyongyang in autumn 2002).

In addition to the political torpedoing of KEDO by Washington, KEDO had already been facing significant structural problems since 1995. It is not a question here of going into the details of the final failure of KEDO but some explanatory factors can be recalled to illustrate the perilous nature of the European involvement in the context of the time:

First, the North Korean side gave KEDO members many signs of fragility. In a very deteriorated general economic environment in North Korea, it was likely that Pyongyang’s recurrent demands that the global envelope of nearly 5 billion dollars be increased in order to build an electricity grid, port facilities, a training centre for nuclear specialists and so on would end up posing an insoluble political and financial problem to the project. As the European Parliament pointed out in 1999, *“according to the KEDO agreement, the DPRK is to provide two stable supplies of offsite power, and associated (2-way) transmission systems to the KEDO project. In addition, by the time the reactors are finished, a distribution system / grid capable of handling the 2000MW electric output must have been built by the DPRK, at an estimated cost of \$300 million. It is far from obvious how this is to be achieved, given the parlous state of the North Korean economy, and this would threaten the credibility of the*

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<sup>24</sup> *Ibid.*

<sup>25</sup> Chang Sun Sup, *op. cit.*

*KEDO project.*<sup>26</sup> The negotiations had repeatedly given rise to threatening rhetorical outbursts by North Korean negotiators.

Secondly, payment difficulties for HFO supplies and reactor construction occurred year after year. The recurrence of funding shortages was clearly one of the main factors in the final failure. However, the financial question was at the heart of this story because KEDO was not unanimously considered a priority by its designers. In the United States in particular, where KEDO was managed at a relatively low administrative level, the Organization's challenges and costs focused more attention than the North Korean nuclear programme itself.<sup>27</sup>

Moreover, the very purpose of the Organization originally gave rise to divergent perceptions between the founding states. The perception the most shared about KEDO is that it was a specifically technical organization responsible for supplying two LWRs to North Korea. This is how many American and Japanese officials understood the task at hand. For others, particularly in the ROK, it was, from the outset, a political project in the 1994 framework agreement designed to normalize relations with North Korea in the long term, in line with the policy of "minimum commitment" initiated by Washington in 1988 with regard to Pyongyang. The framework agreement and then KEDO provided two bases for sustained and regular action. The objective of such an action went far beyond the sole threat of withdrawal from the NPT by the DPRK. That being said, since KEDO's operational purpose was both technical and commercial, its political ambition should have to be materialised from the outset within technical and commercial constraints. These constraints involved not only the United States and North Korea but also Japan, the Republic of Korea and, in a second step, other functional and financial partners. This was a particularly difficult challenge for many stakeholders.<sup>28</sup>

Finally, the very management of KEDO by its members, whose interests often diverged or competed with each other, the compartmentalization of implementation by participating states, the political involvement of the various countries in the implementation of the Organization's projects, were at the root of permanent dysfunctions.<sup>29</sup>

### **2.3. Achievements and lessons learned**

All KEDO stakeholders who shared their experiences stressed the usefulness of the initiative despite its failure. With regard in particular to the European involvement, KEDO's general assessment deserves to be appreciated again.

Direct relations between Europe and the DPRK began in the late 1990s with the holding of fourteen political dialogues from December 1998. Also, a delegation from the European Parliament has visited the DPRK every year since 1998. In October and November 1999, two European Council conclusions underlined the importance of a more coordinated European

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<sup>26</sup> European Parliament, *op. cit.*

<sup>27</sup> Charles Kartman, Robert Carlin, Joel Wit, *op. cit.*

<sup>28</sup> *Ibid.*

<sup>29</sup> Alexandre Y. Mansourov, *op. cit.*

approach to Korean affairs.<sup>30</sup> The EU collectively and individual member states began to establish diplomatic relations with the DPRK mainly at the turn of the century. Sweden is the exception, as the first Western country to open an embassy in Pyongyang in 1975. For the rest, Italy and the United Kingdom began formal relations in 2000, followed by Belgium, Germany, Greece, Luxembourg, the Netherlands and Spain in 2001 and Ireland in 2003. The EU established diplomatic relations with North Korea in 2001 after a landmark visit to Pyongyang in May 2001, bringing together the Swedish President of the Council and Prime Minister Göran Persson, Commissioner for External Relations Chris Patten and High Representative for the FPSFC Javier Solana.<sup>31</sup> This European movement was led by some states, Italy, the United Kingdom and Germany in the first place, but also smaller ones such as Sweden or Belgium. In particular, Italy's motivation to approach the DPRK in 1998 seems to have been motivated by the desire to prevent the proliferation of North Korean ballistic missiles in North Africa, particularly in Libya, by establishing a direct diplomatic dialogue with Pyongyang on this topic. Then the decision to pursue a more active European policy towards North Korea was mainly taken by the European countries themselves, which played a significant role regardless of their size.<sup>32</sup> In other words, in this case, there is no distinction between a monopolisation of the debate by the large states or a "Brussels supranationalisation" of the initiatives at their origin. The fact is that some European states led the EU towards a more integrated and complex North Korean policy in its ambitions, scope and modalities.<sup>33</sup> A similar dynamic drove European participation in KEDO, in particular by several European countries individually, including Finland, the Netherlands, and Greece. The collective support decision was therefore preceded by national initiatives in this direction. Even France, which has still not agreed to open official diplomatic relations with North Korea, followed this movement as the country eventually opened a cultural liaison office in Pyongyang under the initiative of President Sarkozy (2007-2012).

The question still arises as to whether KEDO provided an opportunity for Europeans to distance themselves from the United States in their approach to North Korean issues. The May 2001 visit of a high-level European delegation to Pyongyang deserves to be detailed in that regard.<sup>34</sup> The EU had previously formulated four conditions for such a visit: discussions with the North Korean leader would have to be planned, the country would commit itself to implementing the June 2000 joint inter-Korean declaration, the country would undertake to have a second inter-Korean summit in the near future, human rights issues, confidence-building measures and the ballistic programme would have to be addressed. During their visit, the European delegates confirmed North Korea's commitment to comply with the June 2000 declaration, including a moratorium on ballistic testing until at least 2003. The DPRK also reiterated its commitment to the 1994 framework agreement. On the American side, where the new American administration was being set up, the European visit was considered opportunistic with the government blaming the European initiative for taking

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<sup>30</sup> *Ibid.*, p. 51.

<sup>31</sup> The EU does not have a diplomatic representation as such in Pyongyang. Local representation is provided by one of the seven European states that have opened embassies in the country: Bulgaria, the Czech Republic, Germany, Poland, Romania, Sweden, the United Kingdom. Conversely, the DPRK embassy in the United Kingdom has been dealing with European affairs until now.

<sup>32</sup> Sangtu Ko, *op. cit.*

<sup>33</sup> *Ibid.*

<sup>34</sup> Axel Berkofsky, *op. cit.*

advantage of the ongoing review – and therefore suspension – of the American approach to the North Korean security issue. Indeed, several attentive observers of European foreign policy at the time<sup>35</sup> considered that the Brussels initiative was a sign of the Union's desire to make its foreign and security policy independent of the United States. For Washington, the previous ten years had established a tacit distribution of roles on the peninsula: security affairs for the United States, trade, development aid, assistance and humanitarian aid for Europe. For their part, European officials promised that the May 2001 visit had been carried out in close consultation with the Americans, the South Koreans and the Japanese, also in line with the changing role of the EU in international affairs: the EU did not intend to compete with the United States on the North East Asian scene.<sup>36</sup> In any case, the North Korean regime did not keep the promises made to Europeans in 2001. In particular, the DPRK conducted at least three ballistic tests before 2003, breaking its commitment to a moratorium. This was a direct indication to the EU of the regime's unreliability, and as such a useful lesson for the future that helps to explain the relative European caution in the North Korean nuclear and ballistic issue over the next decade.

Incidentally, the Euratom agreement with KEDO illustrated a recurrent dysfunction of European institutions: the Parliament complained that it was insufficiently informed about the EU's accession process to KEDO. It expressed its frustration in a "motion for the resolution" (26 February 1999) preceding its report on KEDO, while approving *ex post* the initiative. It then acknowledged that it did not have to be consulted beforehand, in accordance with Article 101 (2) under which the decision was taken: "*Article 101(2) (...) provides for the agreement to be concluded by the Commission with the approval of the Council, which shall act by a qualified majority*". However, Article J7 of Title V of the Treaty on the European Union states that "*The Presidency shall consult the European Parliament on the main aspects and basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy.*" And the Parliament to conclude: "*It is unacceptable that democratic control over such important foreign policy issues should be completely bypassed in the case of international agreements concluded under Article 101 of the Euratom Treaty.*" The issue of parliamentary scrutiny of Council and Commission decisions under the EU's Common Foreign and Security Policy has been a well-worn subject of EU foreign policy since the beginning of European political integration. It should be noted, however, that the role of joint parliamentary representation in Europe has been steadily increasing since the founding acts of 1957. As the report noted at the time, this progress in democratic control does not affect the Euratom Treaty, maintaining the opacity of nuclear cooperation cases at the European level: "*Since 1957, we have witnessed substantial changes and modifications to the EEC (now EC) Treaty, via the Single European Act, the Maastricht Treaty, and now the Treaty of Amsterdam. These changes have, inter alia, steadily increased the role, power, and influence of the European Parliament, by the introduction of co-decision, and the assent procedure for international agreements. But no*

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<sup>35</sup> Rüdiger Frank in particular, a German economist and prominent expert on Korean affairs.

<sup>36</sup> Axel Berkofsky, *op. cit.*

*such changes have been made to the Euratom Treaty: apart from minor adjustments, it remains essentially unamended (...)."*<sup>37</sup>

## Conclusion

The first nuclear crisis with North Korea in 1993-1994 brought the EU into the diplomatic process of dealing with North Korean security issues, while the second nuclear crisis in 2002-2003 pushed it back. In this respect, the experience of KEDO and the few European initiatives that accompanied it were directly responsible for the turn that European politics have taken for more than fifteen years, moving from an assumed willingness to "commit" to a more cautious practice of "conditional commitment". In any case, an independent European policy that is uncoordinated with that of the main regional actors in the North Korean crisis appeared unrealistic and certainly undesirable after 2003.

It was also important for European leaders to recall at the time of their commitment that the framework agreement and KEDO would not become the relevant frame of reference for European political action, since it had been going beyond this frame of reference for several years. Thus, the EU maintained from then on, and this remained true thereafter and remains so to a large extent today, that the Union's North Korean policy was not focused on the nuclear factor. In particular, European humanitarian aid programmes to the DPRK have not been affected by the vicissitudes of nuclear litigation on the peninsula, including the conduct of nuclear tests by the North Korean regime. The continuity of Europe's commitment to North Korea is now underlined by European diplomacy as an element of solidity, reliability and predictability.

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<sup>37</sup> European Parliament, *op. cit.*

## **Annexe 1            CHARTER OF KEDO<sup>38</sup>**

*The Korean Peninsula Energy Development Organization  
600 3rd Avenue,  
12th Floor  
New York,  
NY 10004*

### **AGREEMENT ON THE ESTABLISHMENT OF THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION**

#### **INTRODUCTORY NOTE**

The Agreement on the Establishment of the Korean Peninsula Energy Development Organization (the Agreement) was signed on 9 March 1995, in New York.

A protocol signed by the Governments of the Republic of Korea, Japan and the United States on 19 September 1997 in Washington amended Article V(b), Article VI(b) and (e), Article VIII(d) and (f) and Article XIV(b), (c) and (d) of the Agreement.

The amendments to Article V(b), Article V(b) and Article XIV(b) make international organizations, including regional integration organizations, as well as states, eligible for membership in the Organization and representation on the Executive Board on the basis of substantial and sustained support for the Organization.

#### **[Text]**

The Government of the United States of America, the Government of Japan, and the Government of the Republic of Korea:

Affirming the objective of an overall resolution of the North Korean nuclear issue, as referred to in the Agreed Framework Between the United States of America and the Democratic People's Republic of Korea, signed in Geneva on October 21, 1994 (hereinafter referred to as "the Agreed Framework");

Recognizing the critical importance of the non-proliferation and other steps that must be taken by North Korea, as described in the Agreed Framework, as a condition of implementation of the Agreed Framework;

Bearing in mind the paramount importance of maintaining peace and security on the Korean Peninsula;

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<sup>38</sup> Source: KEDO.

Wishing to cooperate in taking the steps necessary to implement the Agreed Framework, consistent with the Charter of the United Nations, the Treaty on the Non-Proliferation of Nuclear Weapons, and the Statute of the International Atomic Energy Agency; and

Convinced of the need to establish an organization, as contemplated in the Agreed Framework, to coordinate cooperation among interested parties and to facilitate the financing and execution of projects needed to implement the Agreed Framework;

Have agreed as follows:

#### **ARTICLE I**

The Korean Peninsula Energy Development Organization (hereinafter referred to as “KEDO” or “the Organization”) is established upon the terms and conditions hereinafter set forth.

#### **ARTICLE II**

. (a) The purposes of the Organization shall be to: (1) provide for the financing and supply of a light-water reactor (hereinafter referred to as “LWR”) project in North Korea (hereinafter referred to as “the DPRK”), consisting of two reactors of the Korean standard nuclear plant model with a capacity of approximately 1,000 MW(e) each, pursuant to a supply agreement to be concluded between the Organization and the DPRK;

(2) provide for the supply of interim energy alternatives in lieu of the energy from the DPRK’s graphite-moderated reactors pending construction of the first light-water reactor unit; and

(3) provide for the implementation of any other measures deemed necessary to accomplish the foregoing or otherwise to carry out the objectives of the Agreed Framework.

. (b) The Organization shall fulfil its purposes with a view toward ensuring the full implementation by the DPRK of its undertakings as described in the Agreed Framework.

#### **ARTICLE III**

In carrying out these purposes, the Organization may do any of the following:

. (a) Evaluate and administer projects designed to further the purposes of the Organization;

. (b) Receive funds from members of the Organization or other states or entities for financing projects designed to further the purposes of the Organization, manage and disburse such funds, and retain for Organization purposes any interest that accumulates on such funds;

. (c) Receive in-kind contributions from members of the Organization or other states or entities for projects designed to further the purposes of the Organization;

. (d) Receive funds or other compensation from the DPRK in payment for the LWR project and other goods and services provided by the Organization;

- . (e) Cooperate and enter into agreements, contracts, or other arrangements with appropriate financial institutions, as may be agreed upon, for the handling of funds received by the Organization or designated for projects of the Organization;
- . (f) Acquire any property, facilities, equipment, or goods necessary for achieving the purposes of the Organization;
- . (g) Conclude or enter into agreements, contracts, or other arrangements, including loan agreements, with states, international organizations, or other appropriate entities, as may be necessary for achieving the purposes and exercising the functions of the Organization;
- . (h) Coordinate with and assist states, local authorities and other public entities, national and international institutions, and private parties in carrying out activities that further the purposes of the Organization, including activities promoting nuclear safety;
- . (i) Dispose of any receipts, funds, accounts, or other assets of the Organization and distribute the proceeds in accordance with the financial obligations of the Organization, with any remaining assets or proceeds therefrom to be distributed in an equitable manner according to the contributions of each member of the Organization, as may be determined by the Organization; and
- . (j) Exercise such other powers as shall be necessary in furtherance of its purposes and functions, consistent with this Agreement.

#### **ARTICLE IV**

- . (a) Activities undertaken by the Organization shall be carried out consistent with the Charter of the United Nations, the Treaty on the Non- Proliferation of Nuclear Weapons, and the Statute of the International Atomic Energy Agency.
- . (b) Activities undertaken by the Organization shall be subject to the DPRK's compliance with the terms of all agreements between the DPRK and KEDO and to the DPRK acting in a manner consistent with the Agreed Framework. In the event that these conditions are not satisfied, the Organization may take appropriate steps.
- . (c) The Organization shall obtain formal assurances from the DPRK that nuclear materials, equipment, or technology transferred to the DPRK in connection with projects undertaken by the Organization shall be used exclusively for such projects, only for peaceful purposes, and in a manner that ensures the safe use of nuclear energy.

#### **ARTICLE V**

- . (a) The original members of the Organization shall be the United States of America, Japan, and the Republic of Korea (hereinafter referred to as the "original Members").
- . (b) Additional states and international organizations, including regional integration organizations, that support the purposes of the Organization and offer assistance, such as providing funds, goods, or services to the Organization, may, with the approval of the Executive Board, also become members of the Organization (hereinafter jointly with the

original Members referred to as “Members”) in accordance with the procedures in Article XIV(b).

## **ARTICLE VI**

. (a) The authority to carry out the functions of the Organization shall be vested in the Executive Board.

. (b) The Executive Board shall consist of one representative of each of the original Members and representatives of such other Members as may be approved. Such approval shall be made by decision of the Executive Board existing at the time of such approval on the basis of substantial and sustained support to the Organization. The terms and conditions in connection with this approval shall be determined in each case by the Executive Board existing at the time of such approval.

. (c) The Executive Board shall select a Chair from among the representatives serving on the Executive Board for a term of two years.

. (d) The Executive Board shall meet whenever necessary at the request of the Chair of the Executive Board, the Executive Director, or any representative serving on the Executive Board, in accordance with rules of procedure it shall adopt.

. (e) Decisions of the Executive Board shall be made by a consensus of the representatives serving on the Executive Board or, if a consensus is not achievable, by a majority vote. If voting is required, each Member that is represented on the Executive Board (hereinafter referred to as

“Executive Board Member”) shall be entitled to one vote to be cast by its representative serving on the Executive Board.

. (f) The Executive Board may approve such rules and regulations as may be necessary or appropriate to achieve the purposes of the Organization.

. (g) The Executive Board may take any necessary action on any matter relating to the functions of the Organization.

## **ARTICLE VII**

. (a) The General Conference shall consist of representatives of all the Members.

. (b) The General Conference shall be held annually to consider the annual report, as referred to in Article XII.

. (c) Extraordinary meetings of the General Conference shall be held at the direction of the Executive Board to discuss matters submitted by the Executive Board.

. (d) The General Conference may submit a report containing recommendations to the Executive Board for its consideration.

## ARTICLE VIII

. (a) The staff of the Organization shall be headed by an Executive Director. The Executive Director shall be appointed by the Executive Board as soon as possible after this Agreement enters into force.

. (b) The Executive Director shall be the chief administrative officer of the Organization and shall be under the authority and subject to the control of the Executive Board. The Executive Director shall exercise all the powers delegated to him or her by the Executive Board and shall be responsible for conducting the ordinary business of the Organization, including the organization and direction of a headquarters and a staff, the preparation of annual budgets, the procurement of financing, and the approval, execution and administration of contracts to achieve the purposes of the Organization. The Executive Director may delegate such powers to other officers or staff members as he or she deems appropriate. The Executive Director shall perform his or her duties in accordance with all rules and regulations approved by the Executive Board.

. (c) The Executive Director shall be assisted by two Deputy Executive Directors. The two Deputy Executive Directors shall be appointed by the Executive Board.

. (d) The Executive Director and the Deputy Executive Directors shall be appointed for terms of two years and may be reappointed. The terms of employment, including salaries, of these officers shall be determined by the Executive Board. The Executive Director and the Deputy Executive Directors may be removed prior to the expiration of their terms by a decision of the Executive Board.

. (e) The Executive Director shall have the authority to approve projects, execute contracts, and enter into other financial obligations on behalf of the Organization within the guidelines adopted by the Executive Board and the limits of the approved budget, provided that the Executive Director shall obtain the prior approval of the Executive Board for projects, contracts, or financial obligations that exceed a specified value, which shall be determined by the Executive Board based on the need for effective and efficient operation of the Organization.

. (f) The Executive Director shall establish staff positions and terms of employment, including salaries, subject to the approval of the Executive Board. The Executive Director shall appoint qualified personnel to such staff positions and dismiss personnel as necessary, in accordance with rules and regulations to be approved by the Executive Board. The Executive Director shall seek to appoint a staff in which the nationals of the original Members and other Executive Board Members are fairly represented, paying due regard to the importance of securing the highest standards of integrity, efficiency, and technical competence.

. (g) The Executive Director shall report to the Executive Board and the General Conference on the activities and finances of the Organization. The Executive Director shall promptly bring to the notice of the Executive Board any matter that may require Executive Board action.

. (h) The Executive Director, with the advice of the Deputy Executive Directors, shall prepare rules and regulations consistent with this Agreement and the purposes of the Organization.

The rules and regulations shall be submitted to the Executive Board for its approval prior to implementation.

. (i) In the performance of their duties, the Executive Director and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action that might reflect on their position as international officials responsible only to the Organization. Each Member undertakes to respect the exclusively international character of the responsibilities of the Executive Director and the staff and not to seek to influence them in the discharge of their responsibilities.

#### **ARTICLE IX**

. (a) The Executive Board shall establish Advisory Committees to provide advice to the Executive Director and the Executive Board, as appropriate, on specific projects being carried out by the Organization or proposed to be carried out by the Organization. Advisory Committees shall be established for the light- water reactor project, the project for the provision of interim energy alternatives, and such other projects as the Executive Board may determine.

. (b) Each Advisory Committee shall include representatives of the original Members and other Members that support the project for which the Advisory Committee was established.

. (c) The Advisory Committees shall meet at such times as they may determine.

. (d) The Executive Director shall keep the Advisory Committees fully informed of matters pertinent to their respective projects, and the Executive Board and Executive Director shall give due consideration to the recommendations of the Advisory Committees.

#### **ARTICLE X**

. (a) The budget for each fiscal year shall be prepared by the Executive Director and shall be approved by the Executive Board. The Organization's fiscal year shall be from January 1 to December 31.

. (b) Each Member may make voluntary contributions to the Organization by providing or making available such funds as it deems appropriate. Such contributions may be made directly to the Organization or by paying the Organization's contractors. Contributions shall be made by cash deposit, escrow, letter of credit, promissory note, or by such other legal means and in such currency as may be agreed between the Organization and the contributor.

. (c) The Organization may seek contributions from such other public or private sources as it deems appropriate.

. (d) The Organization shall establish an account or accounts to receive funds from Members or other sources, including independent accounts for those funds to be reserved for specific projects and the administration of the Organization. Interest or dividends accruing on such

accounts shall be reinvested for activities of the Organization. Excess funds shall be distributed as set forth in Article III(i).

#### **ARTICLE XI**

. (a) Members may make available to the Organization or its contractors' goods, services, equipment, and facilities that may be of assistance in achieving the purposes of the Organization.

. (b) The Organization may accept from such other public or private sources as it deems appropriate any goods, services, equipment, and facilities that may be of assistance in achieving the purposes of the Organization.

. (c) The Executive Director shall be responsible for valuing in-kind contributions to the Organization, whether direct or indirect. Members shall cooperate with the Executive Director in the valuation process, including by providing regular reports of in-kind contributions and access to records necessary to verify the value of such contributions.

. (d) In the event of a dispute concerning the value of an in-kind contribution, the Executive Board shall review the matter and render a decision.

#### **ARTICLE XII**

The Executive Director shall submit to the Executive Board for its approval an annual report on the activities of the Organization, which shall include a description of the status of the LWR project and other projects, a comparison of planned activities to completed activities, and an audited statement of the Organization's accounts. Upon the approval of the Executive Board, the Executive Director shall distribute the annual report to the Members. The Executive Director shall submit to the Executive Board such other reports as may be required by the Executive Board.

#### **ARTICLE XIII**

. (a) To carry out its purposes and functions, the Organization shall possess legal capacity and, in particular, the capacity to: (1) contract; (2) lease or rent real property; (3) acquire and dispose of personal property; and (4) institute legal proceedings. Members may accord the Organization such legal capacity in accordance with their respective laws and regulations where necessary for the Organization to carry out its purposes and functions.

. (b) No Member shall be liable, by reason of its status or participation as a Member, for acts, omissions, or obligations of the Organization.

. (c) Information provided to the Organization by a Member shall be used exclusively for the purposes of the Organization and shall not be publicly disclosed without the express consent of that Member.

. (d) Implementation of this Agreement in the Members' territories shall be in accordance with the laws and regulations, including budgetary appropriations, of such Members.

#### **ARTICLE XIV**

- . (a) This Agreement shall enter into force upon signature by the original Members.
- . (b) States approved by the Executive Board for membership in accordance with Article V(b) may become Members by submitting an instrument of acceptance of this Agreement to the Executive Director, which shall become effective on the date of receipt by the Executive Director.
- . (c) This Agreement may be amended, terminated, or suspended by written agreement of all Executive Board Members, or, if such agreement is not achievable by written agreement of a majority of the Executive Board Members.
- . (d) Amendment to this Agreement shall enter into force ninety days after the date on which the written agreement to amend is registered with the Executive Director. Any Executive Board Member that does not enter into that written agreement may withdraw from this Agreement with the Executive Director and the entry into force of the amendment by giving written notice of withdrawal to the Executive Director, with such withdrawal becoming effective upon receipt of the notice by the Executive Director notwithstanding the provisions of Article XV.

#### **ARTICLE XV**

A Member may withdraw from this Agreement at any time by giving written notice of withdrawal to the Executive Director. The withdrawal shall become effective ninety days after receipt of the notice of withdrawal by the Executive Director.

DONE at New York, this ninth day of March, 1995, in three copies in the English language.

## **Annex 2 Agreement between the European Atomic Energy Community and KEDO<sup>39</sup>**

The Korean Peninsula Energy Development Organization  
600 3rd Avenue, 12th Floor  
New York, NY 10004

AGREEMENT ON TERMS AND CONDITIONS OF THE ACCESSION OF THE EUROPEAN ATOMIC ENERGY COMMUNITY TO THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION  
Brussels, 30 July 1997

THE EUROPEAN ATOMIC ENERGY COMMUNITY,

hereinafter referred to as "the Community", and

THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION,

hereinafter referred to as "KEDO",

WHEREAS the Community and its Member States support the objectives of the Agreed Framework between the United States of America and the Democratic People's Republic of Korea (hereinafter referred to as the "DPRK"), signed in Geneva on 21 October 1994;

WHEREAS KEDO was established pursuant to the Agreement on the Establishment of the Korean Peninsula Energy Development Organization, entered into in New York on 9 March 1995 (hereinafter referred to as the "KEDO Agreement") among the Governments of the Republic of Korea, Japan and the United States of America (hereinafter referred to as the "Original Members");

WHEREAS the Community is willing to cooperate with the Original Members in taking the necessary steps to implement KEDO's objectives and, to that end, has become a member of KEDO pursuant to Article V(b) and XIV(b) of the KEDO Agreement, as amended, effective, 1997; and

WHEREAS the Executive Board of KEDO, noting the Community's intention to contribute to KEDO ECU 15 million annually for five years, has determined pursuant to Article VI(b) of the KEDO Agreement, as amended, that such contributions would constitute substantial and sustained support to KEDO,

HAVE AGREED AS FOLLOWS:

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<sup>39</sup> Source: KEDO

## **ARTICLE 1**

### Executive Board

1. Pursuant to Article VI(b) of the KEDO Agreement, as amended, the Community shall be represented on the Executive Board of KEDO for a term to coincide with the Community's substantial and sustained support to KEDO.
2. As a member of the Executive Board, the Community shall participate in the activities of the Board with the same rights and obligations as the other members of the Executive Board, as described in the KEDO Agreement, as amended.

## **ARTICLE 2**

### Advisory Committees

Community representation on KEDO Advisory Committees under Article IX(b) of the KEDO Agreement of the KEDO Agreement, as amended shall include representation on Advisory Committees that may be established on safeguards and nuclear safety. The Community shall also be entitled to serve as chair of appropriate Advisory Committees pursuant to the relevant rules and regulations of KEDO

## **ARTICLE 3**

### KEDO Staff

Personnel from the Community shall be appointed to suitable positions on the staff of KEDO.

## **ARTICLE 4**

### Privileges and immunities in the DPRK

Personal from the Community and its Member States sent to the DPRK by KEDO, its contractors and subcontractors are entitled to privileges, immunities, protections, exemptions and facilities, as appropriate, in accordance with the respective provisions in the Protocol between KEDO in the DPRK on the Juridical Status, Privileges and Immunities, and Consular Protections of KEDO in on the Supply of a Light-Water Reactor (LWR) Project to the DPRK between KEDO and the DPRK, signed in New York on 15 December 1995 (hereinafter referred to as the "Supply Agreement").

## **ARTICLE 5**

### Equitable Distribution

Pursuant to Article III(i) of the KEDO Agreement, as amended, the Community shall be entitled to participate in distribution of any remaining KEDO assets or proceeds therefrom in an equitable manner according to its contribution to KEDO.

## **ARTICLE 6**

### Liability Protections

1. In the area of nuclear liability, KEDO has obtained legally binding commitments from the DPRK in Article XI of the Supply Agreement, with respect, inter alia, to an indemnity to be given by the DPRK, nuclear liability insurance or other financial security to be secured by the DPRK, and a legal mechanism to be implemented by the DPRK channelling nuclear liability exclusively to the operator, in order to protect itself, its Members, its contractors and subcontractors, and their respective personnel from any liability for any injury, loss or damage resulting from nuclear incidents in connection with the LWR plants.

2. Conventional liability for any injury, loss or damage resulting from KEDO's activities and omissions shall be covered under appropriate insurance policies.

## **ARTICLE 7**

### Industrial Aspects

1. Subcontracts for the appropriate portion of the LWR balance of plant will be put to bid and awarded in a fair and transparent manner by the Prime Contractor, subject to the terms and conditions of the Community, of the Community Member State in which the prospective subcontractor is established.

2. Pursuant to its procurement guidelines for contracts other than the Prime Contract for the LWR Project, KEDO follows a fair and transparent process in awarding its own contracts for goods and services in which Community enterprises will be able to participate fully.

## **ARTICLE 8**

### Audit

The Community will be entitled to audit KEDO's expenditure of its contribution and, to do so, will be granted access to, in an appropriate manner, the relevant financial accounts of KEDO upon demand.

## **ARTICLE 9**

### Dispute Settlement

Any question or dispute relating to the application or interpretation of this Agreement shall be the subject of consultations, negotiations or other similar procedure.

## **ARTICLE 10**

### Entry into Force

This Agreement shall enter into force upon signature by the Community and KEDO. Done at Brussels, this 30th day of July, 1997 in two originals.

## Annex 3 Contributions to KEDO by Member States, August 1998<sup>40</sup>

### *Members:*

United States, Republic of Korea, Japan, EU, Canada, Australia, Finland, New Zealand, Indonesia, Chile, Argentina, and Poland.

**Total: 12**

### *Contributions<sup>41</sup>*

Total contributions to KEDO of \$195.8 million consist of \$91.5 million from the U.S. and \$104.3 million from 21 other countries and the EU.

United States—\$91,500,000<sup>42</sup>

European Union (EU)—\$34,654,500

Japan—\$32,260,000<sup>43</sup>

ROK—\$17,165,000

Australia—\$9,379,00

Canada—\$2,696,500

New Zealand—\$1,355,400

Germany—\$1,011,500

UK—\$1,000,000

Indonesia—\$974,900

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<sup>40</sup> *KEDO and the Korean Agreed Nuclear Framework: Problems and Prospects*, Hearing before the Subcommittee on East Asian and Pacific Affairs of the Committee on Foreign Relations, United States Senate, One Hundred Fifth Congress, Second Session, US Government Printing Office, Washington, July 14, 1998, 50 p.

<sup>41</sup> Contributions through August 21, 1998.

<sup>42</sup> Does not include appropriations for the spent fuel canning project, which is funded and implemented independently by the United States. To date, the U.S. has appropriated US\$27 million for the spent fuel project, bringing U.S. total contributions in support of the Agreed Framework to US\$118.5 million.

<sup>43</sup> Includes \$19 million cash collateral fund provided by Japan to KEDO to facilitate HFO borrowing.

Netherlands—\$790,200

Norway—\$500,000

Singapore—\$600,000

Brunei—\$423,700

Finland—\$310,500

Malaysia—\$300,000

Thailand—\$300,000

Argentina—\$200,000

Philippines—\$150,000

Czech Republic—\$127,816

Switzerland—\$118,100

Oman—\$50,000

Greece—\$25,000

Hungary—\$10,000

*Pledges*<sup>44</sup>

**Total:** \$20.6 million

EU—\$16,618,500 (ECU 15 mil. x 1.1079 \$/EU)

France—\$2,000,000 (US\$ 2 mil.)

Italy—\$1,710,000 (Lira 3 bil. x .00057 \$/Lira)

New Zealand—\$264,200 (NZ\$ 500,000 x .5283 \$/NZ\$)

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<sup>44</sup> Only includes pledges approved by legislature of donor. Exchange rates as of 7/20/98.

## Annex 4 Chronology of KEDO<sup>45</sup>

October 21, 1994: US-DPRK Agreed Framework signed.

December 5, 1994: First shipment of heavy fuel oil (HFO) arrives in DPRK.

December 10, 1994 US-DPRK Liaison Office talks end in Washington, D.C.

December 20, 1994: KPA shot down US Army helicopter over North Korea.

February 1995: U.S. State Department relaxes selected sanctions.

March 9, 1995: Korea Peninsula Development Organization established in New York City.

March 19, 1995: First KEDO board meeting convenes in New York.

September 19, 1995: Australia joins KEDO.

November 24, 1995: Canada joins KEDO.

December 15, 1995: The KEDO-DPRK Reactor Supply contract is signed.

July and September 1996: Chile and Argentina join KEDO.

January 1997: U.S. Spent Fuel Team begins placement of spent fuel rods in long term safe storage under IAEA supervision. KEDO-DPRK protocols governing site take-over, logistics and non-payment arrangements concluded.

August 19, 1997: KEDO conducts ground breaking ceremony at Kumho nuclear reactor site in North Korea.

September 19 & 25, 1997: European Union and Poland join KEDO.

December 1997: KEDO and Korea Electric Power Company (KEPCO) sign Preliminary Work Contract (PWC) to start work at Kumho reactor site.

November 9, 1998: KEDO Board of Director agrees on a division of costs for the reactor construction project. South Korea agrees to fund 70%, Japan pledges \$1 billion and the European Union pledges to provide Euro 75 million for operational costs (five-year period).

February 9, 1999: Czech Republic joins KEDO.

December 15, 1999: KEDO-KEPCO sign the reactor Turnkey Contract (TKC) which took effect February 3, 2000.

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<sup>45</sup> Extracted from and based on C. Kenneth Quinones, "Korean Peninsula Energy Development Organization (KEDO) – A bridge Too Far?", International Studies Association Conference, Chicago, March 2006, pp. 21-27.

December 11, 2000: Uzbekistan joins KEDO.

February 2001: President George W. Bush launches a review of North Korea policy.

September 1, 2001: KEDO initiates land grading at Kumho.

April 1, 2002: President Bush refuses to certify that North Korea is in compliance with the Agreed Framework, halting US funding for KEDO.

April 2002: KEDO completes dock facilities at Kumho.

August 7, 2002: KEDO begins pouring concrete for reactor foundation at Kumho.

June 5, 2002: KEDO began training at the Kumho site of 129 of the 529 DPRK personnel in the operation and maintenance of the nuclear reactors and its supporting facilities.

July 9, 2002: KEDO initiates direct flights from Yangyang Airport in South Korea and Sondok Airport in North Korea.

October 16, 2002: The Bush Administration declares that the DPRK is in “material” violation of the Agreed Framework.

November 14, 2002: KEDO suspends heavy fuel oil (HFO) shipments to the DPRK.

December 27, 2002: DPRK expels IAEA inspectors.

January 10, 2003: DPRK announces that the country will withdraw from NPT, using article 10 of the Treaty.

November 21, 2003: KEDO Board of Directors suspends all activities effective for one year beginning December 1, 2003.

March 26, 2004: KEDO announces the terms of its Memorandum of Understanding with the DPRK regarding preservation and maintenance of the Kumho work site and facilities.

November 26, 2004: The KEDO Board of Directors renews the suspension of activities until December 1, 2004.

January 6, 2006: KEDO starts to withdraw all its personnel from the Kumho construction site.

*The opinions expressed here are the sole responsibility of the author*