

WebMemo



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Countering Pyongyang's Next Steps in the Six-Party Process

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North Korea's failure to abide by its Six-Party Talks commitment to shut down and seal the Yongbyong nuclear facility by April 14 raises serious doubts over its commitment to denuclearization. Pyongyang's willingness to jeopardize negotiations by insisting on the return of funds in bank accounts tied to illegal activities may foreshadow protracted negotiations over more contentious denuclearization issues and collapse of the Six-Party Talks. U.S. acquiescence to North Korea's financial demands sets a bad precedent and undermines Washington's negotiating leverage. South Korea's willingness to provide fertilizer and food aid unilaterally, despite Pyongyang's non-compliance, reduces North Korea's incentive to abide by its nuclear commitments. In the next round of Six-Party negotiations, the U.S. should take a firm stance on denuclearization, disclosure, verification, and compliance, lest North Korea devise new strategies to shirk more if its commitments.

Nuclear Deadlines. The Six-Party Talks agreement signed in Beijing on February 13 ("Beijing Agreement") required North Korea to "shut down and seal for the purpose of eventual abandonment the Yongbyong nuclear facility [and] invite back International Atomic Energy Agency personnel to conduct all necessary monitoring and verifications" within 60 days, by April 14. In return, the other parties would ship 50,000 tons of heavy fuel oil to North Korea. Working groups would also be established to begin discussions on North Korea's denuclearization, normalization of U.S.–North Korean and North Korean–Japanese relations, economic

and energy cooperation, and the creation of a peace and security mechanism for Northeast Asia.

Politics Trumps Law Enforcement. Separately, the U.S. promised to "resolve" the status of the frozen North Korean assets at Banco Delta Asia (BDA) within 30 days. It remains unclear whether the U.S. commitment was a verbal promise by Assistant Secretary of State Christopher Hill or part of an undisclosed written addendum.

In March, the U.S. Treasury affirmed its September 2005 ruling that BDA, a Macau-based bank, is a "primary money laundering concern" for facilitating North Korea's laundering of money from counterfeiting and drug smuggling. Acting under Section 311 of the Patriot Act, Washington banned all U.S. banks from dealing with BDA, effectively isolating the bank and North Korea from the international financial system.

The next week, however, the U.S. announced that it favored the full release of the frozen North Korean assets in BDA, undermining Washington's pledges to target currency counterfeiters and not negotiate on law enforcement. Despite the U.S. statement, the BDA issue was unresolved, because no foreign bank was willing to transfer illicit funds and risk international sanctions for complicity in North Korea's illegal activities.

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Although the Bush Administration downplayed the impasse as a minor technical issue, Pyongyang did not withdraw the funds, to avoid exposing North Korea's covert operations and, more importantly, to further its broader objective of reintegrating the country into the international financial system.

The frozen \$25 million has always been less important than overcoming the devastating impact of the Treasury Department's ruling on BDA. The seemingly minor U.S. action against BDA severed North Korea's principal conduit for illicit and legal transactions, leading other countries to freeze North Korean transactions and most foreign banks and companies to refrain from business dealings with Pyongyang.

North Korea thus seeks to regain the BDA funds in a way that ends its pariah status, such as a transfer through a third-party bank. North Korean Vice Foreign Minister Kim Gye-gwan commented in March, "[If the U.S. does not] remove *all* of its restrictions on our funds at BDA, we cannot shut down our nuclear facilities at Yongbyon" (emphasis added). The acting chief of North Korea's U.N. mission emphasized on April 24, "When we said we wanted the money in our hands, we meant that there has to be transfer of the money." According to North Korea, then, persuading a bank to agree to the transfer is a U.S. responsibility.

Although North Korea is likely to eventually receive the \$25 million through unilateral withdrawal or an accommodating bank, the transfer will not generate the economic benefits it seeks. Pyongyang may, therefore, demand the rescission of the U.S. Treasury Department's ruling on BDA. There are rumors that another Chinese bank or even South Korea's debt restructuring agency may purchase BDA, which would provide an opportunity for Washington to repeal the BDA ruling—an ill-advised decision.

Even this, however, will not overcome international trepidation in conducting business with North Korea, leading to further delays in North Korean denuclearization or additional demands by Pyongyang to overcome its economic isolation.

South Korean Unilateral Aid Undermines Pressure on Pyongyang. Washington's decision to advocate the return of BDA funds traded off the enforcement of international financial regulations and U.N. Resolution 1718 for making progress in the Six-Party Talks. As a result, Seoul may feel less con-

strained in resuming its unconditional aid to the North. This aid was halted after Pyongyang's July 2006 missile launches and October 2006 nuclear test.

On April 22, South Korea agreed to provide 400,000 tons of rice to North Korea despite Pyongyang's failure to abide by its Beijing Agreement commitments. Seoul had already promised to deliver 350,000 tons of fertilizer prior to the April 14 deadline. Chin Dong-soo, head of the South Korean delegation, asserted that the aid was contingent on North Korea freezing nuclear operations at Yongbyon, but the countries' joint statement stipulates only that the aid was "a loan on brotherly and humanitarian grounds" and imposes no conditions on its delivery.

Another Bargaining Chip. North and South Korean negotiators tentatively agreed in mid-April to a symbolic test run of rebuilt inter-Korean rail lines. Seoul could hail the test as a vindication of its engagement policy with North Korea. But as the proposed date approaches, North Korea may resurrect the "security issues" that derailed a test run scheduled for May 2006. North Korean military hardliners had apparently objected to the test, although all messages from Pyongyang are controlled by Kim Jong-il.

In exchange for the test run, North Korea may again demand South Korean acquiescence to Pyongyang's interpretation of the Northern Limit Line (NLL), the maritime equivalent of the Military Demarcation Line (MDL) that delineates the boundaries of the two Koreas. The disputed waters encompass crab breeding grounds that provide a major source of foreign currency for Pyongyang and have been the site of North Korean abductions of South Korean fishing boats and several fatal naval clashes.

The NLL and MDL have served as the de facto border between North and South Korea, because the two countries technically remain in a state of war. Resurrecting the NLL issue would also highlight the need to replace the 1953 armistice agreement with a treaty formally ending the Korean War. Pyongyang has long sought a treaty because it could undermine the rationale for maintaining U.S. troops in South Korea.

Pyongyang's Summit. Despite repeated South Korean denials, rumors abound that President Roh Moo-hyun is contemplating a summit with Kim Jong-il. A meeting would provide significant bene-

fits to both leaders and remains a very real possibility. The most likely scenario is for Pyongyang to agree to a May 17 railroad test run in preparation for former President Kim Dae-jung traveling to Pyongyang to commemorate the June 15 anniversary of the 2000 inter-Korean summit. This would lay the groundwork for a summit between Kim Jong-il and President Roh Moo-hyun on August 15, which is Liberation Day, the anniversary of the end of Japanese occupation of the Korean Peninsula.

Although Kim Jong-il is obligated, under the terms of the 2000 joint statement, to visit South Korea for the second summit, he is unlikely to do so. Instead, the meeting may take place in Kaesong to highlight the joint Korean economic zone that is the flagship initiative of President Roh's engagement policy. A less likely alternative is that the summit could occur on the isolated Dokdo/Takeshima Islands, which would send an inflammatory message to Tokyo, asserting Korean sovereignty over the disputed islands.

Although Kim Jong-il may be reluctant to meet with Roh during the waning days of his lame duck presidency, a summit would be tangible evidence of the success of Roh's engagement policy, would boost South Korean public approval for massive unilateral aid to Pyongyang, would weaken the conservative opposition party in the December 2007 South Korean presidential election, and would further reduce domestic support for the presence of U.S. troops.

Recommendations. It is possible, even likely, that the BDA issue will eventually be resolved to Pyongyang's satisfaction, leading it to freeze operations at the Yonbyon nuclear facility and readmit IAEA inspectors to the site, thereby completing Phase One of the Beijing Agreement.

North Korean negotiators will be emboldened to push back against U.S. demands during the Phase Two negotiations meant to determine Pyongyang's responsibilities for dismantling its nuclear facilities, providing a data declaration of its nuclear weapons programs (including weapons based on highly enriched uranium) and verifying its compliance.

During these follow-on negotiations, the U.S. should:

- Maintain the Treasury Department's ruling against BDA and continue ongoing global efforts to target North Korea's illicit activities;

- Resist North Korean efforts to remove human rights from the Six-Party Talks process. Washington should make clear that removal of North Korea from the list of state sponsors of terrorism and the establishment of formal diplomatic relations are contingent on progress in the bilateral North Korea–Japan working group, including satisfactory resolution of the abductee issue;
- Insist on treaty language defining the requirements for the required data declaration, the methods for disabling and dismantling nuclear facilities, and disposal procedures for existing fissile material and nuclear weapons;
- Require extensive verification measures, including provisions for short-notice challenge inspections of non-declared facilities to resolve current and future suspicions; and
- Urge South Korea to integrate its unilateral aid into the multilateral Six-Party Talks process to minimize Pyongyang's ability to play Washington and Seoul against each other and to resist efforts to moderate its threatening behavior. South Korea should adopt World Food Program monitoring standards to ensure Pyongyang does not divert humanitarian assistance.

Conclusion. North Korea's objectives go beyond the BDA funds or even the economic benefits promised in the Beijing Agreement. A recent article in *Chosun Shinbo*, a Korean-language newspaper seen as an unofficial mouthpiece for the regime, links progress on even initial denuclearization to larger political objectives: "It is impossible that [North Korea] would close down its nuclear facilities—the essence of its deterrence power—just to receive one million tons of heavy fuel aid."

Instead, Pyongyang will demand that Washington prove it has loosened its hostile policy by "eliminating all the legal and institutional devices hostile to North Korea [and] the elimination of all nuclear threats on the peninsula as well as in the region." North Korea is thus unlikely to accept the current U.S. interpretation that discussion of establishing relations and removing Pyongyang from the terrorist list is sufficient for gaining initial denuclearization.

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