

U.S.-DPRK Negotiations: From Failed Diplomacy to Engagement

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Abstract

Having reversed the policy of the first 6 years, the Bush administration switched to an engagement policy shortly after North Korea's detonation of a nuclear device in October 2006. The United States had the serious bilateral negotiations with North Korea for the first time which led to the six party talk's February 13, 2007 statement. Later in the Geneva meeting, the United States pressed North Korea to agree to finish Phase II commitments by the end of 2007.

What is most remarkable is not that the U.S. has so completely reversed its policy, but that North Korea appears to have adopted a strategic plan that incorporates rational flexibility. Pyongyang has calculated what is no longer strategically important, and offered it up as available in the negotiations, showing extraordinary levels of flexibility in exchange for getting what is most important to it. As this suggests that the strategic value of nuclear weapons and plutonium have not changed for North Korea, the author concludes that the eagerness of the United States to make progress before the end of the Bush term in office would lead to contrary results.

Taking a page out of my recent book, *Failed Diplomacy: The Tragic Story of How North Korea Got the Bomb*:

By any objective evaluation, the Bush administration's stated goal of halting North Korea's nuclear weapons program has not been achieved. U.S. policy toward North Korea has been a failure. North Korea has succeeded in restarting its nuclear facilities, extracted significant amounts of plutonium, openly declared that it possesses nuclear weapons, by some accounts outmaneuvered the U.S. diplomatically, advanced its missile program, and exploited the differences in policy approach between the United States and South Korea. The inexperience of most administration officials in dealing

with North Korea and the discrepancy between the administration's stated goal of negotiating a peaceful resolution and its desire to see the regime collapse have been significant contributors to policy failure. Worst of all, North Korea, in defiance of a united international community—whose unanimity is the goal of the multilateral six-party approach—conducted a nuclear test. As a result, the United States is less safe now than it was at the beginning of 2001 and the alliance with South Korea is in worse shape.¹

That description of the Bush administration's policy toward North Korea was accurate until January 2007. While the consequences of the administration's policy from 2001 until 2007 have not changed – North Korea extracted enough plutonium for approximately 8 additional nuclear weapons – the policy itself has changed.

By all measures, 2006 was a bad year for the Bush administration regarding its approach to North Korea. The year started with Pyongyang boycotting the Six Party process, insisting that it would only return to the talks after the Bush administration had lifted the “sanctions” imposed on it by U.S. Treasury Department action to penalize Banco Delta Asia (BDA). In July, Pyongyang launched six short to medium range missiles and one long range missile – the first launch of a long range missile since the Clinton administration successfully negotiated a missile moratorium with Pyongyang in 1999. On October 9, 2006, North Korea detonated a nuclear device despite universal calls for it not to do so. The final blow to the Bush administration was the loss of control of the U.S. Congress by republicans to democrats.

The failures of the Bush policies to halt North Korea's rapid rise to become a declared and demonstrated nuclear weapons power, the loss of control of the legislative branch of government, new challenges from Iran over its nuclear program and potential new problems in Iraq that eventually led to a surge of more than 30,000 new troops being introduced into Iraq, contributed to the willingness of President Bush to change course on North Korea policy. But perhaps the single most important factor contributing to a radical change in policy was the departure of key hard-line supporters of Bush's original policy of confrontation and isolation of North Korea. Immediately following the November 2006 election, Secretary of Defense Donald Rumsfeld was fired, replaced by a more pragmatic Bob Gates. John Bolton's recess

¹ Charles L. Pritchard, *Failed Diplomacy: The Tragic Story of How North Korea Got the Bomb*, Brookings Press, May 2007, p161.

appointment as UN Ambassador expired without any efforts by the administration to fight to keep him in place. Elsewhere within the administration, Undersecretary of State Bob Joseph resigned and Deputy National Security Advisor J.D. Crouch departed. Vice President Cheney seemed distracted by the impending trial of his former Chief of Staff Scooter Libby.

The result of the departure of President Bush's key hard-line supporters was a president that had to make decisions on his own without a cacophony of small minded voices whispering in his ear, "we don't reward bad behavior." Former Secretary of State Colin Powell once confided in his chief of staff that the only way to have a substantive conversation with President Bush was to be alone with him or at least be the last person he talked to on the subject. With all the hardliners gone, in this new environment, Secretary Rice and Assistant Secretary of State Chris Hill were able to persuade President Bush to change policy toward North Korea.

Regardless of how the Bush administration finally arrived at a policy that permits diplomacy to explore various options to walk back North Korea's nuclear program, it is to be commended. However, having waited so long to engage in diplomacy and now having reversed course on the policy of the first 6 years, the Bush administration finds itself in a very vulnerable position. It is not negotiating from a position of strength. Pyongyang had insisted for more than 4 years that the only way it would negotiate in good faith was in serious bilateral contact with the United States. The Bush administration refused all attempts at bilateral contact for the longest time and only under pressure from other members in the six party talks did it begin to engage in bilateral contact within the context of the six party talks.

From a North Korean perspective, its bad behavior was rewarded. It detonated a nuclear device on October 9, 2006 and on October 31st the U.S. lead negotiator, Assistant Secretary Chris Hill, was meeting bilaterally with his North Korean counterpart, Vice Minister Kim Gye-gwan, in Beijing. In that meeting, according to North Korea, Chris Hill promised to resolve the BDA issue to the satisfaction of Pyongyang in exchange for North Korea rejoining six party talks and making progress on the September 19, 2005 Joint Statement. A new round of six party talks was held in December, but without any significant progress. For North Korea, the formulation was straight forward: resolution of BDA (and the return of its \$25 million) in exchange for meaningful progress in the six party process. BDA had not been resolved, therefore, no progress was made in six party talks.

As the final pieces of the Bush administration's original policy were falling by the wayside with the departure of its key proponents, Chris Hill was finally given approval to fully engage North Korea in true bilateral talks. The United States and North Korea met in Berlin January 16-18, 2007 for the first serious bilateral negotiations that were not directly under the auspices of the six party talks. To be sure, the topic and outcome were six party related, but the meeting represented for Pyongyang a significant achievement. As a practical matter, the U.S. and North Korea were able to reach a very specific agreement (in writing) that would become the six party talk's February 13, 2007 "Initial Actions for the Implementation of the Joint Statement." The five parties and North Korea agreed to two phases of actions that North Korea would complete in return for specific benefits.

What was not listed in the written agreement was the quid-pro-quo understanding that Pyongyang extracted from the United States. The United States agreed to resolve the BDA issue and ensure that North Korean funds held in Banco Delta Asia would be returned. For its part, Pyongyang agreed to implement its Phase I requirements (shutting down and sealing the facilities at Yongbyon) within 60 days upon final resolution of the BDA issue. It ultimately took the United States 150 days to have North Korea's \$25 million transferred from BDA through a U.S. banking facility (the New York Federal Reserve Bank) and a Russian bank to Pyongyang. Once that was accomplished, Pyongyang shut down and sealed its nuclear facilities at Yongbyon in thirty days. To be sure, there were plenty of critics of Bush's new engagement policy that were claiming that Pyongyang had failed to live up to its obligation to shut down and seal the Yongbyon facilities within 60 days. But more importantly, Pyongyang was teaching Washington an important lesson: Pyongyang was willing to cooperate with Washington in these early phases, but since it held all cards it would not compromise on certain issues. BDA and the return of its money was an issue it would not compromise on.

Pyongyang was also learning that the Bush administration was desperate to show progress from its change in policy. Having changed from a policy of confrontation and isolation to one of engagement, the Bush administration could not afford to switch back in such a short period of time. It needed results. Pyongyang also learned that it could use its decision that the nuclear facilities at Yongbyon no longer held any strategic value to its advantage in negotiations with the United States.

For the Bush administration, it was not enough to negotiate the shutting down of the reactor at Yongbyon. That had already been accomplished by the

Clinton administration in 1994. The Bush administration needed to go beyond the accomplishments of the Clinton administration and negotiate the disablement of the key facilities at Yongbyon. But more than that, it needed North Korea to give up its nuclear weapons and fissile material – the development of which is something that the Bush administration would be held accountable for. In order to have any chance at negotiating a Phase III (the dismantlement of the North Korea's nuclear program, including its weapons and fissile material), Phase II (disablement and declaration) needed to be completed as quickly as possible, preferably by the end of 2007.

Again, it was a serious bilateral meeting between the U.S. and North Korea that led to a break through. U.S. and North Korean negotiating teams met in Geneva from September 2-4, 2007. This time the bilateral process functioned as part of the six party process. The February 13 agreement set up five working groups, one of which was the U.S. – DPRK normalization working group. By mid-2007, the six party process was beginning to function as many observers had hoped it would. In the Geneva meeting the United States pressed North Korea to agree to finish Phase II commitments by the end of 2007 so it could devote 2008 to negotiating the return of the fissile material and nuclear weapons. Pyongyang recognized the vulnerability of the American position and insisted that it be taken off the State Sponsor of Terrorism List and have the Trading with the Enemy Act (TWEA) sanctions lifted as a specific quid-pro-quo for agreeing to finish Phase II by year's end. The United States agreed.

Key to Washington's decision to take Pyongyang off the Terrorism List was the de-linkage of progress of one working group to progress to another. That language was incorporated in the February 13 agreement. Also incorporated was the U.S. commitment to begin the process of removing Pyongyang from the Terrorism List. In practical terms, that means that the United States and North Korea can agree to improve their relationship regardless of how much or how little progress is made toward resolution of the abduction issue in the Japan – DPRK working group. Concerned about where this may lead, former Japanese Prime Minister Abe visited Washington in April 2007 to make the case that it was important for Japan that the U.S. keep North Korea on the Terrorism List. For Japan, the Terrorism List provided a certain amount of leverage in its talks with North Korea about abductions. Abe was temporarily successful in getting the White House to publicly say that it would be much further in the denuclearization process before Pyongyang was taken off the Terrorism List and that the United States would continue to consult with Tokyo on

the issue.

When Pyongyang completed its Phase I requirements of shutting down and sealing its nuclear facilities after holding out for 150 days until it received its \$25 million, Washington realized that it had to entice Pyongyang with something that it actually wanted. The only thing that Pyongyang wants from the United States in the near term is removal from the Terrorism List. In Geneva the United States got what it wanted from North Korea (a commitment to complete Phase II by the end of the year) and North Korea got what it wanted from the United States (a commitment to be taken off the Terrorism List). At the conclusion of the Geneva meeting, Ambassador Hill told Vice Minister Kim that he would describe the meeting in general terms without revealing that North Korea had agreed to complete disablement and to provide the nuclear declaration by year's end. Vice Minister Kim told Hill that it was fine to announce the details, which Hill did. What Hill failed to do was get an agreement from Kim not to disclose what the United States had promised in return. When Pyongyang announced that it would be taken off the Terrorism List, Hill was not prepared publicly to acknowledge the claim. The ground work had not been properly prepared with Japan. When asked by reporters, Hill circumvented a direct answer by saying that "North Korea still remains on the Terrorism List;" "North Korea knows what it has to do to get off the Terrorism List;" and "It will be sometime in the future before North Korea comes off the Terrorism List." None of these comments contradicted Vice Minister Kim's claim that the U.S. would remove North Korea from the Terrorism List in exchange for its completion of Phase II requirements by year's end.

What is most remarkable about the bilateral engagement between the United States and North Korea is not that the U.S. has so completely reversed its policy, but that North Korea appears to have adopted a strategic plan in its dealings with Washington that incorporates rational flexibility. Specifically, Pyongyang has calculated what is no longer strategically important to it, has offer it up as available in the negotiations, conditioned the United States to appreciate the necessity of dealing with Pyongyang's pre-conditions seriously, and been willing to show extraordinary levels of flexibility in exchange for getting what is most important to it.

Pyongyang's nuclear weapons goal has been to create a certain level of anxiety among its neighbors while possessing a sufficient deterrent against possible U.S. military action – both of which put a premium on its nuclear program. It has not

harbored secret desires of becoming an offensive nuclear threat accumulating endless numbers of nuclear warheads. In Pyongyang's calculation, it has achieved its basic nuclear goals regarding potential numbers of nuclear weapons. It also has determined that the 5 megawatt reactor at Yongbyon has just about run its useful life. Rather than continue for some short period of time operating a dilapidated reactor that could quickly working without notice – and thus lose its value at the negotiating table – Pyongyang decided to let the U.S. negotiate for it. While the process may have looked straight forward, the North Korean pre-condition on the resolution of BDA and the return of its funds complicated matters for the United States. Early in the bilateral negotiations, North Korea figured out how important it was to the Bush administration to show progress after switching to an engagement policy. Because Pyongyang was not particularly motivated to get rid of its nuclear program on its own volition, it knew it could extract a high price for its cooperation in the renewed six party process.

One of the problems the six parties had to contend with was the requirement from the September 19, 2005 Joint Statement that “The Six Parties agreed to take coordinated steps to implement the afore-mentioned consensus in a phased manner in line with the principle of ‘commitment for commitment, action for action.’”² Once North Korea agreed to complete its commitments under Phase II by the end of the year, it became incumbent upon other members to provide Pyongyang with the corresponding benefits in the same time frame. However, it was never going to be possible to provide North Korea with one million tons of heavy fuel oil (HFO) in a timely manner. North Korea does not have the infrastructure to receive, use or store more than 50,000 tons of HFO per month. The language of the February 13 agreement was written so the United States could provide benefits of equivalent value without having to request funding from the Congress, at least in the early stages pending actual compliance by North Korea that would give the Bush administration political cover for later requests for funding.

The North Koreans have used the desire by the U.S. to finish Phase II actions by year's end and the language of the February 13 agreement to suggest flexibility on their part in receiving the specific benefits promised them in exchange for a guarantee that they will be removed from the Terrorism List. Under normal circumstances, North Korea would insist on “commitment for commitment, action for action.” When it comes to the delivery of benefits, Pyongyang very much ascribes to former

² Joint Statement of the Fourth Round of the Six-Party Talks Beijing, September 19, 2005.

U.S. Ambassador to the United Nations John Bolton's corollary of Ronald Reagan's famous "trust but verify" axiom: "let's see real verification first, leave trust until later."³ In an unusually generous offer, North Korea told the United States (and then later reconfirmed it with the rest of its negotiating partners) that it was willing to accept only half of the promised one million tons of HFO while receiving the remaining equivalent value in material for repairs of its energy sector. It even stated that it would accept a target date of April or later in 2008 for completion of the benefits involved. It could do this because it was assured that its primary objective, removal from the Terrorism List, would be forth coming.

What guarantees does Pyongyang have that the United States will live up to its bargain once the nuclear facilities at Yongbyon are disabled and a complete declaration has been made? Because the actions by North Korea are not strategic in nature and because North Korea continues to control the timing and agenda for follow on negotiations over the dismantlement of its nuclear program, it will not have lost much if the U.S. fails to remove it from the Terrorism List. On the other hand, failure by the United States to satisfy North Korea's expectations will mean that the U.S. will lose the opportunity to negotiate an end to North Korea's nuclear program. The Bush administration will leave office with the unfortunate legacy of having had North Korea reprocess approximately 8 bombs worth of plutonium and detonate a nuclear device during its term.

Complicating the U.S. game plan to have North Korea complete its Phase II requirements by year's end and start serious negotiations in 2008 on the dismantlement of Pyongyang's nuclear weapons program were two issues, one more serious than the other. Like Abe before him, Prime Minister Fukuda made a personal appeal to President Bush to consult more closely before removing North Korea from the Terrorism List.⁴ The mere presence of Prime Minister Fukuda around the time the Bush administration would have had to notify Congress (45 days in advance) of its intention to remove North Korea from the Terrorism List if it wanted to have the removal correspond to the end of the year actions by North Korea, suggested the administration would wait an appropriate length of time rather than risk offending Fukuda. Because North Korea knows it is in control of the future of the six party talks,

³ John R. Bolton, Wall Street Journal, October 31, 2007, "Bush's North Korea Meltdown"

⁴ This paper was completed before the scheduled November 17, 2007 summit meeting between Prime Minister Fukuda and President Bush in Washington, DC. The results will be factored in the oral presentation.

a delay beyond year's end will not materially matter.

The more serious challenge to the six party talks is the possibility that North Korea may have been involved in helping Syria develop a nuclear program. On September 6, 2007, Israel bombed Syrian facilities near the Turkish border. While the Israelis have not acknowledged attacking Syria, there has been a flood of leaks from Washington and speculation from a variety of sources that suggest that the facility that Israel attacked was a nuclear reactor that was being built with assistance from North Korea. Compounding the problem that speculation is causing, the Bush administration is exercising extreme discipline and refusing to talk about the issue. It has limited its briefings to a small number of Members of Congress, causing some Members to threaten to withhold funding the administration is seeking to support progress in the six party talks. In testimony before the House Committee on Foreign Affairs Subcommittee on Asia, the Pacific and the Global Environment and the Subcommittee on Terrorism, Nonproliferation, and Trade, Assistant Secretary Hill said, "whether or not North Korea is involved in a nuclear program with Syria is classified."⁵

If it turns out to be true that North Korea was involved in proliferating nuclear technology or materials to Syria, the Bush administration will find itself in an untenable and unenviable situation of trying to make the case that it is in the United States security interests to move forward in the six party process with a new agreement that requires the U.S. to provide benefits to Pyongyang for the dismantlement and removal of its nuclear program – without exacting a severe penalty on North Korea for proliferation.

Even without the North Korea – Syria proliferation question for the Bush administration to be concerned about, there are potential obstacles that Pyongyang will introduce in the Phase III negotiations that will make it unlikely that dismantlement will be agreed upon in 2008. Unlike the facilities at Yongbyon, plutonium and nuclear weapons are of vital strategic importance to Pyongyang and it is unlikely to easily negotiate them away. At some point during the Phase III negotiations, Pyongyang could request that the effects of the BDA sanctions be permanently resolved. The return of North Korea's \$25 million held in BDA accounts did not fix the problem

⁵ Testimony by Assistant Secretary Christopher R. Hill before the House Committee on Foreign Affairs Subcommittee on Asia, the Pacific and the Global Environment and the Subcommittee on Terrorism, Nonproliferation, and Trade October 25, 2007: *The Six Party Process: Progress and Perils in North Korea's Denuclearization*.

that the U.S. Treasury inflicted upon Pyongyang. The actions against BDA had a worldwide chilling effect that resulted in North Korea's inability to use the international financial system. Pyongyang will want that remedied before long. It will also want a commitment from the United States and others to decontaminate Yongbyon and retrain its nuclear scientist (much as the Nunn-Lugar Act did for the former Soviet Union). And finally, Pyongyang will want an early commitment by the other five parties to provide it with a Light Water Reactor – as it demanded on September 20, 2005 – the day following the Joint Statement.

In early December 2007, Assistant Secretary Hill traveled to Pyongyang carrying a letter from President Bush to Kim Jong Il. The United States was concerned that North Korea would not make the appropriate declaration and the letter from Bush was designed to urge Kim Jong Il to meet his obligations in a complete, correct and timely manner. Apparently Hill was shown a copy of the declaration that Pyongyang intended to provide and because it was unsatisfactory (incomplete), Hill maneuvered to have the next round of six party Heads of Delegation scheduled for the following week postponed indefinitely rather than have the document formally submitted. By year's end, the United States and other six party partners were confirming to critics and news organizations that North Korea had not met its obligations to provide a correct and complete declaration of its nuclear programs. In response, Pyongyang countered that it had provided Hill with a declaration and nothing further would be forthcoming and that it was the United States and others who had failed to provide promised benefits in a timely manner. As a consequence, North Korea slowed down the removal of fuel rods from its 5 MW reactor to 30 rods per day rather than the maximum of 80 rods per day it was capable of.

In summary, the eagerness of the United States to make progress before the end of the Bush term in office, the potential for the North Korea - Syria proliferation connection to become public, and the strategic value of North Korea's nuclear weapons and plutonium all combine to suggest that 2008 will not be a year that sees much results in the six party process. Essentially, the Bush administration is stuck in neutral while hoping that North Korea will make the necessary declaration and complete Phase II. It looks more and more likely that whatever creative solutions that the six parties might find to restart the denuclearization process, it will be too little and too late for substantial progress to be made before the end of the Bush presidency and history will appropriately judge George W. Bush harshly as a result.