

WebMemo



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Banking Transfer Plays to North Korean Demands

Bruce Klingner

Yesterday, the Macau-based Banco Delta Asia (BDA) released \$25 million that had been parked in frozen North Korean accounts. BDA had been a major conduit for North Korean cash, from both legal and illegal activities, and Pyongyang had refused to abide to its nuclear commitments under the February 13 Six Party Talks agreement until the funds were released. The Bush Administration's agreement to link the BDA matter to the Six Party Talks needlessly undermined U.S. diplomatic efforts and set a dangerous precedent for future nuclear negotiations with North Korea, as well as with Iran. Still, now that this issue has seemingly been resolved, the U.S. must press North Korea to provide a complete data declaration that includes details on its highly enriched uranium-based nuclear weapons program and to agree to stringent verification measures to ensure the destruction of its nuclear weapons facilities and nuclear weapons.

An Impediment to Denuclearization. In March 2007, the U.S. Treasury Department concluded its 18-month investigation into BDA by affirming its initial September 2005 identification of the bank as a "prime money-laundering concern" under Section 311 of the Patriot Act, which precluded any U.S. bank from interacting with it. U.S. citizens are bound by the Money Laundering Control Act of 1986, which makes it a federal criminal offense to conduct a financial transaction involving proceeds of another crime. Violators face significant prison time and financial penalties as well as potential forfeiture of all property involved in the money-laundering offense or in a conspiracy to commit a money-laundering offense.

The U.S. government's characterization of the delay in releasing the funds as a "technical difficulty" caused by North Korea's unfamiliarity with the international banking system was disingenuous. In truth, Washington could not find any bank or country willing to risk engaging in money laundering, which could carry great consequences.

Although details remain sketchy, most of the North Korean funds have now been released, according to Francis Tam, Macau's secretary of economy and finance. Rumors suggest the transfer involved the U.S. Federal Reserve Bank of New York and the Russian central bank. Whether the Bush Administration chose the Federal Reserve, an independent government entity, because it is exempt from some U.S. laws is uncertain.

Ramifications of BDA Resolution. The successful transfer of the BDA money via a third-country bank should fulfill the North Korean demand for the U.S. to "resolve" the BDA issue, allowing progress in the Six Party Talks. But it will not lead foreign banks to reach out to Pyongyang for new business or lead to North Korea's reintegration into

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the international financial system. It is all but certain that North Korea will eventually seek additional U.S. steps, such as a rescission of the Treasury Department ruling against BDA.

In the near term, however, resolution of the BDA issue should allow for the rapid completion of the first phase of the February multilateral agreement. North Korea is now likely to freeze operations at the Yongbyon nuclear reactor and re-admit International Atomic Energy Agency (IAEA) inspectors at that facility. This will trigger the release of an initial tranche of 50,000 tons of heavy fuel oil by the other Six Party Talks participants.

These steps should result in the resumption of nuclear negotiations. The complicated and contentious issues of this second phase of talks will provide a greater test of North Korea's commitment to denuclearization. Issues such as North Korea's parallel uranium-based nuclear weapons program, requirements for destruction of nuclear facilities and weapons, and the parameters of a stringent verification regime are likely to slow future progress.

South Korean Engagement. Resumed progress in the Six Party Talks will also have effects in South Korea. Seoul will begin shipment of 400,000 tons of rice to North Korea, which it had conditioned on Pyongyang fulfilling its initial nuclear obligations. While Seoul has already gone back on its pledge not to provide aid following North Korea's 2006 missile and nuclear tests by sending 300,000 tons of fertilizer earlier this year, it kept the conditionality on its rice pledge.

More significantly, progress in nuclear negotiations will increase the likelihood that South Korean President Roh Moo-hyun will seek an inter-Korean summit with North Korean leader Kim Jong-il. On June 15, President Roh said, "If North Korea ceased operations at the Yongbyon reactor, I will most certainly meet [Kim Jong-il], even if there is only three to four months left in my term to discuss how we could help accelerate the process." The two sides would likely conduct a summit in Kaesong on August 15 (the anniversary of Korea's liberation from Japanese occupation) for maximum symbolic value. Roh is eager to conduct a summit to show for the success of his engagement policy, which has

come under increasing criticism domestically for providing significant aid with few conditions.

Conservatives in the opposition Grand National Party fear that a summit will give an unfair advantage to progressive candidates in the December 2007 South Korean presidential election. The GNP had considered softening its stance toward North Korea following initial progress in the Six Party Talks but subsequently affirmed its position. The South Korean electorate's perceptions of progress in the Six Party Talks and inter-Korean relations at the time of the election would hurt former GNP chairwoman Park Geun-hye, who has advocated a firmer North Korean policy than her rival, former Seoul Mayor Lee Myung-bak.

Recommendations for the Bush Administration. With the likely resumption of the Six Party Talks, the Bush Administration must:

- Resist any North Korean demands to reverse the Treasury Department ruling against BDA and any North Korean efforts to reintegrate into the international financial network before Pyongyang addresses international concerns over its illegal activities;
- Call on other participants in the Six Party Talks to fully enforce the economic restrictions called for in U.N. Resolution 1718 and in international laws against counterfeiting, money laundering, and drug smuggling;
- Undertake multilateral diplomatic, law enforcement, and intelligence efforts to identify and target North Korean illicit activity;
- Insist that specific reference be made to North Korea's uranium-based nuclear weapons programs in subsequent treaty text and other agreements;
- Insist on a verification regime that can prevent North Korea from cheating on its denuclearization commitments, such as by including short-notice challenge inspections at suspect sites.

Conclusion. The transfer of BDA money to North Korea raises serious questions under both U.S. and international law. Representative Ileana Ros-Lehtinen (R-FL), the Ranking Member of the House Foreign Affairs Committee, requested on June 12 that the Government Accountability Office

evaluate whether this action is consistent with anti-money laundering and counterfeit laws. Other signers of the letter include Representatives Christopher H. Smith (R-NJ), Dan Burton (R-IN), Edward R. Royce (R-CA), Mike Pence (R-IN), and Joseph R. Pitts (R-PA).

The Administration should resolve not to repeat the errors of the BDA imbroglio. To this end, it must call on North Korea to prove its commitment to divesting itself of its nuclear weapons programs.

The other Six Party Talks participants must insist on detailed treaty text rather than still more vaguely worded joint statements which lend themselves to misinterpretation and malfeasance. Finally, the United States must make clear that its patience is not limitless and that North Korea will not be allowed to continue to drag out the negotiations.

—Bruce Klingner is Senior Research Fellow for Northeast Asia in the Asian Studies Center at The Heritage Foundation.