

# Policy Forum 07-028: BDA: Hill's Tactical Miscalculation



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# BDA: Hill's Tactical Miscalculation

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BDA: Hill's Tactical Miscalculation

By Tong Kim

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## I. Introduction

Tong Kim, Visiting Scholar at SAIS, Johns Hopkins University, writes that "The North Koreans should heed the rekindled criticisms among the opponents of the Bush administration's new approach to the DPRK since their refusal to participate in the talks last week. They should remind themselves that they won a rare opportunity to engage the United States after waiting 6 long years. They should also remember that the United States still has other options to resort to, if it is

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convinced, as events may prove right or wrong, that there is no way to reach a fair negotiated settlement."

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## **II. Article by Tong Kim**

- "BDA: Hill's Tactical Miscalculation"

By Tong Kim

It is now clear what the confusion was all about in Beijing last week, concerning the technicalities involved in transferring the freed North Korean funds of \$25 million from the Banco Delta Asia (BDA) in Macau to an account held by North Korea in the Bank of China (BOC) in Beijing, or transferring them through BOC to a bank account in a third country.

No party in the talks seemed to have expected the money transfer issue would hold up the serious talks of nuclear dismantlement. No diplomat at the talks seemed to have studied beforehand the international banking requirements for "remittance business" and the legal ramifications and concerns for an international bank to accept "illegal funds."

All U.S. banks operating under U.S. laws including the Patriot Act are on notice to cut off transactions with any foreign bank that is involved in money laundering or terrorist financing.

Nobody explained why the North Koreans did not want or could not transfer the funds to their Trade Bank in Pyongyang or why they wanted the money transferred to BOC.

A testimony to the confusion and unpreparedness was found in the words of South Korean chief delegate to the talks, Chun Yung Woo, "Absurd and preposterous things are happening, but nobody really knows why these things are happening."

Now Washington is sending back deputy assistant secretary of treasury Daniel Glaser, who watches terrorist financing and financial crimes, to explain to the reluctant BOC officials that their bank will not be punished after it receives the "dirty money" from BDA.

Glaser was in Beijing only a week earlier to announce the conclusion of an 18 month investigation of North Korean illicit financial activities - including money laundering and counterfeiting - and a U.S. decision to unfreeze the DPRK related funds from BDA a couple of hours before the convening of the multilateral talks last Monday (March 19th).

Despite the U.S. treasury department's barring all American banks from doing business with BDA and its condition that the released DPRK funds could only be used for educational and humanitarian purposes, assistant secretary of State Christopher Hill, who joined Glaser at the hurriedly staged announcement, appeared confident that the BDA issue would no longer be an impediment to the nuclear talks. It took him only a few hours to find that he was wrong afterwards.

Washington could have told Glaser to stay in Beijing and do what he is now going back there to do. This action could have saved at least a few days to a week to complete the transfer and to bring the parties back together sooner than possible under the present circumstances.

It does not surprise me that the North Koreans refused to discuss the substantive issues of how to implement the 2.13 agreement and what steps to take for disablement in the next phase. Under

different circumstances, the defiant North Korea had walked out of meetings before, even when they had less understandable justification to do so.

From the beginning, the North Koreans said they would not move until the issue of financial sanctions is fully resolved. However, what they did not make clear before was that they wanted to "see the money" deposited in their own account. Apparently the U.S. negotiating team had erroneously assumed "U.S. assurances" for releasing the frozen DPRK funds, backed up by a policy pronouncement - which was not exactly seen as an exoneration of North Korea from the U.S. charges of financial crimes - would suffice to meet North Korea's needs. This assumption quickly proved wrong.

Amid last week's confusion, the frustrated U.S. chief negotiator said, "The day I am able to explain to you North Korean thinking is probably the day I've been in this process too long." About the same time the South Korean foreign minister said North Korea is "an unpredictable group that gives us a headache." The common sentiments reflected in these two statements are the incomprehensiveness and unacceptability of North Korean behavior.

Well, unacceptability is one thing, but if it is about incomprehensiveness, here is something to consider. Having a few bilateral meetings, a few occasions for social dinners and drinks or even going to a Broadway show is hardly enough to understand the reasons for North Korean behavior.

Those of us who had engaged the North Koreans for many years still found it hard at times to figure out the true motivation of what often appeared to be unreasonable or offensive behavior. But they always acted on their own reasoning and logic, either as a tactical move for what to pursue next or as a matter of "principle" reflecting their unique thinking. Their logic is typical: "You did or did not do that, so we do this."

There is plenty of blame to go around for the unproductive conclusion of the last round. Some of the blame goes to the United States, some to North Korea, some even to China - for failing to persuade BOK to accept the risky DPRK related funds. The rest of the six parties were actually irrelevant to the complicated problem, and there was little that they could do, except wait in vain, wasting their valuable time.

My uneasy hunch is that the DPRK leadership, beyond the level of vice minister Kim Kye Gwan, was not fully satisfied by the final BDA outcome. It might be going through an internal debate over how far and how fast it should proceed with the negotiation process. It is also possible that the DPRK, now possessing nuclear weapons, may even think that they can drag out the process to squeeze the maximum political and economic benefits, believing that the Bush administration badly wants to strike a deal to meet its political agenda.

Washington is hoping to resume the talks in a week or two, once the money transfer is completed. The U.S. disposition of the BDA issue - a verdict of conviction but no immediate punishment against the DPRK - was perhaps the best creative compromise possible from the legal and political perspectives of Washington. That compromise probably was made possible by Hill's negotiations within the administration, as Don Oberdorfer, chairman of the U.S.-Korea Institute at SAIS wrote in last week's Newsweek Korea about the U.S. envoy's internal efforts.

The North Koreans should heed the rekindled criticisms among the opponents of the Bush administration's new approach to the DPRK since their refusal to participate in the talks last week. They should remind themselves that they won a rare opportunity to engage the United States after waiting 6 long years. They should also remember that the United States still has other options to resort to, if it is convinced, as events may prove right or wrong, that there is no way to reach a fair

negotiated settlement.

Lessons from last week: for the United States, it does not pay to push the process too fast. As a principle in negotiation, it will be more difficult to get a desired result, if you are seen as badly wanting a settlement. It should not act on assumptions until validated by unmistakable communication.

Critics of the administration's BDA disposition are quick to point out no negotiation can succeed without pressure on the opposing party. Some of them warn that the United States should not use up all its bargaining chips at this stage. Some may even argue that negotiation must be conducted from a position of strength if it is to succeed. But I think the United States has plenty of leverage, including its capability and strength to pressure the DPRK, and the DPRK knows it.

The DPRK learned from its experience last week first what it takes to transfer funds from one bank to another in the international financial community. The real ownership of the released funds may belong to the government of the DPRK, but since the funds were deposited in 50 accounts under different names of entities and individuals some of whom are dead, the BDA required applications for each account, not a single, master application for all the accounts as the DPRK presented at first. More importantly, the DPRK must have learned it will be extremely difficult to have access to banking benefits if it engages in illicit financial activities in the future.

As long as the DPRK wants normalized relations with the United States and a stronger economy, its leadership should seriously cooperate with other parties to steadily move towards the common goal of denuclearization. What's your take?

### **III. Nautilus invites your responses**

The Northeast Asia Peace and Security Network invites your responses to this essay. Please send responses to: [napsnet-reply@nautilus.org](mailto:napsnet-reply@nautilus.org) . Responses will be considered for redistribution to the network only if they include the author's name, affiliation, and explicit consent.

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