

Policy Forum 06-75A: Missiles and Sanctions: Has a Watershed Been Reached in the Korean Nuclear Crisis?



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Essay by James Cotton

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I. Introduction

James Cotton, Professor of Politics in the University of New South Wales, Australian Defence Force Academy campus, Canberra, writes, "North Korea's rejection of UN authority is unprecedented in modern times; it is also a serious reverse both to multilateral diplomacy as well as to the prospects for confidence-building in Northeast Asia. Reviving the Six-Party process and a return to the path of diplomacy will require Pyongyang to take a much more constructive approach to regional and global concerns regarding missile and WMD proliferation."

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II. Essay by James Cotton

- Missiles and Sanctions: Has a Watershed Been Reached in The Korean Nuclear Crisis?
by James Cotton

Unlike during the nuclear crisis of 1992-94, the current Korean confrontation has elicited a surprisingly uncompromising response from the United Nations Security Council. There are grounds for the view that a major watershed has been reached. No longer assured of China's unconditional patronage, North Korea may be much less able to manoeuvre between the other members of the multilateral six-party forum. At the same time, those within the United States policy community who advocate increasing the pressure on Pyongyang are bound to represent the UN position as an endorsement of their views. The Australian reaction has been especially firm, in line with Canberra's commitment to non-proliferation norms and active membership of the Missile Technology Control Regime (MTCR).

North Korea's missile tests: reactions and outcome

North Korea's decision to test seven missiles (including one apparently a multi-stage Tae'podong similar to that launched in 1998) brought the issue of the lack of progress on building security assurances in Northeast Asia through the Six-Party Talks to a head. Prior to the tests the United States had warned that any testing of such a device would be a 'provocative act', and following the launches Japan imposed bilateral sanctions on Pyongyang including banning ferry links, diplomatic visits and charter flights. There was also a debate in Japan on the issue of a pre-emptive response if future North Korean activities posed a material threat. These and other nations also pursued the expedient of international diplomacy. As a result of the tests, Japan, the United States and 5 other members of the UNSC proposed a resolution that would require all nations to impose sanctions on North Korea in the event that it did not cease development, testing and deployment of missiles. This resolution would have referred to the powers of the Council under Chapter 7 of the UN Charter, which would entail the judgement that North Korea's actions had constituted a threat to or breach of the peace. As a less stringent alternative, P5 members China and Russia initially supported a (necessarily) non-binding presidential statement on the issue.

An intense diplomatic effort eventually produced something of a compromise on 15 July, with all UNSC states supporting Resolution 1695/2006 adopted 'under its special responsibility for the maintenance of international peace and security'. The Resolution condemned the tests, and urged the DPRK to the return to the Six-Party process and in particular to its obligation to the NPT and the IAEA in fulfilment of the September 19 agreement. Moreover, the Resolution required UN member states to 'prevent the procurement of missiles or missile related items, materials, goods and technology from the DPRK', and also obstruct any financial transactions relating to the DPRK's missile or WMD programs. Two days later the members of the G8, meeting in St Petersburg, jointly supported the main elements of this Resolution, calling on the DPRK 'to abandon all nuclear

weapons and existing nuclear programs.'

The reaction of North Korea to the initial diplomatic manoeuvres was uncompromising. On 6 July the North Korean Foreign Ministry issued a statement asserting that as the DPRK was bound neither by any bilateral nor by multilateral arms limitation agreements, the missile tests were 'its legitimate right as a sovereign state'. Previous undertakings to the US and Japan to observe a moratorium on missile launches had been invalidated by the lack of progress on official recognition from Tokyo and Washington's 'hostile policy' manifest in such measures as the imposition of financial sanctions. Though North Korea remained committed to the six-party process, the missiles tests were irrelevant to its progress. Indeed, North Korea even claimed that its missile program was a factor preserving the status quo in the region and therefore 'keeping the balance of force and preserving peace and stability in Northeast Asia'.

In response to Resolution 1695, Pyongyang reiterated its earlier claims regarding its missile tests. In doing so, however, the DPRK criticised not only the United Nations itself but the members of the Council in particular, and categorically stated its intention to defy the authority of the Council. North Korea insisted that the UN had only adopted the resolution as a result of 'the US hostile policy' - no other country was mentioned in its rebuttal - and, as such, it was an act of 'irresponsibility' on the part of the Council. Further, according to the statement, North Korea not only 'strongly denounces and fully condemns' this resolution but 'will not be bound to it in the least'.

The UN role in this episode was in important respects a contrast to the approach taken in 1993. In response to the worsening nuclear crisis which had led to the Board of Governors of the IAEA reporting to the Council that North Korea was in breach of the conditions of its safeguard undertakings, the Council adopted a President's Statement calling on the DPRK to return to its obligations. On this occasion China had signalled its unwillingness to permit the Council to adopt a full Resolution, let alone one that mandated penalties in the event of non-compliance, while nevertheless not obstructing the IAEA in its prior deliberations on North Korea's misconduct. However, China abstained from voting when the Statement was adopted. Now China was prepared to endorse a full Council Resolution, albeit one with mixed characteristics. On the one hand, this Resolution associated all of the participants in the six-party process to the censure of DPRK activities, not only regarding WMD but also missile proliferation. Given the fact that Pyongyang is still in a formal sense in an alliance relationship with Beijing (the 45th anniversary of the Treaty of Friendship, Cooperation and Mutual Assistance being commemorated by a high-level visit to the DPRK as the missile crisis developed) China nonetheless supported a resolution highly critical of North Korea's conduct. On the other, although the Council decided 'to remain seized of the matter', no specific measures were prescribed in the event of North Korean defiance, with China taking exception to any mention in the text of UNSC Chapter 7 powers.

At the ASEAN Regional Forum meeting in Kuala Lumpur the Ministers present called for an early resumption of the Six-Party talks and adherence to the 19 September agreement. They also 'noted' the adoption of Resolution 1695. These sentiments echoed similar views expressed at the ASEAN and 'ASEAN+3' which were held immediately prior. At the ARF, the North Korean delegation resolutely refused to attend a multilateral meeting on the crisis, which then was convened with five of the six parties to the Beijing process (as well as other states, including Australia) present.

It has been so far left to individual countries to implement the requirements of UNSC Resolution 1695. Japan has indicated that further financial restrictions on businesses dealing with North Korea are under review. The United States, having developed from 2003 the Proliferation Security Initiative largely with DPRK weapons exports in view, has announced that restrictions upon travel to and investment in North Korea, lifted in 2000 by the Clinton administration, might be re-imposed. China has not adopted any measures specifically related to the Resolution, though financial

sanctions taken earlier on North Korean state assets held in Macau may have been formulated in part with regional tensions in mind. In light of the fact that DPRK-ROK trade is now running at over \$0.5 billion annually, and North Korea has expressed the hope that the joint North-South industrial facility at Kaesong be permitted to operate normally, there is a vocal debate in South Korea on the issue of how far to proceed with restrictions upon economic linkages with the DPRK. As a result of the collapse of North-South ministerial talks held in Busan in July after the DPRK claimed that North Korea's missiles also enhanced ROK security, Seoul withheld any further food aid. The Roh Moo-hyun administration also characterised the missile test as 'irresponsible' though a presidential spokesman also criticised Japan's reaction as excessive.

The reaction of the Australian government was consistent with the positions taken by the US and Japan. North Korea was described as a 'self-declared nuclear state' with a known 'history of proliferation' and its actions condemned as a provocation and indicative of an inability to keep international commitments. Foreign Minister Alexander Downer announced that further restrictions would be placed on the travel of DPRK officials to Australia, and the Deputy-Secretary of the Department of Foreign Affairs and Trade was dispatched to Northeast Asian capitals for consultations. A suggestion that emerged was the convening of the Six-Party process without North Korea, though presumably to consider sanctions if the 19 September agreement was to be abandoned.

Is Resolution 1695 a watershed?

There are at many reasons for considering UNSC 1695 to constitute a watershed in the Korean nuclear crisis.

For the first time, China has become associated with international censure of North Korea's activities. Throughout the Six-Party process, Beijing has affirmed the need for the comprehensive 'de-nuclearisation' of the Korean peninsula, but has avoided taking a stand on missile or other weapons issues. Not only is China now on record as critical of North Korean weapons and missile proliferation, but Beijing has even expressed support for financial strictures on North Korea to the end of containing that proliferation. It is true that China may yet use the Resolution's apparent escape hatch that it must act 'in accordance with .. national legal authorities and legislation and consistent with international law' to avoid unpalatable actions, but other states will certainly cite China's position as support for their own programs of interdiction or suppression. Having assumed that responsibility for the North Korea problem that many US commentators have long thought appropriate, Beijing may now be called upon for yet more practical action.

The Resolution provides a (further) basis in international law for financial restrictions on the North Korean regime of the kind initiated by the United States in September 2005 and currently under consideration in Japan. Prior to the Resolution, North Korea repeatedly stated its objections to those measures as indicative of US intentions to 'pressure' and 'stifle' its form of government. Now Washington can claim UN legitimation, and may indeed pursue an even more stringent policy.

In the period before the September 2005 actions directed at Banco Delta Asia in Macau, the most considered campaign of pressure directed at Pyongyang was the Proliferation Security Initiative (PSI). Australia was a founding member of the PSI coalition in 2003 and has since hosted two major PSI exercises. From its inception, and despite Washington's claims to the contrary, the PSI laboured under the difficulty of insufficient legitimation, and was thus worthy of the appellation, 'Cuba Lite'. In addition the major neighbouring states, China and South Korea, carefully avoided cooperation with the PSI. This legitimacy deficit has now been largely overcome. If the US decides to interdict North Korean shipping on the high seas on the grounds that there is a suspicion that items of proliferation are aboard, Beijing cannot reasonably complain. Further, China may be called upon to

assist in the detention of North Korean aircraft on the ground in China or in transit over China's airspace. An overt refusal would constitute a major embarrassment.

From 1993 until the present, North Korea has evaded any concerted sanction for its behaviour towards its NPT obligations. North Korea has announced its withdrawal from NPT membership, suspended that withdrawal, and then summarily absented itself from the Treaty. In 2005 at the NPT Review Conference, this cavalier behaviour was dealt with through the expedient (or non-sanction) of the Chair personally impounding the DPRK conference nameplate. Sanctions of quite a different order may now be expected.

The Resolution provides the Roh Moo-hyun administration in Seoul with a major headache. The divergence of views on North Korea between Seoul and Washington has been widely discussed and analysed. South Korean unease with Japan's overt criticism of the North Korean missile tests has been on display, but now the Security Council has resolved that the DPRK's conduct is a matter infringing 'international peace and security', Seoul's position has been undermined. For the time being, South Korea has taken the view that its cancellation of further food and fertiliser aid to Pyongyang is a sufficient response, but further measures may be demanded by the UNSC or even a concerned coalition. If, for example, the US decides to investigate the financial dealings between North and South entailed in the Kaesong industrial zone development with a view to preventing the DPRK from accessing further hard currency on the grounds that these funds are being used to support proliferation activities, South Korea will find it difficult not to offer some cooperation.

The deep division in opinion amongst Washington's Korea policy-makers is a staple of US political commentary. It has been argued that while Assistant Secretary of State Christopher Hill has wider latitude for negotiation than his predecessor, intervention from the Vice-President's office at crucial points has brought into question how far the US is really capable of sustaining the comprehensive bargain with Pyongyang envisaged in the 19 September agreement. UN censure will undoubtedly have strengthened the hand of those in the Bush administration who regard the multilateral path as no longer worth pursuing.

At the same time, this development will have a powerful impact on the Korea debate in Japan. For some years the UN and its works have been invoked by those in Japan who have rejected a more overt military posture for the country and, correspondingly, an uncompromising response to hostile North Korean posturing. Now that the UN has backed sanctions on Pyongyang and North Korea in turn has ridiculed and rejected UN sincerity, the endorsement of the Security Council will undoubtedly be used by those favouring more punitive policies.

Finally, the developments on North Korea are of relevance well beyond Northeast Asia. Without Resolution 1695 it is arguable that the Security Council would not have taken such restrictive action against Iran. It is significant that the Security Council Resolution (1696) censuring Iran does invoke, though for carefully limited purposes, Chapter 7 of the Charter. This watershed for the DPRK issue may prove also a turning point in the wider global campaign against proliferation.

Conclusion

North Korea's rejection of UN authority is unprecedented in modern times; it is also a serious reverse both to multilateral diplomacy as well as to the prospects for confidence-building in Northeast Asia. Reviving the Six-Party process and a return to the path of diplomacy will require Pyongyang to take a much more constructive approach to regional and global concerns regarding missile and WMD proliferation. In its absence, opinion in Japan and the United States may drive a new phase of confrontation. And Australia may join a new multilateral group implementing sanctions.

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 . 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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