

Policy Forum 09-059: Too Much Importance Attached to ‘Ship of Fools’

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Too Much Importance Attached to 'Ship of Fools'

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By Tim Savage

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I. Introduction

Tim Savage, Deputy Director of the Nautilus Institute's Seoul office, writes, "In the short term, we are thus unlikely to see a rapid return to negotiations, or any kind of capitulation to pressure on the part of North Korea. Instead, we are likely in for a long period of containment and stalemate, while

the surrounding nations wait to see the outcome of the ongoing succession saga in Pyongyang. The only problem with this approach is that North Korea -- as it showed once again with its recent volley of missile tests -- does not like to be ignored, and has several tools for getting attention."

II. Article by Tim Savage

- "Too Much Importance Attached to 'Ship of Fools'"
By Tim Savage

The recent saga of the Kang Nam -- the North Korean vessel that led the U.S. Navy on a tour of the South China Sea before turning around and heading for home -- shows both the strengths and the limitations of U.N. Resolution 1874, which authorizes the inspection of North Korean vessels suspected of carrying materials for Weapons of Mass Destruction.

Admiral Gary Roughead, the top American naval commander, pointed to the incident as an example of the effectiveness of the resolution. Certainly, the vessel did not unload whatever cargo it may have been carrying, and in that sense Roughead is right to term it a success. On the other hand, the United States may be breathing a sigh of relief that the ship did not continue to its final destination. Doing so would have set up a test of the resolution that the Obama administration is hoping to avoid.

The Kang Nam was purported to be carrying small arms -- most likely AK-47s -- to Myanmar. As always with intelligence matters, it is not clear from the publicly available information how accurate this assessment is. Assuming it is true, however, such a shipment would not represent a serious proliferation threat.

North Korea's conventional arms are outdated copies of Soviet-era weaponry that are of little interest to countries that have other options. This limits its customer base to other so-called "rogue states" that are also under sanctions or in some other way operating outside of the international system. Therein lies the rub. The states that North Korea is likely to be selling to -- Iran, Syria, Myanmar -- are also the states that are least likely to comply with the Resolution's "call" to inspect North Korean cargo. Had the Kang Nam actually landed in Myanmar, there is a very good chance that the cargo would have been offloaded, especially if it was indeed a shipment of arms for the country's ruling junta.

That would suggest that there was another reason for the ship's decision to turn around. While the U.S. Navy was tracking the Kang Nam, Philip Goldberg, the Obama administration's point man on North Korean sanctions, was traveling to Kuala Lumpur to persuade the Malaysian government to cut off the payments for the shipment, which were allegedly passing through a Malaysian bank. If North Korea could not receive payment, there would be no reason to continue with the shipment. Since the end of the Cold War, Pyongyang has picked its partners based on self-interest rather than ideology.

This result demonstrates that the United States does have a significant capability to persuade other states to comply with sanctions against North Korea. Access to U.S. trade and financial markets, after all, are vital for just about every state involved in international trade. North Korean trade, on the other hand, is negligible even in those states that rank among its largest trade partners. Given a choice of angering Washington or Pyongyang, most states will naturally err on the side of caution and go along with the U.S. program.

This is a vital point for the implementation of 1874, as the resolution puts the burden of implementation on the states whose ships carry North Korean cargo. It states, "if the flag State did not consent to inspection on the high seas... that State should direct the vessel to proceed to an

appropriate and convenient port for the required inspection by the local authorities." Small states that act as "flags of convenience" for international shipping, such as Liberia or the Bahamas, are susceptible to pressure from Washington to go along with such requests.

The problem arises when the flag state is North Korea itself. As maritime law expert Mark Valencia points out, Resolution 1874 was issued under Chapter III, Article 41 of the U.N. Charter, which excludes the use of force. This was insisted upon by China and Russia, who wanted to prevent a stronger resolution favored by Japan. Without an explicit authorization of the use of force, an interdiction of a North Korean vessel on the high seas by a U.S. Navy ship could reasonably be considered an act of war.

For some hawks, like Gordon Chang, that is not particularly a problem. Chang argues that, since North Korea has renounced the armistice, Pyongyang and Washington are in an actual state of war, and thus the United States has the right to treat all North Korean vessels and their crew as enemy combatants.

This argument is questionable. Technically, the United States is not at war with North Korea -- the United Nations is. Under the U.S. constitution, only Congress has the authority to declare war, something it never did in regards to North Korea. Instead, the United States sent troops to Korea under a much earlier U.N. resolution, and continues to operate in South Korea under the aegis of the U.N. Command. While the UNC may be something of a legal fiction, since it is in reality indistinguishable from the U.S. Forces Korea, one might reasonably ask whether the United States could claim the right to unilaterally restart hostilities without either a new U.N. resolution or a formal declaration of war.

Even if Chang's argument holds legal water, however, it is largely academic, as there is little appetite beyond the editorial pages of the Wall Street Journal for beginning a shooting war with North Korea. The Obama administration, as one Washington insider recently put it, regards North Korea as being at the "top of the bottom of the list" of its priorities. While the administration wants to demonstrate the efficacy of sanctions, it wants to avoid any actual conflict.

No doubt many in Washington breathed a sigh of relief when the news came that the Kang Nam had turned around and headed for home. It allowed Washington to declare victory while avoiding a scenario that would force it to choose between exposing the holes in its interdiction policy or risking a confrontation that could escalate out of control.

Unfortunately, the risk remains. Certainly, the best thing for U.S. policy would be for all North Korean vessels to undergo thorough inspections at their ports of call. This would no doubt annoy Pyongyang, which would respond with its usual wailing and gnashing of teeth, but would be unlikely to result in any direct confrontation.

Even if Resolution 1874 is effective in stopping any North Korean attempts to ship WMD by sea, there is still the question of the land route. Shutting this down will require the cooperation of the two countries that North Korea shares borders with to mainland Asia -- Russia and China. Both are members of the U.N. Security Council, and thus had a hand in shaping Resolution 1874 -- and, presumably, have a stake in seeing it implemented properly.

China in particular is the key to any successful sanctions regime against North Korea. Beijing is Pyongyang's number one trading partner, as well as its primary financial and political sponsor. China in the past has been reluctant to join in squeezing North Korea for fear of regime collapse and its consequences for Chinese interests.

There has been some hope in Washington that Chinese thinking on North Korea may be shifting. The Chinese government has lately allowed more criticism of North Korea to appear in the press. A survey of Chinese experts that was published in the Global Times showed that half supported stronger sanctions against Pyongyang -- a marked increase from earlier.

But policy is ultimately made not by academic experts but by government officials, and there the news is less encouraging for proponents of a strong sanctions approach. Here it seems the policy remains somewhat in flux. Beijing remains torn between its increasing frustration with North Korea's actions and its fear of instability on its southern border. Almost none of the scenarios of a North Korean collapse look good for China -- mass refugee flows across the Yalu River, civil war within the North, absorption by a U.S.-allied South Korea, or -- perhaps Beijing's worst-case scenario -- a joint U.S.-South Korean military intervention.

The hope for a harder line from Beijing rests on the concept that China needs to act against North Korea's nuclear weapons program to prevent Japan and South Korea from getting their own nuclear arsenals. China did indeed express concern about statements made by certain politicians in both countries calling for nuclear weapons development in the wake of North Korea's latest test.

But whether either country would really travel down that route is doubtful. As the only country ever to suffer a nuclear attack, Japan has a very strong antinuclear "allergy." While North Korea's acquisition of nuclear weapons may have eroded this somewhat, most experts agree that it is not sufficient to completely overturn it.

As for South Korea, despite its past dalliances with a nuclear weapons program, it is unlikely to pursue a nuclear weapons option as long as it maintains a strong alliance with the United States and Tokyo remains nuclear-free. Washington's formal extension of the nuclear umbrella to Seoul at the recent Lee-Obama summit likely forestalls the possibility of a nuclear-armed South Korea for the foreseeable future.

Chinese leaders are undoubtedly capable of making these kind of calculations, and it is likely that in their mind, the threat of nuclear proliferation in Japan or South Korea remains less real than that of a collapsed state on their southern border. The current riots in Xinjiang may reinforce this feeling, given the large ethnic Korean population in China's border region. For this reason, persuading China to agree to a policy of coercive sanctions aimed at changing North Korea's behavior remains something of a pipe dream.

Where China's viewpoint does appear to have shifted is in its evaluation of the efficacy of negotiations. Many Beijing policymakers -- like most in Washington -- have now concluded that North Korea will not give up its nuclear weapons. Chinese officials blame an inconsistent U.S. commitment to engagement for this impasse, while many American observers believe that Kim Jong-il had never intended to negotiate away his deterrent capability.

Regardless, this emerging consensus does suggest the possibility for a China-U.S. convergence around a nonproliferation (as opposed to disarmament) policy. This does not mean, as many in South Korea have feared, that either country is prepared to accept North Korea as a de facto nuclear state. Certainly the United States will continue to base any improvement in relations with Pyongyang on a North Korean commitment to disarmament. It does mean that China may be willing to go along with tightened inspections of North Korean cargo to prevent dealing in WMD, while continuing to provide basic necessities like food and oil and to allow normal cross-border trade.

In the short term, we are thus unlikely to see a rapid return to negotiations, or any kind of capitulation to pressure on the part of North Korea. Instead, we are likely in for a long period of

containment and stalemate, while the surrounding nations wait to see the outcome of the ongoing succession saga in Pyongyang. The only problem with this approach is that North Korea -- as it showed once again with its recent volley of missile tests -- does not like to be ignored, and has several tools for getting attention. Thus whatever policy is adopted, preventing miscalculation will remain at the top of the agenda.

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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