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# Policy Forum 07-057: Turnabout is Fair Play



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# Turnabout is Fair Play

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Turnabout is Fair Play

By Leon V. Sigal

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## I. Introduction

Leon V. Sigal, Director of the Northeast Cooperative Security Project at the Social Science Research Council and author of *Disarming Strangers: Nuclear Diplomacy with North Korea*, writes, "The irreconcilables insist Pyongyang will never live up to its pledge... How can they be so sure? The fact is, with the possible exception of Kim Jong-il, nobody knows. And the only way for Washington to find out is to proceed, reciprocal step by reciprocal step, in sustained negotiations to reconcile with Pyongyang in return for its disarming."

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## II. Article by Leon V. Sigal

- "Turnabout is Fair Play"

By Leon V. Sigali

Call it the shock of recognition. It took a nuclear test to put the United States back on the road to reconciliation with the Democratic People's Republic of Korea - the only road to disarming that Pyongyang might be persuaded to take.

In a commendable about-face last October, President Bush accepted North Korea's longstanding offer to suspend its production of plutonium by shutting down and sealing its reactor, reprocessing plant and a factory to fabricate fuel rods, halt construction of a larger reactor and allow inspectors from the International Atomic Energy Agency to verify these moves.

In doing so, Bush rejected the counsel of the "irreconcilables" in Washington and took his first steps toward ending enmity with Pyongyang. He authorized U.S. negotiator Christopher Hill to meet directly with his DPRK counterpart in Beijing and Berlin; promised to free up suspect North Korean hard-currency accounts in a Macao bank; supported the resumption of shipments of heavy fuel oil suspended in 2002; promised a meeting between Secretary of State Condoleezza Rice and North Korean Foreign Minister Kim Gye-gwan; and pledged to relax sanctions under the Trading with the Enemy Act and take Pyongyang off the list of state sponsors of terrorism.

Bush thus put the brakes on a North Korean nuclear program that had threatened to set off an arms race in Northeast Asia, erode U.S. alliances in the region and jeopardize his most significant foreign policy achievement- continued accommodation with China.

Unrestrained nuclear arming would intensify pressure from right-wing Republicans, who want to confront China for not bringing North Korea to its knees. It would also sow doubts in Tokyo and Seoul as to whether they can rely on Washington for their security. That could revive nuclear ambitions in Japan and set off an arms race with China and Korea.

Washington can coax Pyongyang farther down the road to disarmament by sustaining direct diplomatic give-and-take. By negotiating as Clinton once did, Bush legitimated deal-making with North Korea as a bipartisan foreign policy, making it easier for his successor to follow in his footsteps.

Irreconcilables like John Bolton and Robert Joseph, who had long fought to prevent Amb. Hill from meeting, let alone negotiating, with the North, immediately pounced on the deal. They argued that it failed to stop Pyongyang's uranium enrichment program, dismantle its plutonium facilities, or deal with the seven-to-nine bombs' worth of plutonium the North is believed to have.

Yet delaying a freeze to seek a more demanding deal would have given Pyongyang time to generate plutonium for additional nuclear devices, adding to its bargaining leverage. That is why the president was right to rebuke Bolton publicly for his criticism of the agreement.

### Pyongyang's Point

Pyongyang's basic stance is that if Washington remains a foe, it will seek nuclear arms and missiles to counter that threat; but if Washington ends its enmity, then it will not pursue nuclear weapons.

If it were up to the hardliners in the Bush administration, however, Washington would never put Pyongyang to the test. These ideologues equate diplomatic give-and take with rewarding bad behavior. They insist the DPRK is determined to arm, or else is engaged in blackmail to extort

economic aid without giving up anything in return. In fact, it has been doing neither. It has followed a strategy of tit for tat - cooperating whenever Washington cooperates, and retaliating when Washington reneges or fails to honor its agreements - in an effort to end mutual antipathy. It is still doing so.

Up to now, the only way for North Korea to make the fissile material it wanted for weapons has been via its plutonium program at Yongbyon. Yet the North halted reprocessing in the fall of 1991, some three years before signing the Agreed Framework, and did not resume reprocessing until 2003. It also shut down its fuel-fabrication plant before signing the accord, having made enough fuel rods for at most 15-to-17 bombs' worth of plutonium-laden spent fuel, and only recently refurbished that plant.

The North exercised some restraint on missiles, as well. The only way for it to perfect ballistic missiles was to test-fire them until they worked. Yet it had conducted only two medium- and longer-range missile tests of its own in the 20 years prior to the fireworks of last July 4.

With that history in mind, it is instructive to review the sequence of events that led up to the Bush administration's October 2006 turnaround.

### The U.S. Reneges

During the fourth round of the Six-Party Talks in August and September 2005, under pressure from South Korea and Japan to seek a negotiated solution to the nuclear dispute, Pres. Bush authorized U.S. negotiators to meet directly with the North Koreans for sustained discussion of their concerns. Isolated at the talks, Washington grudgingly accepted a joint statement that incorporated the main goal it was seeking, a pledge by Pyongyang to abandon "all nuclear weapons and existing nuclear programs."

When an earlier draft of that accord was circulated by China before the second round of talks in February 2004, Vice President Dick Cheney had intervened to turn it down with the words, "We don't negotiate with evil. We defeat it." The ink was hardly dry on the Sept. 19, 2005, joint statement when the irreconcilables struck back, getting Washington to renege on the accord and hamstringing U.S. diplomats.

The very day Washington agreed to respect Pyongyang's right to nuclear power and "to discuss at an appropriate time the subject of the provision of light-water reactors" it had promised in 1994 but never delivered, it announced it was disbanding KEDO, the international consortium it had set up to provide the reactors.

On Sept. 19 the United States also pledged "to take coordinated steps to implement" the accord "in a phased manner in line with the principle of 'commitment for commitment' and 'action for action.'" Yet immediately thereafter, Secretary of State Condoleezza Rice insisted North Korea had to disarm first and implied that the "appropriate time" for discussing the reactors was when hell freezes over: "When the North Koreans have dismantled their nuclear weapons and other nuclear programs verifiably and are indeed nuclear-free ... I suppose we can discuss anything."

Pyongyang reacted sharply. "The basis of finding a solution to the nuclear issue between the DPRK and the U.S. is to wipe out the distrust historically created between the two countries. A physical groundwork for building bilateral confidence is none other than the U.S. provision of light-water reactors to the DPRK," a Foreign Ministry spokesman said. "The U.S. should not even dream of the issue of the DPRK's dismantlement of its nuclear deterrent before providing LWRs, a physical guarantee for confidence-building."

Even worse, having declared in the September 2005 agreement that they had "no intention to attack or invade the DPRK with nuclear or conventional weapons," and having pledged to "respect [North Korea's] sovereignty"- diplomatic code for renouncing military attacks and regime change - administration officials began sounding their old refrain: "All options remain on the table."

Worst of all, instead of going for the jugular by testing Pyongyang's stated willingness to abandon nuclear arms, Washington's irreconcilables showed an unerring instinct for the capillaries. They capitalized on a Treasury Department investigation of money-laundering at the Banco Delta Asia in Macao to pressure North Korea. The Treasury Department was right to stop North Korean counterfeiting of U.S. currency and other illicit activities; but its action convinced skittish bankers to freeze North Korean hard currency accounts around the globe - some containing ill-gotten gains from illicit activities, but many with proceeds from legitimate foreign trade.

How much that curtailed trade is unclear, but even if it did, it was a strange way to encourage economic reform. To Pyongyang it looked a lot like regime change.

### North Korea Retaliates

Far from giving Washington leverage, the financial measures provoked Pyongyang to retaliate. For over a year it refused to return to the Six-Party Talks while seeking to resolve the BDA issue bilaterally. When Amb. Hill tried to pursue direct talks in November 2005, he was kept from going to Pyongyang unless the North shut down its reactor first, which assured that no talks took place. On March 7, 2006, in New York, North Korea proposed a U.S.-DPRK bilateral mechanism to resolve the banking and money-laundering issues, but Hill was kept from pursuing the offer. He was also kept from direct talks with the North's Kim Gyegwan in Tokyo on April 11-12. Kim was blunt at a press briefing afterward. "Now we know what the U.S. position is," he said, adding: "There is nothing wrong with delaying the resumption of Six-Party Talks. In the meantime, we can make more deterrents."

Besides warning Washington, Pyongyang opened talks with Tokyo. Instead of sustaining the talks, however, Japan's ruling coalition introduced legislation on April 28, 2006, to implement the sanctions that the Diet had previously authorized.

Within days, Pyongyang began preparations for missile tests. When Beijing sent a high-level mission to Pyongyang to press the North to call them off or face sanctions, Kim Jong-il made the Chinese cool their heels for three days before seeing them, then went ahead and tested anyhow, knowing it would affront its ally. The tests of seven missiles, including the Taepo-dong 2, on July 4, 2006, did just that, prompting China to vote for a U.S.-backed resolution in the U.N. Security Council condemning the tests and threatening sanctions.

Undaunted, North Korea immediately began preparations for a nuclear test, which it conducted on Oct. 9, 2006. It was demonstrating in no uncertain terms that it would not bow to pressure - from the United States or China. Only U.S. willingness to end enmity could get it to change course. That message was lost on most, but not all, of Washington.

The United States reacted by pushing a resolution in the U.N. Security Council authorizing sanctions. Having warned the North in July 2006, Security Council members (China included) had little choice but to impose some sanctions, lest they undermine their own credibility.

After years of huffing and puffing but failing to blow Kim Jong-il's house down, U.S. irreconcilables claimed that with China's support for sanctions, they finally had Pyongyang where they wanted it. But when the Bush administration took office in 2001, the North had stopped testing longer-range

missiles, had one or two bombs' worth of plutonium and was verifiably not making more. Six years later it had between seven and nine bombs' worth, had resumed testing missiles, and had little reason to restrain itself from nuclear testing or, worse, generating more plutonium. Is that where the hardliners wanted North Korea?

It was not where President Bush wanted the DPRK. He was ready to negotiate in earnest and settle for shutting down the nuclear facilities at Yongbyon as a first step. He authorized Hill to hold a series of direct meetings with Kim Gye-gwan.

### The Turnaround

At the first meeting, on Oct. 31, 2006, in Beijing, Hill agreed that "we will find a mechanism within the six-party process to address these financial measures." That led the North to announce it would return to the Six-Party Talks. On Nov. 28-29, Amb. Hill met Kim again in Beijing to lay out what he would seek in the talks, but the first meeting of the Financial Working Group made no progress. Neither did the December round of talks a few days later.

The turning point came at the third bilateral, in Berlin, when Hill and Kim concluded a memorandum of understanding that was the basis of the Feb. 13, 2007, joint agreement. The North pledged to shut down and seal its Yongbyon facilities within 60 days and readmit IAEA inspectors to conduct "all necessary monitoring," in return for a U.S. promise to resolve the financial issue within 30 days and supply 50,000 tons of heavy fuel oil.

Some in Tokyo likened the abrupt turn of events to the "Nixon shock" of 1971, when President Nixon announced he would visit China and then took the United States off the gold standard without advance warning. When Japan balked at contributing its share of heavy fuel oil without progress on the issue of the DPRK's abduction of Japanese citizens in the 1970s, South Korea agreed to supply all of the first tranche. It remains to be seen whether Prime Minister Abe Shinzo will stick to his tough stance, using the North Korea threat to justify new assertiveness abroad and placate right-wingers in his own party who insist that "Japan can say no" - to the United States, as well as China. It also remains to be seen whether or not Japanese voters will support his new direction.

Resolution of the Banco Delta Asia issue delayed implementation of the Feb. 13 joint agreement until late June. The Treasury Department's insistence on barring the bank from transactions with U.S. financial institutions irritated Beijing and made bankers everywhere reluctant to accept transfers of North Korean funds from BDA or unfreeze its accounts without Washington's okay. Treasury's effort to save face by getting Pyongyang's pledge to use the funds "solely for the betterment of the North Korean people, including humanitarian and educational purposes" proved a further embarrassment when Western firms objected, arguing that some of the funds were theirs and not the North's to disburse.

### The Next Phase

To Pyongyang the dispute was not about money, but about Washington's failure, once again, to keep its word. If the United States could not even resolve the financial issue, how would it ever provide more convincing proof of its non-hostile intent?

That is the key to the next phase of negotiations. The most urgent need is to restore inspectors' control over the North's reprocessed plutonium, in whatever form it now exists. Assuring a verifiable halt to the uranium enrichment program is not as pressing, because U.S. intelligence estimates that the North cannot produce much highly enriched uranium until the end of the decade. Pyongyang had offered to put some plutonium back under inspection in an earlier round of the Six-Party Talks, but

what reciprocal U.S. steps it may want in return are not yet clear.

A critical first step to addressing enrichment will be what the IAEA calls an initial declaration from Pyongyang, a list of all its nuclear facilities, fissile material, equipment and components. The Feb. 13 accord provides for the list to be "discussed" - negotiated - starting in the initial phase, with a complete declaration due in the next phase.

Once that list is cross-checked against what U.S. intelligence has already ascertained, elimination could begin. Irreconcilables may try to use the declaration to play "gotcha," seizing on any omissions as conclusive evidence of North Korean cheating and grounds for breaking off talks. Because that would put the plutonium freeze in jeopardy, it would be preferable to seek further clarification in negotiations.

Inasmuch as dismantling a nuclear reactor can take years, the joint agreement speaks of "disabling" all existing nuclear facilities in the next phase. Disabling the reactor and reprocessing plant could make it time-consuming and difficult for the North to resume their operation.

### Disarming Strangers

What are the U.S. terms of trade for the declaration and the disabling? The Feb. 13 joint statement cites two steps to improve relations: "advance the process of terminating the application of the Trading with the Enemy Act" to the North and "begin the process of removing the designation of the DPRK as a state sponsor of terrorism."

As Bush administration officials have testified, North Korea has not been implicated in any known acts of terrorism since 1987. However, it still harbors aging Japanese Red Army Faction terrorists who hijacked an airplane in 1970, though it has tried to repatriate them to Tokyo without success. More importantly, the whereabouts of Japanese citizens abducted in the 1970s have not been adequately accounted for. Thus, removing the designation without some resolution of that issue could harm U.S. relations with Tokyo.

In any case, Washington has many ways to relax sanctions and could simply put the North in the "not fully cooperating" category on terrorism. But Pyongyang will likely insist on full removal in order to isolate Japan and push it to resume negotiating in earnest. If Tokyo does not do so, Pyongyang can raise the stakes by conducting more missile tests, perhaps of its new IRBM.

Another way of demonstrating non-hostile intent is for the United States to provide direct aid. The Feb. 13 accord links the "complete declaration" and disabling of the reactors to receipt of "economic, energy and humanitarian assistance up to the equivalent of one million tons of heavy fuel oil." Although the North allowed South Korea to supply an initial shipment of heavy fuel oil, it will insist on U.S. participation in future energy aid.

Further steps will doubtless require much more substantial improvement in relations with the United States. The DPRK seeks full diplomatic recognition, but U.S. policy dating back to the Clinton administration conditions formal ties on the resolution of other issues, among them the North's missile programs and human rights. In the meantime, there are other ways to provide at least a token form of recognition. The Sept. 19, 2005, joint statement suggests one: negotiating "a permanent peace regime on the Korean Peninsula at an appropriate separate forum."

President Bush has held out the possibility of signing a peace treaty formally ending the Korean War, once the North eliminates its nuclear programs. Politically, that would be a major step to improve relations. Militarily, however, a peace treaty would hardly be worth the paper it is written

on unless it reduced the risk of inadvertent war on the peninsula. The only way to accomplish that is to get rid of the North's forward-deployed artillery and short-range missiles or redeploy them out of range of Seoul. That is unlikely if the North were to eliminate its nuclear arms, leaving the forward-deployed artillery and short-range missiles as its ultimate deterrent.

As an interim step to a peace treaty, peace agreements, though militarily less meaningful, may be a politically useful way to proceed. Such agreements signed by the United States, the DPRK and the ROK - the three countries with armed forces on the peninsula - could provide for confidence-building measures, like hot lines to link military commands, advanced notice of exercises or an "open skies" arrangement allowing reconnaissance flights.

The North has long sought replacement of the Military Armistice Commission, set up to monitor the cease-fire at the end of the Korean War, with a three-party "peace mechanism." This could be a vehicle for resolving disputes like the 1996 shooting down of a U.S. reconnaissance helicopter that strayed across the DMZ or the repeated incursions of North Korean spy submarines, as well as for negotiating confidence-building measures.

Much attention has been paid to verification, and the irreconcilables have made the most of it. They have been pushing for intrusive inspections - what a top State Department official once dismissed as a "national proctological exam" - in hopes that North Korea would resist, deadlocking talks. Other officials have devised a better way to proceed. Instead of negotiating to inspect all the items on North Korea's initial declaration, they sought the dismantling of facilities and removal of nuclear material and technology on the list. Only then would the right to inspect "any time, anywhere" be invoked to clear up anomalies. When the issue came to a head in the State Department in 2004, Secretary of State Colin Powell sided with those who gave primacy to elimination over inspection.

The irreconcilables insist Pyongyang will never live up to its pledge, made in the September 2005 round of the Six-Party Talks, to abandon "all nuclear weapons and existing nuclear programs." How can they be so sure?

The fact is, with the possible exception of Kim Jong-il, nobody knows. And the only way for Washington to find out is to proceed, reciprocal step by reciprocal step, in sustained negotiations to reconcile with Pyongyang in return for its disarming.

### **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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