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The U.S. Congress and North Korea Policy: What's Next for the 109th Congress?

By Adam Miles

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I. Introduction

Adam Miles, staff member at the East Asia Policy Education Project for the Friends Committee on National Legislation, writes: “concerns about North Korea’s nuclear proliferation and human rights abuses will be better addressed through policies that promote engagement. After years of resistance to negotiating with North Korea, it may be up to Congress to help get the situation back on track.”

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II. Essay by Adam Miles

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Returning from his January 8-11 trip to Pyongyang, Rep. Tom Lantos (D-CA), the ranking Democrat on the House International Relations Committee, stated “I made it clear to my North Korean hosts that we have a proposal on the table, and that proposal is supported by Congress.”¹ Rep. Curt Weldon (R-PA), a renowned if somewhat maverick Republican on the House Armed Services Committee returned from Pyongyang three days later, stating confidently that North Korea would be ready to return to negotiations “in a matter of weeks.”² Unfortunately, such optimism has been largely eroded following North Korea’s February 10 announcement that it has nuclear weapons and will indefinitely suspend its participation in the six-party talks. Nevertheless, the interest in North Korea demonstrated by these two prominent members of the House should not be overlooked, as it signals the potential for congressional support of an agreement should the current diplomatic impasse come to an end.

¹ “US Congressman 'optimistic' progress made after talks with North Korea.” Agence France Presse. January 11, 2005.

² Sang-hun Choe. “North Korea Willing to Talk on Nukes.” *Washington Times*, January 15, 2005. (among other sources).

Congress' approach toward North Korea has long weighed more heavily towards containment than engagement. Beginning in 1994, Congress repeatedly expressed disapproval with the Clinton Administration's policy toward North Korea by amending the foreign operations appropriations bill, the annual legislation that Congress uses to review U.S. spending on foreign aid, thereby making its mark on executive foreign policy.³ Through this bill, Congress tied the hands of the Clinton Administration in its efforts to engage North Korea to meet U.S. national security goals. The legislative roadblocks placed by Congress eventually served as a foundation for the Bush Administration's North Korea policy. In 2003 and 2004, Congress went even further by removing nearly all traces of foreign assistance to North Korea from foreign assistance legislation.⁴

However, the 109th Congress (2005-2006) may have an opportunity to help move the diplomatic process forward. Despite its strong, persistent, and--at times--warranted reservations, Congress should begin to weigh the potential financial and political costs of a settlement, including resumed assistance, versus the only realistic alternative: an active and unchecked North Korean nuclear weapons program and an indefinite nuclear stand-off on the Korean Peninsula.

August 1994: Senate Unanimously Supports "CVID"

In August 1994, months before the Agreed Framework was signed, reports from the U.S.-DPRK negotiations in Geneva warned Capitol Hill of an impending settlement between the U.S. and North Korea. Senators Frank Murkowski (R-AK) and John McCain (R-AZ), among others, had been regular critics of the negotiations process. Earlier in the year, Sen. McCain characterized the Clinton Administration's negotiating strategy as an "abysmal record of failed appeasement."⁵ In an effort to curtail further "appeasement," Sens. McCain and Murkowski cosponsored an amendment to the foreign operations appropriations bill that would condition any U.S. aid to North Korea on a presidential determination that North Korea did not possess nuclear weapons, had halted its nuclear weapons programs, and had not exported plutonium. The amendment was passed in the Senate, 95-0.

In many ways, the amendment was the first incarnation of the George W. Bush Administration's "CVID"⁶ (complete, verifiable, irreversible, disarmament) as a precursor

³ Larry Nowels. "Appropriations for FY2004: Foreign Operations, Export Financing, and Related Programs." Congressional Research Service, Updated June 20, 2003. P. 3.

⁴ While energy assistance to North Korea was suspended--perhaps permanently--in FY2004, the U.S. continued to provide humanitarian food assistance, as it has since 1995. The U.S. has contributed over 2 million tons; pledges made by the U.S. to the World Food Programme in 2004 will continue to be shipped in early 2005.

⁵ Sen. John McCain. "United States Policy and the Crisis in Korea." Congressional Record, May 24, 1994; S6245.

⁶ In preparing for the second round of six-party talks (U.S., North Korea, China, South Korea, Japan, and Russia), held in Beijing, the Bush Administration repeatedly asserted that North Korea would have to completely, verifiably, and irreversibly end its nuclear programs before the U.S. would provide any assistance or formal security assurances to North Korea. CVID became the catch-phrase for this policy. However, following North Korean protests, the phrase -- although not the content -- was dropped prior to the third round of six-party talks in June 2004.

to negotiations with, or assistance to, North Korea. As Sen. Murkowski, the author of the amendment, argued, “We should expect that the administration will...refrain from rewarding North Korea with taxpayer dollars until the President can certify that the nuclear threat on the Korean peninsula is eliminated.”⁷

Ultimately, under pressure from the Clinton Administration, Congress did not include the amendment in the final version of the foreign operations appropriations bill for the Fiscal Year (FY) 1995.

Congress’ Role in Shaping North Korea Policy

Congressional challenges to the Agreed Framework continued long after it was signed. In the FY1996 foreign operations appropriations bill, Congress grudgingly provided funds for the Korean Peninsula Energy Development Organization (KEDO), the international consortium established to facilitate the heavy oil shipments called for under the Agreed Framework. In each successive year, 1997-2002, the financial cost to the U.S. for supplying heavy oil to North Korea increased.⁸ So too did Congress’ concerns about North Korea’s possible diversion of energy assistance to the military, the role U.S. assistance played in supporting the regime, and DPRK weapons programs not covered by the Agreed Framework, including possible efforts to enrich uranium and the build up and export of ballistic missiles.

The debate over North Korea policy between the Clinton White House and Capitol Hill climaxed in 1998 following North Korea’s test flight of a ballistic missile into the Sea of Japan. The House removed all funding for KEDO from its version of the foreign operations appropriations bill. After the Clinton Administration threatened to veto the legislation, Congress included the requested \$35 million for KEDO, but added a total of 12 certification requirements or related reports, which the administration would have to meet, waive in the interest of national security, or submit, before appropriations for KEDO would be made available.⁹ The substantial list of requirements allowed Congress to express disapproval without effectively undoing the Administration’s policy.¹⁰ As Rep. Sonny Callahan (R-AL) conceded in a House floor speech in 1998, “We do not dictate” policy to the administration. “However,” he continued, “I [am] firmly convinced that we ought to move beyond the current policy of the Korean Energy Development Corporation.”¹¹

A Change in Administration and a Change in Policy

⁷ Sen. Frank Murkowski. Congressional Record. August 9, 1994. S10979.

⁸ Excluding the expenditures for FY1999 and FY2000, which totaled \$65.1 million and \$64.4 million respectively.

⁹ Ultimately, the Clinton Administration would spend \$64.4 million on oil shipments to North Korea in FY1999, \$29.4 million more than the congressional appropriation. During the years of the Agreed Framework, the rising cost of oil and the failure of the Clinton Administration to request sufficient funds to cover the rising costs further aggravated some members of Congress.

¹⁰ Diamond, Howard. “Congress Okays KEDO Funding; Japan Lifts LWR Funding Block.” *Arms Control Today*. October 1998. http://www.armscontrol.org/act/1998_10/nk2oc98.asp

¹¹ Rep. Sonny Callahan. Congressional Record. September 17, 1998; H7949.

In April 2002, President George W. Bush did not certify to Congress that Pyongyang was complying with the terms of the Agreed Framework. In October 2002, the U.S. accused North Korea of engaging in a program to enrich uranium and North Korea reportedly admitted to the charge. This prompted the Bush Administration to suspend shipments of oil to North Korea in November 2002, and the Agreed Framework has since been all but terminated.

Congress completely eliminated funding for KEDO in FY2004. A long-standing prohibition on all direct assistance to North Korea (overridden by a Presidential waiver during the years of the Agreed Framework) is retained in the FY2005 foreign operations appropriations bill.¹² And Congress included language recommending additional prohibitions on assistance to North Korea when it passed the North Korean Human Rights Act of 2004 last November.¹³

What's Next?

The Agreed Framework was certainly not perfect, and the shortcomings of that agreement have been discussed in detail. However, cutting off assistance and failing to cooperatively engage North Korea have been far more damaging to the security interests of the U.S. and Northeast Asia. Since the end of oil shipments in 2003, North Korea has reportedly reprocessed enough plutonium for up to 6 nuclear weapons. This is the same plutonium that was canned and stored safely under the terms of the Agreed Framework. Now, North Korea may be on the verge of declaring itself a nuclear power. To put it simply: the North Korean nuclear weapons program has advanced far more rapidly with no agreement than during the years of a flawed one.

Rather than telegraphing their mistrust of an agreement in advance--as they did in 1994--Congress should recognize the new risks created by the current diplomatic stalemate. Sen. Richard Lugar (R-IN), chairman of the Senate Foreign Relations Committee, has suggested the use of Cooperative Threat Reduction (Nunn-Lugar) funds to facilitate the removal of North Korean nuclear weapons and materials. In 2005, Congress could authorize the use of funds to dismantle the North Korean nuclear weapons program--contingent on a deal for verifiable dismantlement--as a sign of good will. Such an act would convey to Pyongyang, as well as to the administration, that the U.S. Congress is genuinely committed to a peaceful settlement of the nuclear crisis *and* is willing to pay the price. Alternatively, Congress could pass a resolution expressing its support for a diplomatic settlement and urge the President to move quickly in that direction.

Eliminating energy assistance to North Korea represents a victory for the members of Congress that opposed the Agreed Framework from the start. However, Congress should reconsider the implications of this "victory" and demonstrate to North Korea and the President that the U.S. Congress will support a settlement that leads to the eventual

¹² Foreign operations appropriations were included in HR 4818, the consolidated appropriations act for FY2005.

¹³ HR 4011-108, along with authorizing \$24,000,000 annually to promote democracy and protect North Korean refugees in China, expresses the Sense of Congress that no assistance to North Korea be provided until significant improvements in human rights have been made.

disarmament of North Korea. Concerns about North Korea's nuclear proliferation and human rights abuses will be better addressed through policies that promote engagement. After years of resistance to negotiating with North Korea, it may be up to Congress to help get the situation back on track.

III. Nautilus invites your responses

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