

TESTIMONY OF DAVID L. ASHER, PH.D.,  
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TO A JOINT HEARING OF THE COMMITTEE ON FOREIGN AFFAIRS, U.S. HOUSE OF  
REPRESENTATIVES, SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND  
TRADE AND COMMITTEE ON FINANCIAL SERVICES, SUBCOMMITTEE ON  
DOMESTIC AND INTERNATIONAL MONETARY POLICY  
April 18, 2007

Chairmen Sherman and Gutierrez, ranking members Royce and Paul, I am honored to testify before this important joint hearing today. From 2001-2005 I served as the Senior Advisor for East Asian and Pacific Affairs at the Department of State and Coordinator of the North Korea Working Group, the task force on North Korea under the Office of the Secretary. I also co-chaired a special principal's coordinating committee for the National Security Council, the North Korea Activities Group.

In early 2002 I was tasked by Assistant Secretary Kelly and Deputy Secretary Armitage to put together a State Department-led effort to analyze, investigate, and then counter North Korean illicit activities. The effort eventually became known as the Illicit Activities Initiative (IAI).

The IAI was never designed as a substitute for diplomacy. Instead, we saw the IAI as an initiative that should be pursued for its own merits as well as potentially serving as an adjunct element to our diplomatic efforts. Our objectives were three-fold:

1. Apply Law enforcement for its own sake (our laws were being broken and our currency counterfeited; a vigorous response was needed),
2. Cut off illicit support for the regime (hoping this would steer them toward cleaner sources of support in cooperation with the members of the Six Party talks), and
3. Contain the threat of proliferation by restricting the access of weapons trading companies to the international financial system as well as disrupting their business operations and support networks globally.

The IAI eventually came to involve 14 different US government Departments and Agencies and around 200 officials, analysts, and law enforcement officers. Between 2003 and 2005 we briefed and enlisted the cooperation of over 15 different governments and international organizations. We also worked closely with private industry participants drawing on their independent investigations into high income producing areas for the military and Pyongyang elite, such as the counterfeit cigarette and counterfeit pharmaceutical businesses.

In the area of counter-proliferation our mandate was to pursue the disruption of weapons trading networks via law enforcement methods. For example, we worked with partner countries, such as Japan and Taiwan, to help them identify and investigate trading companies involved in North Korean proliferation, arrest their senior management, freeze their assets, and put them out of business once and for all.

The IAI also prominently involved the use of several important legal provisions that this hearing is reviewing, including the use of Section 311 of the USA Patriot Act. The decision to use Section 311 of the Patriot Act against Banco Delta in Macau remains controversial. Some question its timing, believing it disrupted the Six Party Talks, while others credit the action with getting the DPRK to sign on to the September 19, 2005 denuclearization plan to begin with and now bringing them back to the table after a long boycott. Whatever one's perspective on BDA, I believe the use of Section 311 was extremely effective both in containing North Korea's weapons proliferation and illicit trading networks as well as in demonstrating to the regime that such activities are not a sustainable or acceptable means of supporting the DPRK state.

Today many of us are concerned with the way that illicit funds that had been frozen at Banco Delta have been returned to the North Korean perpetrators or financial beneficiaries of these activities as a means of getting the DPRK back to the negotiating table in the Six Party Talks. Even as a diplomatic act of expediency this strains one's litmus test of what's reasonable and contradicts the spirit and possibly the letter of our laws we have invoked and international agreements we have vociferously supported, such as UN Resolution 1718. North Korea, a nation whose profits from illicit trade in some years may *exceed* what it earns in legal exports, has got to learn that if it wants to eventually enjoy normalized relations with the United States – something it says is its top priority – it must act normal and abandon government directed criminality and proliferation to state sponsors of terror as well as give up its nuclear weapons and programs. The frozen funds in Macau served to reinforce this message which is at the core of potential improved relationship with North Korea, not at its periphery. We could have offered North Korea \$250 million in development assistance to help improve some aspects of its bankrupt economy but never should have allowed \$25 million in dirty money to be handed back. This action played to North Korea's few remaining strengths as a nuclear armed dictatorship, not the many we enjoy as a nation of freedom and law.

Some wonder how freezing \$25 million dollars at a small bank could cause such a disruption. There are at least two reasons, both of which we had clearly conceptualized in planning the action. The first is that the 311 imposition served to drive a wedge between North Korea and Macau. Until September 15, 2005, the DPRK had a protected relationship with Macau's government and many of its business leaders that reached far, far beyond BDA and its management. Not only was Macau a global crime center for North Korea (something that has been thoroughly documented by US law enforcement investigations), it served as a central hub for the DPRK's weapons proliferation. It also was a critical node for the management and investment of Kim Jong Il's huge kleptocratic fortune– which reportedly reaches into the billions of dollars. Losing ready access to Macau imposed a huge cost on North Korea.

The other reason is that it was far more than the \$25 million at BDA that was frozen in September 2005. North Korea was, in effect, frozen out of the international financial system as banks around the world suspended business relations with it. Moreover, one can only assume that much more than \$25 million is likely to have been frozen, immobilized, or impeded in Macau and elsewhere. Certainly in discussions with Chinese authorities, as with all other foreign governments, we had repeatedly asked them to investigate and, where appropriate under criminal statutes or anti-money laundering rules, freeze funds tied to North Korean illicit activity. Perhaps, fearing that the Treasury would expand the 311 designation to cover other much more important banks in Macau or even to the domicile itself, they took broader action. One would hope so.

In closing the BDA issue is said to have been “settled” by the recent reversal in policy. However, the reality is that its effect will linger until North Korea demonstrates that it can and will operate as a normal, transparent, rule-abiding member of the international financial system and indeed of the international community writ-large. Thus while I am dismayed that the BDA funds decision has been reversed, I am much more dismayed by the way North Korea continues to be able to use crime and nuclear coercion for profit, unfortunately including in the Six Party Talks.