

House Foreign Affairs Committee

Countering the North Korean Threat: **New Steps in U.S. Policy**

MR. ANTHONY RUGGIERO

Senior Fellow
Foundation for Defense of Democracies

Washington, DC
February 7, 2017

Chairman Royce, Ranking Member Engel, and distinguished members of this committee, thank you for the opportunity to address you today on this important issue.

My testimony will review the accomplishments of the North Korea Sanctions and Policy Enhancement Act of 2016, outline four core elements to create a more effective North Korea policy, clear away myths about North Korean sanctions, and provide recommendations for Congress and the Trump administration.

The Kim family dynasty continues its 25-year drive to develop a nuclear weapon that it has already used to threaten the United States and its allies in Japan and South Korea. None of the last three U.S. presidents, Republicans and Democrats, were able to develop an effective strategy to prevent North Korea from acquiring a nuclear weapon. And now Kim Jong Un has threatened to test an intercontinental ballistic missile (ICBM) to target the United States. We know that North Korea has proliferated ballistic missiles to Iran, Syria, and other nations, and secretly built a nuclear reactor in a location in Syria that has since fallen under the control of ISIS.¹ Pyongyang is likely to proliferate any technology it develops to other problematic regimes, such as Iran.

As we look at the North Korea problem, it is hard to find anyone who argues that the status quo is acceptable. That can be frustrating, because there is no simple, ready-made solution. One expert has predicted that North Korea could have an operational ICBM by 2020.² It is plausible, even likely, that by 2020, North Korea will have a miniaturized nuclear device that could survive reentry on an ICBM. It is important to note that North Korea could have that capability now or soon.³

An equally concerning scenario has emerged now that South Korea may soon elect a president that, at one time, questioned the deployment of THAAD, a U.S. anti-ballistic missile system designed to shoot down short-, medium-, and intermediate-range ballistic missiles in their terminal phase.⁴ (The presidential candidate, Moon Jae In, has subsequently back-tracked on this statement.)⁵ Moon has also advocated negotiations with North Korea that would include offering the Kim regime financial inducements that would undermine the financial pressure of UN and U.S. sanctions, and which could violate recent UN Security Council resolutions.⁶ This scenario is concerning, as history has clearly shown that this approach will not resolve the North Korean nuclear crisis. The United States has tried altering Pyongyang's behavior through economic engagement for 25 years, and we have tried disarming it through bilateral and multilateral

¹ David Albright, Serena Kelleher-Vergantini, and Sarah Burkhard, "Syria's Unresolved Nuclear Issues Reemerge in Wake of ISIL Advance and Ongoing Civil War," *Institute for Science and International Security*, June 30, 2015. (http://isis-online.org/uploads/isis-reports/documents/Syria_June_30_2015_Final.pdf)

² John Schilling, "North Korea's Large Rocket Engine Test: A Significant Step Forward for Pyongyang's ICBM Program," *38 North*, April 11, 2016. (<http://38north.org/2016/04/schilling041116/>)

³ Jeffrey Lewis, "North Korea's Nuke Program Is Way More Sophisticated Than You Think," *Foreign Policy*, September 9, 2016. (<http://foreignpolicy.com/2016/09/09/north-koreas-nuclear-program-is-way-more-sophisticated-and-dangerous-than-you-think/>)

⁴ James Griffiths and Joshua Berlinger, "What is THAAD?" *CNN*, September 9, 2016. (<http://www.cnn.com/2016/07/13/asia/what-is-thaad/>)

⁵ Dagyum Ji, "S. Korean presidential candidate Moon reverses position on THAAD deployment," *NK News*, January 16, 2017. (<https://www.nknews.org/2017/01/s-korean-presidential-candidate-moon-reverses-position-on-thaad-deployment/>)

⁶ Kent Boydston, "Moon Jae-In on North-South Integration," *North Korea: Witness to Transformation*, September 8, 2015. (<https://piie.com/blogs/north-korea-witness-transformation/moon-jae-north-south-integration>)

negotiations on multiple occasions, resulting in three separate agreements with Pyongyang to freeze or dismantle its nuclear weapons. This approach failed, and it failed miserably.

The approach I outline out below lives in the area between these two scenarios, where we preserve our dedication to the denuclearization of the Korean peninsula while acknowledging that North Korea is not ready to negotiate away its nuclear weapons. Given that reality, we must use all of the tools of American power to protect ourselves and our allies while we simultaneously begin to roll back the North Korean threat. Although Pyongyang is not yet ready to give up its nuclear weapons, the Kim family must know that the United States will not accept it as a nuclear state, or back down against its aggressive actions.

Impact of the North Korea Sanctions and Policy Enhancement Act of 2016 (NKSPEA)

I want to recognize Chairman Royce and Ranking Member Engel in particular for their leadership in their drafting and successful advocacy for the first comprehensive, bipartisan North Korea sanctions law. As someone who spent the last 16 years in the Departments of the Treasury and State working on North Korea policy, it was heartening to see this important issue receive the attention it deserves. It is useful to review some of the accomplishments since former President Barack Obama signed the North Korea Sanctions and Policy Enhancement Act of 2016 (NKSPEA) bill into law almost one year ago.

- On May 27, 2016, the Treasury Department’s Financial Crimes Enforcement Network (FinCEN) designated the jurisdiction of North Korea a “primary money laundering concern” consistent with Section 201(b) of the law that required the determination.⁷ This Section 311 action against North Korea was long overdue, as the FinCEN Notice of Finding stated that North Korea used front companies to allow two of its designated banks to

⁷ U.S. Department of the Treasury, Financial Crimes Enforcement Network, “Finding that the Democratic People’s Republic of Korea is a Jurisdiction of Primary Money Laundering Concern,” 81 Federal Register 35441, June 2, 2016. ([https://www.fincen.gov/sites/default/files/shared/2016-13038\(DPRK_Finding\).pdf](https://www.fincen.gov/sites/default/files/shared/2016-13038(DPRK_Finding).pdf)); North Korea Sanctions and Policy Enhancement Act of 2016, Pub. L. No. 114-122, 130 Stat. 93, codified as amended at 114 U.S.C. §201. (<https://www.congress.gov/114/bills/hr757/BILLS-114hr757enr.pdf>)

conduct financial transactions through U.S. correspondent accounts.⁸ The FinCEN action called these activities “a threat to the integrity of the U.S. financial system.”⁹

- The requirement in Section 207 of the NKSPEA that the secretary of state issue expanded travel warnings for all U.S. citizens traveling to North Korea has been an invaluable resource toward protecting our citizens. North Korea is not a safe place to visit, especially for Americans, yet the companies that sell tours of North Korea continue to advertise those trips as safe. The stories of Americans being arbitrarily arrested and detained, and treated harshly by the Kim regime, are heartbreaking for these Americans’ families, and avoidable. I will return to this issue later in my testimony.
- The increase in designations by the Obama administration in 2016 is directly attributable to the new law this committee drafted. Although it was disappointing that not all these actions were taken under the NKSPEA, thus evading the law’s conditions for suspension and termination of the sanctions, the designations of regime-level persons and human rights abusers, and the designation of North Korea’s national airline, are important regardless of the authority used.¹⁰ As I discuss later, it is important that executive branch cite the NKSPEA as the authority for its designations and that the pace of designations is divorced from North Korean provocations.

⁸ The FinCEN Notice of Finding also stated: “In 2013, senior North Korean leadership utilized a [Korea Kwangson Banking Corporation (KKBC)] front company to open accounts at a major Chinese bank under the names of Chinese citizens, and deposited millions of U.S. dollars into the accounts. The same KKBC front company processed transactions through U.S. correspondent accounts as recently as 2013. … Between 2008 and 2012, [Foreign Trade Bank (FTB)] used front companies in multiple countries to make and receive payments equivalent to tens of millions of U.S. dollars. In 2011, an FTB front company was involved with U.S.- designated KKBC and Korea 5 Trading Corporation, a subordinate of U.S. and UN-designated Korea Ryonbong General Corporation, in financial dealings totaling several millions of U.S. dollars. The same FTB front company processed transactions through U.S. correspondent accounts as recently as April 2014.” U.S. Department of the Treasury, Financial Crimes Enforcement Network, “Finding that the Democratic People’s Republic of Korea is a Jurisdiction of Primary Money Laundering Concern,” 81 Federal Register 35441, June 2, 2016.

([https://www.fincen.gov/sites/default/files/shared/2016-13038\(DPRK_Finding\).pdf](https://www.fincen.gov/sites/default/files/shared/2016-13038(DPRK_Finding).pdf)); KKBC was designated by the Treasury Department under E.O. 13382 in August 2009. U.S. Department of the Treasury, Press Release, “Treasury Designates Financial Institution Tied to North Korea’s WMD Proliferation,” August 11, 2009.

(<https://www.treasury.gov/press-center/press-releases/Pages/tg260.aspx>). FTB was designated by the Treasury Department under E.O. 13382 in March 2013. U.S. Department of the Treasury, Press Release, “Treasury Sanctions Bank and Official Linked to North Korean Weapons of Mass Destruction Programs,” March 11, 2013.

(<https://www.treasury.gov/press-center/press-releases/Pages/jl1876.aspx>)

⁹ U.S. Department of the Treasury, Financial Crimes Enforcement Network, “Finding that the Democratic People’s Republic of Korea is a Jurisdiction of Primary Money Laundering Concern,” 81 Federal Register 35441, June 2, 2016. ([https://www.fincen.gov/sites/default/files/shared/2016-13038\(DPRK_Finding\).pdf](https://www.fincen.gov/sites/default/files/shared/2016-13038(DPRK_Finding).pdf)); U.S. Department of the Treasury, Financial Crimes Enforcement Network, “Imposition of Special Measure Against North Korea as a Jurisdiction of Primary Money Laundering Concern,” 81 Federal Register 35665, June 3, 2016.

([https://www.fincen.gov/sites/default/files/shared/2016-13037\(DPRK_NPRM\).pdf](https://www.fincen.gov/sites/default/files/shared/2016-13037(DPRK_NPRM).pdf))

¹⁰ U.S. Department of the Treasury, Press Release, “The United States Sanctions North Korea Government Officials and Organizations Tied to Its Missile and Nuclear Programs,” March 2, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0372.aspx>); U.S. Department of the Treasury, Press Release, “Treasury Sanctions North Korean Senior Officials and Entities Associated with Human Rights Abusers,” July 6, 2016.

(<https://www.treasury.gov/press-center/press-releases/Pages/jl0506.aspx>); U.S. Department of the Treasury, Press Release, “Treasury Sanctions Individuals and Entities Supporting the North Korean Government and its Nuclear and Weapons Proliferation Efforts,” December 2, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0677.aspx>)

Four Core Policy Elements

As president-elect, Donald Trump mentioned Kim Jong Un's New Year's Day message threatening to test an ICBM, demonstrating that his administration may take Kim's threats more seriously than President Obama did. North Korea presents a unique foreign policy challenge that will require attention early in Trump's presidency.

The Trump administration can return to a more effective North Korea policy with four core policy elements.

1. Talk to North Korea anytime and anywhere. We know that Kim has no present interest in giving up his nuclear weapons. And we know he would see renewed negotiations with the West over his arsenal as an opportunity to buy time or extract new concessions. It is not worth engaging in negotiations that yield concessions without verifiable changes in Pyongyang's behavior. But it is useful to talk to North Korea directly or in a multilateral format to explain U.S. policy. Pyongyang needs to know what to expect in response to its continued aggression. It is also essential that Pyongyang always understand that it has a non-violent, diplomatic exit strategy that, even if undesirable from its perspective, is vastly preferable to war. It is also essential that any negotiations be held in close consultation with our allies, after explaining the U.S. position and reassuring them that we will not abandon or bargain away their interests.
2. Get tough with China. In 2016, a ground-breaking study by C4ADS and South Korea's Asan Institute for Policy Studies documented how China is turning a blind eye to North Korea's nuclear and missile programs.¹¹ Chinese trade statistics show that in December 2016, China imported twice the amount of North Korean coal it agreed to in UN Security Council Resolution 2321.¹² China must be treated as part of the problem until it shows that it will be part of the solution.

The new Trump administration has already vowed to get tough with Beijing. This is an important place to start. Presidents Clinton, Bush, and Obama tried softer approaches to North Korea. Both Bush and Obama sought to work through China to pressure Pyongyang into negotiations. Each of these efforts produced agreements of limited value. In the Clinton and Bush instances, the post-deal implementation efforts focused more on preserving the deals than holding China or North Korea to their commitments. Obama's focus on deals with Iran and Cuba clouded his focus on North Korea and produced the failed policy of strategic patience.

¹¹ "In China's Shadow," *The Asan Institute for Policy Studies and C4ADS*, August 2016. (<https://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/57dfe74acd0f68d629357306/1474291539480/In+China%27s+Shadow.pdf>)

¹² "China imports more North Korean coal even after ban, customs data shows," *Reuters*, January 23, 2017. (<http://www.scmp.com/news/china/diplomacy-defence/article/2064731/china-imports-more-north-korean-coal-even-after-ban>)

3. Support key allies in the region. Secretary of Defense James Mattis' trip to South Korea and Japan on February 1-4, the first of any Trump official overseas, comes at an important time. The South Korea-Japan relationship has hit a rough patch, with South Korea recently protesting Japanese sexual slavery of Korean women during World War II. Mattis' visit will attempt to shore up this shaky alliance to deter the North Korean threat. Washington should work with South Korea and Japan, and also Australia and other Asian allies, to use tools – including the Proliferation Security Initiative, a coalition of 105 nations dedicated to interdicting materials used in weapons of mass destruction – or other mechanisms to stymie North Korea's proliferation activities. The U.S. should also conduct additional high-profile military exercises with its allies as a deterrent to North Korea. We must reassure South Korea in the face of China's efforts to intimidate it into canceling the deployment of the U.S. Terminal High Altitude Area Defense (THAAD) missile defense system in its territory.
4. Introduce new sanctions on North Korea and strengthen existing ones. U.S. Senator Cory Gardner (R-CO) on January 2 noted the importance of secondary sanctions and measures to address the country's cyber activities to ensure there are consequences for North Korea and those that help it violate UN sanctions or U.S. law.¹³ I discuss specific sanctions recommendations for Congress and the Trump administration later in my testimony.

Clearing Away Myths about North Korea Sanctions

Our understanding of the potential utility of sanctions as part of a broader, coherent North Korea policy is often clouded by myths about its history. It is common for scholars and journalists to repeat that years of strong sanctions against North Korea have failed. It is true that thus far, sanctions have not achieved the U.S. objective of disarming North Korea, but it is not true that they have been strong or well enforced, or that they cannot work. The most common myths include the following:

1. Myth #1: North Korea is the most sanctioned country. Despite North Korea's many egregious acts over the last 25 years, the United States showed extraordinary restraint in sanctioning the country. Only in January of 2015 did the president give the secretary of the treasury comprehensive authority to designate North Korean officials and property, and only a few mid-level arms dealers were designated at that time. Additional designations did not begin to pick up speed until March of 2016, after the passage of the NKSPEA. To date, only about one-fourth as many North Korean entities are designated as there were Iranian entities designated in 2015 before the Iran deal was finalized and many entities delisted. Recent actions have brought the number of North Korea designations to a level above the number of Zimbabwe designations, but still behind other sanctions programs, including the Iran and Ukraine/Russia programs.¹⁴ Even so, the increase in North Korea

¹³ Cory Gardner, "Why Donald Trump should make North Korea a top priority," CNN, January 2, 2017. (<http://www.cnn.com/2017/01/02/opinions/trump-north-korea-priority-opinion/>)

¹⁴ Joshua Stanton, someone familiar to this Committee and editor of the One Free Korea blog, has a comprehensive analysis from 2014 comparing North Korea sanctions to other previous programs. Joshua Stanton, "You'd be surprised how much tougher our Zimbabwe and Belarus sanctions are than our North Korea sanctions," *One Free Korea*, July 15, 2014. (<http://freetokorea.us/2014/07/15/youd-be-surprised-how-much-tougher-our-zimbabwe-and-belarus-sanctions-are-than-our-north-korea-sanctions/#sthash.C61YYXQe.dpbs>)

designations (to approximately 200) is a clear and direct result of this committee's leadership, which resulted in the North Korea Sanctions and Policy Enhancement Act of 2016.

2. Myth #2: North Korea is isolated financially; there is no way to have an Iran-style sanctions program. As I noted earlier, Treasury's FinCEN's Section 311 action against North Korea designating the country as a jurisdiction of primary money laundering concern, the C4ADS report, the Justice Department's indictment and asset forfeiture actions in late September 2016, and other efforts have debunked this myth.¹⁵ The fact that North Korean financial institutions had used front companies to conduct financial transactions through the U.S. financial system that allowed it to threaten us, our allies, and its own people is an outrage.

North Korea has been developing nuclear weapons to target the United States for more than 25 years, compromising our own financial system with the knowledge of our government. The public report by C4ADS and the Asan Institute for Policy was eye opening for what it revealed about the scope and scale of Chinese nationals acting on behalf of North Korea.¹⁶ Treasury's designations and Justice's indictments and civil forfeiture complaint were astonishing and should have reset the priorities in the U.S. dialogue with China.¹⁷ The Justice Department noted that from August 2009 to September 2015, Chinese nationals had "opened Chinese bank accounts to conduct U.S. dollar financial transactions through the U.S. financial system when completing sales to North Korea."¹⁸ These are recent examples showing the global scope of North Korea's financial activities that pose a direct threat to the United States and to the integrity of the financial system. They are also prime targets for Iran-style sanctions.

¹⁵ U.S. Department of the Treasury, Financial Crimes Enforcement Network, "Finding that the Democratic People's Republic of Korea is a Jurisdiction of Primary Money Laundering Concern," 81 Federal Register 35441, June 2, 2016. ([https://www.fincen.gov/sites/default/files/shared/2016-13038\(DPRK_Finding\).pdf](https://www.fincen.gov/sites/default/files/shared/2016-13038(DPRK_Finding).pdf)); U.S. Department of the Treasury, Financial Crimes Enforcement Network, "Imposition of Special Measure Against North Korea as a Jurisdiction of Primary Money Laundering Concern," 81 Federal Register 35665, June 3, 2016.

([https://www.fincen.gov/sites/default/files/shared/2016-13037\(DPRK_NPRM\).pdf](https://www.fincen.gov/sites/default/files/shared/2016-13037(DPRK_NPRM).pdf)); "In China's Shadow," *The Asan Institute for Policy Studies and C4ADS*, August 2016.

(<https://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/57dfe74acd0f68d629357306/1474291539480/In+China%27s+Shadow.pdf>); U.S. Department of Justice, Press Release, "Four Chinese Nationals and China-Based Company Charged with Using Front Companies to Evade U.S. Sanctions Targeting North Korea's Nuclear Weapons and Ballistic Missile Programs," September 26, 2016. (<https://www.justice.gov/opa/pr/four-chinese-nationals-and-china-based-company-charged-using-front-companies-evade-us>)

¹⁶ "In China's Shadow," *The Asan Institute for Policy Studies and C4ADS*, August 2016. (<https://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/57dfe74acd0f68d629357306/1474291539480/In+China%27s+Shadow.pdf>)

¹⁷ U.S. Department of the Treasury, Press Release, "Treasury Imposes Sanctions on Supporters of North Korea's Weapons of Mass Destruction Proliferation," September 26, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/j15059.aspx>); U.S. Department of Justice, Press Release, "Four Chinese Nationals and China-Based Company Charged with Using Front Companies to Evade U.S. Sanctions Targeting North Korea's Nuclear Weapons and Ballistic Missile Programs," September 26, 2016. (<https://www.justice.gov/opa/pr/four-chinese-nationals-and-china-based-company-charged-using-front-companies-evade-us>)

¹⁸ U.S. Department of Justice, Press Release, "Four Chinese Nationals and China-Based Company Charged with Using Front Companies to Evade U.S. Sanctions Targeting North Korea's Nuclear Weapons and Ballistic Missile Programs," September 26, 2016. (<https://www.justice.gov/opa/pr/four-chinese-nationals-and-china-based-company-charged-using-front-companies-evade-us>)

3. Myth #3: There are not enough people to designate because North Korea is isolated. One often hears this argument in the context of North Korea. The truth of the matter is related to the previous point that North Korea is dependent on the dollar system, and therefore vulnerable to an Iran-style sanctions program. In 2016 alone, the NKSPPEA forced the designations of 20 individuals, 30 companies (including 7 banks), 6 government ministries, 20 ships, and 16 aircraft. We will soon find out how many more North Korean targets our intelligence and law enforcement agencies can identify. The U.S. could have amplified the impact of those designations by taking enforcement action against Chinese banks that helped Pyongyang access the financial system.

It is important to note that even some of the actions that were taken in 2016 were incomplete. For example, in the case I cited above on Chinese nationals essentially providing a financial conduit for North Korea from the Chinese financial system to the U.S. financial system, not a single Chinese bank was designated, fined, or investigated for deficient anti-money laundering (AML) compliance measures, despite multiple warning signs of deceptive financial practices. That is a missed opportunity. Unless Congress has received a waiver of the mandatory sanctions requirement, this is a key area in which Congress can exercise its oversight powers.

4. Myth #4: China does not respond to pressure. I have participated in many formal and informal debates with colleagues at the State and Treasury Departments on this very issue, as it goes to the heart of our approach on North Korea sanctions. In my experience, China can be swayed to change its behavior, but only if the United States is willing to act against China's interests and seek Beijing's cooperation from a position of strength. It is not a foregone conclusion that China's leaders will shelter North Korea. Two examples are illustrative here. In March 2013, the U.S. Treasury designated North Korea's Foreign Trade Bank (FTB), North Korea's primary foreign exchange bank. At the time of FTB's designation, Treasury stated that the FTB was "facilitating transactions on behalf of actors linked to [North Korea's] proliferation network."¹⁹ Two months later, the Bank of China stated that it had sent North Korea's Foreign Trade Bank a notice that it had "closed its account and has also halted all fund transfers related to this account."²⁰ This is a good example of China acting to cut off North Korea's activities inside China when those actions threaten China's economic interests. The case of Chinese nationals acting on behalf of another North Korean designated financial institution, Korea Kwangson Banking Corporation, noted earlier, was three years later, even though we now know the activities were ongoing in 2013.²¹ While the U.S. action against these Chinese persons was

¹⁹ U.S. Department of the Treasury, Press Release, "Treasury Sanctions Bank and Official Linked to North Korean Weapons of Mass Destruction Programs," March 11, 2013. (<https://www.treasury.gov/press-center/press-releases/Pages/j11876.aspx>)

²⁰ Simon Rabinovitch and Simon Mundy, "China reduces banking lifeline to N Korea," *Financial Times* (UK), May 7, 2013. (<https://www.ft.com/content/a7154272-b702-11e2-a249-00144feabdc0>)

²¹ U.S. Department of the Treasury, Press Release, "Treasury Imposes Sanctions on Supporters of North Korea's Weapons of Mass Destruction Proliferation," September 26, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/j15059.aspx>); U.S. Department of Justice, Press Release, "Four Chinese Nationals and China-Based Company Charged with Using Front Companies to Evade U.S. Sanctions Targeting North Korea's Nuclear Weapons and Ballistic Missile Programs," September 26, 2016. (<https://www.justice.gov/opa/pr/four-chinese-nationals-and-china-based-company-charged-using-front-companies-evade-us>)

incomplete, it is important to note that China did act against this network. After the United States acted against these Chinese persons, Beijing arrested 10 people and froze the assets of the founder of the involved company.²²

Recommendations for Congress

1. Mandate additional resources to address North Korea's activities. The North Korea Sanctions and Policy Enhancement Act of 2016 is a comprehensive law that provides a myriad of tools for the Trump administration to address the North Korean threat. It is important that Congress continue to address additional areas through legislation in the same overwhelmingly bipartisan nature, signaling to North Korea and China that focus on this issue will continue. Throughout my testimony, I have detailed the challenge we face with an adversary that seems to be one step ahead of us. Our entire approach to the North Korea issue needs to change. One area Congress can address immediately is providing additional resources to the Treasury Department, Justice Department, Intelligence Community, and other government agencies to investigate violations of the NKSPEA.
2. Restrict travel to North Korea. I noted earlier that the State Department's enhanced travel warnings mandated by the NKSPEA are important to protecting the safety of U.S. nationals.²³ Banning tourist travel would also amplify the effectiveness of the recent designation of North Korea's national flag carrier, Air Koryo, and deny Pyongyang another source of hard currency. By law, the president does not have the authority to ban transactions incident to travel to, from, or within North Korea without further action by Congress.²⁴ Congress, however, could pass legislation authorizing the president to restrict travel to North Korea by requiring licenses for such transactions. The benefit of this licensing system is that it would allow the United States to screen and be aware of all U.S. persons in North Korea. The licensing system could also have exceptions for U.S. government travel and private trips associated with humanitarian missions. The goal would simply be to restrict tourist travel to North Korea.
3. Increase transparency into investigations. The North Korea Sanctions and Policy Enhancement Act of 2016 in Section 102 requires the president to open an investigation into a possible designation upon receipt of "credible information" that a person has engaged

²² Chun Han Wong and Jay Solomon, "U.S., China Move Against Firm Suspected of Aiding North Korean Nuclear Program," *The Wall Street Journal*, September 19, 2016. (<https://www.wsj.com/articles/u-s-china-move-against-firm-suspected-of-aiding-north-korean-nuclear-program-1474300834>); Elizabeth Shim, "China arrests more than 10 business executives for North Korea trade," *UPI*, September 21, 2016. (http://www.upi.com/Top_News/World_News/2016/09/21/China-arrests-more-than-10-business-executives-for-North-Korea-trade/1531474469593/)

²³ The State Department "strongly urges U.S. citizens to avoid all travel to North Korea/the Democratic People's Republic of Korea (DPRK) due to the serious risk of arrest and long-term detention under North Korea's system of law enforcement, which imposes unduly harsh sentences, including for actions that in the United States would not be considered crimes and which threaten U.S. citizen detainees with being treated in accordance with "wartime law of the DPRK." U.S. Department of State, "North Korea Travel Warning," November 9, 2016.

(<https://travel.state.gov/content/passports/en/alertswarnings/north-korea-travel-warning.html>)

²⁴ International Emergency Economic Powers Act of 1977, Pub. L. 95-223, 91 Stat. 1625, codified as amended at 95 U.S.C. §103(b)(4).

in any of the prohibited conduct described in section 104(a).²⁵ Congress could amend this section to increase transparency into the investigations of persons that could be subject to sanctions under NKSPEA. One option could be to include provisions found in the Sergei Magnitsky Rule of Law Accountability Act of 2012 Section 404(c)(3) that the president consider information from “credible data obtained by other countries and nongovernmental organizations.”²⁶ This, for example, would have prompted an investigation following the C4ADS-Asan report.²⁷

Another useful addition from the Magnitsky Act’s Section 404(e) requires a response from the executive branch on whether information submitted from the chairperson and ranking member of appropriate congressional committees are investigated.²⁸

An additional useful transparency measure is mandating regular briefings from the administration, including specific information on ongoing investigations for a small group of members and staff, possibly as an extension of Section 103 of the North Korea Sanctions and Policy Enhancement Act of 2016.

4. **Investigate China.** The Treasury and Justice Departments’ actions in late September 2016 showed a troubling pattern of Chinese persons assisting North Korean-designated persons, including through the U.S. financial system. These transactions lasted six years, up to September 2015, making it hard to believe the Chinese government regulators were unaware of this conduct. It is important that Congress and the American people understand the extent of China’s efforts, or lack thereof, to combat money laundering, sanctions violations, and proliferation financing. I recommend that new legislation include specific sections on North Korea’s network within China. It should also address the broader issue of Chinese support for, and harboring of, North Korean nationals involved in prohibited conduct. In particular, the report could also focus on whether the financial institutions involved should have been designated or subjected to secondary sanctions.

Recommendations for the Trump Administration

1. **Make significant changes to our North Korea sanctions efforts.** North Korea represents a direct threat to the United States and our allies, and we must radically change our approach to North Korea sanctions efforts. All remaining North Korean banks should be designated immediately. A senior official from the Treasury Department should make clear in a major speech or in Congressional testimony that the Trump administration will enforce

²⁵ North Korea Sanctions and Policy Enhancement Act of 2016, Pub. L. No. 114-122, 130 Stat. 93, codified as amended at 114 U.S.C. (<https://www.congress.gov/114/bills/hr757/BILLS-114hr757enr.pdf>)

²⁶ Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. 112-208, 126 Stat. 1496, codified as amended at 112 U.S.C. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112_208.pdf)

²⁷ “In China’s Shadow,” *The Asan Institute for Policy Studies and C4ADS*, August 2016. (<https://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/57dfe74acd0f68d629357306/1474291539480/In+China%27s+Shadow.pdf>)

²⁸ Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. 112-208, 126 Stat. 1496, codified as amended at 112 U.S.C. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112_208.pdf)

requirements on financial institutions to know their customer when it comes to North Korea and will use available sanctions against those who do not comply.

President Trump should direct the attorney general and treasury secretary to jointly investigate the Treasury and Justice actions in late September 2016 and the Bank of China for its 2013 transactions on behalf of Chinpo Shipping.²⁹ The treasury secretary should take strong action against any bank that continues to provide direct or indirect financial services to North Korean banks. The Treasury and State Departments should press SWIFT, a global provider of secure financial messaging services, to immediately cut North Korea from the system.³⁰ In 2012, SWIFT took a similar action to remove Iranian financial institutions from its system; a decision that was reversed in February 2016.³¹

2. Designate additional persons before the next North Korean provocation. The United States has a tendency to engage in a provocation-response cycle when it comes to North Korea's provocative behavior. This approach is dangerous, as it suggests that North Korea is only a threat when it engages in provocations. In fact, North Korea is a threat to the United States and our allies every day it continues the development of its nuclear weapons, means of delivery, and proliferation activities. Part of this new approach would include investigating China-North Korea activities and using the North Korea Sanctions and Policy Enhancement Act of 2016 to designate persons, including Chinese financial institutions, with sanctions and secondary sanctions. A critical aspect of this approach is the designation of North Korean front companies on a regular basis. Financial institutions can be an ally in the effort to stop North Korea's activities, but that can only happen if there is a regular designation process that exposes North Korea's efforts to compromise the financial system through the use of front companies.
3. Enhance diplomatic efforts to implement sanctions. The United States is uniquely positioned to lead a robust diplomatic effort to implement existing sanctions and create the environment for new multilateral sanctions through the United Nations or as the leader of international coalitions concerned with the prevention of money laundering, smuggling, proliferation, human trafficking, and other human rights abuses. The UN Panel of Experts has consistently called out the poor implementation of the of the UN sanctions already in place. The United States, specifically its Special Representative for North Korea Policy, could lead that effort.³² It is also important that these efforts reinforce the notion that while a significant percentage of North Korea's trade is with China, Pyongyang has other economically important and dangerous relationships with other states. The U.S. government must be properly organized, staffed, and resourced for this mission, and it is

²⁹ Andrea Berger, "Thanks to the Banks: Counter-Proliferation Finance and the Chinpo Shipping Case," *38 North*, December 16, 2015. (<http://38north.org/2015/12/abberger121615/>)

³⁰ Society for Worldwide Interbank Financial Telecommunication (SWIFT), <https://www.swift.com/>

³¹ Rick Gladstone and Stephen Castle, "Global Network Expels as Many as 30 of Iran's Banks in Move to Isolate Its Economy," *The New York Times*, March 15, 2012. (<http://www.nytimes.com/2012/03/16/world/middleeast/crucial-communication-network-expelling-iranian-banks.html>); "Iranian banks reconnected to SWIFT network after four-year hiatus," *Reuters*, February 17, 2016. (<http://www.reuters.com/article/us-iran-banks-swift-idUSKCN0VQ1FD>)

³² United Nations Security Council, "Report of the Panel of Experts established pursuant to resolution 1874 (2009)," S/2016/157, February 24, 2016. (http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/157)

imperative that North Korea be given the highest priority when it comes to diplomatic engagement and sanctions investigations.

4. Increase engagement at the United Nations. A general rule with regard to sanctions is that the United States leads while other states and multilateral bodies (such as the United Nations and the European Union) follow. That rule is instructive here, where the United States must use all of its sanctions and investigative tools, including the resources of non-governmental organizations, to expose North Korea's illicit network. The United States could use the information it acquires to host information sessions for interested delegations. The U.S. should also increase its support to the UN Panel of Experts, including by providing the Panel more information about the status and location of key North Korean networks and assets.

Conclusion

North Korea is a difficult foreign policy challenge that the United States has failed to appropriately address. The new Trump administration presents another opportunity – perhaps our last one – to harness all of the tools of American power to address this direct threat to the United States non-violently. Today's hearing is an important step in that direction, and I look forward to addressing your questions.

On behalf of the Foundation for Defense of Democracies, I thank you again for inviting me to testify.