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***CONGRESSIONAL TESTIMONY***

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**Moving Beyond Timid Incrementalism:  
Time to Fully Implement U.S. Laws on North  
Korea**

**Testimony before  
Subcommittee on Asia and the Pacific of the  
Foreign Affairs Committee  
United States House of Representatives**

**“The U.S. Response to North Korea’s Nuclear  
Provocations”**

**January 13, 2016**

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## **Moving Beyond Timid Incrementalism: Time to Fully Implement U.S. Laws on North Korea**

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### **North Korean Nuclear Threat**

North Korea announced on January 4 that it had conducted a successful H-bomb nuclear test of a miniaturized warhead. Nuclear experts continue to analyze the data, but preliminary assessments are that North Korea did indeed conduct its fourth nuclear test, though it is more likely that Pyongyang has achieved a boosted fission rather than a fusion bomb. Such a weapon would be larger than Pyongyang's first three nuclear tests (and the 1945 U.S. atomic weapons), but not of the magnitude of a hydrogen fusion bomb.

If confirmed, North Korea's fourth nuclear test, particularly of an improved weapon, is a dangerous development. With its ongoing development of several different missile systems, North Korea poses an increasing direct threat to the United States, South Korea, and Japan. Experts estimate that Pyongyang currently has 10–16 nuclear weapons, with the potential to increase that cache to as many as 50–100 by 2020.<sup>1</sup>

North Korea has likely already achieved warhead miniaturization, the ability to place nuclear weapons on its medium-range missiles, and a preliminary ability to reach the continental U.S. with a missile.<sup>2</sup> The regime's No Dong medium-range ballistic missiles put Japan and parts of South Korea under a nuclear threat today. North Korea also continues its development of long-range missiles to attack the United States.

In April 2013, U.S. officials told reporters that North Korea "can put a nuclear weapon on a missile, that they have missile-deliverable nuclear weapons, but not ones that can go more than 1,000 miles."<sup>3</sup> In October 2014, General Curtis M. Scaparrotti, senior U.S. commander on the Korean Peninsula, told reporters that North Korea has the ability to produce a miniaturized nuclear warhead that can be mounted on a ballistic missile.<sup>4</sup>

U.S. experts concluded that the North Korean missile recovered from the ocean floor by the South Korean navy after the December 2012 launch provided "tangible proof that North Korea was building the missile's cone at dimensions for a nuclear warhead, durable enough to be

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<sup>1</sup>Joel S. Wit and Sun Young Ahn, "North Korea's Nuclear Futures: Technology and Strategy," Johns Hopkins University, U.S.–Korea Institute at SAIS, February 2015, <http://38north.org/wp-content/uploads/2015/02/NKNF-NK-Nuclear-Futures-Wit-0215.pdf> (accessed January 11, 2016).

<sup>2</sup>Bruce Klingner, "Allies Should Confront Imminent North Korean Nuclear Threat," Heritage Foundation *Backgrounder* No. 2913, June 3, 2014, <http://www.heritage.org/research/reports/2014/06/allies-should-confront-imminent-north-korean-nuclear-threat>.

<sup>3</sup>NBC News, "Will North Korea Follow Through on Nuclear Threats?" *Nightly News*, April 3, 2013, <http://www.nbcnews.com/video/nightly-news/51421978> (accessed January 11, 2016).

<sup>4</sup>General Curtis Scaparrotti and Rear Admiral John Kirby, "Department of Defense Press Briefing by General Scaparrotti in the Pentagon Briefing Room," transcript, October 24, 2014, <http://www.defense.gov/Transcripts/Transcript.aspx?Transcriptid=5525> (accessed January 11, 2016).

placed on a long-range missile that could re-enter the earth's atmosphere from space." A U.S. official added that South Korea provided other intelligence suggesting that North Korea had "mastered the miniaturization and warhead design as well."<sup>5</sup> In March 2013, Minister of Defense Kim Kwan-jin told the National Assembly that the missile had a range of more than 10,000 kilometers (km) and could have reached the U.S. West Coast.<sup>6</sup> New York and Washington, DC, are approximately 11,000 km from North Korea.

In April 2015, Admiral Bill Gortney, commander of North American Aerospace Defense Command (NORAD), told reporters that the KN-08 road-mobile intercontinental ballistic missile (ICBM) "is operational today. Our assessment is that they have the ability to put a nuclear weapon on a KN-08 and shoot it at the [U.S.] homeland." The four-star commanders of U.S. Forces Korea and Pacific Command have made similar threat assessments.<sup>7</sup>

According to The Heritage Foundation's calculations, North Korea's Taepo Dong 2 missiles, with a range of 10,000 kilometers, are within strike capability of 120.6 million people, or 38 percent of the U.S. population.



<sup>5</sup>Eli Lake, "US Recovery of North Korean Satellite Exposed Nuclear Progress," *The Telegraph*, April 15, 2013, <http://www.telegraph.co.uk/journalists/the-daily-beast/9995514/US-recovery-of-North-Korean-satellite-exposed-nuclear-progress.html> (accessed January 11, 2016).

<sup>6</sup>"S. Korea Says Debris Reveals North's ICBM Technology," Voice of America, December 23, 2012, <http://www.voanews.com/content/north-korea-missile/1570703.html> (accessed January 11, 2016), and "N. Korea Rocket 'Could Fly 10,000 km,'" *The Chosun Ilbo*, April 16, 2012, [http://english.chosun.com/site/data/html\\_dir/2012/04/16/2012041601302.html](http://english.chosun.com/site/data/html_dir/2012/04/16/2012041601302.html) (accessed January 11, 2016).

<sup>7</sup>Zachary Keck, "Assessing the North Korea Nuclear Threat," *The Diplomat*, May 1, 2015, <http://thediplomat.com/2015/05/assessing-the-north-korea-nuclear-threat/> (accessed January 11, 2016).

## North Korean Cyber Threat

The United States assessed that North Korea was responsible for the cyber attack against Sony Pictures in 2014. Contrary to the perception that North Korea is a technically backward nation, the regime has an active cyber warfare capability. The Reconnaissance General Bureau has 3,000 “cyber-warriors” dedicated to attacking Pyongyang’s enemies.<sup>8</sup> Seoul concluded that North Korea was behind cyber attacks against South Korean government agencies, businesses, banks, and media organizations in 2009, 2011, 2012, and 2013. A South Korean cyber expert assessed that North Korea’s electronic warfare capabilities were surpassed only by the United States and Russia.<sup>9</sup>

President Obama denounced the attack against Sony Pictures and issued Executive Order 13687. According to Assistant Secretary of Treasury Daniel Glaser, the executive order is a “significant broadening of Treasury’s authority to increase pressure” on North Korea since the U.S. for the first time can designate entities “solely on their status as officials or agencies” of the North Korean government.<sup>10</sup>

Because the executive order provides for *affiliation*-based rather than *conduct*-based sanctions, the U.S. does not need to disclose as much detailed evidentiary information, including potentially sensitive intelligence data, when putting an entity or organization on the sanctions list.

**U.S. Response Weakly Implemented.** The executive order, though expansive in legal breadth, was only weakly implemented by the Obama Administration. The U.S. targeted 13 North Korean entities, three organizations already on the U.S. sanctions list, and 10 individuals not involved in cyber warfare. Although White House officials described the executive order as “a first step...this is certainly not the end,” the Administration has not followed up with any additional measures a year later. Nor were any North Korean entities sanctioned under the Obama Administration’s April 2015 cyber executive order.<sup>11</sup>

## North Korea as a Terrorist Nation

North Korea’s cyber attack and accompanying threats of a “9/11-type attack” appear to fulfill the legal definition of international terrorism. Under various statutes of U.S. law (the most relevant being 18 U.S. Code § 2331), international terrorism is defined as acts that:

- (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
- (B) appear to be intended—

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<sup>8</sup>Sangwon Yoon, “North Korea Recruits Hackers at School,” Al-Jazeera, June 20, 2011, <http://www.aljazeera.com/indepth/features/2011/06/201162081543573839.html> (accessed January 11, 2016).

<sup>9</sup>“N. Korea Boosting Cyber Warfare Capabilities,” *The Chosun Ilbo*, November 5, 2013, [http://english.chosun.com/site/data/html\\_dir/2013/11/05/2013110501790.html](http://english.chosun.com/site/data/html_dir/2013/11/05/2013110501790.html) (accessed January 11, 2016).

<sup>10</sup>“Testimony of Assistant Secretary Daniel L. Glaser before the House Foreign Affairs Committee Confronting North Korea’s Cyber Threat, January 13, 2015, <https://www.treasury.gov/press-center/press-releases/Pages/j19738.aspx> (accessed January 12, 2016).

<sup>11</sup>“Executive Order – ‘Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities,’” The White House, April 1, 2015, <https://www.whitehouse.gov/the-press-office/2015/04/01/executive-order-blocking-property-certain-persons-engaging-significant-m> (accessed January 11, 2016).

- (i) to intimidate or coerce a civilian population;
- (ii) to influence the policy of a government by intimidation or coercion; or
- (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and would be a criminal violation if committed within the jurisdiction of the United States and are intended to intimidate or coerce a civilian population.<sup>12</sup>

As such, the United States should return North Korea to the state sponsors of terrorism list. Pyongyang had been on the list until the Bush Administration removed it in 2008 in a failed attempt to stimulate progress in the Six-Party Talks nuclear negotiations.

In addition to the threats of violence following the Sony hack, North Korea has provided support for other acts of international terrorism since its removal from the terrorist list. These acts include:<sup>13</sup>

- Seoul concluded that North Korea was behind cyber attacks using viruses or distributed denial-of-service tactics against South Korean government agencies, businesses, banks, and media organizations in 2009, 2011, 2012, and 2013.
- In June 2012, Seoul Metropolitan Police arrested a South Korean man for violating the National Security Law. The man had met in China with North Korean agents of the General Reconnaissance Bureau to purchase software with malignant viruses which were used to conduct a cyber attack on Incheon International Airport.<sup>14</sup>
- In May 2012, North Korea jammed GPS signals affecting hundreds of civilian airliners flying in and out of South Korea. The Korea Communications Commission stated the signals came from Kaesong in North Korea.<sup>15</sup>
- In April 2012, North Korean agent An Hak-young was sentenced to four years' imprisonment by a South Korean court for plotting to assassinate outspoken anti-Pyongyang activist Park Sang-hak with a poison-tipped needle.<sup>16</sup>
- In July 2010, two agents of the North Korean ruling party's General Reconnaissance Bureau were arrested by South Korean authorities and pled guilty before a South Korean court to attempting to assassinate high-level defector Hwang Jang-Yop who was residing in South Korea. Kim Myung-ho and Do Myung-kwan were sentenced to 10 years in jail.<sup>17</sup> Kim admitted to being an agent of the North Korean General Reconnaissance Bureau and ordered to assassinate Hwang.

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<sup>12</sup>18 U.S. Code § 2331 – Definitions, Cornell University Law School, <http://www.law.cornell.edu/uscode/text/18/2331> (accessed January 11, 2016).

<sup>13</sup>For a more in-depth analysis, see Joshua Stanton, *Arsenal of Terror: North Korea State Sponsor of Terrorism* (The Committee for Human Rights in North Korea, 2015).

<sup>14</sup>"Incheon Airport Cyberattack Traced to Pyongyang," *JoongAng Daily*, June 5, 2012.

<sup>15</sup>"N.Korea's GPS Jamming is Terrorism Pure and Simple," *The Chosun Ilbo*, May 11, 2012.

<sup>16</sup>Park Chan-Kyong, "Seoul Arrests Suspected N. Korean Assassin," AFP, September 15, 2011, and Ashley Rowland, "South Korea Court Upholds Prison Term for Would-Be Assassin," *Stars and Stripes*, November 29, 2012.

<sup>17</sup>Chris Green, "Assassins Get Ten Years for Hwang Plot," *The Daily NK*, July 1, 2010, and Mok Young-jae, "Prosecution Requests 15 Years for Hwang Assassins," *The Daily NK*, June 23, 2010.

- In 2009, three shipments of North Korean conventional arms were seized. Western and Israeli intelligence officials believe the shipments were bound for Hamas and Hezbollah.<sup>18</sup>
  - In July, an Australian-owned ship was seized in the United Arab Emirates carrying North Korean weapons bound for Iran. The ship contained banned North Korean weapons, including rocket-propelled grenades, headed for Iran on the Australian-owned, Bahamas-flagged cargo ship ANL Australia.<sup>19</sup>
  - In November, the Israeli Navy intercepted a large arms consignment (500 tons) shipped by Iran to Syria on the vessel Francop. Some of the shipment (122mm rocket parts) appear to have originated in North Korea.<sup>20</sup>
  - In December, Thai authorities seized 35 tons of North Korean weapons, including rockets and rocket-propelled grenades that were determined to be enroute to terrorist groups Hamas and Hezbollah.<sup>21</sup>
- October 2008, a North Korea woman was convicted by a South Korean court as a spy and plotting to kill South Korean intelligence agents with poisoned needles.<sup>22</sup>

### North Korea Commits “Crimes Against Humanity”

In February 2013, a United Nations Commission of Inquiry report provided a chilling litany of horrors that the North Korean regime had inflicted upon its citizens. The commission issued a damning condemnation of the North Korea government for “systemic, widespread, and gross violations of human rights” that were of such a monumental scale as to constitute “crimes against humanity.” It also advocated adopting targeted sanctions against those most responsible for these crimes against humanity.

Secretary of State John Kerry rightfully described North Korea’s human rights abuses as “horrific [and] one of the most egregious examples of reckless disregard for human rights and for human beings anywhere on the planet.” He called for the international community to continue to “shed light on North Korea’s atrocities against its own people [and] ramp up international pressure.”

<sup>18</sup>Joby Warrick, “Arms Smuggling Heightens Iran Fears,” *The Washington Post*, December 3, 2009, p. A14, and “Iran Bought Masses of N Korean Arms,” *The Chosun Ilbo Online*, December 4, 2009.

<sup>19</sup>“Australia Investigates Seizure of Ship in UAE with North Korean Weapons Going to Iran,” Associated Press, August 30, 2009, <http://www.nydailynews.com/news/world/australia-investigates-seizure-ship-uae-north-korean-weapons-iran-article-1.401152> (accessed January 11, 2016), and Peter Spiegel and Chip Cummins, “Cargo of North Korea Matériel Is Seized en Route to Iran,” *The Wall Street Journal*, August 31, 2009, <http://www.wsj.com/news/articles/SB125151138304468869> (accessed January 11, 2016).

<sup>20</sup>U.N. Panel of Experts Report, March 6, 2014, paragraph 108, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2014/147](http://www.un.org/ga/search/view_doc.asp?symbol=S/2014/147) (accessed January 11, 2016).

<sup>21</sup>“Thailand Seizes ‘Arms Plane Flying from North Korea,’” BBC, December 12, 2009, <http://news.bbc.co.uk/2/hi/asia-pacific/8410042.stm> (accessed January 11, 2016); “Israel Says Seized North Korean Arms Were for Hamas, Hezbollah,” Reuters, May 12, 2010; “Korean Arms Cache Caught En Route to Mideast,” *Daily Star Online* (Beirut), December 15, 2009; and U.N. Panel of Experts report, June 11, 2013, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/337](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/337) (accessed January 11, 2016).

<sup>22</sup>“North Korean Spy Jailed in Sex-for-Secrets Case,” NBC, October 15, 2008, [http://www.nbcnews.com/id/27192149/ns/world\\_news-asia\\_pacific/t/north-korean-spy-jailed-sex-for-secrets-case/](http://www.nbcnews.com/id/27192149/ns/world_news-asia_pacific/t/north-korean-spy-jailed-sex-for-secrets-case/) (accessed January 11, 2016).

**No U.S. Sanctions for Human Rights Violations.** Yet, the Obama Administration has taken no action nearly two years after the U.N. Commission of Inquiry concluded in February 2014 that Pyongyang had committed human rights violations so egregious as to qualify as crimes against humanity. In March 2015, the Obama Administration expressed “deep concern,” and in April 2015, the State Department vowed it was “reviewing options” over North Korean human rights violations. In December 2015, U.S. Ambassador to the U.N. vowed, “We are documenting your crimes, and one day you will be judged for them.”<sup>23</sup>

To date, the United States has targeted zero—yes, zero—North Korean entities for human rights violations. By contrast, the U.S. has targeted Zimbabwe, Congo, and Burma for human rights violations. Washington sanctioned by name the presidents of Zimbabwe and Belarus but has yet to name Kim Jong-un or the heads of any of the North Korean organizations listed by the U.N. Commission of Inquiry report.

### **Sanctions: An Important and Variable Component of Foreign Policy**

Sanctions<sup>24</sup> are punitive measures intended to deter, coerce, and compel changes in another country’s policy and behavior. During the past decade, the U.S. government adopted a more effective financial strategy against rogue regimes. Washington now uses *targeted* financial measures against regimes and violators and not the citizens of a country.

An effective sanctions strategy is based on several key precepts:

1. Even the most isolated regime has to move its money across borders;
2. Because the U.S. dollar is the principal reserve and trading currency around the world, almost all international transactions are denominated in dollars which must go through the U.S. financial system; and
3. Financial institutions are driven to police themselves by aversion to reputational risk and exclusion from the U.S. financial system, which provides Washington with very strong leverage against rogue regimes.

Critics of coercive financial pressure question its effectiveness because they have not yet forced Pyongyang to abandon its nuclear and missile programs, but neither did repeated bilateral and multilateral negotiations or unconditional engagement. Adopting such a narrow viewpoint overlooks the multifaceted utility of sanctions, which:

1. **Show** resolve to enforce international agreements and send a strong signal to other nuclear aspirants. If laws are not enforced and defended, they cease to have value.
2. **Impose** a heavy penalty on violators to demonstrate that there are consequences for defying international agreements and transgressing the law.
3. **Constrain** North Korea’s ability to acquire the components, technology, and finances to augment and expand its arsenal.
4. **Impede** North Korean nuclear, missile, and conventional arms proliferation. Targeted financial and regulatory measures increase both the risk and the operating costs of North Korea’s continued violations of Security Council resolutions and international law.

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<sup>23</sup>“Ambassador Power on Human Rights in North Korea,” U.S. Mission to the U.N., December 11, 2015, <http://usun.state.gov/highlights/7036> (accessed January 11, 2016).

<sup>24</sup>For the purposes of this paper, the terms *sanctions*, *targeted financial or regulatory measures*, and *coercive financial pressure* will be used interchangeably, although there are some technical differences among them.

5. In conjunction with other policy tools, **seek** to modify North Korean behavior.

## **Six Myths About North Korean Sanctions**

### **Myth 1. The U.S. and other nations face a policy choice between sanctions or engagement.**

Sanctions and diplomatic engagement are most effective when integrated into a comprehensive strategy that engages all of the instruments of national power, including diplomatic, information, military, and economic. No tool is meant to be used in isolation. Not fully utilizing any element of national power reduces the effectiveness of U.S. foreign policy.

When debating the efficacy of sanctions, it is important to recognize that diplomatic engagement has failed to curtail North Korea's two nuclear programs. Pyongyang violated each of the four international agreements it signed to never pursue nuclear weapons programs. Four subsequent agreements to abandon the weapons it promised never to build also collapsed. Over a 20-year period, the international community has pursued two-party, three-party, four-party and six-party negotiations—all have failed.

**Myth 2. Sanctions cannot affect an isolated country like North Korea.** When people hear of sanctions, they usually think of trade sanctions, i.e., refusing to allow trade. But it also includes targeted financial measures which are directed against specific entities that violate U.S. laws. It exploits their need to access the global financial network. Even the most isolated regime, criminal organization, or terrorist group is tied to the global financial order. Dirty money eventually has to cross borders.

The vast majority of all international financial transactions are denominated in U.S. dollars. And every dollar-denominated transaction anywhere in the world must go through a U.S. Treasury Department–regulated bank in the United States. That means, money sent from Australia to London or from Macau to Pyongyang goes through New York.

This gives the U.S. government tremendous power and leverage. For banks and businesses, there are catastrophic risks to facilitating illicit transactions. A British bank was fined \$2 billion for money-laundering and sanctions violations, including financial dealings with Iran, and a French bank was fined \$9 billion for processing banned transactions with Sudan, Iran, and Cuba.

Beyond having to pay fines and having assets frozen or seized, financial institutions can be designated as a “money-laundering concern” and denied access to the U.S. financial system. Given the centrality of the U.S. financial system to the international system, that would be the kiss of death for any financial institution and it would be shunned by every other financial institution.

**Myth 3. North Korea is the most heavily sanctioned country in the world.**<sup>25</sup> President Obama claims North Korea “is the most isolated, the most sanctioned, the most cut-off nation on Earth.” That is simply not true. The U.S., the European Union, and the U.N. imposed far more pervasive and compelling measures against Iran than North Korea. Unilaterally, the United States has:

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<sup>25</sup>I am indebted to my colleague, Joshua Stanton, author of *Arsenal of Terror: North Korea, State Sponsor of Terrorism*, for many of these comparisons.



- Targeted far fewer North Korean entities than those of the Balkans, Burma, Cuba, Iran, and Zimbabwe. The U.S. has sanctioned more than twice as many Zimbabwean entities than it has North Korean entities.
- Designated Iran and Burma as primary money-laundering concerns under Section 311 of the Patriot Act, but not North Korea, which counterfeits our currency.
- Targeted Burma, Congo, and Zimbabwe for human rights violations, and sanctioned by name the presidents of Belarus and Zimbabwe, but not yet sanctioned a single North Korean entity for human rights violations even two years after the U.N. Commission of Inquiry declared Pyongyang had committed crimes against humanity.
- Frozen the assets of Syrian,<sup>26</sup> Iranian,<sup>27</sup> Sudanese,<sup>28</sup> and Burundian<sup>29</sup> (but not North Korean) officials for human rights violations.
- Designated Iran and Syria as state sponsors of terrorism, but not North Korea.
- Frozen the assets of Iranian<sup>30</sup> and Syrian<sup>31</sup> (but not North Korean) officials and entities for censorship, and fined the enablers of censorship in Sudan, Iran, and Syria (but not North Korea).<sup>32</sup>
- Frozen the assets of nearly all of the leaders of Belarus<sup>33</sup> and Zimbabwe<sup>34</sup> (but not North Korea) for undermining democratic processes or institutions.
- Sanctioned the Islamic Republic of Iran Broadcasting service and its director of news services for “censorship or other activities that limit the freedom of expression,” but has not sanctioned the Korean Central News Agency, the Rodong Sinmun, or Korea Central Television.<sup>35</sup>

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<sup>26</sup>Executive Order 13606, “Blocking the Property and Suspending Entry Into the United States of Certain Persons With Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology,” April 22, 2012, <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13606.pdf> (accessed January 11, 2016).

<sup>27</sup>“Executive Order 13553-- Designating Iranian Officials Responsible for or Complicit in Serious Human Rights Abuses,” September 29, 2010, <https://www.whitehouse.gov/the-press-office/2010/09/29/executive-order-13553-designating-iranian-officials-responsible-or-compl> (accessed January 11, 2016).

<sup>28</sup>“Executive Order 13412—Blocking Property and Prohibiting Transactions With the Government of Sudan,” October 17, 2006, <https://www.treasury.gov/resource-center/sanctions/documents/13412.pdf> (accessed January 11, 2016).

<sup>29</sup>“Obama Sanctions Burundi (but not North Korea) for Human Rights Violations,” One Free Korea, November 29, 2015, <http://freekorea.us/2015/11/29/obama-sanctions-burundi-but-not-north-korea-for-human-rights-violations/> (accessed January 11, 2016).

<sup>30</sup>“Treasury Designates Iranian Ministry of Intelligence and Security for Human Rights Abuses and Support for Terrorism,” February 16, 2012, <https://www.treasury.gov/press-center/press-releases/Pages/tg1424.aspx> (accessed January 11, 2016).

<sup>31</sup>Executive Order 13606, op. cit.

<sup>32</sup>“Obama Sanctions Syria’s Russian Enablers (but not North Korea’s Chinese Enablers),” One Free Korea, December 2, 2015, <http://freekorea.us/2015/12/02/obama-sanctions-syrias-russian-enablers-but-not-north-koreas-chinese-enablers/> (accessed January 11, 2016).

<sup>33</sup>Executive Order, “Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus,” [https://www.treasury.gov/resource-center/sanctions/Documents/belarus\\_eo.pdf](https://www.treasury.gov/resource-center/sanctions/Documents/belarus_eo.pdf) (accessed January 11, 2016).

<sup>34</sup>“Executive Order 13288—Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe,” <https://www.treasury.gov/resource-center/sanctions/Documents/13288.pdf> (accessed January 11, 2016).

<sup>35</sup>“Obama Sanctions Enablers of Censorship in Iran, Sudan & Syria (but not North Korea),” One Free Korea, November 30, 2015, <http://freekorea.us/2015/11/30/obama-sanctions-enablers-of-censorship-in-iran-sudan-syria-but-not-north-korea/> (accessed January 11, 2016).

- Sanctioned Burmese officials for buying arms from North Korea, but no senior North Korean officials for selling them.<sup>36</sup>
- In response to the Russian invasion of Ukraine, the U.S. sanctioned 16 people for being Russian officials<sup>37</sup> and froze the assets of Russian<sup>38</sup> (but not North Korean) officials and financiers for aggression against a neighboring country.

**Myth 4. There is nothing more the U.S. can impose on North Korea.** The U.S. has pursued a policy in which it incrementally increases punishments on Pyongyang for its repeated defiance of the international community. After he left office, former Assistant Secretary of State Kurt Campbell commented, “I thought North Korea was the most sanctioned country in the world, but I was (proven) wrong.... Myanmar is sanctioned about 10 times (more than) North Korea.... It would be possible for us to put more financial pressure on North Korea.... We can make life much more difficult through financial sanctions on North Korea.”<sup>39</sup>

Other Obama Administration officials have acknowledged that there is far more that could be done. In 2009, the State Department’s sanctions czar commented that the Administration was considering additional measures against North Korea. U.S. Six-Party Talks negotiator Glynn Davies said in 2013, “I think that there are always more sanctions we could put in place if needed.”<sup>40</sup> In March 2013, despite North Korea’s repeated violations of U.N. resolutions, a State Department official commented that there was still room to increase sanctions on North Korea: “[W]e haven’t maxed out, there is headroom.”<sup>41</sup>

President Barack Obama promised in 2013 a “significant, serious enforcement of sanctions.”<sup>42</sup> In April 2014, President Obama declared the U.S. would consider “further sanctions that have even more bite.”<sup>43</sup> Several years ago, a U.S. official privately commented that Washington was considering a “list of blood curdling sanctions.”

In May 2015, Secretary of State Kerry declared international intent to “increase the pressure and

<sup>36</sup>“Executive Order 13619 Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma,” July 11, 2012, <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13619.pdf> (accessed January 11, 2016).

<sup>37</sup>News release, “Treasury Sanctions Russian Officials, Members of the Russian Leadership’s Inner Circle, and an Entity for Involvement in the Situation in Ukraine,” March 20, 2014, <https://www.treasury.gov/press-center/press-releases/Pages/jl23331.aspx> (accessed January 11, 2016).

<sup>38</sup>“Executive Order 13662—Blocking Property of Additional Persons Contributing to the Situation in Ukraine,” March 24, 2014, [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine\\_eo3.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_eo3.pdf) (accessed January 11, 2016).

<sup>39</sup>“U.S. Needs to Toughen Sanctions on Recalcitrant N. Korea: Campbell,” Yonhap, September 26, 2014.

<sup>40</sup>Glynn Davies, Special Representative for North Korea Policy, “Remarks to Press at Ministry of Foreign Affairs,” Tokyo, Japan, November 25, 2013, <http://www.state.gov/p/eap/rls/rm/2013/11/218034.htm> (accessed January 11, 2016).

<sup>41</sup>Adrian Croft, “U.S. Wants EU to Put North Korean Bank on Sanctions List,” Reuters, March 25, 2013, <http://www.reuters.com/article/2013/03/25/us-korea-north-eu-idUSBRE9200TU20130325> (accessed January 11, 2016).

<sup>42</sup>“Remarks by President Obama and President Lee of the Republic of Korea in Joint Press Availability,” The White House, June 16, 2009, <https://www.whitehouse.gov/the-press-office/remarks-president-obama-and-president-lee-republic-korea-joint-press-availability> (accessed January 11, 2016).

<sup>43</sup>“President Obama Holds a Press Conference with President Park of the Republic of Korea,” April 25, 2014, The White House, <https://www.whitehouse.gov/photos-and-video/video/2014/04/25/president-obama-s-holds-press-conference-president-park-republic-k> (accessed January 11, 2016).

increase the potential of either sanctions or other means” to alter Kim Jong-un’s behavior. In September 2015, Secretary Kerry warned of “severe consequences” if North Korea “refuses to live up to its international obligations.”<sup>44</sup>

**Myth 5. Sanctions do not work.** Tougher measures were effective when applied. In 2005, the U.S. designated Banco Delta Asia (BDA) as a money-laundering concern<sup>45</sup> for facilitating North Korean illicit activities and banned all U.S. financial institutions from dealing with the Macau bank. The U.S. Department of the Treasury also considered implementing similar measures against other, larger banks, including the Macao branch of the Bank of China, against which it had “voluminous” evidence. However, the Bush Administration reportedly refrained to “avoid excessive damage to the financial system of Macao and a resultant clash with China.”<sup>46</sup>

North Korea was shunned by the international financial system due to the cumulative effect of the action, the clear signal that Washington would belatedly begin enforcing its laws, and a series of *sub rosa* meetings by U.S. officials throughout Asia. Two dozen financial institutions voluntarily cut back or terminated their business with North Korea, including institutions in China, Japan, Vietnam, Mongolia, and Singapore.<sup>47</sup> BDA targeted financial measures showed the efficacy of economic pressure tactics on North Korea. A North Korean negotiator admitted to a senior White House official, “You finally found a way to hurt us.”<sup>48</sup>

At the time, critics derided the BDA law enforcement initiative as a neoconservative attempt to undermine the six-party nuclear negotiations. Yet senior Obama Administration officials privately characterized the initiative as having been “very effective” and argued that President George Bush’s decision to rescind it was “a mistake that eased pressure on Pyongyang before it took irreversible steps to dismantle its nuclear program.”<sup>49</sup> The Obama Administration now “hopes to recreate the financial pressure that North Korea endured back in 2005 when [the United States] took the action against Banco Delta Asia.”<sup>50</sup>

**Myth 6. China would never go along with targeted financial measures.** China has shown itself to be part of the problem rather than part of the solution by turning a blind eye to North Korean proliferation crossing China and not fully implementing U.N. measures. But as former Treasury Department official Juan Zarate commented in his book *Treasury’s War*, the U.S.

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<sup>44</sup>“Kerry Warns N.Korea of ‘Severe Consequences’ over Nukes,” *The Chosun Ilbo*, September 18, 2015.

<sup>45</sup>Under the Patriot Act, § 311, 31 U.S. Code § 5318A.

<sup>46</sup>Donald Greenlees and David Lague, “The Money Trail That Linked North Korea to Macao,” *The New York Times*, April 11, 2007, [http://www.nytimes.com/2007/04/11/world/asia/11cnd-macao.html?\\_r=0](http://www.nytimes.com/2007/04/11/world/asia/11cnd-macao.html?_r=0) (accessed January 12, 2016).

<sup>47</sup>Daniel L. Glaser, testimony before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, September 12, 2006, [http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=deda4b45-d225-4a22-8ec4-2154cbc61ded](http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=deda4b45-d225-4a22-8ec4-2154cbc61ded) (accessed January 11, 2016).

<sup>48</sup>Juan Zarate, *Treasury’s War: The Unleashing of a New Era of Financial Warfare* (New York: Public Affairs, 2013).

<sup>49</sup>Jay Solomon, “U.S. Pursues Financial Leverage over North Korea,” *The Wall Street Journal*, July 1, 2009, <http://online.wsj.com/article/SB124632106686771095.html> (accessed January 11, 2016).

<sup>50</sup>Margaret Brennan, “U.S. Urges Nations to Cut North Korea’s Financial Link,” CBS News, April 5, 2013, [http://webcache.googleusercontent.com/search?q=cache:n3xFhCvg6QAJ:www.cbsnews.com/8301-202\\_162-57578210/u.s-urges-nations-to-cut-north-koreas-financial-link](http://webcache.googleusercontent.com/search?q=cache:n3xFhCvg6QAJ:www.cbsnews.com/8301-202_162-57578210/u.s-urges-nations-to-cut-north-koreas-financial-link) (accessed January 11, 2016).

action on Banco Delta Asia compelled Chinese banks to make a choice—appear legitimate by scrutinizing North Korean illicit financial activity in their banks, or risk becoming a financial rogue and losing access to the U.S. financial system.

As Zarate points out, it became apparent that Chinese financial entities could be persuaded to follow the U.S. Treasury's lead and act against their government's own stated foreign policy and political interests.

### **Hitting the Snooze Bar on North Korean Sanctions**

While implementing new sanctions measures is important, fully implementing and enforcing already existing far-reaching measures is as important, if not more critical. For years, the Obama Administration has vowed that it is contemplating additional sanctions measures but instead pursued a policy of timid incrementalism. Strong vows to act resolutely were not backed up by strong actions.

Unilateral U.S. actions against Iran, combined with diplomatic pressure, led other nations to impose their own financial and regulatory measures against Tehran. Collectively, the international sanctions isolated Iran from the international banking system, targeted critical Iranian economic sectors, and forced countries to restrict purchases of Iranian oil and gas, Tehran's largest export.

Just as strong measures induced Iran back to the negotiating table, more robust measures are needed to leverage North Korea. The United States should use its action against Iran as a model for imposing the same severity of targeted financial measures against North Korea.

However, by instead pulling our legal punches but always promising to be tougher “the next time,” Washington squandered the opportunity to more effectively impede progress on North Korea's nuclear and missile programs and coerce compliance with U.N. resolutions. The collective international finger-wagging and promises to be tougher the next time have allowed North Korea additional years to develop and refine its nuclear weapons and the means to deliver them. Pyongyang feels that its own strategic patience policy can outlast that of the United States.

Washington should no longer hold some sanctions in abeyance, to be rolled out after the next North Korean violation or provocation. There will be little change until North Korea feels pain and China feels concern over the consequences of Pyongyang's actions and its own obstructionism. The U.S. needs to sharpen the choices for North Korea by raising the risk and cost for those violating laws and resolutions and who have been willing so far to facilitate North Korea's prohibited programs and illicit activities.

U.S. actions can have ripple effects by altering the cost-benefit analysis of those engaging with North Korean shady entities as well as induce other nations to duplicate American law enforcement actions.

### **What Should Be Done**

The United States should increase punitive measures against North Korea, including enhancing sanctions to the same degree as they have been applied against other rogue regimes.

In the U.N., the U.S. should press the Security Council to:

- **Close loopholes in Resolution 2094**, such as including Article 42 of Chapter VII of the U.N. Charter, which allows for enforcement by military means. This would authorize naval ships to intercept, board, and inspect North Korean ships suspected of transporting precluded nuclear, missile, and conventional arms, components, or technology.
- **Adopt a more comprehensive list of prohibited items and materials.** The U.N. Experts Group identified several items and materials critical to Pyongyang's nuclear programs that should be—but have not been—added to the list of products banned for transfer to North Korea. These include maraging steel, frequency changers (also known as converters or inverters), high-strength aluminum alloy, filament winding machines, ring magnets, and semi-hard magnetic alloys in thin strip form.<sup>51</sup>
- **Consider constraining trade of major North Korean imports and exports.** The U.S. should apply sanctions similar to those imposed on significant Iranian imports and exports. The U.S. should also restrict North Korean energy imports and the export of North Korean resources. U.S. law restricts access to the U.S. financial system by foreign companies and banks if they do business with Iran's energy sector or process petroleum transactions with Iran's central bank.

The United States should unilaterally:

- **Designate North Korea as a primary money-laundering concern.** In 2002, 2004, and 2011, the U.S. Treasury designated Ukraine, Burma, and Iran, respectively, as “jurisdiction[s] of primary money laundering concern.”<sup>52</sup>
- **Ban North Korean financial institutions' correspondent accounts<sup>53</sup> in the United States.** Designating North Korea as a money-laundering concern would prohibit North Korea from “the opening or maintaining in the United States of a correspondent account or payable-through account by any domestic financial institution or domestic financial agency for or on behalf of a foreign banking institution.”<sup>54</sup>
- **Publicly identify and sanction all foreign companies, financial institutions, and governments assisting North Korea's nuclear and missile programs.** Executive Orders 13382 and 13551 enable targeted financial and regulatory measures, including freezing of assets, against any entity suspected of helping North Korean nuclear, missile, and conventional arms; criminal activities; money laundering; or import of luxury goods.

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<sup>51</sup>U.N. Panel of Experts, “Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009),” <http://www.ncnk.org/resources/publications/UN-Panel-of-Experts-Report-May-2011.pdf/>.

<sup>52</sup>U.S. Department of the Treasury, “Imposition of Special Measures Against Burma,” April 2, 2004, *Federal Register*, Vol. 69, No. 70 (April 12, 2004), pp. 19093–19098, [http://www.fincen.gov/statutes\\_regs/patriot/pdf/burma.pdf](http://www.fincen.gov/statutes_regs/patriot/pdf/burma.pdf) (accessed September 26, 2013), and press release, “Fact Sheet: New Sanctions on Iran,” U.S. Department of the Treasury, November 21, 2011, <http://www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx> (accessed January 11, 2016).

<sup>53</sup>“Foreign financial institutions maintain accounts at U.S. banks to gain access to the U.S. financial system and to take advantage of services and products that may not be available in the foreign financial institution's jurisdiction.” Federal Financial Institutions Examination Council, Bank Secrecy Act/Anti-Money Laundering InfoBase, s.v., “Correspondent Accounts (Foreign)—Overview,” [http://www.ffeic.gov/bsa\\_aml\\_infobase/pages\\_manual/OLM\\_047.htm](http://www.ffeic.gov/bsa_aml_infobase/pages_manual/OLM_047.htm) (accessed January 11, 2016).

<sup>54</sup>U.S. Department of the Treasury, Financial Crimes Enforcement Network, “Section 311—Special Measures,” [http://www.fincen.gov/statutes\\_regs/patriot/section311.html](http://www.fincen.gov/statutes_regs/patriot/section311.html) (accessed January 11, 2016).

The U.S. should call on foreign banks, businesses, and governments to reciprocate U.S. actions against North Korean and foreign violators.

- **Impose third-party sanctions.** The U.S. should penalize entities, particularly Chinese financial institutions and businesses, that trade with those on the sanctions list or export prohibited items. The U.S. should also ban financial institutions that conduct business with North Korea from conducting business in the United States.<sup>55</sup>
- **Compel the removal of North Korea from SWIFT financial transfers.** The Obama Administration and European Union pressured the Belgian-based Society for Worldwide Interbank Financial Telecommunication (SWIFT) to disconnect sanctioned Iranian banks in 2012. The system is the world hub for electronic financial transactions.
- **Urge the European Union and other countries to sever ties with North Korea's Foreign Trade Bank.** The Foreign Trade Bank, North Korea's main financial portal for international trade, was blacklisted by the U.S. and China in 2013 for facilitating North Korean nuclear and missile proliferation.
- **Target the North Korean government writ large, not just individuals or departments.** The U.S. determined in Executive Order 13551 that the North Korean government itself was involved in illicit and deceptive activities.<sup>56</sup>
- **Formally charge North Korea as a currency counterfeiter.** U.S. officials have repeatedly declared that North Korea is counterfeiting U.S. currency.<sup>57</sup> Under international law, counterfeiting of a country's currency "qualifies as a proxy attack on its national integrity and sovereignty—and a *causus belli* to justify self-defense."<sup>58</sup>
- **Return North Korea to the state sponsors of terrorism list.** Inclusion on the list requires the U.S. government to oppose loans by international financial institutions, such as the World Bank, International Monetary Fund, and Asian Development Bank.<sup>59</sup>
- **Tighten maritime counterproliferation.** The U.S. should target shipping companies and airlines caught proliferating such as Air Koryo. If they are state-owned, the U.S. should sanction the relevant government ministry. Sanctions have been applied against the Islamic Republic of Iran Shipping Line and Iran Air.
- **Enhance U.S. inspection of shipping companies transiting ports that consistently fail to inspect North Korean cargo.** Any vessel or aircraft that has transported prohibited North Korean items should be seized upon entering U.S. jurisdiction.

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<sup>55</sup>Executive Order 13551 applies U.S. sanctions to anyone who has assisted "any person whose property and interests in property are blocked pursuant to this order." Barack Obama, "Blocking Property of Certain Persons with Respect to North Korea," Executive Order 13551, § 1(a)(ii) (E), <http://www.whitehouse.gov/the-press-office/2010/08/30/executive-order-president-blocking-property-certain-persons-with-respect> (accessed January 11, 2016).

<sup>56</sup>Executive Order 13551 concludes by "finding that the continued actions and policies of the Government of North Korea, [including] its illicit and deceptive activities in international markets through which it obtains financial and other support, including money laundering, the counterfeiting of goods and currency, bulk cash smuggling, and narcotics trafficking...constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." Ibid. (emphasis added).

<sup>57</sup>Phillip Crowley, daily press briefing, U.S. Department of State, August 2, 2010, <http://www.state.gov/r/pa/prs/dpb/2010/08/145491.htm> (accessed January 11, 2016).

<sup>58</sup>Zarate, *Treasury's War*.

<sup>59</sup>Section 1621, "Opposition to Assistance by International Financial Institutions to Terrorist States," International Financial Institutions Act (Public Law 95-118), as cited in Mark E. Manyin, "North Korea: Back on the Terrorism List?" Congressional Research Service *Report for Congress*, June 29, 2010, <http://www.nkeconwatch.com/nk-uploads/DPRK-back-on-terrorism-list.pdf> (accessed January 11, 2016).

- **Implement sanctions for human rights violations.** Impose targeted financial measures against all North Korean entities—and their leadership—identified by the commission and then call upon other nations to take commensurate action.
- **Publicly highlight Chinese obstructionism** to addressing North Korea’s heinous human rights abuses and Beijing’s complicity through forced repatriation of refugees in violation of several international accords.
- **Fully fund U.S. defense requirements.** It is unrealistic to think that the United States can cut defense spending by \$1 trillion over the next decade and still maintain its current level of commitment and deterrence.

For its part, South Korea should:

- **Expand the scope of recently resumed propaganda broadcasts** along the demilitarized zone. These efforts should include assessing the viability of expanding cell phone signals into North Korea, using drones along North Korean coasts, and removing any restrictions on nongovernment organizations sending information leaflets via balloons into North Korea. The August land mine crisis showed the sensitivity of the Kim Jong-un regime to psychological operations.
- **Sever its involvement in the Kaesong industrial park.** The joint business venture was always more focused on political than economic objectives. Since its inception, the Kaesong venture failed to achieve its primary objective of inducing economic and political reform in North Korea and moderating the regime’s belligerent foreign policy.
- **Request U.S. deployment of the terminal high altitude air defense (THAAD) missile defense system.** South Korea’s indigenous missile defense system is insufficient to defend against North Korea’s growing nuclear and missile threat.
- **Pass its first North Korean Human Rights Act,** which would provide funding for human rights groups and impose conditions on engagement with Pyongyang. The National Assembly has debated legislation for ten years—it is time to act.

## Conclusion

North Korea’s nuclear test is a flagrant violation of numerous U.N. Security Council resolutions. It reflects Pyongyang’s continued pursuit of its prohibited nuclear weapons programs in open defiance of the international community despite countless attempts by the U.S. and its allies to reach a diplomatic resolution.

The regime has repeatedly asserted it has no intention of ever abandoning its nuclear weapons, even revising its constitution to enshrine itself as a nuclear weapons state. North Korea’s continuing improvement and augmentation of its nuclear arsenal threatens the U.S. and its allies. It is time for the Obama Administration to abandon its policy of timid incrementalism and fully implement existing U.S. laws by imposing stronger sanctions on North Korea and to work with Congress to determine additional measures.

Neither sanctions nor diplomacy alone is a panacea, both are essential and mutually supporting elements of a comprehensive integrated strategy utilizing all the instruments of national power. The U.S. has strong tools, it has just lacked the resolve to use them.

The imperative question would be, “Why has the United States hesitated to impose the same legal measures against North Korea that it has already used against other countries for far less egregious violations of U.S. and international law?”



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