

Statement before the
House Committee on Foreign Affairs
Subcommittee on Asia and the Pacific

**“North Korea’s Perpetual Provocations: Another Dangerous,
Escalatory Nuclear Test”**

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September 14, 2016

Chairman Salmon, Representative Sherman, and distinguished members of the Committee:

Thank you for the opportunity to testify before you today on the U.S. response to the North Korean threat.

North Korea's fifth nuclear test conducted on September 9th—the second this year alone—follows the test of a submarine-launched ballistic missile in early August. These tests show that North's nuclear arsenal and capability are developing at an alarming rate. While we can't confirm the North's claim that it has mastered the ability to mount miniaturized warheads capable of fitting on a ballistic missile that can reach the U.S. homeland, the test was nonetheless the strongest to date. The device that was tested on Friday reportedly yielded 20 to 30 kilotons, a much more powerful blast than North Korea's 7 to 9 kiloton detonation in January. Pyongyang issued a statement that it had tested a "nuclear warhead that has been standardized to be mounted on a strategic ballistic rockets of the Hwasong artillery units of the Strategic Forces of the Korean People's Army." By using the word "standardized," Kim Jong-un likely intended to convey that the North is able to produce nuclear warheads to arm missile force in quantity using various fissile materials. It shows Pyongyang's progress toward nuclear warhead miniaturization, directly threatening the United States.

What should be our response? All three U.S. administrations going back to the Bill Clinton presidency in the early 1990s have tried to address the North Korean threat through various means including negotiations sweetened by economic aid to Pyongyang. The North Koreans have been happy to pocket the aid, but they haven't delivered on their promises of ending their nuclear program. Far from moderating, the Kim Jong-un regime has accelerated the pace of the missile and nuclear program under his watch, and has been more brutal and unpredictable than ever, more so than even his father, Kim Jong-il.

In response to the growing North Korean threat, the community of Korea watchers is deeply divided as to what the next steps should be. In the aftermath of the fifth nuclear test, a number of Korea experts argue that the sanctions strategy has failed as an instrument of U.S. policy and it's time to return to diplomacy and negotiations with North Korea, even without preconditions. Other experts call for ratcheting up even more pressure on the Kim regime through sanctions enforcement and other measures such as information warfare, even if it means risking escalation by the North or even potential regime instability.

I believe returning to the talks now with the North by dropping preconditions will not yield the result we seek, which is denuclearization by the North. As we've seen with Burma, Iran, and Cuba, the Obama administration is not opposed to holding talks or negotiations with its adversaries. But the timing is not right to ease sanctions and return to dialogue with the North, particularly since the Kim regime itself has repeatedly said that it is no longer interested in

denuclearization talks. In fact, the Kim regime has stressed in the past few years that it has no intention of ever giving up its nuclear arsenal, even revising its constitution to enshrine itself as a nuclear weapons state. The North sees possessing nuclear weapons as essential for its national identity and security and for achieving power and prestige on the international stage. If there is any chance at all that the North would ever entertain the idea of giving up its nuclear program—which is, admittedly, only a remote possibility—it would be only because we have made it so that the Kim regime is facing a stark choice between keeping the nuclear arsenal and regime survival.

Tougher Sanctions, Better Enforcement

We have not yet done that. It is premature to argue that sanctions against North Korea have failed. It is important to remember that until February of this year, the U.S. did not maintain comprehensive sanctions against North Korea. As many North Korea sanctions experts like Joshua Stanton and Bruce Klinger have extensively written about and former U.S. government officials like Kurt Campbell have pointed out, the argument that North Korea sanctions have maxed out was simply untrue. Until this year, U.S. sanctions against North Korea were a mere shadow of the sanctions applied to Iran, Syria, or Burma, and even narrower than those applicable to countries like Belarus and Zimbabwe.¹

Today, we finally have stronger sanctions in place for North Korea ever since the President has signed into law the North Korea Sanctions and Policy Enforcement Act in February, which gave him expansive new powers. The following month, in March, the United Nations Security Council also unanimously passed a resolution, United Nations Security Council Resolution 2270, imposing new sanctions on the Kim regime, including mining exports. Moreover, triggered by requirements of the Sanctions Act, in June, the Obama administration finally designated North Korea as a primary money laundering concern, and in July, the Treasury Department designated Kim Jong-un and ten other senior North Korean individuals and five organizations for human rights violations.

For sanctions to work, however, they will need to be pursued over the course of several years, not a mere six months, and most importantly, they need to be enforced. Here, our chief problem has been that China is still reluctant to follow through in fully and aggressively implementing the UN sanctions. There are many examples of China's non-compliance. For example, under UN Security Council Resolution 2270, all UN member states are required to inspect all cargo coming in

¹See Joshua Stanton, "North Korea: The Myth of Maxed-Out Sanctions," *Fletcher Security Review*, Vol.2, No.1, January 21, 2015; Joshua Stanton, "Sanctions Worked Against North Korea, and They Can Work Again," *The Weekly Standard*, January 29, 2016; Joshua Stanton and Sung Yoon Lee, "Financial Could Force Reforms in North Korea," *The Washington Post*, February 20, 2014; Bruce Klinger, "Six Myths About North Korea Sanctions," CSIS Korea Chair Platform, December 19, 2014.

and out of North Korea, but there is a new report showing that China is essentially ignoring this requirement. Trucks are reportedly constantly traveling from China to North Korea to deliver goods and there appears to be little evidence customs agents are checking trucks as required.² Sanctioned North Koreans also have been seen leaving Chinese ports, and China continues to buy banned minerals like gold from the North, while continuing to import coal and iron from the North, trade which is supposed to be limited to “livelihood” purposes.³ *Washington Post* reporter Anna Fifield reported in August that Chinese customs data showed that its trade with North Korea as of June this year was valued at \$504 million, almost 10 percent higher than the previous year, in spite of three months of sanctions in place.⁴

President Obama has yet to use the broad powers that Congress gave him to make China pay a cost for this support of North Korea. He is yet to penalize any Chinese companies or banks for continuing to do business with the Kim regime. Confronting Kim Jong-un credibly depends on getting his bankers in China, Russia, Europe, and other places to comply with the sanctions, which means a credible threat of secondary sanctions is necessary on the part of the U.S. Section 104 of the North Korea Sanctions and Policy Enhancement Act imposes severe and mandatory sanctions in order to target the slush funds that facilitate Kim Jong-un’s proliferation, arms trafficking, cyber attacks, the trade in certain minerals, luxury goods imports, human rights abuses, and censorship.⁵ The purpose of this law was to force the administration to cut off the funds that maintain the Kim regime and to send an unequivocal message to Chinese, Russian, and other third party banks that either they can do business with North Korea or the U.S. but not both. Congress made those sanctions mandatory precisely to make the Obama administration enforce U.S. law.

But the Obama administration has been slow to sanction any of the dozens of third-country enablers of North Korea proliferation and money laundering even after the report from the U.N. Panel of Experts came out which catalogued a long list of third party enablers, such as China-based trading companies, banks, and middle-men. In a rare proliferation financing prosecution, the Singapore District Court charged Chinpo Shipping Company and its director for financing North Korean weapons smuggling and proliferation (Chinpo’s outward remittances on behalf of North Korea

²Matthew Carney, “Inside the Chinese border town sustaining North Korea’s rogue regime,” Australian Broadcasting Corporation, September 11, 2016. <http://mobile.abc.net.au/news/2016-09-11/chinese-north-korean-trade-at-dandong-ignores-sanctions/7832178>

³Trade in North Korean gold, coal and iron to China continues in April,” NK Pro, June 17, 2016. <https://www.nknews.org/pro/trade-in-north-korean-gold-coal-and-iron-to-china-continues-in-april/>

⁴Anna Fifield, “U.S. Policy on North Korea Relies on China—and Provokes It at the Same Time,” *The Washington Post*, August 23, 2016.

⁵ North Korea Sanctions and Policy Enforcement Act of 2016. <https://www.congress.gov/bill/114th-congress/house-bill/757/text/enr?q=%7B%22search%22%3A%5B%22%5C%22hr757%5C%22%22%5D%7D&resultIndex=1>

nationals totaled \$40 million).⁶ But so far no action has been taken against the Singapore branch of Bank of China, which financed Chipo's transactions and whose staff knowingly deceived their U.S. correspondents by directing Chinpo to conceal any North Korean links to the shipment.⁷ As Joshua Stanton notes, whether Bank of China knew the ultimate purpose of the transaction is no defense when its legal obligations were to perform due diligence on its customers, particularly customers linked to North Korea.⁸

Fortunately, when the Congress passed the North Korea Sanctions and Policy Enhancement Act, Congress also included reporting requirements, including a requirement that the administration report to Congress 180 days after the enactment of the legislation on exactly what it has done to enforce the new sanctions. The time has now come for the Congress to hold the administration accountable on what it has done to enforce U.S. law and ask the administration why it has not imposed any secondary sanctions against third-party North Korea enablers.

Secondary sanctions are essential to making North Korea sanctions work, just as they were essential to making Iran sanctions work. History gives us a useful example on this. In September 2005, the U.S. Treasury Department designated Macau-based Banco Delta Asia for laundering North Korea's counterfeit dollars, which led to the blocking of \$25 million in North Korean deposits. This action blocked one of the key streams of hard currency for sustaining the Kim regime. A North Korean officer told a U.S. official that the U.S. has finally found a way to hurt the Kim regime. The North eventually returned to the talks and agreed to give up its nuclear weapons program after the U.S. agreed to return the funds to the Kim regime. Unfortunately, after this important leverage has been traded away, the talks fell apart over verification of the North's disarmament. What the case showed is that third countries, in this case, China, will comply with sanctions if its banks face real consequences for conducting illicit business with North Korea. As the Iran nuclear deal ultimately showed, sanctions can get results but only if they are tough, implemented, and sustained over several years. This requires political will on the part of the U.S. government, particularly a willingness to sanction third-country entities that facilitate North Korea's illicit activities and proliferation.

In addition to enforcing the existing sanctions, the next steps are to close loopholes and add even more individuals and entities to the list to further confront North Korea with a clear choice between keeping its nuclear program and regime survival. For example, the administration should work to close the "livelihood" loophole in the coal and iron export sanctions of UNSCR 2270. As it stands, the UN resolution prohibits North Korea from selling coal, iron, or iron ore unless the

⁶ See UN Security Council, Report of Panel of Experts, February 24, 2016, Section E, "Chinpo Shipping and Financing of Proliferation," 65.

http://www.un.org/ga/search/view_doc.asp?symbol=s/2016/157

⁷Ibid.

⁸See Joshua Stanton's *One Free Korea* blog. <http://freetkorea.us/2016/03/09/u-n-report-bank-of-china-helped-shipper-to-hide-n-korean-connections-for-illegal-arms-deal/>

transactions “are determined to be exclusively for livelihood purposes.” The sanctions would be much tighter and easier to enforce without this loophole.

We can also ban North Korea’s exports of food and labor they rely on for hard currency and add more entities to the sanctions list. The North Korean regime sends more than 50,000 people to work abroad in conditions that amount to forced labor to circumvent UN sanctions and earn hard currency for the regime. The vast majority of them are working in China and Russia in mining, logging, textile and construction, but they are also in Africa, Europe, the Middle East and Southeast Asia.⁹ Marzuki Darusman, the special rapporteur on human rights in North Korea, stated in a report to the UN Assembly a year ago that these workers are providing up to \$2 billion annually.¹⁰ The U.S. needs to call out and pressure the various host countries to stop accepting these North Korean workers.

There are also other entities that could be added to the list. Chairman Royce pointed out, for example, that we can add to the list the state-owned Koryo airline, which continues to “flagrantly violate the ban on luxury goods and [is] implicated in the proliferation of Scud missile parts.”¹¹ In addition, Chairman Royce is also correct to point out that the administration should work with European governments to better block luxury items—including cars, watches, and liquor—from reaching the North Korean ruling elite.¹² Thus far, the Kim regime has managed to keep the flow of luxury goods to the elite class. Cutting off this flow should be an even greater priority for us.

We should also work to disconnect North Korean banks from the Society for Worldwide Interbank Financial Telecommunications (SWIFT) system. Security firm Symantec has linked the hackers who stole \$81 million from a bank in Bangladesh in early February to North Korea. Symantec researchers say that they have found evidence that the same hackers hit a bank in the Philippines and attempted to steal over \$1 million from a bank in Vietnam. One of the pieces of malware used in the targeted attacks on these Southeast Asian banks has been used by Lazarus, a hacking group that has been linked to North Korea and also targeted U.S. and South Korean assets. The hackers reportedly deployed a rare piece of code that had been seen in only two cases in the past—the hacking attack at Sony Pictures in December 2014 and attacks on South Korea’s banks and media companies in 2013, both of which were conducted by North Korea. In Iran’s case, even though it was controversial, Congress introduced legislation that would authorize sanctions against SWIFT and the EU passed sanctions regulations of its own on Iranian banks. SWIFT in the end cut off 30 Iranian banks, including its Central Bank. Similar effort

⁹“UN investigator: North Koreans doing forced labor abroad to earn foreign currency for country,” *Associated Press*, October 28.

¹⁰Ibid.

¹¹“Chairman Royce Condemns Apparent North Korean Nuclear Test,” US House Committee on Foreign Affairs, September 9, 2016. <http://foreignaffairs.co.nz/2016/09/09/chairman-royce-condemns-apparent-north-korean-nuclear-test/>

¹²Ibid.

should be now undertaken against North Korea to remove North Korea from SWIFT and other financial messaging services.

Beyond Sanctions: Containment, Subversion, Diplomacy and Deterrence

In addition to these sanctions measures, there are other actions the administration should pursue to ratchet up pressure on the regime. This requires a multipronged strategy. It includes strengthening deterrence by enhancing missile defense systems around the Korean peninsula, including deployment of the terminal high altitude air defense missile (THAAD) system to South Korea. The Park Geun-hye government has so far stood up to Chinese pressure and domestic opposition in her decision to deploy THAAD. Deployment should be sped up so it doesn't wait until next year. Next steps should include integrating South Korea into the comprehensive U.S.-run ballistic missile defense network and deploying more advanced air and naval assets, including sea-based ballistic missile defenses, against the North Korean submarine missile threat.

We should actively look into ways to increase both funding and means of information dissemination in to North Korea and come up with a comprehensive strategy to help the people of North Korea break the information blockade imposed by the state. Historically, the North Korean regime has been able to maintain tight control over the population by indoctrination and maintaining a monopoly on information. But unofficial information is already increasingly seeping into the North over the porous border with China, chipping away at regime myths and undermining the solidarity of the North Korean people. One South Korean academic who visited a region in China on the border with North Korea a few years ago noted that an MP5 mobile player, which costs about \$20 then, is being sold widely in the North, boosting the spread of South Korean dramas and film.¹³ We should look into ways to increase our efforts to support radio broadcasts and other means—including covert action—to transmit targeted information into North Korea.

North Korea should be also placed back on the State Sponsors of Terrorism list. Despite the State Department's reluctance to put it back since North Korea was removed in 2008, I believe we can find a legal justification to do so. There is mounting evidence that the Kim regime provided support to terrorist groups, shipping arms to Hamas and Hezbollah. One can also cite a long record of regime attempts to assassinate human rights activists and North Korean defectors, its assistance of Syria's chemical weapons program, not to mention extensive cyber-attacks conducted against South Korea and the U.S. in recent years, including the Sony hacking incident.

¹³ "Analysts say Hallyu is Moving Fast in the North," *Korea Joongang Daily*, July 31, 2014.

Finally, as we continue with our various attempts to ratchet up pressure on the North, we need to continue to strengthen effective our alliance with South Korea and Japan. We also need to continue our efforts to pressure/lobby China and hold discussions with Beijing not only on North Korea's nuclear program but on potential contingencies in North Korea, including instability scenarios and the possibility of unification. While Beijing's core strategy toward North Korea has not changed and is unlikely to change anytime soon, the strains between Beijing and Pyongyang and Beijing's worries over the increasing possibility of instability in the North suggest there is an opportunity to launch more serious talks with China to take advantage of its concerns. Instead of standing by, hoping that China will change its policy toward the North on its own, the U.S. should be working hard in behind-the-scenes talks to make China understand that a unified Korea—or at the very least a North Korea with a new, reformist regime on the Chinese model—could be in its interest as well as ours, and that continuing to provide the Kim family dynasty with a virtual blank check is a strategic liability for China.

Reaching such an understanding with Beijing is, to be sure, a long shot, but I believe it is more feasible now than in the past. As controversial as this may be, the U.S. could assuage China's main security concerns by pledging not to deploy our troops north of the 38th parallel even if Korea were unified. We could even pledge to withdraw our troops altogether from the peninsula in the event of unification if that's what it takes to win Chinese support for such a path forward. At the end, the odds of a breakthrough with Beijing are slim, but the initiation of such talks, and their continuation over an extended period, is nonetheless useful as it could increase China's comfort level with regime change in North Korea and could eventually pave the way for Beijing to scale back or even end its subsidies to Pyongyang.

Conclusions: Promoting Unification

Even as we push for enforcement of sanctions and ratcheting up pressure on the Kim regime, I am fully aware that these measures too could ultimately fail in bringing about change in the North. The Kim regime may very well never give up its nuclear weapons program and its brinkmanship tactics, and no amount of pressure is guaranteed to change the regime's calculus. Nonetheless, after more than two decades of dealing with North Korea, we are left with few options. We've already tried diplomacy and various negotiations with the North for several decades. Since the October 12, 1994, Agreed Framework, there have been many talks and even agreements, but all agreements eventually broke down as the North could not accept the verification requirements needed to insure that it was keeping its part of the bargain. If we manage to enforce sanctions, including secondary sanctions over a sustained period of time, this would for the first time decisively raise the cost for North Korea of its pursuit of a nuclear weapons program, and this might make Pyongyang reconsider its policies.

Let's assume, however, that the critics of sanctions policy are right and that even the strictest enforcement of sanctions will not make North Korea reconsider its nuclear program. Even so, enforcement of sanctions and a containment policy is still useful. First, North Korea can be an object case to send a message to other rogue regimes around the world that there will be significant cost for flouting international law. Second, sanctions and containment could weaken Kim Jong-un's grip on power and might precipitate regime instability—an outcome we should ultimately welcome, not fear, because we should be pursuing a policy of Korean unification.

Whatever North Korea's immediate future, there is no question that over the long-term its prospects are bleak. While Kim Jong-un's hold on power seems strong for now, there is a sign of growing discord among the ruling class as it struggles for power and influence. We have recently seen increasing rate of defection by fairly high-ranking elites, including a North Korean general and diplomats such as the Deputy Ambassador to the United Kingdom, Thae Yong-ho. A key reason why the North Korean state has been able to persist for this long has been the Kims' ability to maintain the support of powerbrokers in the party, the military, and the government. Frequent purges and executions of high-level elites in recent years may help to strengthen Kim's rule in the short-run by terrorizing potential rivals within the regime. But fundamentally his heavy-handed rule is more likely to corrode long-term elite support of the regime as these purges and executions raise questions in the minds of North Korean elites of their physical safety and whether the 31-year-old heir to the throne is worthy of their trust. The elites must know that if Kim can turn on his uncle and other very senior elites, any of them could be next in his gun-sights.

This is where sanctions enforcement will help. The more we intensify economic pressure against the regime, the more we shake the confidence of the elites and threaten to stir discontent among the people that Kim relies on for support. The more we enforce sanctions, the more Kim Jong-un will be left vulnerable as he will have less foreign currency to underwrite the lifestyles of the North Korean elite whose support is essential to maintaining his grip on power. At the end of the day, if the North's policy will likely change only if a fundamentally different leadership emerges. Tightening the sanctions screws can help hasten that day even if it doesn't lead to an immediate termination of North Korea's nuclear program.