

# THE ROOT OF ALL EVIL

Money, Rice, Crime & Law in North Korea



Joshua Stanton

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## ABOUT THE COMMITTEE FOR HUMAN RIGHTS IN NORTH KOREA

The Committee for Human Rights in North Korea (HRNK) is the leading U.S.-based nonpartisan, non-governmental organization (NGO) in the field of North Korean human rights research and advocacy, tasked with focusing international attention on human rights abuses in that country. It is HRNK's mission to persistently remind policymakers, opinion leaders, and the general public that more than 20 million North Koreans need our attention. Since its establishment in October 2001, HRNK has played an important intellectual leadership role in North Korean human rights issues by publishing over 50 major reports (available at <https://www.hrnk.org/publications/hrnk-publications.php>). Recent HRNK reports have addressed issues including North Korea's overseas workers, the influx of outside information into North Korea and the regime's response, the health and human rights of North Korean children, and North Korea's political prison camps.

HRNK is the first and only NGO that solely focuses on North Korean human rights issues to receive consultative status at the United Nations (UN). It was also the first organization to propose that the human rights situation in North Korea be addressed by the UN Security Council. HRNK was directly and actively involved in all stages of the process supporting the work of the UN Commission of Inquiry (COI) on North Korean human rights. Its reports have been cited numerous times in the report of the COI, the reports of the UN Special Rapporteur on North Korean human rights, a report by the UN Office of the High Commissioner for Human Rights, two reports of the UN Secretary-General António Guterres, and several U.S. Department of State Democratic People's Republic of Korea Human Rights Reports. HRNK has also regularly been invited to provide expert testimony before the U.S. Congress.

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*The unnamed correspondents of the Daily NK and Rimjin-gang, who speak the truth from inside North Korea at the risk of their lives and those of their families, have made an inestimable contribution to this paper, and to our understanding of their homeland. Professor Sung-Yoon Lee of Tufts University has shared his historical and cultural knowledge with me during our many years of friendship. Former Congressman Ed Royce and his able staffers, Matthew Zweig and Hunter Strupp, made the North Korea Sanctions and Policy Enhancement Act (NKSPEA) and Title III of the Countering America's Adversaries Through Sanctions Act the law of the land. Bill Newcomb, Stephanie Kleine-Ahlbrandt, and Aaron Arnold—all former U.S. Representatives to the U.N. Panel of Experts established under Resolution 1874—engaged me in many thoughtful discussions about building an international enforcement coalition.*

*Many FBI Special Agents and Intelligence Analysts, and the U.S. Attorney's Office for the District of Columbia, gave me the privilege of acting as a consultant in several of their money laundering, sanctions, and asset forfeiture cases involving North Korea. I am especially grateful to former Assistant U.S. Attorneys Zia Faruqui and Arvind Lal, and former FBI Intelligence Analyst Nick Carlsen. Anthony Ruggiero, a former Treasury and Senate staffer who later worked in the National Security Council, often exchanged and cross-checked information about sanctions enforcement history with me. I am deeply indebted to the HRNK Board, to Dr. Nicholas Eberstadt and Robert Joseph for their careful reviews and thoughtful comments, and to Greg Scarlatoiu for offering me the intellectual freedom to go beyond a survey of how sanctions obstruct evil and explain their untapped potential as an instrument of justice. Maria Del Carmen Corte, Rosa Park-Tokola, and Raymond Ha spent many hours proofreading, cite-checking, formatting, and designing this paper's cover,*

*which features a ship that was seized and forfeited under the authority of the NKSPEA. Throughout this process, my wife was my support, my muse, and a constant resource of wisdom and encouragement.*

*What I learned from all of these interactions and countless others braided into a vision of how law and diplomacy can be instruments of economic justice, accountability, and peace in Korea. Justice is not a distant goal that must await historical inevitabilities. Peace is not a condition in which our economy aids and abets a state's war against one set of defenseless subjects, or its preparations to subjugate the next one. We owe it to the people of Korea not to delay justice—or thereby, to deny it—but to use our laws to hasten it, and the day when all Koreans can live freely as a nation once again.*

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## ABOUT THE AUTHOR

JOSHUA STANTON is an attorney in Washington, D.C., with twenty-five years of military and civilian experience in criminal and civil litigation and administrative law. He is the principal drafter of both comprehensive U.S. North Korea sanctions laws, the NKSPEA and title III of the CAATSA. He continues to assist House and Senate staffers from both parties and various federal agencies with the drafting, targeting, and enforcement of North Korea sanctions. From 1998 to 2002, he served as a U.S. Army Judge Advocate in South Korea. In 2006, he testified before the House International Relations Committee. He was the first to identify and publish satellite imagery of three North Korean prison camps, Camp 16 (Hwasong), Camp 25 (Chongjin), and Camp 12 (Cheongori). His work has been cited in *The Wall Street Journal*, *The Washington Post*, *Reuters*, *Le Monde*, *The Guardian*, *The Daily Telegraph*, and “Last Week Tonight” with John Oliver. His op-eds have been published in *The New York Times*, *The Washington Post*, *Foreign Policy*, and *Foreign Affairs*. Since 2017, he has served as an uncompensated consultant to the U.S. Attorney’s Office for the District of Columbia on the enforcement of sanctions and anti-money laundering enforcement relating to North Korea. The views he expresses are solely his own and do not represent the views of any member or committee of Congress, an organization, or a government agency.

## DEDICATION

This paper is dedicated to COL (Ret.) Josiah Wallace, 1924-2021. COL Wallace, a graduate of West Point’s Class of 1946, served in and was wounded in both Korea and Vietnam. After retiring to my home town of Rapid City, South Dakota, COL Wallace and his wife, Vicki, raised six children. He also administered my Oath of Commission as an officer in the United States Army, attended my wedding in Seoul, and lived to see a prosperous democracy grow from the barren soil he had watered with his blood so long ago. Among his many decorations was a posthumous award of the Peace Medal from the South Korean government. His example set me on a path that forever bound my life to Korea by ties of service, love, and belief in the destiny of one free Korea.



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### FOREWORD

A government's budget is perhaps the most faithful embodiment of its values and priorities. It concretely defines the scope of the government's duties and obligations. It specifies which citizens and entities will pay for the fulfillment of these responsibilities. It reflects, in its composition, an implicit judgment about which issues and problems are deemed to be most urgent.

For this reason, the annual budget is one of the most intensely debated subjects in democratic countries. Through their elected representatives, citizens have a voice in deciding how their private property may be directed toward public ends. There are officials and agencies that rigorously inspect the use of government funds. A free and independent press can also expose the misdeeds of corrupt officials. Above all, the people can hold the government accountable for how it uses the nation's collective wealth.

None of this is possible in North Korea. However, as Joshua Stanton rightly notes in *The Root of All Evil: Money, Rice, Crime & Law in North Korea*, his second report for HRNK, "the people of a nation hold the highest claim to its wealth." North Korea is no exception. In the following pages, Stanton presents a thoroughly researched and carefully crafted proposal for how the United States, together with a coalition of like-minded countries, could exercise its financial and diplomatic influence to freeze and direct the North Korean regime's ill-begotten funds toward the pressing humanitarian needs of the North Korean people.

Stanton begins Part I by marshaling a wide array of evidence to support his characterization of the North Korean regime as a kleptocracy. In Part II, he exhaustively documents the relevant domestic and international legal authorities that could be used to address Pyongyang's kleptocratic activities. Next, in Part III, he reviews the successes and shortcomings of U.S. sanctions enforcement against North Korea, relying on his deep expertise in this area to clarify common misconceptions about the role of sanctions in U.S. policy toward North Korea over the past three decades.

The first three parts of this report are an invaluable resource for any reader who is concerned about the human rights situation in North Korea and how the outside world might address it. Nonetheless, Stanton makes a vital and truly unique contribution in the last part of the report. He justifies and delineates a policy roadmap to achieve "a just and lasting peace" on the Korean Peninsula, a policy that "returns the fruit of a nation to its rightful owners"—the people of North Korea.

There is limited data about the size and composition of North Korea's annual budget, but there is sufficient information to identify some of the regime's priorities. They include the development of nuclear weapons and sophisticated missile capabilities, as well as the procurement of luxury goods and amenities for the ruling Kim family and the core elite. Critically, the regime continues to operate an apparatus of repression that commits crimes against humanity in a 21st-century Gulag Archipelago. The people of North Korea cannot, at present, freely discuss and debate how they might use the rightful fruits of their labor to promote their common welfare. If they could, they would arrive at a vastly different set of priorities.

The model legislation in Appendix B of this report is entitled "In North Korea, Money Is the Root of All Evil Act." In its shortened form, "North Korea MIRAE Act," it aptly includes the Korean word for future (*mirae*). There is no single solution on the path to a just and lasting peace on the Korean Peninsula. Arriving at that destination will require the collective wisdom and imagination of the international community. Nevertheless, those of us who are concerned about the future of the Korean Peninsula would do well to carefully review and consider Stanton's proposal in *The Root of All Evil*.

Raymond Ha  
Director of Operations & Research

March 29, 2023

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## EXECUTIVE SUMMARY

North Korea is a nation rich in natural resources. Yet among Pyongyang's long list of crimes against humanity, none has killed or harmed more of its people than its misappropriation of wealth from the enslaved people who extract it from its soil, seas, and mines. It uses this stolen wealth and the proceeds of financial crime to enrich its oligarchy, perpetuate enslavement and repression, proliferate weapons of mass destruction (WMD), and threaten peace in the region and the world.

Since the UN Security Council approved its first sanctions against North Korea in 2006, weak, uneven, and divided enforcement has deprived them of their full and intended effects. Yet between late 2005 and early 2007, and again between 2016 and 2018, stronger U.S. enforcement of financial sanctions demonstrated their potential to damage the finances of North Korea's oligarchy. Historically, Pyongyang has been the most receptive to diplomatic engagement and agreements to disarm during periods when it was under the greatest financial duress. Its demands have consistently prioritized sanctions relief, and it has consistently reneged on its agreements after securing them..

New U.S. sanctions laws enacted since 2016 limit the President's power to ease sanctions until Pyongyang meets benchmarks related to disarmament, transparency, and reform—including progress on human rights. Transparency is the *sine qua non* of verifiable disarmament. Progress on human rights and the transparent delivery of food aid can be tests of the sincerity of Pyongyang's promises.

This report proposes a long-term, multilateral legal strategy, using existing United Nations resolutions and conventions, and U.S. statutes that are either codified or proposed in appended model legislation, to find, freeze, forfeit, and deposit the proceeds of the North Korean government's kleptocracy into international escrow. These funds would be available for limited, case-by-case disbursements to provide food and medical care for poor North Koreans, and—contingent on Pyongyang's progress toward disarmament and reforms—to rehabilitate the nation's infrastructure.

Recent events suggest that other issuers of convertible currencies may be willing to join with the United States to support common goals—to impede Pyongyang's proliferation, hold human rights abusers accountable, and fund humanitarian and development aid. This financial coalition should redouble the freezing and forfeiture of the proceeds of Pyongyang's kleptocracy and hold those proceeds in trust for the North Korean people. Because China and Russia have historically acted in bad faith, this coalition must be formed outside the UN framework.

Because Pyongyang is unlikely to accept an agreement except under severe duress, the coalition must target its enforcement carefully, focusing on specific trading networks that fund the military and security forces that perpetrate human rights abuses, repressing demands for change from the population, and maintaining blockades on trade and information. By defunding the police state, the coalition can frustrate the state's repression, create space for market-driven economic and social change, indirectly improve the production and distribution of food, and raise domestic political pressures on Pyongyang. If Pyongyang accepts a verifiable disarmament agreement, the coalition could use escrow funds to offer limited, conditional, and monitored disbursements to ease those pressures.

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## Part I—Hunger & Kleptocracy in North Korea

### A. The Expendable Millions

In 1997, a *Washington Post* reporter was allowed into the city of Hamheung, in the mountains that ring North Korea's east coast, to investigate reports of a famine in the isolated country. There, he interviewed the director of a local orphanage, who told him that some parents who could no longer feed their children had begun to abandon them "to nature." Some of these children died where their parents left them. In other cases, people would bring them to the orphanage, which was "surrounded by high hills covered with graves and stone markers." The orphanage director told the reporter that he was looking at "an old burial ground," but the reporter also saw "many new graves."<sup>1</sup>

Two years later, a *Reuters* reporter also visited an orphanage in the city, and also observed that it was "surrounded on all three sides by hills covered in graves." Many of the 118 children who resided there looked malnourished or stunted. Others were pale or seemed to have difficulty concentrating. All their parents had either died or abandoned them.<sup>2</sup>

In 1997, Jang So-yeon lived in Hamheung. When her sister fell ill with cholera, she stayed with her in the hospital. Decades later, after her escape from North Korea, she told a reporter how the staff "laid the patients out like goods in a warehouse," and that they "could hear people crying in the next ward, and see people dying." Staff piled the dead outside the building. "Once a week, a truck came and took all the bodies away." The smell of death filled the streets. The hills around the city became cemeteries. "Up in the mountains, there were graves everywhere. Some were not well covered up—it was bare, there was no soil—and the bodies were coming out."<sup>3</sup>

Refugees from the city spoke of "apocalyptic" death rates. One estimated that a third of the city's population of 700,000 perished. He described a city of vacant houses, of apartment buildings where entire floors were emptied by the deaths of families who once lived there.<sup>4</sup> At the station, crowds waited for days for trains bound for Hyesan, near the border with China, to find food. Some did not survive to board them. Railroad workers who dragged away twenty bodies every morning soon gave up on the grim task of recording their names. A hellish three-day journey awaited the rest, of whom perhaps half were discarded along the way—starved, suffocated in the packed carriages, fallen from the undersides or rooftops of the cars, or electrocuted by the overhead power lines.<sup>5</sup>

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1 Keith B. Richburg, "Beyond a Wall of Secrecy, Devastation," *The Washington Post*, October 19, 1997,

[http://www.washingtonpost.com/wp-dyn/content/article/2006/10/18/AR2006101800728\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/10/18/AR2006101800728_pf.html).

2 "North Korea: Whole Generation of Children Affected by North Korean Famine," *Reuters Television*, May 19, 1999, <https://web.archive.org/web/20110713071049/http://www.itnsource.com/shotlist/RTV/1999/05/19/905190018/>.

3 Andrew Salmon, "Starved in North Korea and kidnapped in China," *Asia Times*, November 26, 2019, <https://www.asiatimes.com/2019/11/article/arduous-odyssey-a-nth-korean-defector-remembers/>.

4 Andrew Natsios, *The Great North Korean Famine: Famine, Politics & Foreign Policy* 202 (Washington, D.C.: United States Institute of Peace, 2001).

5 *Id.* 72-80.

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Anyone with an internet connection can corroborate the most horrific part of Jang So-yeon's story. Google Earth imagery of the eastern cities of Wonsan, Hamheung, and Heungnam published in the years after the famine shows what appear to be hundreds of thousands of makeshift graves in the hills overlooking the cities.<sup>6</sup> Since 2000, these vast cemeteries have begun to wash downhill. Year by year, forests have risen to reclaim the dead, who now exist only in the mute memories of the bereaved, for whom the very cry for justice is a crime punishable by death—because not one of these people had to die.



Satellite imagery of the hills around Hamheung, North Korea (via Google Earth)

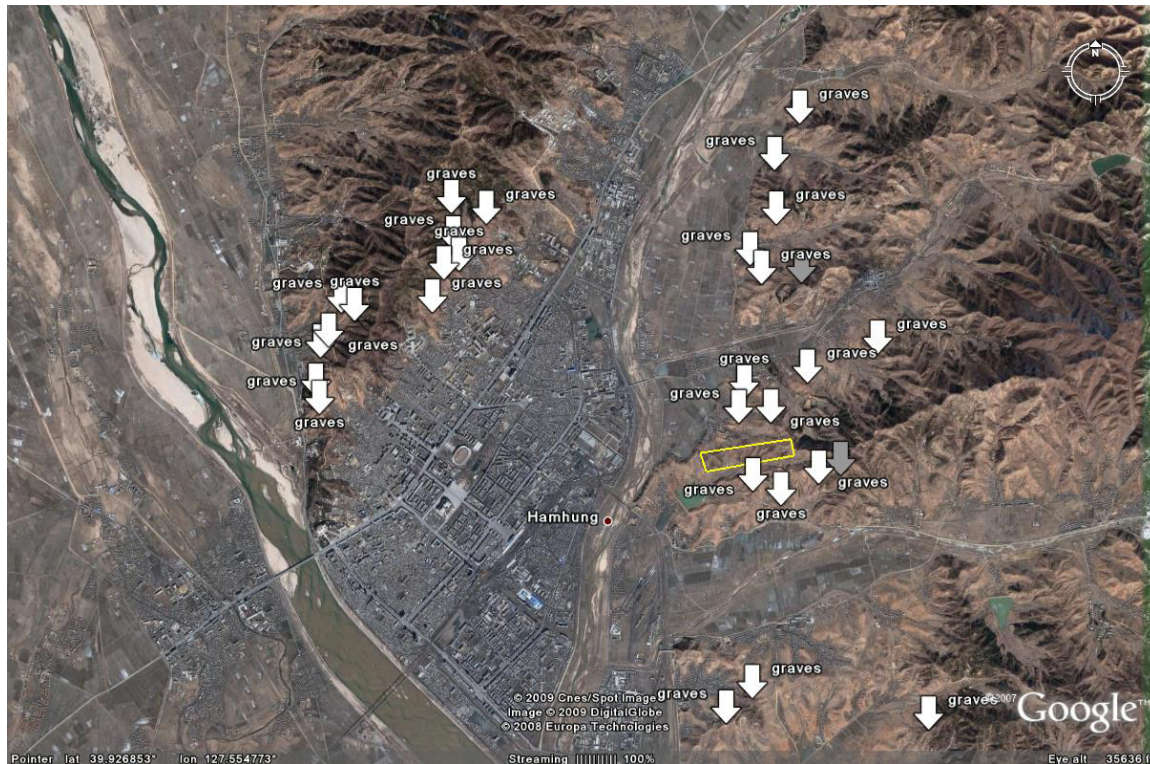
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<sup>6</sup> Joshua Stanton, “39.91 N, 127.55 E: Hamheung, Haunted City,” *One Free Korea blog*, January 21, 2009, <https://freekorea.us/2009/01/21/Hamheung/>. In other regions, such as the northeastern city of Chongjin, anecdotal reports suggest that mass burials in common graves were more typical. Barbara Demick, *Nothing to Envy: Ordinary Lives in North Korea* (New York, NY: Spiegel & Grau, 2009), 169-70; Natsios, “*The Great North Korean Famine*,” 76. Although cremation is increasingly accepted in South Korea, where land is expensive and relatives can visit the ashes of their loved ones at Buddhist temples, it is not accepted in North Korea, where these conditions are very different. “‘Please, Bury Me Somehow’: Forced Cremations Frighten Elders, Threaten Chuseok Traditions,” *Rimjin-gang*, September 24, 2019, <http://www.asiapress.org/rimjin-gang/2019/09/society-economy/chuseok-traditions/2/>. Recent directives by the state to move cemeteries into mass graves to make room for forests or reservoirs have enraged the poor in rural South Pyongan Province, who are powerless to do anything but obey. Mun Dong-hui, “N. Korean Officials Anger Locals after Demolishing Graveyard,” *Daily NK*, November 13, 2019, <https://www.dailynk.com/english/north-korean-officials-anger-locals-after-demolishing-grave-site/>.



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## Satellite imagery of the hills around Hamheung, North Korea (via Google Earth)

Hamheung had been marked for this fate by its own government, but few of those sacrificed would have known this when they died. Andrew Natsios, a former aid worker and later Administrator of the U.S. Agency for International Development (USAID), cited UN survey data to suggest that the state had “triaged” the eastern and northeastern provinces, diverting the nation’s limited food supply to the capital, the military, Party elites, and workers in “essential” (often military) industries. Aid workers observed that the state resisted and frustrated their efforts to assess the needs of these triaged regions and send food there—among them, the eastern port cities of Heungnam and Wonsan.<sup>7</sup>

In 2014, a UN Commission of Inquiry (COI) found evidence of Pyongyang’s culpability for crimes against humanity, including “the inhumane act of knowingly causing prolonged starvation.”<sup>8</sup> The UN COI’s detailed findings cite widely divergent mortality estimates, but between 1993 and 1999, North Korea’s Great Famine killed “at the very least hundreds of thousands

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<sup>7</sup> Natsios, *supra* note 4 at 105-09, 120, 184-85, & 202.

<sup>8</sup> United Nations Human Rights Council, Report of the *Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea*, A/HRC/25/63 ¶ 76 (2014), <https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIDPRK/Report/A.HRC.25.63.doc>.



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of innocent human beings [who] perished due to massive breaches of international human rights law.” It estimated that the toll may have been as high as 2.5 million.<sup>9</sup> Kim Dong-su, a North Korean agricultural envoy who negotiated with UN aid agencies before defecting in 1998, said that the famine killed up to 2.8 million people.<sup>10</sup> High-ranking defector Hwang Jang-yop, who claimed to have had access to North Korean government estimates, said the toll was 2.5 million.<sup>11</sup> Natsios aggregated refugee interviews, statistically controlled projections, and census data from North Korean county offices to arrive at an estimate of up to 2.5 million dead.<sup>12</sup>

Millions of North Koreans did not die because their country was too poor to feed them. It lies in a temperate zone with two long, once-rich coastlines. Its excellent natural harbors are within a day’s voyage of three industrialized trading partners. Most of its people are literate. It inherited mines, infrastructure, and heavy industry upon its founding.<sup>13</sup> It is unafflicted by hostilities other than those provoked by its own government. It is rich in coal, iron, gold, copper, vanadium, timber, and rare-earth minerals. Its perennial food crisis is not the consequence of an uninterrupted, thirty-year series of meteorological miracles by which alternating floods or droughts halted at the Demilitarized Zone and permanently stunted the development of children in only the northern half of Korea.

Various press accounts, citing defectors and intelligence sources, allege that during the famine, Kim maintained offshore cash reserves of between \$4 and \$5 billion, more than enough to feed the dead of Hamheung—and of every other city, village, and farm in North Korea—many times over.<sup>14</sup> The Japanese government estimated that North Korea’s front organization in Japan remitted between \$650 million and \$850 million to Pyongyang during the famine.<sup>15</sup>

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9 United Nations Human Rights Council, *Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea*, A/HRC/25/CRP.1 ¶¶ 667-69 (2014), [https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIDPRK/Report/A.HRC.25.CRP.1\\_ENG.doc](https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIDPRK/Report/A.HRC.25.CRP.1_ENG.doc) (hereinafter UN COI).

10 “Millions dead from starvation says North Korean defector,” *BBC News*, February 18, 1998, <http://news.bbc.co.uk/2/hi/asia-pacific/57740.stm>.

11 UN COI, *supra* 9 ¶ 667.

12 Natsios, *supra* note 4, at 202-15; Andrew Natsios, “The Dangers of the Coming North Korean Famine,” *U.S. News & World Report*, November 12, 2012, <https://www.usnews.com/opinion/blogs/world-report/2012/11/12/the-political-consequences-of-famine-in-north-korea>.

13 Robert A. Scalapino and Chong-shik Lee, *North Korea, Building of the Monolithic State* (Berwyn, Penn., The KHU Press, 2017).

14 Andreas Lorenz, “Joyful Dancing,” *The New York Times*, November 8, 2004, <https://www.nytimes.com/2004/11/08/international/europe/joyful-dancing.html>; Jay Solomon and Hae Won Chi, “In North Korea, Secret Hoard Of Cash Props Up a Regime,” *Wall Street Journal*, July 14, 2003, <https://www.wsj.com/articles/SB105813345248381600>; “Kim Jong-un’s Secret Billions,” *Chosun Ilbo*, March 12, 2013, [http://english.chosun.com/site/data/html\\_dir/2013/03/12/2013031201144.html](http://english.chosun.com/site/data/html_dir/2013/03/12/2013031201144.html).

15 Nicholas Eberstadt, “Financial Transfers from Japan to North Korea: Estimating the Unreported Flows,” *Asian Survey* 36, no. 5 (May 1996), [https://www.jstor.org/stable/2645498?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/2645498?seq=1#page_scan_tab_contents).

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Had Pyongyang instead cut its military budget by just one percent, it could have imported enough food to feed every hungry North Korean.<sup>16</sup> The UN COI found that even “a marginal redistribution of state military expenditure toward the purchase of food could have saved the population from starvation and malnutrition.”<sup>17</sup> It cites economist Marcus Noland’s estimates that North Korea’s national income was \$12.4 billion even at the height of the famine, and that Kim could have fed all of the hungry for one to two percent of this—between \$100 million and \$200 million.<sup>18</sup>

Instead, North Korea’s descent into famine coincided with a sharp increase in military spending, including on nuclear and ballistic missile programs that certainly cost billions of dollars, and on conventional weapons. In the early 1990s, Kim Jong-il purchased the first of thirty MiG-29 fighters from Belarus and Russia for approximately \$35 million each. Annual operating and maintenance costs for these aircraft, which strain the defense budgets of middle-income Eastern European states, may have run into the millions of dollars annually, and the cumulative cost may amount to perhaps a billion dollars.<sup>19</sup> A single long-range missile test in 1998 cost an estimated \$20 million.<sup>20</sup> In 1999, in the latter years of the famine, Kim bought another forty MiG-21s from Kazakhstan.<sup>21</sup> During these critical years, as North Korea slipped into famine, the state reduced its imports of grain and fertilizer—the latter contributing to a rapid decline in domestic food production. Between 1991 and 1994, the state cut commercial grain imports by more than half.<sup>22</sup>

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16 UN COI, *supra* note 9, ¶ 644.

17 *Id.* ¶ 644.

18 *Id.* ¶ 645.

19 Tech. Sgt. Pat McKenna, “A Real MiG Deal,” *Airman Magazine*, May 1998, <https://fas.org/nuke/guide/russia/airdef/980500-mig-airman.htm>; John Sotham, “The Truth About the MiG-29,” *Air & Space Magazine*, September 2014, <https://www.airspacemag.com/military-aviation/truth-about-mig-29-180952403/>; James Dunnigan, “What Is Worse Than Cheap Russian Crap,” *Strategy Page*, March 27, 2012, <https://www.strategypage.com/dls/articles/What-Is-Worse-Than-Cheap-Russian-Crap--3-27-2012.asp>.

20 “N.Korea Spent at Least \$30 Million on Missile Development,” *Chosun Ilbo*, March 16, 2009, <http://english.chosun.com/w21data/html/news/200903/200903160004.html>.

21 Phil Reeves, “Kazakhstan investigates sale of MiGs to N Korea,” *The Independent*, August 13, 1999, <http://www.independent.co.uk/news/world/kazakhstan-investigates-sale-of-migs-to-n-korea-1112390.html>.

22 Stephan Haggard and Marcus Noland, *Famine in North Korea: Markets, Aid, and Reform* (New York: Columbia University Press, 2007).

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Once aid began to arrive, Pyongyang reduced its commercial food purchases and diverted its cash to other priorities,<sup>23</sup> including Kim Jong-il's sybaritic lifestyle. One report claims he spent \$720,000 a year on Hennessy cognac alone.<sup>24</sup> The logic that led the COI to find him culpable for the deaths of the famine's victims is inescapable.<sup>25</sup>

## B. Kim Jong-un & the Age of Red Privilege

The famine ameliorated after 1999, but the food crisis would grind on without end. Harvests improved, aid continued to arrive, and a resourceful core of survivors learned to grow food and live through trade. There were also fewer mouths left to feed. As one North Korean grimly put it, "Those who could not trade are long dead."<sup>26</sup> In the decades that followed, most North Koreans outside of Pyongyang lived in a state of constant, if uneven, hunger. Pyongyang still appeals for about \$100 million in international food aid each year, although donations seldom fulfill those appeals today.<sup>27</sup> As famine yielded to widespread malnutrition and food insecurity, a yawning disparity between the poverty of the masses and the opulence of the oligarchy persisted, then widened. Pyongyang continued to spend about one-third of its national income on its military and perhaps \$500 million to \$700 million each year on nuclear weapons.<sup>28</sup>

These conditions persisted as the state took in vast sums from mineral exports and—paradoxically—the export of food, including fish, seafood, and even rice, before the UN Security Council finally embargoed North Korea's food exports in 2017.<sup>29</sup> Pyongyang still runs a lucrative trade

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23 Stephan Haggard and Marcus Noland, *Hunger & Human Rights: The Politics of Famine in North Korea* (Washington, D.C.: Committee for Human Rights in North Korea, 2005), [https://www.hrnk.org/uploads/pdfs/Hunger\\_and\\_Human\\_Rights.pdf](https://www.hrnk.org/uploads/pdfs/Hunger_and_Human_Rights.pdf).

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25 A/HRC/25/63, summary 76.

26 Tom Plate, "North Korea's evolution," *Seattle Times*, August 10, 2006, [https://web.archive.org/web/20150416162459/http://old.seattletimes.com/html/opinion/2003187284\\_plate10.html](https://web.archive.org/web/20150416162459/http://old.seattletimes.com/html/opinion/2003187284_plate10.html).

27 Daniel Boffey, "UN calls for food aid for starving North Koreans despite sanctions," *The Guardian*, April 3, 2019, <https://www.theguardian.com/world/2019/apr/03/un-calls-on-white-house-to-aid-north-korea-despite-standoff>; Jonathan Cheng, "U.N. North Korea Food Program in Danger," *The Wall Street Journal*, September 25, 2014, <https://www.wsj.com/articles/u-n-north-korea-food-program-in-danger-1411626874>.

28 "North Korea spends about a third of income on military: group," *Reuters*, January 18, 2011, <https://ca.reuters.com/article/topNews/idCATRE70H1BW20110118>; Bruce G. Blair and Matthew A. Brown, *Global Zero Technical Report: Nuclear Weapons Cost Study*, June 2011, <https://www.globalzero.org/wp-content/uploads/2020/01/GZ-Weapons-Cost-Global-Study.pdf>.

29 Rebecca Davis, "Why is North Korea exporting food to China?," *The Guardian*, October 14, 2014, <https://www.theguardian.com/world/2014/oct/14/why-north-korea-exporting-food-china>. At least one press report claims that Pyongyang uses donated grain to produce processed foods for export. Jieun Kim, "North Korean Exports of Processed Food to China Raise Questions About Use of Aid," *Radio Free Asia*, August 19, 2019, <https://www.rfa.org/english/news/korea/north-korean-exports-of-processed-food-08192019162817.html>. For the resolutions banning mineral and food exports, see UNSC resolution

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in conventional weapons and WMD proliferation, despite a UN arms embargo that was first imposed in 2006.<sup>30</sup> In 2003, U.S. military sources in South Korea told the *Wall Street Journal* that Pyongyang earned between \$500 million and \$1 billion annually from the sale of illicit drugs to Europe and Japan, and up to \$560 million from missile exports to the Middle East.<sup>31</sup>

Examples of Pyongyang's egregious kleptocracy continued to accrue. The UN Security Council first prohibited luxury goods exports to North Korea in 2006.<sup>32</sup> In practice, UN member states could neither agree on a consistent definition of "luxury goods" nor prioritize enforcement of the ban. China and Russia ignored it, and European states enforced it unevenly. In 2007, buyers at Pyongyang's embassy in Vienna tried to ship three Steinway grand pianos, worth 162,500 euros, to North Korea; Austrian authorities seized the pianos at the airport.<sup>33</sup> In 2008, Japan reported to the UN Panel of Experts that two trading companies had exported thirty-four pianos, four Mercedes-Benz automobiles, and an unknown quantity of cosmetics to North Korea.<sup>34</sup>

In 2010, Kim Jong-il purchased two baby elephants from Robert Mugabe for \$10,000 each.<sup>35</sup> That same year, he distributed 160 Mercedes-Benz sedans to his top officials,<sup>36</sup> and an Austrian court convicted serial sanctions violator Josef Schwartz of trying to export two yachts worth at least \$4.4 million to North Korea.<sup>37</sup> During a visit to China that year, Kim Jong-il rode in a

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2371, *Non-proliferation/Democratic People's Republic of Korea*, S/RES/2371 (2017); UNSC resolution 2375, *Non-proliferation/Democratic People's Republic of Korea*, S/RES/2375 (2017); and UNSC resolution 2397, *Non-proliferation/Democratic People's Republic of Korea*, S/RES/2397 (2017).

30 UN Security Council Resolution 1718 ¶¶ 8-9 (2006).

31 Jay Solomon and Jason Dean, "Heroin Busts Point to Source Of Funds for North Koreans," *Wall Street Journal*, April 23, 2003, <https://www.wsj.com/articles/SB105106006946882000>; see also David E. Kaplan, "The wiseguy regime: North Korea has embarked on a global crime spree," *U.S. News & World Report*, February 15, 199, [http://scaryreality.com/all/The\\_wiseguy\\_regime.html](http://scaryreality.com/all/The_wiseguy_regime.html).

32 UNSC resolution 1718, *Non-proliferation/Democratic People's Republic of Korea*, S/RES/1718 (2006) ¶ 8(a)(iii).

33 UN POE, *Report of the Panel of Experts established pursuant to resolution 1874 (2009)*, S/2010/571 (2010) ¶ 68.

34 *Id.* ¶ 69.

35 "Zimbabwe: Officials Defend Sale of Animals to North Korea," *AP*, May 19, 2010, <https://www.nytimes.com/2010/05/20/world/africa/20briefs-Zimbabwe.html>.

36 "N.Korean Leader Gives 160 Luxury Cars to Top Officials," *Arirang News*, August 2, 2010, [http://english.chosun.com/site/data/html\\_dir/2010/08/02/2010080200980.html](http://english.chosun.com/site/data/html_dir/2010/08/02/2010080200980.html).

37 UN POE S/2012/422 (2012) ¶ 84-85; UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2207 (2015)*, S/2016/157 (2016) ¶ 198; see S/2010/571 ¶ 67; Sylvia Westall, "Austrian convicted for yacht sale to North Korean leader," *Reuters*, December 7 2010, <https://www.reuters.com/article/us-austria-northkorea/austrian-convicted-for-yacht-sale-to-north-korean-leader-idUSTRE6B62LN20101207>; "Italy Halts Yacht Sale Bound for Kim Jong Il," *Wall Street Journal*, July 24, 2009, <https://www.wsj.com/articles/SB124839615293477775>.

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\$400,000 Maybach.<sup>38</sup> A year later, he rode to his mausoleum in a 1976 Lincoln hearse.<sup>39</sup> The mausoleum had been rebuilt for Kim Il-sung in 1994, as the country descended into famine, at a cost of \$790 million—enough to fulfill almost four years of UN food aid appeals by itself.<sup>40</sup>

A third generation of the Kim Dynasty now perpetuates this kleptocracy. In 2010, unconfirmed reports claimed that Kim Jong-il had already begun to transfer his slush funds from his Swiss bank accounts to Kim Jong-un.<sup>41</sup> In 2011, Pyongyang's agents in Japan purchased ten thousand rolls of tobacco, sake, computers, and cosmetics.<sup>42</sup> In 2012, Kim's wife carried a Christian Dior handbag that—if genuine—would have cost \$1,600.<sup>43</sup> Kim wore a Swiss watch worth \$78,000.<sup>44</sup> As he consolidated his reign, UN aid agencies found that 70 percent of North Koreans were food insecure,<sup>45</sup> and 80 percent of North Korean households had “poor or borderline” food consumption.<sup>46</sup>

A widening gap between the Pyongyang elite and the poor everywhere else—enabled by kleptocracy and money laundering—soon became a hallmark of Kim Jong-un's rule. In 2013, as UN aid agencies appealed for aid to address widespread malnutrition, a South Korean lawmaker, citing Chinese customs data and studies of North Korean trade patterns, estimated that Pyongyang spent \$644 million on luxury goods,<sup>47</sup> including luxury cars, perfume, televisions, computers, liquor, fur coats, and watches.<sup>48</sup> In 2015, Pyongyang purchased \$346,726 worth of gold from Israel, \$1.9 million in precious

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38 Joohee Cho and Chito Romana, “Kim Jong Il Heads to Beijing on Unusually Public Trip for North Korean Leader,” *ABC News*, May 4, 2010, <https://abcnews.go.com/International/north-korean-leader-kim-jong-il-arrives-beijing/story?id=10549640>.

39 David J. Goodman, “Good old American wheels carry Kim Jong Il in funeral,” *Seattle Times*, December 28, 2011, <http://www.autonews.com/apps/pbcsi.dll/storyimage/CA/20111228/BLOG06/111229925/AR/0/AR-111229925.jpg>.

40 UN COI, *supra* note 9, ¶ 659; see also Kongdan Oh and Ralph C. Hassig, *North Korea through the Looking Glass* (Washington, D.C.: Brookings Institution, 2000). The cost is estimated to have been as high as \$900 million.

41 “N. Korean leader transfers secret fund to son: report,” *Agence France-Presse*, July 31, 2010 <https://web.archive.org/web/20100731133434/https://www.google.com/hostednews/afp/article/ALeqM5jwh6EErx6mRAMtI5nem8xeRfs8g>.

42 UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2050 (2012)*, S/2013/337 (2013), annex XVIII.

43 Erica Ho, “North Korea's First Lady Sports Dior Purse Despite Nationwide Food Shortages,” *Time*, August 9, 2012, <http://newsfeed.time.com/2012/08/09/what-famine-north-koreas-first-lady-sports-dior-purse-despite-nationwide-food-shortages/>

44 “North Korea: Kim Watches Given To Top Brass,” *Sky News*, February 16, 2013, <https://web.archive.org/web/20130216165930/https://news.sky.com/story/1053011/north-korea-kim-watches-given-to-top-brass>.

45 United Nations Office for the Coordination of Humanitarian Affairs, *DPR Korea 2015 Needs and Priorities* (2015), [http://reliefweb.int/sites/reliefweb.int/files/resources/20150401%20DPR\\_Korea\\_NP\\_FINAL.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/20150401%20DPR_Korea_NP_FINAL.pdf).

46 United Nations Food & Agriculture Organization and World Food Programme, *Crop & Food Security Assessment, Mission to the Democratic People's Republic of Korea* (2013), <http://www.fao.org/docrep/019/aq118e/aq118e.pdf>.

47 “N. Korea imports US\$644 mln worth of luxury goods in 2013: lawmaker,” *Yonhap News*, October 7, 2014, <https://en.yna.co.kr/view/AEN20141007002300315>.

48 “N. Korea jacks up imports of luxury goods under new leader,” *Dong-A Ilbo*, October 4, 2012, <http://english.donga.com/srv/service.php3?biid=2012100422928>; Jae-soon Chang, “Report: N Korea's Kim using gifts to win support,” *AP*, June 24, 2009, [https://web.archive.org/web/20090627042623/http://news.yahoo.com/s/ap/20090624/ap\\_on\\_re\\_as/as\\_nkorea\\_kim\\_jong\\_il\\_s\\_successor](https://web.archive.org/web/20090627042623/http://news.yahoo.com/s/ap/20090624/ap_on_re_as/as_nkorea_kim_jong_il_s_successor).



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metals and stones from India, more gold from Ghana, and jewelry from Brazil and Thailand.<sup>49</sup>

The South Korean government estimated that in 2013, Kim Jong-un spent an additional \$300 million on leisure facilities for the elites in Pyongyang, including an amusement park, a dolphin aquarium, a 3-D cinema, and a massive ski resort in the mountains east of Pyongyang.<sup>50</sup> Construction of the ski resort was briefly delayed when the Swiss government blocked North Korea from importing \$7.24 million worth of ski lifts, plus “golf, horseback riding and water sports” gear. Pyongyang responded by accusing the Swiss government of violating the UN Charter.<sup>51</sup> It turned to a Chinese supplier, ENFI Engineering Corporation, which sold it the ski lifts. Photographs published by news media also showed cable cars, snow-mobiles, snow blowers, and snow grooming equipment from Europe and Canada at the resort.<sup>52</sup> During the same period, Pyongyang spent approximately 25 percent of its national income on its military, including \$1.3 billion per year on its missile programs alone.<sup>53</sup>

In the year after June 2016, Pyongyang imported nearly half a million dollars’ worth of wine, vermouth, and other spirits from Germany, Italy, Bulgaria, and Chile; and more than \$250,000 in perfumes and cosmetics from Bulgaria and Germany.<sup>54</sup> In 2017, India sold North Korea \$578,994 in diamonds, other precious stones, and precious metals.<sup>55</sup> By then, Pyongyang’s one percent could buy luxury-branded cosmetics, handbags, watches, leather goods, and shoes at a shop called Bugsae.<sup>56</sup> In 2019, a Singaporean court sentenced two men and a company, T Specialist, for supplying the store with more than \$6 million in luxury goods in violation of local laws implementing the UN ban.<sup>57</sup> A second, related Singaporean company, OCN, was also identified as a supplier to Bugsae.<sup>58</sup>

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49 S/2016/157 ¶¶ 123-24.

50 “N. Korean leader orders officials to quickly open ski resort,” *Yonhap News*, December 31, 2012, <http://english.yonhap-news.co.kr/northkorea/2013/12/31/77/0401000000AEN20131231002900315F.html>.

51 “North Korea objects to sanctions ban on ski resort equipment,” *Reuters*, August 24, 2013, <http://www.reuters.com/article/2013/08/24/us-korea-north-idUSBRE97N02X20130824>.

52 UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2094 (2013)*, S/2014/147 (2014) ¶¶ 116-19; UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2141 (2014)*, S/2015/131 (2015) ¶¶ 99-101; UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2276 (2016)*, S/2017/150 (2017) ¶ 124, fig. 30.

53 Ramy Inocencio, “North Korea’s rocket launches cost \$1.3 billion,” *CNN*, December 12, 2012, <http://www.cnn.com/2012/12/12/business/north-korea-rocket-cost/>.

54 UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2345 (2017)*, S/2018/171 (2018) ¶¶ 152-53.

55 *Id.* ¶ 149.

56 *Id.* Annex 64, ¶ 147, & fig. XXIV.

57 UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2464 (2019)*, S/2020/151 (2020) ¶ 161; Chad O’Carroll, “Singaporean resident fined for shipping luxury goods to North Korea,” *NK News*, July 29, 2020, [https://www.nknews.org/2020/07/singaporean-woman-fined-nearly-7300-for-shipping-luxury-goods-to-north-korea/?utm\\_source=dlvr.it&utm\\_medium=twitter](https://www.nknews.org/2020/07/singaporean-woman-fined-nearly-7300-for-shipping-luxury-goods-to-north-korea/?utm_source=dlvr.it&utm_medium=twitter).

58 S/2018/171 ¶ 146, 178-88, fig. XXIV; Chad O’Carroll, “Singaporean man admits to selling \$580K of illegal luxury goods to North Korea,” *NK News*, September 17, 2020, [https://www.nknews.org/2020/09/singaporean-man-admits-to-selling-580k-of-illegal-luxury-goods-to-north-korea/?utm\\_source=dlvr.it&utm\\_medium=twitter](https://www.nknews.org/2020/09/singaporean-man-admits-to-selling-580k-of-illegal-luxury-goods-to-north-korea/?utm_source=dlvr.it&utm_medium=twitter).

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Luxury limousines and yachts are two of the most ostentatious objects of Kim's kleptocracy. In 2013, he imported a yacht with an estimated value of between \$4 million and \$6 million from the United Kingdom.<sup>59</sup> In 2016, the Wonsan Air Show featured a nine-passenger turboprop civil aviation aircraft, likely for the use of senior state officials—if not of Kim himself—with a reported value of \$2.6 million.<sup>60</sup> The 2012 parade to mark Kim Il-sung's birthday featured two Mercedes-Benz limousine conversions, reportedly modified in the United States by a company that denied knowing their final destination. The importer then transferred the limousines through multiple countries before shipping them to North Korea.<sup>61</sup> Estimates of their value ranged from “upwards of \$1 million”<sup>62</sup> to “up to \$2 million each.”<sup>63</sup> The 2013 and 2014 parades also featured different Mercedes-Benz limousine conversions.<sup>64</sup> The UN Panel of Experts later learned that one of the intermediaries for the shipment of the limousines to North Korea was a Chinese businessman, who was an overseas agent of North Korea's national airline, Air Koryo, and who was also suspected of involvement in Pyongyang's arms trade.<sup>65</sup>

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59 S/2014/147 ¶ 120; S/2015/131 ¶ 102, fig. XXI.

60 S/2017/150 ¶ 126-28; Anna Fifield, “How did North Korea get its hands on a New Zealand plane made with American parts,” *Washington Post*, October 3, 2016, [https://www.washingtonpost.com/world/how-did-north-korea-get-its-hands-on-a-new-zealand-plane-made-with-american-parts/2016/10/03/105591d2-892e-11e6-8a68-b4ce96c78e04\\_story.html](https://www.washingtonpost.com/world/how-did-north-korea-get-its-hands-on-a-new-zealand-plane-made-with-american-parts/2016/10/03/105591d2-892e-11e6-8a68-b4ce96c78e04_story.html); Thomas Manch, “Pacific Aerospace guilty of unlawful exports to North Korea,” *Stuff*, October 11, 2017, <https://www.stuff.co.nz/business/96724372/pacific-aerospace-guilty-of-unlawful-exports-to-north-korea>.

61 S/2015/131 ¶ 96; S/2016/157 ¶ 118-21.

62 Joshua Berlinger, “Kim Jong Un appears to have a new Rolls-Royce,” *CNN*, October 9, 2018, <https://www.cnn.com/2018/10/09/asia/kim-jong-un-rolls-royce-intl/index.html>.

63 Leo Byrne, “On parade: luxury Mercedes limos spotted in North Korea,” *NK News*, August 5, 2014, <https://www.nknews.org/2014/08/on-parade-luxury-mercedes-limos-spotted-in-north-korea/>.

64 S/2015/131 ¶ 98.

65 S/2016/157 ¶ 118-21, fig. 27.

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**Customs Intelligence, Bangladesh** কাস্টমস গোয়েন্দা, বাংলা  
about 4 years ago

ব্রেকিং:

রাজধানীতে এবার কূটনীতিকের রোলস রয়েস গাড়ি আটক ...

শুদ্ধ গোয়েন্দা আজ আইসিডি কমলাপুর বন্দরে মিথ্যা ঘোষণায় আনা উত্তর কোরিয়া  
কূটনীতিকের দামি রোলস রয়েস ঘোষ্ট মডেলের গাড়ি আটক করেছে। ... [See More](#)



Rolls-Royce Ghost seized by Bangladeshi Customs from North  
Korean diplomat Han Son in 2017.<sup>66</sup>

<sup>66</sup> “Luxurious Rolls-Royce seized in Dhaka,” *Dhaka Tribune*, January 9, 2017, <https://www.dhakatribune.com/bangladesh/crime/2017/01/09/rolls-royce-seized-dhaka>.

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In 2017, Bangladeshi Customs authorities seized a Rolls-Royce Ghost worth more than \$3.5 million inside a shipping container.<sup>67</sup> The importer was a North Korean diplomat who had been expelled from the country for smuggling five months before.<sup>68</sup> In early 2018, Kim Jong-un arrived for a meeting with Secretary of State Mike Pompeo in a Rolls-Royce Phantom worth \$500,000.<sup>69</sup> He arrived at Panmunjom for his meeting with South Korean President Moon Jae-in in a Lexus LX 570.<sup>70</sup> At another summit with Moon, Kim rode in a Mercedes-Maybach Pullman Guard limousine worth “upwards of \$1 million.”<sup>71</sup>

At his June 2018 Singapore summit with President Trump, Kim Jong-un and his entourage rode in at least two of the Mercedes-Benz limousines that the UN Panel of Experts had observed at previous parades in Pyongyang, each worth \$500,000.<sup>72</sup> That same month, Pyongyang imported two more Mercedes-Benz limousines from Germany, shipped them to Italy to be armored, and in August, transshipped them through Japan and South Korea to North Korea.<sup>73</sup> Kim and his entourage rode in these limousines when they arrived at the 2019 Hanoi summit.<sup>74</sup>

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67 “Expelled N Korean diplomat’s Rolls-Royce seized in Dhaka,” *Daily Star*, January 9, 2017, <https://www.thedailystar.net/city/expelled-n-korean-diplomats-rolls-royce-seized-dhaka-1342690>; “Bangladesh Confiscates Rolls-Royce Smuggled by Ex-N. Korean Diplomat,” *KBS*, January 11, 2017, [http://world.kbs.co.kr/service/news\\_view.htm?lang=e&Seq\\_Code=124523](http://world.kbs.co.kr/service/news_view.htm?lang=e&Seq_Code=124523).

68 S/2017/150 ¶ 125, fig. 31; UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2407 (2018)*, S/2019/171 (2019) ¶ 101.

69 S/2019/171 ¶ 100, fig. XX.; Hollie McKay, “Kim Jong Un under fire for flagrantly violating sanctions with his mysterious, growing fleet of luxurious vehicles,” *Fox News*, March 21, 2019, <https://www.foxnews.com/world/kim-jong-un-under-fire-for-flagrantly-violating-sanctions-with-his-mysterious-growing-fleet-of-luxurious-vehicles>.

70 S/2019/171 ¶ 104, fig. XXIII.

71 Berlinger, “Kim Jong Un appears to have a new Rolls-Royce.”

72 S/2019/171 ¶ 102, fig. XXI.

73 S/2020/151 ¶ 155.

74 UN POE, *Midterm report of the Panel of Experts submitted pursuant to resolution 2464 (2019)*, S/2019/691 (2019) ¶¶ 45-46.



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Kim Jong-un emerges from a Mercedes-Benz limousine in 2019.<sup>75</sup>

Kim also squandered North Korea's resources on transportation of the more animate variety in the form of nearly \$100,000 in white horses from Russia. Kim Jong-un used some of these horses in widely circulated photo ops on Mount Paektu.<sup>76</sup>

Pyongyang's luxury goods trade relies on the same logistical and financial networks as its WMD procurement and proliferation networks.<sup>77</sup> The North Korean partner of OCN and T Specialist, the suppliers of the Bugsae Store, was the Ryugyong Commercial Bank, which the U.S. Treasury Department designated in 2017 as part of its new sectoral sanctions against the North Korean

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75 Joseph Trevithick, "Here's How North Korea Got Kim Jong Un His New Armored S600 Mercedes Maybach Limos," *The Drive*, July 16, 2019, <https://www.thedrive.com/the-war-zone/28999/heres-how-north-korea-got-kim-jong-un-his-new-armored-s600-mercedes-maybach-limos>.

76 Jacob Fromer, "North Korea imported a dozen purebred horses from Russia last year, data shows," *NK News*, February 16, 2020, <https://www.nknews.org/2020/02/north-korea-imported-a-dozen-purebred-horses-from-russia-last-year-data-shows/?t=1596160551369>; Pjotr Sauer, "How North Korea's Leader Buys Purebred White Horses From Russia's Stud Farms," *The Moscow Times*, February 20, 2020 <https://www.themoscowtimes.com/2020/02/19/how-north-koreas-leader-buys-purebred-white-horses-from-russias-stud-farms-a69317>; Colin Zwirko & Min Chao Choy, "North Korea imported more Russian horses amid new work on elite equestrian parks," *NK Pro*, July 8, 2020, <https://www.nknews.org/pro/north-korea-imported-more-russian-horses-amid-new-work-on-elite-equestrian-parks/?t=1594212356741>.

77 Lucas Kuo and Jason Arterburn, *Lux & Loaded: Exposing North Korea's Strategic Procurement Networks* (Washington, D.C.: Center for Advanced Defense Studies, 2019).



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financial industry. Ryugyong Commercial Bank has long been involved in money laundering and proliferation financing.<sup>78</sup>

In 2020, the UN Panel of Experts published photographs of luxury watches and imported alcohol for sale at Pyongyang's Taesong Department Store.<sup>79</sup> This store belongs to the Taesong Group, which also includes Korea Daesong Trading Company and Korea Daesong Bank. Both of these entities had already been designated for proliferation financing.<sup>80</sup> All Taesong Group companies are under the control of a state criminal enterprise, Bureau 39, which is notorious for counterfeiting and money laundering.<sup>81</sup> North Korea's Rungrado Trading Company has also been implicated in Pyongyang's trade in luxury goods, as well as exports of missile parts and slave labor.<sup>82</sup>

In 2019, UN aid agencies estimated that half of North Korea's population was still in need. It appealed to international donors for \$120 million to feed 3.8 million of the most vulnerable people—young children, pregnant women, and lactating mothers.<sup>83</sup> That same year, the International Campaign to Abolish Nuclear Weapons estimated that Pyongyang spent \$620 million on its nuclear weapons program alone.<sup>84</sup> It has continued to divert resources from the needs of its people to accelerate its production of nuclear weapons and ballistic missiles.<sup>85</sup>

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78 U.S. Dep't of Treasury, "Treasury Sanctions Banks and Representatives Linked to North Korean Financial Networks," September 26, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/sm0165.aspx>; see U.S. Dep't of Treasury, "Imposition of Special Measure Against North Korea as a Jurisdiction of Primary Money Laundering Concern," 81 Fed. Reg. 78715 (December 9, 2016), <https://www.federalregister.gov/documents/2016/11/09/2016-27049/imposition-of-special-measure-against-north-korea-as-a-jurisdiction-of-primary-money-laundering>.

79 S/2020/151 ¶¶ 153, 157, figs. 26, 34.

80 S/2019/691 ¶ 48.

81 *Id.*; U.S. Dep't of Treasury Press Release, "Treasury Designates Key Nodes of the Illicit Financing Network of North Korea's Office 39," November 18, 2010, <https://www.treasury.gov/press-center/press-releases/pages/tg962.aspx>.

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83 United Nations Humanitarian Country Team, Democratic People's Republic of Korea, *DPR Korea Need & Priorities* (March 2019), <https://reliefweb.int/sites/reliefweb.int/files/resources/DPRK%20NP%202019%20Final.pdf>.

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In 2020, despite the rising immiseration of its rural population and the worsening economic effects of the COVID-19 pandemic, Pyongyang imported \$30 million worth of wine, whisky, vodka, beer, and other alcoholic beverages from China.<sup>86</sup> That year, the World Food Programme (WFP) asked donor nations to contribute \$161 million to pay for a three-year aid program to feed the poor, who were still hungry a quarter-century after humanitarian aid first arrived in North Korea.<sup>87</sup> But early that year, Kim Jong-un imposed a strict blockade on his own country and ejected all foreign aid workers.

Inexplicably, Pyongyang refused to accept offers of protective equipment and vaccines by Presidents Trump and Biden, the United Nations, the governments of Russia and China, and the industry alliance COVAX via UNICEF, to assist North Korea in coping with the COVID-19 pandemic.<sup>88</sup> The UN Panel of Experts reports that Pyongyang continues to use scarce resources to purchase and import luxury goods to this day—including Mercedes-Benz limousines and imported alcoholic beverages—instead of using those resources to import food and medicine, which are exempt from international sanctions.<sup>89</sup> Between 2020 and 2021, as North Korea's food situation continued to

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87 United Nations World Food Programme, *Democratic People's Republic of Korea interim country strategic plan (2019–2021)*, WFP/EB.1/2019/8-B/1 (2019), [https://docs.wfp.org/api/documents/WFP-0000101974/download/?\\_ga=2.115939714.503039636.1581644977-299558176.1580867706](https://docs.wfp.org/api/documents/WFP-0000101974/download/?_ga=2.115939714.503039636.1581644977-299558176.1580867706)

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deteriorate, Kim Jong-un built himself a floating amusement park off the coast of Wonsan and a series of mansions near Lake Yonphung in the northeast, and in Pyongyang, adding to the dozens of palaces built by his father and grandfather.<sup>90</sup>

In a centrally planned economy, where much of the population is malnourished or food insecure, kleptocracy is not merely the tolerance of gross inequity. It is the state's deliberate segregation of the meat-eaters from the corn-eaters, or—at its worst—of the living from the dead. It is a system that places a lower value on the lives of the poor than on the limousines of its oligarchs. Kim Jong-un's kleptocracy is not a quirky, amusing-yet-harmless hypocrisy, or the story of a plucky David defying Goliath. It is a crime against humanity that relies on the active or passive collaboration of corrupt foreign enablers and profiteers—vendors, shippers, bankers, customs inspectors, and regulators.

Indeed, as this paper argues, *every* crisis emanating from North Korea—its crimes against humanity, its WMD programs, its global arms trade and proliferation, its hacking and financial crimes—is inextricably intertwined with its kleptocracy and corruption. In North Korea, money is the root of *all* evil. Consequently, each of these crises points to a common set of legal and diplomatic strategies that targets all of them at their common source—our willful or negligent choices to facilitate Pyongyang's access to our financial system, our commerce, our technology, and our economy.

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## C. Corruption in North Korea: The State as Perpetrator, Exporter, & Victim

*Corruption impedes economic growth by diverting public resources from important priorities such as health, education, and infrastructure. It undermines democratic values and public accountability and weakens the rule of law. And it threatens stability and security by facilitating criminal activity within and across borders, such as the illegal trafficking of people, weapons, and drugs.<sup>91</sup>*

North Korea consistently ranks as one of the world's most corrupt countries in indices compiled by the NGOs Transparency International and Trace International.<sup>92</sup> In North Korea, corruption may be either obedient or contrary to the direction of the state. The state directs its officials to commit insurance fraud,<sup>93</sup> bank fraud,<sup>94</sup> computer hacking,<sup>95</sup> drug trafficking,<sup>96</sup> counterfeiting,<sup>97</sup> gambling,<sup>98</sup> and money laundering.<sup>99</sup>

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The same officials also cheat the state. Trading company officials embezzle profits,<sup>100</sup> and security officers extort merchants<sup>101</sup> or the relatives of émigrés to South Korea for remittances.<sup>102</sup> Officials pilfer food and fertilizer from collective farms and processing plants.<sup>103</sup> Soldiers steal from the homes of civilians,<sup>104</sup> and officers and soldiers embezzle fuel and rations from military commissaries.<sup>105</sup> Factory managers rent out government land and pocket the proceeds.<sup>106</sup> The leaders of work units steal materials from factories or construction sites.<sup>107</sup> Border guards demand bribes from traders and smugglers.<sup>108</sup> Civil servants take bribes from their subordinates.<sup>109</sup> In all of these cases, the North Korean people are the ultimate victims.

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In a 2019 report, the UN Office of the High Commissioner for Human Rights recognized corruption as a serious human rights problem in North Korea. It analyzed the state's kleptocracy as a form of corruption.<sup>110</sup> Pyongyang's corruption taxes the livelihoods of the poor below subsistence levels to pay for its military expenditures, its cult of personality, and luxuries for its political elites. Its grossly unequal redistribution of the nation's resources favors Pyongyang over the northeast city dwellers over rural people, and "loyal" families over "hostile" ones. Wages and rations seldom reach subsistence levels, so families must grow food or trade to survive. In doing so, they must skirt or flout the state's myriad petty despotisms. These rules often double-tax the poor in application. Enforced as rigidly as they are interpreted ambiguously, they create opportunities for lower-level officials and police to demand bribes arbitrarily. Those who cannot pay are denied fair trials and humane treatment while detained or after they are sentenced.<sup>111</sup>

In North Korea, corrupt officials monetize their political power through bribes and extortion, or coerce vulnerable women and girls for sex.<sup>112</sup> North Korea's *nouveau riche*, who have prospered in its nascent gray-market economy, can buy with dollars the indulgences that the *songbun* caste system had once rationed out only to privileged elites.<sup>113</sup> They benefit from corruption by bribing officials to evade punishments, work assignments,<sup>114</sup> and forced labor mobilizations.<sup>115</sup> They get the first pick of goods smuggled in by merchants who bribe officials.<sup>116</sup> Parents bribe military officers to secure favorable assignments for their sons.<sup>117</sup> Different security forces compete to "inspect" and extort military units for corruption, or for the possession of foreign media.<sup>118</sup> Corruption

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allows fortunate prisoners to receive food parcels, family visitors, or shorter sentences.<sup>119</sup> A few can buy their way out of prosecution entirely.<sup>120</sup> Corruption is a solvent of regime decay, but it is not transforming North Korea into a fair society that provides for its people. It merely alters the class of beneficiaries of its gross inequalities.

The state has acknowledged the ubiquity of corruption, if only implicitly, through an escalating series of crackdowns, purges, and executions. In doing so, it accepts the political price it pays in citizens' loyalty by acknowledging the corruption of its officials, and the perception by the people that the state is corrupt.<sup>121</sup> Does the state assume that citizens do not also project this perception upon the state itself?

The state's profiteering from corruption abroad reflects the same corrupt ethic that also pervades every level of North Korean society. Pyongyang perpetrates its kleptocracy through agents it selects and trains for their aptitude at breaking laws, and for their indifference to the rights of other states and individuals. It then dispatches them abroad with the specific intent of carrying out criminal enterprises, defrauding banks to obtain financial services,<sup>122</sup> and defrauding foreign governments that seek to protect their own sovereignty and security by regulating their own

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122 18 U.S.C. § 1344 (prohibiting fraud to obtain financial services).

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economies.<sup>123</sup> It induces bankers and shippers to turn a blind eye to its money laundering and smuggling.<sup>124</sup> Pyongyang is also an exporter and proliferator of corruption and kleptocracy that induces other poor states to spend their scarce hard currency on weapons and political monuments.<sup>125</sup>

Thus, Kim Jong-un is both the perpetrator and victim of corruption. The corruption he directs is essential to the state's cohesion and his survival; the corruption he cannot extirpate degrades its cohesion and ultimately threatens his survival. The former pits Kim against the world; the latter pits Kim against its own officials. Both forms prey on North Korea's poor, who have been consigned to the lowest levels of the *songbun* system. The poorest cheat the state because they must. Corruption is just another survival strategy to those whose wages seldom reach the barest subsistence level.<sup>126</sup>

This report, however, focuses on the state as the apex predator in North Korea's ecosystem of corruption, and how the world has addressed that corruption—or more often, has failed to. Because Pyongyang's kleptocracy relies on its access to international trade and finance, it is also vulnerable to the risk that other states will coalesce around common interests, values, obligations, authorities, and responsibilities to prevent and alter its behavior. Pyongyang's corruption lends itself to unified, coherent, nonviolent, and humane policy responses—diplomatic, legal, and ethical—by other states, all of which must eventually choose between being its enablers, its victims, or its antagonists.

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124 Aaron Arnold, "How North Korea takes advantage of global corruption to evade sanctions," *NK News*, December 24, 2021, <https://www.nknews.org/2021/12/how-north-korea-takes-advantage-of-global-corruption-to-evade-sanctions/>.

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126 "KPA Corruption: A Necessary Evil?," *Daily NK*, April 6, 2015, <https://www.dailynk.com/english/kpa-corruption-a-necessary-evil/>; "In sanctioned North Korea, bribery problem worsens," *Daily NK*, January 9, 2018, <https://www.dailynk.com/english/in-sanctioned-north-korea-bribery/>; Kang Mi-jin, "MPS officers extract bribes to fund their day of honor," *Daily NK*, November 18, 2019, <https://www.dailynk.com/english/mps-officers-extract-bribes-fund-their-day-honor/>; Kim Yoo-jin, "Police official in North Korea faces jail time for taking bribes," *Daily NK*, April 30, 2019, <https://www.dailynk.com/english/police-official-in-north-korea-faces-jail-time-for-taking-bribes/>; Kang Mi-jin, "North Korean law enforcement officials criticized for using fines to earn money," *Daily NK*, April 4, 2019, <https://www.dailynk.com/english/north-korean-law-enforcement-officials-criticized-for-using-fines-to-earn-money/>; Lee Sung-jin, "Director of Hoiryeong People's Safety Agency on Trial for Drug Charges," *Daily NK*, February 6, 2008, <https://www.dailynk.com/english/director-of-hoiryeong-peoples-safe/>.

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## D. The Hungry as Human Shields

When foreign states limit or deny Pyongyang's access to their economies, some interpret this as a choice between combating proliferation and financial crime (on one hand) and showing mercy toward poor North Koreans (on the other) who are guilty of no crime. This reframing shifts the choice away from the agency of those who have the most responsibility and capability for framing it.

A state's willful choice to spend the nation's resources on weapons and luxury goods while the people go hungry is a violation of the right to food.<sup>127</sup> That is especially so in a centrally planned economy. In 2008, Václav Havel, Kjell Magne Bondevik, and Elie Wiesel invoked the doctrine of "Responsibility to Protect," in one of the Committee for Human Rights in North Korea's first reports. Under this doctrine, a state has a legal obligation to protect the most fundamental human rights of its people. If a state denies its people these rights, the UN Security Council and General Assembly are obligated to act on behalf of those whose rights are denied.<sup>128</sup> Havel, Bondevik, and Wiesel called for engagement with Pyongyang, but Pyongyang ignored their call—and, but for cynical gestures and incredible denials, every other similar call.<sup>129</sup>

In 2014, the UN COI called on the Security Council to refer the evidence of Kim Jong-un's crimes against humanity to the International Criminal Court. China and Russia blocked that referral.<sup>130</sup> But the failure of moral suasion, and the institutional failure of the United Nations, do not relieve other states of their obligation to develop and enforce a strategy to compel Pyongyang to cease its kleptocracy, end its crimes against humanity, and provide its people sufficient food and medical care to live, grow, and prosper. No state has a sovereign right to commit kleptocracy. Under the UN Convention Against Corruption and related authorities, every state has a duty to safeguard against enabling it, and to take all reasonable steps to prevent it.<sup>131</sup>

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127 A/HRC/25/63 ¶¶ 682-92. Specifically, the Commission found as follows:

The Commission finds what occurred during the 1990s a most serious indictment of the DPRK and its officials. In the highly centralized system of the Democratic People's Republic of Korea, decisions related to food, including production and distribution, state budget allocation, decisions related to humanitarian assistance and the use of international aid, are ultimately determined by a small group of officials, who are effectively not accountable to those affected by their decisions. In this context, the Commission considers crimes against humanity of starvation in section V of the present report.*Id.* ¶ 691.

128 Václav Havel, Kjell Magne Bondevik, and Elie Wiesel, *Failure to Protect: The Ongoing Challenge of North Korea* (Washington, D.C.: Committee for Human Rights in North Korea, 2008), [https://www.hrnk.org/uploads/pdfs/F2P\\_North\\_Korea\\_9-19-08\\_English.pdf](https://www.hrnk.org/uploads/pdfs/F2P_North_Korea_9-19-08_English.pdf).

129 Madison Park, "Under pressure, North Korea proposes human rights visit," *CNN*, October 29, 2014, <https://www.cnn.com/2014/10/28/world/asia/north-korea-human-rights/index.html>.

130 A/HRC/25/63 ¶¶ 1201 & 1218.

131 United Nations Office on Drugs and Crime, *United Nations Convention against Corruption*, GA res. 58/4, A/58/422, S. Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004), [https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf); United Nations General Assembly, *United Nations Convention against Transnational Organized Crime and its Protocols*, S. Exec. Rep. No. 109-4, 40 ILM 335 (2001); United Nations General Assembly, *Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime*, A/55/383 (2000), <https://www.unodc.org/pdf/>



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Yet since the Great Famine of the 1990s, Pyongyang has used its poorest people as human shields, thus presenting the world with a false choice between mercy and security. But allowing state access to international finance does not feed the hungry if the state chooses to deprive them of their basic needs anyway. And of course, if UN member states enforce sanctions, the money that Pyongyang has stolen from North Korea's poorest and hungriest people draws interest in foreign bank accounts or treasuries.<sup>132</sup> This, too, fails to reach the root of all evil.

Neither aid nor sanctions, as currently configured, is attacking this evil at its root. A world that is a necessary participant in Kim Jong-un's kleptocracy bears ethical and legal duties to protect the people of North Korea from it. This report presents a non-violent, multilateral strategy to use the combined authorities of UN Security Council resolutions, international conventions, and U.S. domestic law to advance both security and mercy, and reconcile the illusory conflict between them. Understanding the potential of that strategy begins with an understanding of the legal authorities on which it would be based, how they have evolved and developed, and what we can learn from their past uses.

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crime/final\_instruments/383e.pdf; United Nations General Assembly, *United Nations Convention against Transnational Organized Crime*, A/RES/55/25 (2001); United Nations General Assembly, *United Nations Declaration Against Corruption and Bribery in International Commercial Transactions*, A/RES/ 51/191 (1996) [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/51/191](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/51/191).

132 U.S. Dep't of Treasury, "Terrorist Assets Report: Calendar Year 2018 Twenty-Seventh Annual Report to the Congress on Assets in the United States Relating to Terrorist Countries and Organizations Engaged in International Terrorism," 2018, TABLE 1 <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/tar2018.pdf>. This indicates that by the end of the 2018 reporting period, OFAC was holding more than \$74 million in blocked North Korean funds, an increase of just \$11 million over the previous year; U.S. Dep't of Treasury, "Terrorist Assets Report: Calendar Year 2017 Twenty-sixth Annual Report to the Congress on Assets in the United States Relating to Terrorist Countries and International Terrorism Program Designees," 2017, <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/tar2017.pdf>.

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## Part II—Legal Authorities Against North Korean Kleptocracy

### A. A Pre-History of North Korea Sanctions

The Chosun Dynasty had little external trade before 1876, when the Japanese empire forced a self-isolated Korean kingdom into progressively more exploitative trade relations, and eventually colonized it. In 1940, the Roosevelt administration imposed a trade embargo on the Japanese empire, including its Korean colony.<sup>133</sup> Thus, the United States was not a significant trading partner of Korea before Japan's surrender in 1945.

When Kim Il-sung invaded South Korea in 1950, President Truman invoked the Trading With the Enemy Act of 1917 (TWEA),<sup>134</sup> which barred most bilateral trade between the U.S. and North Korea until 1995.<sup>135</sup> But the TWEA was of little consequence during the Cold War, when Pyongyang's principal trading partners were the U.S.S.R., which offered it trade on favorable terms, and the People's Republic of China.<sup>136</sup> Pyongyang regarded trade with other states with suspicion.<sup>137</sup> When it needed hard currency, its agents abroad found other ways to acquire it. As early as the 1960s, North Korean diplomats were arrested for drug trafficking, and for the smuggling of liquor and cigarettes.<sup>138</sup>

Meanwhile, the global economy was becoming increasingly dollarized, and an efficient financial system had risen in Manhattan to facilitate global commerce. Most international transactions—and many intra-national ones—were now denominated in dollars and were cleared through correspondent banks in New York. Even non-U.S. banks must clear most dollar transactions through their

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133 U.S. Fed. Reserve Bank of New York, Exec. Order 8832, "Freezing Japanese and Chinese Assets in the United States," Cir. 2249 (1941), [https://fraser.stlouisfed.org/files/docs/historical/ny%20circulars/1941\\_02249.pdf](https://fraser.stlouisfed.org/files/docs/historical/ny%20circulars/1941_02249.pdf) (amending a previous executive order freezing assets in Nazi-occupied Norway and Denmark to require a license for any transaction in "property subject to the jurisdiction of the United States . . . in which . . . China or Japan or a national thereof had any interest of any nature whatsoever, direct or indirect"); Myung-Soo Cha, "The Economic History of Korea," *Economic History*, accessed September 23, 2020, <https://eh.net/encyclopedia/the-economic-history-of-korea/>; Daniel Wertz and Chelsea Gannon, "A History of U.S.-DPRK Relations," *National Committee for North Korea Issue Brief*, November 2015, [https://www.ncnk.org/sites/default/files/US\\_DPRK\\_Relations\\_November2015.pdf](https://www.ncnk.org/sites/default/files/US_DPRK_Relations_November2015.pdf).

134 Dianne E. Rennack, "North Korea: Legislative Basis for U.S. Economic Sanctions," *U.S. Congressional Research Service*, March 9, 2020, 15, <https://fas.org/srg/crs/row/R41438.pdf>.

135 Exec. Order 13466, "Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals," Presidential Proclamation 8271 (2008), <https://www.govinfo.gov/content/pkg/CFR-2009-title3-vol1/pdf/CFR-2009-title3-vol1-co13466.pdf>; see *infra* notes 144-45.

136 Eberstadt, *The North Korean Economy: Between Crisis & Catastrophe*, 61-90.

137 *Id.* at 145-49; Marcus Noland, "NORTH KOREA'S EXTERNAL ECONOMIC RELATIONS," (WASHINGTON, D.C.: PETERSON INST. FOR INTL. ECONOMICS, 2001), [HTTPS://WWW.PIIE.COM/COMMENTARY/SPEECHES-PAPERS/NORTH-KOREAS-EXTERNAL-ECONOMIC-RELATIONS-PAPER](https://www.piie.com/commentary/speeches-papers/north-koreas-external-economic-relations-paper).

138 Sheena Chestnut Greitens, *Illicit: North Korea's Evolving Operations to Earn Hard Currency*, Committee for Human Rights in North Korea (2014).

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correspondent accounts in U.S. banks.<sup>139</sup> Thus, a wire transfer from a Hong Kong bank to a Taiwanese bank is routed indirectly, from the Hong Kong bank's U.S. correspondent account to the Taiwanese bank's U.S. correspondent account.<sup>140</sup> Because these transactions pass through U.S. jurisdiction, they fall under the regulatory jurisdiction of the U.S. Department of the Treasury. Because America is the hub of this financial system, the Treasury Department is its steward, and the cooperation of correspondent banks is essential to that stewardship.<sup>141</sup>

Since 1970, Congress has increased its regulation of the financial system to protect it from misuse for money laundering and tax evasion. That year, it passed the Bank Secrecy Act (BSA), which required banks to conduct due diligence inquiries into who their customers are and where their money comes from.<sup>142</sup> In 1977, it passed the International Emergency Economic Powers Act (IEEPA), which authorizes the Treasury Department to freeze the assets of criminals, terrorists, and money launderers within U.S. jurisdiction.<sup>143</sup> While the BSA is primarily a law enforcement tool, the IEEPA has become central to enforcing both U.S. national sanctions and UN sanctions.

The IEEPA gives the Office of Foreign Assets Control the power to freeze assets as they transit through U.S. jurisdiction (known as blocking). The authority to block funds is generally by regulation or executive order that either blocks "all property and interests in property" of a specific person, group, or entity; or provides for the blocking of funds involved in specific conduct prohibited by regulation or executive order. Blocking does not change the ownership of property. Blocked funds remain the property of their owner, but no person may legally deal in them within the United States—including through correspondent accounts in the United States—and no U.S. person may deal in them anywhere. The money sits in a blocked property account and draws interest until the Treasury Department unblocks it or the Justice Department

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139 Federal Reserve Bank of New York, "Central Bank & International Account Services," accessed February 7, 2021, <https://www.newyorkfed.org/markets/central-bank-and-international-account-services>; Frances Coppola, "Fedwire: The US Dollar in International Payments," *American Express*, accessed October 18, 2020, <https://www.americanexpress.com/us/foreign-exchange/articles/fedwire-us-dollar-in-international-payments/>; In one recent case, however, transactions involving a North Korean company's construction of statues in Africa, in violation of UN Security Council Resolution 2321, paragraph 29, were cleared through a French bank that had been licensed by the Federal Reserve to conduct dollar-clearing transactions. The Sentry, *Overt Affairs: How North Korean Businessmen Busted Sanctions in the Democratic Republic of Congo*, August 2020, <https://cdn.thesentry.org/wp-content/uploads/2020/08/OvertAffairs-TheSentry-August2020.pdf>.

140 See, e.g., *United States v. \$148,500 of Blocked Funds in the Name of Trans Multi Mechanics, Co., Ltd., et al.*, No. 16-cv-01029 (2019), <https://freekorea.us/wp-content/uploads/2019/05/US-v-148500-Opinion-Granting-Forfeiture.pdf>

141 Money laundering means the transfer of funds to facilitate crime, or to spend, conceal, or obscure the illicit origins of the proceeds of crime. See 18 U.S.C. § 1956 (2016).

142 Bank Secrecy Act of 1970, Pub. L. No. 91-508, 84 Stat. 1114 (1970); see U.S. Dep't of Treasury, Financial Crimes Enforcement Network, "History of Anti-Money Laundering Laws," accessed July 7, 2019, <https://www.fincen.gov/history-anti-money-laundering-laws>.

143 International Emergency Economic Powers Act of 1977, Pub. L. No. 95-223, 91 Stat. 1626 (1977) (codified at 50 U.S.C. §§ 1701-1708);

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forfeits it.<sup>144</sup> Although the U.S. government has no legal authority to spend blocked funds, the owner's judgment creditors may seek to collect against them.

Both the BSA and the IEEPA were delegations to the President of Congress's enumerated constitutional power to regulate commerce with foreign nations, but Congress does not have the staff to carry out the extensive regulatory responsibilities these new laws required.<sup>145</sup> Instead, the Treasury Department built that bureaucracy. Generally, the Financial Crimes Enforcement Network (FinCEN) regulates and enforces the BSA, and OFAC regulates and enforces the IEEPA. Banks that process wire transfers must share information about the parties to and purposes of transactions with their correspondent banks, which are required to share some of that information with the Treasury Department.

All financial institutions—banks, credit unions, casinos, and payday lenders—must maintain Anti-Money Laundering (AML) programs. The industry standard for AML compliance for banks uses specialized software to identify suspicious activities, patterns, or associations that may be red flags for money laundering.<sup>146</sup> Compliance software runs customer and counterparty data through a game of “Six Degrees of Separation” to find suspicious transactions that banks must report to the Treasury Department.<sup>147</sup> AML regulations, though imprecisely described as sanctions when applied to state actors, are merely the implementation of internationally agreed principles to protect the global economy from financial crimes. Recently, however, they have become important tools against the financing of terrorism and proliferation.<sup>148</sup>

Just as AML regulation requires the cooperation of the financial industry, it also requires the

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144 31 C.F.R. § 510.203.

145 Under the non-delegation doctrine, with some exceptions, Congress may not delegate an enumerated power to the executive, *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935). However, every court to have considered the constitutionality of sanctions laws, including the IEEPA, has held that they do not violate the non-delegation doctrine because Congress retains significant discretion over how the executive enforces and implements them. *United States v. Mirza*, 454 Fed. Appx. 249 (5th Cir. 2011); *United States v. Dhafir*, 461 F.3d 211 (2d Cir. 2006); *United States v. Arch Trading Co.*, 987 F.2d 1087 (4th Cir. 1993). The courts also permit a wider breadth in Congress's delegation of powers to the executive in the field of foreign affairs, where the President's power has traditionally been the most expansive. *Dhafir*, 461 F.3d 210-11.

146 “Global Anti-money Laundering Software Market 2019: Key Vendors, Trends, Analysis, Segmentation, Forecast to 2024,” *Market Watch*, May 6, 2019, <https://www.marketwatch.com/press-release/global-anti-money-laundering-software-market-2019-key-vendors-trends-analysis-segmentation-forecast-to-2024-2019-05-06>.

147 U.S. Dep't of Treasury, Financial Crimes Enforcement Network, *FinCEN's 314(a) Fact Sheet*, June 18, 2019, <https://www.fincen.gov/sites/default/files/shared/314afactsheet.pdf>; U.S. Fed. Deposit Ins. Corp., *Federal Financial Institutions Examination Council, Bank Secrecy Act / Anti-Money Laundering Examination Manual, Customer Identification Program—Overview*, August 24, 2007, [https://www.fdic.gov/regulations/examinations/bsa/ffiec\\_cip.pdf](https://www.fdic.gov/regulations/examinations/bsa/ffiec_cip.pdf).

148 Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation*, June 2019, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.



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cooperation of regulators from states—the state of New York is a formidable regulator in its own right—and foreign regulators who oversee financial systems based on the Euro, the Pound, the Yen, and the Canadian, Australian, and New Zealand dollars. The sharing of financial intelligence with other jurisdictions closes enforcement gaps and increases the likelihood that illicit funds will be frozen by banks—not only amounts that are denominated in dollars, but also in other convertible currencies.<sup>149</sup>

Banks that clear transactions for parties that launder money or break sanctions—even if inadvertently—because of insufficient AML due diligence can face stiff civil and criminal penalties.<sup>150</sup> Banks that do so willfully face much higher penalties or criminal prosecution. The Treasury Department's greatest leverage over banks that launder money is to restrict or deny their access to the financial system, using the anti-money laundering authorities of Section 311 of the Patriot Act. This authority includes a range of special measures requiring enhanced due diligence, additional reporting requirements, and beneficial ownership disclosure requirements for designated parties, banks, or jurisdictions.<sup>151</sup> Treasury would later invoke this measure against three foreign banks that facilitated Pyongyang's money laundering through U.S. jurisdiction, and then, invoke it against the jurisdiction of North Korea itself. But Kim Jong-il would enjoy a long grace period before the Treasury Department would expect him to obey our laws.

### B. Kim Jong-il's Road Not Taken

Kim Il-sung did not devise a new economic strategy between the loss of his Soviet patron in 1991 and his death in 1994. His failure to reform and open North Korea's economy contributed to the famine that had already begun. His diplomats may have seen crime as a coping strategy. Around this time, incidents of drug trafficking and counterfeit currency linked to North Korea increased ten-fold.<sup>152</sup>

It was left to Kim Jong-il to gain access to the financial system through the 1994 Agreed Framework. In exchange for Kim's promises to dismantle his nuclear programs, President Clinton offered him humanitarian and energy aid.<sup>153</sup> In 1995, Clinton also granted exceptions to TWEA sanctions<sup>154</sup>

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149 See 31 C.F.R. Pt. 1010.

150 31 U.S.C. § 5322; 31 C.F.R. Part 501 App. A (containing the penalty guidelines for banks, escalating the penalties of banks whose violations are willful or reckless).

151 31 U.S.C. § 5318A (providing for a series of five special measures applicable to entities of primary money laundering concern, including enhanced due diligence, record-keeping, reporting of beneficial ownership information, and a prohibition on the provision of correspondent account services).

152 Greitens, *supra* note 165, fig. 1.

153 U.S. Congressional Research Service, "Foreign Assistance to North Korea," April 2, 2014, <https://www.everycrsreport.com/reports/R40095.html>.

154 31 C.F.R. Pt. 500 (2007); U.S. Dep't of Treasury, "Foreign Assets Control Regulations; North Korean Travel and Financial Transactions; Information and Informational Materials," 60 Fed. Reg. 8935 (February 16, 1995), <https://www.govinfo.gov>.

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for transactions for travel,<sup>155</sup> telecommunications,<sup>156</sup> humanitarian aid,<sup>157</sup> overflight payments,<sup>158</sup> energy sector projects such as light-water reactors and the shipment of fuel oil,<sup>159</sup> the operation of diplomatic missions<sup>160</sup> and news bureaus,<sup>161</sup> and imports of magnesia and magnesite.<sup>162</sup> The most significant sanctions relief, however, was a regulation that authorized dollar-clearing transactions on behalf of North Korean buyers and sellers through U.S. jurisdiction. It may be a coincidence that the Treasury Department published this regulation on February 16, 1995—Kim Jong-il's birthday—as the people of Hamheung, Heungnam, and Wonsan began to fill the hills above their cities with the graves of grandparents, then their parents, and then their children.<sup>163</sup>

Thus, Kim Jong-il entered the peak of the famine with broad access to the U.S. financial system, humanitarian aid, and a conditional opening to bilateral and international trade.<sup>164</sup> All he had to do was to accept peaceful coexistence with his neighbors, abide by his denuclearization and nonproliferation commitments, and make the choice to use his economic access for lawful purposes. We now know that he did not make that choice.

In retrospect, Washington was extraordinarily patient with Kim's financial crimes. In 1995, he strode under the harsh light of Treasury Department regulators, who granted him a lengthy grace period to reform his ways. In 2000, after he carried out a ballistic missile test, Clinton negotiated a test freeze and expanded his access to the U.S. economy again, authorizing more exports of U.S. goods and technology to North Korea,<sup>165</sup> and more transactions for trade and investments.<sup>166</sup>

Although the exercise of this discretion undoubtedly changed with Pyongyang's 2002 admission that it was pursuing a uranium enrichment program and the collapse of the Agreed Framework, these permissive regulations remained on the books well into the George W. Bush

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gov/content/pkg/FR-1995-02-16/pdf/95-3984.pdf.

155 31 C.F.R. §§ 500.563 & 500.566 (1997), <https://www.govinfo.gov/content/pkg/CFR-1997-title31-vol2/pdf/CFR-1997-title31-vol2-part500.pdf>.

156 *Id.* § 500.571.

157 *Id.* § 500.573.

158 *Id.* § 500.585.

159 *Id.* § 500.584.

160 *Id.* § 500.581.

161 *Id.* § 500.583.

162 *Id.* § 500.582.

163 *Id.* § 500.580.

164 Natsios, *The Great North Korean Famine: Famine, Politics & Foreign Policy*, 127, 140.

165 U.S. Dep't of Treasury, "Office of Foreign Assets Control, Foreign Assets Control Regulations," 65 Fed. Reg. 38165 (June 19, 2000), <https://www.govinfo.gov/content/pkg/FR-2000-06-19/pdf/FR-2000-06-19.pdf>; 31 C.F.R. § 500.533 (2000); <https://www.govinfo.gov/content/pkg/CFR-2004-title31-vol2/pdf/CFR-2004-title31-vol2-part500.pdf>.

166 31 C.F.R. § 500.586 (2000).

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administration.<sup>167</sup> OFAC did not replace them with new regulations under the IEEPA until 2011,<sup>168</sup> and these would still lack the comprehensive licensing requirements that applied to Iran, Cuba, and Sudan for another five years.

In 2005, the Treasury Department barred Macau-based Banco Delta Asia from the financial system for laundering the proceeds of illicit activity, including dollar counterfeiting and drug trafficking, for Pyongyang's agents and partners.<sup>169</sup> Almost immediately, depositors lined up to withdraw their savings from Banco Delta Asia. Macanese authorities had to take control of the bank to prevent its collapse and avert a ripple effect in the local banking industry.<sup>170</sup>

When other banks around the world saw the damage done to Banco Delta Asia, they also began freezing North Korean accounts. According to some reports, this caused a financial panic in Pyongyang and may have forced Kim Jong-il to sign a second disarmament agreement in 2007, to win another lengthy reprieve in U.S. anti-money laundering enforcement. That year, as part of this agreement, the Federal Reserve Bank of New York returned \$25 million in tainted funds from the bank to Kim Jong-il.<sup>171</sup>

The action against Banco Delta Asia caused both Washington and Pyongyang to realize just how reliant Pyongyang had become on access to the dollar system. Pyongyang tried to break its dependency on the dollar, with mixed success. According to a 2016 civil forfeiture complaint filed by the Justice Department in the District of New Jersey, prosecutors explained that Pyongyang "needs access to U.S. dollars ... [t]o obtain goods and services in the international marketplace" because "international vendors require purchases to be made in U.S. dollars." "North Korea's trading needs" could not "be met using only Chinese currency."<sup>172</sup>

But in a legal environment in which banks—particularly those in China—only enforced sanctions when faced with serious legal risks, the deterrent effect of the action against Banco Delta Asia would

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167 *Id.* §§ 500.580 & .586 (2004), <https://www.govinfo.gov/content/pkg/CFR-2004-title31-vol2/pdf/CFR-2004-title31-vol2-part500.pdf>.

168 31 C.F.R. § 510.201 (2011), <https://www.govinfo.gov/content/pkg/CFR-2011-title31-vol3/pdf/CFR-2011-title31-vol3-part510.pdf>.

169 U.S. Dep't of Treasury, Financial Crimes Enforcement Network, "Imposition of Special Measure Against Banco Delta Asia, Including Its Subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a Financial Institution of Primary Money Laundering Concern," 72 Fed. Reg. 12730 (March 19, 2007), [https://www.fincen.gov/sites/default/files/special\\_measure/bda\\_final\\_rule.pdf](https://www.fincen.gov/sites/default/files/special_measure/bda_final_rule.pdf).

170 Jay Solomon & Neil King, Jr., "How U.S. Used a Bank To Punish North Korea," *Wall Street Journal*, April 12, 2007, <https://www.wsj.com/articles/SB117627790709466173>.

171 David Lague and Donald Greenlees, "Squeeze on Banco Delta Asia hit North Korea where it hurt," *International Herald Tribune*, January 18, 2007, [https://www.nytimes.com/2007/01/18/world/asia/18iht-north.4255039.html?pagewanted=1&%2360;!--Un..&\\_r=0](https://www.nytimes.com/2007/01/18/world/asia/18iht-north.4255039.html?pagewanted=1&%2360;!--Un..&_r=0); Josh Meyer, "Squeeze on North Korea's Money Supply Yields Results," *L.A. Times*, November 2, 2006, <https://www.latimes.com/world/la-fg-macao2nov02-story.html>; Solomon & King, *supra* note 218.

172 *United States v. All Funds in the Accounts of Blue Sea Business Co., Ltd.*, No. 16-cv-1954 (D.N.J. 2016) (Verified Complaint for Forfeiture In Rem), <https://www.justice.gov/opa/file/897041/download>.

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not last. For the next several years, Pyongyang enjoyed *de facto* leniency to clear its licit and illicit activities through the financial system discreetly, with the former often serving to commingle with and conceal the illicit origins of the latter.<sup>173</sup>

## C. UN Authority to “Seize and Dispose of” North Korean State Property

Starting in 2006, the UN Security Council began to approve a series of North Korea-specific Chapter VII resolutions in response to Pyongyang’s nuclear and ballistic missile tests. Broadly, these resolutions (1) required states to freeze funds and property associated with Pyongyang’s proliferation and other violations, (2) prohibited financial services if the funds provided could contribute to proliferation and other violations, and (3) authorized states to seize and dispose of frozen funds and contraband.

These provisions also authorize the designation of non-North Korean enablers of sanctions evasion, but the Security Council has only designated one person and 11 entities (out of 159 total) that are not North Korean. Most of the non-North Korean entities are small shipping companies. All but three of these are Chinese nationals, companies controlled by Chinese nationals, or companies based in China.<sup>174</sup>

The mandates—such as the requirement to freeze assets “in accordance with their respective legal processes”—underline that the Security Council’s resolutions are not self-executing. Member states must enforce them using their own financial intelligence units, prosecutors, and courts. For states whose institutions face challenges in meeting these obligations, the World Bank has offered its support to help states build their capacities.<sup>175</sup>

**Asset Freeze.** Paragraph 8(d) of Resolution 1718, approved in October 2006, first “decided” that member states must freeze all property owned or controlled by entities designated by the Security Council or its sanctions committee (the “1718 Committee”) for WMD or missile proliferation. It also required member states to “ensure that any funds, financial assets or economic resources

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173 De Luce and Lehren, “Secret documents show how North Korea launders money through U.S. banks,” “Global banks defy U.S. crackdowns by serving oligarchs, criminals and terrorists,” *Int’l Consortium of Investigative Journalists*, September 20, 2020, [https://www.icij.org/investigations/fincen-files/global-banks-defy-u-s-crackdowns-by-serving-oligarchs-criminals-and-terrorists/?fbclid=IwAR0aEJ6fdX1A\\_4ZUzgT7PuUYbw6URuzlo-DZCoxV0nVJDotD\\_1HUXH2yAA0](https://www.icij.org/investigations/fincen-files/global-banks-defy-u-s-crackdowns-by-serving-oligarchs-criminals-and-terrorists/?fbclid=IwAR0aEJ6fdX1A_4ZUzgT7PuUYbw6URuzlo-DZCoxV0nVJDotD_1HUXH2yAA0).

174 United Nations Security Council, Consolidated Sanctions List, last accessed December 29, 2021, <https://scsanc-tions.un.org/6junjen-all.html>. Of the 80 natural persons listed, 79 appear to be North Korean and one appears to be Chinese. Of the 75 entities listed, 64 are North Korean, 8 are based in China or controlled by Chinese nationals, one is a North Korean front company based in Iran, one is based in Panama, and one is based Singapore.

175 World Bank, “Risk Assessment Support for Money Laundering/Terrorist Financing,” February 29, 2016, <https://www.worldbank.org/en/topic/financialsector/brief/antimoney-laundering-and-combating-the-financing-of-terrorism-risk-assessment-support>.



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are prevented from being made available . . . to or for the benefit of such persons or entities.”<sup>176</sup> The word “ensure” shifts the burden to member states to exercise due diligence to ensure that the funds they provide to North Korean entities are not provided to designated entities.

The Security Council later expanded the asset freeze to cover not only property of designated persons, but all property owned or controlled by Pyongyang or its ruling party that a state determines to be “associated with the DPRK’s nuclear or ballistic missile programs or other activities prohibited by” the resolutions.<sup>177</sup> This language includes a significant loophole, in that a state is only required to freeze assets that the state itself determines to be associated with sanctions violations.

“Economic resources” means “assets of every kind [that] potentially may be used to obtain funds, goods, or services.” It includes the ships that Pyongyang uses to smuggle its coal, oil, weapons, and luxury goods;<sup>178</sup> and “financial or other assets or resources” of entities designated by the Security Council for other violations, such as money laundering, arms trafficking, and luxury goods imports.<sup>179</sup>

The broad definition of “economic resources” became controversial when former South Korean Unification Minister Lee In-young asserted—incorrectly—that barter trade was not prohibited by UN sanctions. Lee’s inaugural policy initiative was a scheme to barter South Korean sugar for North Korean liquor. It later emerged that his proposed North Korean partner was a probable front for Bureau 39 of the KWP, which is designated by both the Security Council and the U.S. Treasury Department for proliferation financing and a wide range of illicit activities.<sup>180</sup>

***Transactions that Could Contribute to Sanctions Violations.*** In 2009, the Security Council first called on member states, in implementing the asset freeze, “to prevent the provision of financial services or the transfer to, through, or from their territory,” including by their nationals or financial institutions, of “any financial or other assets or resources that could contribute to the DPRK’s nuclear-related, ballistic missile-related, or other [WMD]-related programs or activities” within their jurisdictions.<sup>181</sup>

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176 S/RES/1718 ¶ 8(d). The word “decides” indicates that the provision is mandatory, while “calls on” indicates that the language is non-binding. For information about the 1718 Committee, see United Nations Security Council, “Security Council Committee established pursuant to resolution 1718 (2006), Work and mandate of the Committee,” accessed August 9, 2020, <https://www.un.org/securitycouncil/sanctions/1718#work%20and%20mandate>.

177 S/RES/2270 ¶ 32. An exception applies to funds needed for humanitarian or diplomatic purposes.

178 *Id.* ¶¶ 12.

179 *Id.* ¶ 32.

180 Song Sang-ho, “(News Focus) Push to barter S. Korean sugar for N.K. liquor raises both hopes, concerns,” *Yonhap News*, August 12, 2020, <https://en.yna.co.kr/view/AEN20200811005900325>; “S. Korea reviewing private entity’s ‘barter’ trade request with N. Korea,” *Yonhap News*, August 5, 2020, <https://en.yna.co.kr/view/AEN20200805010100325>; “북한, 예년 갑절 규모로 베트남 최대 엑스포 참가해 외화벌이,” *Yonhap News*, April 19, 2017, <https://www.yna.co.kr/view/AKR20170419137700084> (in Korean).

181 S/RES/1874 ¶ 18.

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The language (“calls upon”) was not mandatory, but it was important in several regards. First, in an acknowledgement of Pyongyang’s opacity and the problems of proving its ultimate use for the funds, it placed a due diligence burden on states that might transfer funds to Pyongyang, in the same spirit as Resolution 1718’s obligation to “ensure” that persons were not providing economic resources to designated persons, or for prohibited activities. It also decoupled the authority to freeze Pyongyang’s assets from the designation of the owner. Thus, Pyongyang might nimbly set up, collapse, and rename any number of agents, shell companies, and front companies,<sup>182</sup> but states with the political will to do so could make reasonable inferences based on a company’s secrecy, the associations of its officers or customers, or its patterns of suspicious transactions.<sup>183</sup>

Resolution 2094, approved in 2013, finally made these obligations mandatory, requiring member states to “prevent the provision of financial services” that “could contribute” to Pyongyang’s WMD programs and “other activities prohibited” by the Security Council, such as the trade in luxury goods.<sup>184</sup> After Pyongyang’s sixth nuclear test in 2016 the Security Council approved Resolution 2270, which banned correspondent banking services that linked North Korea’s banks to the financial system.<sup>185</sup>

Given Pyongyang’s financial secrecy, its defiance of the Security Council, and its prioritization of its WMD programs and luxury goods trade, was a ban on transactions that “could contribute” to those priorities practically different from a freeze of all of its assets? How could any investor in North Korea “ensure” that the investment could not contribute to prohibited conduct? In practice, however, Chinese banks disregarded risk factors for money laundering and sanctions violations.<sup>186</sup> Despite a requirement to expel North Korean financial representatives

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182 Joshua Berlinger, “Hiding in plain sight: Why Hong Kong is a preferred spot for North Korea’s money launderers,” *CNN*, December 3, 2017, <https://www.cnn.com/2017/10/16/asia/hong-kong-north-korea/index.html>.

183 S/RES/2094 ¶ 11; “FATF Public Statement - 25 February 2011,” *Financial Action Task Force*, <http://www.fatf-gafi.org/countries/d-i/iran/documents/fatfpublicstatement-25february2011.html> (first calling on FATF member jurisdictions to apply countermeasures to protect the financial system against money laundering and terrorist financing risks emanating from North Korea).

184 S/RES/2094 ¶ 11.

185 S/RES/2270 ¶ 33.

186 See *In re Grand Jury Investigation of Possible Violations of 18 U.S.C. § 1956 and 50 U.S.C. § 1705*, Nos. 18-mj-175, 18-mj-176 & 18-mj-177 (D.D.C. 2019), [https://freekorea.us/wp-content/uploads/2019/04/FINAL\\_18mc175\\_176\\_177\\_Mar\\_18\\_2019\\_Mem\\_Op\\_redacted.pdf](https://freekorea.us/wp-content/uploads/2019/04/FINAL_18mc175_176_177_Mar_18_2019_Mem_Op_redacted.pdf). The Chief District Judge held the banks in contempt of court for failure to comply with the subpoenas and fined each of them \$50,000 a day. A panel of the Court of Appeals later affirmed the District Court’s order. *In re Sealed Case*, No. 19-5068 (D.C. Cir. 2019), <https://freekorea.us/wp-content/uploads/2019/08/Sealed-case-DC-Cir-affirms.pdf>. See Christian Berthelsen and Tom Schoenberg, “Chinese Banks Probed Over North Korea’s Nuclear Arms,” *Bloomberg News*, August 6, 2019, <https://www.bloomberg.com/news/articles/2019-08-06/u-s-is-investigating-how-north-korea-finances-nuclear-program>. See also U.S. Dep’t of Treasury, “Treasury Targets Russian Bank and Other Facilitators of North Korean United Nations Security Council Violations,” August 3, 2018, <https://home.treasury.gov/news/press-releases/sm454>.

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and shut down joint ventures with North Korean banks,<sup>187</sup> China remained a safe haven for North Koreans engaged in money laundering, computer hacking, human trafficking, and the smuggling of UN-embargoed goods.<sup>188</sup>

**Seizure, Confiscation, & Disposal of Property.** In 2009, the Security Council authorized states to “seize and dispose ... of items the supply, sale, transfer, or export of which is prohibited by” the resolutions.<sup>189</sup> Three years later, it clarified that “dispose of” means “through destruction, rendering inoperable or unusable, storage, or transferring to a State other than the originating or destination States for disposal.”<sup>190</sup>

Initially, the resolutions defined contraband according to UN lists of items, materials, equipment, goods, and technology related to WMD programs; luxury goods; and arms and related materiel. Over time, they also prohibited Pyongyang from exporting minerals (coal, iron, iron ore, gold, silver, titanium ore, vanadium ore, rare earth minerals, copper, nickel, lead, lead ore, zinc),<sup>191</sup> textiles, agricultural products,<sup>192</sup> statues,<sup>193</sup> and seafood.<sup>194</sup> They banned its imports of ships,<sup>195</sup> aircraft, vehicles, metals, and machinery;<sup>196</sup> and capped its imports of gasoline, diesel, and jet fuel at 500,000 barrels a year.<sup>197</sup>

Different states have interpreted “seize and dispose of” very differently in practice. In 2013, Panama seized fighter aircraft, surface-to-air missiles, and other weapons aboard the merchant vessel (M/V) *Chong Chon Gang*, which were being shipped in violation of the UN arms embargo. It released the vessel after Pyongyang paid the Panamanian government a \$666,000 fine.<sup>198</sup> The following year,

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187 S/RES/2321 ¶ 32.

188 See, e.g., S/2021/777 ¶¶ 161- (citing evidence of that China hosts banned North Korean joint ventures, overseas financial representatives, and the financing of maritime sanctions evasion); S/2021/211 ¶¶ 140-161 (hosting of North Korean financial representatives, joint ventures, and the laundering of stolen cryptocurrencies); S/2020/151 ¶¶ 167-170 (hosting of North Korean financial representatives); S/2019/691 ¶¶ 50-54, 69-71 (hosting of North Korean financial representatives and contractual arrangements for prohibited coal imports, cryptocurrency-enabled profiting from the smuggling of embargoed goods); S/2019/171 ¶¶ 111-113 (hosting of North Korean hackers and financial agents); S/2018/171 ¶¶ 162 & 178-180 (same); S/2017/142 ¶¶ 51-56 (same); S/2017/150 ¶¶ 216, 219-235 (same).

189 S/RES/1874 ¶ 14; see also UNSC resolution 2321, *Non-proliferation/Democratic People's Republic of Korea*, S/RES/2321 (2016) ¶ 40; S/RES/2371 ¶ 22; S/RES/2375 ¶ 22.

190 S/RES/2087 ¶ 8; S/RES/1874 ¶ 14; S/RES/2321 ¶ 40; S/RES/2371 ¶ 22; S/RES/2375 ¶ 22.

191 S/RES/2371 ¶ 10; S/RES/2321 ¶¶ 26 & 28; S/RES/2270 ¶ 30.

192 S/RES/2397 ¶ 6.

193 S/RES/2321 ¶ 9.

194 S/RES/2371 ¶ 9.

195 S/RES/2321 ¶ 30; S/RES/2397 ¶ 14.

196 S/RES/2397 ¶ 7.

197 *Id.* ¶ 5.

198 Leo Byrne, “North Koreans ready to pay for arms smuggling ship and crew” *NK News*, January 17, 2014, <https://www.nknews.org/2014/01/north-koreans-ready-to-pay-for-arms-smuggling-ship-and-crew/>.

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Mexico seized and scrapped the M/V *Mu Du Bong* after it ran aground in a Mexican port and determined that it was controlled by the same front company—since designated—that controlled the *Chong Chon Gang*.<sup>199</sup>

In 2019, by contrast, prosecutors in the Office of the U.S. Attorney for the Southern District of New York filed a civil forfeiture suit against the North Korean coal smuggling ship M/V *Wise Honest*, presumably with the cooperation of Indonesian authorities that first seized the ship.<sup>200</sup> The court later entered an order of forfeiture and directed the U.S. Marshals Service to sell the ship at auction.<sup>201</sup>

Conversely, Russian and Chinese ports and waters are safe havens for North Korean smuggling of coal, fuel, and weapons,<sup>202</sup> despite a requirement by member states to inspect all cargo coming from or going to North Korea.<sup>203</sup> U.S. law now authorizes U.S. Customs and Border Protection to impose additional inspection requirements on cargo coming from those ports,<sup>204</sup> but the U.S. government has not invoked this authority.

**North Korea-Specific Resolutions & Kleptocracy.** The United Nations has not specifically invoked its Chapter VII authority to authorize the seizure of proceeds of kleptocracy by Pyongyang, except to the extent that the trade in weapons and luxury goods falls within the categories of commerce subject to seizure and disposal. The Security Council has, however, expressed regret for Pyongyang’s “massive diversion of its scarce resources toward its development of” weapons while its people “suffer from major insecurities in food and medical care.” It has also noted the “very large number of pregnant and lactating women and under-five children who are at risk of malnutrition and [the] 41 [percent] of its total population who are undernourished.”<sup>205</sup>

The Security Council has emphasized that the sanctions “are not intended to have adverse humanitarian consequences for the civilian population” and pointed to Pyongyang’s “primary responsibility and need to fully provide for the livelihood needs” of its people.<sup>206</sup> To deconflict the tension between sanctions against the state and unintended humanitarian consequences for North Korea’s poor, the 1718 Committee may grant case-by-case humanitarian exemptions to

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199 Leo Byrne, “Mexico declares N. Korean ship abandoned, will sell for scrap,” *NK News*, March 9, 2016, <https://www.nknews.org/2016/04/mexico-declares-n-korean-ship-abandoned-will-sell-for-scrap/>.

200 *United States v. The Bulk Cargo Carrier Known as the “Wise Honest,” Bearing International Maritime Organization Number 8905490*, No. 19-cv-4210 (S.D.N.Y. 2019).

201 *Id.* (Stipulation and Order of Interlocutory Sale of Property).

202 *See, e.g.*, S/2017/150 (documenting numerous examples before and during the 2016 reporting period of smuggling of sanctioned goods through ports in China and Russia, violations of the arms embargo by China and Russia, and of North Korean financial agents operating on Chinese and Russian territory).

203 S/RES/2270 ¶ 18.

204 22 U.S.C. § 9225.

205 S/RES/2397 ¶ 24.

206 *Id.* ¶ 25.

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the sanctions.<sup>207</sup> So far, however, the Security Council has not taken the step of calling on states to make confiscated North Korean state property available for humanitarian use.

### D. UN Anti-Corruption Conventions

The UN Security Council's denunciations of Pyongyang's misappropriation of the nation's wealth have all, to this point, been non-binding. But these non-binding expressions and their mandatory asset-freezing provisions could be a basis to invoke several existing UN conventions that authorize member states to freeze and recover assets of sanctioned states and corrupt state officials for public use.

In 1988, the UN General Assembly adopted the UN Convention Against Transnational Organized Crime, which entered into force in 2003.<sup>208</sup> That convention—

- requires state parties to criminalize laundering the proceeds of predicate offenses for money laundering, including corruption;
- requires states to maintain adequate regulatory controls to detect money laundering, including requirements that banks keep records of certain transactions, verify the identities of their customers, report suspicious activities to state regulators, and give regulators the power to subpoena financial records;
- requires states to enact laws permitting the tracing, seizure, freezing, confiscation, and disposal of the proceeds of predicate offenses, up to the total commingled sum of legally and illegally derived property that is subject to confiscation; and
- calls on state parties to cooperate in the enforcement of the Convention, including by sharing the confiscated proceeds of joint investigations.

In 2003, the General Assembly adopted the UN Convention against Corruption. That convention—

- defines the crimes that constitute public corruption, including bribery, embezzlement, misappropriation, influence peddling, abuse of power, and laundering the proceeds of corruption;
- sets standards of integrity and transparency in the conduct of government officials;
- establishes the importance of protecting the integrity and independence of a jurisdiction's prosecution and judiciary;
- urges states to enact laws and regulations to prohibit public corruption and prevent money laundering;

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207 United Nations Security Council, 1718 Sanctions Committee (DPRK), "Humanitarian Exemption Requests," accessed August 23, 2020, <https://www.un.org/securitycouncil/sanctions/1718/exemptions-measures/humanitarian-exemption-requests>.

208 *UN Convention Against Transnational Organized Crime*, 2225 U.N.T.S. 209 (2003), [https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280050d3e&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280050d3e&clang=_en).



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- calls on states to confiscate the proceeds of public corruption, including property that is commingled with property derived from legitimate sources, and to cooperate with other states' confiscation of the proceeds of public corruption;
- calls for cooperation among law enforcement and prosecutorial authorities in different states, including through the extradition of suspects, the service of legal documents, and the sharing of evidence;
- mandates the return of the proceeds of corruption to the countries of origin; and
- calls on states to help build capacity in other member states to combat corruption, and proposes a process for member states to donate to a UN-administered fund to help developing states build the capacity to detect and act against corruption.<sup>209</sup>

The use of these anti-corruption authorities is well-established in law and practice,<sup>210</sup> although a wide gap persists between states with well-developed legal systems and other states—including some OECD states—that either have not prioritized anti-corruption efforts or lack the capacity to do so.<sup>211</sup>

The latter criticism could have been made about the United States until very recently. In 2011, a World Bank study cited the failure of the U.S. government to require record-keeping on the beneficial owners of property as a key weakness in global efforts to combat money laundering and kleptocracy.<sup>212</sup> Only in January of 2020 did Congress pass the Corporate Transparency Act, which requires businesses to report information about their beneficial owners to FinCEN, and bans anonymous shell companies.<sup>213</sup> FinCEN did not publish its proposed regulations implementing the new law until December 2021.<sup>214</sup> Both loopholes have also impeded the enforcement of North

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209 *UN Convention Against Corruption*, 2349 U.N.T.S. 41 (2005), [https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf).

210 See Gerry Ferguson, *Global Corruption: Law, Theory & Practice*, 3d ed. (Victoria, British Columbia: University of Victoria, 2018), <https://icclr.org/publications/global-corruption-law-theory-and-practice/>.

211 Larissa Gray et al., *Few and Far: The Hard Facts on Stolen Asset Recovery, Stolen Asset Recovery Initiative* (Washington DC: World Bank Stolen Asset Recovery Initiative, 2014), <https://www.oecd.org/dac/accountable-effective-institutions/Hard%20Facts%20Stolen%20Asset%20Recovery.pdf>.

212 Emily Van der Does de Willebois et al., *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (Washington DC: World Bank Stolen Asset Recovery Initiative, 2011), <https://star.worldbank.org/sites/star/files/puppetmastersv1.pdf>.

213 Corporate Transparency Act of 2020, Pub. L. No. 116-92, div. F, tit. LXIV, § 6403 (enacted within the National Defense Authorization Act for Fiscal Year 2021).

214 U.S. Dep't of Treasury, Financial Crimes Enforcement Network, Notice of Proposed Rulemaking, "Beneficial Ownership Information Reporting Requirements," 86 Fed. Reg. 69920, December 8, 2021, <https://www.federalregister.gov/documents/2021/12/08/2021-26548/beneficial-ownership-information-reporting-requirements>. The new regulation will protect the confidentiality of beneficial ownership information from public disclosure. Its reporting requirements will not come into full effect for a still-undetermined period that is still several years away. Elizabeth G. Silver and Catherine A. Johnson, "Anti-Corruption Hot Topic: Corporate Transparency Emerges as Cornerstone of Financial Integrity Regulatory Reforms," *Nat'l Law Review*, Vol. XI, No. 301, October 28, 2021, <https://www.natlawreview.com/article/anti-corruption-hot-topic-corporate-transparency-emerges-cornerstone-financial>. It will be available to financial institutions to conduct due diligence checks, and to law enforcement agencies.

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Korea sanctions.<sup>215</sup>

The uneven enforcement of anti-corruption conventions is not for lack of guidance. The UN Office on Drugs and Crime (UNODC) has published a detailed, 300-page legislative guide for implementing the Convention.<sup>216</sup> The Stolen Asset Recovery Initiative, a partnership between the UNODC and the World Bank, has also published a 270-page guide to the investigation of corruption and the tracing, seizure, confiscation, and recovery of assets.<sup>217</sup> In 2004, the UN Security Council approved a resolution creating a committee to help developing states build the capacity to enforce its counterproliferation sanctions. These institutions could help developing states combat Pyongyang's illicit activities, such as arms trafficking, money laundering, and human trafficking.<sup>218</sup>

FinCEN has also faced personnel and technology challenges in analyzing data from the financial industry and enforcing its customer due diligence rules, and Pyongyang has been a beneficiary of these challenges.<sup>219</sup> These revelations in press reports would spur Congress to pass legislation requiring

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215 Joshua Stanton, "Why Treasury should require banks to keep records about N. Korean beneficial ownership," *One Free Korea* blog, August 2, 2016, <https://freekorea.us/2016/08/treasury-should-require-banks-to-collect-information-about-n-korean-beneficial-owners/> (reproducing in full a 2016 joint comment on a FinCEN regulatory action by the author and William Newcomb, former U.S. Representative to the United Nations Panel of Experts Authorized by United Nations Security Council Resolution 1874, citing evidence from the Panama Papers and other sources about Pyongyang's use of anonymous front and shell companies to disguise its beneficial ownership interests in property involved in sanctions violations).

216 UN Office on Drugs & Crime, *Legislative Guide for the Implementation of the United Nations Convention Against Corruption* (2006), [https://www.unodc.org/pdf/corruption/CoC\\_LegislativeGuide.pdf](https://www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf).

217 Jean-Pierre Brun et al., *Asset Recovery Handbook: A Guide for Practitioners* (Washington DC: World Bank Stolen Asset Recovery Initiative, 2011), [https://www.unodc.org/documents/congress/background-information/Corruption/StAR\\_Publication\\_-\\_Asset\\_Recovery\\_Handbook.pdf](https://www.unodc.org/documents/congress/background-information/Corruption/StAR_Publication_-_Asset_Recovery_Handbook.pdf).

218 United Nations Security Council, *Security Council unanimous adoption of resolution 1540 on the threat of proliferation of nuclear, chemical and biological weapons*, S/RES/1540 (2004); United Nations Security Council, "1540 Committee, Security Council Committee Established Pursuant to Resolution 1540 (2004), General Information," accessed September 13, 2004, <https://www.un.org/en/sc/1540/about-1540-committee/general-information.shtml>.

219 Dan De Luce and Andrew Lehren, "Secret documents show how North Korea launders money through U.S. banks," *NBC News*, September 20, 2020, <https://www.nbcnews.com/news/world/secret-documents-show-how-north-korea-launders-money-through-u-n1240329>; "Global banks defy U.S. crackdowns by serving oligarchs, criminals and terrorists," *Int'l Consortium of Investigative Journalists*, September 20, 2020, [https://www.icij.org/investigations/fincen-files/global-banks-defy-u-s-crackdowns-by-serving-oligarchs-criminals-and-terrorists/?fbclid=IwAR0aEJ6fdX1A\\_4ZUzgT7PuUY-bw6URuzlo-DZCoxV0nVJDotD\\_1HUHX2yAA0](https://www.icij.org/investigations/fincen-files/global-banks-defy-u-s-crackdowns-by-serving-oligarchs-criminals-and-terrorists/?fbclid=IwAR0aEJ6fdX1A_4ZUzgT7PuUY-bw6URuzlo-DZCoxV0nVJDotD_1HUHX2yAA0); Ian Talley and Dylan Tokar, "Leaked Treasury Documents Prompt Fresh Calls for Updated Anti-Money-Laundering Regulations," *Wall Street Journal*, September 21, 2020, <https://www.wsj.com/articles/treasury-plugs-gap-in-anti-money-laundering-regulations-11600680611>.

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FinCEN to modernize its technology, improve its anti-money laundering information sharing and enforcement, and strengthen its financial transparency regulations.

## E. U.S. Judicial Remedies Against Corruption

A U.S. government action to recover the proceeds of kleptocracy often begins with an investigation by the FBI, sometimes in partnership with the Treasury Department or a foreign financial intelligence unit. The FBI's International Corruption Unit, or ICU, specializes in tracing the proceeds of kleptocracy. It routinely works with Interpol, and with law enforcement agencies in Australia, Canada, New Zealand, the United Kingdom, and other nations.<sup>220</sup> The ordinary means by which U.S. authorities coordinate with their foreign counterparts is a Mutual Legal Assistance Agreement, although U.S. authorities may also make informal requests for assistance.<sup>221</sup>

Evidence derived from the investigation may be a basis for prosecutors to subpoena a bank's records. The returns from a subpoena may expose a bank and its customers to civil penalties, criminal prosecution, and reputational harm.<sup>222</sup> Prosecutors may seek a magistrate's authorization to seize the proceeds of crime. Seizure is a limited and temporary action to preserve evidence for trial, or to deny an accused the fruits or proceeds of a crime pending the completion of forfeiture proceedings. It does not change the ownership of the property; it temporarily denies the owner certain rights to spend or transfer that property.<sup>223</sup> U.S. courts will also enforce foreign court orders to restrain assets, if the orders meet certain legal thresholds.<sup>224</sup>

The Justice Department may prosecute corrupt foreign officials criminally if they can extradite and arraign a suspect. Prosecutors may present evidence for an indictment or a subpoena to a grand jury, which may remain under seal for months or years until ordered unsealed by the

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220 U.S. Fed. Bur. of Investigation, "Public Corruption," *What We Investigate*, accessed February 2, 2020, <https://www.fbi.gov/investigate/public-corruption>. The State Department also maintains an anti-corruption team in its Bureau of International Narcotics and Law Enforcement Affairs. U.S. Dep't of State, Bur. of Int'l Narcotics & Law Enforcement Affairs, *Combating Corruption and Promoting Good Governance*, accessed February 2, 2020, <https://www.state.gov/combating-corruption-and-promoting-good-governance/>; Kellen McClure, "No Safe Haven for Corruption: Asset Recovery in Action," *DipNote blog* December 8, 2017, <https://blogs.state.gov/stories/2017/12/08/en/no-safe-haven-corruption-asset-recovery-action>.

221 U.S. Dep't of Justice and U.S. Dep't of State, *U.S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation*, 4-7.

222 A requirement that a bank produce records in response to a federal subpoena, even if the bank may incriminate itself by doing so, falls within a recognized exception to the Fifth Amendment privilege against self-incrimination for records that are required to be kept pursuant to a valid regulatory scheme. *In re Grand Jury Proceedings*, 707 F.3d 1262, 1268-71 (11th Cir. 2013) (citing *Shapiro v. United States*, 335 U.S. 1, 32-33 (1948)).

223 Fed. R. Crim. P. 41.

224 U.S. Dep't of Justice and U.S. Dep't of State, *U.S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation*, 11.

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court.<sup>225</sup> But asserting criminal jurisdiction over foreign nationals requires their extradition, which is challenging for North Korean suspects.<sup>226</sup>

When a defendant is beyond the Justice Department's criminal jurisdiction, prosecutors may also sue *in rem* for civil forfeiture of property under the long-standing principle that the government does not recognize a criminal's interest in the proceeds of crime. Unlike freezing (also known as blocking), forfeiture (known as confiscation in other jurisdictions) extinguishes a claimant's ownership of property. To be subject to forfeiture, property must be traceable to the proceeds of, or have been "involved in," crimes that are listed as predicate offenses in the money laundering statute.<sup>227</sup>

There are three types of forfeitures—*administrative forfeitures* (such as for customs violations, for up to \$500,000);<sup>228</sup> *civil forfeitures* (*in rem* proceedings against property, in which a court must find that the property is subject to forfeiture by a preponderance of the evidence);<sup>229</sup> and *criminal forfeitures* (which are decided in a post-trial remission proceeding if the defendant is convicted of a predicate offense, and the government proves that there is a substantial connection between the property and the crime).<sup>230</sup>

The government may use forfeited property for any purpose Congress legislates. Ordinarily, forfeited funds must be deposited into the Justice Department Forfeiture Fund or the Treasury Department Forfeiture Fund to pay for law enforcement expenses.<sup>231</sup> They may also be divided between the two funds or shared with states and foreign governments that helped with the investigation and legal proceedings.<sup>232</sup>

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225 Fed. R. Crim. P. 6(e).

226 *But see* U.S. Dep't of Justice, "First North Korean National Brought to the United States to Stand Trial for Money Laundering Offenses," March 22, 2021, <https://www.justice.gov/opa/pr/first-north-korean-national-brought-united-states-stand-trial-money-laundering-offenses>.

227 18 U.S.C. § 1956.

228 19 U.S.C. § 1595a.

229 18 U.S.C. § 981. In an *in rem* action, the government sues the property itself, not the owner or possessor. The defendant may be real property, bulk cash, bank accounts, or goods as defendants. The case names are unusual, even amusing. *See, e.g., United States v. 280 Virtual Currency Accounts*, No. 20-cv-2396 (D.D.C. filed Aug. 27, 2020) (complaint to forfeit cryptocurrency stolen by North Korean hackers); *In re 650 Fifth Ave. & Related Props.*, 934 F.3d 147 (2d Cir. 2019) (forfeiture suit for proceeds of Iran sanctions violations); *United States v. One 1980 Red Ferrari, Vin Zffaa02a6a0032333, Iowa License No. Uay914*, 875 F.2d 186 (8th Cir. 1989); *United States v. One Package of Japanese Pessaries*, 86 F.2d 737 (2d Cir. 1936); *United States v. Bank Account No. 0000107310*, No. 12-cv-0106 (N.D. Fla. Sep. 17, 2012); *United States v. 11 1/4 Dozen Packages of Articles Labeled in Part Mrs. Moffat's Shoo-Fly Powders for Drunkenness*, 40 F. Supp. 208 (W.D.N.Y. 1941) (enforcement of food and drug laws).

230 18 U.S.C. §§ 982 & 983(c)(3).

231 18 U.S.C. § 524(c); 31 U.S.C. § 9705.

232 18 U.S.C. § 981(i).

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**Table 1: Administrative & Judicial Enforcement Authorities & Standards of Proof**

Seizure (DOJ)	Fed. R. Crim. P. 41	Probable cause to believe that the property to be seized is evidence of a crime, contraband, fruits of a crime, property designed or intended for use in a crime, or property used in a crime.
Blocking (OFAC)	50 U.S.C. § 1701 et seq. 31 C.F.R. subtit. B, Ch. V. (OFAC regulations)	Substantial evidence that the property is owned or controlled by a designated person, or is being used to evade a sanctions regulation.
Civil Penalty (OFAC)	5 U.S.C. § 702(2)(E) ; 31 C.F.R. Part 501	Substantial evidence of a transaction that violates a regulation.  Penalty amounts are determined by a multi-factor schedule according to the number of transactions, their value, their egregiousness, and whether the respondent disclosed the violations voluntarily.
Special Measures (FinCEN)	31 U.S.C. § 5318A; 31 C.F.R. Part 1010 (FinCEN regulations).	Substantial evidence that— <ul style="list-style-type: none"> <li>• a jurisdiction outside of the U.S.,</li> <li>• one or more financial institutions operating outside the U.S.,</li> <li>• one or more classes of transactions within or involving a jurisdiction outside of the U.S., or</li> <li>• one or more types of accounts,</li> <li>• is of primary money laundering concern.</li> </ul> For 31 U.S.C. § 5318A(b)(5), which blocks the target from the financial system, the Treasury Department must publish a regulation explaining the substantial evidence supporting its finding.
Civil Forfeiture (DOJ)	18 U.S.C. § 981	Proof by a preponderance of the evidence that the property is involved in, or is traceable to the proceeds of, a specified unlawful activity, or a conspiracy to commit a specified unlawful activity.
Criminal Forfeiture (DOJ)	18 U.S.C. § 982	Proof beyond a reasonable doubt that the defendant committed a predicate offense for forfeiture, and proof by a preponderance of the evidence of a substantial connection between the property and the predicate offense



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Financial crimes cases against banks and corporations are more likely to settle before trial than to be contested. The target of an investigation may agree to pay a fine or penalty as part of a settlement. How the government may deposit and spend fines and penalties also depends on the statutes that control their disposition. For example, the Justice Department must deposit criminal fines into a fund to assist crime victims.<sup>233</sup> A settlement agreement may allow a defendant to deny any admission of wrongdoing; it may also require the defendant's cooperation against other targets or monitoring of the defendant's future compliance as a term of a deferred prosecution agreement.<sup>234</sup>

### 1. Domestic Anti-Kleptocracy Authorities

Since the 1970s, Congress has passed a series of statutes prohibiting foreign corruption within U.S. jurisdiction and giving prosecutors and regulators escalating authority to combat it. In 1977, it passed the **Foreign Corrupt Practices Act**, which is jointly enforced by the Justice Department, the Securities and Exchange Commission, the Treasury Department, and the FBI. The FCPA provides for criminal penalties for U.S. persons and corporations, persons acting within U.S. jurisdiction (including correspondent banks), and issuers of securities that engage in bribery and other corrupt transactions to gain a business advantage, or deceptive accounting practices to conceal corrupt transactions such as embezzlement.<sup>235</sup>

In December 2016, Congress passed the **Global Magnitsky Human Rights Accountability Act**, which gave the President discretionary authority to freeze the assets of any government official responsible for "acts of significant corruption," including bribery, expropriation for personal gain, corruption related to government contracts or natural resources, or transferring proceeds of corruption abroad.<sup>236</sup> The Magnitsky Act may be applied to the perpetrators of either corruption or human rights abuses.<sup>237</sup> The Trump administration used an executive order implementing it to freeze the assets of Chinese entities involved in the genocide of the Uyghur people,<sup>238</sup> and the

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233 34 U.S.C. §§ 20101-20111.

234 U.S. Dep't of Justice, U.S. Attorneys' Manual, Ch. 9, 9-28.000, Principles of Federal Prosecution of Business Organizations, last visited December 30, 2021, <https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations#9-28.1000>.

235 U.S. Dep't of Justice, *A Resource Guide to the FCPA U.S. Foreign Corrupt Practices Act*, November 2012, <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf> at 11; see 18 U.S.C. § 981(k), authorizing the forfeiture of funds involved in, or traceable to the proceeds of, money laundering—a term whose legal definition includes transactions in proceeds of violation of the Foreign Corrupt Practices Act. *Id.* § 1956(c)(7)(D).

236 Global Magnitsky Human Rights Accountability Act, Pub. L. No. 114-328, § 1263(a)(3), 130 Stat. 2534 (2016) (codified at 22 U.S.C. § 2656 note).

237 See U.S. Dep't of Treasury, "Treasury Targets Support to Designated Corrupt Actors," September 15, 2020, <https://home.treasury.gov/news/press-releases/sm1122> (freezing the assets of the former First Lady of The Gambia, including a Maryland residence that is the *in rem* defendant in a civil forfeiture proceeding).

238 U.S. Dep't of Treasury, "Treasury Sanctions Chinese Entity and Officials Pursuant to Global Magnitsky Human Rights Executive Order," July 31, 2020, <https://home.treasury.gov/news/press-releases/sm1073>; see Exec.

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Biden administration applied it to an Eritrean general for human rights abuses.<sup>239</sup> The Magnitsky Act lacks an independent asset recovery provision. Instead, prosecutors may file separate civil forfeiture actions against the stolen property as proceeds of a predicate offense, such as bribery, wire fraud, or the Foreign Corrupt Practices Act.

## 2. Anti-Kleptocracy & Enforcement Capacity in the U.S. Government

*Corruption threatens United States national security, economic equity, global anti-poverty and development efforts, and democracy itself. But by effectively preventing and countering corruption and demonstrating the advantages of transparent and accountable governance, we can secure a critical advantage for the United States and other democracies.*

– President Joe Biden, June 3, 2021<sup>240</sup>

The United States came late to the realization that its financial system had given it both global power and global responsibilities. It could choose to regulate that system as a force for prosperity, or let it become a slush fund for criminals and kleptocrats, and a catalyst for poverty, inequality, crime, terrorism, repression, and proliferation.

In 2010, the Justice Department created the Kleptocracy Asset Recovery Initiative “to seize and forfeit the ill-gotten gains of foreign leaders and their cronies,” working in partnership with the State Department, foreign governments, and the World Bank. The Justice Department’s Money Laundering and Asset Recovery Section already guides a global anti-kleptocracy campaign through the offices of the 93 U.S. Attorneys, who are experienced in the prosecution of public corruption cases and in the use of the forfeiture laws to recover the proceeds of corruption.<sup>241</sup>

This initiative has already seized and recovered billions of dollars in assets linked to foreign corruption.<sup>242</sup> Between 2016 and 2019, the Justice Department’s attorneys, in partnership with the governments of Malaysia, Singapore, Switzerland, and Luxembourg, recovered more than \$2.2

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Order 13818, “Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,” 82 Fed. Reg. 60839 (December 20, 2017), <https://www.federalregister.gov/documents/2017/12/26/2017-27925/blocking-the-property-of-persons-involved-in-serious-human-rights-abuse-or-corruption>.

239 U.S. Dep’t of Treasury, “Treasury Sanctions Eritrean Military Leader in Connection with Serious Human Rights Abuse in Tigray,” August 23, 2021, <https://home.treasury.gov/news/press-releases/jy0329>.

240 U.S. Executive Office of the President, White House Briefing Room, “Fact Sheet: U.S. Strategy on Countering Corruption,” December 6, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/06/fact-sheet-u-s-strategy-on-countering-corruption/>.

241 Pamela Stanek, *Asset Forfeiture in Public Corruption Cases: Practitioner Guide* (New York, NY: Columbia Law School, 2016), [https://www.law.columbia.edu/sites/default/files/microsites/public-integrity/files/asset\\_forfeiture\\_in\\_public\\_corruption\\_cases\\_-\\_capi\\_practitioner\\_toolkit\\_-\\_august\\_2016.pdf](https://www.law.columbia.edu/sites/default/files/microsites/public-integrity/files/asset_forfeiture_in_public_corruption_cases_-_capi_practitioner_toolkit_-_august_2016.pdf), for a good primer on the civil and criminal forfeiture statutes, the theories of forfeiture Justice Department uses to forfeit property linked to corruption.

242 Ibid., 1.

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billion that had been misappropriated from Malaysia's Sovereign Wealth Fund.<sup>243</sup> The FBI ICU developed the evidence for the case in partnership with FBI Special Agents in New York and Los Angeles.

In 2019, OFAC ordered the freezing of all funds of a South African corruption network with close ties to that government's former President. The U.S. and Nigerian governments recently agreed to repatriate \$300 million in funds stolen by that country's former dictator.<sup>244</sup> The Treasury Department also worked with the World Bank's Stolen Assets Recovery Fund to trace Moammar Qaddafi's hidden assets and return them to Libya's transitional government.<sup>245</sup>

In 2021, the Biden administration acknowledged both the past successes and shortcomings, importance, and interdependence of these authorities in its new United States Strategy on Countering Corruption, whose subtitle describes "the fight against corruption as a core United States national security interest." The White House fact sheet described the five pillars of the strategy as follows:

1. ***Modernizing, coordinating, and resourcing U.S. Government efforts to fight corruption*** to address gaps in enforcement, and to build capacity and interoperability among U.S. law enforcement agencies;
2. ***Curbing Illicit finance*** by regulating toward international financial transparency, and by building capacity and interoperability with partner governments abroad;
3. ***Holding Corrupt Actors Accountable*** by supporting whistleblowers, partnering with the financial industry, and by "[e]stablishing a kleptocracy asset recovery rewards program that will enhance the U.S. Government's ability to identify and recover stolen assets linked to foreign government corruption that are held at U.S. financial institutions;"
4. ***Preserving and strengthening the multilateral anti-corruption architecture*** by joining with, and by building and expanding international institutions in partnership with, G7 and G20 governments; and

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243 U.S. Dep't of Justice, "United States Reaches Settlement to Recover More Than \$700 Million in Assets Allegedly Traceable to Corruption Involving Malaysian Sovereign Wealth Fund," October 30, 2019, <https://www.justice.gov/opa/pr/united-states-reaches-settlement-recover-more-700-million-assets-allegedly-traceable>; U.S. Dep't of Justice, "U.S. Seeks to Recover Approximately \$540 Million Obtained From Corruption Involving Malaysian Sovereign Wealth Fund," June 5, 2017, <https://www.justice.gov/opa/pr/us-seeks-recover-approximately-540-million-obtained-corruption-involving-malaysian-sovereign>; U.S. Dep't of Justice, "United States Seeks to Recover More Than \$1 Billion Obtained from Corruption Involving Malaysian Sovereign Wealth Fund," July 20, 2016, <https://www.justice.gov/opa/pr/united-states-seeks-recover-more-1-billion-obtained-corruption-involving-malaysian-sovereign>.

244 U.S. Dep't of Justice, "U.S. Enters into Trilateral Agreement with Nigeria and Jersey to Repatriate Over \$300 Million to Nigeria in Assets Stolen by Former Nigerian Dictator General Sani Abacha," February 3, 2020, <https://www.justice.gov/opa/pr/us-enters-trilateral-agreement-nigeria-and-jersey-repatriate-over-300-million-nigeria-assets>.

245 UN Security Council, *Final Report of the Panel of Experts on Libya Established Pursuant to Resolution 1973 (2011)*, S/2017/466 (2017), <https://reliefweb.int/report/libya/final-report-panel-experts-libya-established-pursuant-resolution-1973-2011-s2017466>.

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5. ***Improving diplomatic engagement and leveraging foreign assistance resources to achieve anti-corruption policy goals*** by prioritizing anti-corruption efforts in U.S. diplomacy and as a condition of U.S. foreign assistance.<sup>246</sup>

In theory, the ideal target of a concerted international anti-corruption effort would be a state whose egregious corruption and financial crime threatened the economic and physical security of G7 and G20 states; posed significant humanitarian concerns shared by most G7 and G20 states; and were the subject of multiple Chapter VII UN Security Council resolutions. Although the White House fact sheet did not emphasize which legal tools it would use to implement the new strategy, the full strategy paper and the case studies it cited clarified that greater financial transparency, expanded subpoena powers, asset blocking, and forfeiture would be important tools against “fraud, money laundering, terrorist financing, and proliferation financing.”<sup>247</sup>

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246 U.S. Executive Office of the President, “Fact Sheet: U.S. Strategy on Countering Corruption,” December 6, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/06/fact-sheet-u-s-strategy-on-countering-corruption/>.

247 U.S. Executive Office of the President, United States Strategy on Countering Corruption 19, 22-25, December 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

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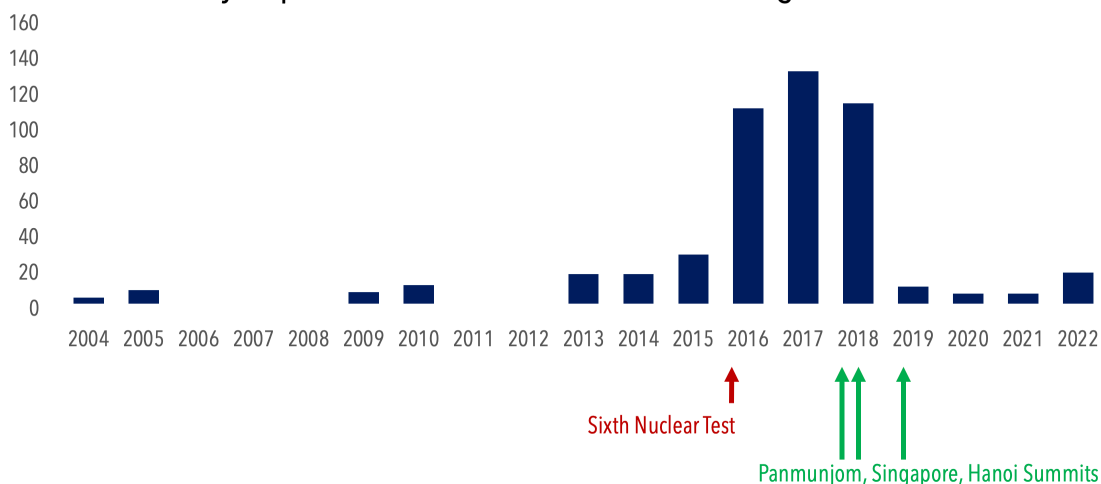
### Part III—U.S. National Enforcement of North Korea Sanctions

Part I of this study explained how, in the three decades since the collapse of the U.S.S.R., Pyongyang became an egregious kleptocracy, and how it also became dependent on access to global finance. Part II explained the authorities and capacities for U.S. and multinational efforts to trace, freeze, forfeit, and recover the proceeds of kleptocracy.

This part will explain that, despite some tactical successes proving the potential of sanctions enforcement, the U.S. has not led any such campaign against North Korea's kleptocracy. It also explains how Pyongyang's diplomacy has defeated Washington's unity of effort and alliances once that disruption posed a threat to its cohesion and survival.

Sanctions have not achieved their least attainable goal—coercing the abandonment of Pyongyang's nuclear drive, global proliferation, and strategic objectives—and the United States has struggled to translate its economic power into lasting diplomatic gains, probably because Pyongyang has always extracted the relaxation of U.S. economic leverage as the price of its concessions. Pyongyang did so by dividing ally against ally, interest against interest, agency against agency, and diplomacy against the pressure that has historically coincided with Pyongyang's renewed interest in diplomacy. But as the concluding pages of this paper will explain, those are not the only purposes for sanctions.

U.S. Treasury Department North Korea Sanctions Designations, 2004-2022



A close examination of this history yields lessons for a more coherent global policy that uses the authorities available to the U.S. and its allies to reach enough of Pyongyang's funds to deny it the means to pursue its destructive behaviors.



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## A. 2005-2016: Minimum Pressure

*[L]ong before North Korean vessels conduct ship-to-ship transfers under the cover of night, on-shore operatives go to extraordinary lengths to establish anonymous shell companies, falsify financial and ownership records and bribe customs officials, U.N. Panel of Experts reports have shown. Behind each of these transactions is a registered agent that ignores false documentation, a banker willing to turn a blind eye, an accountant that fails to ask questions or a lawyer whose attempts at due diligence are in name only. Cases like this, among others, increasingly highlight how – and why – sanctions fail when states lack effective legal, regulatory and enforcement mechanisms to combat corruption.*

– Aaron Arnold, former U.S. Representative to the U.N. Panel of Experts  
Established by UNSCR 1874<sup>248</sup>

Starting in 2010, the reports of a UN Panel of Experts investigating compliance with UN Security Council sanctions confirmed what many analysts already knew—that Pyongyang’s money laundering networks, while finite and discoverable, were extensive, adaptable, and reliant on corruption.<sup>249</sup> The misconception that North Korea was “the most isolated, the most sanctioned, the most cut-off nation on Earth” circulated widely among scholars and reached all the way to the Oval Office.<sup>250</sup> A former Obama administration official (and current Biden administration official) conceded that he, too, “thought North Korea was the most sanctioned country in the world,” until he learned on closer examination that Burma was “sanctioned about 10 times (more than) North Korea.”<sup>251</sup>

Financial regulators were also slow to respond to Pyongyang’s money laundering through the financial system. In the six years after the Federal Reserve returned \$25 million in tainted funds from Banco Delta Asia to Kim Jong-un’s accounts, Pyongyang became adept at accessing the financial system surreptitiously, by hiding behind layers of front companies, shell companies, fictitious names, and third-country enablers. In doing so, it had the active or tacit cooperation of foreign banks—most of them based in China. Despite official U.S. policy to seek the denuclearization of North Korea and oppose its human rights abuses, Pyongyang continued to support its proliferation, crimes against humanity, and kleptocracy using money laundered through U.S. jurisdiction.<sup>252</sup>

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248 Aaron Arnold, “How North Korea takes advantage of global corruption to evade sanctions,” *NK News*, December 24, 2021, [https://www.nknews.org/2021/12/how-north-korea-takes-advantage-of-global-corruption-to-evade-sanctions/?utm\\_source=dlvr.it&utm\\_medium=twitter](https://www.nknews.org/2021/12/how-north-korea-takes-advantage-of-global-corruption-to-evade-sanctions/?utm_source=dlvr.it&utm_medium=twitter).

249 S/2020/151 ¶¶ 167-188.

250 “Obama, on YouTube, says North Korea likely to collapse and Net may play a role,” *Japan Times*, January 24, 2015, <https://www.japantimes.co.jp/news/2015/01/24/world/obama-youtube-says-north-korea-likely-collapse-net-may-play-role/#.XVBHn5NKjOQ> (quoting President Obama).

251 Kurt Campbell, “Remarks at the Center for Strategic and International Studies,” September 5, 2014, quoted in Joshua Stanton, “North Korea: The Myth of Maxed-Out Sanctions,” *Fletcher Security Review*, vol. 2, no. 1 (Winter 2015), [https://docs.wixstatic.com/ugd/c28a64\\_82a6a04a9f314a67bd434ad7b3dc5490.pdf](https://docs.wixstatic.com/ugd/c28a64_82a6a04a9f314a67bd434ad7b3dc5490.pdf).

252 *Id.*; *Restricting North Korea’s Access to Finance: Testimony Before the House Committee on Financial Services, Monetary*

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In 2011, the Treasury Department and the Financial Action Task Force, an influential global industry alliance, began to warn banks to safeguard the financial system from money laundering and terrorism financing risks emanating from North Korea.<sup>253</sup> Yet until 2016, “[c]ontrary to commonly expressed views, the United States [did] not maintain a comprehensive embargo against North Korea.”<sup>254</sup>

That is why the major French bank, BNP Paribas, agreed to pay U.S. and New York authorities nearly \$9 billion in fines, penalties, and forfeitures after it was caught clearing transactions for sanctioned parties in Iran, Sudan, Cuba, and Burma—but not North Korea.<sup>255</sup> OFAC’s North Korea sanctions regulations, which had been relaxed in 1995, still did not include a comprehensive transaction licensing requirement when BNP Paribas engaged in its longstanding pattern of violations. Here was just one example of the gap between the common perception of strong North Korea sanctions, and the reality of weak regulation and lax enforcement.

In 2014, OFAC’s North Korea sanctions regulations and enforcement were qualitatively and quantitatively much weaker than those against Iran, Cuba, Sudan, or Syria, and arguably weaker than those against Belarus and Zimbabwe.<sup>256</sup> North Korean banks still had indirect access to the U.S.

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*Policy & Trade Subcommittee*, 144<sup>th</sup> Cong. (2017), 7 (statement by Anthony Ruggiero, senior fellow at the Foundation of Defense for Democracies). [https://financialservices.house.gov/uploadedfiles/07.19.2017\\_anthony\\_ruggiero\\_testimony.pdf](https://financialservices.house.gov/uploadedfiles/07.19.2017_anthony_ruggiero_testimony.pdf); North Korea Sanctions Enforcement Act of 2015, H.R. 757, 114<sup>th</sup> Cong., 2d Sess. (2016), <https://www.congress.gov/congressional-report/114th-congress/house-report/392>; U.S. Dep’t of Treasury, “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>; U.S. Dep’t of Treasury, “Treasury Sanctions Supporters Of North Korea’s Weapons Of Mass Destruction And Illicit Finance Networks,” November 13, 2015, <https://www.treasury.gov/press-center/press-releases/Pages/jl0269.aspx>; U.S. Dep’t of Treasury, “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/jl5059.aspx>; U.S. Dep’t of Treasury, Treasury Sanctions Agents Linked to North Korea’s Weapons of Mass Destruction Proliferation and Financial Networks, March 31, 2017, <https://home.treasury.gov/news/press-releases/sm0039>; U.S. Dep’t of Treasury, “Treasury Sanctions Senior North Korean Officials Involved in Weapons Development,” December 26, 2017, <https://home.treasury.gov/news/press-releases/sm0245>.

253 U.S. Dep’t of Treasury, Advisory on the Financial Action Task Force-Identified Jurisdictions with Anti-Money Laundering and Combatting the Financing of Terrorism Deficiencies, FIN-2018-A007, October 31, 2008, [https://www.fincen.gov/sites/default/files/advisory/2018-10-31/FATF%20Advisory%20Oct\\_FINAL%20508.pdf](https://www.fincen.gov/sites/default/files/advisory/2018-10-31/FATF%20Advisory%20Oct_FINAL%20508.pdf).

254 Dianne E. Rennack, “North Korea: Legislative Basis for U.S. Economic Sanctions,” *Congressional Research Service*, September 29, 2011, [https://digital.library.unt.edu/ark:/67531/metadc29611/m1/1/high\\_res\\_d/R41438\\_2010Sep29.pdf](https://digital.library.unt.edu/ark:/67531/metadc29611/m1/1/high_res_d/R41438_2010Sep29.pdf).

255 Nate Raymond, “BNP Paribas sentenced in \$8.9 billion accord over sanctions violations,” *Reuters*, May 1, 2015, <https://www.reuters.com/article/us-bnp-paribas-settlement-sentencing/bnp-paribas-sentenced-in-8-9-billion-accord-over-sanctions-violations-idUSKBN0NM41K20150501>; U.S. Dep’t of Treasury, *Settlement Agreement Between the Office of Foreign Assets Control and BNP Paribas*, June 30, 2014, [https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20140630\\_bnp\\_settlement.pdf](https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20140630_bnp_settlement.pdf).

256 Joshua Stanton, “You’d be surprised how much tougher our Zimbabwe and Belarus sanctions are than our North Korea sanctions,” *One Free Korea blog*, July 15, 2014, <https://freekorea.us/2014/07/>

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financial system through front companies using “U-turn” transactions, in which front companies’ foreign banks concealed the transactions’ links to North Korea to clear them through U.S. correspondent banks surreptitiously.<sup>257</sup> A total of 43 entities, and just one senior North Korean official, were designated by OFAC for breaking North Korea sanctions, compared to more than 800 for violations of Iran sanctions, and hundreds each for Cuba, Syria, and the Balkans.<sup>258</sup> Its most significant designation, of North Korea’s Foreign Trade Bank, for “facilitat[ing] transactions on behalf of actors linked to its proliferation network,” followed Kim Jong-un’s third nuclear test, when the administration also learned that Congress was writing legislation to mandate stricter enforcement.<sup>259</sup>

The Obama administration increased the pace of sanctions designations modestly after the Sony cyberattack and terror threats of late 2014, and as pressure from Congress rose. In its first seven years, it designated 89 entities for violating North Korea sanctions. In its last eleven months, after Congress acted to mandate more designations, it designated 77 more.<sup>260</sup> But it did not attempt to replicate the successful enforcement strategy it had employed against Iran’s financial enablers, which was instrumental in compelling Iran to negotiate the Joint Comprehensive Plan of Action.<sup>261</sup> No president had ever implemented a comparable enforcement strategy against Pyongyang’s financial enablers. According to David Cohen, who managed the Treasury Department’s sanctions programs and later became Deputy CIA Director, “North Korea is not, by any stretch, ‘sanctioned

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you-d-be-surprised-how-much-tougher-our-zimbabwe-and-belarus-sanctions-are-than-our-north-korea-sanctions/ (counting the number of OFAC designations against various governments and comparing the qualitative significance of those designations).

257 Jay Solomon, “U.S. Moves to Cut Off North Korea From Banking System,” *Wall St. Journal*, June 2, 2016, <https://www.wsj.com/articles/u-s-moves-to-cut-off-north-korea-from-banking-system-1464797927>; see, e.g., S/2016/157 ¶¶ 190-192 (finding that the Bank of China, Singapore branch, assisted the North Korean front company Chinpo Shipping to broker a shipment of weapons from Cuba to North Korea by helping it conceal information about the shipper and the cargo from a U.S. correspondent bank).

258 Joshua Stanton, “Sanctions Worked Against North Korea, And They Can Work Again,” *Weekly Standard*, January 16, 2016, <https://www.washingtonexaminer.com/weekly-standard/sanctions-worked-against-north-korea-and-they-can-work-again> (analyzing and comparing the law and designation patterns of North Korea sanctions to sanctions against Iran, Cuba, and other states).

259 U.S. Dep’t of Treasury, “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>.

260 Anthony Ruggiero, “Maximum Pressure 2.0: How to Improve Sanctions on North Korea,” *Foundation For the Defense of Democracies*, June 4, 2018, [https://s3.us-east-2.amazonaws.com/defenddemocracy/uploads/documents/MEMO\\_Ruggiero\\_June2018.pdf](https://s3.us-east-2.amazonaws.com/defenddemocracy/uploads/documents/MEMO_Ruggiero_June2018.pdf).

261 Thomas Erdbrink, “Iran Staggers as Sanctions Hit Economy,” *New York Times*, October 1, 2013, <https://www.nytimes.com/2013/10/01/world/middleeast/iran-staggers-as-sanctions-hit-economy.html>. A search of OFAC’s civil penalties between 2010—when Congress passed the Comprehensive Iran Sanctions And Disarmament Act—and 2015 shows multiple nine- and ten-digit penalties against banks for violating Iran sanctions. U.S. Dep’t of Treasury, “Civil Penalties and Enforcement Information,” accessed October 13, 2020, <https://home.treasury.gov/policy-issues/financial-sanctions/civil-penalties-and-enforcement-information>.

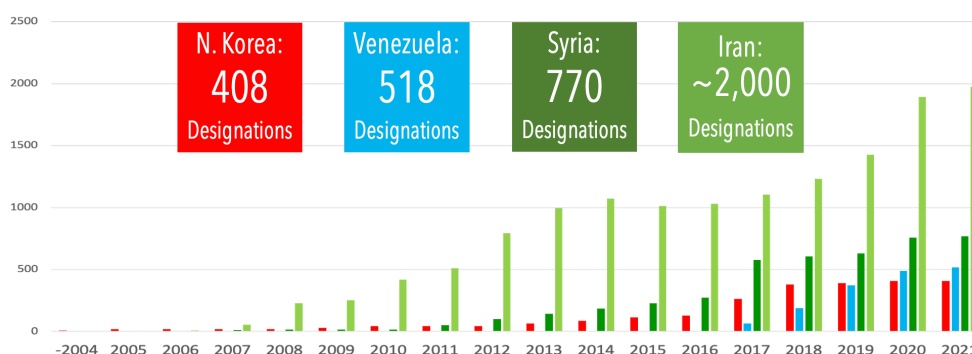
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out,” and had “gotten off relatively easy, especially as compared with Iran.”<sup>262</sup>

Only in September 2016, during President Obama’s last months in office, did OFAC freeze the assets of one of Pyongyang’s major China-based money laundering fronts, Dandong Hongxiang Industrial Development Company.<sup>263</sup> The Obama administration ended without either a diplomatic breakthrough or a sanctions program that put significant financial pressure on Pyongyang.<sup>264</sup> Yet in early 2017, a former Treasury Department official testified before Congress that North Korea was still the eighth-most sanctioned government—behind Iran, Iraq, the Balkans, Syria, Sudan, and Zimbabwe.<sup>265</sup> Even then, “sanctions against North Korea were not strong or well-enforced.”<sup>266</sup>

Cumulative Sanctions Designations by Country: 2005-2021



- Despite evidence that major Chinese banks launder money for UN-designated North Korean banks, the Treasury Department has never penalized a major Chinese bank for any of these violations.
- EU & US banks have faced 9-to-11-digit penalties for violating Iran, Syria, & Sudan sanctions regulations.

262 David S. Cohen, “One powerful weapon to use against North Korea,” *Washington Post*, April 21, 2017, [https://www.washingtonpost.com/opinions/one-powerful-weapon-to-use-against-north-korea/2017/04/21/ddbb9702-26c2-11e7-bb9d-8cd6118e1409\\_story.html?utm\\_term=.f4a89212dbec](https://www.washingtonpost.com/opinions/one-powerful-weapon-to-use-against-north-korea/2017/04/21/ddbb9702-26c2-11e7-bb9d-8cd6118e1409_story.html?utm_term=.f4a89212dbec) (quoted in Ruggiero HFSC at 6 n.7.)

263 U.S. Dep’t of Treasury, “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/jl5059.aspx>.

264 “North Korean Nuclear Negotiations, 1985-2019,” *Council on Foreign Relations*, accessed August 7, 2019, <https://www.cfr.org/timeline/north-korean-nuclear-negotiations>; Andrew Quinn, “Insight: Obama’s North Korean leap of faith falls short,” *Reuters*, March 30, 2012, <https://www.reuters.com/article/us-korea-north-usa-leap/insight-obamas-north-korean-leap-of-faith-falls-short-idUSBRE82T06T20120330>.

265 *Restricting North Korea’s Access to Finance: Hearing before the U.S. House Committee on Financial Services, Subcommittee on Monetary Policy & Trade* at 3-4, 115th Cong., 1st Sess. (2017) (statement of Anthony Ruggiero), <https://www.govinfo.gov/content/pkg/CHRG-115hhrg29452/pdf/CHRG-115hhrg29452.pdf>; *Empty Threat or Series Danger: Assessing North Korea’s Risk to Homeland: Testimony Before the House Homeland Security Committee*, 114<sup>th</sup> Cong. (2017) (statement of Anthony Ruggiero, senior fellow at the Foundation of Defense for Democracies), <https://docs.house.gov/meetings/HM/HM09/20171012/106467/HHRG-115-HM09-Wstate-RuggieroA-20171012.pdf>.

266 *Ibid.*

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A former U.S. Representative to the UN Panel of Experts testified similarly, as follows:

*Regrettably, the success the U.S. and like-minded countries have achieved in getting tougher sanctions adopted has been blunted by inadequate action by most member states, squandering the political capital Washington has spent to obtain agreement from Beijing and Moscow. Over the past decade, the record of implementation is poor. There were some years when even members of the Security Council had not implemented the measures.*<sup>267</sup>

## B. 2016-2021: Medium Pressure

A week after North Korea's January 2016 nuclear test, the House of Representatives asserted its constitutional authority to regulate commerce with foreign nations and passed the **North Korea Sanctions and Policy Enhancement Act (NKSPEA)** by a vote of 418 to 2.<sup>268</sup> After some amendments and a full day of debate, the Senate also passed it by 96 to 0. On February 18, 2016, President Obama signed the first comprehensive North Korea sanctions legislation into law.<sup>269</sup>

The NKSPEA mandated the designation and blocking of persons who engaged in proliferation, arms trafficking, computer hacking, money laundering, human rights abuses, or censorship on behalf of the Government of North Korea.<sup>270</sup> It also created a blocking authority—which Congress would also make mandatory in 2019<sup>271</sup>—to freeze the assets of persons who knowingly contributed to—

- (i) the bribery of an official of the Government of North Korea or any person acting for on behalf of that official;
- (ii) the misappropriation, theft, or embezzlement of public funds by, or for the benefit of, an official of the Government of North Korea or any person acting for or on behalf of that official; or

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267 *Restricting North Korea's Access to Finance at 7* (statement of William J. Newcomb, chair of the North Korea Economic Forum at the Center for Advanced Defense Studies), <https://www.govinfo.gov/content/pkg/CHRG-115hhrg29452/pdf/CHRG-115hhrg29452.pdf>.

268 U.S. Const. art. I, § 8, cl. 3.

269 Pub. L. No. 114-122, 130 Stat. 94 (2016) (codified at 22 U.S.C. Ch. 99); see North Korea Sanctions and Policy Enhancement Act of 2016: Major Actions, H.R.757, 114<sup>th</sup> Cong. (2020), <https://www.congress.gov/bill/114th-congress/house-bill/757/actions>.

270 22 U.S.C. § 9214(a).

271 Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act of 2019, Pub. L. No. 116-92, div. F, tit. LXXII, subtit. A, § 7121 (codified at 22 U.S.C. §§ 9221B & 9221C); 22 U.S.C. § 9214(g)(1)(F); see 31 C.F.R. § 510.201(a)(3)(ix) (F). The Warmbier Act also included non-binding “sense of Congress” language that “that the President should . . . prioritize multilateral efforts to identify and block . . . any property owned or controlled by a North Korean official; and . . . any significant proceeds of kleptocracy by the Government of North Korea or a North Korean official.”



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(iii) the use of any proceeds of any activity described in clause (i) or (ii).<sup>272</sup>

The NKSPEA employed three existing enforcement tools to deny Pyongyang the means to launder its money through the U.S. financial system: (1) mandates for OFAC to designate more North Korean targets and enablers for prohibited conduct; (2) extended civil forfeiture authority for property involved in or derived from prohibited conduct; and (3) a requirement for FinCEN to crack down on Pyongyang's money laundering, by excluding it from the financial system entirely. Two weeks after President Obama signed the NKSPEA, the UN Security Council approved Resolution 2270.<sup>273</sup>

Some scholars had long argued that sanctions enforcement would have little effect, because Pyongyang's funds were so well concealed.<sup>274</sup> But starting in 2016, the Treasury Department, the FBI, and Justice Department prosecutors would demonstrate their ability to trace, freeze, and forfeit illicit North Korean funds. The new authorities substantially restricted Pyongyang's access to the global financial system and were a watershed in the legal potency of sanctions against Pyongyang. The Treasury and Justice Departments would soon disprove the hypothesis that Pyongyang was too isolated to be vulnerable to sanctions.<sup>275</sup> However, during the Obama and Trump administrations, the enforcement of both authorities—and additional U.S. statutes and UN resolutions that would follow in the coming years—would fall far short of their potential.

**Blocking Designations.** During the first months of his presidency, President Trump threatened Kim Jong-un with “fire and fury”<sup>276</sup> and said that he would use sanctions to create “maximum pressure.”<sup>277</sup> OFAC accelerated the pace of its North Korea sanctions designations dramatically. According to one analyst, it issued more of them in the first sixteen months of Trump's presidency (182) than it had during Obama's entire eight-year presidency (154).<sup>278</sup> The new designations included most of North Korea's banks and several trading companies affiliated with its

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272 22 U.S.C. § 9214(b)(1)(B).

273 S/RES/2270.

274 John Park and Jim Walsh, “Stopping North Korea, Inc.: Sanctions Effectiveness and Unintended Consequences” (Cambridge, MA: MIT Security Studies Program, 2016), <https://www.belfercenter.org/sites/default/files/legacy/files/Stopping%20North%20Korea%20Inc%20Park%20and%20Walsh%20.pdf>; Andrei Lankov, “Why stiffer sanctions on North Korea won't work,” *Bloomberg View*, January 9, 2016, <https://www.sunherald.com/opinion/other-voices/article53974690.html>.

275 *Countering the North Korean Threat: New Steps in U.S. Policy, Testimony before the House Foreign Affairs Committee*, 115<sup>th</sup> Cong. (2017), <https://docs.house.gov/meetings/FA/FA00/20170207/105527/HHRG-115-FA00-Wstate-RuggieroA-20170207.pdf> (statement of Anthony Ruggiero, senior fellow at the Foundation for Defense of Democracies).

276 W.J. Hennigan, David S. Cloud, and Noah Bierman, “President Trump threatens North Korea with ‘fire and fury like the world has never seen,’” *L.A. Times*, August 8, 2017, <https://www.latimes.com/politics/la-fg-pol-norkor-nuclear-20170808-story.html>.

277 Matthew Pennington, “Trump strategy on NKorea: ‘Maximum pressure and engagement,’” *AP*, April 14, 2017, <https://apnews.com/86626d21ea2b45c79457a873a747c452/Trump-strategy-on-NKorea:-Maximum-pressure-and-engagement>

278 Mathew Ha, “Let's face it, North Korea won't yield without more pressure,” *The Hill*, March 21, 2019, <https://thehill.com/opinion/international/435056-lets-face-it-north-korea-wont-yield-without-more-pressure>; see also Ruggiero, “Maximum Pressure 2.0: How to Improve Sanctions on North Korea.”

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military-industrial complex. OFAC also blocked the assets of two small Russian banks—the Agrosoyuz Commercial Bank<sup>279</sup> and the Russian Financial Society, for laundering Pyongyang’s money.<sup>280</sup>

Yet even in July 2017, when the number of North Korea designations had more than doubled since early 2016, the same former Treasury Department official testified that North Korea was only the fifth-most-sanctioned nation, behind Iran, Syria, Ukraine, and Russia. Of course, North Korea’s economy is smaller and less diverse than Iran’s. Even then, however, the new designations mostly targeted individual North Korean ships and low-to-mid-level diplomats and trading company officials. They still did not meaningfully target North Korea’s principal vulnerability—the third-country banks and enablers with exposure to the international financial system.<sup>281</sup>

In August 2017, Congress strengthened the NKSPEA’s authorities in title III of the **Countering America’s Adversaries Through Sanctions Act (CAATSA)** by a similarly overwhelming vote—419 to 3 in the House, and 98 to 2 in the Senate.<sup>282</sup> The table in Appendix A summarizes the complex web of eleven UN resolutions, U.S. statutes, and regulations that limited Pyongyang’s access to the financial system. It does not summarize the national sanctions of the European Union, the United Kingdom, Japan, South Korea, Singapore, or other states that have since implemented UN sanctions. Not all of these authorities are sanctions *per se*, but generally applicable laws against money laundering.

**Anti-Money Laundering Enforcement.** In December 2016, in accordance with one of the mandates of the NKSPEA,<sup>283</sup> FinCEN issued a final rule designating North Korea as a jurisdiction of “primary money laundering concern,” finding that Pyongyang uses its access to the financial system to advance its proliferation “through a system of front companies, business arrangements, and representatives that obfuscate the true originator, beneficiary, and purpose of transactions,” and that “these deceptive practices have allowed millions of U.S. dollars of [North Korean] illicit activity to flow” from “foreign-based banks . . . through correspondent bank accounts in the United States and Europe.”<sup>284</sup> FinCEN ordered financial institutions to bar

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279 U.S. Dep’t of Treasury, “Treasury Targets Russian Bank and Other Facilitators of North Korean United Nations Security Council Violations,” August 3, 2018, <https://home.treasury.gov/news/press-releases/sm454>.

280 U.S. Dep’t of Treasury, “Treasury Designates Russian Financial Institution Supporting North Korean Sanctions Evasion,” June 19, 2019, <https://home.treasury.gov/news/press-releases/sm712>.

281 *Restricting North Korea’s Access to Finance, Testimony Before the House Committee on Financial Services, Monetary Policy & Trade Subcommittee*, 3–4. (statement of Anthony Ruggiero, senior fellow at the Foundation for Defense of Democracies)

282 Countering America’s Adversaries Through Sanctions Act of 2017 (CAATSA), Pub. L. No. 115-44, tit. III, 131 Stat. 886 (2017) (amending the NKSPEA). Unlike the NKSPEA, which was a stand-alone North Korea sanctions bill, the CAATSA was also bundled with sanctions against Russia and Iran.

283 22 U.S.C. § 9221.

284 U.S. Dep’t of Treasury, Financial Crimes Enforcement Network, Imposition of Special Measures Against North Korea as a Jurisdiction of Primary Money Laundering Concern, 81 Fed. Reg. 78715 (December 9, 2016), <https://www.federalregister.gov/documents/2016/11/09/2016-27049/>

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Pyongyang's direct and indirect access to correspondent accounts.

FinCEN also began to enforce its anti-money laundering regulations against foreign banks that helped Pyongyang launder its money—at least the small ones. In November 2017, it designated the Bank of Dandong in China as an institution of primary money laundering concern and cut off its access to the dollar system—the same measure it had imposed on Banco Delta Asia in 2005.<sup>285</sup> In February 2018, it imposed the same measure on Latvia's ABLV Bank for turning a blind eye to suspicious transactions, neglecting AML compliance, and consequently laundering money for North Korea.<sup>286</sup> Eleven days later, the European Central Bank stated that ABLV was “failing or likely to fail” and announced plans to shut it down.<sup>287</sup>

But enforcement of these authorities continued to be uneven. In its 2020 mid-term report, the UN Panel of Experts monitoring compliance with sanctions against Pyongyang found that it “continues to access the international financial system” “through joint ventures, offshore accounts, shell companies and the use of virtual assets (for example, cryptocurrencies),” using “small and medium-sized banks in East and South-East Asia.”<sup>288</sup> The Panel found that Pyongyang made extensive use of “aliases, agents, foreign individuals in multiple jurisdictions, and a long-standing network of front companies and embassy personnel.”<sup>289</sup> Justice Department documents also showed that large Chinese banks were helping Pyongyang to launder its money—without facing prohibitive consequences for conduct that may violate U.S. law.<sup>290</sup>

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imposition-of-special-measure-against-north-korea-as-a-jurisdiction-of-primary-money-laundering.

285 U.S. Dep't of Treasury, “Imposition of Special Measure Against Bank of Dandong as a Financial Institution of Primary Money Laundering Concern,” 82 Fed. Reg. 51758, (November 8, 2017), [https://www.fincen.gov/sites/default/files/federal\\_register\\_notices/2017-11-08/Dandong%20Final%202017-24238.pdf](https://www.fincen.gov/sites/default/files/federal_register_notices/2017-11-08/Dandong%20Final%202017-24238.pdf); U.S. Dep't of Treasury, Imposition of Special Measure Against ABLV Bank, AS as a Financial Institution of Primary Money Laundering Concern, 83 Fed. Reg. 6986 (February 16, 2018), [https://www.fincen.gov/sites/default/files/federal\\_register\\_notices/2018-02-16/2018-03214.pdf](https://www.fincen.gov/sites/default/files/federal_register_notices/2018-02-16/2018-03214.pdf).

286 U.S. Dep't of Treasury, *Proposal of Special Measure Against ABLV Bank, AS as a Financial Institution of Primary Money Laundering Concern*, 83 Fed. Reg. 6986 (February 16, 2019); see U.S. Dep't of Treasury, “FinCEN Names ABLV Bank of Latvia an Institution of Primary Money Laundering Concern and Proposes Section 311 Special Measure,” February 13, 2018, <https://www.fincen.gov/news/news-releases/fincen-names-ablv-bank-latvia-institution-primary-money-laundering-concern-and>.

287 Allen Cone, “Latvian bank linked to N. Korea money laundering ordered closes,” *UPI*, February 24, 2018, [https://www.upi.com/Top\\_News/World-News/2018/02/24/Latvian-bank-linked-to-N-Korea-money-laundering-ordered-closed/3631519496638/](https://www.upi.com/Top_News/World-News/2018/02/24/Latvian-bank-linked-to-N-Korea-money-laundering-ordered-closed/3631519496638/); Drew Hinsha, Patricia Kowsmann, and Ian Talley, “How a Tiny Latvian Bank Became a Haven for the World's Dirty Money,” *Wall Street Journal*, March 26, 2018, <https://www.wsj.com/articles/how-a-tiny-latvian-bank-became-a-haven-for-the-worlds-dirty-money-1522083261>.

288 S/2020/840 ¶ 143; S/2017/150, ¶ 210.

289 S/2016/157 ¶ 179.

290 *In re Sealed Case*, No. 19-5068.

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In late 2019, Congress passed the **Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act** as part of the National Defense Authorization Act for Fiscal Year 2020.<sup>291</sup> The law authorized new sanctions against financial institutions that knowingly deal, directly or indirectly, with entities sanctioned under U.S. law or UN resolutions for prohibited dealings with North Korea. Banks that violate this prohibition may be subject to civil and criminal penalties, or limits on their access to the U.S. financial system, including their use of correspondent accounts in the United States.<sup>292</sup>

**Civil Forfeiture.** An NKSPEA success story was its extension of the Justice Department's civil forfeiture authorities. Before 2016, North Korean money launderers successfully evaded U.S. law enforcement from their safe havens in Russia and China. Starting in 2016, FBI Special Agents in Chicago, Minneapolis, and Phoenix, and intelligence analysts in Washington, D.C., traced tens of millions of dollars in proceeds of North Korean financial crime.<sup>293</sup> Prosecutors in New York, New Jersey, and Washington, D.C. forfeited funds of sanctioned North Korean banks,<sup>294</sup> and of the

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291 Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act of 2019, Pub. L. No. 116-92, div. F, tit. LXXII, subtit. A, § 7121 (2019) (enacted within the National Defense Authorization Act for Fiscal Year 2020) (hereinafter Warmbier Act), [https://home.treasury.gov/system/files/126/c116s1790\\_northkorea\\_otto\\_warmbier\\_act.pdf](https://home.treasury.gov/system/files/126/c116s1790_northkorea_otto_warmbier_act.pdf) (codified at 22 U.S.C. §§ 9221B & 9221C).

292 *Id.* § 7211. The restrictions on foreign banks' access to correspondent accounts in the United States will probably mirror those in section 311(b) of the Patriot Act, except that the statute does not require a designation or rulemaking similar to the requirements in section 311(b). See 31 U.S.C. § 5318A(b). The Treasury Department regulations may attempt to impose a requirement for a designation.

293 See Part III.B.3 *infra*.

294 *United States of America v. All Funds In The Accounts Of Blue Sea Business Co., Ltd., et al.*, No. 16-05903. Prosecutors sought the forfeiture of up to \$247 million in twenty-five bank accounts, in twenty-three Chinese banks, controlled by a network of front companies controlled by Ma Xiaohong, a prominent businesswoman and Communist Party member in Dandong, and laundered on behalf of a North Korean bank sanctioned for financing WMD proliferation. The Obama administration denied prosecutors permission to block and seize the funds using domestic U.S. legal authorities. This required prosecutors to seek the assistance of the government of China under the two countries' Mutual Legal Assistance Agreement (MLAA) to seize the funds and recognize the judgment of forfeiture, if granted. This strategy was not fruitful. In October 2018, the court in an unrelated case asked prosecutors to update it on the status of the litigation. In a letter to the court, prosecutors cited their efforts to apply the MLAA and asked the court to keep the case open. A subsequent decision by the U.S. Court of Appeals for the District of Columbia indicates that Beijing was uncooperative and implies that the funds escaped to other nodes in Pyongyang's money laundering network. See *In re Sealed Case*, Nos. 19-5100, -5101, 5103 (2019). See also *United States v. \$1,071,251.44 of Funds Associated with Mingzheng International Trading Ltd., et al.*, No. 17-cv-001166. Prosecutors sued to forfeit \$1.9 million transferred by a network of China-based front companies through banks in the United States, on behalf of a North Korean bank whose assets had been frozen for WMD proliferation financing. The complaint cites two confidential sources and notes that some of the payments to Mingzheng went through the same front companies that transferred funds to Dandong Hongxiang, showing the interconnected nature of North Korea's money laundering networks in China. It names three Chinese banks—China Merchants Bank, Shanghai Pudong Development Bank, and Bank of Communications of China—as holding accounts for Mingzheng, and also implicated ZTE Corporation as using Mingzheng as an intermediary for its business with North Korea.

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infamous Bureau 39 of the KWP,<sup>295</sup> as they were laundered through trading companies in China, and through correspondent banks in New York. They forfeited payments for oil smuggled into North Korea, and one of the tankers used to smuggle it.<sup>296</sup> They forfeited a ship owned by the North Korean army that smuggled coal to Southeast Asia.<sup>297</sup> They recouped nearly \$700,000 in fines and forfeitures from a British Virgin Islands company that laundered Pyongyang's money and smuggled alcohol and tobacco products to North Korea.<sup>298</sup> They recouped over \$600,000 from

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The court granted the government's motion for default judgment on August 15, 2018. A third such case was *United States v. \$599,930 of Funds Associated with Cooperating Company 1*, No. 18-cv-02746 (D.D.C. 2018), in which the Justice Department sued to forfeit \$3 million in assets of three North Korean front companies, two of them based in China and a third based in Singapore and cooperating with the FBI, that laundered funds through the U.S. on behalf of a North Korean bank that had been blocked in 2013 for financing WMD proliferation in violation of the NKSPEA and the IEEPA. The author of this report assisted the Justice Department as a consultant in this matter. As of January 2020, this case was still pending.

295 *United States v. \$4,083,935.00 of Funds Associated with Dandong Chengtai Trading Ltd., et al.*, No. 17-01706 (D.D.C. 2017). Prosecutors alleged that a Chinese national and a front company laundered the Defendant Currency through correspondent banks in the United States on behalf of Bureau 39 of the KWP, Pyongyang's state money-laundering agency, and were thus subject to forfeiture under the IEEPA and the NKSPEA. The funds were proceeds of North Korean coal exports, in violation of UN Security Council resolutions, and according to the complaint, Dandong Chengtai's revenues "may have benefitted the nuclear or ballistic missile programs." Bureau 39 is designated by the U.S. Treasury Department and the UN Security Council. It is alleged to have been involved in currency counterfeiting, proliferation financing, and importing luxury goods. The complaint cites the statements of two defectors to the FBI and two confidential FBI informants. On September 17, 2018, the court entered default judgment for the United States.

296 *United States v. Approximately One Million Two Hundred Fifty-Eight Thousand Six Hundred Eighty-Eight Dollars, More or Less*, No. 18-cv-5216 (E.D.N.Y. 2018). Prosecutors alleged that the Defendant Currency was "involved in" payments for petroleum wired from China to Taiwan, on behalf of a blocked North Korean petroleum company, in violation of the NKSPEA and the IEEPA. U.S. Dep't of Justice, "United States Seizes Oil Tanker Used to Violate Sanctions Against North Korea," July 30, 2021, <https://www.justice.gov/opa/pr/united-states-seizes-oil-tanker-used-violate-sanctions-against-north-korea>.

297 *United States v. the Bulk Cargo Carrier known as the "Wise Honest," bearing International Maritime Organization Number 8905490*, No. 19-cv-04210. In their first suit against tangible North Korean government property, prosecutors sued to forfeit North Korea's second-largest bulk cargo carrier for smuggling coal in violation of UN Security Council resolutions, the IEEPA, and the NKSPEA. The owner of the vessel was a front company for the North Korean army. The complaint alleged that the shipments of coal from North Korea, through Russia, to Indonesia were facilitated by dollar-denominated wire transfers that the ship's owner attempted to clear through banks in the Southern District of New York. The court subsequently entered a default judgment of forfeiture on behalf of the United States. North Korean government missed its deadline to file a claim of interest in the ship, but the families of Otto Warmbier and the Rev. Kim Dong-shik, both of whom had won multi-million-dollar wrongful death judgments against the government of North Korea. U.S. Dep't of Justice, "Department of Justice Announces Forfeiture of North Korean Cargo Vessel," October 21, 2019, <https://www.justice.gov/opa/pr/departments-justice-announces-forfeiture-north-korean-cargo-vessel>; Christy Lee, "US Marshals to Sell Seized North Korean Cargo Ship," *Voice of America*, July 27, 2019, <https://www.voanews.com/usa/us-marshals-sell-seized-north-korean-cargo-ship>. The ship is subject to forfeiture under the NKSPEA. 22 U.S.C. § 9225(d).

298 *United States v. Yang Ban*, No. 20-cr-00173 (2020).



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a UAE company that exported cigarette filters to North Korea for use in the counterfeit cigarette trade.<sup>299</sup> They indicted Chinese nationals for laundering cryptocurrency stolen by Pyongyang's agents,<sup>300</sup> and sued to forfeit the accounts that held the cash proceeds.<sup>301</sup> They indicted dozens of overseas agents of North Korea's Foreign Trade Bank—five of them Chinese nationals—who consequently became toxic to compliance officers of banks throughout the financial system.<sup>302</sup> They sued to forfeit \$1 million laundered through Hong Kong front companies from trade between Chinese telecommunications giant ZTE and sanctioned North Korean banks.<sup>303</sup>

Unfortunately, the Justice Department never had enough prosecutors in the districts where venue was proper.<sup>304</sup> In 2019, I also helped the U.S. Attorney's Office for the District of Columbia forfeit the modest sum of \$148,500, wired by a previously designated Taiwanese proliferator from one of his accounts in Hong Kong to another of his accounts in Taiwan. According to the affidavit of an FBI Special Agent, the funds were derived from the sale of scientific instruments and machine

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299 *United States v. Essentra FZE Co. Ltd.*, No. 20-cr-0012 (D.D.C. 2020), <https://www.justice.gov/opa/press-release/file/1294801/download>. See Andrew Salmon, "North Korean counterfeit cigarette trade faces squeeze," *Nikkei Asia Review*, March 18, 2016, <https://web.archive.org/web/20160318060613/https://asia.nikkei.com/Politics-Economy/International-Relations/North-Korean-counterfeit-cigarette-trade-faces-squeeze>; Gordon Fairclough, "Tobacco Firms Trace Fakes to North Korea," *Wall Street Journal*, January 27, 2006, <https://www.wsj.com/articles/SB113830654895857392>; *North Korea: Illicit Activity Funding the Regime: Hearing Before the Subcommittee on Federal Financial Management, Committee on Homeland Security & Governmental Affairs*, 109th Cong., 2d Sess. (2006), [https://books.google.com/books?id=hjgFm\\_t1LE8C&lpg=PA41&dq=north%20korea%20counterfeit%20cigarettes&pg=PA1#v=onepage&q&f=false](https://books.google.com/books?id=hjgFm_t1LE8C&lpg=PA41&dq=north%20korea%20counterfeit%20cigarettes&pg=PA1#v=onepage&q&f=false);

300 *United States v. Tian Yinyin*, No. 20-cr-00052. This is the first Justice Department indictment for laundering the proceeds of North Korea's illicit activities—in this case, cryptocurrency theft. Pyongyang's agents laundered the money through multiple accounts, media of exchange, and enablers, allegedly including the Chinese nationals Tian Yinyin and Li Jiadong, who used a sophisticated algorithm called a "peel chain" to split the cryptocurrency into much smaller amounts and transfer it to multiple accounts, presumably for a commission. See also *United States v. Griffith*, No. 20-cr-0015. In this case, a federal grand jury returned an indictment against U.S. citizen Virgil Griffith, seeking the criminal forfeiture of proceeds of his transfer of cryptocurrency technology to the Government of North Korea. The indictment alleges that Griffith "personally obtained" "a sum of money in United States currency" that was traceable to his conspiracy to violate the sanctions.

301 *United States v. 113 Virtual Currency Accounts*, No. 20-cv-00606; *United States v. 280 Virtual Currency Accounts*, No. 20-cv-02396. This was related to the *Tian Yinyin* indictment. In August 2020, the Justice Department filed a second, related forfeiture case against another series of cryptocurrency accounts involved in the scheme. *Id.*

302 *United States v. Ko Chol Man*, No. 20-cr-00032 (D.D.C. 2020), [https://freekorea.us/wp-content/uploads/2020/05/show\\_temp-76-1.pdf](https://freekorea.us/wp-content/uploads/2020/05/show_temp-76-1.pdf).

303 *United States v. \$429,000.00 of Blocked Funds Associated with Ryer Int'l Trading, Ltd.*, No. 20-cv-2546 (2020), <https://www.justice.gov/usao-dc/press-release/file/1316241/download>. In 2017, ZTE entered into a plea agreement with the Justice Department, in which it agreed to pay a \$400 million penalty and cooperate with federal investigations of sanctions violations, mostly relating to Iran, but also relating to North Korea. *United States v. ZTE Corp.*, No. 17-cr-0120 (N.D. Tex. 2017), <https://www.justice.gov/opa/press-release/file/946276/download>.

304 The Assistant United States Attorney in Washington D.C., who prosecuted the majority of these cases, routinely communicated with the author on late nights and weekends.

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tools, including vacuum drying furnaces, to a buyer in Damascus, Syria that a UN Panel of Experts believes to be a front for Syria's Scientific Studies and Research Center (SSRC).<sup>305</sup> The SSRC is designated by OFAC for WMD proliferation; the vacuum drying furnaces may have been meant for use in Syria's chemical weapons program.<sup>306</sup> Two North Korean agents of the Korea Mining and International Development Corporation (KOMID) based in Rangoon, Burma brokered the shipment. KOMID is also sanctioned by both the UN and OFAC for WMD proliferation. Fortunately, the U.S. correspondent bank took its enhanced due diligence obligations seriously, saw through the seller's use of aliases to conceal his ownership of the funds, and blocked the payment.<sup>307</sup>

Non-governmental organizations made their own contributions. They learned to mine foreign-language public records abroad; use powerful computer algorithms to identify links of ownership and control between different corporate officers, agents, partners, and beneficial owners; and use this evidence to map out illicit financial networks.

In 2016, the Center for Advanced Defense Studies (C4ADS) exposed a large Chinese trading company as a major facilitator of illicit North Korean trade. One month later, federal prosecutors indicted the trading company and its corporate officers for money laundering on behalf of a U.S.- and UN-designated North Korean bank through correspondent banks in New Jersey, and filed a civil forfeiture complaint against the trading company's accounts in twenty-three Chinese banks, including the largest banks in China.<sup>308</sup> In 2017, C4ADS mapped what it described as a "centralized, limited, and vulnerable" network of 5,233 North Korean front companies operating openly in China, which it believed to comprise the bulk of Pyongyang's financial infrastructure in China.<sup>309</sup> Federal authorities have not yet acted against most other nodes of this network.

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305 *United States v. \$148,500 of Blocked Funds in the Name of Trans Multi Mechanics, Co., Ltd., et al.*, No. 16-cv-01029 (ordering the forfeiture of funds wired by a blocked Taiwanese proliferator from a bank in Hong Kong to a bank in Taiwan, which were derived from the sale of proliferation-sensitive machinery to a Syrian front company for another blocked entity). The author served as a consultant to the Department of Justice in this case. For evidence linking Mechanical Systems to Syria's Scientific Studies and Research Center and its acquisition of materiel for its weapons of mass destruction programs, see S/2016/157 ¶ 64, <https://undocs.org/S/2016/157>, and S/2018/171 ¶ 132, [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2018\\_171.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2018_171.pdf).

306 "N. Korea 'Exporting Chemical Weapons Parts to Syria,'" *Chosun Ilbo*, June 17, 2013, [http://english.chosun.com/site/data/html\\_dir/2013/06/17/2013061700887.html](http://english.chosun.com/site/data/html_dir/2013/06/17/2013061700887.html); Kelsey Davenport, "An Uncertain Future for North Korean Talks," *Arms Control Today* 49, April 2019, <https://www.armscontrol.org/act/2019-04/news/uncertain-future-north-korean-talks>.

307 *United States v. \$148,500 of Blocked Funds in the Name of Trans Multi Mechanics, Co., Ltd., et al.*, No. 16-cv-01029; 31 C.F.R. § 544.201 (prohibiting transactions with persons blocked for the proliferation of weapons of mass destruction).

308 Compare Center for Advanced Defense Studies, *In China's Shadow: Exposing North Korean Overseas Networks* (Seoul, South Korea: The Asan Institute for Policy Studies, 2016), <http://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/57dfe74acd0f68d629357306/1474291539480/In+China%27s+Shadow.pdf>, to *United States v. All Funds in the Accounts of Blue Sea Business Co., Ltd.*, No. 16-cv-1954.

309 David Thompson, "Risky Business A System-Level Analysis of the North Korean Proliferation Financing System"

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In 2017, Sayari Analytics, another NGO that mines and analyzes open-source data, exposed a joint venture between a Chinese company and a North Korean company sanctioned by both the U.S. and the UN for the proliferation of WMDs. Prosecutors in the District of Columbia subsequently unsealed an indictment and filed a civil forfeiture action against the same network.<sup>310</sup> In 2020, the nonprofit group The Sentry exposed a North Korean network building political monuments in the Democratic Republic of Congo (DRC) in violation of a UN ban on Pyongyang's statue exports, and to launder the proceeds through a DRC bank, Afriland First Bank, and a French Bank, BMCE Bank International.<sup>311</sup>

Congress has given governments the authority to reward NGOs that provide them with valuable open-source intelligence. In 2017, it amended the State Department's "Rewards for Justice" program to authorize a North Korea-specific reward program.<sup>312</sup> Rewards are available for "the identification or location of any person who aids or abets a violation of" state-sponsored computer hacking, or for "the disruption of financial mechanisms of any person who has engaged in the conduct described in sections 104(a) or 104(b)(1) of the North Korea Sanctions and Policy Enhancement Act of 2016," including the proceeds of Pyongyang's kleptocracy and other forms of corruption.<sup>313</sup>

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(Washington, D.C.: Center for Advanced Defense Studies, 2017), <https://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/59413c8bebbd1ac3194eafb1/1497447588968/Risky+Business-C4ADS.pdf>. Since 2020, Beijing has moved to conceal publicly available data about business logistics and finances, a move that might also discourage more careful investors. Liza Lin & Chin Han Wong, "China Increasingly Obscures True State of Its Economy to Outsiders," *Wall St. Journal*, December 6, 2021, <https://www.wsj.com/articles/china-data-security-law-ships-ports-court-cases-universities-11638803230>.

310 Jeremy Page and Jay Solomon, "Chinese-North Korean Venture Shows How Much Sanctions Can Miss," *Wall Street Journal*, May 7, 2017, <https://www.wsj.com/articles/chinese-north-korean-venture-shows-how-much-sanctions-can-miss-1494191212>.

311 The Sentry, *Overt Affairs: How North Korean Businessmen Busted Sanctions in the Democratic Republic of Congo*. BMCE is a foreign bank that has been designated as a correspondent bank to clear transactions through the U.S. financial system.

312 Countering America's Adversaries Through Sanctions Act, Pub. L. No. 115-44, 131 Stat. 886, § 323 (2017) (codified at 22 U.S.C. § 2914), <https://www.congress.gov/bill/115th-congress/house-bill/3364/text?q=%7B%22search%22%3A%5B%22sanctions%22%5D%7D&r=2>.

313 U.S. Dep't of State, "Rewards for Justice: North Korea," accessed September 13, 2020, [https://rewardsforjustice.net/english/about-rfj/north\\_korea.html](https://rewardsforjustice.net/english/about-rfj/north_korea.html); see also The Kleptocracy Asset Recovery Rewards Act, Pub. L. No. 116-283, §§ 9701-9703 (2021), <https://www.govtrack.us/congress/bills/116/hr6395/text>. This legislation, which became law as part of the National Defense Authorization Act for Fiscal Year 2021, authorizes appropriations to pay rewards to individuals and nonprofit humanitarian organizations providing information leading to the seizure or forfeiture of stolen assets from an account in a U.S. financial institution. See also National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 6112 & 6214 (2021), <https://www.govtrack.us/congress/bills/116/hr6395/text>; Russia & Moldova Jackson-Vanik Repeal & Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. No. 112-208, 126 Stat. 1496 (2012). The Helsinki Commission has published guidance for non-governmental organizations and informers who provide information to the Treasury Department to support the credibility of their evidence for Magnitsky sanctions. U.S. Helsinki Comm'n, *How-To Guide: Sanctioning Human Rights Abusers and Kleptocrats under the Global Magnitsky Act*, May 24, 2018, <https://www.csce.gov/sites/helsinkicommission.house>.

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Then, in 2019, the Chief District Judge of the U.S. District Court for the District of Columbia unsealed a series of rulings enforcing subpoenas against three major Chinese banks in connection with a criminal investigation of money laundering and sanctions violations involving North Korea, holding the banks in contempt of court when they failed to comply with the subpoenas, and fining them each \$50,000 a day.<sup>314</sup>

As the Chief District Judge's rulings were unsealed in Washington, traders in China reported difficulties accessing banking services,<sup>315</sup> and that Pyongyang's agents had hoarded dollars and renminbi.<sup>316</sup> The banks appealed, but the Court of Appeals affirmed the District Court's decision. The appellants did not seek further review at the U.S. Supreme Court before their appeal deadlines passed. The dockets in the cases have since been unsealed, with the names of the two of the banks redacted.<sup>317</sup>

The litigation over these subpoenas may overshadow every other enforcement action in its significance.<sup>318</sup> Prosecutors allege that in one three-year period, just one of the Chinese banks whose records were subpoenaed facilitated at least \$105 million in payments for Mingzheng International Trading, a China-based North Korean front company that operated as a bank and used major Chinese banks to access the U.S. financial system illegally.<sup>319</sup> Returns from those subpoenas not only have the potential to identify other accounts that contain Pyongyang's hard

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gov/files/Global%20Magnitsky%20How-To%20Designed%20Final%20Updated%20with%20Info.pdf.

314 *In re Grand Jury Investigation of Possible Violations of 18 U.S.C. § 1956 and 50 U.S.C. § 1705*, Nos. 18-mj-175, 18-mj-176 & 18-mj-177 (D.D.C. 2019), [https://freekorea.us/wp-content/uploads/2019/04/FINAL\\_18mc175\\_176\\_177\\_Mar\\_18\\_2019\\_Mem\\_Op\\_redacted.pdf](https://freekorea.us/wp-content/uploads/2019/04/FINAL_18mc175_176_177_Mar_18_2019_Mem_Op_redacted.pdf). The Chief District Judge held the banks in contempt of court for failure to comply with the subpoenas and fined each of them \$50,000 a day. A panel of the Court of Appeals later affirmed the District Court's order. *In re Sealed Case*, No. 19-5068 (D.C. Cir. 2019), <https://freekorea.us/wp-content/uploads/2019/08/Sealed-case-DC-Cir-affirms.pdf>. See Berthelsen and Schoenberg, "Chinese Banks Probed Over North Korea's Nuclear Arms." Two of the subpoenas were issued by a grand jury charged with investigating money laundering and sanctions violations involving North Korea, and two others were issued by the Justice Department under the authority of the Patriot Act. See 18 U.S.C. § 3332; 31 C.F.R. § 1010.670.

315 U.S. Fed. Reserve Bank of New York, Exec. Order 8832, "Freezing Japanese and Chinese Assets in the United States," Cir. 2249.

316 Ha Yoon-ah, "North Koreans turn to local currency due to foreign currency shortages," *Daily NK*, August 6, 2019, <https://www.dailynk.com/english/north-koreans-turn-to-local-currency-due-to-foreign-currency-shortages/>.

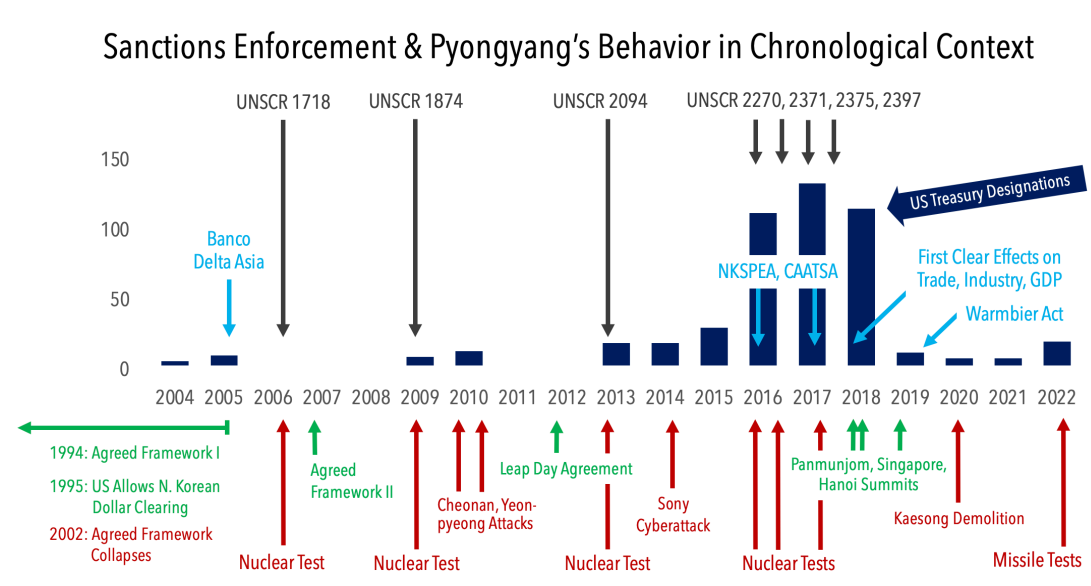
317 U.S. District Court, District of Columbia, Unsealed Orders, Opinions, Documents and Docket Reports, 2020, <https://www.dcd.uscourts.gov/unsealed-orders-opinions-documents/Miscellaneous/2020>; Zia M. Faruqui, Jessie K. Liu, Noha K. Moustafa, "The Long Arm of U.S. Law: The Patriot Act, the Anti-Money Laundering Act of 2020 and Foreign Banks," *Lawfare Blog*, February 23, 2021, <https://www.lawfareblog.com/long-arm-us-law-patriot-act-anti-money-laundering-act-2020-and-foreign-banks>.

318 See *In re Grand Jury Investigation of Possible Violations of 18 U.S.C. § 1956 and 50 U.S.C. § 1705*, Nos. 18-mc-00175, -176, -177 (D.D.C. 2019), *affirmed*, *In re Sealed Case*, Nos. 19-5100, -5101, 5103 (2019). The author acted as an uncompensated consultant to the U.S. Attorney's office in this case, primarily by providing research assistance to the FBI and the prosecution, but did not have access to any grand jury material.

319 *In re Grand Jury Investigation*, No. 18-mc-00176.

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currency reserves, but subsequent enforcement actions could also deter other major Chinese banks from servicing North Korean customers and encourage them to report and freeze North Korean accounts. The cases also spurred Congress to pass the Anti-Money Laundering Act of 2020, which expanded the Justice Department's subpoena authority to records held by foreign banks overseas.<sup>320</sup>



## 1. Effects of Medium Pressure on the North Korean Economy, 2017-2021

By late 2017, there was observable evidence that these sanctions had serious effects on the North Korean regime's finances. In 2017 and 2018, North Korea's GDP fell by 3.5 percent and 4.1 percent, respectively, although these numbers rely on reported trade data and should be viewed with some skepticism.<sup>321</sup>

320 Anti-Money Laundering Act of 2020, Pub. L. No. 116-92, div. F, tit. LXXIII, subtit. A, § 6308 (2019) (enacted within the National Defense Authorization Act for Fiscal Year 2020) (hereinafter AMLA Act).

321 Choonsik Yoo, "North Korea's economy tanks as sanctions, drought bite: South Korea," *Reuters*, July 25, 2019, <https://www.reuters.com/article/us-northkorea-economy-gdp/north-koreas-economy-tanks-as-sanctions-drought-bite-south-korea-idUSKCN1UL08G>.



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A 2017 UN embargo on North Korea's coal exports initially deprived the state of its largest source of hard currency. Initially, OFAC also showed a willingness to sanction Chinese and Russian buyers of North Korean coal.<sup>322</sup> The mining industry, on which Pyongyang had long relied for hard currency, was hit particularly hard.<sup>323</sup> So were the state-affiliated trading companies that grew rich on the North's exports.<sup>324</sup>

In 2018, the prices of apartments in some privileged neighborhoods of Pyongyang fell sharply—according to some accounts, from \$250,000 to \$50,000, a decline of 80 percent.<sup>325</sup> Factories in

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322 U.S. Dep't of Treasury, "Announcement of Sanctions against North Korean Transportation, Mining, Energy, and Financial Services Industries and North Korean Government Officials and Organizations," March 16, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0385.aspx>; U.S. Dep't of Treasury, "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>; U.S. Dep't of Treasury, "Treasury Sanctions Suppliers of North Korea's Nuclear and Weapons Proliferation Programs," June 1, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/sm0099.aspx>; U.S. Dep't of Treasury, "Treasury Designates Two Shipping Companies for Attempted Evasion of North Korea Sanctions," March 21, 2019, <https://home.treasury.gov/news/press-releases/sm632>; Sangmin Lee and Jieun Kim, "Russian Port City Exits Lucrative Sanctions-Dodging North Korean Coal Trade," *Radio Free Asia*, December 12, 2018, <https://www.rfa.org/english/news/korea/north-korean-coal-russia-12122018144209.html>.

323 Ha Yoon-ah, "Muson mine on the verge of total shutdown, sources say," *Daily NK*, November 11, 2018, <https://www.dailynk.com/english/musan-mine-on-the-verge-of-total-shutdown-sources-say/>; Elizabeth Shim, "Report: North Korea coal miners struggle to find work after sanctions," *UPI*, June 12, 2017, [https://www.upi.com/Top\\_News/World-News/2017/06/12/Report-North-Korea-coal-miners-struggle-to-find-work-after-sanctions/8591497286800/?ur3=1](https://www.upi.com/Top_News/World-News/2017/06/12/Report-North-Korea-coal-miners-struggle-to-find-work-after-sanctions/8591497286800/?ur3=1); Dexter Roberts, "A Trump-Kim Summit Could Unfreeze Mining Riches on the Korean Border," *Bloomberg News*, March 14, 2018, <https://www.bloomberg.com/news/articles/2018-03-14/trump-kim-summit-could-unfreeze-china-mining-riches-at-border> ("[B]ecause of United Nations sanctions imposed in 2016 targeting North Korean minerals, all production at the [Hyesan Youth Copper Mine] has stoppeded. ").

324 "Reacting to sanctions, N. Korean merchant in China: 'We have no work,'" *Daily NK*, September 18, 2017, <https://www.dailynk.com/english/reacting-to-sanctions-n-korean-mer/>; "North Korean merchant says trade and smuggling slashed by sanctions," *Daily NK*, February 7, 2018, <https://www.dailynk.com/english/north-korean-merchant-says-trade-a/>; Ha Yoon-ah, "North Korean trader in China expresses concerns about his own precarious situation," *Daily NK*, May 7, 2019, <https://www.dailynk.com/english/north-korean-trader-in-china-expresses-concerns-about-his-own-precarious-situation/>.

325 Mun Dong-hui, "Apartment construction remains steady despite fall in real estate prices," *Daily NK*, October 30, 2018, <https://www.dailynk.com/english/apartment-construction-remains-steady-despite-fall-in-real-estate-prices/>; Jang Seul-gi, "Government conducts survey on housing prices in North Korea," *Daily NK*, August 5, 2019, <https://www.dailynk.com/english/government-conducts-survey-on-housing-prices/>; "<N. Korean Trade Interview> Pyongyang Faces Great Depression as Apartment Prices Plummet and Markets Slump," *Rimjin-gang*, January 21, 2020, <http://www.asiapress.org/rimjin-gang/2020/01/recommendations/pyongyang-interview/3/>; Mun Dong-hui, "Deal disappearance due to plunging apartment prices in North Korea, real estate paralysis," *Daily NK*, October 8, 2019, <https://tinyurl.com/yydgfq27> (in Korean); "<Inside N. Korea> Price Plunge: Pyongyang Properties Depreciate Severely as Sanctions Knock Housing Market Nationwide," *Rimjin-gang*, August 13, 2019, <http://www.asiapress.org/rimjin-gang/2019/08/society-economy/pyongyang-properties/2/>. But see Jieun Kim, "Desperate North Koreans sell homes to raise money for food," *Radio Free Asia*, November 29, 2021, <https://www.rfa.org>.

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Pyongyang and nearby Pyongsong, and munitions factories in Jagang, were idled or ran at reduced capacity.<sup>326</sup> In cities on both sides of the Sino-North Korean border, the decline in commerce was evident.<sup>327</sup> The state, which had previously tried to deny or conceal the effects of sanctions,<sup>328</sup> admitted that they were causing “a colossal amount of damage.”<sup>329</sup>

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org/english/news/korea/homes-11292021203549.html (“quoting a source’s observation that [p]oor residents, who are suffering from hardship, are selling their houses to buy food, while rich people are taking advantage of this opportunity to buy houses at low prices.”) This may reflect that elite North Koreans of means are profiteering, shifting resources from banned foreign currency stores to real estate, or continuing to downsize their residences from urban apartments to rural single-family homes.

326 Ha Yoon-ah, “Local factories in South Pyongan Province face closure amidst theft epidemic,” *Daily NK*, April 30, 2019, <https://www.dailynk.com/english/local-factories-in-north-korea-face-closure-amidst-theft-epidemic/>; Mun Dong-hui, “Majority of Pyongyang state-run factories close after US-DPRK summit fails to bear fruit,” *Daily NK*, April 30, 2019, <https://www.dailynk.com/english/majority-of-pyongyang-state-run-factories-close-after-us-dprk-summit-fails-to-bear-fruit/>; Jang Seul-gi, “North Korea ceases operation of some munitions factories,” *Daily NK*, July 25, 2019, <https://www.dailynk.com/english/north-korea-ceases-operation-of-some-munitions-factories/>; Mun Dong-hui, “North Korea’s Sunghori Cement Factory facing shutdown,” *Daily NK*, July 9, 2019, <https://www.dailynk.com/english/north-koreas-sunghori-cement-factory-facing-shutdown/>; Ha Yoon-ah, “State-run factories in Pyongsong languish as private investors cash in,” *Daily NK*, February 6, 2019, <https://www.dailynk.com/english/state-run-factories-in-pyongsong-languish-as-private-investors-cash-in/>; Mun Dong-hui, “Pyongyang factories encourage workplace exemption program,” *Daily NK*, September 9, 2019, <https://www.dailynk.com/english/factories-encourage-workplace-exemption-program/>.

327 Keith Bradsher, “North Korea’s Trade Troubles Could Point to a Need for Cash,” *New York Times*, September 8, 2017, <https://www.nytimes.com/2017/09/08/business/north-korea-china-trade.html>; “Sharp fall in China’s trade with North Korea as U.N. sanctions bite,” *AFP*, January 14, 2019, <https://www.scmp.com/news/china/diplomacy/article/2181965/chinas-trade-north-korea-sees-sharp-fall-un-sanctions-bite>; Matt Rivers and Steven Jiang, “North Korea sanctions are strangling this Chinese city,” *CNN Money*, January 25, 2018, <https://money.cnn.com/2018/01/25/news/economy/dandong-china-north-korea-sanctions/index.html>; Elizabeth Shim, “Chinese firm in Dandong insolvent after North Korea sanctions,” *UPI*, April 10, 2019, [https://www.upi.com/Top\\_News/World-News/2019/04/10/Chinese-firm-in-Dandong-insolvent-after-North-Korea-sanctions/4631554906755/](https://www.upi.com/Top_News/World-News/2019/04/10/Chinese-firm-in-Dandong-insolvent-after-North-Korea-sanctions/4631554906755/); Ha Yoon-ah, “North Korean trade officials in China grapple with sanctions,” *Daily NK*, May 16, 2019, <https://www.dailynk.com/english/north-korean-trade-officials-in-china-grapple-with-sanctions/>; “Once flourishing Rason hard hit by sanctions, exiting Chinese,” *Daily NK*, October 5, 2017, <https://www.dailynk.com/english/once-flourishing-rason-hard-hit-by/>; Choi Kyong-ae, “N. Korea’s trade halved in 2018 on prolonged sanctions: report,” *Yonhap News*, July 19, 2019, <https://en.yna.co.kr/view/AEN20190719002100320?input=tw>.

328 Sung-hui Moon, “North Korea Orders New Roofs For All Buildings to Suggest Sanctions Lack Teeth,” *Radio Free Asia*, October 27, 2017, <https://www.rfa.org/english/news/korea/roofs-10262017170335.html>; “Kim Jong-un Regime Works Hard to Conceal Sanctions,” *Rimjin-gang*, February 11, 2017, <http://www.asiapress.org/rimjin-gang/report/20171102-conceal-sanction/>.

329 Phil Helsel and Stella Kim, “North Korea Says Sanctions Cause ‘Colossal’ Damage But Won’t Work,” *NBC News*, September 29, 2017, <https://www.nbcnews.com/news/north-korea/north-korea-says-sanctions-cause-colossal-damage-won-t-work-n806146>.

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UN sanctions required “all DPRK nationals earning income in that Member State’s jurisdiction” to return to North Korea by December 2019.<sup>330</sup> Initially, traders and overseas laborers began returning to North Korea ahead of the UN deadline.<sup>331</sup> The converging pressures may have given Kim Jong-un reason to fear for the solvency of the state. By late 2017, he needed a strategy to buy time.

### 2. May 2018: President Trump Preempts Maximum Pressure

From the time of his father’s death in 2011 until 2018, Kim Jong-un never went abroad or met the leader of a foreign country. Then, in his 2018 New Year Speech, Kim Jong-un offered to send an Olympic team to South Korea. It would be a year in which both sanctions and diplomacy would peak, and then ebb. In April 2018, when President Trump agreed to meet Kim Jong-un for their first summit, the Treasury Department still had not acted against most of the networks, agents, and front companies exposed by the UN Panel of Experts and C4ADS. Some of Pyongyang’s largest money laundering networks, such as Glocom, Malaysia-Korea Partners, and Shinheung Trading,<sup>332</sup> were still operating. Major Chinese banks continued to launder Pyongyang’s money.<sup>333</sup>

President Trump’s personal intervention before the June 2018 Singapore summit signaled an extended enforcement pause by the Treasury Department. In May, he canceled at least two rounds of sanctions designations on Twitter—decisions that appear to have caught the Treasury Department and the National Security Council staff off-guard.<sup>334</sup> At the time, OFAC was prepared

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330 S/RES/2397 ¶ 8.

331 Ha Yoon-ah, “North Korean trade officials in China grapple with sanctions,” *Daily NK*, May 16, 2019, <https://www.dailynk.com/english/north-korean-trade-officials-in-china-grapple-with-sanctions/>; Ha Yoon-ah, “North Korean trader in China expresses concerns about his own precarious situation,” *Daily NK*, May 7, 2019, <https://www.dailynk.com/english/north-korean-trader-in-china-expresses-concerns-about-his-own-precarious-situation/>; Jieun Kim, “Hundreds of North Korean Workers Return Home From Vladivostok Airport,” *Radio Free Asia*, September 5, 2019, <https://www.rfa.org/english/news/korea/nk-vladivostok-workers-return-09052019143859.html>.

332 For example, Glocom, a large and sophisticated arms dealing and money laundering enterprise, still operates openly from Malaysia, Singapore, and China. Malaysia-Korea Partners operates openly in Southeast Asia and Africa. Joseph Cox, “North Korea Advertises Military Hardware on Twitter, YouTube, Defying Sanctions,” *Vice News*, March 13, 2019, [https://www.vice.com/en\\_us/article/nexmzz/north-korea-advertises-military-hardware-youtube-twitter-facebook-linkedin-instagram-glocom](https://www.vice.com/en_us/article/nexmzz/north-korea-advertises-military-hardware-youtube-twitter-facebook-linkedin-instagram-glocom); Mathew Ha, “Treasury Sanctions North Korean for Sanctions Evasion,” *Foundation for the Defense of Democracies Policy Brief*, July 31, 2019, <https://www.fdd.org/analysis/2019/07/31/treasury-sanctions-north-korean-for-sanctions-evasion/>. Another undesignated company, Sinheung Trading, is a front for North Korea’s Ministry of Social Security, which operates the country’s political prison camps. “Meet the North Korean firm that reinvents itself to beat sanctions,” *Agence France-Presse*, December 1, 2017, <https://www.scmp.com/news/china/diplomacy-defence/article/2122438/meet-north-korean-firm-which-reinvents-itself-beat>.

333 See *United States v. All Funds in the Accounts of Blue Sea Business Co., Ltd.*, No. 16-cv-1954; *United States v. \$1,071,251.44 of Funds Associated with Mingzheng Int’l Trading Ltd.*, No. 17-cv-1166 (D.D.C. 2017), <https://www.justice.gov/usao-dc/pr/united-states-files-complaint-forfeit-more-19-million-china-based-company-accused-acting>; S/2017/150 ¶¶ 224-34.

334 Vivian Salama and Ian Talley, “U.S. Holds Off on New North Korea Sanctions as Summit Talks Progress,” *Wall*

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to designate “nearly three-dozen sanction targets, including Russian and Chinese entities.” As an administration official conceded, “The goal here is to achieve maximum pressure,” but “[w]e’re still short of that.”<sup>335</sup> Pyongyang used the delay to set up new front and shell companies. Treasury would fail to extend the sanctions’ half-life by maintaining its deterrence against breaking them.

Whether by design, willful blindness, or the careless exercise of the “enhanced due diligence” they had been required to exercise since late 2016,<sup>336</sup> some foreign banks still facilitated Pyongyang’s money laundering through their U.S. correspondent accounts. In other cases, foreign companies set up joint ventures with North Korean companies and used them to evade sanctions.<sup>337</sup>

The U.S. government still did not penalize or prosecute any major Chinese banks for laundering Pyongyang’s money.<sup>338</sup> This was not for lack of reasons to believe that they were doing so.<sup>339</sup> Appeals from Washington to Beijing through the two nations’ Mutual Legal Assistance Agreement (MLAA) had been unavailing for years. Federal prosecutors would later assert in court filings that “in the past 10 years, previous MLAA requests for production of similar records to China remain unanswered.”<sup>340</sup> Representatives and senators of both parties called on the Trump administration

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*Street Journal*, May 28, 2019, <https://www.wsj.com/articles/u-s-prepares-sanctions-while-pursuing-revived-north-korea-talks-1527526255>; Brian Bennett and W.J. Hennigan, “Trump Again Bucked His Own Government’s Actions on North Korea,” *Time*, March 22, 2019, <https://time.com/5557165/trump-north-korea-sanctions/>; Claudia Koerner, “Trump Canceled New North Korean Sanctions Because He ‘Likes’ Kim Jong-Un, The White House Said. Seriously,” *Buzzfeed*, March 22, 2019, <https://www.buzzfeednews.com/article/claudiakoerner/trump-rolled-back-north-korean-sanctions-a-day-after-they>.

335 Ian Talley, “U.S. Sanctions Target North Korea’s Vast International Finance Network,” *Wall Street Journal*, May 28, 2018, [https://www.wsj.com/articles/u-s-sanctions-target-north-korea-s-vast-international-finance-network-1527548907?mod=article\\_inline](https://www.wsj.com/articles/u-s-sanctions-target-north-korea-s-vast-international-finance-network-1527548907?mod=article_inline).

336 31 C.F.R. § 1010.659.

337 S/2017/150 ¶ 210.

338 The Treasury Department issued its first North Korea-related civil penalty to a financial institution—U.S.-based TD Bank—in December 2021, for processing 1,479 transactions for North Korea’s U.N. Mission in New York without obtaining the requisite licenses. In imposing a modest penalty of \$105,238.65, the Treasury Department credited TD Bank with voluntarily self-disclosing the violations and stated that “all of the transactions would likely have been licensable under existing licensing policy.” U.S. Dep’t of Treasury Enforcement Release, “OFAC Settles with TD Bank, N.A. for \$115,005.04 Related to Apparent Violations of the North Korea Sanctions Regulations and the Foreign Narcotics Kingpin Sanctions Regulations,” December 23, 2021, [https://home.treasury.gov/system/files/126/20211223\\_TDBNA.pdf](https://home.treasury.gov/system/files/126/20211223_TDBNA.pdf).

339 Zia M. Faruqui *et al.*, “The Long Arm of U.S. Law: The Patriot Act, the Anti-Money Laundering Act of 2020 and Foreign Banks,” *supra* note 600; U.S. Dep’t of Justice, “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>.

340 *In re Grand Jury Investigation*, No. 18-mc-00176 (D.D.C. 2020) (United States’ Motion to Compel Production of Documents Requested Via Administrative Subpoena Issued Pursuant to 31 U.S.C. § 5318)(k)(3), filed August 12, 2020), <https://www.dcd.uscourts.gov/sites/dcd/files/18mc177%20%20Document%2064-7.pdf>; see *In re Sealed Case*, No. 19-5068; *United States v. All Funds in the Accounts of Blue Sea Business Co., Ltd.*, No. 16-cv-1954; Berthelsen and Schoenberg, “Chinese Banks

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to penalize Chinese banks, as they had called on the Obama administration to do so before, but the appeals were not effective.

One explanation for FinCEN's inaction may have been the personnel and technology challenges it faced in collecting and analyzing financial intelligence. But there was also evidence that Treasury Secretary Steven Mnuchin made a willful decision not to sanction major Chinese banks for laundering Pyongyang's money.<sup>341</sup> The public reporting of Mnuchin's decision came less than a week before President Trump met with South Korea's National Security Advisor and agreed to his first summit with Kim Jong-un.<sup>342</sup>

Mnuchin's decision was contrary to the spirit, if not the mandates, of the NKSPEA, and its public announcement could only have been read as a grant of *de facto* immunity in the Chinese financial industry. If secondary sanctions on major European banks had been the measure of U.S. determination to force Iran to halt its nuclear drive, Mnuchin's open refusal to do so to Chinese banks deprived Trump of the leverage he would need to have any chance of negotiating Kim Jong-un's disarmament at Singapore. The term "maximum pressure" should have been retired before Singapore.

What Treasury had achieved by May 2018 might be characterized as "medium pressure." It was certainly higher than what the Obama administration had done against North Korean money laundering, but it was not remotely comparable to the Obama administration's enforcement of sanctions against Iran in the years before the Joint Comprehensive Plan of Action, or to the levels of enforcement the Trump Administration applied to Cuba, Syria, or Venezuela. It was certainly far below the existential level of pressure necessary to force Kim Jong-un to choose between his nuclear weapons program and his survival. By mid-2018, the era of Medium Pressure was over.<sup>343</sup> Despite Pyongyang's refusal to disarm or reform, annual North Korea designations regressed to the single-digit mean of the early Obama years. Whether this pause reflected an undisclosed agreement at Singapore<sup>344</sup> or simply the policy prerogatives of the Washington bureaucracy is left to conjecture.

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Probed Over North Korea's Nuclear Arms."

341 Christian Berthelsen, "U.S. Considered Blacklisting Two Chinese Banks Over North Korea Ties," *Bloomberg News*, April 13, 2018, <https://www.bloomberg.com/news/articles/2018-04-13/china-banks-aiding-north-korea-are-said-too-big-to-punish>; Peter Whoriskey, "Trump Administration Weighed Sanctions Against Major Chinese Banks Tied to North Korea," *Wash. Post*, March 2, 2018, [https://www.washingtonpost.com/business/economy/trump-administration-considered-but-refrained-from-tougher-north-korea-sanctions/2018/03/02/7eafdc84-1c15-11e8-ae5a-16e60e4605f3\\_story.html](https://www.washingtonpost.com/business/economy/trump-administration-considered-but-refrained-from-tougher-north-korea-sanctions/2018/03/02/7eafdc84-1c15-11e8-ae5a-16e60e4605f3_story.html).

342 Jeremy Diamond and Euan McKirdy, "Trump accepts offer to meet Kim Jong Un," *CNN.com*, March 9, 2018, <https://edition.cnn.com/2018/03/08/politics/donald-trump-kim-jong-un/index.html>.

343 Go Myong-hyun, "Not Under Pressure- How Pressure Leaked Out of North Korea Sanctions," *Asan Inst. For Policy Studies*, June 18, 2020, <http://en.asaninst.org/contents/not-under-pressure-how-pressure-fizzled-out-of-north-korea-sanctions/>.

344 Such an agreement would have been directly contrary to section 104(a) of the NSKPEA, mandating sanctions for sanctionable conduct involving North Korea.



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## Treasury Department North Korea Designations, 2014-2021<sup>345</sup>

2014 .....	20	2018 .....	131
2015 .....	18	2019 .....	40
2016 .....	92	2020 .....	16
2017 .....	135	2021 .....	9

Meanwhile, Pyongyang stepped up its maritime smuggling and arms trafficking.<sup>346</sup> Pyongyang's coal exports began to recover, rising 191 percent in the second quarter of 2019 relative to the previous quarter.<sup>347</sup> Russia,<sup>348</sup> China,<sup>349</sup> South Korea,<sup>350</sup> and Southeast Asian states<sup>351</sup> imported North Korean coal, also in violation of UN sanctions.<sup>352</sup> Coal exports leaked through ship-to-ship transfers and smuggling through Russia and China.<sup>353</sup> Banks in both countries laundered

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345 U.S. Dep't of Treasury, "OFAC Recent Actions," accessed September 13, 2020, <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions>. OFAC designated sixteen new persons, entities, and vessels in 2020, but it also removed seven other designations.

346 S/2020/151 ¶ 2; Jeremy Page, "North Korea Turns Coal Into Gas to Weather Sanctions," *Wall Street Journal*, December 17, 2018, <https://www.wsj.com/articles/north-korea-squeezes-its-coal-to-outlast-sanctions-11545067376>.

347 S/2020/151 ¶ 55, fig. 9.

348 *Id.* ¶¶ 79, 82; Clyde Russell, "COLUMN-Russia takes advantage of China's North Korea coal ban: Russell," *Reuters*, October 3, 2017, <https://www.reuters.com/article/column-russell-coal-china/column-russia-takes-advantage-of-chinas-north-korea-coal-ban-russell-idUSL4N1ME0HJ>; Hyemin Son, "North Korea Exports Coal as 'Russian' in Bid to Beat Sanctions," *Radio Free Asia*, August 8, 2018, <https://www.rfa.org/english/news/korea/coal-08072018145244.html>.

349 S/2020/151 ¶ 57, 61-77, figs. 10-18, <https://undocs.org/S/2020/151>; Jang Seul-gi, "North Korea's coal smuggling continues full speed ahead," *Daily NK*, October 22, 2019, <https://www.dailynk.com/english/north-koreas-coal-smuggling-continues-full-speed-ahead/>.

350 S/2020/151 ¶ 82; Andrew Jeong, "Sanctions Busters Smuggled North Korean Coal, Iron to the South via Russia," *Wall Street Journal*, August 10, 2018, <https://www.wsj.com/articles/sanctions-busters-smuggled-north-korean-coal-iron-to-the-south-via-russia-1533895310>; Joyce Lee, "South Korean prosecutors indict four for importing North Korean coal," *Reuters*, December 10, 2018, <https://www.reuters.com/article/us-northkorea-southkorea-coal/south-korean-prosecutors-indict-four-for-importing-north-korean-coal-idUSKBN1O90TP>.

351 S/2020/151 ¶¶ 78-81; "Ex-judge accused of shipping coal from N Korea to Vietnam," *Taipei Times*, January 31, 2018, <http://www.taipeitimes.com/News/front/archives/2018/01/31/2003686741>.

352 S/RES/2371 ¶ 8.

353 U.S. Dep't of Treasury, "Treasury Sanctions Shipping Companies Transporting North Korean Coal," December 8, 2020, <https://home.treasury.gov/news/press-releases/sm1204>; James Byrne, *Project Sandstone Report 6: The Phantom Fleet: North Korea's Smugglers in Chinese Waters* (London: Royal United Services Institute, 2020), <https://rusi.org/publication/other-publications/project-sandstone-report-6-phantom-fleet-north-korea%E2%80%99s-smugglers>; Project Sandstone, "Anatomy of a North Korean Coal Smuggling Operation," *The Diplomat*, April 16, 2020, <https://thediplomat.com/2020/04/anatomy-of-a-north-korean-coal-smuggling-operation/>; Christina Zhao, "Chinese Ships Spotted Illegally Selling Oil to North Korea by U.S. Spy Satellite," *Newsweek*, December 27, 2017, <https://www.newsweek.com/chinese-ships-illegally-selling-oil-north-korea-760146>;

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Pyongyang's profits from this illicit trade.<sup>354</sup> Cross-border trade with China, which had included both non-sanctioned trade (food, fertilizer, consumer goods) and sanctioned trade (minerals, seafood) also showed signs of recovery.<sup>355</sup> North Korean workers in Russia, China, Africa, and the Middle East overstayed the labor export ban after relocating to less visible worksites.<sup>356</sup>

Pyongyang had also learned to launder cryptocurrencies.<sup>357</sup> Few vendors accept cryptocurrencies as payment for goods or services, which creates a vulnerability when Pyongyang converts cryptocurrency into fiat currency.<sup>358</sup> The Justice Department recently sued to forfeit cryptocurrencies that Pyongyang stole from exchanges.<sup>359</sup> The Treasury Department has also increased its regula-

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Ethan Jewell, "Bump in DPRK coal exports to China continues, outlasting energy crisis: Imagery," *NK Pro*, December 15, 2021, <https://www.nknews.org/pro/bump-in-dprk-coal-exports-to-china-continues-outlasting-energy-crisis-imagery/>; Andrew Jeong, "Sanctions Busters Smuggled North Korean Coal, Iron to the South via Russia," *Wall Street Journal*, August 10, 2018, <https://www.wsj.com/articles/sanctions-busters-smuggled-north-korean-coal-iron-to-the-south-via-russia-1533895310>; Guy Faulconbridge, Jonathan Saul, and Polina Nikolskaya, "Exclusive: Russian tankers fueled North Korea via transfers at sea – sources," *Reuters*, December 29, 2017, <https://www.reuters.com/article/us-northkorea-missiles-russia-oil-exclus/exclusive-russian-tankers-fueled-north-korea-via-transfers-at-sea-sources-idUSKBN1EN1OJ>.

354 Go Myong-hyun, "Not Under Pressure- How Pressure Leaked Out of North Korea Sanctions," *Asan Inst. For Policy Studies*, June 18, 2020, <http://en.asaninst.org/contents/not-under-pressure-how-pressure-fizzled-out-of-north-korea-sanctions/>.

355 Daisuke Harashima, "China-North Korea border trade thrives again, despite sanctions," *Nikkei Asia Review*, December 6, 2018, <https://asia.nikkei.com/Spotlight/N-Korea-at-crossroads/China-North-Korea-border-trade-thrives-again-despite-sanctions>

356 Jang Seul-gi, "North Korean workers avoiding international sanctions while working in China," *Daily NK*, July 8, 2019, <https://www.dailynk.com/english/north-korean-workers-avoiding-international-sanctions-while-working-in-china/>; Mun Dong-hui, "N. Korean workers in China turn to home-based work to eke by," *Daily NK*, July 16, 2020, <https://www.dailynk.com/english/north-korean-workers-china-turn-home-based-work-eke-by/>; The Sentry, *Overt Affairs: How North Korean Businessmen Busted Sanctions in the Democratic Republic of Congo*.

357 Carlisle and Izenman, "Closing the Crypto Gap: Guidance for Countering North Korean Cryptocurrency Activity in Southeast Asia." The Treasury Department continues to supplement its guidance on the prevention of sanctions evasion using cryptocurrencies. U.S. Dep't of Treasury, Office of Foreign Assets Control, "Sanctions Compliance Guidance for the Virtual Currency Industry," October 2021, [https://home.treasury.gov/system/files/126/virtual\\_currency\\_guidance\\_brochure.pdf](https://home.treasury.gov/system/files/126/virtual_currency_guidance_brochure.pdf). In 2021, a U.S. citizen was prosecuted and pled guilty to helping Pyongyang use cryptocurrency to evade sanctions. U.S. Dep't of Justice, "United States Citizen Pleads Guilty To Conspiring To Assist North Korea In Evading Sanctions," September 27, 2021, <https://www.justice.gov/usao-sdny/pr/united-states-citizen-pleads-guilty-conspiring-assist-north-korea-evading-sanctions>.

358 David Carlisle & Kayla Izenman, "Closing the Crypto Gap: Guidance for Countering North Korean Cryptocurrency Activity in Southeast Asia," *Royal United Services Institute.*, April 14, 2009, <https://rusi.org/publication/occasional-papers/closing-crypto-gap-guidance-countering-north-korean-cryptocurrency>.

359 *United States v. 113 Virtual Currency Accounts*, No. 20-cv-00606 (D.D.C. 2020); *United States v. 280 Virtual Currency Accounts*, No. 20-cv-02396 (D.D.C. 2020) <https://www.justice.gov/usao-dc/press-release/file/1310411/download>. This was related to the *Tian Yinyin* indictment. In August 2020, the Justice Department filed a second, related forfeiture case against another series of cryptocurrency accounts involved in the scheme. *United States v. 280 Virtual Currency Accounts*, No. 20-cv-2396

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tory oversight over cryptocurrency transactions,<sup>360</sup> but the efforts were too little and too late.

Again, the Trump administration failed to act. It had the authority to increase inspections of imports from ports that failed to inspect cargo to and from North Korea, as required by UN resolutions, but it did not.<sup>361</sup> It had the authority to bar ships from U.S. waters that flew the flags of states that registered North Korean smuggling ships, but it did not use that authority, either.<sup>362</sup> It could have required maritime insurers to drop ships that turned off their Automatic Identification Systems, but it did not.<sup>363</sup> It could have asked friendly flag states to allow the Coast Guard to board North Korean smuggling ships, or asked friendly nations to seize North Korean ships in their ports and hold them until U.S. authorities could take possession of the ships and forfeit them. It did this only twice.<sup>364</sup> It could have asked Congress for the authority to ground Air Koryo flights and end its arms smuggling business, but it did not.<sup>365</sup> It should have denied aid to states that broke the UN arms embargo to purchase North Korean weapons, but it did not.<sup>366</sup>

After 2018, OFAC's North Korea sanctions designations mostly blocked low-level operatives who were easily replaced with other low-level operatives. Between 2017 and 2020, Treasury imposed just four small civil penalties against violators of North Korea sanctions—none of them banks, and none over \$1 million—compared to eighteen Iran sanctions penalties and twelve Cuba sanctions penalties, several of them in the hundreds of millions of dollars.<sup>367</sup> None of OFAC's designations or penalties since May of 2018 is likely to have imposed a significant financial cost on Pyongyang, as it outpaced OFAC's designations, adapted its front companies to evade scrutiny, and moved its assets through other channels that the Trump administration left unguarded.

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360 U.S. Dep't of Treasury, Office of Foreign Assets Control, "Sanctions Compliance Guidance for the Virtual Currency Industry," October 2021, [https://home.treasury.gov/system/files/126/virtual\\_currency\\_guidance\\_brochure.pdf](https://home.treasury.gov/system/files/126/virtual_currency_guidance_brochure.pdf). OFAC's guidance mentions North Korea sanctions compliance as a risk for the industry, and includes a brief case study of virtual currency laundering by Chinese nationals on Pyongyang's behalf.

361 22 U.S.C. § 9225; S/RES/2270 ¶ 18.

362 33 U.S.C. § 1232c.

363 Consistent with North Korea's exclusion from the financial system, the Financial Crimes Enforcement Network promulgated an enhanced due diligence regulation for financial at 31 C.F.R. § 1010.659. It could have promulgated a similar regulation for insurers in Part 1020.

364 U.S. Dep't of Justice, "United States Seizes Oil Tanker Used to Violate Sanctions Against North Korea," July 30, 2021, <https://www.justice.gov/opa/pr/united-states-seizes-oil-tanker-used-violate-sanctions-against-north-korea>; U.S. Dep't of Justice, "Department of Justice Announces Forfeiture of North Korean Cargo Vessel," October 21, 2019, <https://www.justice.gov/opa/pr/department-justice-announces-forfeiture-north-korean-cargo-vessel>.

365 A legislative amendment would have been necessary to override a statutory limitation on the application of sanctions to transactions incident to travel. 50 U.S.C. § 1702(b)(4).

366 22 U.S.C. § 9223.

367 U.S. Dep't of Treasury, "Civil Penalties and Enforcement Information, Civil Penalties Enforcement Chart," accessed August 30, 2020, <https://home.treasury.gov/policy-issues/financial-sanctions/civil-penalties-and-enforcement-information>.

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Treasury Department Civil Penalties by Country, 2017-2020<sup>368</sup>[illegible]

368 U.S. Dep't of Treasury, "OFAC Recent Actions," accessed September 13, 2020, <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions>. Because many of the civil penalties against banks involved violations of sanctions against multiple countries, and because penalties against banks were almost always several orders of magnitude larger than penalties against non-bank respondents, several of these columns double-count the same penalties.

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2020	665,112	1,125,000	134,523	894,111	257,862	473,157
	134,523					824,314
						134,523
	<u>799,635</u>					<u>1,431,994</u>

Still, the effects were slow to dissipate, and Kim’s diplomatic positions revealed the degree to which they concerned him. In early 2019, he made sanctions relief his principal demand at his meeting with President Trump at Hanoi. Revealingly, he demanded “only” the lifting of the post-2016 sanctions, in an implicit concession that only NKSPEA and CAATSA sanctions had affected the state’s finances.<sup>369</sup> Clandestine reporting from inside North Korea suggested that his failure to secure sanctions relief fueled some latent discontent after Kim raised, and then failed to meet, expectations for sanctions relief.<sup>370</sup>

Congress did not force the Trump administration to enforce sanctions, but it did act to rebuild and modernize the Treasury Department’s Anti-Money Laundering capacity. In the 2020 National Defense Authorization Act, it required FinCEN to create a registry of beneficial ownership information,<sup>371</sup> strengthen international anti-money laundering cooperation,<sup>372</sup> help build anti-money laundering compliance abroad,<sup>373</sup> tighten suspicious activity reporting rules for banks,<sup>374</sup> improve

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369 Stephanie Nebehay, “North Korea seeks sanctions relief,” *Reuters*, March 19, 2019, <https://in.reuters.com/article/northkorea-usa-nuclear-sanctions-idINKCN1R01EH>; “U.N. expert says Kim Jong Un demand shows sanctions work,” *AP*, March 13, 2019, <http://www.asahi.com/ajw/articles/AJ201903130021.html>; Stephan Haggard and Marcus Noland, “Here’s why Kim Jong un put sanctions first—and why North Korea is not Vietnam,” *Washington Post*, February 28, 2019, <https://www.washingtonpost.com/politics/2019/02/28/heres-why-kim-jong-un-put-sanctions-first-why-north-korea-is-not-vietnam/>.

370 Kang Mi-jin, “North Koreans hope summit to bring sanctions relief,” *Daily NK*, February 28, 2019, <https://www.dailynk.com/english/north-koreans-hope-summit-to-bring-sanctions-relief/>; Myungchul Lee, “North Korea Issues Directives to Prevent Unrest Over Uncertainty About US Summit,” *Radio Free Asia*, May 30, 2018, <https://www.rfa.org/english/news/korea/north-korea-issues-directives-to-prevent-unrest-over-uncertainty-about-us-summit-05302018144405.html>; Kang Mi-jin, “Views on Hanoi Summit continue to be mixed among North Koreans,” *Daily NK*, April 15, 2019, <https://www.dailynk.com/english/views-on-hanoi-summit-continue-to-be-mixed-among-north-koreans/>; Tae-jun Kang, “North Korea’s Internal Struggles Hint That Sanctions Are Working,” *The Diplomat*, April 8, 2019, <https://thediplomat.com/2019/04/north-koreas-internal-struggles-hint-that-sanctions-are-working/>; Jang Seul-gi, “N. Koreans criticize government calls for ‘self-reliance,’” *Daily NK*, January 14, 2020, <https://www.dailynk.com/english/n-koreans-criticize-government-calls-for-self-reliance/>.

371 National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 134 Stat. 3388 (2021), <https://www.govtrack.us/congress/bills/116/hr6395/text>.

372 *Id.* § 6403.

373 *Id.* §§ 6106, 6108, 6111-6112.

374 *Id.* §§ 6201-6206.



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whistleblower reward programs,<sup>375</sup> and strengthen the subpoena powers of the Treasury and Justice Departments for records of foreign banks that maintain U.S. correspondent accounts.<sup>376</sup> It also ordered a study of money laundering by the Chinese financial industry and “the efforts of authoritarian regimes to exploit the financial system of the United States.”<sup>377</sup>

### 3. 2018 to 2021: Strategic Patience 2.0

In 2021, some journalists still wrote about “maximum pressure,”<sup>378</sup> but did the Treasury Department’s public enforcement data support the assumption behind that description? OFAC issued 40 North Korea designations in 2019 (compared to 183 Venezuela designations); 16 in 2020 (and 7 designation removals, for a net of 9, compared to 16 Nicaragua designations); and 9 in 2021 (compared to 27 Venezuela designations and 14 Nicaragua designations).<sup>379</sup> OFAC’s 2021 designations were also qualitatively modest—a senior North Korean official and a government office without direct exposure to the financial system, and a group of animation studios that constituted one tentacle within a global money laundering network. OFAC announced them in December, after the first one-year period with no North Korea sanctions designations since 2012.<sup>380</sup>

In 2022, the Biden Administration froze the assets of 21 entities, including six North Koreans procuring WMD materials and technology from Russia, five North Korean trading companies, two small Russian banks, four Russian trading companies, and two Russian nationals. It also froze two cryptocurrency mixing services, one of which had reported links to the Russian FSB, and which are probably the only significant designations of 2022.

Treasury also issued small civil penalties against an Australian shipper and an American gift card company for unlicensed dealings with North Korea. It did not announce any indictments or major penalties against the three major Chinese banks that defied a Washington, D.C. grand jury investigation into laundering money for North Korea, and that the Chief District Judge had held in contempt of court. It did not announce a conviction or sentence against Huawei, which is under

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375 *Id.* § 6314.

376 *Id.* § 6308.

377 *Id.* §§ 6507-6508.

378 Edward White, “North Korea: the failure of ‘maximum pressure’ on Kim’s isolated regime,” *Financial Times*, August 9, 2021, <https://www.ft.com/content/53eed94f-6cd5-4ed9-97a9-56de6eccf53c>.

379 *See generally* U.S. Dep’t of Treasury, Office of Foreign Assets Control, OFAC Recent Actions, last accessed December 26, 2021, <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions>.

380 U.S. Dep’t of Treasury, “Treasury Sanctions Perpetrators of Serious Human Rights Abuse on International Human Rights Day,” December 10, 2021, <https://home.treasury.gov/news/press-releases/jy0526>.

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indictment in the Eastern District of New York for violating North Korea sanctions. It has not sanctioned the Russian or Chinese ports or shippers that are smuggling North Korean coal, which provides most of Kim Jong-un's income.

In 2021, OFAC finally issued its first North Korea-related civil penalty to a financial institution, against U.S.-based TD Bank. The penalty did not target Pyongyang's overseas money laundering infrastructure, but North Korea's UN Mission in New York. TD Bank staff, perhaps not understanding the difference between North and South Korea, had processed 1,479 transactions for the UN Mission without obtaining the requisite OFAC licenses, which OFAC's penalty notice suggested that it would likely have granted. The penalty of \$105,238.65 was small when compared to other civil penalties against banks, which often reach nine-digit levels.<sup>381</sup> Still, the threat of penalties, prosecution, or adverse publicity probably encouraged large correspondent banks to scour wire transfer data for North Korean connections, and this likely would have had residual, if hidden, effects on the complexity and risk premiums of Pyongyang's money laundering.<sup>382</sup>

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381 U.S. Dep't of Treasury Enforcement Release, "OFAC Settles with TD Bank, N.A. for \$115,005.04 Related to Apparent Violations of the North Korea Sanctions Regulations and the Foreign Narcotics Kingpin Sanctions Regulations," December 23, 2021, [https://home.treasury.gov/system/files/126/20211223\\_TDBNA.pdf](https://home.treasury.gov/system/files/126/20211223_TDBNA.pdf).

382 See, e.g., Gibson Dunn, "2020 Year-End Sanctions and Export Controls Update," February 5, 2021, <https://www.gibsondunn.com/2020-year-end-sanctions-and-export-controls-update/>. Careful observers of OFAC's civil penalties will note a typical lag of several years between the publication of a transaction licensing requirement or designation and the announcement of a penalty against a bank for violating the requirement. The recency of OFAC's updated North Korea sanctions regulations may explain, in part, the lack of significant penalties against any foreign banks to date. The effects of industry compliance on Pyongyang's finances is unquantifiable, at least in an open source, because most of Treasury's relevant data are classified.

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If the pressure created by sanctions had begun to dissipate since 2018—as Pyongyang adapted, set up new front companies, and deployed new agents faster than OFAC designated them,<sup>383</sup> and as the Biden administration was unwilling to sanction Chinese and Russian companies for their violations<sup>384</sup>—it was also difficult to measure sanctions’ peak effects or half-life due to Kim Jong-un’s own decisions.

By late 2022, North Korea had been under a self-imposed blockade for nearly three years—ostensibly as a precaution against COVID-19, but probably to reassert Kim’s control over an increasingly marketized economy and conserve hard currency for weapons programs and other state priorities.<sup>385</sup> Kim enforced the blockade by posting soldiers along the border and issuing shoot-on-sight orders.<sup>386</sup> Bleak economic conditions are the norm in North Korea, but by early 2021, the North Korean economy was probably at its lowest point since the post-famine years. The Bank of Korea estimated that in 2020, North Korea’s economy contracted by 4.5 percent, its largest contraction in 23

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years.<sup>387</sup> Major industries were idled for lack of spare parts and materials,<sup>388</sup> and the state could not shield even the security forces and the elites from the effects of this economic distress.<sup>389</sup>

There was no evidence of famine, but the food situation was strained in both the capital and the provinces, and the state also expelled almost all humanitarian aid workers.<sup>390</sup> Most diplomats

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also left the country after Kim locked them down and prevented them from sending diplomatic mail.<sup>391</sup> By 2021, there was no reliable or precise way to learn, disaggregate, or compare the effects of sanctions to those of the blockade, but the blockade was indiscriminate and recognized no humanitarian exemptions.<sup>392</sup>

In the fifth year of Treasury's enforcement pause, Pyongyang was able to maintain the stability of its currency, aside from a few exchange rate surges and falls. A counterintuitive appreciation in the North Korean won's value in 2021 was likely the result of state manipulation, such as the threat to confiscate foreign currency,<sup>393</sup> but most economists agreed that the manipulation was not sustainable.<sup>394</sup> The state's issuance of coupons as a currency substitute fueled more speculation about the long-term stability of the North Korean won.<sup>395</sup>

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Some observers suggested that North Korea's economic decline was taxing the cohesion and legitimacy of the state—or threatened to.<sup>396</sup> Kim Jong-un was forced to accept the political cost of acknowledging this. In mid-2020, for example, Pyongyang had to scrap the country's five-year economic plan. State media admitted that the economy was still under significant pressure and had failed to meet the state's goals.<sup>397</sup> Later that year, Kim conceded the severe economic effects of sanctions—and those of the quarantine, floods, and other causes—in a tearful speech to Party members.<sup>398</sup> Kim himself could still buy limousines and build mansions,<sup>399</sup> but his appearance

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deteriorated noticeably in 2021, leading to speculation about his health.<sup>400</sup> But by late 2021, Kim must have calculated that he could accept the political risk of public discontent, or presumably, he would have eased the blockade or accepted foreign aid. After all, evidence from inside North Korea suggested that the pandemic had entered North Korea despite his blockade.<sup>401</sup>

### C. Disposition of Blocked and Forfeited Proceeds of North Korean Kleptocracy

Today, the proceeds of Kim Jong-un's kleptocracy draw interest in government accounts as they await disbursement to his American judgment creditors. Changes in the law since 2005, when the Federal Reserve returned the assets frozen in Banco Delta Asia to Pyongyang as part of a disarmament agreement, mean that most of the North Korean state funds frozen since 2016 will be disbursed to the judgment creditors of the four listed state sponsors of terrorism—Iran, Syria, Cuba, and North Korea. Under the new U.S. Victims of State Sponsors of Terrorism Act, 75 percent of the proceeds of civil fines, penalties, and forfeitures, and all proceeds of criminal fines, penalties, and forfeitures collected for North Korea-related violations of the IEEPA—and of any related offense arising from doing business with or on behalf of North Korea—must be deposited into the United States Victims of State Sponsored Terrorism (USVSST) Fund.<sup>402</sup>

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Using an exemption to the Foreign Sovereign Immunities Act, scores of U.S. persons have sued Pyongyang for damages caused by its terrorism and torture.<sup>403</sup> Pyongyang has never entered an appearance in court to contest those suits. Consequently, the courts have entered over \$2 billion in default judgments against the Government of North Korea,<sup>404</sup> including a February 2021 judgment awarding \$1.2 billion to dozens of former crew members of the U.S.S. *Pueblo*, their estates, and their surviving family members.<sup>405</sup>

Since North Korea's designation as a state sponsor of terrorism in 2017, its judgment creditors may make claims from the USVSST Fund. Although each claim against the Fund is capped at \$20 million, the large number of plaintiffs with judgments against Pyongyang results in only a modest reduction in the amount that could be recovered from the Fund.<sup>406</sup> In 2017, 2019, and 2020, the Special Master disbursed three rounds of payments of over \$1 billion for claims against Iran, Libya, and other current or former state sponsors of terrorism. More than \$27 billion in claims remains outstanding.<sup>407</sup>

One possible indication of these judgment collections is that in 2018, the Treasury Department held \$74 million in funds blocked for violations of sanctions against North Korea. Only some of these funds were property of the North Korean government. About half of that amount was fro-

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403 28 U.S.C. § 1605A.

404 See *Warmbier v. Democratic People's Republic of Korea*, No. 18-00977 (D.D.C. 2018) (awarding \$501 million to family of an American student the court found to have been tortured to death in North Korean custody); *Kim v. Democratic People's Republic of Korea*, No. 09-cv-00648 (D.D.C. 2015) (awarding \$330 million to family of U.S. resident abducted by North Korean agents in China, carried into North Korea, and starved and tortured to death); *Calderon-Cardona v. Democratic People's Republic of Korea*, No. 08-cv-1367 (D.P.R. 2010) (awarding \$378 million to survivors and family members of victims of 1970 attack at Lod Airport, Israel, carried out by North Korean-trained and armed Japanese Red Army terrorists); *Kaplan v. Hezbollah*, No. 09-00646 (D.D.C. 2016) (awarding \$169 million to family of man killed by Hezbollah rocket attack from North Korean-designated bunker complex); *Massie v. Government of the Democratic Peoples' Republic of Korea*, No. 06-00749 (D.D.C. 2018) (awarding \$69 million to tortured survivors of U.S.S. *Pueblo*).

405 *John Doe A-1, et al., v. Democratic People's Republic of Korea*, No. 18-cv-00252 (2021).

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zen between 2005 and 2008.<sup>408</sup> By 2020, that amount declined to less than \$32 million,<sup>409</sup> probably reflecting the collection of civil judgments against blocked funds and deposits into the USVSST Fund.

Unless Congress amends the USVSST Act, it would require years of determined enforcement to satisfy these judgments and create a surplus that may be used for other purposes, including humanitarian ones that benefit the people of North Korea. The fact that the fines, penalties, and forfeitures related to violations of Iran, Syria, and Sudan sanctions are also available to pay these judgments might abbreviate this timeline, but the opposite is also true. North Korea-related fines, penalties, and forfeitures would also be available to pay the victims of terrorism sponsored by Iran, Syria, and Sudan.

Thus, building a surplus of funds for escrow in the near future would require an amendment of the USVSST Act. The model legislation at Appendix B would share fines, penalties, and forfeitures collected from the enforcement of North Korea sanctions between the USVSST fund and the escrow fund created by the model legislation. The escrow fund would pay for enforcement, administration, and enforcement capacity-building; food, agricultural, medical, and disaster aid, refugee assistance, and infrastructure rehabilitation; and finally, the promotion of human rights and freedom of information programs inside North Korea. If Pyongyang refuses to accept monitored humanitarian aid, the result would be to raise the proportion of funds used for freedom of information and human rights promotion programs. After the total collections of North Korea-related fines, penalties, and forfeitures into the USVSST Fund exceed the sum of civil judgments against Pyongyang, further collections would be deposited into the escrow fund. Given the large amounts historically collected from foreign banks for evading Iran, Syria, and Cuba sanctions, an escrow fund could plausibly fund an annual World Food Program appeal for North Korea within a year of the enactment of the model legislation.

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408 U.S. Dep't of Treasury, "Terrorist Assets Report: Calendar Year 2018 Twenty-Seventh Annual Report to the Congress on Assets in the United States Relating to Terrorist Countries and Organizations Engaged in International Terrorism," (2018), table 1, <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/tar2018.pdf>; U.S. Dep't of Treasury, "Terrorist Assets Report: Calendar Year 2007 Sixteenth Annual Report to the Congress on Assets in the United States on Assets in the United States of Terrorist Countries and International Terrorism Program Designees," (2007) table 1, <https://home.treasury.gov/system/files/126/tar2007.pdf>.

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In the medium term, building a surplus of funds for escrow will require the dedication of enough resources to enforce the laws that form the basis for those collections.<sup>410</sup> In the interests of equity for the judgment creditors wronged by Pyongyang's acts of terrorism and torture, the model legislation also returns a portion of any unexpended funds collected—but unexpended—to the USVSST.

In the long term, a sufficiently resourced, politically empowered, whole-of-government sanctions enforcement campaign could collect enough proceeds of kleptocracy to fully fund the WFP's annual appeals—money that would otherwise be used or earmarked to buy weapons, yachts, and ski lifts.<sup>411</sup>

So it tends to be with Pyongyang: it dazzles our consciences with such a wide spectrum of evils that we are forced into agonizing choices, selecting which evils to address, and which evils to overlook and passively perpetuate, as allowing it access to our financial system assuredly does. Do we feed a few of the hungry or demand access to all of them, or do we try to stop its nuclear proliferation and prevent a devastating war? Do we compensate American victims of torture or help North Korean victims of kleptocracy? In the end, the people of a nation hold the highest claim to its wealth. But no one speaks for the people of North Korea, least of all their government. A state without ethical or political legitimacy holds no claim to stolen economic sovereignty, either.

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410      Accordingly, the model legislation appended to this report would allow the first \$45 million collected from North Korea-related fines, penalties, and forfeitures collected each year to be used to augment personnel to enforce the NKSPEA. Upon the satisfaction of all North Korea-related judgments eligible for claims against the Victims of Terrorism Fund, any further revenues from North Korea-related fines, penalties, and forfeitures would be deposited into the escrow fund proposed here.

411      S/RES/1718 ¶ 8.



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## Part IV— Escrow: Toward a Durable Peace Through Justice

### A. How Not to Give Sanctions Relief: Lessons from History

The challenge Kim Jong-un presents to the world today is whether our laws and our principles are more powerful than our greed, our vanity, and our false sense of futility. Three decades of disarmament agreements between presidents of both parties and Pyongyang have disappointed human rights advocates who hoped that American diplomats would use their economic, legal, diplomatic, and moral leverage to extract the transparency and reform essential to a lasting peace.

The Clinton administration's Agreed Framework of 1994 made no mention of human rights or political reforms, unless one chooses to interpret a vague reference to "issues of concern to each side" as such.<sup>412</sup> The February 2007 Joint Statement at the Six-Party Talks made no mention of human rights, unless one chooses to interpret a vague reference to "pending bilateral issues and moving toward full diplomatic relations" as such. Even this vague conversation was only to be sidelined to working groups, and only after the lifting of most U.S. sanctions forfeited Washington's then-considerable economic leverage.<sup>413</sup> The 2012 Leap Day Agreement was a limited freeze-for-freeze agreement that promised Pyongyang some food aid, but did not explain how to deliver it to North Korea's hungriest people, and did not mention human rights.<sup>414</sup> And after President Trump's 2017 speech before the National Assembly in Seoul focused heavily on human rights,<sup>415</sup> the Joint Statement at the 2018 Singapore summit omitted any mention of them.<sup>416</sup>

These agreements also disappointed those who longed for peace, or for the less ambitious goal of calm. The 1994 agreement broke down when the Bush administration accused Pyongyang—accurate-

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412 *Agreed Framework of Between the United States of America and the Democratic People's Republic of Korea*, October 21, 1994, INFCIRC/457, <https://www.iaea.org/sites/default/files/publications/documents/infcircs/1994/infcirc457.pdf>.

413 U.S. Dept' of State, *Initial Actions for the Implementation of the Joint Statement Between the United States, the Democratic People's Republic of Korea, the Republic of Korea, Japan, the Russian Federation, & the People's Republic of China*, February 13, 2007, <https://2001-2009.state.gov/r/pa/prs/ps/2007/february/80479.htm>.

414 Steven Lee Myers and Choe Sang-hun, "North Koreans Agree to Freeze Nuclear Work; U.S. to Give Aid," February 29, 2012, <https://www.nytimes.com/2012/03/01/world/asia/us-says-north-korea-agrees-to-curb-nuclear-work.html>.

415 "Remarks by President Trump to the National Assembly of the Republic of Korea, Seoul, Republic of Korea," *The White House*, November 7, 2017, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-national-assembly-republic-korea-seoul-republic-korea/>.

416 "Joint Statement of President Donald J. Trump of the United States of America and Chairman Kim Jong Un of the Democratic People's Republic of Korea at the Singapore Summit," June 18, 2018, <https://www.whitehouse.gov/briefings-statements/joint-statement-president-donald-j-trump-united-states-america-chairman-kim-jong-un-democratic-peoples-republic-korea-singapore-summit/>.

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ly, we now know<sup>417</sup>—of developing a parallel uranium enrichment program and stopped the delivery of fuel oil and the construction of two light-water reactors. Pyongyang then expelled IAEA inspectors and withdrew from the agreement.<sup>418</sup>

Bush's 2007 agreement broke down when Pyongyang refused to deliver a complete declaration of its nuclear programs and provided samples of aluminum tubing smeared with traces of highly enriched uranium.<sup>419</sup> President Obama's limited 2012 test freeze agreement broke down two weeks later when Pyongyang announced a "satellite" test.<sup>420</sup>

If one accepts that President Trump and Kim Jong-un reached a binding agreement in Singapore at all, it has—to date—coincided with a halt in nuclear tests and long-range missile tests, but also with a series of short-range missile tests,<sup>421</sup> continued production of fissile material and ballistic missiles,<sup>422</sup> and the development of a submarine capable of launching them.<sup>423</sup> After three face-to-face meetings between Trump and Kim, Pyongyang continues "striving to build a credible regional nuclear warfighting capability that might evade regional ballistic missile defenses."<sup>424</sup> Most ominous is the recent display of an intercontinental ballistic missile in Pyongyang.<sup>425</sup>

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417 "Weapons of Mass Destruction: Trade Between North Korea and Pakistan," *Congressional Research Service*, November 28, 2006, [https://www.everycrsreport.com/files/20061128\\_RL31900\\_71d9666b1740a6042268a106363451c248e09579.pdf](https://www.everycrsreport.com/files/20061128_RL31900_71d9666b1740a6042268a106363451c248e09579.pdf).

418 "US-DPRK Agreed Framework," *Nuclear Threat Inst.*, October 26, 2011, <https://www.nti.org/learn/treaties-and-regimes/us-dprk-agreed-framework/>.

419 Arshad Mohammed and Susan Cornwell, "US Looks for N. Korean declaration 'in near future,'" *Reuters*, June 20, 2008, <https://www.reuters.com/article/idUSN20478345>; Glenn Kessler, "Uranium Traces Found on N. Korean Tubes," *Washington Post*, December 21, 2007, [https://www.washingtonpost.com/wp-dyn/content/article/2007/12/20/AR2007122002196\\_pf.html](https://www.washingtonpost.com/wp-dyn/content/article/2007/12/20/AR2007122002196_pf.html).

420 Andrew Quinn, "Insight: Obama's North Korean leap of faith falls short," *Reuters*, March 30, 2012, <https://www.reuters.com/article/us-korea-north-usa-leap/insight-obamas-north-korean-leap-of-faith-falls-short-idUSBRE82T06T20120330>.

421 Julia Masterson, "North Korea Tests First Missiles of 2020," *Arms Control Assn.*, April 2020, <https://www.armscontrol.org/act/2020-04/news/north-korea-tests-first-missiles-2020>.

422 Mary Beth Nikitin and Samuel Ryder, "North Korea's Nuclear Weapons and Missile Programs," *U.S. Congressional Research Service*, July 14, 2020, <https://fas.org/sgp/crs/nuke/IF10472.pdf>; Julia Masterson, "North Korea Continues Uranium Enrichment," *Arms Control Today*, October 2020, <https://www.armscontrol.org/act/2020-10/news/north-korea-continues-uranium-enrichment#.X3swtjySKNk.twitter>; Joby Warrick and Simon Denyer, "As Kim wooed Trump with 'love letters,' he kept building his nuclear capability, intelligence shows," *Washington Post*, September 30, 2020, [https://www.washingtonpost.com/national-security/trump-kim-north-korea-nuclear/2020/09/30/2b7305c8-032b-11eb-b7ed-141dd88560ea\\_story.html](https://www.washingtonpost.com/national-security/trump-kim-north-korea-nuclear/2020/09/30/2b7305c8-032b-11eb-b7ed-141dd88560ea_story.html).

423 Dan De Luce, "Photos indicate North Korea may be building submarine capable of launching nuclear missiles," *NBC News*, August 28, 2019, <https://www.nbcnews.com/news/all/photos-indicate-north-korea-may-be-building-submarine-capable-launching-n1047066>.

424 Mary Beth D Nikitin, "North Korea's Nuclear and Ballistic Missile Programs," *Congressional Research Service In Focus*, June 6, 2019, <https://fas.org/sgp/crs/nuke/IF10472.pdf>.

425 Hyonhee Shin and Josh Smith, "North Korea unveils 'monster' new intercontinental ballistic missile at parade,"

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One could argue that the great failing of America's presidents was the diplomacy of instant gratification. Each, in turn, traded the leverage of sanctions—often painstakingly built through years of investigation and diplomacy—for signatures and commitments that Pyongyang inevitably failed to keep. Our government became moderately adept at imposing financial pressure, but it never learned to use that pressure to secure a peace worthy of the name. We pursue what the Reverend Martin Luther King once called “peace that had been purchased at the price of capitulating to the forces of darkness.”

*This is the type of peace that all men of goodwill hate. It is the type of peace that is obnoxious. It is the type of peace that stinks in the nostrils of the almighty God.*<sup>426</sup>

We remember his admonition: “True peace is not merely the absence of tension: it is the presence of justice.”<sup>427</sup>

This not to deny our paramount interest in negotiating a durable end to Pyongyang's WMD proliferation—if that was ever possible. America's paradox in this project has always been devising a formula for meeting Pyongyang's diplomatic demands for sanctions relief without surrendering the leverage necessary to ensure that it keeps the agreements exchanged for those same demands.

Historically, Pyongyang has offered concessions just as sanctions created significant economic pressure. Then, the U.S. would give “limited” sanctions relief in exchange, foreign investment would refill the state's empty coffers, Pyongyang would renege, and the U.S. would be left with neither its gains nor its leverage. One nuclear test later, a new generation of criminal investigators, intelligence analysts, sanctions examiners, and prosecutors would begin the Sisyphean work of rebuilding that leverage. Pyongyang has used this strategy with success for decades, and probably meant to repeat it at Hanoi.<sup>428</sup> Recently, it has become popular to refer to “snap-back” sanctions. Kim Jong-un may have sought snap-back sanctions relief at the Hanoi summit.<sup>429</sup> The U.S. may also have floated its own snap-back

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October 9, 2020, <https://www.reuters.com/article/us-northkorea-missiles/north-korea-unveils-monster-new-intercontinental-ballistic-missile-at-parade-idUSKBN26V01K>.

426 Rev. Martin Luther King, Jr., Remarks at the Dexter Avenue Baptist Church, Montgomery, Alabama, March 18, 1956, <https://kinginstitute.stanford.edu/king-papers/documents/when-peace-becomes-obnoxious>.

427 Rev. Martin Luther King, Jr., A Martin Luther King Treasury 30 (1964), Educational Heritage, Yonkers, New York, <https://quoteinvestigator.com/2020/11/26/true-peace/#note-438619-1>.

428 Lee Sang-yong, “Kim Jong Un explained US-DPRK summit strategy to party officials prior to Hanoi,” *Daily NK*, March 22, 2019, <https://www.dailynk.com/english/kim-jong-un-explained-us-dprk-summit-strategy-to-party-officials-prior-to-hanoi/>; “N.K. leader says negotiations with U.S. are first step to recognition as nuclear power: report,” *Yonhap News*, June 17, 2019, <https://en.yna.co.kr/view/AEN20190617006700325?section=nk/nk>.

429 Joyce Lee, “North Korea says Trump was open to easing sanctions with ‘snapback’ clause:

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proposal at the UN Security Council in response to Russian and Chinese demands for sanctions relief.<sup>430</sup> But the hard work of sanctions enforcement may require years of painstaking investigation, including the cultivation of informants who risk their lives and those of their families;<sup>431</sup> years of intelligence collection and analysis; the drafting of affidavits for wiretaps and seizures; the negotiation of proffers and plea agreements with cooperating witnesses; the presentation of evidence to grand juries; the drafting of designation packages for the president's signature; the drafting and litigation of motions, indictments, and complaints; and finally, revealing the government's evidence at trial.

The unsealing of an indictment, the designation of a front company, or the filing of a complaint may expose investigative methods and sources to a ruthless, adaptable, and sophisticated adversary.<sup>432</sup> Once a sanction is relaxed, the target learns and adapts, and Washington's leverage cannot be rebuilt without more years of painstaking work. This is not work that "snaps" back.

## 1. UN Limits on Sanctions Relief

The Biden administration will inevitably come under strong pressure to offer Pyongyang some form of sanctions relief to give it an incentive for a freeze or partial nuclear disablement.<sup>433</sup> If the President sought to provide Pyongyang with sanctions relief, his first step would be to seek the consensus of

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South Korean media," *Reuters*, March 25, 2019, <https://www.reuters.com/article/us-northkorea-usa/north-korea-says-trump-was-open-to-easing-sanctions-with-snapback-clause-south-korean-media-idUSKCN1R700D>.

430 Lee Yu-jung and Sarah Kim, "U.S. tried flexibility on North Korea Sanctions," *JoongAng Daily*, January 4, 2020, <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=3072214>.

431 One example is the unsealed docket in *In re Grand Jury Investigation of Possible Violations of 18 USC 1956 and 50 USC 1705*, 18-mc-175 (D.D.C. 2018), which reveals years of risky, painstaking, costly, and exhausting investigation and litigation, and whose extensive record can be seen at <https://www.dcd.uscourts.gov/unsealed-orders-opinions-documents/Miscellaneous/2020>. See also *United States v. \$6,999,925.00 of Funds Associated with Velmur Mgm't, Ltd.*, No. 17-cv-01705 (D.D.C. 2017) (citing the statements of two confidential informants in suing to forfeit the proceeds of a conspiracy to commit money laundering and smuggle oil from Russia to Singapore to North Korea). The action against Banco Delta Asia's North Korean customers, which President Bush reversed in 2007, resulted from years of patient intelligence collection, investigation, diplomacy, and law enforcement. U.S. Dep't of Treasury, Financial Crimes Enforcement Network, "Imposition of Special Measure Against Banco Delta Asia, Including Its Subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a Financial Institution of Primary Money Laundering Concern," 72 Fed. Reg. 12730; David Lague and Donald Greenlees, "Squeeze on Banco Delta Asia hit North Korea where it hurt," *N.Y. Times*, January 18, 2007, <https://www.nytimes.com/2007/01/18/world/asia/18iht-north.4255039.html>.

432 *Banco Delta Asia, S.A.R.L., et al., v. Financial Crimes Enforcement Network, et al.*, No. 12-cv-0333 (D.D.C. 2020) (moving to disclose classified evidence to attorneys representing Banco Delta Asia).

433 Harry Kazianis, "Surprise meeting between Trump and Kim Jong Un could make progress on North Korea nuke dispute," *Fox News Opinion*, June 28, 2019, <https://www.foxnews.com/opinion/harry-kazianis-surprise-meeting-between-trump-and-kim-jong-un-could-make-progress-on-north-korea-nuke-dispute>.

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the UN Security Council. Although any permanent member of the Security Council could veto the alteration or removal of a sanction, neither Russia nor China would oppose sanctions relief.<sup>434</sup> That would leave it to the administration to persuade the representatives of France, the United Kingdom, and the non-permanent members to support the negotiated terms.

Removing the designation of a specific person or entity, or granting a sanctions exemption to a specific activity, requires the unanimous approval of the 1718 Committee, whose members are appointed by members of the Security Council.<sup>435</sup> For example, this procedure would apply to an exemption for the Kaesong Industrial Complex, which would otherwise violate a UN ban on joint ventures and the obligation to “ensure” that Pyongyang does not use its proceeds for WMD or luxury goods.<sup>436</sup>

None of these obstacles would stand in the way of sanctions relief in the form of food, medicine, and appropriately monitored humanitarian aid through UN aid agencies, including the WFP, UNICEF, or the UN Development Program. Russia and China complain about the impact of sanctions on aid-related transactions, but the NKSPEA has explicitly authorized the Treasury Department to grant licenses to financial institutions for that very purpose since 2016.<sup>437</sup> Instead, China and Russia propose to lift sanctions on dual-use machinery exports and technology transfers to North Korea; Pyongyang’s exports of statues, textiles, and the forced labor that makes them in Chinese sweatshops;<sup>438</sup> and its exports of food, which China and Russia would rather sell in their own markets than let North Koreans buy in theirs.<sup>439</sup>

## 2. U.S. Statutory Limits on Sanctions Relief

The Constitution grants Congress the power to regulate commerce with foreign nations.<sup>440</sup> Congress exercises that authority through legislation enforced by the executive branch—the International

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434 Michelle Nichols, “China, Russia revive push to lift U.N. sanctions on North Korea, *Reuters*, November 2, 2021, <https://www.reuters.com/world/asia-pacific/china-russia-revive-push-lift-un-sanctions-north-korea-2021-11-01/>.

435 United Nations Security Council, “Security Council Committee established pursuant to resolution 1718 (2006),” accessed August 6, 2019, <https://www.un.org/securitycouncil/sanctions/1718#work%20and%20mandate>.

436 S/RES/2375 ¶ 18; S/RES/1718 ¶ 8(d).

437 22 U.S.C. § 9228(d).

438 U.S. Customs & Border Protection, H317249: “Application for Further Review; 22 U.S.C. § 9241a; 19 U.S.C. § 1307; Protest No. 4601-21-125334; Poof Apparel; Dandong Huayang Textiles and Garments Co., Ltd.; Forced Labor,” March 5, 2021, <https://rulings.cbp.gov/ruling/H317249>.

439 “In full: China and Russia’s Dec. 2019 pitch for North Korea sanctions relief at the UN,” NK Pro, October 30, 2021, <https://www.nknews.org/pro/in-full-china-and-russias-pitch-for-north-korea-sanctions-relief-at-the-un/?t=1648350300257>.

440 U.S. Const. art. I, § 8, cl. 3; see Benjamin Alter, “Sanctions are Congress’s Path Back to Foreign Policy Relevance,” Lawfare blog, March 27, 2018, <https://www.lawfareblog.com/sanctions-are-congress-path-back-foreign-policy-relevance>.



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Emergency Economic Powers Act of 1979 (IEEPA),<sup>441</sup> the Patriot Act,<sup>442</sup> the Export Administration Act,<sup>443</sup> and the Criminal Code.<sup>444</sup> These laws regulate Pyongyang's access to the U.S. financial system, markets, and technology. There are also limitations in most annual appropriations acts against providing assistance to the government of North Korea.<sup>445</sup> In recent years, Congress has steadily restricted the President's power to give sanctions relief without Pyongyang's substantial performance on disarmament and reform.

## 3. NKSPEA Limits on Sanctions Relief

In enacting the NKSPEA, Congress gave the President powerful new legal tools. It also put strict limits on presidential discretion to refrain from imposing them, to suspend them, or to lift them. Although Pyongyang has offered few disarmament concessions since Kim Jong-un first met President Trump in June 2018,<sup>446</sup> some scholars in Washington, D.C. have already asked "whether and how to roll back the complex regime of U.S. and multilateral sanctions."<sup>447</sup> Scholars who have studied this thicket of UN resolutions, U.S. statutes, and regulations agree that they will be legally, practically, and politically difficult to clear until Pyongyang makes significant progress toward disarmament, reform,

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441 50 U.S.C. §§ 1701-1705 (2018).

442 USA Patriot Act of 2001, Pub. L. No. 107-56, 115 Stat. 271 (2001).

443 Export Administration Act, Pub. L. No. 96-72, 93 Stat. 503 (1979) (codified at 50 U.S.C. app. § 2405).

444 See 18 U.S.C. § 981 (authorizing the forfeiture of property involved in certain specified unlawful activities); *id.* § 1956(c)(7) (defining specified unlawful activities); *id.* § 2333d (prohibiting unlicensed transactions with governments that have been designated as state sponsors of terrorism under section 6(j) of the Export Administration Act).

445 See H.J. Res. 31, Consolidated Appropriations Act of 2019, § 7007, Pub. L. No. 116-6 (2019), <https://www.congress.gov/bill/116th-congress/house-joint-resolution/31/text?overview=closed&r=2> ("None of the funds appropriated or otherwise made available pursuant to titles III through VI of this Act shall be obligated or expended to finance directly any assistance or reparations for the governments of Cuba, North Korea, Iran, or Syria . . ."); *id.* § 7403(d)(4)(C) ("None of the funds made available by this Act under the heading ``Economic Support Fund'' may be made available for assistance for the Government of North Korea.").

446 Pyongyang has observed an informal freeze in the testing of nuclear weapons and intercontinental ballistic missile (ICBM) systems but has continued to develop both. Although the U.S. and North Korean accounts of the Hanoi summit differ, both accounts broadly agree that Kim offered to dismantle one nuclear site at Yongbyon and offered to make the test freeze permanent, but did not offer any broader disclosure, inspection, verification, disablement, or dismantlement of his weapons of mass destruction programs, as required by multiple UN Security Council resolutions. The accounts differed on Pyongyang's demands for sanctions relief, with President Trump saying that Kim had demanded that all sanctions be lifted, and Pyongyang demanding that the U.S. merely lift all sanctions except nonproliferation sanctions. Deb Reichmann, Hyung-jin Kim, and Catherine Lucey, "US, North Korea offer dueling accounts of talks breakdown," *AP*, February 28, 2019, <https://apnews.com/article/3152b3e5854849829eaabb23d98403d3>.

447 "The North Korea Sanctions Regime a Year After Singapore," *U.S. Inst. of Peace*, July 8, 2019, <https://www.usip.org/events/north-korea-sanctions-regime-year-after-singapore>.

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and transparency.<sup>448</sup> Sanctions relief still does not guarantee that the financial industry would accept North Korean customers, given their history of financial crime, or that investors would risk exposure to Pyongyang's history of non-repayment, or the risk of boycotts due to its crimes against humanity.

In the NKSPEA, Congress exercised its authority to prevent Pyongyang from using its access to U.S. financial system to support its proliferation, threaten the security or economy of the United States, or facilitate censorship or other human rights abuses. It also mandated the designation of persons and entities supporting Pyongyang's proliferation, arms trafficking, computer hacking, and human rights abuses, and limited the President's ability to rescind designations without substantial progress by Pyongyang.

Thus, Section 104 of the NKSPEA provided three "on-ramps" to designation—one mandatory in section 104(a), one discretionary in section 104(b), and one that mandates the freezing of all of the North Korean government's assets in section 104(c). A designation under section 104(a) freezes the designated person's assets, debars the designated person from receiving government contracts, and denies a designated corporation's officers entry into the United States.

If section 104 is the NKSPEA's on-ramp, then section 208—which contains its diplomatic, humanitarian, and national security exemptions and waivers—is its U-turn. Section 208(a) exempts diplomatic, intelligence, and prisoner of war recovery activities from section 104. Section 208(b) provides for humanitarian waivers, for up to one year, subject to accountability and monitoring controls.<sup>449</sup> Section 208(c) provides that "[t]he President may waive" an NKSPEA sanction "on a case-by-case basis," for up to a year, if the President certifies "that the waiver . . . is important to the national security interests of the United States; or . . . will further the enforcement of" the sanctions, such as "for an important law enforcement purpose."<sup>450</sup> This subsection gives the President a narrow authority to waive a designation that might have unintended consequences, such as by causing the failure of a major bank that might be willing to cooperate with U.S. authorities instead.<sup>451</sup> And as stated above,

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448 Troy Stangarone, "Removing Sanctions on North Korea: Challenges and Potential Pathways," U.S. Inst. of Peace, December 10, 2021, <https://www.usip.org/publications/2021/12/removing-sanctions-north-korea-challenges-and-potential-pathways>; Daniel Wertz, "Special Report: Understanding U.S. and International Sanctions on North Korea," Nat'l Committee for North Korea, November 20, 2020, <https://www.ncnk.org/news/special-report-understanding-u.s.-and-international-sanctions-north-korea>.

449 The NKSPEA contain broader general licenses. 31 C.F.R. § 510.512.

450 22 U.S.C. § 9228(c).

451 An unnamed scholar, presumably raising a question posed by other unknown persons, privately asked the author of the whether Section 208 gives the President plenary authority to part the thicket of laws and regulations described in Table I. It does not. Had Congress intended to create such a broad waiver authority, it would not have limited it to "a case-by-case basis" or enacted the specific conditions in sections 401 and 402 for broader sanctions relief. To read section 208(c) as a bypass around these conditions would effectively render sections 401 and 402 redundant, contrary to long-standing canons of statutory

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Section 208(d) also authorizes the establishment of reputable banking channels for humanitarian aid.

The metaphor for the structure of the NKSPEA extends to section 401 (the “rest area”) and section 402 (the “off-ramp”). These conditions for sanctions relief set performance-based benchmarks for denuclearization, human rights and political reforms, and the cessation of criminal activities. These conditions not only reflect Congress’s distrust of Pyongyang, but also its concern that past presidents have not always spent their leverage wisely. They deliberately make sanctions easier for the President to suspend than to lift. They offer the President the flexibility to negotiate, but not to trade away, leverage for transitory promises. Under section 401, the President may offer Pyongyang a one-year suspension of NKSPEA sanctions, renewable in 180-day increments, as long as Pyongyang continues to make progress toward disarmament and reform.<sup>452</sup>

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construction that one provision of law should not be read as rendering another provision to be surplusage. *Ratzlaf v. United States*, 510 U.S. 135, 140-41 (1994); *Kungys v. United States*, 485 U.S. 759, 778 (1988).

452 22 U.S.C. §§ 9251 & 9252.

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Table 3. Statutory Conditions for Sanctions Relief

To receive <i>temporary</i> sanctions relief, Pyongyang must meet all of the following conditions—	To receive <i>permanent</i> sanctions relief, Pyongyang must meet the conditions for temporary sanctions relief, <i>and</i> meet all of the following conditions—
verifiably cease its counterfeiting of U.S. currency and surrender or destroy the materials and equipment used for counterfeiting;	meet the condition for temporary sanctions relief;
take steps toward financial transparency to comply with generally accepted anti-money laundering protocols;	meet the condition for temporary sanctions relief;
take steps toward verifying its compliance with applicable UN Security Council resolutions;	make significant progress toward completely, verifiably, and irreversibly dismantling all of its nuclear, chemical, biological, and radiological weapons programs, including delivery systems;
take steps toward accounting for and repatriating the citizens of other countries it has either abducted or unlawfully held captive, or detained in violation of the Korean War Armistice Agreement;	make significant progress toward fully accounting for and repatriating Americans (including their remains) whom it either abducted, held captive, or detained in violation of the Korean War Armistice Agreement;
accept and begin to abide by internationally recognized standards for the distribution and monitoring of humanitarian aid; <i>and</i>	meet the condition for temporary sanctions relief;
take verified steps to improve living conditions in its political prison camps.	make significant progress toward releasing all political prisoners, including North Koreans held in its political prison camps;
---	make significant progress toward ceasing its censorship of peaceful political activity; and establishing an open, transparent, and representative society.

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These conditions will complicate the short-term prospects for a “small deal.” Pyongyang can only blame its own history and conduct for Congress’s skepticism.<sup>453</sup> These conditions will test Pyongyang’s good faith by testing its acceptance of transparency and reform.

For example, the evidence of Pyongyang’s counterfeiting of U.S. dollars is compelling. The Bureau of Engraving and Printing has redesigned the hundred-dollar bill to protect the integrity of the world’s reserve currency from North Korean counterfeits.<sup>454</sup> Congress made a verified cessation of Pyongyang’s counterfeiting a condition of temporary sanctions relief.

Similarly, Pyongyang must “tak[e] steps toward financial transparency to comply with generally accepted protocols to cease and prevent” money laundering to earn temporary sanctions relief.<sup>455</sup> Recently, Pyongyang has laundered funds used to finance proliferation,<sup>456</sup> stolen from banks in Bangladesh and other states,<sup>457</sup> stolen from cryptocurrency exchanges<sup>458</sup> and ATMs,<sup>459</sup> and carried out ransomware attacks.<sup>460</sup> Congress is unlikely to restore Pyongyang’s access to an economy and

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453 David Lague and Donald Greenlees, “Squeeze on Banco Delta Asia hit North Korea where it hurt,” *International Herald Tribune*, January 18, 2007, [https://www.nytimes.com/2007/01/18/world/asia/18iht-north.4255039.html?pagewanted=1&%2360;!--Un.&\\_r=0](https://www.nytimes.com/2007/01/18/world/asia/18iht-north.4255039.html?pagewanted=1&%2360;!--Un.&_r=0); Josh Meyer, “Squeeze on North Korea’s Money Supply Yields Results,” *L.A. Times*, November 2, 2006, <https://www.latimes.com/world/la-fg-macao2nov02-story.html>; Jay Solomon and Neil King Jr., “How U.S. Used a Bank to Punish North Korea,” *Wall Street Journal*, April 12, 2007, <https://www.wsj.com/articles/SB117627790709466173>.

454 Julian Ryall, “Quality of fake ‘supernotes’ found in Seoul fan suspicions that North Korea is forging \$100 bills,” *The Telegraph*, December 11, 2017, <https://www.telegraph.co.uk/news/2017/12/11/quality-fake-supernotes-found-seoul-fan-suspicions-north-korea/>; David Rose, “North Korea’s Dollar Store,” *Vanity Fair*, September 2009, <https://www.vanityfair.com/style/2009/09/office-39-200909>; Stephen Mihm, “No Ordinary Counterfeit,” *New York Times Magazine*, July 23, 2006, <https://www.nytimes.com/2006/07/23/magazine/23counterfeit.html>.

455 In the Asia Reassurance Initiative Act of 2019, the President also reaffirmed that “[i]t is the policy of the United States to continue to impose sanctions with respect to activities of the Government of [North] Korea” until it “is no longer engaged in the illicit activities described” in the authorities cited in Table 1. Pub. L. No. 115-409, § 210(b)(1).

456 U.S. Dep’t of Treasury, Financial Crimes Enforcement Network, “Advisory on the Financial Action Task Force-Identified Jurisdictions with Anti-Money Laundering and Combatting the Financing of Terrorism Deficiencies,” FIN-2019-A001, March 8, 2019, [https://www.fincen.gov/sites/default/files/advisory/2019-03-08/FAFT\\_Advisory\\_March\\_final\\_508.pdf](https://www.fincen.gov/sites/default/files/advisory/2019-03-08/FAFT_Advisory_March_final_508.pdf).

457 *United States v. Park Jin Hyok*, No. 18-cr-1479 (C.D. Cal. 2018), <https://www.justice.gov/usao-cdca/press-release/file/1091951/download>.

458 U.S. Dep’t of Justice, “United States Files Complaint to Forfeit 280 Cryptocurrency Accounts Tied to Hacks of Two Exchanges by North Korean Actors,” August 27, 2020, <https://www.justice.gov/usao-dc/pr/united-states-files-complaint-forfeit-280-cryptocurrency-accounts-tied-hacks-two>; Pamela Falk, “North Korea skirted U.N. sanctions and earned \$2 billion using cyber attacks, new U.N. report say,” *CBS News*, August 6, 2019, <https://www.cbsnews.com/news/north-korea-skirted-un-sanctions-and-earned-2-billion-using-cyber-attacks-new-u-n-report-says/>.

459 Dustin Volz and Ian Talley, “U.S. Warns of Global Bank Heist Campaign by North Korean Hackers,” *Wall Street Journal*, August 26, 2020, <https://www.wsj.com/articles/u-s-warns-of-global-bank-heist-campaign-by-north-korean-hackers-11598470267>.

460 U.S. Dep’t of Treasury, Office of Foreign Assets Control, “Advisory on Potential Sanctions Risks for Facilitating Ransomware Payments,” October 1, 2020, [https://home.treasury.gov/system/files/126/ofac\\_ransomware\\_advisory\\_10012020\\_1.pdf](https://home.treasury.gov/system/files/126/ofac_ransomware_advisory_10012020_1.pdf); U.S. Dep’t of Treasury, Financial Crimes Enforcement Network, “Advisory on Ransomware and the



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financial system whose integrity it threatens, or to exempt it from the laws that apply to every other nation, until it accepts the financial transparency necessary to ensure its compliance with U.S. laws and financial regulations to combat money laundering and proliferation financing. Pyongyang's corruption brings it into conflict with Congress's new emphasis on anti-corruption legislation and enforcement. And even if Congress were willing to overlook this condition, the financial industry would not be obligated to accept the legal and boycott risks of facilitating financial crime, kleptocracy, or other human rights abuses.

Congress expects denuclearization talks to be about denuclearization. Therefore, Pyongyang must "tak[e] steps toward verification of its compliance with applicable United Nations Security Council resolutions" to earn temporary sanctions relief.<sup>461</sup> Russian diplomats and some American pundits urge us to accept that Pyongyang will never relinquish its nuclear programs,<sup>462</sup> but Congress will hesitate to relax sanctions as long as Pyongyang threatens a global metastasis of proliferation. Indeed, Congress recently reaffirmed the lifting conditions of section 402 of the NKSPEA in the Warmbier Act.<sup>463</sup> Pyongyang has proliferated ballistic missile technology to Iran and Syria;<sup>464</sup> supplied man-portable surface-to-air missiles to Iran, allegedly for use by terrorists;<sup>465</sup> built a nuclear

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Use of the Financial System to Facilitate Ransom Payments," FIN-2020-A006, October 1, 2020, <https://www.fincen.gov/sites/default/files/advisory/2020-10-01/Advisory%20Ransomware%20FINAL%20508.pdf>.

461 22 U.S.C. § 9251(a)(3); see Pub. L. No. 115-409, § 201(c) (reaffirming that "[i]t is the policy of the United States that the objective of negotiations with respect to the nuclear and ballistic missile programs of [North] Korea be the complete, verifiable, and irreversible dismantlement of such programs."); see Letter from Sens. Gardner, Graham, Rubio, and Sullivan to President Trump, August 2, 2018, [https://www.gardner.senate.gov/imo/media/doc/NK Letter 08.02.18 \(signed\).pdf](https://www.gardner.senate.gov/imo/media/doc/NK%20Letter%2008.02.18%20(signed).pdf) (reaffirming that the NKSPEA and applicable U.N. Security Council resolutions require the "complete, verifiable, and irreversible denuclearization" of North Korea); Letter from Sens. Mendez, Schumer, Durbin, Feinstein, Warner, Leahy, and Brown to President Trump, June 4, 2018, <https://www.foreign.senate.gov/imo/media/doc/06-04-18%20Menendez%20joint%20letter%20to%20Trump%20on%20NK%20Summit.pdf> ("[A]ny agreement with North Korea must . . . ultimately include the dismantlement and removal of all nuclear, chemical and biological weapons from North Korea").

462 Georgy Toloraya, "From CVID to CRID: A Russian Perspective," 38 *North*, December 26, 2018, <https://www.38north.org/2018/12/gtoloraya122618/>; Doug Bandow, "Accept Reality: North Korea Will Remain a Nuclear State," *The National Interest*, August 10, 2019, <https://nationalinterest.org/feature/accept-reality-north-korea-will-remain-nuclear-state-72296>.

463 Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act, Pub. L. No. 116-92, div. F, tit. LXXII, subtit. A, § 7143(c)

464 Paul K. Kerr, Steven A. Hildreth, and Mary Beth D. Nikitin, "Iran-North Korea-Syria Ballistic Missile and Nuclear Cooperation," *Congressional Research Service*, February 26, 2016, <https://fas.org/sgp/crs/nuke/R43480.pdf>.

465 *Report of the U.N. POE established pursuant to resolution 1874, S/2013/337* (2013) ¶¶ 64-75, fig. XVIII, [http://www.un.org/ga/search/view\\_doc.asp?symbol=UN POE, S/2013/337](http://www.un.org/ga/search/view_doc.asp?symbol=UN%20POE,%20S/2013/337); "Israel says seized North Korean arms were for Hamas, Hezbollah," *Reuters*, May 12, 2010.

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reactor in Syria;<sup>466</sup> assisted Syria with its chemical weapons programs;<sup>467</sup> used VX nerve agent in a crowded airport terminal in Malaysia;<sup>468</sup> carried out a cyberterrorist attack against the U.S. mainland;<sup>469</sup> and launched unprovoked attacks against South Korea. These are not the actions of a state that would be a responsible nuclear power.

Pyongyang must “tak[e] steps toward accounting for and repatriating the citizens of other countries” that it abducted or held after the Korean War Armistice.<sup>470</sup> This condition reflects Congress’s support for the families of Americans still missing from the Korean war, and for our Japanese ally’s legitimate demand to bring its abducted citizens home.

Pyongyang must “accept[] and begin[] to abide by internationally recognized standards for the distribution and monitoring of humanitarian aid.”<sup>471</sup> If Pyongyang impedes the monitoring of aid distribution, can we have confidence that it would allow weapons inspectors enough access to verify its disarmament? The fair and open distribution of humanitarian aid can be another test of Pyongyang’s acceptance of transparency.

Lastly, Pyongyang must also take “verified steps to improve living conditions in its political prison camps.”<sup>472</sup> The UN COI has documented Pyongyang’s culpability for “crimes against humanity, arising from ‘policies established at the highest level of State,’” including “extermination, murder, enslavement, torture, imprisonment, rape, forced abortions and other sexual violence, persecution on political, religious, racial and gender grounds, the forcible transfer of populations, the enforced disappearance of persons and the inhumane act of knowingly causing prolonged

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466 “Al-Kibar,” *Nuclear Threat Initiative*, March 1, 2011, <https://www.nti.org/learn/facilities/461/> (“U.S. officials expressed high confidence . . . that the facility had been a nuclear reactor under construction. They also alleged that Syria and North Korea had cooperated for more than a decade in the nuclear field, and had medium confidence that North Korea was involved in the construction of the facility at Al-Kibar”).

467 Michael Schwirz, “U.N. Links North Korea to Syria’s Chemical Weapons Program,” *New York Times*, February 27, 2018, <https://www.nytimes.com/2018/02/27/world/asia/north-korea-syria-chemical-weapons-sanctions.html>.

468 U.S. Dep’t of State, “Statement by Heather Nauert, Spokesperson,” March 6, 2018, [https://twitter.com/statedeptspox/status/971186360399880192?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etwembed%7Ctwterm%5E971186417014624256&ref\\_url=https%3A%2F%2Fwww.cbsnews.com%2Fnews%2Fstate-department-north-korea-chemical-weapons-assassination-kim-jong-nam%2F](https://twitter.com/statedeptspox/status/971186360399880192?ref_src=twsrc%5Etfw%7Ctwcamp%5Etwembed%7Ctwterm%5E971186417014624256&ref_url=https%3A%2F%2Fwww.cbsnews.com%2Fnews%2Fstate-department-north-korea-chemical-weapons-assassination-kim-jong-nam%2F) (“On February 22, 2018, the United States determined . . . that the Government of North Korea used the chemical warfare agent VX to assassinate Kim Jong Nam, in the Kuala Lumpur Airport”).

469 U.S. Fed. Bureau of Investigation, “Update on Sony Investigation,” December 14, 2014, <https://www.fbi.gov/news/pressrel/press-releases/update-on-sony-investigation>.

470 22 U.S.C. § 9252.

471 *Id.*

472 *Id.*

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starvation.”<sup>473</sup> As long as Pyongyang holds its people in mute horror, none would dare disclose nuclear secrets to a UN inspector.<sup>474</sup> The camps are vast enough to conceal an unlimited number of warheads, machine tools, and centrifuges. A state that holds human life in contempt also shows contempt for the ethical foundation of a just and lasting peace.

These conditions also give human rights advocates legally enforceable benchmarks—through allies in Congress—to prevent Pyongyang’s crimes against humanity from being sidelined again at the negotiating table.<sup>475</sup>

If political gratification is the objective of our diplomacy, these conditions will complicate the prospects to offer an agreement that Pyongyang would easily accept. But no enduring peace will be possible if Pyongyang continues to threaten the core national interests of the U.S. and its allies, and investors and banks will bar North Korea from their wire transfers and supply chains while its conduct continues to embarrass humanity. The pace at which Pyongyang meets these conditions is negotiable, but if Pyongyang seeks free and secure access to the U.S. economy, its compliance with them must not be. Pyongyang’s acceptance of transparency, the laws of other nations, and the most basic standards of human civilization are prerequisites to any lasting peace.

#### 4. Political Limits on U.S. Sanctions Relief

Unfreezing the assets of certain sanctions targets will also raise political objections from Congress. For example, Congress would likely object to unfreezing the assets of persons that had been frozen for proliferation, particularly as part of a nonproliferation agreement, without credible assurances that the unfrozen funds would not be used for proliferation again. Congress is also unlikely to support the relaxation of sanctions against Pyongyang’s cyber-attacks, which are a growing threat to the global economy.

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473 A/HRC/25/63.

474 John Sifton, “Why Trump Needs to Raise Human Rights with North Korea’s Kim,” *Just Security*, February 20, 2019, <https://www.justsecurity.org/62647/trump-raise-human-rights-kim/>; Olivia Enos, “Leveraging U.S. Law to Advocate for Human Rights in Talks with North Korea,” *The Heritage Foundation*, February 22, 2019, <https://www.heritage.org/asia/report/leveraging-us-law-advocate-human-rights-talks-north-korea>; Victor Cha, “Human Rights Are the Key to a North Korea Deal,” *Bloomberg Opinion*, February 20, 2019, <https://www.bloomberg.com/opinion/articles/2019-02-20/trump-should-press-north-korea-s-kim-on-human-rights-at-summit> (“[I]n order to verify any nuclear deal, inspectors have to be able to move around the country to different sites. That will require a much more open North Korean society than exists today, for which the U.S. should be pressing simultaneously with denuclearization”).

475 Cha, “Human Rights Are the Key to a North Korea Deal” (“Even at Trump’s behest, no general counsel of any U.S. company would recommend investing in North Korea if human-rights abuses in the supply chain might put them in violation of U.S. law”).

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Congress would likely oppose the relaxation of sanctions against Pyongyang's arms trafficking, given that some of Pyongyang's traditional arms clients are themselves engaged in severe human rights abuses (Syria) and support for terrorism (Iran), are plagued by corruption (Angola), or should be prioritizing human development over weapons (Mozambique, Zimbabwe).

Some members of Congress would strongly oppose the relaxation of sanctions for severe human rights abuses (for which Kim Jong-un is personally designated by OFAC), censorship (for which Kim Yo-jong is designated), and luxury goods imports without a durable solution to North Korea's decades-long food crisis. The U.S. and the UN may also hesitate to lift sanctions on North Korea's exports of food for cash.<sup>476</sup>

Seoul has long lobbied Washington to reopen the Kaesong Industrial Complex, but Treasury has long had questions about how Pyongyang spent its Kaesong revenues,<sup>477</sup> and Seoul probably never knew the answer.<sup>478</sup> Any relaxation of the ban on Pyongyang's textile exports would raise questions about proliferation financing or forced labor.<sup>479</sup>

North Korea's largest exports are its coal and other mineral products. The Treasury Department has alleged that several North Korean mineral export companies fund its missile programs, its nuclear program, and the military.<sup>480</sup> North Korea's mineral industry is also linked to human rights

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476 S/RES/2397 ¶ 6; 22 U.S.C. § 9214(b)(1)(K) (discretionary sanctions for North Korea's export of food or agriculture products); *Id.* § 9214(g)(1)(A)(i)(I) (mandatory sanctions for seafood exports); 31 C.F.R. § 510.201(a)(3)(ix)(A)(1) (implementing the prohibition in the Treasury's North Korea Sanctions Regulations).

477 "US Targeting Secret Funds of North Korea's Kim," *VOA News*, April 15, 2013, <https://www.voanews.com/east-asia/us-targeting-secret-funds-north-koreas-kim> (quoting Undersecretary of the Treasury David Cohen as saying, "Precisely what North Koreans do with earnings from Kaesong, I think, is something that we are concerned about.")

478 "Unification Minister reverses claim over N.K. Kaesong revenue use," *Yonhap News*, February 15, 2016, <https://en.yna.co.kr/view/AEN20160215005152315>. UNSCR 1718 ¶ 8(d) requires member states to "ensure" that revenues are paid to Pyongyang are *not* used for purposes that violate the resolutions.

479 S/RES/2397 ("Acknowledging that the proceeds of the DPRK's trade in sectoral goods, including but not limited to coal, iron, iron ore, lead, lead ore, textiles, seafood, gold, silver, rare earth minerals, and other prohibited metals, as well as the revenue generated from DPRK workers overseas, among others, contribute to the DPRK's nuclear weapons and ballistic missile programs").

480 U.S. Dep't of Treasury, "Treasury Sanctions Agents Linked to North Korea's Weapons of Mass Destruction Proliferation and Financial Networks," March 31, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/sm0039.aspx> (designating Paeksol Trading Company for exporting iron ore to raise money for Bureau 39 of the Workers' Party, the military, and the Munitions Industry Department, which funds Pyongyang's ballistic missile program); U.S. Dep't of Treasury, "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> (designating Daewon Industries and Kangbong Trading Corporation for exporting coal and metals to raise funds for the military and the Munitions Industry Department).

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abuses. Two of its political prison camps, Camp 14 and Camp 18, contain coal mines, and there are recent reports of the state mobilizing prisoners to mine coal in this region.<sup>481</sup> Camp 15 also contains a gold mine,<sup>482</sup> and Camp 12 contains a copper mine.<sup>483</sup> Shinheung Trading Company, which is under the control of the Ministry of State Security (MSS)—the agency that operates the political prison camps—earns revenue by selling iron ore, quack cancer cures, and seafood.<sup>484</sup>

Relaxing the seafood export ban not only raises the humanitarian objection to a state with a malnourished population exporting food, but also questions about the state agencies that control the seafood trade. The military, Bureau 39, the Ministry of State Security, and the Reconnaissance General Bureau (the spy agency that sends assassins abroad, sank the ROKS *Cheonan*, and may have carried out the Sony cyberattack) all have stakes in the seafood export industry.<sup>485</sup> Congress would hesitate to relax any of these sanctions without strong assurances that Pyongyang would spend these revenues responsibly, and as long as the people of North Korea have a protein-deficient diet.

Relaxing other UN and U.S. sanctions that restrict Pyongyang's imports of dual-use metals, machinery, and petroleum products may be politically acceptable if Pyongyang makes verifiable assurances to use its imports for civilian use, but this form of sanctions relief is unlikely to be enough to induce Pyongyang to agree to disarm and reform.

A more plausible option for short-term sanctions relief may be the four million-barrel cap on Pyongyang's crude oil imports and the 500,000-barrel cap on imports of refined petroleum prod-

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481 Joseph S. Bermudez Jr., Andy Dinville, and Mike Eley, "North Korea: Imagery Analysis of Camp 14 (Washington, D.C.: Committee for Human Rights in North Korea, 2015), [https://www.hrnk.org/uploads/pdfs/ASA\\_HRNK\\_Camp14\\_v7\\_highrezFINAL\\_11\\_30\\_15.pdf](https://www.hrnk.org/uploads/pdfs/ASA_HRNK_Camp14_v7_highrezFINAL_11_30_15.pdf); "Working and Living Conditions in Bukchang Prison Camp Extremely Poor," *Daily NK*, April 16, 2021, <https://dailynk.com/english/working-living-conditions-bukchang-prison-camp-extremely-poor/>

482 Joseph S. Bermudez Jr., Andy Dinville, and Mike Eley, *North Korea: Imagery Analysis of Camp 15* (Washington, D.C.: Committee for Human Rights in North Korea, 2015), [https://www.hrnk.org/uploads/pdfs/ASA\\_AnalysisReport\\_HRNK\\_Camp15\\_Final.pdf](https://www.hrnk.org/uploads/pdfs/ASA_AnalysisReport_HRNK_Camp15_Final.pdf).

483 Joseph S. Bermudez et al., *North Korea's Long-term Prison-Labor Facility Kyo-hwa-so No. 12, Jôngô-ri - Update 3* (Washington, D.C.: Committee for Human Rights in North Korea, 2020), [https://www.hrnk.org/uploads/pdfs/KHS12\\_FINALFINAL.pdf](https://www.hrnk.org/uploads/pdfs/KHS12_FINALFINAL.pdf).

484 "Squeezed by sanctions, North Korea firm hawks cancer cures," *AFP*, December 1, 2017, <https://www.straitstimes.com/asia/east-asia/squeezed-by-sanctions-north-korea-firm-hawks-cancer-cures>.

485 Choi Song-min, "Ban on fisheries exports sees domestic supply climb," *Daily NK*, October 28, 2015, <https://web.archive.org/web/20151029141007/http://www1.dailynk.com/english/read.php?cataId=nk01500&num=13543>; Choi Song-min, "Sanctions include RGB for the first time, but can they be enforced?," *Daily NK*, March 14, 2016, <https://web.archive.org/web/20160314061820/http://www.dailynk.com/english/read.php?num=13797&cataId=nk02900>.



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ucts.<sup>486</sup> These sanctions have proven difficult to enforce in practice.<sup>487</sup> Despite the Security Council's setting of caps at levels calculated to allow for "livelihood" purposes, they may also be adversely affecting the market economy. This unintended consequence does not serve U.S. interests or those of the North Korean people.<sup>488</sup>

Thus, any new "agreed framework" in which the President agrees to lift sanctions outright would be fraught with questions about how Pyongyang would use the windfall of that relief, and whether the relief would ultimately set back the objectives of nonproliferation, reform, and peace. And when—not if—Pyongyang begins to renege on an agreement or is caught cheating, Congress has an array of options to reimpose sanctions. Pyongyang's potential investors and business partners are certain to weigh this risk carefully before exposing themselves to renewed sanctions and boycotts at some future date.

## 5. Congressional Power to Limit Sanctions Relief

When former President Trump signed the Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA), he issued a signing statement that "[b]y limiting the executive's flexibility, this bill makes it harder for the United States to strike good deals for the American people and will drive China, Russia, and North Korea much closer together," and that "[a]s President, I can make far better deals with foreign countries than Congress."<sup>489</sup>

Whatever one believes about the merits of this statement, and notwithstanding the end of Trump's presidency, it points to a longstanding conflict between different branches of government over the power to impose, amend, and lift sanctions. But if Article I, Section 8 of the Constitution explicitly grants Congress the power to regulate commerce with foreign nations, it follows that Congress also retains the constitutional power to review, limit, or reject a President's agreement to lift sanctions, including human rights sanctions, that do not conform to Congress's limits and intent.<sup>490</sup>

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486 S/RES/2397 ¶¶ 4-5.

487 Gordon Lubold and Ian Talley, "Seven Countries Join to Hunt Ships Smuggling Fuel to North Korea," *Wall Street Journal*, September 14, 2018, [https://www.wsj.com/articles/new-u-s-led-coalition-to-track-illicit-fuel-shipments-to-north-korea-1536922923?mod=article\\_inline](https://www.wsj.com/articles/new-u-s-led-coalition-to-track-illicit-fuel-shipments-to-north-korea-1536922923?mod=article_inline).

488 Kang Mi-jin, "Optimism rising as fuel prices dip in North Korea," *Daily NK*, January 28, 2019, <https://www.dailynk.com/english/optimism-rising-as-fuel-prices-dip-in-north-korea/>.

489 Statement on Signing the Countering America's Adversaries Through Sanctions Act, DCPD-201700558, *U.S. Government Publishing Office*, August 2, 2017, <https://www.govinfo.gov/content/pkg/DCPD-201700558/html/DCPD-201700558.htm>.

490 Benjamin Alter, "Sanctions Are Congress's Path Back to Foreign Policy Relevance," *Lawfare Blog*, March 27, 2018, <https://www.lawfareblog.com/sanctions-are-congress-path-back-foreign-policy-relevance>. One possible limitation on

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The most obvious means for Congress to block premature sanctions relief would be to reimpose the sanctions legislatively. Both the NKSPEA and the CAATSA passed Congress by overwhelming, veto-proof margins. Just as a previous Congress overrode President Reagan's veto to pass the Comprehensive Anti-Apartheid Act of 1986,<sup>491</sup> Congress could legislate sanctions that the President attempted to lift over its protests, possibly in expanded form with increased oversight and reporting requirements.<sup>492</sup>

In doing so, Congress could also amend the NKSPEA to empower the Justice Department to enforce it judicially through civil forfeiture laws, regardless of whether the Treasury Department designates the alleged violator. It could also require the Secretary of the Treasury to make findings about whether specific Chinese banks tolerated North Korean money laundering, whether those banks were compliant with their enhanced due diligence obligations to prevent North Korean money laundering,<sup>493</sup> and whether it will impose Patriot Act special measures on them.<sup>494</sup>

The Treaty Clause of the Constitution gives Congress powers to review an agreement with Pyongyang. Before the Singapore Summit, both the Senate Majority Leader and the Chairman of the Senate Foreign Relations Committee called on the White House to submit any agreement with Kim Jong-un to the Senate for ratification.<sup>495</sup> This would have required two-thirds of the Senate to vote to ratify it.<sup>496</sup> Before the Hanoi summit, senators from both parties again asked to review the

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Congress's power is the constitutional prohibition against the legislative veto—an Act of Congress that delegates a power to the President but retains a conditional power to disapprove the President's exercise of power without enacting new legislation. See *INS v. Chadha*, 462 U.S. 919 (1983); "Legislative Vetoes After Chadha," *U.S. Congressional Research Service*, May 2, 2005, [https://www.everycrsreport.com/files/20050502\\_RS22132\\_f3f5994e75ce9c1c1ac4aac4e3b019cfc61f2f38.pdf](https://www.everycrsreport.com/files/20050502_RS22132_f3f5994e75ce9c1c1ac4aac4e3b019cfc61f2f38.pdf).

491 Pub. L. No. 99-440, 100 Stat. 1086 (1986).

492 Leverage to Enhance Effective Diplomacy Act of 2019, S. 2050, 116th Cong., § 402 (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/2050/text?q=%7B%22search%22%3A%5B%22LEED+act+north+korea%22%5D%7D&r=1&s=1>.

493 See 31 C.F.R. § 1010.659.

494 See 31 U.S.C. § 5318A.

495 Jordain Carney, "McConnell: Any North Korea deal should be submitted to Congress," *The Hill*, June 12, 2018, <https://thehill.com/homenews/senate/391902-mcconnell-submit-north-korea-deal-to-congress>; Rebeca Kheel, "Lawmakers push for role in North Korea talks as Iran scars linger," *The Hill*, June 7, 2018, <https://thehill.com/policy/defense/391078-lawmakers-push-for-role-in-north-korea-talks-as-iran-scars-linger>; see U.S. Const. art. II § 2. For a discussion of the factors that may distinguish a treaty from an international agreement that does not require Senate ratification, see U.S. Dep't of State, "Treaties and Other International Agreements" and "Considerations for Selecting Among Constitutionally Authorized Procedures" in *Foreign Affairs Manual* (1955); "Treaties and Other International Agreements: The Role of the United States Senate," S. Rept. 106-71, 106th Congress, 2d Sess. *U.S. Congressional Research Service*, January 2001.

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terms of any agreement with Pyongyang.<sup>497</sup>

Alternatively, if the President reaches an agreement with Pyongyang but lacks the votes for Senate ratification, Congress could pass new legislation to modify the sanctions or the conditions for lifting them, as it did when President Obama lacked the votes for ratification of the Joint Comprehensive Plan of Action.<sup>498</sup> Congress could also withhold funds for fuel, aid, the normalization of diplomatic relations, or the construction of consular facilities.<sup>499</sup> Finally, any senator could place a hold on the confirmation of an administration official to delay or modify the implementation of an agreement.<sup>500</sup>

## B. How to Give Sanctions Relief The Objectives of Escrow

Part I of this report established that Pyongyang's diversion of North Korea's national resources to its military-industrial complex and oligarchy is a manifestation of its kleptocracy—its most serious human rights abuse when measured by its death toll or the breadth of its impact on human development.

Part II established that existing authorities obligate states generally, and the United States in particular, to freeze and confiscate the proceeds of kleptocracy.

Part III established that U.S. law enforcement authorities are legally and operationally capable of exerting substantial economic pressure on Pyongyang, recouping stolen North Korean assets from the financial system, and deterring banks from laundering the proceeds of Kim Jong-un's kleptocracy—if the President has the political will to let them.

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497 Elana Shor, “Congress looks to horn in on Trump’s North Korea deal,” *Politico*, June 4, 2018, <https://www.politico.com/story/2018/06/04/democrats-north-korea-agenda-621819>.

498 Iran Nuclear Review Act of 2015, Pub. L. No. 114-17, 129 Stat. 201 (2015).

499 See Dep’t of Defense Appropriations Act of 2019, § 8041, S. 3159, 115<sup>th</sup> Cong., 2d Sess. (2018) (“None of the funds appropriated or otherwise made available in this Act may be obligated or expended for assistance to the Democratic People’s Republic of Korea unless specifically appropriated for that purpose”); Dep’t of State, Foreign Operations, & Related Programs Appropriations Act, 2019, § 7007, H.R. 6385, 115<sup>th</sup> Cong., 2d Sess. (2018) (“None of the funds appropriated or otherwise made available pursuant to titles III through VI of this Act shall be obligated or expended to finance directly any assistance or reparations for the governments of Cuba, North Korea, Iran, or Syria . . .”); *Id.* § 7043 (“None of the funds made available by this Act under the heading “Economic Support Fund” may be made available for assistance for the Government of North Korea”).

500 Elizabeth Rybicki, Senate Consideration of Presidential Nominations: Committee and Floor Procedure 10, *U.S. Congressional Research Service*, April 4, 2019, <https://www.senate.gov/CRSPubs/74919ab6-b407-451c-b429-702e9ae8dcb1.pdf>.

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Part IV established that agreements to trade limited sanctions relief for a limited freeze, without extracting broad and durable commitments to transparency and fundamental reforms, have historically exacerbated Pyongyang's threats to human security both within and beyond North Korea's borders. Congress has been increasingly assertive in legislating North Korea sanctions policy, and it has the constitutional and legislative means to review or block an agreement that gives premature sanctions relief.

If America and its allies are to move beyond a diplomacy of instant gratification and the paralysis of Russian and Chinese obstructionism, they require a long-term, bipartisan, multilateral strategy to unite them around common objectives, offering Pyongyang positive and negative incentives to disarm, reform, and live in peace with the world. They also require a strategy that maintains that peace by maintaining their leverage.

***The U.S. can use its financial and diplomatic influence to unite the issuers of convertible currencies into a coalition to freeze and confiscate the proceeds of Pyongyang's crime, proliferation, and kleptocracy; to place those funds under the control of a coalition Receiver; and to disburse the funds in limited amounts, for purposes that serve the humanitarian needs of the North Korean people. If Pyongyang makes progress toward disarmament, transparency, and reform, recovered funds can also rehabilitate its infrastructure, public health facilities, and civilian economy.***

This form of sanctions relief, which confiscates the proceeds of kleptocracy with one hand and offers the proceeds back to the people of North Korea with the other, would not require the relaxation of any sanctions. It is compatible with both the UN Security Council's resolutions and U.S. domestic law. It would not require Congress to accept Pyongyang's threats to U.S. interests, U.S. allies, global nonproliferation, or the people of North Korea. It would not expect the financial industry to become a safe haven for crime and corruption, and it could leverage existing law to create reputable banking channels for humanitarian aid. If Pyongyang makes good-faith commitments to disarmament and reform, an escrow model of sanctions enforcement and relief could fund limited incentives for a "small deal" while withholding the long-term leverage to enforce an agreement.

Until Pyongyang complies with UN Security Council resolutions and accepts fundamental humanitarian reforms, the coalition states must keep the pressure firmly on. They must enforce their sanctions and anti-corruption laws, holding the proceeds of corruption in escrow, and disburse them as limited and carefully monitored relief for the benefit of the people whose needs are greatest. They must not cede the leverage necessary to make progress before they extract progress. Pyongyang, Beijing, and Moscow will not cooperate with this strategy voluntarily; consequently, it may be necessary for a coalition of allied nations to enforce it using UN authorities, but outside

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the UN framework. Escrow, like sanctions, is a coercive strategy, to be implemented by a coalition of issuers of convertible currencies, based on agreed goals and principles.

If the narrow objective of coercing Pyongyang to negotiate its own disarmament seems unlikely to succeed, and if Pyongyang's history tells us that coexistence with a nuclear North Korea will continue to threaten core U.S. and allied interests, it follows that our strategy must broaden to cut the deeper political and ideological roots from which all of its destructive behaviors arise. Pyongyang must not only be denied the means to continue them. It must conclude that their continuation threatens the integrity of the state. At the same time, it must be offered a path to survival, prosperity, and peace in exchange for disarmament and a steady evolution toward reform.

The coalition's greatest coercive power is not the threat of war, but to empower change from within North Korea. It can target the trading companies that maintain Pyongyang's control over the civilian population and weaken the forces of the state that repress change from within. It can wage a war of ideas by broadcasting detailed and credible facts about the state's kleptocracy, corruption, international illegitimacy, refusal of foreign assistance, and disregard for the welfare of the people.

Money, as we have seen, is the root of all evils that stalk the people of North Korea, and ultimately, the United States and its allies. Their common purpose must be to seize and freeze Pyongyang's misspent wealth and to put the world—including the people of North Korea—on notice that this wealth may only be used for the peaceful and humane benefit of the people to whom it rightfully belongs. All prospective members of the coalition share common interests in global nonproliferation, the preservation of peace, the integrity of the global economy, funding and promoting humanitarian aid for the people of North Korea, and opposing crimes against humanity through legal accountability.

The coalition must agree on principles of sound financial management. The failure of the Iraq Oil-for-Food program has taught us that any escrow fund to benefit the victims of a kleptocracy must be administered with integrity and transparency.



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## 1. Building a Global Coalition for a Lasting Peace

In late 2021, naval vessels from the United Kingdom, Germany, France, Australia, and Canada, and naval patrol aircraft from Canada and New Zealand, joined the U.S. Coast Guard and the Japanese Naval Self-Defense Force in patrolling waters near North Korea to monitor smuggling and sanctions violations. The formation of this coalition is welcome news, but there are also limits to a naval interdiction strategy. Military deployments are expensive. They carry an inherent risk of conflict if they involve boarding a vessel, even with the consent of the flag state. A naval coalition cannot effectively regulate maritime trade between North Korea and its two largest trading partners, China and Russia.<sup>501</sup>

Nonetheless, the composition of this coalition suggests that the issuers of the world's convertible currencies—the U.S. Dollar; the Euro; the Yen; the Pound; and the Canadian, Australian,

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501 See German Federal Foreign Office, “German contribution to monitoring North Korea sanctions,” December 11, 2021, <https://www.auswaertiges-amt.de/en/aussenpolitik/regionaleschwerpunkte/asien/sanktionen-nordkorea/2495750> ; “How the French navy enforces UN sanctions on North Korea,” *Deutsche Welle*, November 24, 2021, <https://www.dw.com/en/how-the-french-navy-enforces-un-sanctions-on-north-korea/av-59921167>; Colin Zwirko, “German warship arrives in Japan to join DPRK sanctions mission for first time,” *NK News*, November 8, 2021, [https://www.nknews.org/2021/11/german-warship-arrives-in-japan-to-join-dprk-sanctions-mission-for-first-time/?utm\\_source=dlvr.it&utm\\_medium=twitter](https://www.nknews.org/2021/11/german-warship-arrives-in-japan-to-join-dprk-sanctions-mission-for-first-time/?utm_source=dlvr.it&utm_medium=twitter); “International partners increase patrols to uphold North Korea sanctions,” *Indo-Pacific Defense Forum*, November 5, 2021, <https://ipdefenseforum.com/2021/11/international-partners-increase-patrols-to-uphold-north-korea-sanctions/>; Japan Ministry of Foreign Affairs, “Monitoring and surveillance activities by New Zealand against illicit maritime activities including ship-to-ship transfers,” November 4, 2021, [https://www.mofa.go.jp/press/release/press3e\\_000265.html](https://www.mofa.go.jp/press/release/press3e_000265.html); Chaewon Chung, “Australia deploys warship to enforce UN sanctions against North Korea,” *NK News*, October 29, 2021, [https://www.nknews.org/2021/10/australia-deploys-warship-to-enforce-un-sanctions-against-north-korea/?utm\\_source=dlvr.it&utm\\_medium=twitter](https://www.nknews.org/2021/10/australia-deploys-warship-to-enforce-un-sanctions-against-north-korea/?utm_source=dlvr.it&utm_medium=twitter); Japan Ministry of Foreign Affairs, “Monitoring and surveillance activities by Canada against illicit maritime activities including ship-to-ship transfers,” October 13, 2021, [https://www.mofa.go.jp/press/release/press3e\\_000255.html](https://www.mofa.go.jp/press/release/press3e_000255.html); Ridzwan Rahmat, “HMS Richmond captures evidence of North Korean sanctions violations,” *Janes*, September 27, 2021, <https://www.janes.com/defence-news/news-detail/hms-richmond-captures-evidence-of-north-korean-sanctions-violations>; Japan Ministry of Foreign Affairs, “Monitoring and surveillance activities by Canada against illicit maritime activities including ship-to-ship transfers,” September 9, 2021, [https://www.mofa.go.jp/press/release/press3e\\_000243.html](https://www.mofa.go.jp/press/release/press3e_000243.html); Dzirhan Mahadzir, “U.S. Coast Guard Continues to Expand Presence in the Western Pacific,” *USNI News*, September 3, 2021, <https://news.usni.org/2021/09/03/u-s-coast-guard-continues-to-expand-presence-in-the-western-pacific>; Artem Sherbinin, “Enforcing Sanctions on North Korea Is an Opportunity for Cooperation at Sea,” *War on the Rocks*, March 16, 2021, <https://warontherocks.com/2021/03/enforcing-sanctions-on-north-korea-presents-an-opportunity-for-cooperation-at-sea/>; Christian Lopez, “Coast Guard Cutter Keeps Eye on North Korea During Patrol of East China Sea,” *Stars and Stripes*, March 20, 2019, <https://www.military.com/daily-news/2019/03/20/coast-guard-cutter-keeps-eye-north-korea-during-patrol-east-china-sea.html>; U.S. Coast Guard, “Coast Guard Cutter Conducts Sanctions Patrol Against North Korea,” October 24, 2019, <https://www.defensemedianetwork.com/stories/coast-guard-cutter-conducts-sanctions-patrol-against-north-korea/>.

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and New Zealand dollars—recognize their common interests in the enforcement of UN sanctions. Forming this naval coalition into a financial coalition could achieve a far greater impact at a lower cost and risk. And in the cases of the M/V *Wise Honest* and the M/T *Courageous*, finance and law offer peaceful and effective outcomes to the work of maritime patrols. Other international institutions, including the World Bank, the Financial Action Task Force, and the Proliferation Security Initiative, could be invited to advise and support a financial coalition.

As Pyongyang resists cooperation, coalition member states can escalate the coercive character of their uses of confiscated state funds. Not every member of the coalition would necessarily agree to all of the following purposes for escrow expenditures. Member states should be free to join or abstain from supporting the following objectives with the assets they seize and contribute to the fund:

**To Retard Pyongyang's Proliferation.** Slowing, and eventually reversing, Pyongyang's proliferation is the most obvious reason for sanctions enforcement. Other UN member states with a shared interest in halting Pyongyang's proliferation have recently sought ways to expand their cooperation and intelligence-sharing.<sup>502</sup> The pooling of financial intelligence, law enforcement, and humanitarian aid policy to advance nonproliferation and political reforms benefiting the North Korean people would be a logical confluence of those shared interests. Pyongyang's human rights abuses are also linked to its proliferation and arms dealing abroad. An MSS official, Ri Won-ho, has worked in both Egypt and Syria as an arms dealer.<sup>503</sup> Another MSS official, Jo Yong-chol, operates as an arms dealer for KOMID in Syria, where the UN has implicated North Korea in helping Damascus make and use the chemical weapons to kill civilians.<sup>504</sup>

**To Obstruct the Military-Industrial Complex.** Effective enforcement can damage Pyongyang's military-industrial complex by targeting the trading companies that support it for blocking and forfeitures. It can disrupt the payrolls and logistics of elite military units. By depressing morale and readiness, it can convince Pyongyang that any war would be unwinnable, deter war, and

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502 Ankit Panda, "Five Eyes' Countries Eye Expanded Cooperation Amid North Korea Challenges," *The Diplomat*, January 28, 2020, <https://thediplomat.com/2020/01/five-eyes-countries-eye-expanded-cooperation-amid-north-korea-challenges/>.

503 *United Nations Security Council Consolidated List*, September 8, 2020 <https://scsanctions.un.org/fop/fop?xml=htdocs/resources/xml/en/consolidated.xml&xslt=htdocs/resources/xsl/en/consolidated.xsl>; Hamish Macdonald, "Egypt denies North Korean ambassador deportation claims," *NK News*, May 5, 2016, <https://www.nknews.org/2016/05/egypt-denies-north-korean-ambassador-deportation-claims/>.

504 U.S. Dep't of Treasury, "Announcement of Sanctions against North Korean Transportation, Mining, Energy, and Financial Services Industries and North Korean Government Officials and Organizations," March 16, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0385.aspx>; Michael Schwartz, "U.N. Links N. Korea to Syria's Chemical Weapons Program," *New York Times*, February 27, 2018, <https://www.nytimes.com/2018/02/27/world/asia/north-korea-syria-chemical-weapons-sanctions.html>.

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dissuade it from diverting such a high percentage of North Korea's national resources away from human development to military spending.

***To Deter Nuclear and Missile Testing.*** The five-year period since September 2017 marks the longest period without a significant nuclear test since North Korea's first nuclear test in October 2006. Most of this period coincided with a freeze in military exercises that would, over the long term, degrade the interoperability, integrity, and deterrence of the U.S.-South Korean military alliance. An exercise freeze will not be sustainable in perpetuity.

This five-year period also coincides with the time since Pyongyang began to feel the effects of the new sanctions on state finance and industry. Whether this prolonged testing pause suggests the utility of sanctions as a deterrent is unknowable without more evidence, but Kim Jong-un's destruction of the Kaesong Liaison Office in 2020, and his prolonged refusal to answer an inter-Korean military hotline, would seem to rule out improved inter-Korean relations as an alternative explanation. A credible threat that continued testing and proliferation will result in intensified enforcement, and the undermining of the state's finances, legitimacy, and cohesion, could offer coalition states more options to deter Pyongyang's threats to international and regional peace.

***To Enforce the Law, Prevent Crime, Fight Corruption, & Defend Our Economic Sovereignty.*** Every nation has the sovereign right to use its domestic laws to protect its financial and commercial systems against money laundering, bank fraud, computer hacking, drug trafficking, and other crimes. These crimes are serious infringements on the interests of the nations through which Pyongyang chooses to commit them. Enforcing national laws against financial crimes is essential to maintaining the integrity of our financial system. Pyongyang's status as a state actor does not exempt it from those laws. The enforcement of national Anti-Money Laundering and sanctions laws is a responsibility the U.S. has undertaken to implement UN Security Council resolutions.<sup>505</sup>

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505 Financial Action Task Force, "High Risk Jurisdictions subject to a Call for Action," February 21, 2020, <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html> ("The FATF remains concerned by the DPRK's failure to address the significant deficiencies in its anti-money laundering and combating the financing of terrorism (AML/CFT) regime and the serious threats they pose to the integrity of the international financial system. The FATF urges the DPRK to immediately and meaningfully address its AML/CFT deficiencies. Further, the FATF has serious concerns with the threat posed by the DPRK's illicit activities related to the proliferation of weapons of mass destruction (WMDs) and its financing"); U.S. Dep't of Treasury, Financial Action Task Force, "Advisory on the Financial Action Task Force-Identified Jurisdictions with Anti-Money Laundering and Combating the Financing of Terrorism Deficiencies," FIN-2020-A001, March 6, 2020, [https://www.fincen.gov/sites/default/files/advisory/2020-03-25/FATF%20February%202020%20Advisory%20FINAL%20508\\_0.pdf](https://www.fincen.gov/sites/default/files/advisory/2020-03-25/FATF%20February%202020%20Advisory%20FINAL%20508_0.pdf).

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***To Fund Enforcement, Both Domestically and Abroad.*** We have seen in Part II that UN conventions support the limited use of confiscated proceeds of crime to support law enforcement, and in Part III that Congress may redirect the proceeds of fines, penalties, and forfeitures to fund law enforcement, compensate the victims of crime or state-sponsored terrorism, or any other purpose it legislates. Congress has long expressed its displeasure with the insufficiency of resources devoted to North Korea sanctions or financial crime enforcement. By limiting the purposes for which these funds are available, Congress can constitutionally force the President to fully resource an enforcement campaign and make additional funds available to build enforcement capacity abroad. Potential vehicles for capacity-building include revenue sharing of forfeited revenue and grants to non-governmental or multilateral organizations—the World Bank, the Financial Action Task Force, or organs established under UN Security Council Resolution 1540.<sup>506</sup>

***To Hold Perpetrators Accountable for Crimes Against Humanity.*** The 2014 report of the UN COI recommended multiple alternatives for accountability for crimes against humanity in North Korea, including a referral to the International Criminal Court and the imposition of targeted sanctions against perpetrators.<sup>507</sup> The European Union recently joined the United States in imposing sanctions on senior North Korean officials responsible for human rights abuses.<sup>508</sup> These national sanctions follow years of attempts by the United States and the European Union to pursue accountability at the UN Security Council, and years of obstruction of those efforts by Beijing and Moscow.<sup>509</sup> That obstructionism leaves targeted national sanctions as the only available form of accountability. Pyongyang's strong reaction to the UN COI's report<sup>510</sup> and its demoralizing

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506 See 18 U.S.C. § 981(i).

507 UN COI ¶ 1196, 1225(a).

508 Council of the European Union, “EU imposes further sanctions over serious violations of human rights around the world,” March 22, 2021, <https://www.consilium.europa.eu/en/press/press-releases/2021/03/22/eu-imposes-further-sanctions-over-serious-violations-of-human-rights-around-the-world/>; U.S. Dep’t of State, “Report on Human Rights Abuses or Censorship in North Korea,” January 11, 2017, <https://web.archive.org/web/20170114033956/https://www.state.gov/j/drl/rls/266853.htm>; U.S. Dep’t of Treasury, “Treasury Sanctions North Korean Senior Officials and Entities Associated with Human Rights Abuses,” July 6, 2016, <https://www.treasury.gov/press-center/press-releases/pages/jl0506.aspx>.

509 “Joint Open Letter on Human Rights in North Korea,” October 10, 2021, <https://www.hrw.org/news/2021/10/10/joint-open-letter-human-rights-north-korea>; Robert R. King, Korea Economic Institute of America, “UN Security Council Discusses Human Rights in North Korea for the First Time in Three Years,” The Peninsula blog, December 15, 2020, <https://keia.org/the-peninsula/un-security-council-discusses-human-rights-in-north-korea-for-the-first-time-in-three-years/>; Robert R. King, “Fifth Anniversary of the Landmark Report of the UN Commission of Inquiry on North Korean Human Rights,” Center for Strategic and International Studies, February 21, 2019, <https://www.csis.org/analysis/fifth-anniversary-landmark-report-un-commission-inquiry-north-korean-human-rights>.

510 David Hawk, “North Korea Responds to the UN Commission of Inquiry,” October 16, 2014, <https://www.38north.org>.

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effect on North Korean diplomats<sup>511</sup> suggest that human rights sanctions the assets they seize and contribute to the fund its legitimacy by accepting monitored food and medical assistance, and more meaningful humanitarian engagement.

**To Defund the Police State.** In addition to the important symbolic step of targeting senior North Korean officials, despite their lack of direct exposure to the financial system, coalition members should adopt the more practical strategy of targeting the financial infrastructure that pays and equips the specific agencies that perpetrate crimes against humanity. North Korean government agencies fund their salaries and expenses through their own foreign trade networks, which sanctions can target selectively. For example:

- As noted, the Ministry of State Security controls Shinheung Trading Company, which exports iron ore and seafood. OFAC has not designated Shinheung Trading.
- The army, whose border guards keep people in and information out, sells seafood<sup>512</sup> and coal through a front called Songi Trading Company. Songi is the former operator of North Korea's second-largest bulk cargo carrier, the M/V *Wise Honest*, which a federal court in New York forfeited in 2019.<sup>513</sup>
- The internal security forces have also funded themselves through their own cross-border trading companies.<sup>514</sup>

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org/2014/10/dhawk101614/.

511 Boram Park, "High-profile defector sheds light on everyday life of N. Korean diplomats," *Yonhap News*, February 1, 2017, <https://web.archive.org/web/20170201145741/http://english.yonhapnews.co.kr/northkorea/2016/12/29/0401000000AEN20161229003100315.html> (quoting Thae Yong-ho's recollection that "I, myself, had to cry hooray for Kim Jong-un ... but I had a very difficult time defending the North Korean state during meetings with people in Britain in which most people denounced the North's system and challenged my vindication of it."); Jee-hye Yoo and Sarah Kim, "North Korean embassies defend Kim's reputation," *JoongAng Daily*, January 4, 2017, <https://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3028268>; Brian Padden, "Defector: Criticism of Nuclear Program Only Strengthens Kim," *Voice of America*, January 6, 2017, <https://www.voanews.com/a/defector-north-korea-nuclear-program-strengthens-kim/3665504.html>.

512 Choi Song-min, "Fragile habitats devastated by fisheries push," *Daily NK*, February 3, 2016, <https://web.archive.org/web/20160211152014/http://www1.dailynk.com/english/read.php?cataId=nk01500&num=13734>.

513 U.S. Dep't of Treasury, "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>.

514 Joon-ho Kim, "New State Security Organization Earning Foreign Cash For North Korean Regime," *Radio Free Asia*, October 7, 2015, <https://www.rfa.org/english/news/korea/currency-10072015130531.html>; U.S. Dep't of Treasury, "Treasury Sanctions Additional North Korean Officials and Entities In Response To The North Korean Regime's Serious Human Rights Abuses and Censorship Activities," January 11, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/jl0699.aspx>; U.S. Dep't of Treasury Press Release, "Treasury Sanctions Additional North Korean Officials and Entities in Response to the



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- The Reconnaissance General Bureau (RGB) dispatches assassins to abduct refugees and murder human rights activists abroad, is responsible for the *Cheonan* and Yeonpyeong-do attacks in South Korea, and carried out the 2014 Sony Pictures cyberattack.<sup>515</sup> It funds itself in part through coal and iron ore exports through the Paeksol Trading Company.<sup>516</sup>
- The RGB-controlled network known as Glocom sells military radios and seafood through UN- and OFAC-designated banks, such as Korea Kwangson Banking Corporation.<sup>517</sup> OFAC has never designated Glocom or its neighboring network, Malaysia-Korea Partners.
- The Propaganda and Agitation Department, which is designated by both the United States and the UN Security Council, controls the heavily censored state media. It earns money by collecting royalties from foreign news organizations.<sup>518</sup>

These companies and support networks would become primary targets of a counter-repression sanctions strategy. Defunding the police state could disrupt the state's capacity to seal the borders, hunt down cell phone users, censor non-state media, and confiscate private remittances intended for the poor and hungry. It could deny the state the means to operate political prison

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Regime's Serious Human Rights Abuses and Censorship Activities," October 26, 2017, <https://home.treasury.gov/news/press-releases/sm0191>.

515 U.S. Dep't of Treasury, "Treasury Sanctions Suppliers of North Korea's Nuclear and Weapons Proliferation Programs," June 1, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/sm0099.aspx>.

516 U.S. Dep't of Treasury, "Treasury Sanctions Agents Linked to North Korea's Weapons of Mass Destruction Proliferation and Financial Networks," March 31, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/sm0039.aspx>; U.S. Dep't of Treasury, "Treasury Designates Two Shipping Companies for Attempted Evasion of North Korea Sanctions," March 21, 2019, <https://home.treasury.gov/news/press-releases/sm632>.

517 S/2018/171 ¶¶ 169-77; U.S. Dep't of Treasury, "Treasury Sanctions Agents Linked to North Korea's Weapons of Mass Destruction Proliferation and Financial Networks," March 31, 2017, <https://home.treasury.gov/news/press-releases/sm0039>; U.S. Dep't of Treasury, "Treasury Imposes Sanctions Against the Government of The Democratic People's Republic Of Korea," January 2, 2015, <https://www.treasury.gov/press-center/press-releases/Pages/jl9733.aspx>; Choi Song-min, "Sanctions include RGB for the first time, but can they be enforced?," *Daily NK*, March 14, 2016, <https://www.dailynk.com/english/sanctions-include-rgb-for-the-firs/>. For information on protein deficiencies in the diets of North Korean children and how this affects their growth and development, see Soo-kyung Lee, "North Korean Children: Nutrition and Growth," *Annals of Pediatric Endocrinology & Metabolism*, December 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5769832/>; Anthony Kuhn, "Why South Korea Is Sending \$8 Million In Food Aid To North Korea," *NPR*, June 9, 2019, <https://www.npr.org/sections/goatsandsoda/2019/06/09/730441007/why-aid-wont-fix-north-koreas-recurring-food-shortages>.

518 U.S. Dep't of Treasury, "Announcement of Sanctions against North Korean Transportation, Mining, Energy, and Financial Services Industries and North Korean Government Officials and Organizations," *NK News*, March 16, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0385.aspx>; Chad O'Carroll, "Foreign media asked to pay North Korea copyright by South Korean organization," *NK News*, September 6, 2019, <https://www.nknews.org/2019/09/foreign-media-asked-to-pay-north-korea-copyright-by-south-korean-organization/>.

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camps, and to suppress the rise of a market economy and private agriculture. It could thus indirectly improve the production and distribution of food, and shift North Korea's internal balance of power from the state to non-state networks. Eventually, a counter-repression strategy could create space for the emergence of independent journalists, clinics, trade schools, churches, and labor organizations.

***To Fund Humanitarian Aid Programs.*** By forfeiting Pyongyang's misappropriated funds and the proceeds of its financial crimes, the U.S. and its allies can accumulate an escrow fund to pay for underfunded humanitarian aid programs through the same UN agencies and distribution channels from which Pyongyang has historically accepted aid. If initial efforts to distribute aid fairly and transparently succeed, and if Pyongyang makes progress toward disarmament and reform, escrow funds can also rehabilitate North Korea's civilian infrastructure and empower enduring, market-based solutions to the food crisis, such as land reform, sustainable agriculture, and more efficient food processing and transportation. If Pyongyang continues to refuse offers of aid, broadcasts to the North Korean people should publicize that refusal, raising internal political pressure on Pyongyang to accept aid and prioritize the needs of its people.

***To Support Peaceful Development Abroad.*** Pyongyang induces less developed states, chiefly in the Middle East and Africa, to divert their scarce resources toward weapons and political monuments. In doing so, it exports kleptocracy and militarization, and fuels conflict in nations far from its own borders, such as in Syria.

***To Recruit Human Intelligence Sources and Compromise Pyongyang's Financial Networks.*** Miscalculations cause wars. The disruption of Pyongyang's finances can encourage defections by regime agents abroad who cannot meet their remittance quotas and fear returning to Pyongyang. This can provide opportunities for foreign intelligence agencies to recruit informants within the regime's financial infrastructure, and to sow mistrust within those networks. Subsequent enforcement actions based on intelligence provided by informants would cause other regime agents to risk failing to meet their quotas and instigate a "death spiral" of the state's financial lifelines, raising the pressure on Pyongyang for a diplomatic agreement.

***To Subvert the State's Propaganda.*** Achieving the highest coercive pressure for a disarmament agreement would require a sustained and well-resourced information program directed toward North Korea's elites, military, rural population, and market classes. A message to the military could sow dissension within command systems and discourage soldiers from obeying orders to fire on civilian targets during domestic unrest or war. A message to the elites would reassure them of their place in within a more open, reformed, and reunified Korea. A message to the rural poor would help them organize independent networks to grow and distribute food, and to aid the hungriest among them. An escrow program could eventually fund small-scale human-

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itarian operations by these independent networks. The threat to fund subversive broadcasts could create strong incentives for Pyongyang to accept a peace agreement and humanitarian aid to preempt information operations that accelerate regime decay.

## 2. Targeting Sanctions for Justice and Peace

Because we care more about the people of North Korea than Kim Jong-il or Kim Jong-un cares about them, our sanctions targeting must be precise and humane. We should avoid blockades against the economy as a whole and target vulnerabilities in the state's capacity to sustain itself through corruption, feed its military-industrial complex, and repress its people. War economies collapse when chokepoints close. In the case of Nazi Germany, the fuel shortages of 1944 and 1945 denied it the means to train pilots, defend its airspace, and fight a war of maneuver on two fronts.<sup>519</sup> Non-violent conflicts must also be waged strategically. It stands to reason that a narrowly focused, well-enforced sanctions campaign against a few of the state's critical vulnerabilities will be more effective, legitimate, and humane than a broadly focused, poorly enforced campaign against the North Korean economy as a whole. Therefore, sanctions and engagement strategies should discriminate between three broad categories of potential targets:

**“Red” entities** are persons and entities within the networks that support the regime's proliferation, and its immune system against liberalism and reform—the military-industrial complex and the security forces. They are under direct state control and either engage in, finance, or facilitate proliferation, terrorism, arms trade, cyberattacks, censorship, slave labor, and human rights abuses—the conduct subject to mandatory sanctions under section 104(a) of the NKSPEA. Some of these entities are designated by the U.S. Treasury Department, the UN Security Council, or the European Union. Others are undesignated but have common directors, personnel, locations, email addresses, and clients. Even when these targets trade in non-sanctioned goods, their profits sustain the destructive and repressive work of their parent organizations. The coalition of like-minded states should seize every favorable opportunity to impede or defund them, or to use their diplomatic influence to have their operatives expelled. This, in turn, will increase the state's dependence on “yellow” entities.

**“Yellow” entities** may include state-owned enterprises like Samhwa, a textile producer that was recently ordered to import corn, beans, and flour to make up for a failed harvest.<sup>520</sup> Textile exports

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519 U.S. Strategic Bombing Survey, *Summary Report, European War*, September 30, 1945, <https://www.anesi.com/ussbs02.htm>.

520 Ha Yoon-ah, “North Korean foreign trade businesses ordered to import corn,” *Daily NK*, November 13, 2018, <https://www.dailynk.com/english/north-korean-foreign-trade-businesses-ordered-to-import-corn/>.

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were banned by UN Security Council Resolution 2375, but the coalition has neither a legal basis for—nor an interest in—blocking Samhwa’s transactions to buy and ship food. In other cases, yellow targets may be quasi-private traders (*donju*) who trade on their political connections and graft to gain access to international trade and finance, usually with China. They will do whatever is profitable, including sanctions violations, illicit activity, or sourcing and transporting food that supplies the markets that feed the hungry. They are often under suspicion by the regime, which tolerates them because they provide goods more efficiently than the state can. The coalition should address each line of commerce these entities engage in on its own merits. It should block transactions involving illicit commerce and allow transactions that benefit the poor. Its objective should be to compel them to shift from sanctioned to non-sanctioned trade, such as food imports. Some evidence suggests that a few state trading companies have already adapted to sanctions in this manner.<sup>521</sup>

**“Green” entities** are non-state traders, who may pay bribes and protection money to the security forces, but who are otherwise independent of state control. They include illegal cross-border smugglers, private-plot (*sotoji*) farmers, and market traders and businesspeople who pay bribes to officials. Most of these entities have minimal access to international finance or export markets, access to which is largely monopolized by Pyongyang. Our objective should not only be to avoid harming green entities, but also to support their proliferation and growth as much as possible—particularly those that support the private agriculture and trade that sustain most North Koreans. As sanctions damage the military-industrial complex and trading companies under its control, the security forces will increasingly rely on bribes from, and extortion of, green entities.<sup>522</sup> The people will also increasingly depend on their produce to survive.

Carefully targeted sanctions can shift the balance of economic and political power from the state

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521 Sung-hui Moon and Kyung-ha Rhee, “North Korean State Trading Firms Raise Cash on Food Imports From China,” *Radio Free Asia*, November 15, 2017, <https://www.rfa.org/english/news/korea/imports-11152017100152.html>.

522 “In sanctioned North Korea, bribery problem worsens,” *Daily NK*, January 9, 2018, <https://www.dailynk.com/english/in-sanctioned-north-korea-bribery/>; Ha Yoon-ah, “North Korea’s Group 109 ratchets up crackdowns in Ryanggang Province,” *Daily NK*, June 18, 2019, <https://www.dailynk.com/english/north-koreas-group-109-ratchets-up-crackdowns-in-ryanggang-province/>; In-hua Kim, “Ask a North Korean: is anyone genuinely loyal to the ruling Kims anymore?,” *Daily NK*, August 12, 2019, [https://www.nknews.org/2019/08/ask-a-north-korean-is-anyone-genuinely-loyal-to-the-ruling-kims-anymore/?c=1565597505727&utm\\_content=bufferae553&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](https://www.nknews.org/2019/08/ask-a-north-korean-is-anyone-genuinely-loyal-to-the-ruling-kims-anymore/?c=1565597505727&utm_content=bufferae553&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer); Kang Mi-jin, “Markets provide relief for ordinary people hurting from sanctions,” January 2, 2018, <https://www.dailynk.com/english/markets-provide-relief-for-ordinar/>. In 2008, the state tried to ban remittances. *North Korea Today*, 112th ed., February 2008, [https://web.archive.org/web/20080315172452/http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/MMAH-7C73D6-full\\_report.pdf/\\$File/full\\_report.pdf](https://web.archive.org/web/20080315172452/http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/MMAH-7C73D6-full_report.pdf/$File/full_report.pdf). The lure of corruption has caused the security forces to extort those who receive remittances rather than punish them.

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toward the “wavering” and “hostile” classes. By empowering the poor, the coalition can help them resist the state’s efforts to squeeze and tax them to make up for revenue lost to sanctions. It can help independent actors earn money to bribe their way out of state control, and to buy indulgences from crackdowns on commerce, information, and dissent. It is in the humanitarian and security interests of the coalition to empower the poor, not to impoverish them. It is in our shared interest to catalyze North Korea’s evolution toward a more humane, equal, and open society. The coalition should pursue these interests through diplomacy, information operations, and the careful targeting of security forces that torment green entities, supporting appropriate humanitarian licenses and exemptions, and using the proceeds of Kim Jong-un’s kleptocracy to support them with alternative payment systems as soon as our evolving technology allows it.

When the necessary communications technology becomes available, coalition nations should open free communications between North Korea’s poor and the wider world, including their relatives in South Korea.<sup>523</sup> They should seek to bypass the state and directly engage the people, providing broadcasts to enhance freedom of information and setting up guerrilla banking channels that enable better access to remittances and cross-border trade. These, in turn, can build up an independent domestic economy and civil society organizations to feed the hungry and heal the sick. An informed population will eventually demand that the resources of their nation be used for their own welfare.

### 3. Escrow and Diplomacy

An escrow model of sanctions enforcement and relief would test the sincerity of Pyongyang’s amenability to transparency, opening, and reform. By forfeiting misspent funds and disbursing them for humanitarian purposes, a coalition can compel Kim Jong-un to make better decisions with the wealth that rightfully belongs to the North Korean people. If Kim Jong-un can still be persuaded to disarm, reform, and accept peaceful coexistence, escrow disbursements can help him make those changes. But he will only choose that path if all other alternatives are closed to him.

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523 See Michael Schuille and Scott Fisher, “Satellite Internet Services—Fostering the Dictator’s Dilemma?,” *The Rand Blog*, April 12, 2021, <https://www.rand.org/blog/2021/04/satellite-internet-services-fostering-the-dictators.html>.



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Sanctions must do more than slow Pyongyang's proliferation or pressure it to return to talks. Until sanctions catalyze either the disarmament of North Korea or the fundamental alteration of its form of government, their most humane use is to defund the police state and build a framework of financial controls such that Pyongyang cannot write a check until an international Receiver endorses it as necessary for the humanitarian needs of the people. Escrow disbursements should always be available for emergency humanitarian aid, without regard to Pyongyang's conduct or negotiating position. That aid must prioritize children, nursing mothers, prisoners, the disfavored classes, and regions and recipients affected by sanctions. It must be closely monitored and distributed transparently and fairly through UN agencies.

Revenue-sharing provisions in the forfeiture laws can encourage allies to join a growing coalition to find and confiscate misspent funds.<sup>524</sup> If enough of Pyongyang's funds come under the Receiver's control, its financial inability to pay and equip its military and security forces, or to provide for its elites, will raise internal pressure to reach a diplomatic resolution. If Pyongyang offers a full declaration of its WMD programs, lets IAEA inspectors in, freezes its nuclear and missile programs, and agrees to begin dismantling them, it will expect sanctions relief to maintain the essential functions of the state as it performs on its obligations. Any such relief must be limited, monitored, and focused on maintaining essential government services. If sanctions demonstrate the potential to threaten the stability of Kim Jong-un's rule, and if the processes of disarmament and verification take years to complete, those may be years the state's leaders would not have without some tailored and limited disbursement from an escrow fund.

As Pyongyang makes progress toward disarmament and reform, the coalition could authorize the Receiver to disburse funds to rehabilitate North Korea's agricultural self-sufficiency, public health, and infrastructure. The Treasury Department could use Section 208(d) of the NKSPEA to license a responsible foreign bank to clear transactions to fund aid and reconstruction.<sup>525</sup> Even so, North Korea's deep history of corruption will require rigorous monitoring of each disbursement.<sup>526</sup> Only when the coalition agrees that Pyongyang has met a set of rigorous conditions similar to those in section 402 of the NKSPEA would the Receiver transfer any balances remaining under the Receiver's control to the North Korean government.

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524 18 U.S.C. § 981(i).

525 22 U.S.C. § 9228(d) (setting strict conditions on monitoring of humanitarian aid provided inside North Korea).

526 United Nations Office of the High Commissioner for Human Rights, *The price is rights: The violation of the right to an adequate standard of living in the Democratic People's Republic of Korea* 19 (2019) ("[C]orruption appears to be endemic in the Democratic People's Republic of Korea. The 2018 Corruption Perceptions Index ranks the country in the bottom 3 per cent of countries worldwide, with its score (14) worse than the previous year (17)").

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True “maximum” pressure for Pyongyang to accept the conditions for a just and lasting peace is not a function of sanctions alone. A whole-of-government strategy must include diplomacy, law enforcement, information operations, intelligence, and the principled declaration assertion of shared values to the world—the people of North Korea most of all. Such a strategy will require time, patience, bipartisan continuity, and multilateral unity that must endure from one administration to the next. Congress’s expression of that bipartisan continuity is now codified in law. That law gives human rights defenders a seat at the tables of policymakers, to counsel them toward a policy that cuts the root of all evil, and that returns the fruit of a nation to its rightful owners.

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## Appendix A:

### UN, U.S. Statutory, and U.S. Regulatory Sanctions in Effect Against North Korea, as of August 2019

	UN Security Council Resolutions (Security Council must agree to suspend). <sup>527</sup>	U.S. Statute (Lifting requires Senate ratification as a treaty or authorizing legislation)	U.S. Executive Order (POTUS may either amend the regulation or grant a specific or general license) <sup>528</sup>
Proliferation	<ul style="list-style-type: none"> <li>North Korea must abandon all nuclear, ballistic missile, and other WMD programs in a complete, verifiable, and irreversible manner.<sup>529</sup></li> </ul>	<ul style="list-style-type: none"> <li>POTUS shall designate any person who knowingly facilitates the export to or import from North Korea any goods, services, or technology that contributes to WMD use or development by any person.<sup>530</sup></li> </ul>	<ul style="list-style-type: none"> <li>Previously prohibited by separate regulations and executive orders.<sup>531</sup></li> <li>OFAC's North Korea Sanctions Regulations (NKSRS) authorize the blocking of all property of any person who knowingly engages in a transaction that funds or facilitates North Korea's WMD programs.<sup>532</sup></li> </ul>

<sup>527</sup> To the extent that multiple UN resolutions sanction the same conduct, this table summarizes the most recent and authoritative provisions.

<sup>528</sup> Most OFAC regulations block all property and interests of property of a person designated by the Secretary of State, in coordination with the Secretary of the Treasury. 31 C.F.R. Ch. V. The requirement for an executive designation under the NKSRS arguably conflicts with Congress's intent in enacting mandatory sanctions in section 104(a) and 104(c) of the NKSPEA.

<sup>529</sup> S/RES/1718 ¶¶ 6-8; S/RES/2087 ¶ 3; S/RES/2094 ¶¶ 5 & 6; S/RES/2270 ¶¶ 3 & 4; S/RES/2321 ¶ 2; UNSC resolution 2356, Non-proliferation/Democratic People's Republic of Korea, S/RES/2356 (2017) ¶ 2; S/RES/2371 ¶ 2; S/RES/2375 ¶¶ 2 & 31; S/RES/2397 ¶ 2.

<sup>530</sup> 22 U.S.C. § 9214(a)(1) & (a)(2).

<sup>531</sup> Exec. Order 13382, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters," (2005); 31 C.F.R. Part 544.

<sup>532</sup> 31 C.F.R. § 510.201(a)(3).

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Arms Trafficking	<ul style="list-style-type: none"> <li>Transactions in arms and related materiel to or from North Korea, or by its representatives, are prohibited.<sup>533</sup></li> </ul>	<ul style="list-style-type: none"> <li>POTUS shall designate any person who knowingly facilitates import from or export to North Korea any weapons, or any services relating to their use or maintenance.<sup>534</sup></li> </ul>	<ul style="list-style-type: none"> <li>Similar in NKSR, but subject to State/Treasury designation.<sup>535</sup></li> </ul>
Luxury Imports & Kleptocracy	<ul style="list-style-type: none"> <li>Member states may not provide luxury goods to North Korea.<sup>536</sup></li> </ul>	<ul style="list-style-type: none"> <li>POTUS shall designate any person who knowingly imports, exports, or re-exports luxury goods to or into North Korea.<sup>537</sup></li> <li>POTUS shall designate any person who knowingly contributes to the North Korean government's (or a North Korean official's) bribery, theft, misappropriation, or embezzlement of public funds.<sup>538</sup></li> </ul>	<ul style="list-style-type: none"> <li>Similar in NKSR, but subject to State/Treasury designation.<sup>539</sup></li> <li>Most exports to North Korea require a license from the Commerce Department. Listed luxury items are subject to a presumption of denial.<sup>540</sup></li> </ul>
Food Exports	<ul style="list-style-type: none"> <li>North Korea may not export food or agricultural products,<sup>541</sup> including fishing rights.<sup>542</sup></li> </ul>	<ul style="list-style-type: none"> <li>POTUS may designate any person who knowingly acquires significant types or amounts of food or agricultural products from North Korea.<sup>543</sup></li> </ul>	<ul style="list-style-type: none"> <li>POTUS may designate a person who imports goods, services, or technology from North Korea to the U.S., whether directly or indirectly.<sup>544</sup></li> </ul>

<sup>533</sup> S/RES/1718 ¶ 8(a)(i); S/RES/1874 ¶¶ 9, 10; S/RES/2270 ¶ 6.

<sup>534</sup> 22 U.S.C. § 9214(a)(9).

<sup>535</sup> 31 C.F.R. § 510.201(a)(3)(iv)(B).

<sup>536</sup> S/RES/1718 ¶ 8(a)(iii).

<sup>537</sup> 22 U.S.C. § 9214(a)(3).

<sup>538</sup> 22 U.S.C. § 9214(g)(1)(F); 31 C.F.R. § 510.201(a)(3)(ix)(F).

<sup>539</sup> 31 C.F.R. § 510.201(a)(3)(ii)(C).

<sup>540</sup> 15 C.F.R. subpt. 746.1.

<sup>541</sup> S/RES2397 ¶ 6.

<sup>542</sup> Id. ¶ 6; see S/RES/2371 ¶ 10.

<sup>543</sup> 22 U.S.C. § 9214(b)(1)(K).

<sup>544</sup> 31 C.F.R. § 510.205; see also Exec. Order 13,570 (2011).

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Censorship	<ul style="list-style-type: none"> <li>Although there are no UN sanctions against censorship per se, the Security Council has designated the Propaganda and Agitation Department, which is responsible for censorship.<sup>545</sup></li> </ul>	<ul style="list-style-type: none"> <li>POTUS shall designate any person who knowingly engages in, is responsible for, or facilitates censorship by the Government of North Korea.<sup>546</sup></li> </ul>	<ul style="list-style-type: none"> <li>Similar in NKSR, but subject to State/Treasury designation. Persons and entities designated include the Propaganda and Agitation Department and its head, Kim Yo-jong, the sister of Kim Jong-un.<sup>547</sup></li> </ul>
Labor Exports	<ul style="list-style-type: none"> <li>Member states must expel North Korean workers by December 22, 2019.<sup>548</sup></li> </ul>	<ul style="list-style-type: none"> <li>POTUS shall designate any person who knowingly engages in or facilitates the exportation of workers by North Korea, or the employment of such workers.<sup>549</sup></li> <li>POTUS shall designate persons employing North Korean laborers, unless it can be certified that the workers receive their own wages and are subject to working conditions consistent with international standards.<sup>550</sup></li> </ul>	<ul style="list-style-type: none"> <li>The property of any person that has engaged in, facilitated, or been responsible for the exportation of workers by the government of North Korea is blocked, if designated by State/Treasury.<sup>551</sup></li> <li>Individuals may file petitions requiring Customs to seize North Korean-made goods as products of forced labor.<sup>552</sup></li> <li>The importation of goods, services, or technology from North Korea, whether directly or indirectly, is prohibited.<sup>553</sup></li> </ul>

<sup>545</sup> S/RES/2397, Annex II.3.

<sup>546</sup> 22 U.S.C. § 9214(a)(4).

<sup>547</sup> 31 C.F.R. § 510.201(a)(3)(iv)(B).

<sup>548</sup> S/RES/2397 ¶ 8.

<sup>549</sup> 22 U.S.C. § 9214(g)(1)(C); 31 C.F.R. § 510.201(a)(3)(ix)(C).

<sup>550</sup> *Id.* § 9241b(c)(1).

<sup>551</sup> 31 C.F.R. § 510.201(a)(3)(iv)(D).

<sup>552</sup> 19 C.F.R. § 12.42.

<sup>553</sup> 31 C.F.R. § 510.205; see also Exec. Order 13,570 (2011).



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Labor Exports (Continued)		<ul style="list-style-type: none"> <li>• Goods made with North Korean labor are presumed to be made with forced labor and are banned from U.S. commerce, but this presumption may be rebutted by clear and convincing evidence.<sup>554</sup></li> <li>• A country's use of North Korean laborers shall be a consideration in its tier ranking under the Trafficking Victims Protection Act.<sup>555</sup></li> </ul>	
Intellectual Property		<ul style="list-style-type: none"> <li>• POTUS shall designate any person who knowingly engages in the counterfeiting of goods that supports North Korea or its officials.<sup>556</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Similar in NKSR, but subject to State/Treasury designation.<sup>557</sup></li> </ul>
Human Rights Abuses		<ul style="list-style-type: none"> <li>• POTUS shall designate any person who knowingly engages in, is responsible for, or facilitates serious human rights abuses by the Government of North Korea.<sup>558</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Similar in NKSR, but subject to State/Treasury designation.<sup>559</sup> Persons and entities designated include Kim Jong-un, the Ministry of State Security, the Ministry of People's Security, and their senior officials.<sup>560</sup></li> </ul>

554 *Id.* § 9241a; *see* 19 U.S.C. § 1307.

555 22 U.S.C. § 7108 (as amended by Pub. L. 115-44, § 321).

556 *Id.* § 9214(a)(6).

557 31 C.F.R. § 510.201(a)(3)(iv)(E).

558 22 U.S.C. § 9214(a)(5).

559 31 C.F.R. § 510.201(a)(3)(iv)(B).

560 U.S. Dep't of Treasury, "Treasury Sanctions North Korean Senior Officials and Entities Associated with Human Rights Abuses," January 11, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/jl0506.aspx>; U.S. Dep't of Treasury, "Treasury Sanctions Additional North Korean Officials and Entities In Response To The North Korean Regime's Serious Human Rights Abuses and Censorship Activities," January 11, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/jl0506.aspx>.

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Cyber Crime	<ul style="list-style-type: none"> <li>Although no UN sanctions specifically target North Korea's cybercrimes, the UN Panel of Experts has repeatedly reported on cybercrimes as violations of the sanctions' financial provisions. Several of the responsible parties, including the Reconnaissance General Bureau, are designated.<sup>561</sup></li> </ul>	<ul style="list-style-type: none"> <li>POTUS shall designate any person who knowingly engages in significant activities undermining cybersecurity on behalf of North Korea.<sup>562</sup></li> </ul>	<ul style="list-style-type: none"> <li>Similar in NKSR, but subject to State/Treasury designation.<sup>563</sup></li> </ul>
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[treasury.gov/press-center/press-releases/Pages/jl0699.aspx](https://treasury.gov/press-center/press-releases/Pages/jl0699.aspx).

561 S/2019/171 ¶¶ 109-15.

562 22 U.S.C. § 9214(a)(7).

563 31 C.F.R. § 510.201(a)(3)(ii)(D).

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Mineral and Metals Trade	<ul style="list-style-type: none"> <li>• North Korea may not export iron or iron ore,<sup>564</sup> gold, titanium ore, vanadium ore, rare earth minerals,<sup>565</sup> copper, nickel, silver, zinc,<sup>566</sup> lead, lead ore,<sup>567</sup> or coal.<sup>568</sup></li> <li>• Member states may not provide industrial machinery, iron, steel, or other metals to North Korea, except spare parts for Air Koryo civilian passenger aircraft.<sup>569</sup></li> </ul>	<ul style="list-style-type: none"> <li>• POTUS shall designate any person who knowingly transfers to or from North Korea precious metal, graphite, raw or semi-finished metals or aluminum, steel, coal, or software, related to North Korea's WMD programs, ruling party, military, intelligence services, security forces, or prison camps.<sup>570</sup></li> <li>• POTUS shall designate any person who knowingly engages in the importation or exportation to North Korea of coal, textiles, seafood, iron, iron ore, crude oil or petroleum products (in excess of UN limits).<sup>571</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Similar in NKSR, but subject to State/Treasury designation.<sup>572</sup></li> <li>• POTUS may block the property of any person who operates in North Korea's mining industry.<sup>573</sup></li> </ul>
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<sup>564</sup> S/RES/2270 ¶ 29.

<sup>565</sup> *Id.* ¶ 30.

<sup>566</sup> S/RES/2321 ¶ 28.

<sup>567</sup> S/RES/2371 ¶ 11.

<sup>568</sup> *Id.* ¶ 9. An exception allows for the export of Russian coal through Rason.

<sup>569</sup> S/RES/2397 ¶ 7. Note the omission of Air Koryo's dual-use Il-76 cargo aircraft from this exemption.

<sup>570</sup> 22 U.S.C. § 9214(a)(8).

<sup>571</sup> 22 U.S.C. § 9214(g)(1)(A); 31 C.F.R. § 510.201(a)(3)(ix)(A).

<sup>572</sup> 31 C.F.R. § 510.201(a)(3)(iv)(B).

<sup>573</sup> *Id.* § 510.201(a)(3)(iv)(A).

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Mineral and Metals Trade (Continued)		<ul style="list-style-type: none"> <li>POTUS may designate any person who knowingly acquires significant quantities of coal, iron, or iron ore from North Korea, in excess of UNSC limits (zero since 2017).<sup>574</sup></li> </ul>	<ul style="list-style-type: none"> <li>POTUS may designate a person who imports goods, services, or technology from North Korea to the U.S.<sup>575</sup></li> </ul>
Fuel Imports	<ul style="list-style-type: none"> <li>Member states may not, collectively, provide North Korea</li> <li>more than 2 million barrels of crude oil, or<sup>576</sup></li> <li>more than 500,000 barrels of refined petroleum products</li> <li>per year, except for humanitarian purposes after advance notice to the UNSC.<sup>577</sup></li> </ul>	<ul style="list-style-type: none"> <li>POTUS may designate any person who knowingly exports refined petroleum products to North Korea, other than for humanitarian use.<sup>578</sup></li> </ul>	<ul style="list-style-type: none"> <li>POTUS may designate and block the property of a person who operates in North Korea's energy industry.<sup>579</sup></li> </ul>

<sup>574</sup> *Id.* § 9214(b)(1)(D).

<sup>575</sup> *Id.* § 510.205; see also Exec. Order 13,570 (2011).

<sup>576</sup> S/RES/2397 ¶ 4.

<sup>577</sup> *Id.* ¶ 5.

<sup>578</sup> 22 U.S.C. § 9214(b)(1)(H).

<sup>579</sup> 31 C.F.R. § 510.201(a)(3)(iv)(A).

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Shipping	<ul style="list-style-type: none"> <li>• Member states must inspect cargo going to or coming from North Korea, or brokered by its nationals.<sup>580</sup></li> <li>• States must prohibit insurance to vessels they have reasonable grounds to believe are involved in violating the resolutions.<sup>581</sup></li> <li>• Member States shall seize, inspect, and freeze any vessel in their ports, and may seize, inspect, and freeze any vessel subject to its jurisdiction in its territorial waters, if they have reasonable grounds to believe that the vessel was involved in violating the resolutions.<sup>582</sup></li> </ul>	<ul style="list-style-type: none"> <li>• POTUS must designate any person who knowingly facilitates the registration of a North Korean vessel or maintains insurance for a vessel owned or controlled by North Korea.<sup>583</sup></li> <li>• POTUS must designate any person who knowingly sells a significant number of vessels to North Korea.<sup>584</sup></li> <li>• U.S. Customs may impose enhanced inspection requirements on cargo coming from ports that fail to inspect cargo to or from North Korea, or brokered by North Korean nationals.<sup>585</sup></li> </ul>	<ul style="list-style-type: none"> <li>• POTUS may designate and block the property of any person who operates in North Korea's transportation industry.<sup>586</sup></li> <li>• Transactions related to the flagging or registration of North Korean vessels are prohibited.<sup>587</sup></li> <li>• Vessels that have landed in North Korea in the last 180 days may not land in the United States.<sup>588</sup></li> </ul>
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580 S/RES/2270 ¶ 18.

581 S/RES/2321 ¶ 22.

582 S/RES/2397 ¶ 9.

583 22 U.S.C. § 9214(a)(13).

584 22 U.S.C. § 9214(g)(1)(D); 31 C.F.R. § 510.201(a)(3)(ix)(D).

585 Id. § 9225.

586 31 C.F.R. § 510.201(a)(3)(iv)(B).

587 Id. § 510.207.

588 Id. § 510.208.



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Shipping (Continued)	<ul style="list-style-type: none"> <li>• Calls on flag states to consent to inspection on the high seas of any vessels they have reasonable ground to believe are violating the resolutions.<sup>589</sup></li> <li>• A flag state may ask the 1718 Committee to release the ship six months later after the state makes adequate arrangements to prevent the vessel from contributing to future violations.<sup>590</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Any vessel used to facilitate any activity prohibited under section 104(a) of the NKSPEA is subject to seizure and forfeiture.<sup>591</sup></li> <li>• Any vessel used to facilitate any activity prohibited under section 104(a) of the NKSPEA is subject to seizure and forfeiture.<sup>592</sup></li> <li>• The Coast Guard may ban ships from U.S. waters that are flagged by states that fail to abide by UN sanctions against North Korea.<sup>593</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Property of persons determined to own, control, or operate any seaport, airport, or land port of entry in North Korea is blocked.<sup>594</sup></li> </ul>
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589 S/RES/2375 ¶¶ 7-8.

590 S/RES/2397 ¶ 9.

591 Id. § 9225.

592 Id. § 9225(d); see, e.g., *infra* note 131.

593 Countering America's Adversaries Through Sanctions Act, Pub. L. No. 115-44, § 315 (2017) (amending 33 U.S.C. § 1221).

594 Id. § 510.201(a)(3)(v)(B).

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Financial	<ul style="list-style-type: none"> <li>• Member states must require enhanced monitoring of transactions with North Korea to prevent UNSCR violations.<sup>595</sup></li> <li>• Member states must ensure that funds sent to North Korea do not facilitate conduct that violates the resolutions.<sup>596</sup></li> <li>• Member states must prohibit correspondent relationships with North Korean banks.<sup>597</sup></li> </ul>	<ul style="list-style-type: none"> <li>• POTUS must block all property of the government of North Korea.<sup>598</sup></li> <li>• Transactions with the Government of North Korea require a license.<sup>599</sup></li> <li>• POTUS must designate any person who knowingly engages in money laundering, the counterfeiting of currency, or bulk cash smuggling that supports North Korea or its officials.<sup>600</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Transactions with the Government of North Korea require an OFAC license.<sup>601</sup></li> <li>• POTUS may block the property of any person who operates in North Korea's financial services industry.<sup>602</sup></li> <li>• North Korea is designated as a jurisdiction of primary money laundering concern and is subject to two special measures.<sup>603</sup></li> <li>• Direct and indirect correspondent relationships with North Korean banks are prohibited.</li> </ul>
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<sup>595</sup> S/RES/2094 ¶ 11.

<sup>596</sup> S/RES/1718 ¶ 8(d).

<sup>597</sup> S/RES/2270 ¶ 33.

<sup>598</sup> 22 U.S.C. § 9214(c).

<sup>599</sup> 22 U.S.C. § 9214(c).

<sup>600</sup> 18 U.S.C. § 2332d. This is a consequence of President Trump's October 2017 designation of North Korea as a state sponsor of terrorism.

<sup>601</sup> 31 C.F.R. § 596.201. This is a consequence of North Korea's designation as a state sponsor of terrorism.

<sup>602</sup> Id. § 510.201(a)(3)(iv)(A).

<sup>603</sup> 31 U.S.C. § 5318A(b)(1)&(5). The imposition of these special measures was pursuant to a NKSPEA mandate that Treasury make specific findings as to money laundering risks emanating from North Korea. See 22 U.S.C. § 9221.

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Financial (Continued)	<ul style="list-style-type: none"> <li>• Member states must expel North Korean bank representatives.<sup>604</sup></li> <li>• Member state banks may not maintain branches in North Korea,<sup>605</sup> or permit North Korean banks to maintain branches in their jurisdictions.<sup>606</sup></li> </ul>	<ul style="list-style-type: none"> <li>• The direct or indirect provision of correspondent banking services to North Korea is prohibited, and POTUS must designate any person who knowingly maintains a correspondent account, whether directly or indirectly, for North Korea.<sup>607</sup></li> <li>• The categories of conduct prohibited by section 104(a) of the NKSPEA are specified unlawful activities under the criminal statute that prohibits money laundering.<sup>608</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Financial institutions must exercise enhanced due diligence to prevent North Korea from accessing the financial system through U.S. correspondent banks.<sup>609</sup></li> <li>• OFAC had designated nearly all North Korean banks by late 2017.<sup>610</sup></li> <li>• POTUS may block the property of any financial institution that facilitates a significant financial transaction— <ul style="list-style-type: none"> <li>• for a person blocked under a recent North Korea-related executive order, or</li> <li>• in connection with trade with North Korea.<sup>611</sup></li> </ul> </li> </ul>
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604 S/RES/2321 ¶ 33.

605 S/RES/2270 ¶ 34.

606 Id. ¶ 33; S/RES/2321 ¶ 33; S/RES/2371 ¶ 15.

607 Id. § 9214(a)(14); see id. § 9221a-9221c.

608 18 U.S.C. § 1956(c)(7). Any property that constitutes proceeds of a specified unlawful activity, or that is involved in a specified unlawful activity, is subject to forfeiture to the United States. Id. § 981.

609 31 C.F.R. § 1010.659; id. § 510.210 & .211.

610 U.S. Dep't of Treasury, "Treasury Sanctions Banks and Representatives Linked to North Korean Financial Networks," September 26, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/sm0165.aspx>.

611 31 C.F.R. § 510.201(a)(3)(vi).

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Trade and Investments	<ul style="list-style-type: none"> <li>• Joint ventures with North Korea are prohibited.<sup>612</sup></li> <li>• Public and private support for trade with North Korea is prohibited.<sup>613</sup></li> </ul>	<ul style="list-style-type: none"> <li>• POTUS may designate any person who conducts a significant transaction in North Korea's mining, transportation, energy, or financial services industries.<sup>614</sup></li> </ul>	<ul style="list-style-type: none"> <li>• The importation or exportation of goods, services, and technology from or to North Korea without an OFAC license is prohibited.<sup>615</sup></li> <li>• Property of persons determined—             <ul style="list-style-type: none"> <li>• to operate in the construction, energy, financial services, fishing, information technology, manufacturing, medical, mining, textiles, or transportation industries;</li> <li>• to have engaged in at least one significant importation from or exportation to North Korea of goods, services, or technology;</li> <li>• to be a North Korean person, including a person that has engaged in commercial activity that generates revenue for North Korea's government or ruling party;</li> </ul>             is blocked.<sup>616</sup> </li> <li>• New investment in North Korea is prohibited.<sup>617</sup></li> </ul>
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612 S/RES/2375 ¶ 18; see S/RES/2371 ¶ 13; S/RES/2270 ¶¶ 15 & 33; S/RES/2094 ¶ 12.

613 S/RES/2321 ¶ 32.

614 22 U.S.C. § 9214(b)(1)(M).

615 31 C.F.R. §§ 501.205-.206; Exec. Order 13570 (2011).

616 31 C.F.R. § 510.208.

617 Pub. L. No. 114-57, div. O, § 203 (amending 8 U.S.C. § 1187(a)(12)(A)(i)(II)). This is a consequence of President Trump's designation of North Korea as a state sponsor of terrorism.

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Travel Sanctions	<ul style="list-style-type: none"> <li>Member states shall deny entry to and expel persons responsible or violations of the resolutions, or acting on behalf of designated entities<sup>618</sup></li> </ul>	<ul style="list-style-type: none"> <li>POTUS shall deny visas to designated persons, and to corporate officers of designated persons <sup>619</sup></li> <li>POTUS shall issue regular travel advisories about the risk of arbitrary detention in North Korea, and about the regime's human rights abuses. <sup>620</sup></li> </ul>	<ul style="list-style-type: none"> <li>Air Koryo is designated by OFAC, but the effect of the designation is limited by statute. <sup>621</sup></li> <li>U.S. passport holders require special State Department validation to travel to North Korea. <sup>622</sup></li> <li>An aircraft that has landed in North Korea in the previous 180 days may not land in the U.S. <sup>623</sup></li> <li>Aliens who traveled to North Korea after March 1, 2011 are ineligible for visa-free travel to the United States. <sup>624</sup></li> </ul>
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<sup>618</sup> S/RES/1718 ¶ 8(d).

<sup>619</sup> 22 U.S.C. § 9214(g)(1)(B); 31 C.F.R. § 510.201(a)(3)(ix)(B).

<sup>620</sup> 22 U.S.C. § 9214(c).

<sup>621</sup> A carve-out in the IEEPA withholds from the President the authority to block transactions ordinarily incident to travel. 50 U.S.C. § 1702(b)(4).

<sup>622</sup> 22 C.F.R. § 51.64.

<sup>623</sup> 31 C.F.R. § 510.208.

<sup>624</sup> Pub. L. No. 114-57, div. O, § 203 (amending 8 U.S.C. § 1187(a)(12)(A)(i)(II)). This is a consequence of President Trump's designation of North Korea as a state sponsor of terrorism.



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<p>Other Enforcement Provisions</p>	<ul style="list-style-type: none"> <li>• Member states must —</li> <li>• freeze all assets of designated persons and prevent persons subject to their jurisdiction from providing economic resources to them.<sup>625</sup></li> <li>• expel persons, including diplomats, who are representatives of designated persons or who are assisting in the evasion of sanctions.<sup>626</sup></li> </ul>	<ul style="list-style-type: none"> <li>• POTUS must designate any person who knowingly facilitates a transfer of property that facilitates a violation of applicable UNSCRs.<sup>627</sup></li> <li>• POTUS shall freeze all assets of the North Korean government.<sup>628</sup></li> <li>• All property that constitutes proceeds of, or is involved in, conduct prohibited under 22 U.S.C. § 9214(a), is subject to forfeiture to the United States.<sup>629</sup></li> <li>• Knowingly engaging in, facilitating, or conspiring to engage in or facilitate a transaction prohibited under 22 U.S.C. § 9214(a) is prohibited and punishable under several criminal statutes.<sup>630</sup></li> <li>• POTUS may designate any person who facilitates a violation of an applicable UN Security Council resolution.<sup>631</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Facilitation of sanctions violations is punishable by 20 years in prison, a \$1 million fine, and a \$250,000 civil penalty.<sup>632</sup></li> </ul>
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625 S/RES/1718 ¶ 8(d).

626 S/RES/2094 ¶ 10; S/RES/2270 ¶¶ 13 & 14.

627 22 U.S.C. § 9214(g)(1)(B); 31 C.F.R. § 510.201(a)(3)(ix)(B).

628 22 U.S.C. § 9214(c).

629 18 U.S.C. § 981(a); Id. § 1956(a)(7).

630 Id § 1956 (money laundering); 50 U.S.C. § 1705 (the International Emergency Economic Powers Act); 18 U.S.C. § 371 (conspiracy); 31 U.S.C. § 5321 (civil penalties for violating Patriot Act special measures); id. § 5322 (criminal penalties for same).

631 22 U.S.C. § 9214(b)(1).

632 31 C.F.R. § 510.212; see 50 U.S.C. § 1705 (providing for criminal and civil penalties).

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## Appendix B: Model Legislation to Create an Escrow Fund for the Proceeds of North Korean Kleptocracy

118TH CONGRESS

1ST SESSION    H.R. \_\_\_\_\_

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### A BILL

To strengthen sanctions against the Government of North Korea, and to authorize the escrow and disbursement of blocked and forfeited proceeds of kleptocracy of the Government of North Korea to fund the enforcement of sanctions, programs to promote freedom of information in North Korea, and monitored humanitarian aid for the North Korean people, and for other purposes.

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “In North Korea, Money Is the Root of All Evil Act” or “North Korea MIRAE Act.”

#### SEC. 2. ORGANIZATION OF ACT INTO TITLES; TABLE OF CONTENTS.—

The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Organization of Act into divisions; table of contents.

Sec. 3. Definitions.

### TITLE I - IDENTIFICATION OF PROCEEDS OF MONEY LAUNDERING AND KLEPTOCRACY BY SENIOR OFFICIALS OF THE GOVERNMENT OF NORTH KOREA

Sec. 101. Grants to conduct research on financial networks and financial methods of the government of North Korea.

Sec. 102. Sharing of financial information with qualifying international organizations.

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## TITLE II – FORFEITURE OF PROCEEDS OF KLEPTOCRACY BY THE GOVERNMENT OF NORTH KOREA

Sec. 201. Amendments to North Korea sanctions authorities.

Sec. 202. Forfeiture of property involved in the evasion of sanctions against the government of North Korea and special measures against money laundering by the government of North Korea.

## TITLE III – USE OF PROCEEDS OF KLEPTOCRACY BY THE GOVERNMENT OF NORTH KOREA TO FUND FOOD, MEDICINE, HUMANITARIAN ASSISTANCE, AND THE ENFORCEMENT OF SANCTIONS

Sec. 301. Escrow authority for blocked proceeds of kleptocracy.

Sec. 302. Escrow authority for fines, penalties, and forfeitures of proceeds of kleptocracy.

Sec. 303. Administration of funds.

### SEC. 3. DEFINITIONS.

[Text omitted.]

## TITLE I - IDENTIFICATION OF PROCEEDS OF MONEY LAUNDERING AND KLEPTOCRACY BY SENIOR OFFICIALS OF THE GOVERNMENT OF NORTH KOREA

### SEC. 101. AMENDMENT AUTHORIZING GRANTS FOR RESEARCH INTO FINANCIAL NETWORKS OF THE GOVERNMENT OF NORTH KOREA.

Title I of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. Ch. 99, subch. I), as amended, is further amended by inserting the following section 106 after section 105:

### SEC. 106. GRANTS TO CONDUCT RESEARCH ON FINANCIAL NETWORKS AND FINANCIAL NETWORKS OF THE GOVERNMENT OF NORTH KOREA.

(a) In general.—The President, acting through the Attorney General, the Secretary of State, or the Secretary of the Treasury, may provide grants to, and enter into cooperative agreements with, states, units of local government, nongovernmental organizations, and qualifying international organizations, to conduct research and investigation to further

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the enforcement of —

- (1) this Act;
- (2) any applicable executive order or applicable regulation; or
- (3) any applicable United Nations Security Council resolution.

(b) Research grants and cooperative agreements funded pursuant to this section shall include research or investigation of the following subject areas:

- (1) The methods used by the Government of North Korea to deal in, transact in, or conceal the ownership, control, or origin of, property owned or controlled by the Government of North Korea;
- (2) The export by any person to any country of any goods, services, or technology from North Korea, or that are made in whole or in part with materials from North Korea or labor provided by the Government of North Korea;
- (3) The human trafficking of citizens or nationals of North Korea;
- (4) The provision by any financial institution of direct or indirect correspondent account services, or other financial services, to the Government of North Korea or any North Korean financial institution;
- (5) The failure of any financial institution to comply with regulations promulgated by the Secretary of the Treasury requiring enhanced due diligence to prevent the Government of North Korea from accessing the financial system;
- (6) The failure of any financial institution to fully implement an applicable United Nations Security Council resolution;
- (7) The failure of any United Nations member state or national government to fully implement an applicable United Nations Security Council resolution;
- (8) The identification of any property in which the Government of North Korea, a Senior North Korean Official, or a designated person maintains a substantial beneficial ownership interest;
- (9) The identification of any property that is subject to blocking or forfeiture under an applicable executive order or section 104 of this Act, as amended;
- (10) The export of any goods, services, or technology that facilitates censorship or severe human rights abuses by the Government of North Korea; and
- (11) The effectiveness of law enforcement and diplomatic initiatives of federal, state, and foreign governments to comply with the provisions of applicable United Nations Security Council resolutions.

(c) Interagency Coordination.—The President shall ensure that any information collected pursuant to subsection (a) is shared among the agencies described in section 102(b) of this Act.

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(d) Qualifying international organization defined.—The term “qualifying international organization” shall have the meaning given such term in Section 314(b) of the USA PATRIOT Act, Pub. L. 107-56, (31 U.S.C. 5311(b) note), as amended by this Act.

## SEC. 102. SHARING OF FINANCIAL INFORMATION WITH QUALIFYING INTERNATIONAL ORGANIZATIONS.

(a) Section 314(b) of the USA PATRIOT Act, Pub. L. 107-56, (31 U.S.C. 5311(b) note) is amended by—

(1) striking the words “2 or more financial institutions and any association of financial institutions;”

(2) substituting therefor the words “2 or more financial institutions, any association of financial institutions, and any qualifying international organization;”

(3) inserting the following new subsection (e) after subsection (d):

(e) Qualifying international organization defined.—As used in this section, the term “qualifying international organization” means—

(1) a Panel of Experts acting under the authority of the United Nations Security Council;

(2) the Financial Action Task Force;

(3) the Stolen Assets Recovery Initiative of the World Bank;

(4) the International Monetary Fund; and

(5) any other international organization as the Secretary of the Treasury may certify, that assists financial institutions to safeguard international financial or commercial systems against money laundering, kleptocracy, the financing of terrorism, the trafficking in arms or related material, human trafficking, or the proliferation of weapons of mass destruction, including the financing of any such activity.

## TITLE II — FORFEITURE OF PROCEEDS OF KLEPTOCRACY BY THE GOVERNMENT OF NORTH KOREA

### SEC. 201. AMENDMENTS TO NORTH KOREA SANCTIONS AUTHORITIES.

(a) **Penalties for Prohibited Conduct.**—Section 104 of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9214(f)), as amended, is further amended by inserting the following subsection (g) after subsection (f), and by renumbering the subsequent subsections:



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(g) Prohibited Conduct.—The conduct described in paragraphs (1) through (15) of subsection (a) is prohibited.

(1) It shall be unlawful for any person to engage in, conspire or attempt to engage in, or cause any of the conduct described in subsection (a) and prohibited by this subsection, or to knowingly evade or avoid such a prohibition, or any regulation promulgated to enforce such a prohibition.

(2) Penalties.—A person who violates this subsection shall be punished as provided in section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705), without regard to whether the President has designated the person under such Act or under this section.

[subsections (b) through (e) omitted.]

### **SEC. 202. FORFEITURE OF PROPERTY INVOLVED IN THE EVASION OF SANCTIONS AGAINST THE GOVERNMENT OF NORTH KOREA AND SPECIAL MEASURES AGAINST MONEY LAUNDERING BY THE GOVERNMENT OF NORTH KOREA.**

(a) Section 981(a)(1) of title 18, United States Code, is amended by striking the existing subparagraph (I) and by inserting therefor the following text:

“(I) Any property, real or personal, foreign or domestic, that is involved in conduct prohibited under section 104(a) or 104(g) of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9214(g)), Pub. L. 114-122, as amended, or which constitutes or is derived from proceeds traceable to such conduct.

(b) Section 981(e) of title 18, United States Code, is amended—

(1) by striking the word “or” at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting a semicolon and the word “or” therefor; and

(3) by inserting after paragraph (7) the following new paragraph:

“(8) in the case of property referred to in subsection (a)(1)(I), in accordance with section 306(b) of the North Korea Sanctions and Policy Enhancement Act, Pub. L. 114-122, as amended.

(c) AMENDMENT TO DEFINITION OF “CIVIL FORFEITURE STATUTE.” Section

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983(i)(2)(D) of Title 18, United States Code, is amended—

(1) by striking the words “or the North Korea Sanctions Enforcement Act of 2016;” and

(2) by substituting therefor the words “the North Korea Sanctions and Policy Enhancement Act of 2016”.

(d) AMENDMENT TO DEFINITION OF SPECIFIED UNLAWFUL ACTIVITY.—Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by striking the words “or section 104(a) of the North Korea Sanctions Enforcement Act of 2016 ;”

(2) by substituting therefor the words “or section 104(a) or 104(g) of the North Korea Sanctions and Policy Enhancement Act of 2016”.

## **TITLE III – USE OF PROCEEDS OF KLEPTOCRACY BY THE GOVERNMENT OF NORTH KOREA TO FUND FOOD, MEDICINE, HUMANITARIAN ASSISTANCE, AND THE ENFORCEMENT OF SANCTIONS**

### **SEC. 301. ESCROW AUTHORITY FOR BLOCKED PROCEEDS OF KLEPTOCRACY.**

The North Korea Sanctions and Policy Enhancement Act, Pub. L. 114-122, as amended, is further amended by inserting the following new section after section 304 of such Act:

### **SEC. 305. ESCROW AUTHORITY FOR USE OF BLOCKED PROPERTY OF THE GOVERNMENT OF NORTH KOREA AND SENIOR NORTH KOREAN OFFICIALS FOR HUMANITARIAN PURPOSES.**

(a) RELEASE OF FUNDS AUTHORIZED.—The President may promulgate regulations, rules, and policies to block, receive, transfer, deal in, and the release property of the Government of North Korea that is blocked under section 104 of this Act, or the International Emergency Economic Powers Act, Pub. L. 95-223, as amended, to international humanitarian organizations to purchase, import, and distribute to the North Korean people food, medicine, and humanitarian supplies.

(b) ESCROW AGREEMENTS AUTHORIZED.—In carrying out the authorities described in this section, the Secretary of the Treasury may—

(1) enter into, license, authorize, direct, and compel any appropriate official, or the Federal Reserve Bank of New York, as fiscal agent of the United States, to enter into escrow or related agreements with a foreign financial institution with respect to blocked property of the Government of North Korea or any Senior North Korean Official, for use by the people of North Korea for the humanitarian purposes described in subsection (a);

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(2) license, authorize, direct, and compel the Special Envoy, as authorized in section 306, to receive certain money and other assets in which the Government of North Korea or a Senior North Korean official has an interest and to hold or transfer such money and other assets, and any interest earned thereon, in such a manner as he deems necessary to fulfill the purposes described in subsection (a).

(c) any property held pursuant to subsection (b) may be held in interest-bearing form and where possible shall be invested with or through the entity holding the money or asset on the date of enactment of this Act.

(d) **LIMITATION ON USE OF FUNDS.**—The release of property pursuant to this section shall be subject to the certification described in section 208(b)(2) of this Act, that the food, medicine, and humanitarian assistance purchased with funds released pursuant to this section will be distributed in a non-discriminatory manner, and solely on the basis of humanitarian need.

(e) **RULE OF CONSTRUCTION.**—Nothing in this section shall be interpreted as providing independent authority for the confiscation of property of the Government of North Korea or any Senior North Korean Official.

### **SEC. 302. ESCROW AUTHORITY FOR FINES, PENALTIES, AND FORFEITURES OF PROCEEDS OF KLEPTOCRACY.**

(a) The North Korea Sanctions and Policy Enhancement Act, Pub. L. 114-122, as amended, is further amended by inserting the following new section after section 305 of such Act:

### **SEC. 306. REVEREND KIM DONG SHIK FUND FOR FOOD, PEACE, AND FREEDOM.**

(a) **ESTABLISHMENT.**—

(1) **Findings.**—The Reverend Kim Dong Shik, a permanent resident of the United States, was assisting North Korean child famine refugees in China until 2000, when North Korean government agents kidnapped him, abducted him to North Korea, and murdered him.

(2) **Establishment.**—There is established in the Treasury of the United States a fund to be known as the Reverend Kim Dong Shik Fund for Food, Peace, and Freedom (in this section referred to as the “Fund”), to commemorate the sacrifices of Rev. Kim and advance the causes for which he gave his life.

(b) **DEPOSITS.**—Upon the satisfaction of all judgments described in subsection 404(c) (2) of Pub. L. 114-113, div. O, title IV (Dec. 18, 2015), as amended (24 U.S.C. 20144(c) (2)), and as provided in subparagraph (e)(2)(C) of such section, in which the foreign gov-

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ernment described in such section is the Government of North Korea, the President shall deposit into the Fund, and shall transfer and consolidate on the books of the Treasury in a special account for the purposes described in subsection (c), all revenues derived from—

(1) fines, penalties, and forfeitures of property constituting proceeds of, derived from, or involved in any conduct—

(A) for which a person may be designated under section 104 of this Act or any amendment enacted under such Act;

(B) any applicable Executive Order or Applicable Regulation; or

(C) any conspiracy or attempt to violate the authorities described in subparagraphs (A) or (B), or to engage in any conduct for which a person may be designated under such subparagraphs.

(2) all amounts paid in lieu of the commencement of, or paid in settlement of, criminal, civil, or administrative proceedings by the President—

(A) to enforce the authorities described in subparagraphs (A) and (B) of paragraph (1).

(B) to forfeit any property that is alleged—

(i) to have been involved in any of the conduct described in subsection (b)(1), or to be property traceable to such property; or

(ii) to constitute, or to be derived from proceeds traceable to, any of the conduct described in subsection (b)(1).

(3) Exception for transfers of forfeited property to foreign governments.—

(A) The Special Envoy is authorized to transfer funds to foreign governments in accordance with the procedures, and under the criteria, described in section 981(i) of title 18, United States Code.

(B) Funds transferred in accordance with subparagraph (A) of this subsection shall not be treated as deposits into the Fund for purposes of the authorizations described in subsection (c).

(c) PURPOSES AUTHORIZED FOR DISBURSEMENTS.—There are authorized to be appropriated from the Fund each fiscal year, in such amounts as may be specified in an Act making appropriations for the administration of the Fund, amounts not exceeding—

(1) For the salaries and benefits of the personnel described in section 102(b) of this Act, \$10,000,000, including for the reimbursement of details of personnel among federal agencies and departments;

(2) For other necessary expenses of investigations, intelligence collection, and law enforcement to carry out the authorities described in subsection (b)(1)(A) through (b)(1)(D), \$20,000,000;

(3) to provide grants to, and enter into cooperative agreements with, states, units of lo-

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cal government, nongovernmental organizations, and relevant international organizations to carry out the purposes of the authorities described in subsection (b)(1)(A) through (b)(1)(D); \$10,000,000;

(4) to provide grants to persons and organizations for the purposes described in section 106 of this Act, \$5,000,000;

(5) to assist foreign governments and agencies of foreign governments to improve their capacity to enforce any Applicable United Nations Security Council Resolution, or any of the authorities described in paragraph (b)(1), \$20,000,000;

(6) to provide grants to facilitate and support the expansion of radio, television, and other broadcasting to the people of North Korea by nongovernmental organizations, \$20,000,000;

(7) to provide grants to support organizations or persons that support or promote independent journalism inside North Korea, whether for North Korean or international audiences, \$10,000,000;

(8) to provide grants or to take such other actions as may be necessary to increase the availability of information inside North Korea, including by procuring and distributing radios, USB drives, micro SD cards, audio players, video players, electronically readable devices, cell phones, wireless communications, web pages, internet, and other electronic media that share information, \$20,000,000;

(9) to provide grants to support organizations or persons that produce art, literature, music, film, and other artistic and cultural content for the people of North Korea to promote human rights, political and humanitarian reforms, and the development of a more peaceful, open, tolerant, humane, and prosperous society in North Korea, \$20,000,000;

(10) to provide grants to support organizations or persons that support or promote human rights, democracy, the rule of law, private agriculture, and the development of a market economy inside North Korea, \$10,000,000;

(11) to provide grants to support organizations or persons that provide humanitarian assistance to North Korean refugees, defectors, migrants, victims of human trafficking, and other persons who are outside of North Korea without the permission of the Government of North Korea, including by providing support for refugee housing and resettlement outside of the United States, \$10,000,000;

(12) to provide support to international and non-governmental organizations providing food, medicine, medical care, and other forms of humanitarian assistance inside North Korea, \$25,000,000, provided that any such disbursements—

(A) shall be subject to the certification described in section 208(b)(2) of this Act, that the food, medicine, and humanitarian assistance purchased with funds released

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pursuant to this section will be distributed in a non-discriminatory manner, and solely on the basis of humanitarian need;

(B) shall be available only for the purchase of food, medicine, humanitarian supplies, and for the shipment of food, medicine, and humanitarian supplies to the custody of a United Nations humanitarian organization at the most convenient port of entry into North Korea; and

(C) shall not be available to provide any cash, funds, payment, or financial assistance to the Government of North Korea, or to procure any goods, services, or technology from the Government of North Korea, whether directly or indirectly.

(13) to carry out the purposes described in Section 491 of the Foreign Assistance Act of 1961 (22 U.S.C. 2292), \$200,000,000 provide that such funds shall only be available to the extent the President determines that the recipient organization is in compliance with the accountability controls described in section 208(b) of this Act, as amended;

(14) upon certification by the President of the conditions described in section 401 of this Act, as amended—

(A) to carry out projects to support private agriculture, fisheries, food processing, and transportation to produce and distribute food for the exclusive consumption of the people of North Korea, \$10,000,000;

(B) to provide medical training, facilities, and equipment to provide medical care for the people of North Korea, \$10,000,000; and

(C) upon the second consecutive certification by the President of the conditions described in section 401 of this Act, as amended, for the repair and rehabilitation of civilian infrastructure inside North Korea, \$25,000,000; and

(15) for salaries and other necessary expenses for the administration of the Fund pursuant to section 307 of this Act, including for the reimbursement of details of personnel among departments and agencies of the federal government, \$5,000,000.

(d) Amendment to United States Victims of State Sponsored Terrorism Fund Clarification Act.—Section 1701 of the United States Victims of State Sponsored Terrorism Fund Clarification Act, Pub. Law 116–69 (34 U.S.C. 20144) is amended by inserting the following new subparagraph (C) below subparagraph (e)(2)(B):

(C) Transfer into the Fund of certain funds and property involving North Korea.—If the state sponsor of terrorism for purposes of subparagraph (e)(2)(A) is the Government of North Korea, the Special Master shall, with respect to any funds or net proceeds described in such subsection received by the United States



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for deposit into the Fund—

(i) notwithstanding paragraph (e)(2)(A) of this section, transfer to the fund described in section 306 of the North Sanctions and Policy Enhancement Act, Pub. Law 114-122, as amended—

(I) if the amount of such funds and net proceeds received by the United States for deposit into the Fund in that fiscal year is less than \$30 million, seventy-five percent of such funds and net proceeds, which shall be available for the purposes described in paragraphs (c)(1) and (c)(2) of such section;

(II) if the amount of such funds and net proceeds received by the United States for deposit into the Fund in that fiscal year is greater than \$30 million, fifty percent of such funds and net proceeds, which shall be available for any of the purposes described in subsection (c) of such section; and

(III) twenty-five percent of the funds and net proceeds described in clause (e)(2)(A)(ii), which shall be available for any of the purposes described in subsection (c) of such section.

(ii) with respect to payments by the Fund to claimants awarded compensatory damages against the Government of North Korea, upon paying each such claimant an amount equal to the limitation described in subparagraph (d)(3)(A)(ii) of this section, transfer any additional funds and property received by the United States for deposit into the Fund, as described in paragraph (e)(2)(A) of this section, into the fund described in section 306 of the North Sanctions and Policy Enhancement Act, Pub. L. 114-122, as amended.

(iii) Voluntary Donations to the Reverend Kim Dong Shik Fund for Food, Peace & Freedom.—

(I) A claimant against the Fund for compensatory damages awarded against the Government of North Korea may direct the Special Master to donate any portion of a payment to that claimant to the fund described in section 306 of the North Sanctions and Policy Enhancement Act, Pub. L. 114-122, as amended, to be used for any of the purposes described in subsection (c) of such section.

(II) A donation described in subclause (I) of this clause shall be considered a payment from the Fund to the claimant from the Fund for purposes of subsection (d).

(iv) If the state sponsors of terrorism described in subparagraph (e)(2)(A) include the Government of North Korea and at least one other state sponsor of terrorism, the Special Master shall, in consultation with the Secretary of the Treasury and the Attorney General, allocate a proportion of the funds to be disbursed

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or transferred under this subparagraph in proportion to the amount of such criminal and civil fines, penalties, and forfeitures arising from conduct that involves the Government of North Korea.

## (e) REPORT REQUIRED.—

(1) Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter, the President shall provide a report to the appropriate congressional committees describing amounts available in the Fund, amounts obligated and expended for each purpose described in subsection (c), and any amounts transferred out of the Fund.

(2) FORM.—The report required under this subsection shall be submitted in unclassified form but may include a classified annex.

(f) TRANSFER.—To prevent the accumulation of excessive surpluses in the Fund, in any fiscal year an amount specified in an annual appropriation law that is available after the obligation of amounts authorized to be appropriated in this section may be transferred out of the Fund and deposited, in such proportions as the President may determine, into the funds established under—

(A) section 1701 of the United States Victims of State Sponsored Terrorism Fund Clarification Act, Pub. Law 116-69 (34 U.S.C. 20144);

(B) section 524(c) of title 28, United States Code; and

(C) section 9703 of title 31, United States Code.

## (f) RULES OF CONSTRUCTION.—

(1) Nothing in this section shall be construed to restrict or limit the authority of the President under section 9703 of title 31, United States Code, or under section 524(c) of title 28, United States Code, or to limit the availability of other appropriations for the purposes described in subsection (c).

(2) Any appropriation under this section shall be without prejudice to, and in addition to, any other funds Congress may appropriate for such purpose.

(3) The funds authorized and appropriated in accordance with this section shall remain available until consolidated in accordance with subsection (e), or until expended, without fiscal year limitation.

## SEC. 303. ADMINISTRATION OF FUNDS.

The North Korea Sanctions and Policy Enhancement Act, Pub. L. 114-122, as amended, is further amended by inserting the following new section after section 306 of such Act:

## SEC. 307. ADMINISTRATION, AUDIT, AND DISBURSEMENT OF BLOCKED

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## AND FORFEITED PROCEEDS OF KLEPTOCRACY OF THE GOVERNMENT OF NORTH KOREA.

(a) The Special Envoy appointed pursuant to section 107 of the North Korean Human Rights Act of 2004, Pub. L. 108-333 (22 U.S.C. 7817), shall administer the collection, administration, audit, and disbursement of—

(1) any blocked property of the Government of North Korea, or of a Senior North Korean Official, as described in section 305; and

(2) any property deposited into the fund described in section 306.

(b) The Attorney General shall appoint a Deputy Special Envoy for Anti-Kleptocracy Assistance, who shall —

(1) advise and assist the Special Envoy with the administration of programs authorized under paragraphs (2) through (5) of section 306(c).

(2) seek the cooperation of a coalition of United Nations member states and jurisdiction with the enforcement of this Act, and of applicable United Nations Security Council resolutions, including by making the greatest appropriate use of the authority in section 981(i) of title 18, United States Code.

(c) The Administrator of the United States Agency for International Development shall appoint a Deputy Special Envoy for Humanitarian Operations, who shall—

(1) advise and assist the Special Envoy with respect to any programs funded by the funds described in paragraphs (1) and (2) of subsection (a) for the purposes described in section 301(a) or paragraphs (6) through (14) of section 302(c); and

(2) advise and assist the Special Envoy in ensuring that programs and operations inside North Korea that are funded, in whole or in part, by the funds described in paragraphs (1) and (2) of subsection (a) are administered in a transparent, fair, and non-discriminatory manner, solely on the basis of assessed humanitarian needs, and without the exclusion of any persons from the benefits of such programs for political reasons, to include persons incarcerated by the Government of North Korea; and

(3) inspect and audit of any programs and operations described in paragraph (1) of this subsection, as necessary.

(d) The Federal Reserve Bank of New York shall appoint a Deputy Special Envoy for Finance and Accounting, who shall serve as the fiscal agent of the United States as necessary for the collection, administration, and disbursement of the funds described in paragraphs (1) and (2) of subsection (a).

(e) International Coordination.—

(1) The Administration shall, in coordination with the United States Ambassador to the United Nations, seek the authorization of the United Nations Security Council before disbursing funds for any purpose or project that requires such authorization pur-

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suant to applicable United Nations Security Council resolutions.

(2) It is the sense of Congress that the Special Envoy should coordinate the priorities, expenditures, and disbursements from the Fund, and from the funds described in section 301(a), with allies of the United States, to include—

- (A) Australia,
- (B) Canada,
- (C) Japan,
- (D) the European Union,
- (E) the United Kingdom,
- (F) New Zealand,
- (G) the Republic of Korea, and

(H) any other United Nations member state or jurisdiction that President certifies to be in full, good-faith compliance with applicable United Nations Security Council resolutions.





The Committee for  
Human Rights in North Korea  
북한인권위원회