

# BACKGROUND

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## Time to Get North Korean Sanctions Right

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### Abstract

*The U.S. response to North Korea's nuclear threats has been characterized by firm rhetoric and minimalist measures, in contrast to stronger punitive measures imposed on Iran. Yet in terms of real capabilities, North Korea poses a greater nuclear threat to the U.S. and its allies than Iran. Furthermore, North Korea's economic and political isolation could make its regime more vulnerable to coercive financial pressure, provided that the Chinese leadership is persuaded that continuing to shelter its recalcitrant ally will only increase the potential for a crisis on the Korean Peninsula. The Obama Administration should overcome its reluctance to impose more extensive punitive measures against Pyongyang and the foreign entities that assist its nuclear and missile programs.*

Responding to North Korea's third nuclear test in 2013, President Barack Obama declared that North Korea's nuclear weapons program was a "threat to the U.S. national security and to international peace and security."<sup>1</sup> The U.N. Security Council similarly warned that North Korea's nuclear and missile threats posed "a clear threat to international peace and security."<sup>2</sup> In 2009, Obama had vowed that North Korean "belligerent, provocative behavior that threatens neighbors will be met with significant, serious enforcement of sanctions."<sup>3</sup>

Yet despite these unambiguous warnings and unequivocal vows of resolute response, the United States continues to implement timid policies that only incrementally increase punishments on Pyongyang for its repeated defiance of the international community.

### KEY POINTS

- Despite vows of resolute response and tough sanctions, the United States continues to implement timid policies that only incrementally increase punishments on Pyongyang for its repeated defiance of the international community. By contrast, the U.S. has led the charge for far more pervasive and compelling measures against Iran.
- The United States should use its action against Iran as a model and impose the same severity of targeted financial measures against North Korea. The U.S. has sufficient tools. It has just lacked the resolve to use them.
- Sanctions are most effective when integrated into a comprehensive strategy that engages all the instruments of national power. Not fully utilizing any element of national power reduces the effectiveness of U.S. foreign policy.
- By adopting a sanctions policy of timid incrementalism, the U.S. squandered the opportunity to impede progress on North Korea's nuclear and missile programs more effectively and coerce compliance with U.N. resolutions.

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The United States still pulls its punches when targeting financial measures against North Korea and its supporting entities, and the U.S. has shied away from effective unilateral action since 2006. By contrast, the U.S. has led the charge for far more pervasive and compelling measures against Iran, despite Tehran's greater diplomatic and economic interaction with the rest of the world.

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## Sanctions and engagement are most effective when integrated into a comprehensive strategy that engages all of the instruments of national power.

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The United States should use its action against Iran as a model and impose the same severity of targeted financial measures against North Korea. While there are mitigating factors, North Korea's limited nodes of economic contact with the outside world and lack of a valuable global commodity—such as Iran's oil—make it vulnerable to enhanced economic pressure.

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

Sanctions<sup>4</sup> are punitive measures intended to deter, coerce, and compel changes in another country's policy and behavior. The debate over the utility of financial pressure in foreign policy is usually depicted in binary fashion, such as whether the U.S. should use sanctions or engagement. The reality, of course, is that sanctions and engagement—along with economic assistance, military deterrence, alliances, and public diplomacy—are diplomatic tools to influence the behavior of other nations. These tools can be employed in a range of options and combinations.

Rather than being used in isolation, sanctions and engagement are most effective when integrated into a comprehensive strategy that engages all of the instruments of national power. Not fully utilizing any element of national power reduces the effectiveness of U.S. foreign policy.

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

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

The U.N. Security Council established a Panel of Experts to review member countries' implementation

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1. Calum MacLeod and Sunny Yang, "U.N. Condemns North Korea Nuclear Test, Promises Action," *USA Today*, February 12, 2013, <http://www.usatoday.com/story/news/world/2013/02/11/earthquake-north-korea-nuclear-test/1911587/> (accessed September 25, 2013).

2. U.N. Security Council, Resolution 2094, S/RES/2094 (2013), March 7, 2013, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2094\(2013\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2094(2013)) (accessed September 25, 2013).

3. Barack Obama and Lee Myung-Bak, "Remarks by President Obama and President Lee Myung-Bak of the Republic of Korea in Joint Press Availability," June 16, 2009, <http://www.whitehouse.gov/the-press-office/remarks-president-obama-and-president-lee-republic-korea-joint-press-availability> (accessed September 25, 2013).

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

of Security Council resolutions imposed on North Korea. In June 2013, the panel concluded:

[W]hile the imposition of sanctions has not halted the development of nuclear and ballistic missile programs, it has in all likelihood considerably delayed the [North Korean] timetable and ... choked off significant funding which would have been channeled into its prohibited activities. [It] has hampered its arms sales and illicit weapon programs. The resolutions are also crucial in preventing the country from exporting sensitive nuclear and missile technology.<sup>5</sup>

The narrow perspective on sanctions also overlooks viable options for turning up the pressure. The choice is not as simple as sanctions versus engagement. North Korea has withstood sanctions in the past because nations drawing this distinction too starkly were eager to abandon them in return for fecklessly buying Pyongyang's way back to the status quo or for North Korea's simply returning to the negotiating table.

### **Tougher Sanctions on Iran Than on North Korea**

North Korea has withdrawn from the Non-Proliferation Treaty, developed and tested nuclear weapons, declared that its nuclear program is for military purposes, and threatened the United States and its allies with nuclear annihilation. As great a threat as Iran's nuclear program is, Tehran has done none of these things. Yet the U.S., the European Union, and the United Nations have imposed far less restrictive sanctions against Pyongyang than against Tehran.

**Iran.** For decades, the United States has imposed sanctions on Iran for a variety of transgressions. President Jimmy Carter barred U.S. purchase of Iranian oil in response to Iran's taking U.S. diplomatic hostages in 1979. The sanctions were subsequently

removed but then reimposed by President Ronald Reagan in 1987 because of Iran's "active support of terrorism" and "aggressive and unlawful action against U.S. flag vessels ... in the international waters of the Persian Gulf."<sup>6</sup>

In 1995, President Bill Clinton signed Executive Order 12957 banning U.S. development of petroleum resources in Iran. Under congressional pressure, Clinton expanded U.S. financial measures against Iran by signing the Iran-Libya Sanctions Act of 1996 (ILSA, later renamed the Iran Sanctions Act), which authorized sanctions on foreign companies and individuals investing \$20 million or more in one year in Iran's energy sector or selling threshold amounts of refined petroleum to Iran. In response to strong European objections, Clinton never invoked the sanctions.<sup>7</sup>

### **The U.S., the European Union, and the United Nations have imposed far less restrictive sanctions against Pyongyang than against Tehran.**

President George W. Bush expanded pressure against Iran by sanctioning Iranian banks. Financial measures were also imposed on the Revolutionary Guards and three of Iran's largest banks. The U.S. actions pressured other countries to sever financial transactions with these groups. Under President Obama, the U.S. has targeted Iran's energy sector—its principal source of exports—to degrade the government's finances and its nuclear weapons program. U.N. Security Council Resolution 1929 noted a "potential connection between Iran's revenues derived from its energy sector and the funding of Iran's proliferation-sensitive nuclear activities."<sup>8</sup>

Since 2010, the U.S., the EU, and U.N. have adopted steadily stricter and more comprehensive

5. Panel of Experts, "Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)," in U.N. Security Council, S/2013/337, June 11, 2013, p. 5, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/337](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/337) (accessed September 26, 2013).

6. Ronald Reagan, "Prohibiting Imports from Iran," Executive Order 12613, October 29, 1987, <http://www.archives.gov/federal-register/codification/executive-order/12613.htm> (accessed September 25, 2013).

7. Bijan Khajepour, Reza Marashi, and Trita Parsi, "Never Give In and Never Give Up," March 2013, [http://www.niacouncil.org/site/DocServer/Never\\_give\\_in\\_never\\_give\\_up.pdf?docID=1941](http://www.niacouncil.org/site/DocServer/Never_give_in_never_give_up.pdf?docID=1941) (accessed September 25, 2013).

8. U.N. Security Council, Resolution 1929 (2010), S/RES/1929 (2010), June 9, 2010, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1929\(2010\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1929(2010)) (accessed September 27, 2013).

measures against Iran. In July 2010, Obama signed the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), which prohibited providing fuel to Iran and banned the sale of equipment or services that would help Iran to increase its gasoline production capability.<sup>9</sup>

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## The U.S. actions, combined with diplomatic pressure, led other nations to impose their own sanctions against Iran, including an EU ban in 2012 against purchasing Iranian oil.

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The National Defense Authorization Act of 2011 (NDAA) restricts foreign financial institutions' access to the U.S. financial system if they process petroleum transactions with Iran's central bank. The Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRA) prohibits access to the U.S. market by companies doing business with Iran's energy sector and froze the U.S. assets of any entity doing business with the National Iranian Oil Company and the National Iranian Tanker Company.<sup>10</sup>

In June 2011, the Obama Administration sanctioned the Iranian security services for human rights abuses and the Islamic Republic of Iran Shipping Lines for proliferation activities. In November 2011, the Obama Administration issued Executive Order 13590 to expand U.S. financial measures on foreign companies that provided goods or services to Iran's oil and gas sector and petrochemical industry. Robert Einhorn, Obama's Special Advisor for Nonproliferation and Arms Control, cited Iran's progress toward enriching uranium, sponsorship of a plot to assassinate the Saudi ambassador in Washington, and human rights violations as reasons for imposing the tougher measures.<sup>11</sup>

In January 2013, the U.S. implemented new sanctions against Iran targeting key Iranian industries, such as shipping and ports management. The law also imposes sanctions on foreign companies that engage with Iranian companies in the targeted sectors.

The U.S. actions, combined with diplomatic pressure, led other nations to impose their own financial and regulatory measures against Iran, including an EU ban in 2012 against purchasing Iranian oil. Collectively, the international sanctions have isolated Iran from the international banking system, targeted critical Iranian economic sectors, and forced countries to restrict purchases of Iranian oil and gas, Tehran's largest export.

**North Korea.** The United Nations has imposed a series of incrementally tougher Security Council resolutions<sup>12</sup> on North Korea in response to Pyongyang's repeated defiance of previous resolutions. However, the U.N. did not pass any resolutions after Pyongyang's two attacks on South Korea in 2010.

The latest iteration, Resolution 2094:

- Demands that North Korea return at an early date to the Non-Proliferation Treaty;
- Reaffirms the U.N. demand that North Korea abandon all nuclear weapons, existing nuclear programs, and ballistic missile programs in a complete, verifiable, and irreversible manner;
- Decides that nations shall prevent any financial services, including electronic transfers through banks or their overseas correspondent accounts, that could contribute to North Korean nuclear or ballistic missile programs;
- Calls upon nations to prohibit North Korean financial institutions from establishing

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9. The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Public Law 111-195, <http://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf> (accessed September 25, 2013).

10. Khajepour et al., "Never Give In and Never Give Up."

11. Robert J. Einhorn, "U.S.–South Korea Relations," remarks at the American Center Korea, Seoul, December 5, 2011, <http://iipdigital.usembassy.gov/st/english/texttrans/2011/12/20111207140416su0.157539.html> (accessed September 25, 2013).

12. The U.N. Security Council passed Resolution 1695 in response to a North Korean missile test in 2006, Resolution 1718 in response to a North Korean nuclear test in 2006, Resolution 1874 in response to a North Korean nuclear test in 2009, Resolution 2087 in response to a North Korean missile test in 2012, and Resolution 2094 in response to a North Korean nuclear test in 2013.

correspondent banks in their jurisdiction if reasonable grounds exist for believing that it could contribute to North Korean nuclear or missile programs; and

- Decides that nations shall inspect all cargo transiting their territory and deny permission to any aircraft flights if there are reasonable grounds for believing that it is related to prohibited North Korean programs.<sup>13</sup>

The United States has also issued a series of executive orders imposing punitive measures on North Korea.<sup>14</sup> In August 2010, the Obama Administration issued Executive Order 13551 to target North Korean arms trafficking and those engaged in illicit activities, including counterfeiting, narcotics smuggling, and money laundering. Executive Order 13570, issued in 2011, prohibits imports of North Korean goods into the United States unless licensed by the Office of Foreign Assets Control.

In 2010, Einhorn declared that North Korea was involved in “counterfeiting of U.S. currency and other goods, narcotics smuggling, and other illicit and deceptive activities in the international financial and banking systems [bringing] hundreds of millions of dollars in hard currency annually into North Korea, which can be used to support DPRK nuclear or missile programs.”<sup>15</sup>

Pyongyang has repeatedly challenged Security Council resolutions with nuclear tests and ballistic missile launches. The continued existence of these programs is itself a violation of the resolutions. Pyongyang has made clear that it has no intention of complying with the U.N. resolutions or fulfilling its six-party talks pledges to abandon its nuclear weapons. North Korea has declared that:

- “Pyongyang will not unilaterally abandon its war deterrence. North Korea’s nuclear weapons are the ultimate defender of national interest and a trusted shield to defend peace.”<sup>16</sup>
- Its nuclear weapons “are not goods for getting U.S. dollars and they are neither a political bargaining chip nor a thing for economic dealings. The DPRK’s possession of nuclear weapons shall be fixed by law and the nuclear armed forces should be expanded and beefed up qualitatively and quantitatively.”<sup>17</sup>
- “The six-party talks and the joint September 19 [2005] statement were rendered null and the denuclearization of the Korean Peninsula was put to an end. There will be no more discussion over denuclearization of the Korean Peninsula.”<sup>18</sup>
- It is a “nuclear-armed state and an indomitable military power” in a revision of its constitution.<sup>19</sup>

13. U.N. Security Council, Resolution 2094 (2013).

14. George W. Bush, “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,” Executive Order 13224, September 23, 2001, <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010924-1.html> (accessed September 26, 2013); George W. Bush, “Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters,” Executive Order 13382, June 29, 2005, <http://georgewbush-whitehouse.archives.gov/news/releases/2005/06/20050629.html> (accessed September 26, 2013); George W. Bush, “Continuing Certain Restrictions with Respect to North Korea and North Korean Nationals,” Executive Order 13466, June 26, 2008, <http://georgewbush-whitehouse.archives.gov/news/releases/2008/06/20080626-4.html> (accessed September 26, 2013); Barack Obama, “Blocking Property of Certain Persons with Respect to North Korea,” Executive Order 13551, August 30, 2010, <http://www.whitehouse.gov/the-press-office/2010/08/30/executive-order-president-blocking-property-certain-persons-with-respect> (accessed September 26, 2013); and Barack Obama, “Prohibiting Certain Transactions with Respect to North Korea,” Executive Order 13570, April 18, 2011, <http://www.whitehouse.gov/the-press-office/2011/04/18/executive-order-13570-prohibiting-certain-transactions-respect-north-kor> (accessed September 26, 2013).

15. Robert J. Einhorn, “Terrorist Financing and Financial Crimes,” remarks, U.S. Embassy, Seoul, August 2, 2010, <http://www.state.gov/p/eap/rls/rm/2010/08/145598.htm> (accessed September 26, 2013).

16. Yonhap News Agency, “N. Korea Says No Plans to Give Up Nuclear Capabilities,” May 28, 2013, <http://english.yonhapnews.co.kr/northkorea/2013/05/28/92/0401000000AEN20130528008400315F.HTML> (accessed September 26, 2013).

17. Korean Central News Agency, “Report on Plenary Meeting of WPK Central Committee,” Korea News Service (Tokyo), March 31, 2013, <http://www.kcna.co.jp/item/2013/201303/news31/20130331-24ee.html> (accessed September 27, 2013).

18. Yonhap News Agency, “Korea Vows to End Denuclearization Talks,” January 23, 2013, <http://english.yonhapnews.co.kr/northkorea/2013/01/23/95/0401000000AEN20130123001500315F.HTML> (accessed September 26, 2013).

19. Yonhap News Agency, “N.K. Calls Itself ‘Nuclear-Armed State’ in Revised Constitution,” May 30, 2012, <http://english.yonhapnews.co.kr/northkorea/2012/05/30/76/0401000000AEN20120530005200315F.HTML> (accessed September 26, 2013).

- “Those who talk about an economic reward in return for the dismantlement of [North Korea’s] nuclear weapons would be well advised to awake from their daydream.”<sup>20</sup>
- “We have tightened our belts, braved various difficulties and spent countless amounts of money to obtain a nuclear deterrent as a self-defense measure against U.S. nuclear threats. Only fools will entertain the delusion that we will trade our nuclear deterrent for petty economic aid.”<sup>21</sup>

### China Critical to Sanction Success

The Iranian economy depends on global imports and exports, necessitating extensive international cooperation for sanctions to have an impact. Cooperation is complicated by Iran’s status as a significant producer of oil, a critical world commodity that nations are loath to restrict.

Unlike Iran, North Korea is small, weak, and undiversified in its economic or diplomatic contacts. It is singularly reliant on China, making Pyongyang more susceptible to sanctions if Beijing or Chinese banks comply.

North Korea’s increased reliance on foreign-owned and foreign-flagged ships in recent years<sup>22</sup> provides an opportunity to improve interdiction of North Korean shipments. Foreign businesses and governments are more likely to allow inspection of their ships when confronted with evidence of North Korean malfeasance.

**A Paper Dragon on Sanctions.** Strong sanctions can work against a weak opponent, but coercive financial pressure against North Korea has been insufficiently robust and has been undermined by China. Despite North Korea’s belligerent actions, Beijing is reluctant both to allow more comprehensive sanctions and to fully implement those already imposed:

- In 2002, Director of Central Intelligence George Tenet said that the proliferation activities of Chinese firms were at times “condoned by the Chinese government.” In November 2007, the State Department assessed that shipments of prohibited North Korean missile parts “frequently transit Beijing on regularly scheduled flights” and that China failed to act on detailed information and a direct, personal appeal by President Bush.<sup>23</sup>
- After the April 2012 missile launch, the U.S., South Korea, Japan, and the EU proposed adding 40 additional North Korean entities to the U.N. sanctions list. China vetoed all but three, severely limiting the scope of U.N. efforts against North Korea’s prohibited nuclear and missile programs. Despite the Chinese obstructionism, the Obama Administration hailed the addition of only three violators as a “strong and united response [that would] increase North Korea’s isolation.”<sup>24</sup>
- In 2013, U.S. and South Korean authorities found dozens of overseas bank accounts worth hundreds of millions of dollars that were linked to North Korean leaders Kim Jong-un and Kim Jong-il. Allied officials urged China to include these accounts in U.N. sanctions lists, but Beijing refused.<sup>25</sup> It is unclear why Washington and Seoul did not publicly identify the accounts and include them in their own unilateral sanctions.
- China has repeatedly increased its economic engagement with North Korea after the imposition of sanctions, thus negating their impact. After U.N. sanctions were first implemented in 2006, Chinese exports to North Korea actually

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20. CNN, “North Korea Refuses to Abandon Nukes,” February 19, 2010, <http://www.cnn.com/2010/WORLD/asiapcf/02/19/north.korea.nuclear/index.html> (accessed September 26, 2013).

21. Korea Herald/Asia News Network, “North Korea Pledges Not to Abandon Nukes,” AsiaOne, February 21, 2010, <http://news.asiaone.com/News/Latest+News/Asia/Story/A1Story20100221-199951.html> (accessed September 26, 2013).

22. Mary Beth Nikitin et al., “Implementation of U.N. Security Council Resolution 1874,” memorandum to Senator Richard G. Lugar (R-IN), October 8, 2010, <http://fpc.state.gov/documents/organization/152630.pdf> (accessed September 26, 2013).

23. “Pyongyang’s Accomplice,” *The Wall Street Journal*, December 7, 2010, <http://online.wsj.com/article/SB10001424052748704594804575648473842565004.html> (accessed September 26, 2013).

24. Voice of America News, “UN Expands Sanctions on N. Korea for Rocket Launch,” *Chosun Ilbo*, May 3, 2012, [http://english.chosun.com/site/data/html\\_dir/2012/04/17/2012041700398.html](http://english.chosun.com/site/data/html_dir/2012/04/17/2012041700398.html) (accessed September 26, 2013).

25. “Kim Jong-un’s Slush Funds Found,” *Chosun Ilbo*, March 11, 2013, [http://english.chosun.com/site/data/html\\_dir/2013/03/11/2013031101105.html](http://english.chosun.com/site/data/html_dir/2013/03/11/2013031101105.html) (accessed September 26, 2013).

increased by 140 percent by 2009.<sup>26</sup> In response to North Korea's sinking of the *Cheonan*, South Korea cut off most inter-Korean trade, worth approximately \$300 million annually. Yet in the following year, China increased its trade with Pyongyang by 29 percent, from \$2.68 billion to \$3.47 billion.<sup>27</sup>

More robust Chinese implementation of sanctions will not guarantee that North Korea abandons its nuclear arsenal, but a continuation of Beijing's lackluster enforcement does guarantee that sanctions will fail to achieve their objectives.

### **Strong Sanctions, Effective When Applied**

In 2005, U.S. criminal investigations Royal Charm and Smoking Dragon proved that North Korea was involved in drug smuggling and money laundering. The investigations also provided "incontrovertible proof of the role of Macao banks, Macao gangsters, and North Koreans in Macao," according to a senior State Department official.<sup>28</sup>

As a result, Washington declared Macao-based Banco Delta Asia (BDA) a primary money-laundering concern<sup>29</sup> and banned all U.S. financial institutions from dealing with BDA. The U.S. Department of the Treasury also considered implementing similar measures against other, larger banks, including the Macao branch of the Bank of China, against which it had "voluminous" evidence. However, the Bush Administration reportedly refrained to "avoid excessive damage to the financial system of Macao and a resultant clash with China."<sup>30</sup>

The U.S. action against BDA signaled that Washington would finally begin to enforce its laws.

Taken in conjunction with *sub rosa* meetings by U.S. officials with Asian banks and businesses, it had a devastating impact on North Korea's finances. Foreign businesses and financial institutions shunned Pyongyang, fearful of being sanctioned as complicit in North Korean illegal activity. Two dozen financial institutions voluntarily cut back or terminated their business with North Korea, including institutions in China, Japan, Vietnam, Mongolia, and Singapore.<sup>31</sup>

### **The BDA sanctions showed the efficacy of economic pressure tactics on North Korea.**

The BDA targeted financial measures showed the efficacy of economic pressure tactics on North Korea. However, according to a Bush Administration official, the National Security Council instructed the Treasury Department to "bury the evidence and keep it out of court, masking the role of the North Korean government so as not to embarrass the [six-party] talks."<sup>32</sup>

The United States eventually acquiesced to North Korea's demands that its ill-gotten money be returned. The Bush Administration even used the Federal Reserve Bank of New York to transfer the money since no U.S. commercial bank dared to risk involvement in felony money laundering.

At the time, critics derided the BDA law enforcement initiative as a neoconservative attempt to undermine the six-party nuclear negotiations. Yet senior Obama Administration officials privately characterized the initiative as having been "very

26. Stephan Haggard and Marcus Noland, *Famine in North Korea: Markets, Aid and Reform* (New York: Columbia University Press, 2007), p. 230.

27. Editorial, "Is China Neutralizing N. Korea Sanctions?" *Chosun Ilbo*, May 23, 2011, [http://english.chosun.com/site/data/html\\_dir/2011/05/23/2011052301184.html](http://english.chosun.com/site/data/html_dir/2011/05/23/2011052301184.html) (accessed September 26, 2013).

28. Donald Greenlees and David Lague, "The Money Trail That Linked North Korea to Macao," *The New York Times*, April 11, 2007, <http://www.nytimes.com/2007/04/11/world/asia/11cnd-macao.html> (accessed September 26, 2013).

29. Under the Patriot Act, § 311, 31 U.S. Code § 5318A.

30. Greenlees and Lague, "The Money Trail That Linked North Korea to Macao."

31. Daniel L. Glaser, testimony before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, September 12, 2006, [http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=deda4b45-d225-4a22-8ec4-2154cbc61ded](http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=deda4b45-d225-4a22-8ec4-2154cbc61ded) (accessed September 26, 2013).

32. David Asher, "Pressuring Kim Jong Il: The North Korean Illicit Activities Initiative, 2001-2006," in David L. Asher, Victor D. Comras, and Patrick M. Cronin, "Pressure: Coercive Economic Statecraft and U.S. National Security," Center for New American Security, January 2011, [http://www.cnas.org/files/documents/publications/CNAS\\_Pressure\\_AsherComrasCronin\\_1.pdf](http://www.cnas.org/files/documents/publications/CNAS_Pressure_AsherComrasCronin_1.pdf) (accessed September 26, 2013).

effective” and argued that President George Bush’s decision to rescind it was “a mistake that eased pressure on Pyongyang before it took irreversible steps to dismantle its nuclear program.”<sup>33</sup> The Obama Administration now “hopes to recreate the financial pressure that North Korea endured back in 2005 when [the United States] took the action against Banco Delta Asia.”<sup>34</sup>

### Costs of Timidity

Regrettably, the world has now become largely inured to North Korea’s development of nuclear weapons, repeated violations of Security Council resolutions and international law, and belligerent threats. Evidence of North Korean nuclear and missile progress has often been dismissed until it became irrefutable.

After each North Korean provocation or violation, the U.S. and its allies returned to the Security Council demanding stronger measures, only to run into Chinese obfuscation and obstruction. The result has been only incrementally strengthened measures.

Instead, the U.N. and U.S. should have imposed comprehensive sanctions against North Korea and its facilitators immediately after Pyongyang’s provocations, when international outrage and support was strongest. The Obama Administration’s policy of strategic patience is predominantly passive because it fails to impose sufficient pressure to effectively degrade North Korea’s capabilities or alter its behavior. The U.S. has sufficient tools. It has just lacked the resolve to use them.

In 2010, President Obama declared that the United States will “continue to press on sanctions implementation until there is concrete, verifiable progress on denuclearization,” but Administration officials privately commented that year that the “intensity with which they push for tough implementation of sanctions [is] calibrated depending” on North Korean behavior.<sup>35</sup> In March 2013, despite North Korea’s repeated violations of U.N. resolutions, a State Department official commented that there

was still room to increase sanctions on North Korea: “[W]e haven’t maxed out, there is headroom.”<sup>36</sup>

The obvious question is: Why has the Obama Administration not lowered the boom on Pyongyang as it has on Iran, instead preferring to keep some financial pressure measures in reserve for another incremental step after the next North Korean provocation? For example, sanctioning North Korea’s Foreign Trade Bank in 2013 is an effective measure, but why was it not done several years earlier?

Sanctions have delayed North Korea’s nuclear and missile programs. Punitive measures have caused international financial institutions and businesses to become increasingly reluctant to engage with North Korea, even in legitimate businesses. Coercive financial pressure has raised the risk and cost to Pyongyang and its facilitators and forced them to alter their operations, thus stretching out the development timelines.

### The U.S. has sufficient tools. It has just lacked the resolve to use them.

However, by adopting a sanctions policy of timid incrementalism, the U.S. squandered the opportunity to impede progress on North Korea’s nuclear and missile programs more effectively and coerce compliance with U.N. resolutions. The regime has successfully weathered weak diplomatic responses to its provocations, weak international sanctions, and no military response to its two attacks on South Korea. As a result, Pyongyang feels that its own strategic patience policy can outlast that of its opponents.

The collective international finger-wagging and promises to be tougher the next time have allowed North Korea additional years to develop and refine its nuclear weapons and the means to deliver them. The inability and unwillingness to impose more comprehensive sanctions has emboldened North Korea, Iran, and other nuclear aspirants to believe

33. Jay Solomon, “U.S. Pursues Financial Leverage over North Korea,” *The Wall Street Journal*, July 1, 2009, <http://online.wsj.com/article/SB124632106686771095.html> (accessed September 26, 2013).

34. Margaret Brenan, “U.S. Urges Nations to Cut North Korea’s Financial Link,” CBS News, April 5, 2013, [http://webcache.googleusercontent.com/search?q=cache:n3xFhCvg6QAJ:www.cbsnews.com/8301-202\\_162-57578210/u.s-urges-nations-to-cut-north-koreas-financial-link](http://webcache.googleusercontent.com/search?q=cache:n3xFhCvg6QAJ:www.cbsnews.com/8301-202_162-57578210/u.s-urges-nations-to-cut-north-koreas-financial-link) (accessed September 26, 2013).

35. Nikitin et al., “Implementation of U.N. Security Council Resolution 1874.”

36. Adrian Croft, “U.S. Wants EU to Put North Korean Bank on Sanctions List,” Reuters, March 25, 2013, <http://www.reuters.com/article/2013/03/25/us-korea-north-eu-idUSBRE9200TU20130325> (accessed September 26, 2013).



they can defy the world until they present their nuclear status as a *fait accompli*. North Korea also has felt no compunction about proliferating nuclear and chemical weapon technologies to Syria.

## What Should Be Done

The United States should increase punitive measures against North Korea, including enhancing sanctions to the same degree as they have been applied against other rogue regimes, such as Iran today and Burma at key points.

The United States should unilaterally:

- **Designate North Korea as a primary money-laundering concern.** In 2002, 2004, and 2011, the U.S. Treasury designated Ukraine, Burma, and Iran, respectively, as “jurisdiction[s] of primary money laundering concern” under Section 311 of the USA Patriot Act.<sup>37</sup>
- **Ban North Korean financial institutions’ correspondent accounts<sup>38</sup> in the United States.** Designating North Korea (like Burma and Iran) as a money-laundering concern under Section 311 of the Patriot Act would prohibit North Korea from “the opening or maintaining in the United States of a correspondent account or payable-through account by any domestic financial institution or domestic financial agency for or on behalf of a foreign banking institution.”<sup>39</sup> Executive Order 13310 prohibited “the exportation or reexportation, directly or indirectly, to

Burma of any financial services either from the United States or by a United States person.”<sup>40</sup>

Even financial institutions not doing business in the United States would likely be affected since “nearly all dollar-denominated transactions pass through U.S. Treasury-regulated banks. Chinese and European banks that need their own access to U.S. financial institutions may also shun transactions with North Korea.”<sup>41</sup>

- **Prohibit any U.S. investment in North Korea, including Kaesong.** For example, from 1997–2012, the U.S. prohibited all new investments in Burma
- **Publicly identify and sanction all foreign companies, financial institutions, and governments assisting North Korea’s nuclear and missile programs.** Executive Orders 13382 and 13551 enable targeted financial and regulatory measures, including freezing of assets, against any entity suspected of helping North Korean nuclear, missile, and conventional arms; criminal activities; money laundering; or import of luxury goods.<sup>42</sup> The U.S. should call on foreign banks, businesses, and governments to reciprocate U.S. actions against North Korean and foreign violators.
- **Impose third-party sanctions.** The U.S. should penalize entities, particularly Chinese financial institutions and businesses, that trade with those on the sanctions list or export prohibited items.

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

38. “Foreign financial institutions maintain accounts at U.S. banks to gain access to the U.S. financial system and to take advantage of services and products that may not be available in the foreign financial institution’s jurisdiction.” Federal Financial Institutions Examination Council, Bank Secrecy Act/Anti-Money Laundering InfoBase, s.v. “Correspondent Accounts (Foreign)—Overview,” [http://www.ffiec.gov/bsa\\_aml\\_infobase/pages\\_manual/OLM\\_047.htm](http://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_047.htm) (accessed September 26, 2013).

39. U.S. Department of the Treasury, Financial Crimes Enforcement Network, “Section 311—Special Measures,” [http://www.fincen.gov/statutes\\_regs/patriot/section311.html](http://www.fincen.gov/statutes_regs/patriot/section311.html) (accessed September 26, 2013).

40. George W. Bush, “Blocking Property of the Government of Burma and Prohibiting Certain Transactions,” Executive Order 13310, July 28, 2003, <http://www.gpo.gov/fdsys/pkg/FR-2003-07-30/pdf/03-19573.pdf> (accessed September 26, 2013).

41. Joshua Stanton, “Kaesong Investors Beware: Treasury Issues New Warning About N. Korea Money Laundering Risk,” September 21, 2013, <http://freekorea.us/2013/09/21/kaesong-investors-beware-treasury-issues-new-warning-about-n-korea-money-laundering-risk/> (accessed October 18, 2013).

42. Sung-Yoon Lee and Joshua Stanton, “Hit Kim Jong Eun Where It Hurts: His Wallet,” *The Washington Post*, February 13, 2013, [http://articles.washingtonpost.com/2013-02-12/opinions/37059212\\_1\\_nuclear-test-pyongyang-international-network](http://articles.washingtonpost.com/2013-02-12/opinions/37059212_1_nuclear-test-pyongyang-international-network) (accessed September 26, 2013).

The U.S. should also ban financial institutions that conduct business with North Korea from conducting business in the United States.<sup>43</sup>

- **Compel the removal of North Korea from SWIFT financial transfers.** The Obama Administration and European Union pressured the Belgian-based Society for Worldwide Interbank Financial Telecommunication (SWIFT) to disconnect sanctioned Iranian banks in 2012. The system is the world hub for electronic financial transactions.
- **Urge the European Union and other countries to sever ties with North Korea's Foreign Trade Bank.** The Foreign Trade Bank, North Korea's main financial portal for international trade, was blacklisted by the U.S. and China in 2013 for facilitating North Korean nuclear and missile proliferation.
- **Target the North Korean government writ large, not just individuals or departments.** The U.S. determined in Executive Order 13551 that the North Korean government itself was involved in illicit and deceptive activities.<sup>44</sup> Washington should therefore designate and sanction the entire North Korean government rather than individual departments and persons.
- **Formally charge North Korea as a currency counterfeiter.** U.S. officials have repeatedly declared that North Korea is counterfeiting U.S.

currency. For example, Assistant Secretary of State Phillip Crowley stated in 2010, "We have no doubt that North Korea has engaged directly in counterfeit operations as a means of bringing currency into the country."<sup>45</sup>

- **Resume law enforcement efforts against North Korean illicit activities.** Despite the U.S. government's affirmation that North Korea is complicit in the counterfeiting of currency and pharmaceuticals, illegal production and distribution of narcotics, and money laundering, the U.S. apparently has not taken any law enforcement action since the mid-2000s when the Banco Delta Asia money was returned. Pyongyang's involvement in illicit activities should trigger criminal cases against the North Korean leadership.
- **Return North Korea to the state sponsors of terrorism list.** North Korea has provided missile and nuclear assistance to Iran and Syria, two nations on the U.S. State Department's Sponsors of Terrorism List.<sup>46</sup> North Korean weapons seized in Thailand were headed for Islamist groups Hamas and Hezbollah. Two North Korean agents confessed that Kim Young-chol, chief of the Reconnaissance Bureau, ordered them to assassinate Hwang Jang-yop, the highest-ranking North Korean defector.<sup>47</sup> Inclusion on the list requires the U.S. government to oppose loans by international financial institutions, such as the World Bank, International Monetary Fund, and Asian Development Bank.<sup>48</sup>

43. Executive Order 13551 applies U.S. sanctions to anyone that has assisted "any person whose property and interests in property are blocked pursuant to this order." Barack Obama, "Blocking Property of Certain Persons with Respect to North Korea," Executive Order 13551, § 1(a)(ii) (E), <http://www.whitehouse.gov/the-press-office/2010/08/30/executive-order-president-blocking-property-certain-persons-with-respect> (accessed September 30, 2013).

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

45. Phillip Crowley, daily press briefing, U.S. Department of State, August 2, 2010, <http://www.state.gov/r/pa/prs/dpb/2010/08/145491.htm> (accessed September 26, 2013).

46. Countries that the Secretary of State determines have repeatedly provided support for acts of international terrorism are designated pursuant to three laws: Section 6(j) of the Export Administration Act, Section 40 of the Arms Export Control Act, and Section 620A of the Foreign Assistance Act. U.S. Department of State, "State Sponsors of Terrorism," <http://www.state.gov/j/ct/list/c14151.htm> (accessed July 1, 2013).

47. Kim So-hyun, "Kim Visits Army Unit Spying on S. Korea," *The Korea Herald*, April 27, 2010, <http://www.koreaherald.com/national/Detail.jsp?newsMLId=20100427000663> (accessed September 26, 2013).

48. Section 1621, "Opposition to Assistance by International Financial Institutions to Terrorist States," of the International Financial Institutions Act (Public Law 95-118), as cited in Mark E. Manyin, "North Korea: Back on the Terrorism List?" Congressional Research Service *Report for Congress*, June 29, 2010, <http://www.nkeconwatch.com/nk-uploads/DPRK-back-on-terrorism-list.pdf> (accessed September 26, 2013).

- **Tighten maritime counterproliferation.** The U.S. should target shipping companies and airlines caught proliferating. If they are state-owned, the U.S. should sanction the relevant government ministry. Sanctions have been applied against the Islamic Republic of Iran Shipping Line and Iran Air.
- **Enhance U.S. inspection of shipping companies transiting ports that consistently fail to inspect North Korean cargo.** Any vessel or aircraft that has transported prohibited North Korea items should be seized upon entering U.S. jurisdiction.

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

- **Close loopholes in Resolution 2094**, such as including Article 42 of Chapter VII of the U.N. Charter, which allows for enforcement by military means. This would authorize naval ships to intercept, board, and inspect North Korean ships suspected of transporting precluded nuclear, missile, and conventional arms, components, or technology.
- **Adopt a more comprehensive list of prohibited items and materials.** The U.N. Experts Group identified several items and materials critical to Pyongyang's nuclear programs that should be—but have not been—added to the list of products banned for transfer to North Korea. These include maraging steel, frequency changers (also known as converters or inverters), high-strength aluminum alloy, filament winding machines, ring magnets, and semi-hard magnetic alloys in thin strip form.<sup>49</sup>
- **Constrain trade of major North Korean imports and exports.** The U.S. should apply sanctions similar to those imposed on significant Iran imports and exports. The U.S. should also restrict North Korean energy imports and the export of North Korean resources. U.S. law restricts access to the U.S. financial system by foreign companies and banks if they do business with Iran's energy sector or process petroleum transactions with Iran's central bank.

### **Time for Incrementalism Is Past**

North Korea is every bit the nuclear threat that Iran is. In fact, in terms of real capabilities, it is an even greater threat today to its neighbors than Iran is to its neighbors. North Korea's successful missile and nuclear tests show that in only a matter of time, Pyongyang will be able to threaten the United States directly with nuclear weapons.

North Korea already threatens U.S. interests and allies in Asia. The regime shows its disdain for international efforts to constrain its behavior by openly and repeatedly defying international law and U.N. resolutions. Responding with strong rhetoric and minimalist measures has only encouraged North Korea to remain on course.

North Korea faces a perfect storm of conditions that makes it more vulnerable to economic pressure. The U.S. and its allies are unwilling to offer unconditional benefits without progress in the six-party talks. International aid has been curtailed due to Pyongyang's refusal to accept global monitoring standards, and international coercive financial pressure is affecting North Korea's finances. This increasing economic isolation could lead the regime to become more malleable.

The United States possesses an array of strong punitive measures that it can levy on Pyongyang. It has employed many of these against Iran. The Obama Administration should overcome its reluctance to impose more extensive punitive measures against Pyongyang and the foreign entities that assist its nuclear and missile programs. It should also make clear to the new Chinese leadership that continued sheltering of its recalcitrant ally will only increase the potential for a crisis on the Korean Peninsula.

Washington should no longer hold some sanctions in abeyance, to be rolled out after the next North Korean violation or provocation. There will be little change until North Korea feels pain and China feels concern over the consequences of Pyongyang's actions and its own obstructionism.

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49. Panel of Experts, "Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)."