

Whitehall Report 3-17



A House Without Foundations

The North Korea Sanctions Regime and its Implementation

Andrea Berger



Royal United Services Institute
for Defence and Security Studies

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RUSI Whitehall Report 3-17, June 2017



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Cover image: Military vehicles carry missiles during a military parade in Pyongyang, April 2017. Courtesy of PA Images/Reuters/Damir Sagolj

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Executive Summary

NORTH KOREA TESTED its first nuclear weapon over a decade ago, in October 2006. UN sanctions have been part of the international community's tools to address the concerning trajectory of Pyongyang's nuclear and missile programmes ever since. They have evolved substantially, particularly since 2016, to become the most complex UN sanctions regime ever designed. Yet, today, the sanctions regime on North Korea faces a crisis of legitimacy, repeatedly being accused of 'not working' to advance their stated aim of convincing North Korea to come back to the table over its nuclear programme. Pyongyang has not changed its calculus since UN sanctions were imposed in 2006. Instead, it has accelerated research and development on new delivery vehicles and warhead types, and has stepped up the pace of nuclear and ballistic missile testing.

Frustrations with the effectiveness of sanctions are understandable in this troubling context. However, any effort to recalibrate the pressures and inducements used to shift the North Korean leadership's views in favour of concessions on its nuclear programme must be underpinned by a detailed diagnosis of the sanctions regime's ailments, particularly in relation to implementation. This report offers such a diagnosis. It does so by exploring three variables determining the effectiveness of UN sanctions as currently designed: the sophistication and scale of North Korea's own evasive abilities; the approaches taken by UN member states towards implementing their Security Council-imposed obligations; and the behaviour of the private sector. In examining the state of play of each, the report relies primarily on open-source information, including years of the author's own detailed open-source investigations into North Korean networks and sanctions breaches. These sources are bolstered by expert interviews conducted on a not-for-attribution basis in Asia and North America in autumn 2016. Recognising that it is not possible to provide a comprehensive picture of the evasive behaviour of North Korean networks, the national policies and practices of all UN member states, and the actions of myriad private sector entities, this report instead offers a snapshot.

The report finds that not a single component of the UN sanctions regime against North Korea currently enjoys robust international implementation. Global gaps in awareness, capacity and political interest were not addressed while the sanctions regime against North Korea was modestly sized. Obligations on UN members are now significantly more complex than they were pre-2016, creating an acute crisis in the North Korea sanctions regime's implementation. While China has always been a significant part of the story, it is certainly not the only stumbling block. The problem is that rather than addressing these issues with the sanctions regime, the key advocates of sanctions appear to have prioritised individual enforcement actions to deliver limited effect. Moreover, North Korea's own evasive techniques have helped those perpetrating sanctioned activity to outpace the efforts of those seeking to counter it. Unless these deficiencies are rectified, sanctions will not generate the pressure on North Korea that they intend to. They

are therefore also unlikely to hold any chance of changing Pyongyang's calculus, or achieving more limited aims, such as preventing North Korea from proliferating to others.

Introduction

THE PHRASE ‘sanctions against North Korea are not working’ is now heard in almost every discussion considering US and allied policy prescriptions for addressing North Korean nuclear and missile developments.¹ UN sanctions on North Korea have been in place for more than a decade, and underwent notable expansions twice in 2016. Yet despite their increasing scope and complexity, North Korea’s prohibited activities have shown no signs of ending. On the contrary, Pyongyang has attained new levels of advancement and progress towards its apparent aim of being able to target the continental US with a nuclear weapon.²

This worrying trend has given a palpable sense of urgency to Western policy debates on Korean Peninsula issues. Many analysts believe that sanctions have already been afforded the chance to generate decisive pressure on North Korea’s leadership and to compel it to return to the negotiating table over its nuclear programme.³ They have been left wanting. Their favoured approach, therefore, is not to invest more effort or hopes in sanctions, but rather to pursue other policy options, such as negotiations over a verifiable nuclear and/or missile freeze agreement with Pyongyang. At the other end of the spectrum, analysts argue that sanctions have not produced policy changes because they lack strength and the cooperation of China, North Korea’s largest trading partner. In their view, more sanctions at both the multilateral and unilateral levels should be adopted to address these gaps and impose costs on China for its indifference.⁴

If this debate is to promote informed policymaking in Washington or allied capitals, it must be accompanied by a clear assessment of the state of implementation of the UN sanctions regime.⁵

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1. Alexander Freund, “‘Sanctions Against North Korea Are Not Working’”, *Deutsche Welle*, 20 February 2017.
 2. For references to Pyongyang’s intent to hold mainland US targets at risk, see Kim Rye Yong, ‘Advertisement of Evacuation Plan What For?’, *Pyongyang Times*, 13 May 2017, <<https://kcnawatch.co/newstream/1494691360-930936893/advertisement-of-evacuation-plan-what-for/>>, accessed 24 May 2017. See also Ri Myong Hyok, ‘Real War to be Fought in US Mainland’, *Pyongyang Times*, 6 May 2017, <<https://kcnawatch.co/newstream/1494108315-8214001/real-war-to-be-fought-in-us-mainland/>>, accessed 24 May 2017.
 3. Remarks by Andrei Lankov at the 2017 Carnegie Nuclear Policy Conference, Washington, DC, 20 March 2017, <<http://carnegieendowment.org/2017/03/21/concurrent-session-iii-running-out-of-strategic-patience-rethinking-u.s.-policy-toward-north-korea-pub-65038>>, accessed 26 May 2017.
 4. See, for example, Anthony Ruggiero, ‘Severing China–North Korea Financial Links’, Newsletter, Center for Strategic and International Studies, 3 April 2017; see also Joshua Stanton and Anthony Ruggiero, ‘North Korea’s Nuclear Blackmail: Trump, Make Sanctions Work Again’, *The Hill*, 3 April 2017.
 5. This report distinguishes ‘implementation’ from ‘enforcement’. The former, for the purposes of this report, refers to actions taken by a state to: transpose UN Security Council obligations into national law; inform relevant agencies and private sector constituencies; and create practical processes that enable the state to identify breaches within its jurisdiction. ‘Enforcement’, by

This report provides such a snapshot. It does not seek to duplicate the valuable reports of the UN Panel of Experts tasked with monitoring member state compliance with the organisation's sanctions regime. It does not delve into the implementation of unilateral or EU sanctions on North Korea, which would require a far longer report to usefully analyse. Rather, it strives to present a high-level view of three factors affecting the level of practical effect that the UN sanctions regime on North Korea generates, considering national and multilateral measures only where they affect compliance with UN restrictions, including the significant effect US and EU sanctions can have on the behaviour of the private sector.

The first is North Korea's own ability to evade restrictions put in place. In February 2017, the UN Panel of Experts on North Korea assessed that Pyongyang's illicit networks overseas were increasing in scale, scope and sophistication.⁶ These capabilities can nullify, shorten or significantly complicate the effectiveness of UN Security Council sanctions or national action taken pursuant to them. The second factor is the actions pursued by individual UN member states. In principle, each is legally bound to transpose UN Security Council decisions into national law and subsequently enforce them. In practice it is not as straightforward, and many countries do so improperly or not at all. Gaps allow North Korean illicit activity to persist. The third, and least appreciated, factor, is the activity of the private sector. Motivated by different considerations from those of states, the private sector can, and already has, both enhanced and undermined the impact of UN sanctions, independent of the behaviour of the country in whose jurisdiction they fall. They must therefore be considered in their own right.

When these three factors are taken together, a clear and concerning picture emerges. The narrative around the UN Security Council table that sanctions are the 'strongest' they have ever been may be true of their paper form, but is fiction in practice. North Korean sanctions evasion continues to outpace the actions of state implementers and enforcers. At the state level, no single measure enjoys robust global buy-in and action. In some countries, this is best explained by the lack of political interest in the sanctions regime on North Korea. Yet in many others it is better explained by a mixture of low capacity, lack of guidance and technical assistance, as well as a higher political priority accorded to other issues.

This problem is compounded by the rapid expansion of the sanctions regime in 2016. Substantial new measures were adopted at the UN before most countries had created the basic national structures that would allow them to implement these more complicated actions. The additional UN requirements also mean that states must now appreciate and engage a much wider number of private sector stakeholders, exacerbating capacity issues. Proper support systems to facilitate outreach and national capacity-building were never created. Perhaps partly as a consequence

contrast, refers to individual actions or sets of actions by a state that bring those within its jurisdiction into compliance with national law or UN measures. For example, enacting appropriate export control and customs legislation and creating the practical structures that empower relevant officials to identify and search suspect North Korean cargo is 'implementation'. Acting to seize an individual North Korean consignment passing through national territory, on the basis of information passed by another state, is 'enforcement'.

6. UN Security Council, 'Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)', S/2017/150, 27 February 2017.

of these gaps in capacity and political priority, the architect of the sanctions regime – the US – appears to emphasise global enforcement, which delivers quick results, over implementation.

The sanctions regime is thus in many respects a house without foundations. A substantial body of opinion in the US and allied states seems to be that North Korea is unlikely to give up its nuclear and missile programmes soon, if ever.⁷ While the policy of US President Donald Trump's administration reportedly focuses on preventing North Korea from developing an intercontinental nuclear capability, its repeated use of the word 'hope' in describing the prospect of changing North Korea's calculus indicates that senior officials are aware of the low probability of success.⁸ If this is the case, the UN sanctions regime on North Korea will continue to exist for some time. In fact, the Trump administration has expressed its intention to push for even stronger restrictions, with sanctions on North Korean migrant labour and oil and gas imports floated as possible additions.⁹

As long as the UN sanctions regime on North Korea exists, countries active in countering proliferation will want sanctions to help curb as much of the prohibited activity that is covered by the resolutions as possible. Focusing greater multilateral attention on promoting implementation and creating appropriate supporting resources – such as coordinated outreach programmes demanding greater numbers of staff and higher budgets – for the sanctions regime will be imperative. At the UN level, Russia and China are likely to remain lukewarm on such proposals, meaning coalitions of more concerned countries will need to collaborate to address the sanctions regime's shortfalls.

This report will also highlight the pitfalls of concluding that the failings of UN sanctions on North Korea are entirely made in China. While China is a critical trading partner for North Korea and a partial enabler of its sanctions evasion in other parts of the world, Beijing is not the only one that matters. Non-implementation goes much further than that. Numerous other countries actively violate the sanctions regime or consciously look the other way. Even without Chinese cooperation, progress with countering North Korean illicit activity in any of these places can still create major disruptions for Pyongyang's networks overseas and the parts of the country's system that profit from them.

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7. While his remarks diverge from current and previous US policy, former Director of National Intelligence James Clapper's assessment that efforts to get North Korea to denuclearise are probably 'a lost cause' reflect the views of many in the strategic community. See Rick Gladstone, 'North Korea Giving Up Nuclear Arms "a Lost Cause", Official Says', *New York Times*, 25 October 2016.
 8. Alexander Smith, 'Rex Tillerson: Military Action Against North Korea Is "on the Table"', *NBC News*, 17 March 2017.
 9. North Korea currently has significant numbers of migrant labourers in China and Russia, which has generated resistance to proposals to sanction such exports. The US secured a compromise in UN Security Council Resolution 2321 (2016) in the form of a condemnation of North Korea's migrant labour exports. Similarly, sanctions on oil and gas imports into North Korea have been recently discussed with China as a possible next step. See David Brunnstrom and Matt Spetalnick, 'Exclusive: North Korean Oil Imports, Airline among Possible U.S. Sanctions Targets – Sources', *Reuters*, 13 April 2017.

I. Evolution of the Sanctions Regime

WASHINGTON AND ITS allies first contemplated international sanctions on North Korea during the 1993–94 nuclear crisis, when Pyongyang was removing spent fuel rods from its Yongbyon reactor in a move many feared was intended to produce plutonium for a nuclear weapon.¹ The crisis ended not with economic sanctions, but with the negotiation of the Agreed Framework, which imposed restrictions on North Korea’s nuclear programme in exchange for aid and multilateral civilian nuclear cooperation.

International sanctions did not materialise until several years after the framework collapsed, in the immediate wake of North Korea’s first nuclear test on 9 October 2006. Despite the grave threat to international peace and security posed by this development, UN Security Council Resolution 1718 (2006) – the first UN sanctions resolution on North Korea – remained narrow in scope.² It created a list of entities and individuals involved in North Korean proliferation, which were to be subject to an assets freeze and travel ban. It introduced an embargo on trade with North Korea in WMD and dual-use goods, as well as major conventional weapons systems, and called upon member states to inspect any cargo they suspected of being in breach of that embargo. Lastly, it prohibited the sale of certain luxury goods to North Korea in an attempt to eliminate some of the comforts of Kim Jong-il’s regime.

At the time it was clear that Security Council members overwhelmingly believed that Pyongyang’s cost-benefit calculus could be changed by appropriately calibrated economic sanctions of the limited variety captured in Resolution 1718. This aligned with the dominant narrative in Western expert communities that North Korea would still sell its nuclear programme for the right price,³ and Pyongyang’s insistence that it would seek denuclearisation in a negotiated setting.⁴

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1. Arms Control Association, ‘Chronology of U.S.-North Korean Nuclear and Missile Diplomacy’, updated March 2017, <<https://www.armscontrol.org/factsheets/dprkchron>>, accessed 3 May 2017.
 2. UN Security Council Resolution 1718, 14 October 2006, S/Res/171814.
 3. The view that North Korean nuclear rollback remained possible was understandable. Pyongyang was at the time actively participating in Six Party Talks, which resulted in a limited freeze-for-aid agreement in 2007. For discussion on North Korean negotiating intentions, see Stephan Haggard and Marcus Noland, ‘North Korea in 2007: Shuffling in from the Cold’, *Asian Survey* (Vol. 48, No. 1, January/February 2008), pp. 107–15; see also Sergey Radchenko, ‘North Korea’s Nuclear Test’, LSE Ideas, May 2009, <<http://eprints.lse.ac.uk/43680/1/SA001.pdf>>, accessed 24 May 2017. Another early summary of this prevailing belief, and recognition of its limitations in practice, can be found in Jinwook Choi, ‘The North Korean Domestic Situation and its Impact on the Nuclear Crisis’, *Ritsumeikan Annual Review of International Studies* (Vol. 5, 2006), pp. 1–18
 4. Pak Gil Yon, statement given at the 5551st meeting of the UN Security Council in New York, 14 October 2006.

Design

The framework set up under Resolution 1718 has expanded dramatically in the ten years since its inception, in tandem with subsequent North Korean nuclear tests, which took place in 2009, 2013, and twice in 2016. Yet for most of its life, the sanctions regime has comprised restrictions anchored to assessments that a particular activity is proliferation-connected. Ships were not seized and bank accounts not frozen pursuant to UN resolutions unless the authorities first had grounds to believe that proliferation-linked deals lay in the background.

The shift away from this approach appears to have begun in late 2014, after North Korea's hacking of Sony Pictures. Only a few days later, then US President Barack Obama introduced an Executive Order that created a broad legal authority for domestic sanctioning of North Korean entities and individuals.⁵ Washington no longer needed to prove that a firm or person had materially contributed to North Korean proliferation in order to sanction them; instead, any individual or entity connected to the North Korean government could be designated – a significantly lower burden of proof. On a similar timeline, progress in nuclear talks with Iran cemented the view that sanctions on its access to the international financial system and on its key export commodities had compelled Tehran to return to the negotiating table.⁶ By 2016, the US appeared to already believe that, if sanctions were to have any prospect of changing Pyongyang's calculations of the value of its nuclear programme, they would need to move beyond their traditional focus on proliferation.

When North Korea conducted its fourth nuclear test on 6 January 2016, other countries joined the US in its readiness to expand the scope of the UN sanctions framework. China and Russia, both longstanding sceptics of the utility of sanctions, consented to on-paper restrictions on commodities, modes of transport and mechanisms for finance central to general North Korean trade. UN Security Council Resolution 2270 was initially drafted by the US, refined in negotiations with Beijing, and adopted by the Security Council in March 2016. Recycling major elements of the playbook for Iran, it took aim at North Korea's access to the international financial system and its key export commodities (coal and iron).⁷ Beijing managed to insert important caveats in these sectoral sanctions, however. Under the terms of the final resolution, North Korea would continue to be able to export any coal or iron that was for unspecified 'livelihood' purposes.⁸ Given the nature of the commercial applications for coal and iron, Beijing was able to interpret this provision expansively, purchasing significantly higher amounts of North Korean coal in 2016

5. For further details, see Andrea Berger, 'New Kids on the Blocked Persons List: US Expands North Korea Sanctions', *RUSI Commentary*, 14 December 2015; for the Executive Order, see the White House, Office of the Press Secretary, 'Executive Order – Imposing Additional Sanctions with Respect to North Korea', 2 January 2015.

6. Suzanne Maloney, 'Why "Iran Style" Sanctions Worked Against Tehran (And Why They Might Not Succeed with Moscow)', Brookings Institution, 21 March 2014; John Cassidy, 'The Iran Deal is a Victory for Reason and Economic Sanctions', *New Yorker*, 3 September 2015.

7. UN Security Council Resolution 2270, 2 March 2016, S/Res/2270.

8. *Ibid.*

than in previous years.⁹ The ‘livelihood’ carve-out thus rapidly became a source of irritation for the US, which expressed its determination to rectify the issue at the next available opportunity.¹⁰

This opportunity came with North Korea’s fifth nuclear test in September 2016.¹¹ The test occurred a few months after North Korea had substantially increased its rate of ballistic missile testing.¹² Pyongyang appeared to be hitting the accelerator on its nuclear and missile programme, with a stated aim of being able to strike the continental US.¹³ As it had pledged, Washington pushed for a new UN Security Council sanctions resolution to eliminate the livelihood exemption and add a raft of substantively new restrictions, many focused on stemming the revenue streams of Kim Jong-un’s regime. It took three months of negotiations – longer than ever before – to agree Resolution 2321 (2016).¹⁴ The wait was not simply a testament to the complexity of the resolution. It was a form of protest by China, which for months had been obstructing UN activity to demonstrate its discontent with the plan to deploy the US-made Terminal High-Altitude Aerial Defence (THAAD) system in South Korea.¹⁵ However logical Seoul’s arguments that its need for increased ballistic missile defences is a result of North Korean WMD advancements, Beijing’s distaste for security developments in South Korea were (and remain) stronger than its distaste for those in North Korea.

Resolution 2321 was one of the longest sanctions resolutions ever introduced by the UN Security Council. In principle, the North Korea sanctions regime now restricts Pyongyang’s trade in all military goods or services; its export of a wide range of metals and minerals that are significant sources of revenue for the country; its ability to maintain any formal banking relationships; the country’s use of bulk cash and gold as alternative payment forms; its use of foreign flags of convenience; and even the accreditation and activities of North Korean diplomats, who frequently engage in illicit activity while abroad.

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9. *South China Morning Post*, ‘China Buys More North Korean Coal, Even After Ban, Customs Data Shows’, 23 January 2017.
 10. Gerry Shih, ‘US Calls on China to Cut Coal Imports Propping up N. Korea’, *AP: The Big Story*, 29 October 2016; Permanent Mission of Japan to the UN, ‘Remarks by Ambassador Koro Bessho, Permanent Representative to the United Nations of Japan, Ambassador Samantha Power, US Permanent Representative to the United Nations, and Ambassador Oh Joon, Permanent Representative to the United Nations of the Republic of Korea, at the Security Council Stakeout Following the Adoption of Resolution 2321’, 30 November 2016, <http://www.un.emb-japan.go.jp/statements/bessho113016_2.html>, accessed 30 May 2017.
 11. Yi Yong-in, ‘UN Seeking to Fill Few Existing Loopholes with Additional Sanctions on North Korea’, *The Hankyoreh*, 13 September 2016.
 12. Nick Hansen, ‘North Korea ups Pace of Ballistic Missile Launches’, *IHS Jane’s Intelligence Review*, 2007.
 13. Kim Rye Yong, ‘Advertisement of Evacuation Plan What For?’; Ri Myong Hyok, ‘Real War to be Fought in US Mainland’.
 14. UN Security Council Resolution 2321, 30 November 2016, S/RES/2321.
 15. Eun A Jo, ‘Seoul’s THAAD Decision and its Implications for China-ROK Relations’, Asan Forum, 6 October 2016.

Never before has the UN created a sanctions framework so sweeping and complex.¹⁶ Its novelty is in large part a product of three related trends. The first is the persistence and expansion of the North Korean WMD threat and the perceived lack of other feasible or politically palatable options for countries, especially the US and its allies, to address it. The second – and related – trend is the developing appreciation that Pyongyang’s cost-benefit calculation for its nuclear programme may look different than most believed in 2006. Third, the unprecedented scope of the sanctions regime today has been enabled by the consistently poor implementation of the previous resolutions within it. Weak global enforcement creates the impression for sanctions-averse countries – such as China – that it can agree to (but not systematically enforce) new farther-reaching measures with little tangible cost, and have plenty of company in the process. These trends are considered in greater detail below.

Objectives

The North Korea sanctions regime, in common with many others, has both overarching goals as well as intermediate and subsidiary ones. Its proponents have consistently stated that the high-level strategic objective for multilateral sanctions is to compel Pyongyang to return to denuclearisation talks and to agree to a disarmament plan. In 2006, statements made in the UN Security Council by its members revealed the comparatively widespread hope that North Korea would step back behind the nuclear threshold it had crossed and come into compliance with Resolution 1718 in exchange for sanctions lifting.¹⁷ As suggested above, at the time many knowledgeable officials and experts believed that Kim Jong-il was prepared to trade away North Korea’s nuclear capabilities for aid and other assistance – backed by the pain created by an arms embargo, moderate inducements could change Pyongyang’s cost-benefit calculation in favour of denuclearisation. This was a reasonable assessment given North Korean statements concerning its willingness to denuclearise, as well as recent experiences with the 1994 Agreed Framework. Kim Jong-il had already once before accepted concrete steps that would roll back (rather than simply freeze) North Korea’s military nuclear potential. It was reasonable to believe he might again.

In the years following the passage of Resolution 1718, however, doubts emerged about whether the cost-benefit analysis others projected on Pyongyang was accurate. For example, Gary Samore, one of the architects of the Agreed Framework, noted that North Korea seemed increasingly unwilling to relinquish strategic capabilities. It would, in his view, ‘insist on retaining some level of nuclear capability ... The North Koreans are not prepared to give up their nuclear weapons’.¹⁸ While this opinion was shared by other experts prior to Kim Jong-un’s assumption of power in

16. While sanctions on Iran were also expansive, the majority of sanctions on the country were adopted at the unilateral or multilateral (EU) level, rather than by the UN Security Council.

17. UN Security Council, ‘5551st Meeting of the UN Security Council’, S/PV.5551, 14 October 2006.

18. Bernard Gwertzman, ‘Samore: N. Korean Deal a “Wise Compromise” for Bush’, Council on Foreign Relations, 13 February 2007.

late 2011,¹⁹ it did not permeate mainstream, official narratives in the US, South Korea, Japan or elsewhere at the time.

Little genuine hope for North Korean denuclearisation could be found at the UN Security Council by 30 November 2016, when Resolution 2321 was adopted. Kim Jong-un's determination to advance the country's nuclear and missile programmes, seemingly in spite of any costs and at an unprecedented pace, was not lost on the delegations present.²⁰ In the five years since he assumed power, Kim Jong-un has enshrined North Korea's nuclear weapons state status into its constitution, restarted its reactor at Yongbyon, accelerated the pace of nuclear and missile testing, moved rapidly towards a submarine-launched ballistic missile capability, and announced the country's intention to be able to strike the mainland US with a nuclear weapon.²¹

While then US Ambassador Samantha Power spoke in November 2016 of her continued belief that 'it is possible to change ... [North Korea's] calculus', she also affirmed that '[t]he United States is realistic about what [Resolution 2321] will achieve'.²² Indeed, Power's comments highlighted the contemporary divide in the official and expert communities working to curb North Korea's illicit programmes. A growing number, including senior intelligence figures,²³ are now publicly stating that North Korea will never denuclearise as long as the regime takes its current form. In this context, sanctions are generally no longer spoken of as a tool to encourage North Korea to reverse a single, and perhaps half-hearted, decision to cross the nuclear threshold. Rather, they are increasingly referred to as a last-ditch attempt to help stop a runaway train.

Emerging opinion thus appears to contend that changing Pyongyang's mind about its nuclear programme is harder today than ever before, if not impossible.²⁴ A simple arms embargo would therefore be highly unlikely to create meaningful progress towards the international community's overarching goal of denuclearising North Korea. The conventional wisdom of the architects of Resolutions 2270 and 2321 seems to be that only by imposing wide-ranging costs on the Kim Jong-un regime will UN sanctions have any chance of tipping the scales towards dialogue.

Indeed, the US and its allies, in setting out the case for the measures in 2270 and 2321, have laid the logical foundations for the expansion of sanctions. The nature of the North Korean system, they have argued, means that any revenue stream can be diverted to support the country's

19. See, for example, Stephen Bradner, 'North Korea's Strategy', in Henry D Sokoloski (ed.), *Planning for a Peaceful Korea* (Carlisle Barracks, PA: US Army War College, Strategic Studies Institute, 2001), p. 40.

20. UN Security Council, '7821st Meeting of the UN Security Council', S/PV.7821, 30 November 2016.

21. For references to Pyongyang's intent to hold mainland US targets at risk, see Kim Rye Yong, 'Advertisement of Evacuation Plan What For?'; and Ri Myong Hyok, 'Real War to be Fought in US Mainland'.

22. UN Security Council, '7821st Meeting of the UN Security Council', S/PV.7821, 30 November 2016.

23. David Brunnstrom, 'Getting North Korea to Give up Nuclear Bomb Probably "Lost Cause": US Spy Chief', *Reuters*, 26 October 2016.

24. Carnegie Endowment for International Peace, 'Concurrent Session III – Running out of (Strategic) Patience: Rethinking U.S. Policy Toward North Korea', Event Panel, Washington, DC, 21 March 2017.

priority programmes; for Kim Jong-un that priority is WMD development.²⁵ Simply put, anything that generates revenue for the country, whether exports, or foreign direct investment, or aid, is asserted to be a proliferation finance risk worthy of restriction. By the same logic, North Korean export commodities other than those already sanctioned could be put on the negotiating table during the next push for a new UN sanctions resolution. Sanctions may become an even blunter instrument.

It is important to recognise that the sanctions regime has intermediate or subsidiary objectives as well, which have remained constant since 2006. Regardless of whether the whole sanctions framework meaningfully progresses denuclearisation, certain individual measures should be assessed in their own right. For example, while difficult to prove and measure, any slowing or disruption of North Korea's illegal military programmes (including both its WMD and conventional weapons programmes) is intrinsically valuable. So too is tackling North Korean sales of military goods and services to overseas buyers. Pyongyang continues to equip foreign countries and non-state groups with military equipment, ranging from small arms to tanks, ships and ballistic missiles.²⁶ Until 2007, North Korea was even assisting Syria with a clandestine nuclear programme of its own.²⁷ The UN arms embargo against North Korea, provisions requiring the interdiction of suspicious cargo, and measures that exert scrutiny on North Korean networks that could be used for proliferation to others, are important in this light. Efforts must be made to prevent North Korea, which lacks regard for global export control or safety standards, from enabling atrocities beyond the Korean Peninsula.

Sanctions have already had a disruptive effect in places. Middle Eastern countries have been denied key ballistic missile parts, chemical weapons protection equipment and conventional arms purchased from North Korea.²⁸ Some African states have been caught contracting to North Korea for entire arms factories.²⁹ While many illegal shipments and contracts go undetected, and too few countries devote attention and resources to enforcing sanctions, the sanctions nevertheless help to facilitate each of these small and individually important success stories. A nuanced appreciation of these intermediate and subsidiary objectives should therefore be a component of the many ongoing discussions over the utility of sanctions as a policy tool in the North Korean context.

25. Samantha Power, statement given at the 7821st meeting of the UN Security Council in New York, 30 November 2016, S/PV.7821.

26. Andrea Berger, *Target Markets: North Korea's Military Customers in the Sanctions Era*, RUSI Whitehall Paper 84 (London: Taylor and Francis, 2015).

27. David Makovsky, 'The Silent Strike: How Israel Bombed a Syrian Nuclear Installation and Kept it Secret', *New Yorker*, 17 September 2012.

28. Louis Charbonneau, 'Suspected North Korean Missile Parts Seized En Route to Syria in May', *Reuters*, 14 November 2012.

29. Oscar Nkala, 'Namibia Confirms North Korean-Built Arms and Ammunition Factory', *Defense News*, 17 March 2016.

Implementation

From the start, global awareness, implementation and enforcement of UN sanctions on North Korea have been poor. Between October 2006 and June 2009, when Resolution 1874 was adopted and monitoring architecture for the regime expanded, violations of the luxury goods ban and arms embargo were rife. North Korea continued to have sanctions-busting military relationships across the Middle East, Asia, Africa and – to a lesser extent – in Latin America.³⁰ A majority of countries failed to report to the relevant sanctions committee listing the actions they had taken to translate their obligation into national law and practice, as demanded by the resolutions.³¹ Of the 73 which submitted reports, only one was African (South Africa); North Korea's largest growth market for military cooperation was ignoring the sanctions regime entirely.³² In fact, it was not until August 2009, nearly three years after UN sanctions on North Korea were introduced, that the first case of a suspected violation anywhere in the world was brought to the attention of the Sanctions Committee.³³

Global engagement with the requirements of the sanctions regime did not swiftly or markedly improve after the second North Korean test and corresponding adoption of Resolution 1874,³⁴ though the creation of a Panel of Experts to monitor implementation and report on suspected breaches helped draw attention to the situation. Many countries continued to lack the domestic infrastructure to take action pursuant to UN resolutions, even with credible information that a proliferation-linked incident was ongoing. Even more lacked the political will or interest. As a consequence, North Korea has generally continued to be able to access goods from overseas needed for its prohibited programmes, to supply its foreign military customers and to use formal financial and logistical channels to achieve both.

This is not to discount individual successes in the first decade of the UN sanctions regime on North Korea. As indicated above, numerous consignments of illegal goods have been prevented from entering or exiting the country. Bank accounts have been frozen, diplomats stopped with bulk cash for prohibited activities and sanctions-busting relationships exposed. In one notable instance, sanctions helped to bring decisive pressure to bear on the Republic of the Congo to

30. See Berger, *Target Markets*.

31. UN Security Council, 'Letter Dated 31 December 2007 from the Chairman of the Security Council Committee Established Pursuant to Resolution 1718 (2006) Addressed to the President of the Security Council', S/2007/778, 31 December 2007. In 2006–07, 71 countries submitted initial implementation reports; only two additional countries reported in 2008. See UN Security Council, 'Letter Dated 31 December 2008 from the Chairman of the Security Council Committee Established Pursuant to Resolution 1718 (2006) Addressed to the President of the Security Council', S/2008/830, 31 December 2008.

32. *Ibid.*

33. UN Security Council, 'Letter Dated 14 January 2010 from the Chairman of the Security Council Committee Established Pursuant to Resolution 1718 (2006) Addressed to the President of the Security Council', S/2010/28, 18 January 2010, p. 5

34. Only 47 countries submitted implementation reports in the period required by Paragraph 22 of Resolution 1874. See *Ibid.*

cut its illegal ties to North Korea.³⁵ Broadly speaking, however, the sanctions regime on North Korea has always been riddled with implementation gaps through which illicit activity passes. And those who remain ignorant of their obligations, those who choose to ignore them and those who consciously breach them have traditionally faced few, if any, costs, whether tangible or reputational.

Implementation patterns are an important but often overlooked consideration in the context of sanctions design. As with all Security Council resolutions, new sanctions must be acceptable to China and Russia, two of the most ardent sceptics of their use as a foreign policy tool. As demonstrated by its One Belt, One Road strategy, Beijing believes that economic integration and interdependence is the optimal method for promoting strategic stability in its neighbourhood, North Korea included.³⁶ Even the continued growth of North Korea's nuclear and missile testing does not appear to have invalidated this assumption.³⁷

Widespread, longstanding implementation gaps reinforce the impression for Beijing and Moscow that they can have it all: they can reap political benefits from accepting new measures in the aftermath of North Korean nuclear tests, but without having to expend significantly greater resources actually enforcing the agreed provisions, and thereby undermining their broader strategy for Korean Peninsula stability. It is this very dynamic that sparked US–China discord in the wake of Resolution 2270, when it became apparent that Beijing had agreed to groundbreaking sanctions on North Korean coal and iron, but had no intention of changing its practices.³⁸ Resolution 2321 only widens the gulf between paper and practice, both in the Chinese and global enforcement contexts. The remainder of this study seeks to help measure and explain this gap.

35. Some others fell away for separate reasons. Myanmar, for example, transitioned from military to civilian governance, although it is possible that the defence enterprise in the country continues to engage with Pyongyang. Other known customers from the pre-sanctions period – including Iran, Syria, Egypt, Ethiopia, Eritrea, the Democratic Republic of the Congo, Uganda, Angola, Cuba and Namibia – remained broadly active in military trade with North Korea, in contravention of their UN obligations.

36. For a summary of the strategic ambitions underpinning China's One Belt, One Road strategy, see Sarah Lain, 'China's Silk Road in Central Asia: Transformative or Exploitative?', *Financial Times*, 27 April 2016. For an excellent discussion of the role of China's thinking towards economic integration with North Korea, see Mathieu Duchatel and Phillip Schell, *China's Policy on North Korea: Economic Engagement and Nuclear Disarmament*, SIPRI Policy Paper No. 40 (Stockholm: SIPRI, 2013).

37. China emphasised at the vote on UN Security Council Resolution 2321 that the resolution is not aimed at 'affecting normal economic and trade activities'. Liu Jieyi, statement given at the 7821st meeting of the UN Security Council, S/PV.7821, 30 November 2016. It is therefore also no surprise that China's overall trade with North Korea continues to increase despite the worsening of the security situation on the Korean Peninsula. See Jane Perlez and Yufan Huang, 'China Says its Trade with North Korea Has Increased', *New York Times*, 13 April 2017.

38. Rina Takahashi and Oki Nagai, 'US Pressures China to Close Loophole on North Korea', *Nikkei Asian Review*, 28 September 2016; see also Matthew Pennington, 'US Official: China Using a Loophole to Buy Coal from North Korea is "Unacceptable"', *Associated Press*, 25 October 2016.

II. North Korea Sanctions Circumvention

THE DESIGN OF UN sanctions has been driven by North Korean WMD development and a shift in opinion about the nature of Pyongyang's cost-benefit calculus, with broadly poor implementation enabling sceptical countries such as China to agree to new measures at the Security Council. The current state of implementation, and thereby the gap between paper and practice, however, rests on three additional considerations: North Korea's prowess in evasion; implementation of the sanctions at member state level; and the nature of private sector action. Although it is impossible to provide an exhaustive examination of each, expert interviews and extensive open-source research provide an illuminating overview.

A new report by the UN Panel of Experts – tasked with investigating compliance with relevant resolutions – outlines how North Korea 'is flouting sanctions ... with evasion techniques that are increasing in scale, scope and sophistication'.¹ Government efforts to counter North Korean illicit activity have largely failed to keep pace. Pyongyang is often able to circumvent any increase in scrutiny with simple amendments to its existing evasive methods. And in some cases it is already able to work around new measures the moment they are introduced. North Korea has made complying with UN sanctions resolutions an extremely time-consuming due diligence challenge for all involved.

The country's continued evasion of UN sanctions depends on its ability to conceal any North Korean link when navigating global trade and finance. Today, whether in the course of procuring goods from overseas, facilitating payments or securing flags for vessels, a clear North Korean connection risks inviting disruptive scrutiny from authorities or the private sector. Pyongyang knows this. When active overseas, North Korean networks therefore attempt to adopt foreign identities and hide in plain sight.

North Korea's largest trade and financial networks are in China, corresponding to the size of the bilateral trading relationship and the presence of sizeable Korean-Chinese ethnic communities. These networks are vast. North Korean-headquartered companies have more than 300 official representative offices in Liaoning province alone, and they control many more affiliated (but not overtly North Korean) firms.² Its footprint across the whole of China is substantially larger still. In many ways, China serves as the gateway for the North Korean economy's access to the rest of the world; most North Korean trade and finance involving jurisdictions further afield will flow through the country on its way into or out of North Korea. Yet significant North

1. UN Security Council, 'Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)', S/2017/150, 27 February 2017.

2. Data collected by the author using Chinese corporate and credit registries. The data was updated in March 2016. The author is grateful to Ching Fung and Jenny Lin for their research assistance.

Korean networks can be found elsewhere too. These are not only in places where Pyongyang has important political, trade or military relations, but also where it wishes to source priority goods from, or in countries along important logistical pathways for North Korean trade. For example, Russia, Southeast Asia and parts of the Middle East continue to be major corporate hubs for North Korea.³

In these places, North Korean networks tend to apply a straightforward approach to concealment. Often, they deploy one or more North Korean nationals to the country in question; for jurisdictions where North Korea has only sporadic dealings, Pyongyang sometimes uses its nationals stationed in a neighbouring country in the same way.⁴ In either case, individuals may or may not be affiliated with a North Korean embassy or consulate. Once established, they create generically named companies, such as International Global System,⁵ and Rich Lead Trading,⁶ along with corresponding bank accounts.

In some cases, North Koreans establishing corporate networks overseas seek to acquire passports of convenience to avoid revealing their other nationality. Many countries offer investment-for-citizenship schemes, or have simpler than normal processes for acquiring citizenship in order to encourage greater inward investment. In 2015, a China-based North Korean man affiliated with a sanctioned North Korean arms trading firm was arrested in the US, having travelled there on his Cambodian passport.⁷ Cambodia granted him citizenship in 2007,⁸ and shortly thereafter he opened two companies in Hong Kong using his Cambodian nationality. Earlier cases have shown North Korean use of Seychelles and Kiribati passports.⁹

It is difficult to tell on what scale passports of convenience continue to be used as an evasive tactic by North Koreans operating overseas. Research by this author indicates that in jurisdictions where it is possible to use a local Chinese identification document to establish companies or bank accounts, North Koreans with such an ID form tend to use it instead of their North Korean passport, likely for the reasons described above. In China, official open sources offer no identifying details other than name for the individuals attached to a company.¹⁰ Transliterating a Korean name into Chinese is often sufficient to make it impossible for an outside audience

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3. Its corporate networks in Africa may also be considerable, though the lack of digitalised corporate registries makes it difficult to concretely assess.
 4. The latter approach appears to be more common in parts of Africa. For example, North Koreans based in South Africa are known to shuttle across the border to Namibia and Mozambique to facilitate business.
 5. James Pearson and Rozanna Latiff, 'North Korea Spy Agency Runs Arms Operation out of Malaysia, U.N. Says', *Reuters*, 27 February 2017.
 6. Andrea Berger and Ching N Fung, 'Business or Pleasure? A N. Korean-Cambodian Arrested in Hawaii', *NKNews.org*, 7 August 2015.
 7. *Ibid.*
 8. Records of Cambodian naturalisations for 2007, acquired by the author.
 9. Corporate registry documents for Neweast International Trading (Hong Kong Company Number 0726760) show that the company's North Korean directors registered the firm using their Kiribati passports, and subsequently their Seychelles passports.
 10. Hong Kong is an exception, as its corporate registry provides the Chinese ID number or foreign passport number for company directors.

to conclude whether or not a person is North Korean.¹¹ Other tactics used to obfuscate the national origins of North Koreans overseas include self-declaring as ‘South Korean’ or simply ‘Korean’. Administrators processing documentation may assume the latter refers to the Republic of Korea without verification.¹²

A similar desire to avoid revealing the North Korean nationality of the individuals behind a company also leads them to partner with local national facilitators when setting up companies and bank accounts. This approach seems to be used increasingly frequently among North Korean networks overseas.¹³ Annex 1 shows a North Korean-controlled company engaged in military trade out of Malaysia. Kim Chang-hyok, the local ‘puppet-master’, is listed alongside several Malaysian national directors and shareholders. In addition to this company, it is believed he controls at least five others in the country. Companies affiliated with this network also exist in Singapore and mainland China and possibly elsewhere.¹⁴

In certain circumstances, trusted foreign nationals operate independently of any locally based North Korean coordinator. Annex 2 offers an example of a Japanese national operating a major North Korean logistical network using an elaborate web of front and shell companies in Hong Kong and mainland China. In another case, convicted British arms dealer Michael Ranger acted as a broker for sanctioned North Korean entities, meeting his counterparts only sporadically in hotels across South Asia.¹⁵

Involving foreign nationals easily and substantially heightens the due diligence challenge for anyone investigating the company or account: on paper, the entity will show no obvious affiliation to sanctioned individuals, companies or even to North Korea. Simple evasion tactics replicated on a large scale have created disproportionate difficulties for those seeking to identify and counter such illicit activity.

These – seemingly non-North Korean – companies engage in a wide variety of general trade, frequently conducting imports and exports as well as mixing categories of traded goods. Any illicit trade performed by these companies is hidden among volumes of legal activity. While China-based networks record trade directly with North Korea, in any other jurisdiction this is increasingly rare. Imports and exports arranged by North Korean companies overseas are recorded as being to or from intermediary countries. This dynamic will be discussed further with relation to state implementation patterns for restricted commodities, such as iron.

11. The size of the Korean diaspora community in China compounds this problem.

12. An analysis of the Cambodian naturalisation announcements also suggests that North Koreans used this same practice, labelling their home town as a variation of ‘PY City’ and their country of birth as ‘Korea’.

13. Author’s observations, based on more than 100 case studies compiled between 2015 and 2017.

14. Research conducted by the author in support of a *Reuters* special investigation. The case is discussed in detail by the author and the lead *Reuters* correspondent at <<http://armscontrolwonk.libsyn.com/glocom-and-dprk-fronts>>.

15. See Jeffrey Lewis and Andrea Berger, ‘The Michael Ranger Files: Parts 1–3’, *Arms Control Wonk*, 15–17 February 2016.

The basic approach described above enables more complex deceptive and evasive practices in specific sectors. The generically named, apparently non-North Korean companies, or the local nationals associated with them, open accounts with international or domestic banks who fail or neglect to catch their deeper connections to a sanctioned country. In several cases gathered and reviewed by the author, relevant individuals or companies open multiple accounts in different denominated currencies, financial institutions or jurisdictions.¹⁶ Limitations on sharing proprietary financial information between banks or countries usually prevent compliance professionals or authorities from realising that multiple accounts exist. Such evasive methods thus swiftly undermine the global efficacy of related UN restrictions. Multilateral sanctions specify that a North Korean diplomat overseas may not hold more than one bank account. Identifying that this is the case will be beyond the abilities of a financial institution unless the accounts are with the same bank, and usually only if they are in the same jurisdiction;¹⁷ only well-resourced national intelligence agencies are likely to have the capability to identify breaches of this provision.

As with the underlying trade itself, accounts opened using the aforementioned tactics route any North Korean-linked transactions via jurisdictions other than North Korea. Having replicated the above pattern on a large scale, North Korea uses the array of bank accounts it controls in foreign jurisdictions and currencies to facilitate its day-to-day foreign business – all largely without having to transfer money into and out of North Korea itself. Its funds circulate offshore. The Chinpo Shipping case in Singapore revealed this pattern clearly: Chinpo's Bank of China account was set up in the name of its Singaporean staff and was used to facilitate more than 600 payments related to the business of the North Korean fleet.¹⁸ Chinpo's staff would be told by their North Korean counterparts when funds were set to be paid into the account and when money should be paid out of it.¹⁹

North Korean banks, which have been widely discredited and prevented from operating internationally,²⁰ take advantage of this avenue for evading restrictions, too. By using the bank accounts attached to trading companies, they can continue to access the international financial system and provide services needed to facilitate North Korean business overseas. The US Treasury recently designated the Dandong Hongxiang Industrial Development Corporation for acting as a financial facilitator in precisely this fashion.²¹ Using a company to perform

16. Financial information related to North Korean accounts, reviewed by the author in 2016.

17. Data protection legislation in many jurisdictions inhibits banks from sharing information within different international offices of the same bank.

18. *Chinpo Shipping Co (Pte) Ltd vs. Public Prosecutor, 'Judgment'*, High Court of the Republic of Singapore, Magistrate's Appeal No. 9016 of 2016, 2017 SGHC 108, 12 May 2017, <<http://www.armscontrolwonk.com/files/2017/05/Chinpo-Shipping-Judgment-Court-of-Appeal.pdf>>, accessed 30 May 2017.

19. Jennifer Dodgson and Leo Byrne, 'Court Case Reveals Chinpo Shipping's Ties to North Korea', *NKNews.org*, 10 September 2015.

20. The section that follows on state implementation will examine the exceptions to this where North Korean banks maintain correspondent banking relations and branch offices.

21. US Department of the Treasury, 'Treasury Imposes Sanctions on Supporters of North Korea's Weapons of Mass Destruction Proliferation', press release, 26 September 2016.

such services, as the Kwangson Banking Corporation did with Dandong Hongxiang, skirts the restrictions on North Korean banks outlined in Resolutions 2270 and 2321. Global awareness of this highly problematic evasion tactic appears to be lacking. Greater outreach on this trend is thus necessary to ensure that UN resolutions are interpreted to include North Korean-controlled or -linked trading companies performing the functions of banks.

North Korea also circumvents sanctions on its financial institutions by entering into joint ventures with foreign nationals and firms. Mansudae Overseas Projects, a large North Korean construction contractor, is part of a joint venture with Malaysian businessmen called the MKP Group of Companies.²² The MKP website makes few direct mentions of North Korea, Pyongyang or Mansudae. Indeed, its only reference to the latter is the use of the acronym 'MOP'.²³ The company does not immediately appear from the outside to be engaged in illegitimate activity, yet focused investigation reveals its North Korean links as well as its potential usage as a means of evading restrictions on North Korean banks. In addition to managing a bank based in Pyongyang, MKP appears to have established a financial institution in Zambia, Commercial Capital Corporation Limited, via a leasing company.²⁴ Its website also indicates that it may have a stake in a cash remittance business in Africa called Cash4Africa. On paper, the trail that leads to North Korea is long and few who encounter MKP-controlled entities will trace it.²⁵

North Korea's basic evasion tactics also help it to succeed in maintaining access to global logistical networks despite unprecedentedly harsh sanctions on the North Korean commercial fleet and the North Korean flag. As the North Korean flag invites greater scrutiny than ever before, owners of the country's vessels are increasingly eager to equip their ships with foreign flags of convenience.²⁶ Resolution 2321 recently forbade them from doing so. Yet the legal change only seems to have cemented what was already a trend: North Korea is transferring the official ownership and management of some of its vessels from Pyongyang-based companies to foreign-incorporated ones that it either controls or trusts. When applying for a new flag, a foreign flag registry administrator may thus only see that the vessel's owner and manager are in Hong Kong or Southeast Asia, for example. No North Korean connection will necessarily be discernible, even with a modest amount of enhanced due diligence. It is therefore unsurprising that the country's fleet manages to continually secure access to flags of convenience. When a country takes action to revoke North Korean-controlled ships' access to its flag, Pyongyang

22. *Ibid.*

23. MKP, 'About MKP Group of Companies', <<http://www.mkpholdings.com.my/aboutus.php>>, accessed 24 May 2017.

24. MKP, 'MKP Service Division', <<http://www.mkpholdings.com.my/services.php>>, accessed 24 May 2017.

25. Investigations conducted by the author. For further details, see James Pearson, Tom Allard and Rozanna Latiff, 'Exclusive – "Dollars and Euros": How a Malaysian Firm Helped Fund North Korea's Leadership', *Reuters*, 10 April 2017; see also Jake Maxwell Watts, Tom Wright and Nicholas Bariyo, 'The Killing of Kim Jong Nam: Malaysia Probes Firm for North Korea Sanctions Violations', *Wall Street Journal*, 28 March 2017.

26. This refers to the practice of registering a ship in a country different from that of the ship's owners.

manages to quickly find substitutes. This trend is discussed in greater detail below with relation to national implementation of shipping sanctions on North Korea.

In the past, North Korean-linked business networks in Singapore have even been known to manage the registries for foreign flags of convenience, including the Mongolian, Kiribati, Tuvalu and Niue flags.²⁷ One of the companies involved, Senat Shipping, along with its director, Lai Yong Chian (also known as Leonard Lai), was designated by the US Treasury in 2015 for unspecified dealings with North Korea's main shipping firm, Ocean Maritime Management (OMM).²⁸ It remains unclear the extent to which Pyongyang has exploited the fact that its trusted partners overseas control foreign flag registries; several North Korean-linked vessels continue to be flagged to Kiribati and Niue.

In the course of daily procurement and sales, North Korea leverages its wider networks to establish often-convincing false end users or manufacturers, particularly when the underlying trade is illicit. The most common manifestation of this trend is for North Korea to pass its products off as Chinese, or declare Chinese front companies to be the end users of goods it wishes to source from further afield. North Korea is known to label its textiles as 'Made in China', selling them successfully into South Korean and Western markets.²⁹ Open-source investigations by the James Martin Center for Nonproliferation Studies reveal that when selling computer-numerically controlled lathes abroad in violation of sanctions, North Korean companies have passed them off as Chinese in origin.³⁰ While China may be the main subject of these tactical rebranding exercises, it is not the only one. Investigations by the author in partnership with *Reuters* show how North Korean arms trading networks market illicit military communications technology as being Malaysian-made, attracting clients in Southeast Asia and the Middle East.³¹

Comparable tactics are used when the direction of trade is reversed. North Korean-controlled and -linked companies in China are frequently and falsely declared as end users for imports that are in reality destined for North Korea. Cases involving attempted imports of unmanned aerial vehicle guidance technology or components for nuclear and missile applications, highlight this pattern.³²

27. Andrea Berger, 'North Korea's Friends in Singapore Running Flags of Convenience', *38 North*, 22 June 2015.

28. US Department of the Treasury, 'Treasury Sanctions Supporters of North Korea's Ocean Maritime Management Company and Updates Sanctions List', press release, 23 July 2015.

29. Chad O'Carroll and Curtis Melvin, 'American Brand Clothing Seen at North Korean Garment Factory', *NKNews.org*, 12 September 2013.

30. Jeffrey Lewis and Catherine Dill, 'Smoke and Mirrors: DPRK Front Companies in China and Russia', *38 North*, 18 November 2014.

31. Pearson and Latiff, 'North Korea Spy Agency Runs Arms Operation Out of Malaysia, U.N. Says'; see also <<http://armscontrolwonk.libsyn.com/glocom-and-dprk-fronts>>.

32. UN Security Council, 'Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)', S/2016/157, 24 February 2016.

Assessing the extent to which North Korea exploits corruption in foreign countries to facilitate its sanctions evasion remains challenging. Reports of bribes being paid to facilitate smuggling of illicit goods across the North Korea–China border are rife.³³ North Korea also has a penchant for formally involving senior political figures in its overseas business, indicating a desire to ensure top political cover in the country of operation.³⁴ Corruption is therefore likely an element of North Korean overseas activities more often than is publicly discernible.

The evasion tactics employed by North Korea in the course of its daily trade and finance business significantly complicate state and private sector implementation efforts, where they exist. They render simple translations of UN requirements into national law, even if done well, largely insufficient for catching illicit activity in real time. Unless intelligence collection and sharing mechanisms are robust, inter-agency cooperation is sophisticated and outreach programmes to private sector stakeholders are well developed, North Korea's illicit networks will mostly be able to carry on with their business with little hindrance.

33. *Daily NK*, 'Military Items Smuggled Through Chinese Customs Despite Sanctions', 4 April 2016; Sue-Lin Wong, 'From Bricks to Smuggled Wigs: China's Border Trade with North Korea', *Reuters*, 12 September 2016.

34. For example, two North Korean conglomerates in Southeast Asia – MKP and Pan Systems – were recently discovered to have senior Malaysian politicians listed as directors or shareholders. See Watts, Wright and Bariyo, 'The Killing of Kim Jong Nam: Malaysia Probes Firm for North Korea Sanctions Violation'; and Pearson and Latiff, 'North Korea Spy Agency Runs Operation out of Malaysia, U.N. Says'.

III. Contemporary Overview of State Implementation

ALL UN MEMBER states are obliged to dutifully translate Security Council resolutions into national law, implement appropriate policies to effect these legal changes and then strictly enforce them. Given this requirement, the expert and public discussion over the North Korea sanctions regime rightly focuses on the implementation and enforcement decision of countries, rather than the companies that fall within their jurisdiction.

China, in particular, is at the forefront of this conversation. The very utility of sanctions lies in the fact that implementing actors, individually and/or collectively, have leverage over the actor whose behaviour they wish to change. That leverage may take the form of – for example – trade relationships, financial market access or diplomatic relations. Curtailing any one is designed to show that the target’s actions have consequences and that the costs of pursuing a particular course do not outweigh the benefits. UN Security Council resolutions imposing sanctions outline the nature of the lever and the conditions and legal grounds for pulling it.

China remains North Korea’s most important economic partner, accounting for over 90% of the country’s total trade.¹ It acts as a critical pathway for North Korean goods travelling further afield, and for its imports from countries other than China. For the same reason, its financial institutions continue to act as an essential facilitator for North Korean economic relations with the wider world. China is also home to a large Korean ethnic diaspora and business community.² In terms of individual countries, China is therefore assessed as having the greatest relative leverage over Pyongyang. This is a reasonable preoccupation.

However, much of the discussion over the sanctions regime ignores the leverage held by other UN member states as a collective. For nearly its entire history as an independent state, North Korea has been extremely sensitive to perceived international isolation. It has consistently fought to keep its friendships overseas and to create new ones, viewing this effort as a zero-sum game played against its adversaries, particularly South Korea and the US.³ It has usually managed to hold important ground among friends in Asia, Africa and the Middle East. From

1. Hooyeon Kim and Ting Shi, ‘China Message to Trump with North Korea Coal Ban: Let’s Deal’, *Bloomberg*, 19 February 2017.

2. Approximately 2 million ethnic Koreans live in China, though estimates vary based on how the community is defined. See Si Joong Kim, ‘The Economic Status and Role of Ethnic Koreans in China’, in Bergsten and Choi (eds), *The Korean Diaspora in the World Economy*, Special Report 15, Petersen Institute for International Economics (New York, NY: Columbia University Press, 2003). See also Robert E McCoy, ‘Ethnic Koreans in China not Bound to North Korea’, *NK News*, 28 June 2016.

3. Charles K Armstrong, *Tyranny of the Weak: North Korea and the World 1950–1992* (Ithaca, NY: Cornell University Press, 2013).

Pyongyang's perspective, the sanctions regime may simply be the latest round. Yet if these core relationships were to degrade, newfound pressure could be brought to bear on North Korea's leadership. Admittedly, it is unclear whether this would encourage Pyongyang to behave in a way that was more or less in service of the sanctions regime's primary objective of advancing denuclearisation.

Nevertheless, collective implementation can meaningfully disrupt North Korean illicit activity overseas, inhibit procurement for its illicit programmes wherever possible, and curb the revenue streams that help to sustain critical nodes in the North Korean system: all important subsidiary or intermediate objectives for the sanctions regimes. These activities rely upon jurisdictions outside China. The loss of a single African government's military custom may not decisively change Pyongyang's thinking about the merits of its nuclear and missile programmes. It could, however, deny North Korea an important base from which to conduct other arms-related sales across the region. And closing the bulk of North Korea's overseas military market could deprive important organisations within the country's defence industrial complex, some of which are also responsible for nuclear- and missile-related procurement.

The following overview of the sanctions regime's implementation and enforcement highlights the importance of both individual and collective action. Yet too many countries have failed to act. At the time of writing, not a single sanctions measure enjoys robust, global implementation and enforcement – a reality that is difficult to address in the near term, but essential for the longer-term utility of sanctions in managing North Korean threats.

Luxury Goods

The embargo on selling certain luxury goods to North Korea was devised as part of the first UN sanctions resolution on North Korea, in order to deny the regime in Pyongyang its comforts. Despite its longevity, the provision is one of the most poorly implemented in the sanctions regime. Resolution 1718 (2006) left decisions over how to define 'luxury goods' to member states, creating enormous divergences in state practice.⁴ Some countries swiftly took steps to outline their own unique lists of prohibited items, but many others set out only very limited lists, or none at all.⁵ China, for example, has never published and disseminated a list of banned luxury goods, only dual-use items.⁶

Subsequent resolutions specified additional luxury items which all member states would have to prohibit for sale to North Korea, regardless of their existing national lists. The latest iteration

4. UN Security Council Resolution 1718, 14 October 2006, S/Res/1718, para. 8(a)(iii).

5. The EU's list of prohibited luxury items is in Annex III of the relevant Official Journal. See Council of the European Union, 'Council Regulation (EC) No 329/2007 of 27 March 2007 Concerning Restrictive Measures Against the Democratic People's Republic of Korea', *Official Journal of the European Union* (L 88/1, 29 March 2007), accessed 30 May 2017; Australia's list is available at <<https://www.legislation.gov.au/Details/F2006L05741>>, accessed 30 May 2017.

6. For an excellent discussion on the luxury goods trade with North Korea, see Kevin Stahler, 'In the Lap of Luxury (Goods)', Petersen Institute of International Economics, 29 April 2015, <<https://piie.com/blogs/north-korea-witness-transformation/lap-luxury-goods>>, accessed 30 May 2017.

of this UN list of items includes certain jewellery, watches, race cars, yachts, snowmobiles and other pleasure craft.⁷ Bans on luxury goods detailed by the Security Council are often directly translated into national law via the UN statutes of individual countries, giving countries enforcement potential in relation to those limited lists of products. Still, there has been a relatively small number of enforcement cases in relation to luxury goods, and usually only by countries that publish national luxury goods lists. In one of the most well-known cases, Irish-sponsored US basketball star Dennis Rodman imported crystal glassware, high-end alcohol and a Mulberry handbag into North Korea as gifts for Kim Jong-un and his wife. When investigated, Irish authorities insisted that this was not a sanctions breach, as it was a 'one-off' transaction and not for 'commercial purposes'.⁸ Cases like this have made the practical value of the luxury goods ban on North Korea laughable: luxury goods that were proscribed by the EU's own list and were going *directly* to the North Korean leader himself were not even the subject of enforcement action by relevant authorities.

In practice, because of the apathy of many countries towards this component of the sanctions regime, a wide range of products that some countries would define as luxury goods still flow in steady streams over the border into North Korea. In many cases, if a desired product is easily portable, it can be purchased in China (or elsewhere) and carried by hand into the country, likely without an accompanying declaration. North Korean diplomats were recently stopped in Sri Lanka while returning home, on suspicion that they were carrying bulk cash. In addition to the cash in their hand luggage, investigators also found significant amounts of gold jewellery and watches.⁹ North Korea likely gets away with luxury goods violations more than it gets caught, including with bigger ticket items which travel separately from a courier. For this reason, it is no surprise that jewellery, watches, luxury clothing, fine automobiles and high-end alcohol can all still be found in abundance in Pyongyang.¹⁰

The Arms Embargo

The arms embargo is the backbone of the global sanctions regime on North Korea. It is the component that most directly endeavours to undermine North Korea's nuclear and missile programmes: by denying Pyongyang foreign goods needed for these programmes and by prohibiting the military-related sales that fund the country's defence industrial complex. Under UN Security Council resolutions, Pyongyang is forbidden from buying any WMD-related, conventional weapons-related, or dual-use goods and services. Pursuant to this, items can be prevented from being exported to North Korea on the basis of either the good itself (if it appears on a control list), or its suspected end use (if it is not controlled). The legal standard for the

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7. UN Security Council, 'Consolidated List of Additional Items and Luxury Goods', 21 December 2016, <https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/list_items_and_luxury_goods.pdf>, accessed 30 May 2017.
 8. Andrea Berger, 'Further Shades of Grey: North Korea Sanctions and the 2015 UN Panel of Experts Report', *38 North*, 4 March 2015.
 9. Andrea Berger, 'Connecting the OSINT Dots on North Korean-Sri Lankan Military Deals', *38 North*, 15 March 2017.
 10. This author and others have personally observed such foreign goods on the shelves of retailers and driving the streets in Pyongyang.

latter is no longer that countries have credible information that the item *will* go to prohibited programmes, but rather that it *could* go to prohibited programmes.

The same applies to North Korean defence exports to foreign customers, which have been a key source of revenue for Pyongyang since the mid-Cold War period, but especially since the 1990s.¹¹ North Korea is able to manufacture and export a large range of finished weapons and supporting systems, spare parts and refurbishment services, military training and procurement services. Indeed, it continues to diversify these offerings to include, for example, command, control and communications systems. Despite the 2006 UN arms embargo, it has consistently found customers in Asia, Africa, the Middle East and Latin America.¹²

The embargo remains a source of frustration for those looking to improve sanctions implementation, though some aspects benefit from more widespread implementation than others. Few countries today consciously permit obviously military-linked sales to North Korea. China and Russia, which were for decades the source of the defence technology that North Korea has since learned to produce itself, no longer act as such patrons. Doing so would breach in the gravest and most obvious fashion the sanctions regime these countries helped to pass at the UN; Moscow and Beijing strive to maintain at least a thin veil of seriousness on implementation. Rather, this sort of direct assistance today comes from elsewhere. Iran, for example, is allegedly assisting North Korea with the production of a new rocket booster.¹³ Cuba's military provided North Korea with conventional military technology in 2013, although there is reason to believe that some of the goods they shipped may have actually related to Pyongyang's technical assistance to Cuba.¹⁴ These relationships are troubling; however, from what can be gleaned from open sources, they appear to be relatively few in number. For this reason, North Korea has likely gained significant independence in its defence manufacturing, reducing the international community's ability to impede the development of prohibited programmes.

Exports to North Korea that fall under the arms embargo, but which are less blatantly military-linked, present a significantly greater challenge. This includes preventing the sale of dual-use goods to North Korea. Countries in Europe and North America, which tend to be sources of high-end goods needed for nuclear and missile programmes, have well-developed export control regimes and are more active in implementing sanctions on North Korea. This has helped to inhibit the unfettered flow of such goods to North Korea. However, as indicated in the previous section, North Korea's ability to camouflage its procurement efforts as being those of Chinese entities has continued to fool Western firms eager to expand their business in Asia. Analysis of

11. During the Cold War, North Korea was known to offer its military goods and services at heavily discounted rates, or sometimes even for free. Such exports were thought of primarily as a means of building stronger, politically strategic diplomatic relations with foreign partners, and to support anti-imperialist movements worldwide. This perception changed in the 1990s after the Soviet Union collapsed, withdrew its economic patronage from North Korea and plunged the country into years of famine.

12. Berger, *Target Markets*.

13. US Department of the Treasury, 'Treasury Sanctions Those Involved in Ballistic Missile Procurement for Iran', press release, 17 January 2016.

14. Berger, *Target Markets*, section on Cuba.

sub-components in North Korean missiles and conventional military platforms shows that goods of Western heritage still find their way into these illegal supply chains.¹⁵

A second challenge is that emerging markets outside Europe and North America are increasingly manufacturing goods towards the top of the value chain. In many of these jurisdictions, particularly China and Southeast Asia, export control policies are not keeping pace with technological change. This means that North Korea will be steadily more able to complete its nuclear, missile and conventional weapons-related shopping list in its own region, without having to attempt purchases from more scrutinised countries. This is already playing out. A recent investigation by *Reuters* into a North Korean company manufacturing military communications technology revealed that most of the company's supply chain consists of goods from China, Hong Kong and Taiwan.¹⁶ All have notoriously poor export control and sanctions implementation records that proliferators exploit.

The arms embargo's other side, which restricts North Korean military exports, is similarly troubled. Few of the countries and non-state actors that were customers of North Korea's before 2006 – when the arms embargo was introduced – have fallen off the client list. The Republic of the Congo is the most well-known success story of the few there are. After it was caught red-handed in 2010 contracting to North Korea for tank, armoured vehicle and artillery repairs, Brazzaville swiftly discontinued the deals and invited in UN inspectors.¹⁷ Progress has also likely been made with Myanmar as part of that country's political transition, although it is not clear whether its untethered defence industry has decisively ceased dealings with Pyongyang.¹⁸

Others have remained more resilient, even under heavy public pressure to find other suppliers. Then South Korean President Park Geun-hye travelled to Uganda in 2016 to encourage her counterpart, Yoweri Museveni, to cease using North Korean military training services in violation of sanctions. In a shambolic public relations exercise, Museveni pledged to do so.¹⁹ Several months later, however, and Kampala has yet to cut its contract with Pyongyang for pilot training, which is set to run until 2018.²⁰ Similarly, Namibia has come under fire for North Korean defence construction projects on its soil, including arms factories and military barracks. Although it has made pledges disavowing relations with certain North Korean firms, it remains unwilling to concretely demonstrate that it is abiding by its UN obligations.²¹

15. UN Security Council, 'Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)', S/2014/147, 6 March 2014, pp. 22–24.

16. Pearson and Latiff, 'North Korea Spy Agency Runs Arms Operation out of Malaysia, U.N. Says'; see also <<http://armscontrolwonk.libsyn.com/glocom-and-dprk-fronts>>.

17. Berger, *Target Markets*, section on the Republic of the Congo.

18. The US State Department recently reapplied sanctions pursuant to the Iran, North Korea and Syria Nonproliferation Act (2005) to Myanmar's Directorate of Defence Industries, which had been previously sanctioned for conducting arms deals with North Korea. See <<https://www.state.gov/documents/organization/261144.pdf>>, accessed 5 May 2017.

19. Andrea Berger, 'North Korea's Military Partnerships Under Threat?', *38 North*, 17 June 2016.

20. Cara Anna, 'UN Report Shows North Koreans Using Africa to Slip Sanctions', *Associated Press*, 4 March 2017.

21. *The Namibian*, 'North Koreans Still Operating in Namibia', 13 January 2017.

Additional longstanding North Korean military clients remain firm. Among others, Syria, Iran, the Democratic Republic of the Congo, Mozambique, Egypt, Vietnam, Angola, Eritrea and Cuba continue to be intransigent beneficiaries of illegal North Korean goods and services. In fact, new markets may be opening for North Korea's defence industry. In 2017, the UN flagged its concerns in relation to Sri Lanka,²² Sudan and South Sudan.²³ Due to customer and supplier secrecy, it is impossible to tell from open sources how much these individual markets are worth to North Korea. What is clear is that, in terms of numbers, the sanctions regime has not resulted in a notable shortening of Pyongyang's list of military customers. As Pyongyang diversifies its military offerings and becomes more sophisticated at passing them off as non-North Korean, the international community will need to invest more in improving implementation of the arms embargo.

Sectoral Sanctions

The most noteworthy policy change encompassed within Resolution 2270 (2016) and Resolution 2231 (2016) was the inclusion of sectoral sanctions, particularly restrictions on the export of North Korean coal and iron. The addition revealed that there had been a move away from restrictions on activity directly connected to North Korean military programmes. Washington successfully argued that Pyongyang needed to face greater pressure, given the concerning trajectory of its nuclear and missile development. The US added that North Korea's major export commodities should be put in the cross-hairs. In many ways, it was a recycling of the playbook the administration of former US President Barack Obama had used for Iran, in which it sought to curtail foreign imports of Iranian energy products.²⁴

The US bolstered its case for applying sectoral sanctions on North Korea by arguing that the nature of the country's system is such that any foreign revenue stream can be diverted to prohibited priority programmes. Everything can be proliferation finance. The narrative has since been borrowed by numerous others; South Korea argued the same when it announced it would be closing the Kaesong Industrial Zone jointly run with North Korea.²⁵

Back-to-back provocations by Pyongyang in early 2016 – a nuclear test followed by a satellite launch – softened earlier resistance from China and Russia to expanding the sanctions regime

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22. In 2009, the US had intelligence to believe that Sri Lanka was negotiating the purchase of rocket-propelled grenades and multiple rocket launchers from North Korea's primary weapons trading firm. It is unclear whether the purchase went through following US demarches. This was the second time that suspicions of sanctions-busting links between the two countries arose. See 'Sri Lanka Negotiating to Procure Military Equipment from North Korea and Iran', cable from the Secretary of State to the US Embassy in Colombo, Sri Lanka, 09STATE46946_a, 8 May 2009, document obtained by Wikileaks, <https://search.wikileaks.org/plusd/cables/09STATE46946_a.html>, accessed 5 May 2017.
 23. UN Security Council, 'Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)', S/2017/150, 27 February 2017.
 24. Andrea Berger, 'Recycling the Playbook: UNSCR 2321 and its Coal Caps', *38 North*, 16 December 2015.
 25. Choe Sang-Hun, 'South Korea to Shut Joint Factory Park, Kaesong, Over Nuclear Test and Rocket', *New York Times*, 10 February 2016.

in this way. Resolution 2270, adopted in March, banned purchases of North Korean rare earth minerals, gold, titanium ore and vanadium ore. It also prohibited imports of North Korean coal, iron and iron ore unless the purchases were for unspecified 'livelihood' purposes. The definition of 'livelihood', or details of whose livelihood, was never included.²⁶

Coal and iron ore are among North Korea's top export commodities,²⁷ and China has long been its primary consumer. China's substantial domestic coal consumption is a well-known and longstanding issue, complicating its ability to meet international climate change targets and address local pollution issues. While North Korean coal is regarded as being of poor quality compared with other international suppliers, Chinese companies have traditionally been offered it at far below market rate. Many small and medium-sized enterprises operating in the border region have taken advantage of this opportunity and rely on coal trade as the core of their business. These dynamics make weaning China off North Korean coal no easy task.

China's agreement to such a step-change in sanctions, and its approach to implementation, thus became the subject of immediate media and expert interest in the wake of the Security Council's adoption of Resolution 2270. Beijing adopted the UN measures into national law a month later, on 5 April 2016.²⁸ Its approach to the 'livelihood' carve-out also became clear. For each purchase of coal, iron or iron ore, a company representative would simply have to sign a document promising that the consignment was exclusively for the same unspecified livelihood purposes. According to UN monitors, between April and December 2016, the policy change 'had no impact on the revenue acquired from coal and iron ore exports since 2015'.²⁹ In fact, in some months during this period, imports actually increased compared with the previous year. December 2016 saw record imports of North Korean coal into China.³⁰ The livelihood exemption became a source of immense frustration for sanctions policymakers in Washington and eliminating it was flagged as a priority for future Security Council action.

Iron and iron ore, also covered by that exemption, were not discernibly affected either. Iron ore exported to China appeared to be smelted and transformed into semi-finished or finished products, some of which were then returned to North Korea.³¹ In other cases, North Korean iron products (excluding iron ore) seemed to be imported into China by small and medium-sized

26. UN Security Council, 'Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)', S/2017/150, 27 February 2017.

27. Measured in value. In 2015, anthracite coal was by far North Korea's most valuable export commodity, though iron ore exports also earned it about \$80 million annually. See Leo Byrne, 'Trade in North Korean Gold, Coal and Iron to China Continues in April', *NK Pro*, 17 June 2016.

28. People's Republic of China, Ministry of Commerce, 'MOFCOM Announcement No. 11 of 2016 Announcement on List of Mineral Products Embargo Against the DPRK', 7 April 2016.

29. UN Security Council, 'Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)', S/2017/150, 27 February 2017.

30. See Kent Boydston, 'Sanctions Watch Update: April 2017', Petersen Institute for International Economics, 7 April 2017, <<https://piie.com/blogs/north-korea-witness-transformation/sanctions-watch-update-april-2017>>, accessed 30 May 2017.

31. Based on a review of shipment-level data for more than 100 Chinese companies importing iron and iron ore products from North Korea.

enterprises, which subsequently inflated the prices of those commodities and re-exported them to markets further afield.³² For example, Yanbian Haihua Import and Exports Trade Corporation imported nine consignments of North Korean pig iron (HTS 7201) for the year between January 2016 and January 2017. North Korea accounted for 98% of the company's \$22 million in imports of that period, and of the remaining 2% imported from Russia and China, none of the products was iron-related. In the same period it exported nine shipments of pig iron to Russia, South Korea and Taiwan. A similar pattern is observed with numerous other companies, indicating that it is possible that even though China is the first stop for certain North Korean iron exports, it is not the last. Trade data may show China as the customer of these goods when, in fact, others are the true consumer. In addition to the possible recipient countries mentioned above in the Yanbian Haihua case, Turkey, The Netherlands and India also feature repeatedly.³³

In contrast, the unqualified restrictions on trade in gold, vanadium, titanium and rare earths do appear to have had an effect. In March 2016, China imported approximately 3,000 kg of gold from North Korea. The figure dropped the next month to approximately 500 kg.³⁴ In the case of gold, North Korea likely has other foreign buyers, though consistent mislabelling of South Korean trade as North Korean in international statistics makes it difficult to conclude with certainty. UN Comtrade reports that North Korea still sold more than \$1.5 million of gold in 2016, despite sanctions.³⁵

China is one of the world's largest producers of vanadium, which is used in the manufacturing of alloys.³⁶ Resolution 2270 specifies that only vanadium ore trade is prohibited.³⁷ Shipment data for the period since the resolution was introduced indicates that there have been no such purchases. While vanadium oxides did make their way across the border to China in 2016, the UN and Chinese restrictions did not cover them.³⁸

Washington capitalised on the frustration created by North Korea's fifth nuclear test in September 2016 to pressure China into closing the livelihood 'loophole' and further extending sectoral sanctions in Resolution 2321. The US and China negotiated clear caps on the permitted

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32. Based on an analysis of company-level data provided by global trade data authority Panjiva, covering the period March 2016–March 2017. Filtered to include commodities in HTS category 7201 and 2602, as covered by Chinese export control regulations. Data provided by Panjiva is only specific to six-digit HTS codes, while Chinese export control regulations specify by ten-digit HTS codes. While it cannot be conclusively determined that the imports by these companies from North Korea are linked to the exports by the same companies, of the same commodity type to other foreign markets, the pattern occurs frequently enough to conclude a probable relationship.
33. Analysis of company-level data provided by Panjiva covering the period March 2015–March 2017.
34. Byrne, 'Trade in North Korean Gold, Coal and Iron to China Continues in April'.
35. UN Security Council, 'Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)', S/2017/150, 27 February 2017, para. 270.
36. *PR Newswire*, 'Global and China Vanadium Industry Report, 2014–2017', 4 May 2015.
37. Harmonised Tariff Code 2615 (vanadium ore).
38. Dandong Rich Earth Trade Co, which is based in the same building as the North Korean consulate in Dandong, has imported approximately \$140,000 worth of vanadium oxide between April 2016 and now. Data from Panjiva, accessed March 2017.

volume and value of annual North Korean coal imports,³⁹ specifying one for the remainder of 2016 and a separate cap for 2017. In practice, these apply only to China, which is now obliged to regularly report the volume of North Korean coal imported for the preceding month to the UN.

For December 2016, China was prohibited from importing more than around 1 million metric tons of coal, or \$53.5 million in value, whichever is lower. Beijing announced the suspension of all coal imports from North Korea for the remainder of 2016 on 9 December. However, Chinese data reported to the Korea International Trade Association quickly showed this policy had not been enforced; China recorded imports of over 2 million metric tonnes in December 2016,⁴⁰ which the UN Panel of Experts later assessed had a value of \$183 million.⁴¹ Furthermore, China missed its deadline to report this information to the UN by several weeks, incurring consistent anger from other member states at UN meetings.

On 20 February, following weeks of embarrassment that included the assassination of Kim Jong-un's half brother, Kim Jong-nam, who had been under Chinese protection, Beijing announced it would suspend North Korean coal imports for the remainder of 2017. The announcement's arrival so early in the year stunned many. China's foreign ministry spokesman explained that 'imports of coal from the DPRK [North Korea] have approximated the value limit put in place by the resolution'.⁴² Cumulative figures declared by China for January and February 2017 do not bear this out, and suggest that imports had not yet come close to the 2017 caps of 7.5 million metric tons or \$400 million. At the time of writing, volume has not yet reached 3 million metric tons, or \$250 million. China's calculation thus likely includes the over-run of its December 2016 coal caps, which would have taken it to over 90% of its value cap for 2017.⁴³ Inclusion of December excesses in the 2017 calculation, if accurate, would have been made at Washington's insistence and will probably have stemmed from three considerations: an interest in making a token concession to Washington at a politically significant time in the Trump administration's posturing; embarrassment over having fumbled its December 2016 purchases and February reporting obligations, which shattered the thin veil of compliance with UN measures that China strives to maintain; and frustration with North Korea's assassination of Kim Jong-nam.

39. Value is set by the UN, not what is actually paid by Chinese importers. This was to discourage further discounting of North Korean coal, and to judge progress towards caps based on a global market rate.

40. Leo Byrne, 'Beijing Says it's "in Line" with Obligations on N. Korean Coal', *NKNews.org*, 26 January 2017. The actual amount paid for the coal was \$168 million.

41. UN Security Council Subsidiary Organs, 1718 Sanctions Committee (DPRK), 'Procurement of DPRK Coal by Member States', <<https://www.un.org/sc/suborg/en/sanctions/1718/procurement-of-dprk-coal-by-member-states>>, accessed 5 May 2017.

42. Embassy of the People's Republic of China in the State of Israel, 'Foreign Ministry Spokesperson Geng Shuang's Regular Press Conference on February 21, 2017', 21 February 2017.

43. Other theories put forward include that China left room for orders that had been placed but not filled. However, this is explicitly refuted in the statement by China's Ministry of Commerce. See People's Republic of China Ministry of Commerce, 'MOFCOM and GACC Announcement No. 12 of 2017', 20 February 2017. Another hypothesis relates to Chinese market pricing, but fails to take into account that progress against value caps is measured by prices set by the UN Panel of Experts, not by the rate actually paid for North Korean coal or Chinese domestic pricing. See Yun Sun, 'The Myth of China's Coal Imports from North Korea', *38 North*, 5 April 2017.

It remains too early to tell whether China will systematically enforce its latest cut-off, changing its long track record of non-implementation of this sanction and others. Some reports have already emerged that North Korean ships, apparently loaded with cargo, continue to call at Chinese coal terminals.⁴⁴ While data for January and February 2017 indicates a drop in purchasing compared with the same months in 2016, data for the first half of 2017 (once it is available) will be best able to substantiate whether Beijing has changed policy as well as practice. Doing so would be in service of its effort to convince the world of its intention to comply with UN resolutions on North Korea, as well as its wider need to change the patterns of domestic coal consumption.

Even if it does enforce its latest coal policy, two other question marks will linger over the future of China's approach to UN restrictions on North Korean coal trade. The first concerns the possibility that China will lift the cut-off, or cease enforcing it, in protest over the US deployment of the THAAD system to South Korea. Beijing has already imposed penalties on South Korean companies,⁴⁵ and sanctioned types of tourism to South Korea over the issue,⁴⁶ and it is possible it will modify its coal policy to show Washington what it has to lose. The second is whether China intends to retain the possibility of going back to business as usual in 2018, once its current coal import suspension expires. Both must be considered in ongoing discussions of how to promote Chinese compliance with UN resolutions.

Unlike with coal, Resolution 2321 (2016) retained the livelihood carve-out for iron and iron ore, and therefore no substantial change is expected. Data from Panjiva and KITA both show continued shipments to China of items in this category. New restrictions without caveats were placed on the import of North Korean copper, zinc, silver and nickel.⁴⁷ Imports by China of these commodities dropped notably in the first month of 2017, but not entirely. China imported over 100,000 kg of prohibited silver ore, 500,000 kg of copper ore and more than 170,000 kg of zinc ore.⁴⁸ Each represents a reduction of 68–98% from the previous month, though a larger data set is necessary to conclude that these downturns are not temporary.

China's apparently selective approach to implementation, its overarching desire to be seen to be compliant with progressively stronger sanctions and renewed internal debate over North Korea policy,⁴⁹ raises the possibility that it will agree to yet more sectoral restrictions. The Trump administration is currently pushing for new sanctions on oil and gas imports into North Korea, among other things, which would shift the current focus of sectoral measures away from North Korean export commodities. By targeting general revenue streams rather than

44. Leo Byrne, 'UN Website Says China's February Coal Imports Lower than Previous Month', *NK Pro*, 17 March 2017.

45. Jethro Mullen and Sol Han, 'One Company is Bearing the Brunt of China's Anger over U.S. Missile System', *CNN Money*, 7 March 2017.

46. Luoyan Liu and John Ruwitch, 'South Korean Stocks Fall on Fears of Chinese Tourism Ban', *Reuters*, 3 March 2017.

47. UN Security Council Resolution 2321, 30 November 2016, S/Res/2321.

48. Hamish Macdonald, 'China Continues Importing Sanctioned North Korean Commodities in 2017', *NK Pro*, 10 March 2017.

49. Chris Buckley, 'Criticism of Beijing's North Korea Policy Comes from Unlikely Place: China', *New York Times*, 18 April 2017.

specific goods used by the general population, that focus has maintained some sensitivity to the humanitarian situation in the country. Sanctions on oil and gas imports would struggle to avoid adverse consequences on the local population, if fully implemented. While tanks might be deprived of the fuel needed to operate, so too would tractors, for example. China is thus likely to resist or water down any such proposals, even though it is believed to have previously used temporary reductions in oil supply to demonstrate displeasure from Pyongyang.⁵⁰ Russia also supplies North Korea with energy products, and may have significant reservations about moves to include them within the scope of UN sanctions. Whether it is oil or another commodity that becomes the focal point for new measures, sectoral sanctions will continue to form key components of drives for new restrictions on North Korea.

Interdictions

Since 2013, states have been obliged to inspect any cargo within or transiting through their territory that they have 'reasonable grounds' to believe contains items prohibited by UN Security Council resolutions, and to subsequently seize and dispose of any such goods.⁵¹ Aircraft believed to be carrying prohibited goods or persons related to the provision of prohibited services should be denied overflight rights unless the state determines it should land for inspection.

Additional challenging requirements were added in 2016. Resolution 2270 (2016) sanctioned the North Korean logistics firm OMM, which controlled a notable portion of the country's commercial fleet and shipping operations. A few years earlier, the company had been caught arranging for the transfer of large amounts of conventional military equipment from Cuba to North Korea. By sanctioning OMM, the Security Council subjected the company to an assets freeze. The resolution clarified that vessels controlled by the company, as listed in an annex, should be treated as assets and frozen. States were given conflicting instructions to deny these vessels access to territorial waters (where they would have authority to seize the ship) and to allow them to enter and subsequently carry out the seizure.⁵² Officials quickly explained that the contradiction in fact gave states the option to do either.⁵³

Interdictions are particularly important for the sanctions regime because they serve as the last line of defence to prevent the supply of illicit goods from meeting demand. This applies both to North Korea's sale of prohibited goods and services, as well as its attempts to access goods and services from abroad for its military programmes. They also tend to involve multiple countries, and are thus an excellent litmus test for state implementation and multilateral cooperation under the North Korea sanctions regime. Maritime interdiction cases can involve, for example,

50. Shaun Waterman, 'China Stops Oil Exports to North Korea, Possibly as Punishment for Nuclear Test', *Washington Times*, 22 March 2013, <<http://www.washingtontimes.com/news/2013/mar/22/china-stops-oil-exports-north-korea-possibly-punis/>>, accessed 30 May 2017.

51. UN Security Council Resolution 2094, 7 March 2013, S/Res/2094. High seas interdictions were previously written into the sanctions regime in 2009 as voluntary.

52. UN Security Council Resolution 2270, 2 March 2016, S/Res/2270.

53. Informal discussions with the author in 2016.

the interdicting state, flag state, the state in which the ship's owner is registered, the states where the consignor and consignee are located, and transit states.

In 2016 and 2017, there have been several interdictions of illicit North Korean-linked cargo by UN member states. Egypt recently stopped a vessel found to be carrying North Korean iron ore and rocket-propelled grenades in violation of sanctions.⁵⁴ Another member state seized North Korean military radios en route to Eritrea.⁵⁵ Bangladesh has repeatedly searched and seized cargo believed to be connected to North Korean prohibited activities.⁵⁶ Mexico and the Philippines, for their part, seized vessels listed on the 2270 Annex of OMM-linked ships.

Aside from these well-reported cases, however, it is difficult to assess the level of implementation of interdictions requirements using open sources. There tends to be little public information on 'failed' interdictions or those that did not occur, either because of inaction by member states or successful circumvention by North Korea. Interdictions are also usually an activity facilitated by national intelligence collection or the sharing of intelligence between states. Action is usually not taken on the basis of open-source information. As a consequence, countries wary of cooperating with the state passing the information, or those that feel they have insufficient legal grounds to take action on the basis of another country's assessments, sometimes decline to acquiesce to requests to search or seize consignments of concern.

When they do occur, interdictions of North Korean vessels or cargo tend to be high profile. They can therefore be the 'sanction of choice' for those countries wanting to demonstrate good faith implementation of UN Security Council resolutions and generate positive press. Panama's 2013 interdiction of the arms-laden *Chong Chon Gang*, during which the Panamanian president was posting mobile phone pictures of the cargo to Twitter, is a case in point.⁵⁷ So too is the Philippines' decision to seize the *Jin Teng*, an OMM ship on the 2270 Annex, only days after the adoption of UN Security Council Resolution 2270 (2016) listing the vessel.⁵⁸

Such public visibility creates the incentive to downplay operational and practical challenges encountered during interdictions. Bangladesh recently admitted to lacking sufficient open-source or shareable evidence to continue to hold vessels or consignments that it had stopped pursuant to national law.⁵⁹ The UN Panel of Experts hinted that similar evidentiary and legal issues were being encountered in relation to vessels listed on the 2270 Annex, as those vessels

54. James Griffiths, 'North Korea Flouting Sanctions with Illegal Arms Trade, Report Finds', *CNN*, 2 March 2017; Andrea Berger, 'A Familiar Story: The New UN Report on North Korean Sanctions Implementation', *38 North*, 16 March 2017.

55. Griffiths, 'North Korea Flouting Sanctions with Illegal Arms Trade, Report Finds'.

56. Comments by an official at an August 2016 workshop in Asia, conducted on a not-for-attribution basis.

57. Ian Johnston and F Brinley Bruton, 'North Korean Ship Carrying Hidden "Missile Equipment" Detained after Leaving Cuba', *NBC News*, 17 July 2013.

58. Avantika Chilkoti, 'Philippines Impounds North Korean Ship', *Financial Times*, 7 March 2016.

59. Comments by an official at an August 2016 workshop in Asia, conducted on a not-for-attribution basis.

do not have the legal equivalence of a sanctioned individual or entity.⁶⁰ The Philippines, for its part, acknowledged practical difficulties in transposing UN resolutions into national legislation, which complicated its ability to freeze the *Jin Teng*.⁶¹ These issues were encountered in the most successful of cases and are only the tip of the iceberg. Similar legislative or regulatory deficiencies undoubtedly deter or prevent countries from cooperating in interdiction scenarios, even if they possess the political will to do so.

Complications with recent interdictions have similarly brought the issue of ‘after-care’ to the fore.⁶² UN Security Council resolutions prior to 2321 did not create a framework for assisting states enforcing interdictions provisions, or outline an approach to managing related burdens. For example, if OMM-linked ships were to be frozen as long as the company was on the sanctions list, who should pay for the costs of keeping them in port? Could the vessel be scrapped or sold? If so, who would retain the profit? Panama encountered these issues when disposing of the cargo of the *Chong Chon Gang*, portions of which it eventually sold, transferred to another country, or discarded. The Philippines incurred substantial cost for its efforts to hold the *Jin Teng* for several weeks. While some of these issues have been resolved on a case-by-case basis, it remains a systemic issue that requires further attention, particularly as the potential for interdictions has grown in tandem with the expanding list of commodities prohibited under the North Korea sanctions regime. Without continued focus, countries are likely to shy away from interdicting sensitive cargo, seizing OMM vessels or forcing planes to land.⁶³ Refusing entry to the ship or plane in question, when possible, may be viewed as an easier way to mitigate risk and cost.

Shipping and Cargo Sanctions

Gaps in national laws and regulations that hinder the ability of countries to take action to interdict vessels also inhibit wider implementation of UN-mandated cargo screening requirements. In March 2016, the UN took the extraordinary step of determining that states shall ‘inspect’ all cargo going to North Korea, coming from North Korea, brokered by North Korea or transported on North Korean-flagged vessels or aircraft, with a view to identifying prohibited activities. As with other important terms in Resolution 2270, ‘inspect’ was not defined.

In order to be effectively implemented, the provision in principle necessitates that the relevant country in question has an export control law in place. Constant coordination between customs,

60. UN Security Council, ‘Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)’, S/2017/150, 27 February 2017, p. 90.

61. The *Jin Teng* was removed from the Annex to Resolution 2270 only a few weeks after it was added after an argument between the US and China about standards of evidence. The Philippines released the vessel thereafter and officials have since expressed frustration over the inconvenience and cost created by the incident. See Manuel Mogato, ‘Philippines Releases Seized North Korean Ship after U.N. Lifts Embargo’, *Reuters*, 25 March 2016.

62. The author is extremely grateful to Ian Bolton at King’s College London for his insights on this point.

63. Such reticence may be particularly acute if hazardous materials or explosives are suspected of being on board, as handling or disposing of such goods requires special procedures, and therefore cost.

tax, transport and maritime agencies is similarly important. Vessels involved in transit or transshipment might stop in a port only for 24 hours. For aircraft, the opportunity for inspection is even shorter.

The countries that should be most affected by this provision are those which have active trade relationships with North Korea, or common transit points for North Korean vessels, or which are destinations on national airline Air Koryo's flight routes. In other words, many countries in Northeast Asia, Southeast Asia and the Middle East should have taken on a significant extra burden in implementing and enforcing Resolution 2270's cargo screening requirements.

In fact, there is no evidence that countries in these key regions have changed their policies and practices to systematically inspect North Korean cargo. Several countries mentioned in their implementation reports to the UN Sanctions Committee that their relevant agencies were notified of the requirement.⁶⁴ The Philippines and Malaysia outlined that their existing laws were sufficient to allow for searching of any cargoes.⁶⁵ Singapore indicated it was undertaking a more thorough review of its national policies.⁶⁶ In none of these instances did the country state that systematic cargo searches were ongoing. Early suggestions about Chinese implementation pointed to their loose interpretation of the term 'inspect'. One year on, it is clear that comprehensive physical inspection of North Korean cargo by China is not occurring.⁶⁷

Many more countries said nothing in their implementation reports.⁶⁸ Interviews with Asian export control experts revealed that in some of North Korea's key commercial and logistical markets in Southeast Asia, no action was being taken to adjust existing export, import and transshipment control practices. Several countries in the region still do not have a national export control law,⁶⁹ and Resolution 2270's requirement therefore far exceeded what was possible.

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64. UN Security Council, 'Security Council Committee Established Pursuant to Resolution 1718 (2006): Note Verbale Dated 25 July 2016 from the Permanent Mission of Angola to the United Nations Addressed to the Chair of the Committee', S/AC.49/2016/47, 27 July 2016.
65. UN Security Council, 'Security Council Committee Established Pursuant to Resolution 1718 (2006): Note Verbale Dated 25 August 2016 from the Permanent Mission of Malaysia to the United Nations Addressed to the Chair of the Committee', S/AC.49/2016/4, 26 August 2016; UN Security Council, 'Security Council Committee Established Pursuant to Resolution 1718 (2006): Note Verbale Dated 27 January 2017 from the Permanent Mission of the Philippines to the United Nations Addressed to the Chair of the Committee', S/AC.49/2017/1, 27 January 2017.
66. UN Security Council, 'Security Council Committee Established Pursuant to Resolution 1718 (2006): Letter Dated 2 June 2016 from the Chargé d'affaires a.i. of the Permanent Mission of Singapore to the United Nations Addressed to the Chair of the Committee', S/AC.49/2016/17, 2 June 2016.
67. Nathan VanderKlippe, 'Nuclear Neighbours: China and North Korea at the Edge of Patience', *Globe and Mail*, 30 May 2017.
68. Russia, for example, has notable trade relations with North Korea yet made no mention of cargo screening requirements in its very brief report. See UN Security Council, 'Note Verbale Dated 27 May 2016 from the Permanent Mission of the Russian Federation to the United Nations Addressed to the Chair of the Committee', S/AC.49/2016/19, 27 May 2016.
69. Vietnam and Myanmar are two examples.

Indeed, in some cases, North Korea's circuitous trade practices are being viewed as a free pass to continue business as usual. Some interviewees revealed that North Korea's practice of routing legitimate and illegitimate trade via China means that cargo is not classified as coming from North Korea or going to the country *per se*.⁷⁰ Although the UN provision's inclusion of 'cargo brokered by the DPRK' should capture this practice, it is clear that several country experts do not agree.

Resolutions 2270 and 2321 also require countries to impose a range of restrictions on North Korea's commercial maritime activities in particular. Among other things, they should prevent North Korean ships from using their national flag, stop their vessels using North Korean crews, and withhold the provision of certain services, such as insurance or vessel classification, to its ships.

While there have been some successes in relation to these requirements, there have also been shortcomings, helped mainly by North Korea's evasion techniques. Pyongyang's maritime agencies and their associated networks organise the full range of services for North Korean vessels. Without having to rely on many external partners, they are able to adapt quickly, reflag vessels and move declared ship owners and managers to foreign countries with relative ease. For states, implementation and enforcement has become a game of cat and mouse. A clear example of this played out in 2016. At the time of Resolution 2270's adoption, more than ten North Korean ships were flying the Mongolian flag of convenience. When confronted with the requirement to deny such services to North Korean vessels, Mongolia promptly delisted a number of them. The ships rapidly changed guise, and several successfully applied to Tanzania to use its flag. When Tanzania was confronted about its failure to conduct adequate due diligence on the ships before registering them, some of the same vessels reflagged to Togo and Fiji.⁷¹

The experience involved several challenges encountered with other parts of the sanctions regime: countries have poorly translated their UN requirements into regular practice, including that of relevant private sector entities managing flag registries; enforcement is reactive, and appears to be most often done on the basis of information shared by other countries; and disagreements between countries receiving information and those passing it, over what constitutes sufficient evidence to warrant enforcement, are exacerbated by North Korean evasion and lead to only partial action or inaction.

North Korean evasion techniques which put degrees of separation between a ship's current management and its once overt Pyongyang connection, taken together with a country's own standard of evidence for concluding that a vessel is North Korean-linked, makes this even harder.

70. Three Asian export control specialists interviewed by the author in November 2016, on the condition of anonymity.

71. Shipping data from Marine Traffic and the International Maritime Organization monitored by the author over the course of 2016 and 2017. The author is also grateful to Leo Byrne for his insights on the subject.

Financial Restrictions

Financial measures have assumed new prominence in the North Korea sanctions regime. North Korean banks are prohibited from having branches, offices or correspondent accounts overseas. The same applies to foreign financial institutions having presences in North Korea, though until November 2016 they were permitted to if the relationship was established prior to Resolution 2270 (March 2016). Joint ventures between North Korean and foreign banks are similarly prohibited by the UN Security Council. So too is the provision of loans or trade finance products to facilitate North Korean trade.

Due to the proprietary nature of financial information, assessing implementation and enforcement of the UN's financial restrictions on North Korea from open sources is challenging. Belarus reported that it investigated the status of North Korean financial institutions on its territory and closed relevant accounts.⁷² Yet this is the only such voluntary report concerning action being taken pursuant to UN obligations to end formal financial relationships with North Korean banks. It is unclear whether Russia has ended its rouble-trading arrangement with North Korea's Foreign Trade Bank, an agreement reached in 2015.⁷³

Open-source information nevertheless reveals the obvious: that Belarus was not North Korea's only outlet into the international formal financial sector. UN, US and EU designations, as well as Panel of Expert reports, point to the fact that representatives of designated North Korean banks continue to be active in parts of the Middle East, Southeast Asia, Africa and Russia, where there is little or no regard for the sanctions regime.⁷⁴ It is thus probable that North Korean banks maintain prohibited relationships in these countries.

Furthermore, investigations by this author show how North Korean banks continue to be able to send and receive payments with foreign banks of nearly every variety, via correspondent accounts in jurisdictions such as China.⁷⁵ Foreign banks of all types are still affected, from small local institutions through to major international ones, from those with limited international footprints to those with sizeable reach, and from those without robust compliance programmes to those with them. This is despite periodic media reports that Chinese authorities have instructed banks to close individual North Korean accounts.⁷⁶ These reports are often – but mistakenly – interpreted to signal systematic changes in China's willingness to implement and enforce UN resolutions.

72. See UN Security Council, 'Security Council Committee Established Pursuant to Resolution 1718 (2006): Letter Dated 16 September 2016 from the Permanent Mission of Belarus to the United Nations Addressed to the Chair of the Committee', S/AC.49/2016/3, 16 September 2016.

73. Tae-jun Kang, 'North Korea–Russia Trade Takes Another Step', *The Diplomat*, 21 January 2015.

74. See, for example, US Department of the Treasury, 'Treasury Sanctions Agents Linked to North Korea's Weapons of Mass Destruction Proliferation and Financial Networks', press release, 31 March 2017.

75. Financial information examined by the author in autumn 2016.

76. Ju-min Park et al., 'Chinese Banks Freeze North Korean Accounts: South Korean Media Report', *Reuters*, 22 February 2016; Heng Xie and Megha Rajagopalan, 'Bank of China Closes Account of Key North Korean Bank', *Reuters*, 7 May 2013.

North Korean sanctions evasion further undermines the global implementation picture for financial measures, and countries have either struggled to or been unwilling to go to the lengths required to address basic North Korean circumvention practices. In particular, rather than North Korean financial institutions maintaining representative offices or correspondent accounts overseas, these institutions establish generic trading companies, use that entity to open an account with a local bank and subsequently use that account to provide many of the services that a financial institution would. This pattern is described in greater detail in the preceding section.

Few jurisdictions outside Europe and North America seem to have appreciated this form of circumvention and taken action to detect and respond to it, notwithstanding US Treasury actions against one China-based trading company acting as a North Korean financial facilitator.⁷⁷ UN investigations, as well as those conducted by the James Martin Center for Nonproliferation Studies, reveal other entities evading sanctions in this fashion.⁷⁸ Even countries in Europe have discovered North Korean-linked front companies acting on behalf of North Korean financial institutions.⁷⁹ These cases probably represent only a sliver of the entire picture of prohibited financial activity.

In fact, comparable patterns are undermining prohibitions on joint banking ventures as well, as described earlier in relation to the MKP Group of Companies. North Korea is successfully establishing banking operations overseas, not via joint ventures between North Korea and foreign banks, but via non-financial North Korean and foreign companies. Countries where this is taking place, such as Malaysia and Zambia, do not yet appear to have shut down these operations. MKP did attempt to expand its banking operations into Britain, but the UK registered companies intended to facilitate this have since been closed.⁸⁰

Bulk cash and gold transfers by North Korea have largely persisted. Four cases have been publicised in the past several years involving North Korean officials stopped while in transit and found to be carrying large volumes of cash or gold; these took place in Singapore, Malaysia, Sri Lanka and Bangladesh. In three of the four cases the officials provided an explanation for cash or gold and its allegedly authorised end use, and were permitted to leave with it in tow.⁸¹ Bangladesh was the notable exception, and the diplomat was subsequently expelled from the

77. US Department of the Treasury, Office of Foreign Assets Control, 'Non-Proliferation Designations', 26 September 2016, <<https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20160926.aspx>>, accessed 8 May 2017.

78. Both have investigated the evasive activities of Daedong Credit Bank, which maintains an elaborate network of front companies in China and Hong Kong. It also had associated companies in the British Virgin Islands, which were featured in the Panama Papers. See Juliette Garside and Luke Harding, 'British Banker Set Up Firm "Used by North Korea to Sell Weapons"', *The Guardian*, 4 April 2016.

79. Author's conversation with a North Korean official, November 2015.

80. Corporate documentation reviewed by the author between March 2016 and January 2017. The author is grateful to Nick Gillard for his analysis on possible MKP activities.

81. UN Security Council, 'Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)', S/2017/150, 27 February 2017, p. 79.

country.⁸² The individual stopped in Malaysia, who was allowed to leave with nearly \$500,000, has since been identified as an intelligence operative facilitating military sales around the world.⁸³ The individual permitted to leave Singapore, with a comparable amount of money, was later found to be linked to a North Korean shipping company facilitating North Korea's weapons trade with Cuba.⁸⁴

Diplomatic Restrictions

UN Security Council resolutions contain several restrictions on North Korea's diplomatic activity. A decade of sanctions monitoring has revealed that North Korea frequently uses its diplomats to facilitate illicit deals overseas, whether they be related to WMD-related procurement, arms sales or trade in other sanctioned commodities. Embassies and individual diplomats use their bank accounts, diplomatic bags and personal luggage to support these activities. Many double-hat as representatives of sanctioned entities and open companies when stationed overseas, helping to evade detection in the process.

For this reason, the Security Council moved to restrict North Korean diplomats' ability to carry bulk cash or gold in violation of sanctions. Resolution 2270 also obliged countries to expel any North Korean nationals linked to sanctioned parties or assisting in sanctions evasion. Resolution 2321 went much further, however. It expressed 'continued concern that the DPRK is abusing the privileges and immunities accorded under the Vienna Conventions on Diplomatic and Consular Relations' and curbed those privileges. It clarified that all luggage carried by North Korean diplomats while in transit is considered 'cargo' subject to provisions requiring, without exception, inspection by member states. It called upon states to reduce the number of staff at North Korean missions and consular posts. It determined that states must restrict entry to or transit through their territory of North Korean officials or military members if the country determines they are connected to prohibited activities. And it obliged states to limit North Korean missions and their staff overseas to one bank account each.⁸⁵

Some of these provisions will be challenging for even the most well-resourced states to implement. The author's conversations with Western officials indicate particular difficulties with provisions limiting the banking privileges of North Korean missions. From a policy standpoint, if a government wishes to robustly implement this measure, it would need to have: a detailed and consistently up-to-date knowledge of North Korean evasive activities to determine whether accounts may be attached to a diplomat's relatives or companies; the ability to instruct banks registered within their jurisdiction to provide relevant proprietary information, without 'fishing' for that information in a vague and undefined manner – something authorities are usually

82. *Al Jazeera*, 'Bangladesh Orders N Korean Envoy Out for Smuggling Gold', 9 March 2015.

83. James Pearson and Andrea Berger, 'Glocom and DPRK fronts', Arms Control Wonk podcast, 10 March 2017, <<http://armscontrolwonk.libsyn.com/glocom-and-dprk-fronts>>, accessed 30 May 2017.

84. Sangwon Yoon, Sam Kim and Andrea Tan, 'How North Korea Funnels Cash Into the Country', *Bloomberg*, 22 February 2016.

85. UN Security Council Resolution 2321, 30 November 2016, S/Res/2321.

not allowed to do; and the ability to communicate findings with other jurisdictions to ensure additional bank accounts have not been opened elsewhere. One option could be for governments to identify North Korean officials working in their country as ‘Politically Exposed Persons’ – a term used by the international financial community to describe politically connected individuals who pose a higher risk of bribery and corruption exposure. Governments could then instruct their financial institutions to report to the national financial intelligence units any account information related to such persons.⁸⁶

No guidance appears to have been provided to states on how to approach these policy challenges. It is possible that US drafters intended the provision to be enforced primarily through its own intelligence sharing, rather than domestic policy change. If so, this would be yet another example of the disproportionate focus on enforcement over implementation.

Provisions encouraging countries to limit the size of North Korean missions remain voluntary. Again, the resolution provides no indication of how, and on what basis, states should determine the acceptable size of a North Korean embassy or consulate. Only Bulgaria has indicated that it has taken action pursuant to this call in the months since it was passed.⁸⁷

Other provisions are more straightforward from both an implementation and enforcement perspective, yet have seen mixed records with respect to both. In March 2016, Vietnam expelled a North Korean who was added to the UN sanctions list as part of Resolution 2270.⁸⁸ As such, the expulsion was executed not on the basis of Vietnam’s own discretion or information, but that of the UN Security Council. Namibia is also believed to have expelled two North Korean diplomats linked to the country’s primary arms trading firm in accordance with Resolution 2270, but only after significant diplomatic pressure. The country has never filed an implementation report pursuant to any sanctions resolution, making it difficult to assess whether substantive changes in the Namibia–North Korea relationship are genuinely underway.

Reports by the UN Panel of Experts consistently highlight the lack of vigilance exerted on North Korean diplomats in key regions and transit points. North Korean officials linked to sanctioned entities have recently travelled freely through parts of Africa, much of the Middle East, as well as Southeast Asia. In 2016 alone, representatives of three designated entities⁸⁹ visited and/or transited Angola, China, Egypt, Ethiopia, Iran, Singapore, Sri Lanka, Sudan, Russia and the United Arab Emirates.⁹⁰

86. The author is grateful to Tom Keatinge for his thoughts on this point.

87. Leo Byrne, ‘Bulgaria Reduces Number of Staff at North Korean Embassy in Sofia’, *NKNews.org*, 31 March 2017; Leo Byrne, ‘Russia Increases, China Reduces Staff Members in Pyongyang Embassies’, *NK Pro*, 13 October 2016.

88. Elizabeth Shim, ‘Vietnam Deports North Korean Arms Sales Manager’, *UPI*, 27 April 2016.

89. Green Pine Associated Corporation, Tanchon Commercial Bank and the Reconnaissance General Bureau.

90. UN Security Council, ‘Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)’, S/2017/150, 27 February 2017, Tables 9–11.

North Korean nationals particularly exploit visa-free, visa-on-arrival or e-visa travel schemes. While countries are not obligated by UN Security Council resolutions to impose visa requirements on North Korean nationals, such schemes tend to reflect a broader dearth in vigilance on the part of the countries in question. They also expose the country to significant risk, by enabling North Korean officials linked to designated entities to enter that jurisdiction and operate with relatively little scrutiny. For this reason, three countries moved to end visa-free arrangements for North Korea since the beginning of 2016: Ukraine;⁹¹ Singapore;⁹² and Malaysia.⁹³ All three had been used to facilitate illicit North Korean activity in the last five years.⁹⁴ Nevertheless, at least 40 countries maintain visa-free, visa-on-arrival or e-visa schemes for North Korean nationals despite repeated calls by the Security Council for countries to exert vigilance and curb the travel and diplomatic privileges of North Korean nationals where appropriate to mitigate the risk of sanctions-busting and circumvention.

Falling Through the Gaps

With the passing of each new sanctions resolution on North Korea, UN diplomats argue that the latest change makes the sanctions regime stronger than ever. This is true of its strength on paper, but not in practice. An overview of the regime's implementation since the introduction of Resolution 2270 (2016) highlights how flimsy it is. No single measure enjoys robust global implementation and enforcement.

Four factors explain the deficiencies described above. First, countries vary by their risk exposure and understanding of the significance of the North Korean threat, their political will to act and the resources and capabilities that would enable them to do so. The result is that some consciously violate the sanctions regime, others are ignorant, others uninterested or feel themselves to be incapable, and yet others show a mixture of these considerations. In certain cases, as with shipping or cargo screening, the evasion of sanctions by North Korea makes these differences more pronounced.

Second, a corollary of these shades of non-compliance is that UN requirements are not translated into national law or are partially translated or mistranslated. Political will is fluid. While a country may not have sufficient political will to implement cumbersome national policies that reflect UN obligations, if called upon it may be willing to act in a specific circumstance, such as an interdiction. Yet in numerous instances, the lack of an appropriate national legal basis for enforcement has prevented officials from taking the enforcement action requested or expected of them.

91. Ju-min Park and Jane Chung, 'Ukraine Ends Visa-Free Deal with North Korea to Keep out "Ineligible Persons"', *Reuters*, 31 August 2016.

92. Leo Byrne, 'Singapore to Impose Visa Regulations on North Koreans', *NKNews.org*, 21 July 2016.

93. A Ananthalakshmi, 'Malaysia to Cancel Visa-Free Entry for North Koreans – Agency', *Reuters*, 2 March 2017.

94. Summarised at <<https://piie.com/blogs/north-korea-witness-transformation/north-korea-and-2017-passport-index>>.

Third, vague wording that leaves room for interpretation in the sanctions regime has compounded divergences in state implementation practices. The number of these grey areas appears to have grown in tandem with the expanding scope of the sanctions regime itself, suggesting that those who draft the resolutions still struggle to foresee implementation challenges before they arise, or they are preoccupied with enforcement action rather than structural implementation changes, or are forced into vague compromise language by Russian or Chinese resistance to early drafts.

Fourth, and related, the international community has failed to create appropriate support structures for sanctions implementation that match the level of need. Too little effort is invested in educating officials in countries far removed from the Korean Peninsula about the objectives of the sanctions regime and how individual measures serve those aims.⁹⁵ The connection between iron ore and nickel and the North Korean nuclear programme will not be obvious to most. Without such an initiative, the narrative that 'sanctions do not work' will fill the void, reinforcing ignorance and apathy.

Similarly, there is insufficient support for countries that may have the political will to act, but which lack guidance or material assistance to develop national policy and bring it into practice. This created numerous problems in 2016 alone. The UN Panel of Experts on North Korea, which is tasked with monitoring implementation of the sanctions regime, has had its mandate grow significantly. Eight people are today expected to investigate arms embargo violations, track the movements of shady diplomats, identify and counter North Korean illicit finance, value North Korean coal, identify prohibited registrations of North Korean ships, search for evidence of Pyongyang's export of statues to foreign countries, and monitor trade in prohibited metals and minerals, among other things. The panel will struggle to cover these bases.⁹⁶ Like member states themselves, the panel too is now part of a major capacity problem for the UN sanctions regime on North Korea. The architect of this sanctions regime, the US, will have to continue to fill the growing void in the monitoring burden. With the US's role as the 'world's police officer' increasing in this context, enforcement action will likely continue to overshadow any focus on long-term implementation.

These factors, together with North Korea's own evasion practices, have rendered the sanctions regime a sieve. Major implementation gaps are visible from every angle, although some recent headway is being made by individual countries, as with Malaysia and Singapore. This progress is just as much a result of political embarrassment over North Korean exploitation of the bilateral relationship, as it is a result of pressure created by the existence of significant UN obligations. Together, the two can create a perfect storm of negative publicity for a country that subsequently yields greater action on sanctions implementation.⁹⁷ With North Korea among the main issues on the media's foreign policy agenda in 2017, more of these perfect storms could descend on countries whose sanctions implementation records have been imperfect.

95. Some recent effort has been invested by the 1718 Sanctions Committee in organising outreach events in New York for the US-based officials of regional groups. These have taken place periodically in 2017.

96. Andrea Berger, 'Recycling the Playbook'.

97. See <<http://armscontrolwonk.libsyn.com/glocom-and-dprk-fronts>>.

IV. The Role of the Private Sector

UN SECURITY COUNCIL resolutions directly bind the action of member states, but not those of non-state actors. The private sector is restricted in its actions only once individual member states transpose Security Council requirements into national law. Many gaps and shortcomings in the process of national implementation of Security Council obligations on North Korea exist, as described earlier.

Private sector stakeholders are nevertheless important to consider in their own right, as they can and do behave in a way that does not mirror the approach of the government under whose jurisdiction they fall. Commercial companies are motivated by different considerations than national authorities. The international peace and security ramifications of North Korean nuclear and missile developments are not a top priority for most in the private sector. Rather, these firms are driven by the desire to earn and maximise profit. Sanctions compliance is usually of interest to them only insofar as it may be an operating constraint imposed by their own government or another government that takes extraterritorial enforcement action, with potential penalties that threaten to reduce corporate profit margins. Reputational risk that could affect business is another consideration for companies.

These factors mean that profit-motivated individuals and corporations do, in certain circumstances, go beyond the sanctions compliance levels demanded and enforced by their own governments. Even when their regulators are not in conformity with Security Council obligations, it is not unusual to find relevant private sector stakeholders mindful of the risks associated with doing business with North Korea generally. For some, the reputational damage which might be caused if the firm is publicly identified as having conducted activity that would, in principle, breach UN sanctions, is compelling. Another, more substantial, factor is the risk that Washington uses its authority to unilaterally impose secondary sanctions on the firm for violating the same measures, which the US has encompassed within its national legislation. The US and other countries eager to increase pressure on North Korea are aware of these dynamics, and often exploit them to maximise the impact of sanctions.

On the other hand, the role of private sector stakeholders can, in other instances, complicate and thereby reduce the effect of government compliance efforts. This is most often seen in countries where governments have the capacity and political will to disseminate information about new sanctions requirements internally among relevant government agencies, but not to conduct active private sector outreach, monitoring and enforcement activities.

Both dynamics have impacted the global state of play for the North Korea sanctions regime. In fact, the behaviour of relevant private sector actors is one ingredient in the sanctions regime's

implementation as a whole, along with North Korea's evasion activities and implementation approaches by individual governments. For this reason, the private sector must be part of the conversation over implementation and enforcement.

However, it is impossible to comprehensively describe the private sector's importance to a sanctions regime with such wide-ranging and universal obligations. There are many industries that relate to sanctions on North Korea, from manufacturing to logistics, legal, corporate services and finance. To gain a comprehensive understanding of their role in helping the sanctions regime generate practical effects, an analysis of the behaviour of any one of these sectors would have to be nuanced – to account for each jurisdiction's unique implementation and enforcement characteristics. This report does not seek to overcome these analytical obstacles, but instead serves as a limited catalyst for discussion on the private sector's important, but under-appreciated, role in sanctions implementation.

Beyond Requirements

Countless private sector firms independently adhere to UN restrictions on North Korean trade and finance, even when their national authorities are inactive or apathetic on implementation and enforcement. It is important to distinguish between those firms that do so because of the sanctions regime, and those which do not. Companies around the world, but particularly in the West, have avoided obviously North Korean-linked business for some time. This is often not because of the sanctions regime per se, although their decision and unique risk assessments may be reinforced by the existence of such wide-ranging restrictions on North Korean business. Rather, even before the sanctions regime began in 2006, and certainly before its expansion in 2016, Pyongyang had generated an abysmal trade and investment reputation. A body of high-profile tales of failed investments, joint venture flops and contractual breaches by North Korea had emerged. Every year since 1974 Sweden has formally issued North Korea with an invoice for the consignment of Volvo vehicles it imported but never paid for.¹ Dozens of other countries have been doing the same for their unpaid North Korean debts.² The World Bank has concluded that it could not include North Korea within its 'Ease of Doing Business' rankings because of a lack of any reliable data.³ In 2010, North Korea was added to the Financial Action Task Force – the global standard-setter on anti-money laundering and counter terrorist-financing – list of non-cooperative jurisdictions,⁴ and in 2012 to its blacklist requiring 'countermeasures'.⁵

For decades, in the eyes of many in the Western private sector, the risk of doing business in or with North Korea rarely outweighed the potential reward. In other words, North Korea was relatively isolated from economies beyond its neighbourhood before the sanctions regime was

1. John Ericson, 'North Korea Owes Sweden €300m for 1,000 Volvos it Stole 40 Years Ago – and is Still Using', *Newsweek*, 29 August 2014.
2. See, for example, Christian Oliver and Jan Cienski, 'North Korea Offers Ginseng to Pay Czech Debt', *Financial Times*, 10 August 2010.
3. The World Bank, 'Why Are Some Data Not Available?', <<https://datahelpdesk.worldbank.org/knowledgebase/articles/191133-why-are-some-data-not-available>>, accessed 30 May 2017.
4. The Financial Action Task Force (FATF), 'FATF Public Statement – February 2010', 18 February 2010.
5. FATF, 'FATF Public Statement – 22 June 2012', 22 June 2012.

created in 2006 and markedly stepped up in 2016. It is harder to discern the approaches of small and medium-sized enterprises across Asia – which continue to form the core of North Korea's overseas trade relationships – or those further afield in regions with poor corporate transparency. It is particularly challenging to verify the negative, namely where North Korea has failed to maintain or cultivate individual business links because of private sector risk assessments.

The most significant and identifiable instance of continued and widespread overcompliance is in the global financial sector, particularly financial institutions with a connection to the US and, increasingly, EU markets.⁶ Firms with these characteristics are often independently mindful of UN sanctions requirements, as well as unilateral US measures and multilateral EU measures. Both the US and the EU tend to be strict enforcers of their sanctions regimes. Their jurisdiction extends to their own nationals and companies, wherever in the world they may be located, as well as foreign companies incorporated on their territories. Any transgressions by these actors can lead to them being designated with so-called 'primary sanctions'.

Furthermore, the US applies extra-territorial or 'secondary' sanctions on foreign individuals and companies that violate a particular sanctions regime.⁷ Between 2011 and 2016, it levied multibillion dollar fines against foreign financial institutions for breaches of national sanctions laws targeting Iran.⁸ The moves sparked widespread fear among foreign financial institutions with an interest in the US market, leading them to shed all of their Iranian business en masse.⁹ In some cases, banks also began to treat Iran's neighbouring countries as high-risk jurisdictions, rightly believing that Iran would use them to evade sanctions and seek to access the banks' services via third countries.

Similar dynamics are emerging in the financial sector in relation to North Korea sanctions. Several European- and US-connected financial institutions interviewed by the author indicated that they had ceased processing North Korean transactions in either 2006 or 2007.¹⁰ Some explicitly identified this as fallout from the US Treasury's designation of Macao-based Banco

6. That connection may be in the form of representative offices, correspondent banking relations and US dollar/euro clearing needs, or client base.

7. The EU has not engaged in secondary sanctioning.

8. For example, BNP Paribas agreed to pay a \$9 billion fine for violating US sanctions law against Iran, Sudan and Cuba. See *BBC News*, 'BNP Paribas To Pay \$9bn to Settle Sanctions Violations', 1 July 2014.

9. Standard Chartered Bank and HSBC both have internal policies not to do Iran-related business. Stuart Levey, HSBC's Chief Legal Officer, defended maintaining this position in spite of the relaxation of sanctions on Iran. See Stuart Levey, 'Kerry's Peculiar Message About Iran for European Banks', *Wall Street Journal*, 12 May 2016. For a more general discussion on de-risking, see Martin Arnold and Sam Fleming, 'Regulation: Banks Count the Risk and Reward', *Financial Times*, 13 November 2014.

10. Such transactions refer to transactions where the North Korean connection is evident, or discovered in the course of enhanced due diligence. It does not account for transactions that the banks are not able to unearth as being linked to North Korea, because of the country's evasion activities or the bank's particular internal controls.

Delta Asia as a primary money-laundering concern,¹¹ a decision taken because of the bank's North Korea-linked activities, shortly before this time. Clearly some financial institutions did not wish to expose themselves to any risk that they would be similarly treated.

However, this approach appears to have also enabled years of apathy by the same institutions. Their internal policies not to conduct any overtly North Korea-linked business meant that they devoted little concerted attention to Pyongyang's evasive practices, which seek to hide the obvious link to the country. The limited and proliferation-focused scope of the UN sanctions regime until 2016 reinforced their apathy. Similarly, until approximately 2015, the US and EU rarely penalised foreign individuals and entities facilitating violations of North Korea sanctions; their focus was firmly on Iran and Syria. Consequently, Pyongyang continued to be able to access the services of financial institutions of all varieties.

These financial institutions now seem to be slowly awakening to the fact that their internal policy on North Korea business does not sufficiently mitigate the risk of being exposed to illicit North Korean finance, and therefore to the long arm of the US Treasury. A number of major banks are now devoting serious time to investigating potential North Korean connections on their books, even if they do not have correspondent or other formal banking relationships with North Korean banks. One stimulant for the change is the 2016 expansion of the UN sanctions regime and the recent designation by the US Treasury of the entirety of North Korea as a primary money-laundering concern pursuant to Section 311 of the USA PATRIOT Act of 2001.¹² The designation gives the US authority to take a range of punitive actions against foreign financial institutions that allow North Korea to indirectly access the US financial system, for example through dollar-denominated transactions frequently used by Pyongyang. The same authority was used by the Treasury to designate Iran and force costly penalties on foreign banks, and will thus be a familiar nightmare to many in financial institutions.

In parallel, media focus on North Korean illicit activity abroad, including in some cases the banks involved, has notably ramped up. In 2013, Singapore tried and convicted Chinpo Shipping for facilitating North Korean proliferation finance via its Bank of China bank account. The company's use of United Overseas Bank was also raised during the trial. Both banks were caught in the media storm around the case, exemplifying the reputational risk of being involved in North Korea sanctions evasion.¹³ South African-headquartered Old Mutual was similarly exposed

11. US Department of the Treasury, 'Treasury Designates Banco Delta Asia as Primary Money Laundering Concern under USA Patriot Act', 15 September 2005, <<https://www.treasury.gov/press-center/press-releases/Pages/js2720.aspx>>, accessed 30 May 2017.

12. USA PATRIOT Act 2001 (US), Section 311.

13. See, for example, Sangwon Yoon, Sam Kim and Andrea Tan, 'How North Korea Funnels Cash into the Country', *Bloomberg*, 22 February 2016; Jennifer Dodgson and Leo Byrne, 'Court Case Reveals Chinpo Shipping's Ties to North Korea', *NKNews.org*, 10 September 2015; Yang Hee-jung, 'sing-gapoleu eunhaeng nae bug gyejwa josahaeya' ['I Have to Investigate the Northern Bank Account in Singapore Bank'], *RFA*, 13 June 2014, <http://www.rfa.org/korean/in_focus/nk_nuclear_talks/sanction-06132014165050.html>, accessed 26 May 2017.

by the UN as insuring North Korean business activities in Namibia, which in recent years had included the construction of military facilities.¹⁴

Driven by these antecedents, global financial institutions with valuable connections to the US and EU markets are likely to invest more effort to ensure they are not blind to North Korea sanctions evasion and to the risk of being caught doing business deemed illicit at the UN, US or EU levels.

Those with business in China (particularly Liaoning and Jilin provinces) will have substantial risk of being exposed to North Korean activity, as will those with Southeast Asian business. Financial institutions, which tend to want to de-risk whole jurisdictions to mitigate their exposure to illicit activity, will find that taking this 'easy' way out is not so easy in the case of North Korea. Few will be prepared to shed all of their Chinese business. They might be more willing to apply this approach at a provincial level, but in the process they would cut out many Liaoning- and Jilin-based trading partners for European and other foreign firms. The cost and lost opportunity could be substantial. It is more plausible that financial institutions will increasingly exert pressure on their Chinese or Southeast Asian partner banks to be more transparent about their North Korean-related business and policies.

Whether Chinese banks will change practice as a result of these pressures remains to be seen. Indeed, that pressure may be even more significant if the Trump administration starts to penalise Chinese financial institutions directly for their transgressions of UN sanctions on North Korea, as it has indicated it is willing to do.¹⁵ China's 'big four' banks may have important business in the West that would ordinarily create commercial drivers for compliance, but the state continues to be involved in their management and Beijing has demonstrated its willingness to insulate its financial sector from external pressure. Until and unless Beijing instructs policy to change in such institutions, and shows its willingness to enforce its decisions, their behaviour is unlikely to notably change.

Complicating Implementation

Many countries have entered into the habit of passing information on new UN requirements, including those covering North Korea, to the financial sector via national regulators. Contrary to regulated financial institutions, however, a comparably frequent information flow does not appear to exist for the benefit of numerous other relevant industries. Notices may be posted on relevant ministry websites for companies to independently notice and digest, but this is not the case in all jurisdictions. Customs or commerce agencies do this more often than other departments, meaning that manufacturers, exporters and importers might be comparatively better informed. A culture of self-directed awareness-raising also exists in more corners of the global export and import industries by virtue of their need to seek licences in certain

14. UN Security Council, 'Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)', S/2016/157, 24 February 2016, p. 40.

15. Matt Spetalnick and David Brunnstrom, 'Exclusive: Trump Administration Weighing Broad Sanctions on North Korea – U.S. Official', *Reuters*, 21 March 2017.

circumstances. Still, even in the case of customs or commerce departments, it is rare to see active engagement and outreach by responsible authorities on North Korea-specific obligations.¹⁶

This is a concern. As the sanctions regime and North Korea's evasive behaviour expands, so does the range of relevant private sector stakeholders that authorities must ensure are informed, should they wish to promote a robust national sanctions implementation picture. Even where they were already of relevance to the sanctions regime when it was narrowly proliferation-focused, these stakeholders have taken on heightened importance with the sanctioning of so many new commodities and activities. From an implementation and enforcement perspective, therefore, the private sector is increasingly a complicating factor.

One of the classes of stakeholders that appears to be falling through the cracks in the past year is enabling service providers, such as company incorporation firms, corporate secretaries, law firms and national flag registry managers. Such firms are disparate, less strictly regulated than other sectors (depending upon jurisdiction) and often overwhelmed with other priorities. They are also heavily relied upon by North Korea for their illicit trade and finance. Networks cannot be established, deals cannot be done and goods cannot be moved without the assistance of these firms.

Flag registries are one example of service providers in this category, despite their newfound importance to the North Korea sanctions regime. As described in preceding sections, North Korea's commercial fleet continues to exploit flags of convenience to circumvent general scrutiny and formal restrictions on its maritime trade. Flags of convenience are an easy source of revenue for countries that may not have many other exportable goods or services. For this reason, they are attractive to small countries and island states in particular. The size and governmental capacity of these countries creates an incentive for them to outsource the management of their flag registries. Cambodia, Mongolia and Kiribati are three examples of countries that have outsourced the management of their flag registries to companies operating in foreign jurisdictions. In fact, at one point, all three were controlled by North Korean-linked networks. It is unclear whether relevant authorities were aware that the managing companies involved presented a security and conflict of interest risk. While this situation may not be representative of the wider outsourcing trend for flag registries, it highlights the importance of reaching out to, and monitoring the activities of, such firms. Companies with these responsibilities must be aware of the fact that UN sanctions require them to reject applications by – for example – North Korean-controlled vessels that have been deregistered by other countries. Without this careful attention, private sector firms have the potential to further complicate and undermine sanctions implementation by a particular country.

Company incorporation providers and corporate secretaries are another example of this challenge. A study by C4ADS and the Asan Institute examined 160 North Korean-linked companies incorporated in Hong Kong. Of these, 51% were represented by only six company secretary

16. Based on the author's survey of national implementation reports submitted by UN member states to the 1718 Sanctions Committee.

firms.¹⁷ The Hong Kong Institute of Chartered Secretaries describes the duty of these firms as ranging from ‘administrative duties such as personnel management and the maintenance of company accounts and registers, to duties as diverse as ensuring that the company complies with regulation or advising the directors on good corporate governance practice’.¹⁸ None of the six secretarial firms identified by C4ADS was a member of the institute, but several had actively facilitated North Korea sanctions breaches.

Investigations by the author have highlighted similar problems with the firms offering company incorporation services in Hong Kong. To register a company in Hong Kong, it is necessary to provide a scan of the passports of all directors and secretaries, as well as utility bills showing proof of residence. Despite this, North Korean nationals are sometimes recorded as South Korean nationals,¹⁹ or are able to open and maintain companies with no seeming enhanced due diligence.²⁰ The author has also found that Southeast Asian law firms sometimes provide naturalisation assistance to North Korean nationals by allowing ‘Korea’ or ‘PY city’ to be entered into place of birth fields. A simple trick or oversight like this gives North Korea the ability to dodge many more scrutinising pairs of eyes.

A Persistent Challenge

Whether they enhance or undermine the compliance efforts of others, the actions of private sector stakeholders must be considered a critical factor when assessing the state of implementation of the sanctions regime. The considerations that drive them mean that their behaviour is difficult to control and tailor to serve the objectives of sanctions. While overcompliance may be beneficial now in creating pressure where governments may fail to, the lessons of sanctions on Iran serve as a long-term warning of the potential downsides to this approach. In exchange for major nuclear concessions by Tehran, world powers agreed as part of the Joint Comprehensive Plan of Action (JCPOA) to lift sanctions and reintegrate Iran into the global economy. Yet after years of being instructed to treat Iran as a poisonous jurisdiction, large banks have largely refused to engage in any business with Iran, undermining the part of the JCPOA needed to keep Iran interested in its side of the bargain. Private sector pushback on any eventual effort to encourage

17. Asan Institute for Policy Studies and C4ADS, *In China’s Shadow: Exposing North Korean Overseas Networks* (Seoul: Asan Institute for Policy Studies, 2016), pp. 22–23

18. The Hong Kong Institute of Chartered Secretaries, <https://www.hkics.org.hk/index.php?_room+4>, accessed 9 May 2017.

19. This occurred, for example, with North Korean individuals registering companies that were part of a North Korean intelligence-run network selling military communications equipment around the world.

20. For example, Kim Song-il, a North Korean arms’ dealer using a Cambodian passport of convenience was able to open two firms in Hong Kong in 2009 and 2012, respectively. The first company was named Greenpine International, whose parent in Pyongyang – Greenpine Associated Corporation – was sanctioned by the UN in early 2012 for weapons trading. After this designation, despite already having a Hong Kong company using a listed alias of a UN-sanctioned firm, Kim Song-il was able to open a second company, Rich Lead Trading. A quick check on his other corporate holdings would have rapidly raised red flags.

commercial re-engagement with North Korea from select parts of the world, particularly Europe and North America, could meet the same stumbling blocks.

Similarly, private sector undercompliance or noncompliance may be partly a product of consciously poor enforcement and corner-cutting by governments, but for the most part it is and will continue to be the product of an enormous capacity shortfall. The larger the sanctions regime, the greater the number of entities that need to be actively involved in discussions over its requirements. Notices on websites are hardly sufficient to engage the actors required and improve the implementation and enforcement picture, and doing more for a greater number of sectors demands resources many governments feel they do not have.

V. Addressing the Gaps

THE UN SANCTIONS regime on North Korea has experienced remarkable growth since early 2016, but is now facing its own crisis of confidence. A growing chorus questions its effectiveness and utility in addressing threats emanating from North Korea. Yet far fewer go so far as to suggest that sanctions on North Korea should be lifted, or that Pyongyang should be given a free pass to engage in global trade and finance. And fewer still believe that Pyongyang will unwind the nuclear and missile programmes that motivated the imposition of UN sanctions. It is likely that sufficient support will continue to exist for the maintenance of UN sanctions on North Korea, even if they are no longer viewed as a central tool for promoting the denuclearisation of the Korean Peninsula, but rather as a tool for advancing subsidiary objectives such as slowing the programmes, denying parts of the North Korean defence industrial complex important revenue streams or preventing proliferation to others.

Creating the conditions whereby the sanctions regime can more meaningfully advance even these limited objectives will be difficult if the gaps outlined in this report are not addressed. North Korea's overseas networks have had a headstart in circumventing the measures put in place at the UN level, and will continue to outpace national implementation and enforcement efforts. These evasion patterns must be an integral part of the conversation at the sanctions design stage, in order to anticipate how measures set for enactment might be skirted by their targets. In addition, North Korean evasion tactics should be a feature of all outreach activities, whether by UN or US experts to foreign states, or by national authorities to their private sectors. Implementers who do not fully appreciate these evasion dynamics are unlikely to be able to put in place methods to effectively detect and counter illicit North Korean activity involving their jurisdiction.

However, state implementation is deficient for a much broader set of reasons. There remains a dearth of political will to take action against North Korea in many parts of the world. Some are direct customers of North Korean illicit goods and services, or foreign partners of Pyongyang in some respect. Others are ignorant of the threat and its significance, or prioritise other issues. Yet many also struggle with the capacity to take on the wide range of expectations placed upon them by UN Security Council resolutions on North Korea. Globally, these resolutions are poorly translated into national law and practice, are mistranslated or not translated at all.

These capacity deficits existed when the sanctions regime was simple. They are much wider now that it is the most complex UN sanctions regime ever designed. How can a country with no export control law be expected to screen all cargo going to or from North Korea, or brokered by North Koreans? How can a country without appropriate controls on money laundering and cash couriers systematically check transiting North Korean diplomats for bulk cash or gold? The state of implementation undermines prospects for enforcement at every turn, and in almost every part of the world.

Indeed, it is essential that policy discussions on North Korea sanctions recognise that China is not the only country keeping the UN sanctions regime from creating the pressure on Pyongyang that it might otherwise be able to. It may be an important element, but in terms of inhibiting Pyongyang's illegal endeavours, it is certainly not the whole story. North Korea's ships find flags of convenience from countries far further afield. Its arms traders still reside in Africa, the Middle East and Southeast Asia. Pyongyang still controls bank accounts worldwide to facilitate illicit finance. At least a dozen countries still buy military goods and services from North Korea; while others allow North Korean commercial networks to flourish unscrutinised, allowing a range of illicit activity to prosper on their soil.

If this is to change in the medium and longer terms, greater attention must be paid to two areas, as described in this report. The first is global implementation, not just enforcement. The sanctions regime on North Korea will remain a sieve as long as systemic implementation issues are not addressed, particularly in key regions like Southeast Asia, the Middle East and sub-Saharan Africa, where North Korea still has significant commercial and financial linkages. For this to be possible, a more developed support system for global capacity-building and outreach will need to be created. The eight-member UN Panel of Experts cannot achieve this alone, and Washington's help is not always welcome for political reasons. China and Russia are likely to obstruct efforts to create greater UN capacity to perform these functions, or to block any attempt to make cooperation with the panel compulsory rather than voluntary. As a result, countries eager to promote awareness of the North Korean threat and curb Pyongyang's illicit activity abroad will need to find more creative solutions. One option may be for smaller 'coalitions' of states to invest resources in sharing their own expertise with counterparts requiring guidance or technical assistance.

The second issue meriting greater attention is the changing face of private sector stakeholders. In general, the private sector has been an underappreciated part of the discussion over sanctions effectiveness. With the expansion of sanctions regime, it is more important than ever to ensure that countries understand the private sector actors within their jurisdiction that are most relevant to the situation. National or regional risk assessments can go some way to raise awareness of this issue. For example, states which offer flags of convenience, passports of convenience or opaque offshore financing arrangements must understand these to be part of their risk exposure, and any related firms to be part of an effective risk-mitigation strategy. Simply posting information on an agency website and hoping relevant firms read and digest the new requirements will be mostly insufficient to change corporate practices on the scale necessary to affect new UN measures. This is particularly important if national capacity for rigorous monitoring and enforcement of private sector behaviour is low.

Both tasks are monumental. Yet they are also unavoidable if concerned states wish the UN sanctions regime on North Korea to become less porous. The poor and uneven state of sanctions implementation means the regime has not been able to generate pressure as intended, or meaningfully advance any of the objectives it set out.

The timing is also ripe for efforts to renew the focus on rectifying implementation deficiencies. The sharp recent inflection in North Korea's nuclear and missile testing, and incidents such as the assassination of Kim Jong-nam in Malaysia, are steadily adding credence to longstanding Western warnings about Pyongyang's potential to threaten international peace and security. Global public and media alertness to developments involving North Korea has scarcely been so high. This focus should be harnessed to advance a conversation on sanctions implementation with as many states as possible. Without progress in this area, accusations that 'sanctions are not working' risk taking the situation in the opposite direction, further eroding global political interest in implementation. Such a development's sole beneficiary would be North Korea.

About the Author

Andrea Berger is an Associate Fellow at RUSI and a Senior Research Associate and Senior Program Manager at the James Martin Center for Nonproliferation Studies.

She was previously Deputy Director of the Proliferation and Nuclear Policy team at RUSI, where she also co-headed the Institute's programme on the design and implementation of economic sanctions. In addition to her research work on sanctions policy and non-proliferation, Andrea directed the UK Project on Nuclear Issues (UK PONI), a network of over 600 emerging and established nuclear professionals in the UK.

Annex 1: Extract from the Company Register of International Golden Services

Name/Address	IC/Passport	Designation	Date of Appointment
Kim Changhyok B-5-2 Hartamas Regency 2 No. 2 Jalan Duta Hartamas Sri Hartamas 50480 Kuala Lumpur Wilayah Persekutuan	472130058	Director	20 June 2012
Kim Un Sim B-5-2 Hartamas Regency 2 No. 2 Jalan Duta Hartamas Sri Hartamas 50480 Kuala Lumpur Wilayah Persekutuan	472130061	Director	16 January 2014
Mustapha Bin Ya'akub No. 11 Jalan SS 3/47 Taman Subang 47300 Petaling Jaya Selangor	500106-03-5051	Director	16 January 2014
Mohd Fariq Bin Sidik Kg Tempoyak Surau Bator Jelawat 16070 Bachok Kelantan	760309-03-5079	Director	25 July 2013
Chong Siew Chin No. 10 Jalan SS 2/30 47300 Petaling Jaya Selangor	601121-10-6762	Secretary	20 June 2012
Yee Sook Mun 28P-4, Jalan Loke Yew 55200 Kuala Lumpur Wilayah Persekutuan	740306-14-5100	Secretary	25 July 2013

Source: Companies Commission of Malaysia, 2016. Note that this is a selective summary of the results obtained from the original records search.

Annex 2: Extract from the Company Register of Mirae Shipping (HK) Co. Limited

Company Particulars Search				
Companies Registry Number		1136375		
Company Name		Mirae Shipping (HK) Co. Limited		
Company Type		Private company limited by shares		
Date of Incorporation		29 May 2007		
Active Status		Live		
Register of Charges		Available		
Name History				
Effective Date		29 May 2007		
Name Used		Mirae Shipping (HK) Co. Limited		
Registered Office				
Registered Office		18/F Tung Sun Comm Ctr 194–200 Lockhart Road Wanchai Hong Kong		
Share Capital				
Issued		USD 100,000		
Paid-up		USD 100,000		
List of Directors				
Number	Name in English	Overseas Passport Number	Passport Issuing Country	Director Type
1	Kasatsugu, Hiroshi	TG0956548	Japan	Natural Person
Particulars of Company Secretary				
Particulars of Company Secretary (Body Corporate) #1				
Name in English		W K Chan & Co.		
Registered/Principal Office		Unit C 13/F Trade Cnt 235 Wing Lok Street Sheung Wan Hong Kong		
Date of Appointment		18 August 2008		

Source: ICRIS CSC Companies Registry, Government of the Hong Kong Special Administrative Region, 2015.
Note that this is a selective summary of the results obtained from the original records search.