

# North Korean Illicit Activities and Sanctions: A National Security Dilemma

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## Introduction

North Korea is a nation-state that for many years (including the years following the Cold War) has been off of the main radar for American foreign policy. Whether it was because the United States was worried about other issues such as problems in the Balkans in the 1990s, or fighting wars in Iraq and Afghanistan in the new millennium, challenges from the DPRK never seemed to be at the top of the priorities list with American foreign policy makers. This has now changed. It has become obvious to the world that North Korea has an active nuclear weapons program, and that Pyongyang has not been shy about threatening to use it. It is also obvious that North Korea has long and short range ballistic missiles that can not only threaten the region but potentially the United States, and through proliferation, areas as far away as the Middle East. Since North Korea is now not only acknowledged as a threat to the international order but, in a very potentially violent way, to the American homeland, one wonders, how does this highly threatening and possibly the most sanctioned regime-continue to survive? The answer is largely through North Korea's illicit activities—activities that support and enable the Kim family regime.

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Because North Korea's rogue state activities have put it on several sanctions lists, one would think that the DPRK would be economically squeezed. This is true, but because of an incredibly sophisticated financial network that operates worldwide (much like a crime family network), North Korea is able to get its tentacles into numerous banks, supported by at least dozens of front companies. But it does not stop there. I will also consider, in detail, the highly nuanced measures that North Korea takes to get around sanctions and other initiatives that the U.S. and the international community have taken to contain Pyongyang's proliferation, other illicit activities, and illegal banking actions.

Because military proliferation of both conventional weapons and weapons of mass destructions (WMD) is the main focus of this book, I will refer to North Korea's military proliferation from time to time in this chapter, largely because it will become obvious how much this proliferation contributes to Pyongyang's economy. Thus, it will also be necessary to conduct a brief analysis of the non-military illicit activities that the DPRK continues to conduct, by highlighting key aspects of it. While a list of the activities I have described above is important, it is also important to know what the United States has done to contain North Korea's illicit activities. Of course, it will also be necessary to look at how the international community has attempted to do the same—and how successful both the United States and the international community have been in attempting to curb both the activities and the financial network that support them. Finally, I will address China's role (often highly debated) in containing North Korea's illicit activities and in enforcing sanctions. I believe the conclusions will be quite compelling.

## I. North Korea's Illicit Financial Networks

In September of 2016, the South Korean press reported that two key entities within the Korea Workers Party (KWP) who handled funds for the Kim family regime (and reportedly Kim Jong-un's private slush fund) had merged into one. Office Number 38 and Office Number 39 merged and became Office Number 39.<sup>1</sup> In reality, Office Number 39 had always been the "managing entity" of North Korea's illicit money. In fact, Office Number 39, originally formed by Kim Jong-il during his father's reign, has for many years managed everything from military proliferation, to counterfeit currency, to a variety of other illicit and illegal activities.<sup>2</sup> It will be the purpose of this section to analyze and evaluate not only the activities of Office Number 39, but to show the reader the sophisticated financial networks that run these illicit activities. These financial networks are inter-

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1. See *N. Korea Combines 2 Units Managing Leader's Coffers into One*, KOREA TIMES (Sept. 29, 2016), [http://www.koreatimes.co.kr/www/news/nation/2016/09/485\\_215017.html](http://www.koreatimes.co.kr/www/news/nation/2016/09/485_215017.html) [<http://perma.cc/2SBL-JZ83>].

2. See generally Tom Burgis, *North Korea: The Secrets of Office 39*, FIN. TIMES (June 24, 2015), <https://www.ft.com/content/4164dfe6-09d5-11e5-b6bd-00144feabdc0> [<https://perma.cc/Y6C8-QAZQ>].

connected and highly nuanced. But they all end up in one place: the coffers of the Kim family regime.

Office Number 39 was formed under Kim Jong-il in the 1970s, when Kim Il-sung was still in power.<sup>3</sup> Since that time, Office Number 39's illicit fundraising activities have been significant, reportedly raising money in the billions of dollars annually for the Kim family regime. The activities are incredibly diverse and show that North Korea is now the only government on earth actively promoting and engaging in large-scale criminal activities, run by operatives sanctioned by the party. These activities include (but are not limited to) counterfeit U.S. currency, counterfeit cigarettes, sales of illegal drugs, illegal export of minerals, including gold, and of course, the most concerning money maker when it comes to national security concerns, arms sales (I do not include the large, government organized, operations of North Korean overseas workers in these activities, as the largest amount of workers have served or are serving in places such as China, Russia, and the Middle East, and for the most part, their activities have not been hidden). I will later discuss in detail how North Korea's Office Number 39 operatives—diplomats, “businessmen,” and others—use a variety of illegal methods to conduct their criminal and sanctions busting operations.<sup>4</sup> According to Dr. Andrei Lankov of Kookmin University in South Korea, the use of foreign currency has risen greatly in North Korea, largely as a result of all the illicit foreign trade Pyongyang has conducted.<sup>5</sup> In the areas of the country along the Chinese border, much of the illicit trade is conducted using yuan.<sup>6</sup>

According to North Korean defector and former overseas trade official Choi Kin-chol, North Korea's banking and trading activities have greatly diversified since 2005, when the United States Treasury Department sanctioned Banco Delta Asia in Macao, setting off a snowball effect that left North Korean finances out in the cold in banks around Asia and elsewhere.<sup>7</sup> According to the defector, individuals using individual accounts and front companies work together to mask their North Korean identity

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3. See Kim Kwang Jin, *The Defector's tale: Inside North Korea's Secret Economy*, *WORLD AFF. J.* (Sept./Oct. 2011), <http://www.worldaffairsjournal.org/article/defector%E2%80%99s-tale-inside-north-korea%E2%80%99s-secret-economy> [<https://perma.cc/U2VQ-RFZU>].

4. See Alastair Gale, *Defectors Detail How North Korea's Office 39, Feeds Leader's Slush Fund*, *WALL ST. J.* (Sept. 15, 2014), <http://www.wsj.com/articles/defectors-detail-how-north-koreas-office-39-filters-money-to-kims-private-slush-fund-1410823969> (detailing the spider-web like activities of the North Korean illicit financial network, headed by Office Number 39) [<https://perma.cc/7AS2-DJ3Y>].

5. See James Pearson, *North Korea's Black Market Becoming the New Normal*, *REUTERS* (Oct. 28, 2015), <https://www.reuters.com/article/us-northkorea-change-insight/north-koreas-black-market-becoming-the-new-normal-idUSKCN0S N00320151029> [<https://perma.cc/G5UN-95LD>].

6. See Andrei Lankov, *How Private Finance Took Hold in North Korea*, *NK NEWS* (June 30, 2015), <https://www.nknews.org/2015/06/how-private-finance-took-hold-in-north-korea/> [<https://perma.cc/8JQ5-759G>].

7. See Donald Greenlees & David Lague, *Squeeze on Banco Delta Asia Hit North Korea Where It Hurt*, *N.Y. TIMES* (Jan. 18, 2007), <http://www.nytimes.com/2007/01/18/world/asia/18iht-north.4255039.html> [<https://perma.cc/N3V2-D4UK>].

and make deposits in small banks in China, Italy, Russia, and Africa.<sup>8</sup> (My research shows it is even more diverse than this). According to international economic expert Bradley Babson, “The North Korean system evolved over decades in a fragmented way.” He goes on to articulate, “As a result, North Korea has no financial statistics, no significant banking supervision, and no capacity for macroeconomic management of an increasingly mixed economy.” Babson also goes on to point out that the army’s ownership “. . . of significant foreign exchange earning enterprises and affiliated banks was one way that Kim Jong-il maintained the support of the military during his tenure . . .”<sup>9</sup> Thus, the military, as well as Office Number 38, have been involved in conducting overseas endeavors that make money for the regime and for them. Nevertheless, the dominating force in North Korea’s shadow economy (or the “royal court economy” as a high ranking defector would later call it) has always been Office Number 39, which has overseen this secretive aspect of North Korea’s economy and enhanced its growth, since the 1970s.

Kim Kwang-jin, a high-ranking North Korean defector who was a key member of North Korea’s illicit activities network operating out of Singapore, gives us some interesting insight into this shadow economy that has supported Pyongyang’s military and kept the elites living in high style. Kim states, “The same economy that cannot produce a usable toothbrush is now armed to the teeth with nuclear weapons. I say this as someone who knows, having been involved, however obliquely, in providing the funds that made the atom splitting possible.”<sup>10</sup> Kim goes on to state in part,

This hidden financial system I’m referring to has no written records; most of the documents that tell the story—receipts, bank transactions, and the rest—are destroyed annually by Kim’s direct order (less to prevent outside audit than for fear that North Korean citizens might learn what was done with all the money secretly generated while they starved). Yet this same private financial network, which belongs exclusively to Kim and the elite ruling class, produces, by my estimates, fully two hundred times the foreign cash revenue of the Cabinet-run People’s Economy.

Kim further states, “The Royal Court Economy, which supports this development, emerged from necessity. Kim’s dilemma in the early 1990s was straightforward enough: The collapse of the North Korean economic regime was total, laid waste by his father Kim Il-sung’s decision to move to a derivative economy dozens of years earlier, exposing North Korea to the financial bust of the Soviet bloc.”<sup>11</sup> We thus see an illicit economy, based on the sale of largely illegal goods and sanctioned weapons sales, that began as a result of a failed legitimate economy during the Cold War, and

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8. Alastair Gale, *Q&A: High Level Defector on North Korean Trade*, WALL ST. J. (Sept. 16, 2014), <http://blogs.wsj.com/korearealtime/2014/09/16/qa-high-level-defector-on-north-korean-trade/> [https://perma.cc/GD4Z-H96E].

9. Bradley O. Babson, *The Demise of Jang Song Thaek and the Future of North Korea’s Financial System*, 38 NORTH (Feb. 24, 2014), <http://38north.org/2014/02/bbabson022414/> [https://perma.cc/ZU4A-AC6G].

10. Kim, *supra* note 3.

11. *See id.*

continued to grow in the Post-Cold War era as the Kim Family regime struggled to find ways to survive despite its isolation from the global financial system. Of course, all this illegal activity has led North Korea to become one of the most corrupt countries on earth.<sup>12</sup>

According to the South Korean press, current North Korean leader Kim Jong-un holds slush funds of four to five billion dollars hidden in bank accounts (not in his name) in such diverse countries as Austria, China, Lichtenstein, Luxembourg, Russia, Singapore, and Switzerland.<sup>13</sup> North Koreans typically use smaller banks that are under less scrutiny and often are not as strict in enforcing regulations. North Koreans reportedly even have deals with the Russian mafia to help them launder their funds, being managed by officials at the Russian embassy.<sup>14</sup> A North Korean “diplomat” who was posted in Russia as a trade representative reportedly defected in Vladivostok in 2016. This official, who has been reported to have been working for Office Number 39, is only one of several I will address in this Article.<sup>15</sup>

Speaking of the Russian mafia, it is not an exaggeration to say that this spider web of individuals, front companies, and banks, all working under Office Number 39, are very much like a “mafia like” organization. The difference between this network and the mafia is that members of North Korea’s governmental infrastructure—including military members, trade representatives, and diplomats—planned, founded, and now man this organization.<sup>16</sup> As the United Nations Panel of Experts has noted, this vast network of shady North Korean entities is so complex that it is often quite challenging to trace either the true ownership of front companies or how the money is moved around.<sup>17</sup> In 2014, a group of North Korean defectors implored the Swiss government to crack down on and freeze all of the assets of the North Korean leadership—but to no avail.<sup>18</sup> Thus, the money continues to flow in to these essentially untouchable accounts with no accountability to the international community.

12. See Oliver Hotham, *N. Korea is Among the Most Corrupt Nations on Earth*, Says NGO, NK NEWS (Dec. 3, 2013), <https://www.nknews.org/2013/12/north-korea-is-among-most-corrupt-nations-on-earth-says-ngo/> [https://perma.cc/HY4S-7AM4].

13. Lee Ha Won & Lee Yong Su, *Kim Jong-Un’s Secret Billions*, CHOSUNILBO (Mar. 12, 2013), [http://english.chosun.com/site/data/html\\_dir/2013/03/12/2013031201144.html](http://english.chosun.com/site/data/html_dir/2013/03/12/2013031201144.html) [https://perma.cc/D6GK-3B5U].

14. See *id.*

15. Kim Sung-Keun, *Breaking: Regime’s Slush Fund Manager Defects in Vladivostok*, NEW FOCUS INT’L, Aug. 2016.

16. See Elias Groll, *Gold Smuggling North Korean Diplomat Provides Glimpse at Criminal Empire*, FOREIGN POL’Y (Mar. 6, 2015), <http://foreignpolicy.com/2015/03/06/gold-smuggling-north-korean-diplomat-provides-glimpse-at-criminal-empire/> [https://perma.cc/H5MB-BYEE].

17. See Leo Byrne, *North Korea Uses “Multiple and Tiered” Techniques to Evade Sanctions*, NK NEWS (Mar. 11, 2014), <https://www.nknews.org/2014/03/north-korea-uses-multiple-and-tiered-techniques-to-evade-sanctions/> [https://perma.cc/L2SY-X7QB].

18. See Lisa Schlein, *N. Korea Defectors Urge Switzerland to Freeze Leaders’ Funds*, VOICE OF AMERICA (Nov. 17, 2014), <http://www.voanews.com/a/north-korea-defectors-urge-switzerland-to-freeze-leadership-money/2523035.html> [https://perma.cc/H3S5-YHXJ].

Kim Jong-un reportedly requires diplomats and others who are posted overseas to raise millions for celebrations and other activities that promote the regime.<sup>19</sup> Those posted overseas who are required to do so even include military members of the Reconnaissance Bureau, a key special operations force that is often involved in military proliferation to rogue states on Pyongyang's behalf.<sup>20</sup> Recent activities show that there may be trouble brewing in Office Number 39's network. During August of 2016, it was reported that Thae Yong-ho, the DPRK Deputy Ambassador to the UK, defected with \$58 million.<sup>21</sup> He is said to have been one of the managers of Kim Jong-un's secret money. In June of that year, another official from Office Number 39 defected in Europe.<sup>22</sup> He allegedly made off with \$400 million. In 2015, an official from Office Number 39 defected and escaped from China, and another escaped with millions from Singapore.<sup>23</sup> In 2014, Yoon Tae-hyung, who was then in charge of the Russian branch of Daesung Bank (a front bank for Office Number 39) escaped and defected—taking five million dollars with him.<sup>24</sup> These various defections by money management personnel show three things; (1) there is a great deal of corruption within North Korea's illicit financial networks, (2) this corruption likely has led top officials stealing money from the regime to ultimately defecting in many cases, and (3) a great deal of fear still exists everywhere in North Korea for anyone who crosses the regime, and even the members of the elite who work within the shadow economy of Office Number 39 are vulnerable.

If one examines North Korea's spider web of global financial networks, the result is quite fascinating. It is essentially the first government run highly sophisticated set of criminal financial networks in existence since Nazi Germany.<sup>25</sup> This is not an exaggeration. The evidence shows that Office Number 39 was founded specifically for the purpose of raising funds for the regime.<sup>26</sup> It is this series of networks, run like a modern day crime family, that enables the DPRK to operate around the global financial

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19. Elizabeth Shim, *North Korea Requiring Diplomats to Raise Millions in U.S. Currency*, UPI (Sept. 29, 2015), [http://www.upi.com/Top\\_News/World-News/2015/09/29/North-Korea-requiring-diplomats-to-raise-millions-in-US-currency/2841443540260/](http://www.upi.com/Top_News/World-News/2015/09/29/North-Korea-requiring-diplomats-to-raise-millions-in-US-currency/2841443540260/) [https://perma.cc/5E7G-NXCM].

20. *See id.*

21. *See* James Pearson & Ju-min Park, *North Korea Deputy Ambassador in UK Defects to South*, REUTERS (Aug. 16, 2016), <https://www.reuters.com/article/us-northkorea-defector/north-korea-deputy-ambassador-in-uk-defects-to-south-idUSKCN10S0CY> [https://perma.cc/LNK9-336V].

22. *See* Yi Whan-woo, *N. Korea Leader's Secret Funds Coming to Light*, KOREA TIMES (Aug. 21, 2016), [http://www.koreatimes.co.kr/www/news/nation/2016/08/485\\_212381.html](http://www.koreatimes.co.kr/www/news/nation/2016/08/485_212381.html) [https://perma.cc/LB88-ZP4S].

23. *Id.*

24. *Id.*

25. *See* STAFF OF CONGRESSMAN EDWARD R. ROYCE, 110TH CONG., GANGSTER REGIME: HOW NORTH KOREA COUNTERFEITS U.S. CURRENCY 15 (2007), <http://royce.house.gov/uploadedfiles/report.3.12.07.final.gansterregime.pdf> [https://perma.cc/5BVZ-BZ7A].

26. *See* Brian Todd et al., *North Korean Money Man Reveals Smuggling Operations*, CNN (Aug. 3, 2017), <https://www.cnn.com/2017/08/03/politics/north-korea-defector-ri-jong-ho/index.html> [https://perma.cc/JYR2-HEUA].

system, using phony front companies, empty banks, and conspiring individuals (including criminals) in nations all over the world. Office Number 39 continues to operate around the world, constantly generating revenue for Kim Jong-un's slush funds, the North Korean military, and the elites that continue to live in a high fashion. But an examination of North Korea's financial networks is not enough. In the next section, I will show how North Korea gets around sanctions and counter-proliferation initiatives.

## II. How North Korea Gets Around Sanctions

North Korea has an efficient yet corrupt illicit financial system. But in order for the system to work, it must be able to get around the sanctions and counter-proliferation regimes that the international community has imposed on the DPRK. This is not easy matter, but for many years, North Korea has been able to get around banking regulations, unilateral sanctions from several states, counter-proliferation initiatives imposed by the international community, and UN sanctions that have become ever tougher and broader with time. The answer to how it has accomplished this successfully is complex and often confusing. However, it is a necessary undertaking to truly understand North Korea's illicit activities, their proliferation, and the vast set of tactics, techniques, and procedures (TTP) that Pyongyang uses in order to protect its "business assets" overseas that are crucial to the survival of the regime.

According to press sources in South Korea, sanctioned banks are very clever in getting their funds into "legitimate" banks (these sanctioned banks often have very little cash – the key is getting money into a non-sanctioned bank).<sup>27</sup> More often than not, the targets are proven to be smaller banks in China and elsewhere.<sup>28</sup> Reportedly, this is because many individuals in China are bribed to transfer the funds (those who are used as "go-betweens" are said to get a fifteen to thirty percent cut, depending on how strict sanctions or local law enforcement may be).<sup>29</sup> North Koreans transfer dollars to a Chinese intermediary, who then deposits the funds into a small Chinese bank. Many of North Korea's funds are said to be going through Guangzhou, Shenzhen, and Zhuhai. In addition to individuals, front companies are often used—often these companies are used only one time.<sup>30</sup> According to a former North Korean diplomat who spoke to the South Korean press, North Korean diplomats convert counterfeit money into real money and then send it back to the DPRK. North Korea is

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27. See *Kim Jong-Un's Secret Billions*, *supra* note 13.

28. See *id.*; *China's central bank tells banks to stop doing business with North Korea*, REUTERS (Sept. 21, 2017), <https://www.reuters.com/article/us-northkorea-missiles-banks-china/chinas-central-bank-tells-banks-to-stop-doing-business-with-north-korea-sources-idUSKCN1BWIDL> [https://perma.cc/E9VS-7AE5].

29. See Ahn Sung-kyoo, *North money laundering done in Guangdong*, KOREA JOONGANG DAILY (June 5, 2013), <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=2972627> [https://perma.cc/V58H-SHFH].

30. See *id.*

infamous for its “super notes,” counterfeit 100 dollar bills so close to the real thing it is almost impossible to tell the difference.<sup>31</sup> The defector described the *modus operandi* for the counterfeit exchange as such, “An agent working at the embassy goes to a safe house and brings a box full of them. When the bills arrive, embassy staff bundle them up into \$10,000 units. They then travel to major cities in their host country to exchange it.”<sup>32</sup> By 2013, China was reported to have closed down the accounts of North Korean entities in major banks, including Bank of China.<sup>33</sup> Of course, using the method above, North Korea could easily get around such actions, as North Koreans typically use smaller banks anyway.

An excellent example of North Korean use of various resources and the DPRK’s amazingly adept use of shell front companies, easily bribed individuals, and phony banks, lies in one of the few times the North Koreans were actually caught—a shipment of arms to the Middle East caught in Thailand in 2009.<sup>34</sup> The shell companies for the operation were located in 16 countries, including New Zealand, Hong Kong, and Ukraine. The officers listed on the registration papers did not know the identities of the real owners, their nationalities, or even where they were located. They simply received their money and moved on. The Russia-made cargo plane carrying the thirty-five-ton shipment was owned by an international arms trafficker whose company was registered in the UAE. A Georgian company had the operating license for the aircraft. The aircraft was then chartered by a Hong Kong company. After being chartered, the aircraft departed Azerbaijan, eventually landing in Pyongyang. From there, the aircraft departed on the way to Tehran, where thirty-five tons of weapons such as rocket propelled grenades, surface-to-air missiles, and many other light arms were to be delivered to Hezbollah by the Iranians. Non-North Korean individuals who were involved in the operation knew almost nothing about what was going on outside of their compartmentalized information sphere. The front company in New Zealand listed a twenty-five-year old Chinese immigrant as the Director, who held a day job at a Burger King in Auckland.<sup>35</sup> It was only through luck and good intelligence work that the air-

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31. Julian Ryall, *Quality of fake ‘supernotes’ found in Seoul fan suspicions that North Korea is forging \$100 Bills*, TELEGRAPH (Dec. 11, 2017), <http://www.telegraph.co.uk/news/2017/12/11/quality-fake-supernotes-found-seoul-fan-suspicions-north-korea/> [https://perma.cc/3WK3-VE77].

32. How N.Korean Diplomats Launder Counterfeit Money, CHOSUNILBO (Mar. 14, 2013), [http://english.chosun.com/site/data/html\\_dir/2013/03/14/2013031401253.html](http://english.chosun.com/site/data/html_dir/2013/03/14/2013031401253.html) [https://perma.cc/8XCB-CVPZ].

33. *China Probes N.Korea’s Bank Accounts*, CHOSUNILBO (May 9, 2013), [http://english.chosun.com/site/data/html\\_dir/2013/05/09/2013050901215.html](http://english.chosun.com/site/data/html_dir/2013/05/09/2013050901215.html) [https://perma.cc/84VE-WJRW]; *Seoul Sounds Positive Note on Beijing’s Closure of N. Korea Account*, YONHAP (May 9, 2013), <http://english.yonhapnews.co.kr/national/2013/05/09/53/030100000AEN20130509008100315F.HTML> [https://perma.cc/9F4H-AJB7].

34. Thomas Fuller & Choe Sang-Hun, *Thais Say North Korea Arms Were Iran-Bound*, N.Y. TIMES (Jan. 31, 2010), <http://www.nytimes.com/2010/02/01/world/asia/01plane.html> [https://perma.cc/HX7K-KBFS].

35. Nate Thayer, *The Front Companies Facilitating North Korean Arms Exports*, NK NEWS (May 30, 2013), <https://www.nknews.org/2013/05/the-front-companies-facilitating-north-korean-arms-exports/> [https://perma.cc/2HXP-K5PN].



craft—which had landed in Thailand for refueling—was found and the arms shipment stopped. Otherwise, thirty-five tons of military gear, destined for Hezbollah, would have arrived in the Middle East, furthering the violent conflicts that have already caused many casualties.

During March of 2013, the South Korean and U.S. governments found dozens of so called North Korean “dummy accounts” reportedly in China, worth hundreds of millions of dollars.<sup>36</sup> In 2014, Japanese police officials disclosed that they had discovered an illegal North Korean account belonging to a client of a firm in the Shizuoka Prefecture.<sup>37</sup> The North Korean Reconnaissance Bureau reportedly controlled the account through a Chinese individual. The funds from the account were then used for illegal arms trading.<sup>38</sup> This is another great example of North Koreans using easily bribed individuals to cover their illicit activities and proliferation actions. During 2014, the government of Singapore filed charges against Chinpo Shipping Company Ltd., and the company was ordered to pay a fine.<sup>39</sup> Singapore has proven to be a key hub for North Korea’s proliferation and illicit activities—largely because of the lax banking laws and regulations that make Singapore the “Switzerland of Asia.” Due to a technicality, Chinpo was able to successfully appeal the charges in 2017.<sup>40</sup> North Koreans are said to use several different banks in Singapore.<sup>41</sup>

Revenues from transactions made with Iran are also reportedly laundered through banks in Singapore.<sup>42</sup> Citizens of African countries, such as Zimbabwe, are often used as intermediaries (perhaps hundreds of them) to launder the money for the North Koreans in banks located in Singapore.<sup>43</sup> According to the UN Panel of Experts report released in early 2014, North Korea is using “the complicated financial countermeasures and techniques “pioneered by drug trafficking organizations. . . .” The report also states, “. . . it found a relatively complex “‘corporate ecosystem’ of foreign based firms and individuals that helped North Korea evade scrutiny of its assets

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36. See Yongwon Yoo, *Kim Jong-un’s Slush Funds Found*, CHOSUNILBO (Mar. 11, 2013), [http://english.chosun.com/site/data/html\\_dir/2013/03/11/2013031101105.html](http://english.chosun.com/site/data/html_dir/2013/03/11/2013031101105.html) [<https://perma.cc/QZH4-3ETA>].

37. *Suspected N. Korean Money Laundering Account Found in Japan*, KBS WORLD RADIO (Aug. 8, 2014), [http://world.kbs.co.kr/english/news/news\\_In\\_detail.htm?No=104522&id=IN](http://world.kbs.co.kr/english/news/news_In_detail.htm?No=104522&id=IN) [<https://perma.cc/SG7N-PSDK>].

38. *Id.*

39. *Singapore Charges Company Over North Korea Weapons Role*, ASSOCIATED PRESS (June 10, 2014), <https://www.ndtv.com/world-news/singapore-charges-company-over-north-korea-weapons-role-576951> [<https://perma.cc/B478-6U8F>].

40. See Hamish Macdonald, *Shipping Company Wins Appeal Over North Korea Proliferation Conviction*, NK NEWS (May 12, 2017), <https://www.nknews.org/2017/05/shipping-company-wins-appeal-over-north-korea-proliferation-conviction/> [<https://perma.cc/C6ZM-YJ6C>].

41. Interview with Kim Kwang-jin, in Seoul, Republic of Korea (July 19, 2015) (According to a former high-ranking North Korean defector, at least one of the banks in Singapore that the North Koreans have used in the past in Singapore is United Overseas Bank).

42. Interview with Anonymous, in Seoul, Republic of Korea (July 27, 2015) (A senior Republic of Korea former government official who wished to remain anonymous).

43. *Id.*

as well as its financial and trade dealings.”<sup>44</sup>

In 2017, it was revealed that North Korea’s “Glocom” and “Pan Systems” were in fact front companies operating in Singapore, and were used to conduct DPRK military proliferation through a network of agents and illicit bank accounts.<sup>45</sup> Reportedly, “Pan Systems” also operates in Malaysia and China.<sup>46</sup> “Pan Systems” and “Glocom” are said to operate under the direction of North Korea’s Reconnaissance Bureau.<sup>47</sup> North Korea’s financial networks have also used Malaysia, a place that until recently had no visa requirements for North Koreans as a key operating base. To quote North Korean analyst Scott Snyder, “The visa-free access to Malaysia that North Korean citizens have enjoyed until it was rescinded earlier this month following the murder of Kim—the half-brother of the isolated regime’s leader, Kim Jong Un—had provided Pyongyang with a base for both illegal procurement and financing activities that have enabled it to import sensitive materials and finance its WMD development.”<sup>48</sup>

According to a study by Hugh Griffiths and Lawrence Dermody conducted for the Stockholm International Peace Research Institute (SIPRI), foreign companies and individuals, who travel on foreign passports, make up the majority of sanctions violators of both individual unilateral nation-states sanctions and UN sanctions.<sup>49</sup> In other words, foreign individuals and foreign front companies which operate on DPRK’s behalf commit the majority of operations overseas that violate sanctions, international law, and counter-proliferation initiatives. This fact brings an interesting point regarding sanctions and how they are targeted. The SIPRI study found that DPRK compensated third parties who carry out most of the activities conducted on behalf of North Koreans in Pyongyang in the illicit underworld.<sup>50</sup> And yet, as of the date of the SIPRI’s study publication, almost all of the sanctions had been focused on entities within DPRK.<sup>51</sup> Given the reality of the makeup of violators, the best way to pursue counter-illicit operations would be targeting entities within foreign countries. Unfortunately, based on the nature of front companies and shell companies, as

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44. James Pearson, *Front Companies, Embassies Mask North Korean Weapons Trade - U.N.*, REUTERS (Mar. 11, 2014), <https://www.reuters.com/article/us-korea-korea-un/front-companies-embassies-mask-north-korean-weapons-trade-u-n-idUSBREA2A08020140311> [<https://perma.cc/632F-8HWN>].

45. James Pearson & Marius Zaharia, *Singapore ‘Closely Studying’ U.N. Report on North Korea Arms Trade*, REUTERS (Mar. 9, 2017), <https://www.reuters.com/article/us-northkorea-singapore-arms/singapore-closely-studying-u-n-report-on-north-korea-arms-trade-idUSKBN16G13S> [<https://perma.cc/W6KT-PQR5>].

46. *Id.*

47. *Id.*

48. Scott Snyder, *Malaysia’s Front Office Role in Enabling North Korean WMD Procurement*, COUNCIL FOREIGN AFF.: ASIA UNBOUND (Mar. 6, 2017), <https://www.cfr.org/blog/malysias-front-office-role-enabling-north-korean-wmd-procurement> [<https://perma.cc/LWT2-KCJD>].

49. See Hugh Griffiths & Lawrence Dermody, *Loopholes in UN Sanctions Against North Korea*, 38 NORTH (May 6, 2014), <http://38north.org/2014/05/griffithdermod050614/> [<https://perma.cc/F52J-DG64>].

50. *See id.*

51. *See id.*

well as compensated bribed individuals, this idea of targeting agents outside of North Korea appears to be similar to a game of “whack-a-mole.”

According to the SIPRI study’s authors referenced in the paragraph above, North Korea is fully capable of operating outside of the international system quite successfully, and as they state; “One reason is that the sanctions have targeted North Korean companies and state institutions that are impervious to sanctions because they are not embedded in the global economy.”<sup>52</sup> The authors also state, “North Korea-linked proliferation activity is now firmly established beyond North Korea’s borders and sometimes beyond the borders of any regulated state, in what can be described as the offshore economy: companies operating in deregulated business or free-trade zones, ports and financial centers that have proved so conducive to legitimate forms of international trade. Shipments involve the outriders of globalization: offshore bank accounts, flag-of-convenience ships and passports, honorary consuls, free-trade zones and containerization.”<sup>53</sup> As former high-ranking U.S. government official Juan Zarate stated in a Congressional testimony, “The North Korean schemes outside their borders rely heavily on front companies, layered transactions, opaque ownership structures, and trusted or corrupt relationships, making it difficult for legitimate banks and compliance systems to detect and stop its nefarious activities.”<sup>54</sup> These various, often untraceable means are now better known to analysts. More troubling, however, is the fact that North Korea now reportedly uses civilian airliners to transport illicitly gained hard currency.<sup>55</sup> In 2015, the U.S. Treasury Department sanctioned individuals from North Korea operating in Russia, Syria, and Vietnam.<sup>56</sup> These sanctions clearly reveal that North Korea’s spider web of operations is diverse, prosperous, and capable of evading authorities—at least for an extended period of time.<sup>57</sup>

In 2016, a compelling study by the UN Security Council Panel of Experts shows that North Korea continues to successfully evade sanctions.<sup>58</sup> The study also shows that North Korea continues to use the inter-

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52. Hugh Griffiths & Lawrence Dermody, *Feb 13: Sanctions Beyond Borders: How to Make North Korea Sanctions Work*, STOCKHOLM INT’L PEACE RES. INST. (Feb. 28, 2013), <https://www.sipri.org/node/329> [<https://www.sipri.org/node/329>].

53. *Id.*

54. Juan C. Zarate, *Secondary Sanctions Against Chinese Institutions: Assessing Their Utility for Constraining North Korea* (May 10, 2017), [https://www.banking.senate.gov/public/\\_cache/files/32fc800c-312f-4e68-ad3f-3be5a6eae989/F5431B8F84661542DF1C9C3E23CC102A.zarate-testimony-5-10-17.pdf](https://www.banking.senate.gov/public/_cache/files/32fc800c-312f-4e68-ad3f-3be5a6eae989/F5431B8F84661542DF1C9C3E23CC102A.zarate-testimony-5-10-17.pdf) [<https://perma.cc/Q2SV-DHVB>].

55. See *N. Korea Uses Civilian Airliners to Haul Hard Currency*, CHOSUNILBO (July 3, 2015), [http://english.chosun.com/site/data/html\\_dir/2015/07/03/2015070301475.html](http://english.chosun.com/site/data/html_dir/2015/07/03/2015070301475.html) [<https://perma.cc/B9KU-XGAV>].

56. Hamish Macdonald, *U.S. Sanctions KPA Unit, Shipping Companies, N. Koreans Overseas*, NK NEWS (Dec. 9, 2015), <https://www.nknews.org/2015/12/u-s-sanctions-kpa-unit-shipping-companies-n-koreans-overseas/> [<https://perma.cc/Y29U-NX3W>].

57. See *id.*

58. See Brian Padden & Margaret Besheer, *UN Security Council Approves New Sanctions on North Korea*, VOICE OF AMERICA (Mar. 2, 2016), <http://www.voanews.com/a/un-counts-the-ways-north-korea-evaded-sanctions/3215914.html> [<https://perma.cc/D3HX-4VY6>].

national system and its many loopholes, to get around international counter-proliferation initiatives.<sup>59</sup> The report also points out that North Korea continues to proliferate military gear in the Middle East and Africa, among others.<sup>60</sup> According to the UN report, analysts who closely follow North Korean companies' proliferation and illicit activities said that “[t]hey adopted concealment techniques such as the use of foreign intermediaries, front company networks and incomplete documentation.”<sup>61</sup> Other highlights of the report shows that North Korea sent spare parts for ballistic missiles (Scuds) to one of Washington’s allies—Egypt.<sup>62</sup> This appears to be on the cusp of changing. In March of 2017, the U.S. State Department sanctioned companies, entities including government entities, and individuals in North Korea as well as China, Burma, Iran, Sudan, Saudi Arabia, Egypt, Eritrea, and United Arab Emirates, for activities in violation of Section 3 of the Iran, North Korea, and Syria Nonproliferation Act.<sup>63</sup> Though a small first step, going after front companies and individuals who are not North Korean (often referred to as “secondary sanctions”) can be an effective way of containing North Korea’s illegal proliferation networks.<sup>64</sup>

Evidence that had been compiled over several years and was released in 2016 showed that banks in Singapore and China cooperated with members of the North Korean illicit financial network.<sup>65</sup> The evidence also showed that from the bank the “money trail” goes to Panama, where shipping agents provided cover for North Korean activities—including proliferation.<sup>66</sup> For example, a firm of Mossack Fonseca helped serve as a shipping agent in Panama but reportedly did not realize that it was fronting for North Koreans until 2010 when the firm stopped working for them.<sup>67</sup> Often, the transactions appear to have gone through Chinese banks, such as the Bank of China (which, of course, also has denied knowing the funds

59. *See id.*

60. *See id.*

61. *Id.*

62. *See id.*

63. *See* Press Release, Iran, North Korea, and Syria Nonproliferation Act Sanctions, Office of the Spokesperson, U.S. DEP’T ST. (Mar. 24, 2017) <https://www.state.gov/r/pa/prs/ps/2017/03/269084.htm> [<https://perma.cc/5BUB-BNCQ>].

64. *See* Imposition of Nonproliferation Measures Against Foreign Persons, Including a Ban on U.S. Government Procurement, U.S. DEP’T ST. (Mar. 30, 2017) <https://www.federalregister.gov/documents/2017/03/30/2017-06225/imposition-of-nonproliferation-measures-against-foreign-persons-including-a-ban-on-us-government> [<https://perma.cc/5EV7-9LE9>]; *see also* Vivian Salama, *US Imposes Sanctions on China, North Korea Entities, People*, ASSOCIATED PRESS (Mar. 24, 2017), <https://apnews.com/840c799486a6438391cc651d33a93b44> [<https://perma.cc/V584-CB8D>]; *see also* Victor Cha, *US Sends ‘Secondary Sanctions’ Warning to China Through Blacklisting of NK Firm*, YONHAP NEWS (Apr. 3, 2017), <http://english.yonhapnews.co.kr/northkorea/2017/04/03/0401000000AEN20170403000400315.html> [<https://perma.cc/6K89-G976>].

65. *See* Sungwon Yoon et al., *How North Korea Funnels Cash Into the Country*, BLOOMBERG (Feb. 21, 2016), <https://www.bloomberg.com/news/articles/2016-02-21/china-at-the-heart-of-north-korea-s-illicit-cash-flow-funnel> [<https://perma.cc/E2R4-H44U>].

66. *See* Mirren Gidda, *Panama Papers: British Banker Helped North Korea Sell Arms, Expand Nuclear Program*, NEWSWEEK (Apr. 6, 2016), <http://www.newsweek.com/panama-papers-mossack-fonseca-north-korea-444452> [<https://perma.cc/UDW9-T3H8>].

67. *See id.*

were North Korean).<sup>68</sup> Sophisticated networks that run through North Korea, China, Singapore, and Panama, are only one example of how complicated and difficult it is to track these activities because frequently, these financial transactions run through intermediaries who are not North Korean and thus often escape scrutiny initially.<sup>69</sup> In March of 2017, the United States Treasury Department levied sanctions against several North Korean individuals involved in illicit financial activities supporting proliferation in diverse places, such as China, Russia, and Vietnam.<sup>70</sup>

In 2016, when North Korean entities were listed by the American Treasury Department as a “primary money laundering concern,” many thought that it might actually slow down the North’s proliferation and illicit activities.<sup>71</sup> But not everyone concurred. In referring to BDA (the Chinese bank sanctioned by the United States in 2005—which set off a snowball effect on North Korean illicit bank accounts all over Asia), Dr. John Park remarked, “If you look at the BDA period . . . North Korea was caught off guard. It was a big shock to them. But what comes out of that shock is that they moved a lot of their banking activities inside of China and then they started using private Chinese companies to do their activities in between them and smaller banks.”<sup>72</sup> The interview conducted with Dr. Park evolved into even more compelling assessments. As the interviewers stated, “Park said that there are always Chinese middlemen and private firms who are willing to do financial transactions on behalf of North Korea for money, and commission fees go up as sanctions on the regime in Pyongyang become tighter.”<sup>73</sup> Dr. Park also made an interesting and important statement in his article where he discussed the role of Chinese “middlemen,” intermediaries, for a fee, help North Koreans launder and mask the money used to carry out illicit activities and proliferation.<sup>74</sup> According to the article, “As sanctions have become tougher, these local Chinese middlemen have charged higher fees to reflect the elevated risk of doing business with North Korean clients. Instead of hindering procurement activities, we found that sanctions have actually helped to attract more capable middlemen, who are drawn by the larger payday.”<sup>75</sup>

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68. See Sungwon Yoon et al., *supra* note 65.

69. See *id.*; see also Mirren Gidda, *supra* note 66.

70. See Press Release, Treasury Sanctions Agents Linked to North Korea’s Weapons of Mass Destruction Proliferation and Financial Networks, U.S. DEP’T TREASURY (Mar. 31, 2017), <https://www.treasury.gov/press-center/press-releases/Pages/sm0039.aspx> [<https://perma.cc/CT7X-T4V9>].

71. See Chang Jae-soon & Roh Hyo-dong, *U.S. Blacklisting of N.K. Unlikely to be as Powerful as BDA Sanctions: Expert*, YONHAP NEWS (June 12, 2016), <http://english.yonhapnews.co.kr/news/2016/06/13/0200000000AEN20160613000300315.html> [<https://perma.cc/8L93-KZRR>].

72. *Id.*

73. *Id.*

74. John S. Park, *To Curb North Korea’s Nuclear Program, Follow the Money*, THE CONVERSATION (Sept. 20, 2016), <http://theconversation.com/to-curb-north-koreas-nuclear-program-follow-the-money-65462> [<https://perma.cc/6L53-QCXD>].

75. *Id.*

Thus far I have not, at least in detail, discussed the methods by which North Korea ships its weapons that bring in billions to Kim Jong-un's coffers.<sup>76</sup> But when it comes to proliferation of arms to other nations, North Korea has turned this into an art form. In the early 2000s, the United States helped create the Proliferation Security Initiative ("PSI").<sup>77</sup> The PSI has, to date, been endorsed by more than 100 nations, and it frequently focuses on maritime interdiction.<sup>78</sup> This role is a noble effort, and yet, the results have, at best, been mixed.<sup>79</sup> North Korea has been proven quite adept at getting around a variety of PSI methodologies of which one key way is using a legal loophole in maritime law, re-flagging of ships.<sup>80</sup> In 2014, despite many sanctions including sanctioning North Korean merchant ships, trade and proliferation did not slow down.<sup>81</sup> The proliferation has continued because North Korea chose to use flags of convenience to carry its goods and services to other nations, despite the fact that this was banned by sanctions.<sup>82</sup> In fact, Pyongyang has even utilized South Korean ports during using this methodology.<sup>83</sup> North Koreans used this practice in collusion with front companies, to maintain their network of merchant ships that proliferate and operate illegally in violation of international sanctions.<sup>84</sup> In 2015, disclosures indicated that North Korea was using, at least, the flags of Mongolia, Kiribati, Tuvalu, and Niue on its merchant ships in defiance of sanctions. In 2016, North Korea was exposed as flying under the flag of Sierra Leone on some of its merchant ships. In the same year, nearly fifty North Korean ships were, reportedly, flying under the flag of Tanzania. This is undoubtedly only the tip of the iceberg. North Korea has, for many years, moved its merchant ships from flag to flag in order to avoid detection.<sup>85</sup> In 2017 the DPRK was caught

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76. See Evelyn Cheng, *Five Ways North Korea Gets Money to Build Nuclear Weapons*, CNBC (Apr. 18, 2017), <https://www.cnbc.com/2017/04/18/how-does-north-korea-get-money-to-build-nuclear-weapons.html> [<https://perma.cc/D7EH-GYKF>].

77. See *Proliferation Security Initiative*, U.S. DEP'T ST. (2016), <https://www.state.gov/t/isn/c10390.htm> [<https://perma.cc/HE6J-K23K>].

78. *Id.*; Jofi Joseph, *The Proliferation Security Initiative: Can Interdiction Stop Proliferation?*, ARMS CONTROL TODAY (June 1, 2004), <https://www.armscontrol.org/print/1579> [<https://perma.cc/8RQ2-DF7A>].

79. Daniel W. Drezner, *An Analytically Eclectic Approach to Sanctions and Nonproliferation*, in *Sanctions, Statecraft, And Nuclear Proliferation* 161 (Etel Solingen ed., 2012).

80. See Leo Byrne, *All Change: North Korean Ships Reshuffle their Identities*, NK NEWS (Oct. 21, 2014), <https://www.nknews.org/2014/10/all-change-north-korean-ships-reshuffle-their-identities/> [<https://perma.cc/AS5Q-EHJS>].

81. See Zeeshan Aleem, *Here's Why North Korea's Economy is Able to Survive Sanction after Sanction*, VOX (Dec. 7, 2017), <https://www.vox.com/world/2017/12/7/16745692/north-korea-sanctions-nuclear-economy> [<https://perma.cc/YLW4-N8L9>].

82. See Byrne, *supra* note 80.

83. *Murky Waters: North Korea's Ships in South Korean Seas*, NK NEWS (Nov. 6, 2014), <https://www.nknews.org/2014/11/murky-waters-north-koreas-ships-in-south-korean-seas/> [<https://perma.cc/8UAS-FN5W>].

84. *Id.*

85. Andrea Berger, *North Korea's Friends in Singapore Running Flags of Convenience*, 38 NORTH (June 22, 2015), <http://38north.org/2015/06/aberger062215/> [<https://perma.cc/237E-8W5M>]; *N. Korea Runs 9 Merchant Ships Under Foreign Flags: Report*, YONHAP NEWS (Oct. 28, 2016, 11:53 AM), <http://english.yonhapnews.co.kr/news/2016/10/28/33/0200000000AEN20161028004100315F.html> [<https://perma.cc/6VFC->

proliferating weapons on a Cambodia flagged ship.<sup>86</sup>

As I have previously discussed in my book, *The Last Days of Kim Jong-il, the North Korean Threat in a Changing Era*, a North Korean defector who formerly worked within networks that conducted illicit arms deals, has disclosed to the press in South Korea that the DPRK's arms dealers frequently have been students at Pyongyang University of Foreign Studies.<sup>87</sup> The education trained them to be fluent in English and Chinese because Pyongyang's plan was to use these people to deal with "traders" in other countries. According to the defector, a key method that Pyongyang has used to circumvent past sanctions is to transport containers across the Yalu River to China, presumably under the cover of legal trade, of which one third or half filled with weapons. The defector stated that "[t]he forwarder who received this cargo enters a port in a third country, where the containers are filled with freight unrelated to weapons and the paperwork is completed." But this is not the end of the story. The containers are then moved to a third major port, one with heavy traffic. Then "[t]he containers are mixed with other cargo in those transit points. They are searched, but not thoroughly." As a former North Korean official reports, "[e]ven if customs or other officials roll their sleeves up and search for weapons, how can they possibly find the arms among the mountains of other containers headed to other countries?"<sup>88</sup> This method is one of the diverse ways that North Korea gets around sanctions.

So far, we see a North Korean financial network that is so complex and nuanced that it has baffled even the most sophisticated law enforcement networks and international organizations. North Korea has used and continues to use a variety of tactics, techniques, and procedures to get around sanctions and counter-proliferation initiatives. These techniques at times seem to be so clever that one wonders if the international community will ever be able to truly restrain them. Not the least of the reasons for this is that the DPRK uses so many nearly untraceable foreign entities (under the control of North Korea's financial network managers) to conduct its transactions and launder its money. As Anthony Ruggiero of the Foundation for Defense of Democracies stated in 2017 when speaking about the UN Panel of Experts Report released early that year, "[t]he report highlights Pyongyang's habitual use of front companies with no visible ties to the regime, a practice that the Treasury Department has called 'a threat to the integrity of

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4G5A]; see Elizabeth Shim, *Report: North Korea Ships under Sierra Leone Flag Issued Warning*, UNITED PRESS INT'L (Mar. 25, 2016, 11:08PM), [http://www.upi.com/Top\\_News/World-News/2016/03/25/Report-North-Korea-ships-under-Sierra-Leone-flag-issued-warning/7471458960074/](http://www.upi.com/Top_News/World-News/2016/03/25/Report-North-Korea-ships-under-Sierra-Leone-flag-issued-warning/7471458960074/) [https://perma.cc/TR2B-TC4Y].

86. See Seana K. Magee, *N. Korea Tactically Evading Sanctions on a Large Scale: U.N. Report*, KYODO NEWS (Feb. 8, 2017, 2:33 AM), <http://abc140.blog.fc2.com/blog-entry-17001.html> [https://perma.cc/4AGJ-5WT8].

87. See BRUCE E. BECHTOL, *THE LAST DAYS OF KIM JONG-IL: THE NORTH KOREAN THREAT IN A CHANGING ERA* 117 (2013).

88. See *id.* at 117–18; see also *How N.Korea Goes About Exporting Arms*, CHOSUNILBO (Mar. 10, 2010, 12:29 PM), [http://english.chosun.com/site/data/html\\_dir/2010/03/10/2010031000953.html](http://english.chosun.com/site/data/html_dir/2010/03/10/2010031000953.html) [https://perma.cc/KHJ5-DGKA].

the U.S. financial system.”<sup>89</sup>

The lack of enforcement of sanctions on North Korea by governments all over the world, including China, the Middle East, and Africa, is highlighted by the words of Richard Nephew, when referring to the UN Panel of Experts Report in early 2017.

The UNSC Sanctions Committee and UNSC more generally should consider imposing sanctions, even if just targeted designations, on officials and entities involved in the willful refusal to implement UNSC sanctions. Pertinent examples could include the African nations who have continued to purchase arms from North Korea as well as some of the traffickers described in the report. It is too much to expect that China or Russia would agree to impose sanctions on entities or individuals operating in their own territory (and there is more than a touch of hypocrisy involved in supporting designations of citizens of other countries engaged in evasion), but they may be willing to support certain other non-DPRK designations at this stage.<sup>90</sup>

As we move on to the next section, it is important to point out that these constantly evolving networks continue to create billions annually for the Kim Family regime.

### III. North Korean Non-Military Illicit Activities: Focus on Illegal Drugs and Counterfeiting

North Korea has been able to successfully circumvent prohibited activity within the international, globalized system. This shows the cleverness of North Korean party members and leaders within the government. It also shows the long-range vision of Kim Il-sung, who even in the 1970s, foresaw the weakness of the Soviet system and of his own, and tasked his son, Kim Jong-il, to set up an illicit economic infrastructure that has survived and even thrived for nearly fifty years. This system has been able to bring in billions annually for Kim Jong-un’s coffers.<sup>91</sup> North Korea makes the largest chunk of illicit money from proliferation, especially coming from the Middle East such as Iran<sup>92</sup> although another big chunk of illicit money comes from conventional arms sales to several nations in Africa as well.<sup>93</sup> But for the purposes of this Article, I will examine two key aspects of North

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89. Anthony Ruggiero, *UN Report Reveals North Korea’s Sanctions Evasion*, FOUND. DEF. DEMOCRACIES (Mar. 7, 2017), <http://www.defenddemocracy.org/media-hit/anthony-ruggiero-un-report-reveals-north-koreas-sanctions-evasion/> [<https://perma.cc/HTY8-C8TD>].

90. Richard Nephew, *Paper Tigers: DPRK POE Report Shows Deep Problems with Enforcement*, 38 NORTH (Mar. 16, 2017), <http://38north.org/2017/03/rnephew031617/> [<https://perma.cc/HP9X-KAE3>].

91. See *N.Korea’s Informal Economy Thrives*, CHOSUNILBO (Nov. 16, 2013), [http://english.chosun.com/site/data/html\\_dir/2013/11/16/2013111600456.html](http://english.chosun.com/site/data/html_dir/2013/11/16/2013111600456.html) [<https://perma.cc/N82B-KRNG>].

92. See Larry Nicksch, *The Iran-North Korea Strategic Relationship*, 114TH CONG. (July 28, 2015), <http://docs.house.gov/meetings/FA/FA18/20150728/103824/HHRG-114-FA18-Wstate-NickschL-20150728.pdf> [<https://perma.cc/A8S8-SQZ6>].

93. See Samuel Ramani, *North Korea’s African Strategy*, THE DIPLOMAT (July 15, 2015), <https://thediplomat.com/2015/07/north-koreas-african-strategy/> [<https://perma.cc/VW5M-YDLK>].



Korea's illicit activities that are not related to military proliferation—illegal drugs and counterfeit currency. By examining these two key marketing items in North Korea's annual inventory of “bad deeds,” I will show how truly unethical the government's financing of these illicit financial networks can be.

According to a defector who wrote his testimony in 2012, the North Korean government has an interesting methodology for sponsoring those who run its opium industry (largely used for heroin according to most analysts). According to the defector, “[t]he DPRK regime conducts its drugs trade clandestinely, through what seems at first glance a legitimate company. Situated Between Pyongyang's Botong-gang Hotel and Chungrugwan is a gigantic building called ‘Ryugyong.’ It is the home of Ryugyong Corporation, which trades under the auspices of the Party's Foreign Relations Department.” An article found in *New Focus International* corroborates the defector's testimony, stating “[w]ith the absolute support and full protection of the regime, Ryugyong Corporation oversees the DPRK drug industry and its production chain: from cultivation of opium plants to point-of-sale.”<sup>94</sup> Reportedly, opium drug dealers on the North Korea-China border are overseen by Office Number 39, and the DPRK government is also involved in its production and distribution.<sup>95</sup> According to a variety of sources including defectors' testimonies, one of the key resources that North Korea uses to distribute its illegal drugs is its diplomatic corps.<sup>96</sup> As diplomats work within North Korea's illicit system, they naturally come under the control of Office Number 39. South Korean governmental sources estimate North Korea's annual illegal drug sales to overseas amount up to \$200 million.<sup>97</sup> While North Korea has, over the years, made drug sales based on traditional opium based drugs (largely heroin), the biggest money-maker and the largest sales item for several years is now Methamphetamines, sometimes known as “Ice.”<sup>98</sup> North Korean operatives are now known to be dealing with drug distribution organizations in

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94. *The DPRK is capitalist when it wants to be: the story of Drugs Incorporated*, *NEW FOCUS INT'L* (Aug. 18, 2012).

95. *N. Korean Opium Floods Northeast China*, *CHOSUNILBO* (Aug. 15, 2015), [http://english.chosun.com/site/data/html\\_dir/2014/08/15/2014081500517.html](http://english.chosun.com/site/data/html_dir/2014/08/15/2014081500517.html) [<https://perma.cc/HEP9-KKS2>].

96. See Julian Ryall, *North Korea ‘Ramps Up Manufacture of Illegal Drugs’ Amid Sanctions*, *DEUTSCHE WELLE* (Aug. 21, 2017), <http://www.dw.com/en/north-korea-ramps-up-manufacture-of-illegal-drugs-amid-sanctions/a-40169753> [<https://perma.cc/FW7P-VFYZ>]; see also Nathan Thompson, *North Korea's Got a Big Crystal Meth Problem*, *VICE* (Apr. 25, 2014), [https://www.vice.com/en\\_us/article/mv578n/north-korea-crystal-meth-drugs-diplomats-nathan-thompson](https://www.vice.com/en_us/article/mv578n/north-korea-crystal-meth-drugs-diplomats-nathan-thompson) [<https://perma.cc/34ZE-8X3M>].

97. *N. Korean Diplomats ‘Sell Millions of Dollars’ Worth of Drugs*, *CHOSUNILBO* (Mar. 20, 2013), <http://www.neogaf.com/forum/showthread.php?t=527601> [<https://perma.cc/KP4B-KXDD>].

98. See Avinash Tharoor, *North Korea “Increasing Crystal Meth Production” Due to Economic Sanctions*, *TALKING DRUGS* (Aug. 18, 2017), <https://www.talkingdrugs.org/north-korea-increasing-crystal-meth-production-to-economic-sanctions> [<https://perma.cc/69B3-YBL2>].

Southeast Asia including Thailand.<sup>99</sup> North Korean operatives also operate on a large scale in China.<sup>100</sup> Methamphetamines have reportedly become more popular and profitable because the growing of opium has become more difficult over the years with frequent tenuous crop conditions as well as droughts and/or floods.<sup>101</sup>

The quality of the “Meth” coming out of North Korea is reportedly very high.<sup>102</sup> One would expect nothing less from a government sanctioned and often sponsored business endeavor. The finished product is reportedly often smuggled into China, and then moved on to Shandong, and then other provinces.<sup>103</sup> From there, one presumes it likely moves on to places like Southeast Asia and Japan. Reportedly, in North Korea, the security services are compliant with individual manufacturers who distribute the drugs in China and North Korea.<sup>104</sup> For those who are worried that North Korea’s drug smuggling networks might reach all over Asia, and perhaps even the United States, that train has already left the station. According to studies by Chinese scholars conducted in 2014, illegally manufactured North Korean drugs are entering not only China, but also Japan regularly.<sup>105</sup> According to Zhang Li, a professor at the Peoples Public Security University, North Korean drugs bound for foreign nations first enter China by sea, and then are transferred to other ships, where they are then smuggled into countries such as Taiwan, South Korea, Indonesia, and Japan.<sup>106</sup> Reportedly, the manufacture and sale of the drugs sold internationally are under surveillance by Kim Jong-un’s henchmen. This includes North Korea’s overseas operations, where the handling of the drugs, and the sales that follow are under close surveillance of Kim Jong-un’s security people.<sup>107</sup>

Obviously, the North Koreans use a variety of means to generate hard currency for the regime (military proliferation being the primary means,

99. Barbara Demick, *In North Korea, Meth is Offered as Casually as a Cup of Tea*, THE SYDNEY MORNING HERALD (Jan. 29, 2014), <http://www.smh.com.au/world/in-north-korea-a-meth-is-offered-as-casually-as-a-cup-of-tea-20140128-hvabv.html> [<https://perma.cc/85WR-4LSA>].

100. *Id.*

101. Pierre Thomas et al., *North Korea May be Pushing Meth into the United States*, ABC NEWS (Nov. 20, 2013), <http://abcnews.go.com/International/north-korea-pushing-meth-united-states/story?id=20955416> [<https://perma.cc/7ARJ-36KG>]; see Isaac Stone Fish, *Inside North Korea’s Crystal Meth Trade*, FOREIGN POL’Y (Nov. 21, 2013), <http://foreignpolicy.com/2013/11/21/inside-north-koreas-crystal-meth-trade/> [<https://perma.cc/X9KZ-MHPG>].

102. See Demick, *supra* note 99.

103. Yong-an Zhang, *Drug Trafficking from North Korea: Implication for Chinese Policy*, BROOKINGS (Dec. 3, 2010), <https://www.brookings.edu/articles/drug-trafficking-from-north-korea-implications-for-chinese-policy/> [<https://perma.cc/LX3V-NMD2>].

104. Thompson, *supra* note 96.

105. *N. Korean Stimulant Smuggling Networks Extend to Japan, Korea*, INTELL ASIA (Aug. 21 2014), <http://www.intellasia.net/n-korean-stimulant-smuggling-networks-extend-to-japan-korea-2-382493> [<https://perma.cc/WZ4F-3PN2>].

106. *Id.*

107. Oh Hyun Oo, *Drug Trade Continues to Prove Lucrative*, DAILY NK (Jan. 3, 2014), <http://www.dailynk.com/english/read.php?num=11339&catId=NK01500> [<https://perma.cc/H8RM-3AQU>].

but other ancillary means are important as well).<sup>108</sup> While illicit drug activity is a fascinating case study (largely because this is the only illegal drug network in the world actually sponsored by a sovereign government), there are other means that are not related to military proliferation that North Korea uses. One of the key means among these other methods of raising money is counterfeiting. North Korean counterfeiting was considered a key threat to the international community during the 1990s and the early 2000s.<sup>109</sup> North Korean counterfeit 100-dollar bills, dubbed “super notes” by U.S. authorities, were of such fine quality because they were made with the same material and printing tools as the real U.S. dollars.<sup>110</sup> But in 2005, with the crack down on Banco Delta Asia by the Treasury Department, some analysts assessed that North Korea had drastically pulled back on its counterfeiting operations.<sup>111</sup> Indeed, it did seem—at least based on the number of incidents being reported—that North Korea had reduced its counterfeiting operations after 2005.<sup>112</sup> But in 2016, it appeared that North Korea—perhaps out of a motivation to raise more cash for the regime—was resuming its large-scale counterfeiting operations.<sup>113</sup> In June of 2016, press sources reported that North Korea appeared to be working with both terrorist groups and international criminal organizations in order to distribute counterfeit 100-dollar bills.<sup>114</sup> Some analysts believe this is—much like illegal drug sales—under the auspices of Office Number 39.<sup>115</sup> According to North Korean defector Park Sang-hak, “Japanese yakuza and terrorist groups in the Middle East, such as the Islamic State may be among those who are circulating North Korea’s fake money.”<sup>116</sup>

108. See Mark Gollom, *Drugs, Counterfeiting: How North Korea Survives on Proceeds of Crime*, CBC (Dec. 7, 2017), <http://www.cbc.ca/news/world/north-korea-criminal-empire-drugs-trafficking-1.4435265> [https://perma.cc/F3UL-NKAC].

109. See *Bank of China in U.S. Sights over N. Korea Cash Flow*, CHOSUNILBO (Sept. 8, 2005), <https://web.archive.org/web/20070317014232/http://english.chosun.com/w21data/html/news/200509/200509080007.html> [https://perma.cc/4TDU-E57E]; see also Stephen Mihn, *No Ordinary Counterfeit*, N.Y. TIMES (Jul. 23, 2016), <http://query.nytimes.com/gst/fullpage.html?res=9F06E0D61F30F930A15754C0A9609C8B63&pagewanted=all> [https://perma.cc/6PSA-3RV6].

110. Tara Francis Chan, *A \$100 Counterfeit ‘Supernote’ Found in South Korea Could Have Been Made in North Korea*, BUSINESS INSIDER (Dec. 13, 2017), <http://www.businessinsider.com/counterfeit-supernote-found-in-south-korea-2017-12> [https://perma.cc/YKS6-GHCV]; Joshua McMorrow-Hernandez, *Paper Money—Whatever Happened to North Korean Counterfeit U.S. \$100 Bills?*, COIN WEEK (Mar. 29, 2016), <https://coinweek.com/people-in-the-news/crime-and-fraud/paper-money-whatever-happened-north-korean-counterfeit-u-s-100-bills/> [https://perma.cc/669E-2W8M].

111. Greg Walters, *North Korea’s Counterfeit Benjamins Have Vanished*, VICE NEWS (Mar. 16, 2016), <https://news.vice.com/article/north-koreas-counterfeit-benjamins-have-vanished> [https://perma.cc/HF4C-5YJJ].

112. See McMorrow-Hernandez, *supra* note 111.

113. See Julian Ryall, *North Korea May Have Resumed Counterfeiting Operation*, THE TELEGRAPH (June 28, 2016), <http://www.telegraph.co.uk/news/2016/06/28/north-korea-may-have-resumed-counterfeiting-operation/> [https://perma.cc/PT2T-D6S4].

114. See Yi Whan-woo, *N. Korea Selling Counterfeit Money to Terrorists*, KOREA TIMES (June 27, 2016), [http://www.koreatimes.co.kr/www/news/nation/2016/06/485\\_207990.html](http://www.koreatimes.co.kr/www/news/nation/2016/06/485_207990.html) [https://perma.cc/83JU-YJAA].

115. See *id.*

116. *Id.*

Sales and attempted sales of counterfeit American currency may have been a reflection of North Korean efforts to raise more money for the regime during 2016 when international pressure reached a new high.<sup>117</sup>

Illicit drugs and counterfeit currency are only two types of illicit and illegal trade that North Korea engages in. They are particularly interesting ways of raising money for the regime because it is so unambiguously clear that they are—without a doubt—criminal activities carried out with the consent and support of the very top leaders in the North Korean government. There are other types of illicit activities in which the regime engages. These activities, including those described earlier, are designed by entities who answer largely to Office Number 39, exclusively for the purposes for raising money for the regime.<sup>118</sup> These activities are important and raise significant cash for the regime. But it should be pointed out that the most important illicit money maker (probably by far) for the regime is the military proliferation it conducts, especially in the Middle East and Africa. To quote what North Korean military proliferation encompasses:

It essentially involves four efforts: (1) WMD and the platforms to carry it (ballistic missiles), (2) Conventional Weapons sales, (3) Refurbishment of Soviet era weapons for countries that still use them, and (4) Technical and Military assistance and advising. Some have suggested that because North Korea has partially adjusted its tactics, techniques and procedures by actually building facilities (usually actual factories) where countries can assemble WMD, related platforms, and conventional weapons systems, that this somehow means the proliferation has “declined.” In fact, the opposite is true. North Korea builds these facilities for countries like Syria, Iran, and non-state actors such as Hezbollah, and then remains on board to maintain and supervise assembly of weapons systems—with parts (less detectable than entire systems) that continue to roll in from North Korea.<sup>119</sup>

#### IV. How Has the USA Taken Action to Stop North Korea’s Illicit Activities and Proliferation?

The United States has conducted a variety of initiatives and sanctions that have been designed to counter North Korea’s illicit and illegal activities and the financial networks that support these activities. While some of these initiatives and sanctions have been less than successful, I would assess that the reasons, for many years now, have been largely because of difficulties in enforcement, not because the sanctions and initiatives did not have the potential to legitimately contain North Korea’s criminal and “sanctions busting” actions. The way America’s actions have evolved dur-

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117. See Brian R. Moore & Riza De Los Reyes, *What’s Behind North Korea’s Recent Counterfeiting?*, THE DIPLOMAT (July 6, 2016), <http://thediplomat.com/2016/07/whats-behind-north-koreas-recent-counterfeiting/> [https://perma.cc/68HT-AJ74].

118. See Christina Gathman, *Inside North Korea’s State-Sanctioned Criminal Empire*, 23 INT’L AFF. REV. 58, 60-63 (2014).

119. See Bruce E. Bechtol Jr., *Military Proliferation in the Kim Jong-un Era: The Impact on Human Rights in North Korea*, 18 INT’L J. KOR. STUD. 91, 98-99 (2014).

ing recent years, and how they can continue to improve is what I will address here in this section.

During 2013, it became obvious that Washington would go after individuals and front companies that supported North Korea's illicit actions, or who profited from them, when the Obama administration sanctioned Burmese General Thein Htay for buying North Korean missile equipment (the General was at the time, the head of a missile research and development facility).<sup>120</sup> In 2013, after the Obama administration had initiated a number of sanctions against various North Korean entities, the U.S. House of Representatives passed a bill more stringent than other sanctions. The bill brought about new banking restrictions. The new legislation denied North Koreans or any of the third party cohorts, all access to American property or banking institutions, and perhaps as importantly, allowed Washington to sanction any third parties—or banks—that facilitate North Korean illicit activities and/or human rights abuses.<sup>121</sup> In August of 2014, the U.S. Treasury Department issued an “Advisory on Financial Transactions” with the DPRK.<sup>122</sup> This came in the wake of an earlier initiative that came out of the Financial Action Task Force, an international body with thirty-four member jurisdictions that put North Korea on a list of nations in need of improved countermeasures against terrorist financial transactions and money laundering.<sup>123</sup> The Treasury Department advisory urged financial institutions to consult existing guidance on any transactions that had the possibility of involving North Korea.<sup>124</sup>

In early January of 2015, in what many analysts thought was an American reaction to a North Korean cyber-attack launched against Sony, the Treasury Department took financial action against North Korean government agencies and ten individuals.<sup>125</sup> The individuals were at the time reported to be operating out of such diverse places as China, Syria, Iran, and Russia.<sup>126</sup> The sanctions also were noteworthy because they included Korea Mining Development Corporation, the Tangun Trading Corporation, and even the elite special operations forces of the Reconnaissance Bureau,

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120. See Paige Gance, *Obama Administration Sanctions Myanmar General for Dealings with North Korea*, REUTERS (July 2, 2013), <https://www.reuters.com/article/us-usa-sanctions/obama-administration-sanctions-myanmar-general-for-dealings-with-north-korea-idUSBRE9610QF20130702> [<https://perma.cc/AHU4-VPT7>].

121. See Ed Royce: *New North Korean Sanctions Will Sting*, KOREA TIMES (July 30, 2014), [http://www.koreatimes.co.kr/www/news/nation/2014/07/485\\_161957.html](http://www.koreatimes.co.kr/www/news/nation/2014/07/485_161957.html) [<https://perma.cc/4XPV-57SX>].

122. See Yonho Kim, *US Treasury Issues Advisory on Financial Transactions with N. Korea*, VOICE OF AMERICA (Aug. 7, 2014), <http://www.voanews.com/a/us-treasury-issues-advisory-on-financial-transactions-with-north-korea/2406604.html> [<https://perma.cc/D52K-RBLR>].

123. See *id.*

124. See *id.*

125. See Carol Morello & Greg Miller, *U.S. Imposes Sanctions on N. Korea Following Attack on Sony*, WASH. POST (Jan. 2, 2015), [https://www.washingtonpost.com/world/national-security/us-imposes-sanctions-on-n-korea-following-attack-on-sony/2015/01/02/3e5423ae-92af-11e4-a900-9960214d4cd7\\_story.html?utm\\_term=.1f4f4287ddc7](https://www.washingtonpost.com/world/national-security/us-imposes-sanctions-on-n-korea-following-attack-on-sony/2015/01/02/3e5423ae-92af-11e4-a900-9960214d4cd7_story.html?utm_term=.1f4f4287ddc7) [<http://perma.cc/6E8F-8W6Q>].

126. See *id.*

showing once again the dynamic between government trading organizations and the military in proliferation and even illicit activities and banking.<sup>127</sup> This was followed up in March of 2015, when the U.S. Treasury Department issued another advisory naming North Korea as a country with high risk for money laundering and terrorist financing.<sup>128</sup>

After all of the actions initiated above—all with good reason and ample evidence—in June of 2015, the United States State Department once again left North Korea off of the list of nations sponsoring terrorism.<sup>129</sup> Regarding the decision, the U.S. State Department clarified that North Korea “is not known to have sponsored any terrorist acts since the bombing of a Korean Airlines flight in 1987.”<sup>130</sup> This is, in my assessment, an interesting statement, given the evidence that shows North Korea has supported—and continues to actively support terrorist designated groups such as Hezbollah and Hamas.<sup>131</sup> Secretary of Defense Robert Gates stated, “[t]he fact is that North Korea continues to smuggle missiles and weapons to other countries around the world—Burma, Iran, Hezbollah, Hamas—and they continue with their development of their nuclear program.”<sup>132</sup> It is also interesting given the wording that the Treasury Department used in its advisories during 2014 and 2015.<sup>133</sup> Despite the State Department’s rather confusing “non-designation” on North Korea, the sanctions continued in 2015, largely because of North Korean proliferation. In November of that year, the Treasury Department’s Office of Foreign Asset Control (OFAC), which publishes a list of individuals and entities that act on behalf of targeted countries (e.g. North Korea), released a list of four new individuals who were designated as supporting activities already sanctioned.<sup>134</sup> Two of these individuals were working for KOMID (a widely known proliferation front company already sanctioned) and one is known to have worked for Office Number 39.<sup>135</sup> In December of 2015, the United States

127. See *id.*; see also Press Release, Treasury Department Sanctions Against the Government of the Democratic People’s Republic of Korea, U.S. DEP’T TREASURY (Jan. 2, 2015), <https://www.treasury.gov/press-center/press-releases/Pages/jl9733.aspx>; see also Editorial, *Coordinated Position: Pyongyang’s Outmoded Tactics will not Pay Off*, KOREA HERALD (Jan. 16, 2015), <http://www.koreaherald.com/view.php?ud=20150116000387> [<https://perma.cc/PBF6-7QEB>].

128. See *U.S. Issues New Advisory on Financial Deals with N. Korea*, KOREA HERALD (Mar. 18, 2015), <http://www.koreaherald.com/view.php?ud=20150318000713> [<https://perma.cc/5BBB-S84L>].

129. See *U.S. Leaves out N. Korea from Terrorism Sponsors List*, YONHAP (June 2, 2015), <http://english.yonhapnews.co.kr/national/2016/06/03/26/0301000000AEN2016060300200315F.html> [<https://perma.cc/P5NS-T28L>].

130. *Id.*

131. See Jim Geramone, *Gates Gives Frank Assessments of World Trouble Spots*, DEFENSE NEWS (Aug. 13, 2010), <http://archive.defense.gov/news/newsarticle.aspx?id=60425> [<https://perma.cc/74LA-RVLN>].

132. *Id.*

133. Kim, *supra* note 123; U.S. TREASURY DEP’T., *supra* note 128.

134. See Press Release, Treasury Sanctions Supporters of North Korea’s Weapons of Mass Destruction and Illicit Finance Networks, U.S. DEP’T TREASURY (Nov. 13, 2015), <https://www.treasury.gov/press-center/press-releases/Pages/jl0269.aspx> [<https://perma.cc/79DW-5WUJ>].

135. See *id.*

initiated new sanctions against North Korea. This time, another major military entity was targeted (probably for proliferation)—the Strategic Rocket Forces.<sup>136</sup> Banks and front companies also again came under scrutiny and were the targets of action, as well as North Korean citizens who were based in places like Syria and Vietnam<sup>137</sup> (Vietnam has a very lax banking system).<sup>138</sup>

A variety of interesting developments in 2016 impacted the possible U.S. reactions to North Korean activities. Clearly North Korea's proliferation and other illicit activities had caught the attention of both the White House and Congress. On March 16th of 2016, the President issued an Executive Order regarding North Korea.<sup>139</sup> The order blocked the property of the North Korean government and the party, and prohibited several types of transactions that North Korea had used to get around sanctions in the past. Some highlights of the new Executive Order included, "[a]ll property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the Government of North Korea or the Workers' Party of Korea are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in."<sup>140</sup> In addition, the following things were prohibited:

- (i) the exportation or reexportation, direct or indirect, from the United States, or by a United States person, wherever located, of any goods, services, or technology to North Korea;
- (ii) new investment in North Korea by a United States person, wherever located; and
- (iii) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this section if performed by a United States person or within the United States.<sup>141</sup>

Finally, the Executive Order also asserts a very important measure:

The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provi-

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136. See *US Expands North Korea Sanctions Over Arms Trade*, BBC (Dec. 9, 2015), <http://www.bbc.com/news/world-asia-35048138> [<https://perma.cc/8MYQ-PL5B>].

137. See *id.*; see also *US Sanctions North Korea Over Arms Trade*, AFP (Dec. 9, 2015), <http://www.dailymail.co.uk/wires/afp/article-3351645/US-sanctions-N-Korea-arms-trade.htm> [<https://perma.cc/SRQ5-UYVH>].

138. See *Vietnam - Banking Systems*, EXPORT.GOV (Nov. 2, 2016), <https://www.export.gov/article?id=Vietnam-Banking-Systems> [<https://perma.cc/T9Y9-7Z69>].

139. Exec. Order No. 13722, 81 Fed. Reg. 14943 (Mar. 15, 2016).

140. *Id.*

141. *Id.* at 14944.

sions of this order.<sup>142</sup>

Despite the many sanctions and other actions taken by Washington, reports that assessed the impact of these actions on North Korea showed that Pyongyang appeared to be accomplishing its goals.<sup>143</sup> For example, according to reports coming out of Northeast Asia, prices of commodities in North Korea did not seem to be affected by the sanctions in 2016—years after many sanctions had been imposed by the USA (as well as financial initiatives imposed by the U.S. Treasury Department).<sup>144</sup> Despite questions about the reports' validity, Washington continued to act. In June of 2016 (in an action related to the initiative taken in November of the same year), the U.S. Treasury Department declared that North Korea is a jurisdiction of "primary money laundering concern," under the Patriot Act, section 311.<sup>145</sup> The designation was particularly important because it forbade third country banks to use U.S. bank accounts to process financial transactions for the DPRK.<sup>146</sup> This could have made, though its impact on this is unclear, foreign banks vulnerable to U.S. sanctions if they did business with North Korea.<sup>147</sup> In September of 2016, the U.S. House of Representatives introduced legislation that would ban North Korea from engaging in the worldwide bank transfers through electronic funds system, such as the Society for Worldwide Interbank Financial Telecommunications ("SWIFT").<sup>148</sup> SWIFT's system regulations are controlled out of Belgium. Thus, it would take European cooperation for an eventual shut-down of North Korean accounts utilizing this system.<sup>149</sup> For anyone who has transferred electronic funds to a bank overseas, this system is quite familiar.

Korean specialist Scott Snyder stated in September of 2016 that targeting small and medium Chinese enterprises that continue to do business as usual with North Korea was one way, out of four that he mentioned, to strengthen sanctions against North Korea. There are companies similar to the Hongxiang group that play a gateway role for both legitimate trade and

142. *Id.* at 14945.

143. See *Impact of Int'l Sanctions on N. Koreans Remain Minimal: RFA*, YONHAP (May 29, 2016), <http://english.yonhapnews.co.kr/northkorea/2016/05/29/33/0401000000AEN20160529004100315F.html> [<https://perma.cc/BYS9-TM99>].

144. See *id.*

145. Press Release, Treasury Takes Actions to Further Restrict North Korea's Access to the U.S. Financial System, U.S. DEP'T TREASURY (June 1, 2016), <https://www.treasury.gov/press-center/press-releases/Pages/jl0471.aspx> [<https://perma.cc/6W5K-D2LB>].

146. *Id.*

147. See *id.*; see also Matthew Pennington, *US Designates North Korea 'Primary Money Laundering Concern'*, AP (June 2, 2016), <https://apnews.com/5cbca899f29c4be298466f08b9219768> [<https://perma.cc/H23Z-ADYZ>]; see also Matthew Pennington, *US Lawmakers Take Aim at North Korea Over Terrorism*, AP (June 16, 2016), <https://apnews.com/3ed444f0361b4e4fbaedd8ba6eebe6d2> [<https://perma.cc/X77H-ZHH9>]; see also Patricia Zengerle, *U.S. Takes Further Steps to Block North Korea's Access to Financial System*, REUTERS (June 2, 2016), <http://www.reuters.com/article/us-northkorea-usa-treasury-idUSKCN0YN4TM> [<https://perma.cc/L7VJ-E8XZ>].

148. See *U.S. to Shutter North's Overseas Banking*, JOONGANG ILBO (Sept. 29, 2016), <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3024297> [<https://perma.cc/7L5E-E9V2>].

149. See *id.*



embedded North Korean procurement of dual use items.”<sup>150</sup> He also stated in part to “Push Chinese authorities to crack down Chinese banks that deal with North Korean citizens since they use multiple personal accounts containing millions of dollars for state purposes. Since opening an account requires identification, Chinese authorities should be able to identify and cut off all North Korean account holders. If necessary, impose secondary sanctions on these banks.”<sup>151</sup> In November of 2016, the United States Treasury Department finalized actions restricting North Korea’s access to the U.S. financial system.<sup>152</sup> According to the press release from the Treasury Department, “North Korea continues to use front companies and agents to conduct illicit financial transactions—some of which support the proliferation of WMD and the development of ballistic missiles—and evade international sanctions,” said Adam J. Szubin, Acting under the Secretary for Terrorism and Financial Intelligence.<sup>153</sup> He further stated “[s]uch funds have no place in any reputable financial system.”<sup>154</sup> In December of 2016, in reaction to North Korea’s nuclear test and involvement in proliferation, Washington sanctioned 16 North Korean companies and seven individuals.<sup>155</sup>

2017 brought in a new administration and a new philosophy about dealing with North Korea’s proliferation and illicit financial networks. On August 22, 2017, the Treasury Department designated (sanctioned) several entities and individuals “in response to North Korea’s ongoing development of weapons of mass destruction (WMD), violations of United Nation (UN) Security Council resolutions, and attempted evasion of U.S. sanctions.” The report went on to say in part, “Today’s sanctions target third-country companies and individuals that (1) assist already-designated persons who support North Korea’s nuclear and ballistic missile programs . . .” The report designated entities and individuals in Russia, China, and even Namibia.<sup>156</sup> In September, 2017, it was announced that the U.S. Treasury Department was taking further actions against North Korean entities and banks—including those doing business with third party banks and front companies, at least one of which were located in Singapore.<sup>157</sup>

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150. Scott Synder, *Four Ways to Unilaterally Sanction North Korea*, COUNCIL ON FOREIGN RELATIONS (Sept. 28, 2016), <https://www.cfr.org/blog/four-ways-unilaterally-sanction-north-korea> [<https://perma.cc/VKK2-N9KS>].

151. *Id.*

152. Press Release, Treasury finalizes Action to Further Restrict North Korea’s Access to the U.S. Financial System, U.S. DEP’T TREASURY (Nov. 4, 2016), <https://www.treasury.gov/press-center/press-releases/Pages/jl0603.aspx> [<https://perma.cc/QTF9-NAZP>].

153. *Id.*

154. *Id.*

155. *U.S. Sanctions North Korean Companies, Officials After Nuclear Test*, REUTERS (Dec. 2, 2016), <https://www.reuters.com/article/us-usa-northkorea-treasury-idUSKBN13R1YD> [<https://perma.cc/C52T-NJV3>].

156. See “Treasury Targets Chinese and Russian Entities and Individuals Supporting the North Korean Regime,” U.S. DEP’T TREASURY (Aug. 22, 2017), <https://www.treasury.gov/press-center/press-releases/Pages/sm0148.aspx> [<https://perma.cc/SUA6-ASGN>].

157. See Elizabeth Shim, *North Korea Banks Under U.S. Sanctions Have Partners in China, Singapore*, UPI (Sept. 27, 2017), [https://www.upi.com/Top\\_News/World-News/](https://www.upi.com/Top_News/World-News/)

In late September of 2017, it was publicly announced that months earlier, President Trump had signed an executive order expanding the authority of both the State and Treasury Departments to target both entities and individuals trading with North Korea, and banks that are running the dirty money. Trump was quoted in a press conference as saying, “The new executive order will cut off sources of revenue that fund North Korea’s efforts to develop weapons of mass destruction.” He further stated, “For far too long, North Korea has been allowed to abuse the international financial system to facilitate funding for its nuclear weapons and missile programs.”<sup>158</sup> Later that year, in October, 2017, the UN Panel of Experts identified fifty-seven Chinese, Malaysian, and North Korean companies that have helped North Korea evade sanctions and financed its WMD programs. Of the companies, forty-three had yet to be sanctioned at the time—opening up new opportunities to be exploited by the US. The networks of banks, front companies, and phony financial entities reportedly was (and likely is) operating in China, Malaysia, Singapore, and countries in Africa.<sup>159</sup> The renewed pro-active engagement with the international community to pressure the DPRK began paying dividends on a small scale almost immediately. There was initial pressure from the U.S. to get North Koreans off of re-flagged ships (Fiji being a key example). In addition, the pressure on nations with North Korean embassies was intensified, with Mexico, Peru, Spain, and Kuwait among others, all expelling their DPRK ambassadors. The requests from the U.S. to various nations were reportedly targeted and quite specific.<sup>160</sup>

As reported on November 2, 2017, the U.S. officially cut the Bank of Dandong off from the American financial system that same month. According to the Wall Street Journal, the bank is the 148th largest out of 196 banks in the Chinese sector. This is an excellent first step, but there is no doubt several other banks within the Chinese sector need to be addressed. Going after banks that launder North Korea’s dirty money is important—though a report by the think tank Center for Advanced Defense Studies (C4ADS) in Washington DC, suggests that—at least in China—North Korea’s financial holdings and laundered money are far more vulnerable to targeting by U.S. and international agencies than many would think. As the report states in its executive summary, “Today the regime is dependent on the flow of hard currency to function. Maintaining the access and evading international sanctions have required the regime’s for-

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2017/09/27/North-Korea-banks-under-US-sanctions-have-partners-in-China-Singapore/6171506530537/ [https://perma.cc/6U3Z-ZCHP].

158. Ryan Pickrell, *Trump’s Exec Order on North Korea is a Big Step that Should have been Taken Years Ago*, DAILY CALLER (Sept. 23, 2017), <http://dailycaller.com/2017/09/23/trumps-exec-order-on-north-korea-is-a-big-step-that-should-have-been-taken-years-ago/> [https://perma.cc/XHG6-3Q6S].

159. Sarah Kim, “As UN Names Firms Aiding North, U.S. Seeks More Sanctions,” KOREA JOONGANG DAILY (Oct. 9, 2017), <http://mengnews.joins.com/view.aspx?aid=3039187> [https://perma.cc/T86Q-JRXG].

160. Paul Sonne & Felicia Schwartz, *U.S. Pressure on North Korea’s Global Ties Bears Fruit*, WALL ST. J. (Oct. 8, 2017), <https://www.wsj.com/articles/state-department-pressure-on-north-koreas-global-ties-bears-fruit-1507492004> [https://perma.cc/P8AV-9YAT].

eign exchange banks to offshore critical financial infrastructure overseas. The resulting illicit overseas networks play a vital role as proxies for the North Korean banking and foreign exchange systems. However, being integrated into the international systems of banking, commerce and logistics, leaves these networks exposed to international law enforcement actions.<sup>161</sup>

During November, 2017, in a long overdue move, the United States redesignated North Korea as a state sponsor of terrorism. This is not only an important political move because of all of the legitimate moves that it allows nation-states to make against North Korea's rogue state illicit arms deals, but a move that completely discredits that move made by the George W. Bush administration in 2008, simply because it was thought to be an initiative that would bring Pyongyang back to the bargaining table (which it did, accomplishing nothing). North Korea should be and always should have been on the list of nations that are state sponsors of terrorism because it is and has been for many years since before the Cold War and following its conclusion, a state sponsor of terrorism.<sup>162</sup>

As this section has hopefully shown, North Korea has not slowed down its proliferation activities, its illicit activities, or its involvement in the international banking system, despite a variety of sanctions and other actions targeting Pyongyang's activities. This is not a result of the United States' failure to take measures or impose sanctions on North Korea. Rather, it is because, until January 2017, the plethora of actions taken by the United States has all had one major issue that takes away from their effectiveness—enforcement. While the actions taken have all looked good on paper, they are no more useful than the paper they are printed on unless the initiatives are actually acted upon. For the most part, this did not happen during the Obama Administration.<sup>163</sup> It is unfortunate, because some of these sanctions could have truly put North Korea in a place that made the government vulnerable to the international community's actions. As Korean specialist Bruce Klingner has stated, “[e]ven the most reclusive regime, criminal organization or terrorist group is tied to the global financial order. Dirty money eventually flows across borders and—given that the U.S. dollar serves as the global reserve currency—ninety-five percent of all international financial transactions are denominated in dollars. As such, virtually all international transactions must pass through a U.S. Tre-

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161. See Ian Talley, *Treasury Blocks Chinese Bank From U.S. Financial System Over North Korea Ties*, WALL ST. J. (Nov. 2, 2017), <https://www.wsj.com/articles/treasury-blocks-chinese-bank-from-u-s-financial-system-over-north-korea-ties-1509667328> [<https://perma.cc/CHP5-NZXN>]; *The Forex Effect*, CTR ADVANCED DEFENSE STUD. (Dec. 12, 2017), <https://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/5a3292079140b73f73f92efd/1513263687907/The+Forex+Effect.pdf> [<https://perma.cc/S9WB-2ZF2>].

162. See Lee Haye-ah, *U.S. Designates N. Korea as State Sponsor of Terrorism*, YONHAP (Nov. 21, 2017), <http://english.yonhapnews.co.kr/national/2017/11/21/0301000000AEN20171121000355315.html> [<https://perma.cc/DP2L-987D>].

163. See Krishnadev Calamur, *The Options That Have Been Tried on North Korea So Far*, THE ATLANTIC (Sept. 5, 2017), <https://www.theatlantic.com/international/archive/2017/09/north-korea-nuclear/538803/> [<https://perma.cc/46ZN-75V3>].

sury Department-controlled bank account in the United States.”<sup>164</sup>

The initiatives taken by the Trump administration during 2017 are important and relevant. Yet, these initiatives and actions taken need to be stepped up and initiated in a comprehensive manner. This is not a criticism, but simply a lesson learned from past lessons of North Korean issues. Unless or until these actions are taken in a way that puts pressure on all North Korean proliferation, illicit trade, and illegal bank accounts and front companies, Pyongyang will simply morph its *modus operandi* once again and continue to function in a way that will allow military proliferation and other activities to flourish. As we move through 2018 and 2019, we may very well see stepped up pressure on North Korea, to include working with our allies to achieve diplomatic isolation, and working with the international community to order to contain and suppress Pyongyang’s sophisticated illicit financial networks supporting its military proliferation and other illicit activities. It is important to keep in mind that that the threat from North Korea’s conventional and WMD associated programs is every bit as compelling because of proliferation—or more—as it is because of potential conflict in the region in which the DPRK sits.

## V. How has the International Community Taken Action Regarding DPRK Illicit Activities?

Ever since the very first nuclear crisis culminated in the 1994 “Agreed Framework” that froze Pyongyang’s plutonium nuclear program, the international community has attempted to take action against North Korea in ways that would truly impact the regime.<sup>165</sup> In fact, North Korea’s successful dance with the international community regarding its nuclear and missile programs and its attempts to get around sanctions, have often been compared with Iran’s recent talks that resulted in the “JCPOA” in 2015.<sup>166</sup> I have already addressed several initiatives (such as PSI) that have been attempted to either coerce North Korea into changing its rogue state behavior, or to contain that behavior via non-kinetic means. In this section, I will look at the highlights in recent years. This international activity has frequently been conducted through the UN, and thus this has dominated much of the international and multinational action taken against the DPRK.

In early March of 2013, in what came as a surprise to many analysts, China was able to reach an agreement with American officials to draft a

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164. Bruce Klingner, *Debunking Six Myths About North Korean Sanctions*, THE DAILY SIGNAL (Dec. 22, 2014), <http://dailysignal.com/2014/12/22/debunking-six-myths-north-korean-sanctions/> [https://perma.cc/L53C-CMUD].

165. See Curtis H. Martin, *Lessons of the agreed framework for using engagement as a nonproliferation tool*, 6 THE NONPROLIFERATION REV., 35, 35-37 (1999).

166. JCPOA stands for, “Joint Comprehensive Plan of Action,” and was the agreement signed with Iran in 2015, freezing its nuclear weaponization program. It has often been compared to the North Korean series of talks. See Thomas Ricks, *To start talks with North Korea, look to the Iran deal – but don’t hold your breath*, FOREIGN POLY (Sept. 12, 2016), <http://foreignpolicy.com/2016/09/12/to-start-talks-with-north-korea-look-to-the-iran-deal-but-dont-hold-your-breath/> [https://perma.cc/K22N-BEK2].

resolution that targeted North Korea's illicit trade.<sup>167</sup> The agreement targeted "the illicit activities of North Korea's diplomats, banking relationships, and illicit transfers of bulk cash."<sup>168</sup> Later in the month, Japan and Australia sanctioned North Korea's Foreign Trade Bank ("FTB").<sup>169</sup> In April of 2013, the United States Treasury Department publicly encouraged other nations to join them in sanctioning FTB.<sup>170</sup> In May of 2013, the Bank of China announced that it would sever ties with FTB (though as I have stated earlier, North Korea is known to typically use smaller banks in China).<sup>171</sup>

In February and March of 2015, the international body known as the Financial Action Task Force ("FATF") called on North Korea to combat money laundering.<sup>172</sup> This call was supported by the United States Treasury Department and passed on in one of its "Financial Advisories."<sup>173</sup> Later in that year, in late June, the international anti-money laundering organization ("FATF") warned all 34 member states that they "should pay 'special attention' to financial transactions with North Korea."<sup>174</sup> As 2015 turned into 2016, the FATF issued another important report. This time, the international body highlighted, among others, Iran and North Korea.<sup>175</sup> The FATF "expressed concern about 'significant deficiencies' in North Korea's systems."<sup>176</sup> The organization "specifically warned member agencies to 'protect against correspondent relationships being used to bypass or evade counter-measures' and to be wary when considering requests to allow North Korean financial institutions to open branches or subsidiaries in their countries."<sup>177</sup> In 2016, following another nuclear test,

167. See Parameswaran Ponnudurai, *Global Bid to Cripple North Korea's Illicit Trade*, RADIO FREE ASIA (Mar. 5, 2013), <http://www.rfa.org/english/news/korea/illicit-03052013150916.html> [<https://perma.cc/7Y4S-LEL2>].

168. *Id.*

169. Antoni Slodkowski & Warren Strobel, *Japan, Australia to sanction North Korean bank as part of U.S.-led crackdown*, REUTERS (Mar. 26, 2013), <http://www.reuters.com/article/us-korea-north-bank-idUSBRE92P04T20130326> [<https://perma.cc/SND7-45EV>].

170. See Margaret Brennan, *U.S. Urges Nations to Cut North Korea's Financial Link*, CBS NEWS (Apr. 5, 2013), <http://www.cbsnews.com/news/us-urges-nations-to-cut-north-koreas-financial-link/> [<https://perma.cc/SC3T-Q74J>].

171. Yang Jung A, *Banks Put a Big Fly in NK Ointment*, DAILYNK (May 9, 2013), <http://www.dailynk.com/english/read.php?cataId=NK00400&num=10560> [<https://perma.cc/VH3R-M5C9>].

172. See Kim Yonho & Jee Abbey Lee, *Money-Laundering Watchdog Calls On North Korea to Fulfill Pledge*, VOICE OF AMERICA (Mar. 2, 2015), <http://www.voanews.com/a/money-laundering-watchdog-calls-on-north-korea-to-fulfill-pledge/2665115.html> [<https://perma.cc/789G-YG8V>].

173. *Advisory on the FATF-Identified Jurisdictions with AML/CFG Deficiencies*, U.S. DEP'T TREASURY (2015), <https://www.fincen.gov/news/news-releases/advisory-fatf-identified-jurisdictions-amlcfg-deficiencies> [<https://perma.cc/LGL9-RW3C>].

174. See Kim Yonho & Jee Abbey Lee, *Watchdog Warns of N. Korea Money Laundering*, VOICE OF AMERICA (June 29, 2015), <http://www.voanews.com/a/watchdog-warns-of-north-korea-money-laundering/2842448.html> [<https://perma.cc/8D34-VQ2M>].

175. See Mark Hosenball, *Anti-Money Laundering Body Urges More Scrutiny of Iran*, REUTERS (Feb. 19, 2016), <http://www.reuters.com/article/us-iran-economy-money-laundering-idUSKCN0VS2LM> [<https://perma.cc/62U3-SRMX>].

176. *Id.*

177. *Id.*

the UN imposed new sanctions on North Korea.<sup>178</sup> In fact, the UN has imposed several separate sanctions measures since North Korea began its rogue state behavior—particularly nuclear testing.<sup>179</sup> The sanctions imposed on North Korea in March of 2016 involved harsh new regulations about cargo inspections and targeting of North Korean agents of trade in places such as Syria, Iran, and Vietnam.<sup>180</sup> The sanctions truly went after trade between the DPRK and any nations belonging to the UN.<sup>181</sup> Unfortunately, the sanctions had several loopholes that countries such as China could exploit.<sup>182</sup> In addition, many nations trading with North Korea (such as Iran) simply ignore UN sanctions at will.<sup>183</sup>

During October of 2016, the FATF took further action against North Korea, and alerted nations all over the world (specifically FATF member states) to terminate any relationships with North Korean financial institutions.<sup>184</sup> According to a South Korean press piece, which quoted the official announcement, “FATF has serious concerns about the threat posed by DPRK’s illicit activities related to the proliferation of weapons of mass destruction (WMDs) and its financing,” and “Jurisdictions should take the necessary measures to close existing branches, subsidiaries and representative offices of DPRK banks within their territories and terminate correspondent relationships with DPRK banks.”<sup>185</sup> In November of 2016, following North Korea’s second test of a nuclear device in that year, the UN again issued what many saw as harsh new sanctions.<sup>186</sup> The sanctions appeared to be largely designed to take further action against North Korea’s illicit activities—which are a key aspect of maintaining power for the regime.<sup>187</sup> Some, however, have said that North Korea continues to be

178. See *UN imposes harsh new sanctions on North Korea drafted by US, China*, REUTERS (Mar. 2, 2016), <http://www.hurriyetaidailynews.com/un-imposes-harsh-new-sanctions-on-north-korea-drafted-by-us-china.aspx?pageID=238&mid=95970&NewsCatID=359> [<https://perma.cc/MS9A-9TT6>] [hereinafter *UN imposes harsh new sanctions on North Korea drafted by US*].

179. See U.N. 1718 Sanctions Committee (DPRK), Security Council Committee Established Pursuant to Resolution 1718, Resolutions (2006), <https://www.un.org/sc/suborg/en/sanctions/1718/resolutions> [<https://perma.cc/UM2V-JACQ>].

180. See *UN imposes harsh new sanctions on North Korea drafted by US*, *supra* note 178.

181. Press Release, Security Council, Security Council Imposes Fresh Sanctions on Democratic People’s Republic of Korea, Unanimously Adopting Resolution 2270, U.N. Press Release SC/12267 (Mar. 2, 2016), <https://www.un.org/press/en/2016/sc12267.doc.htm> [<https://perma.cc/F9SV-EY9Q>].

182. See Bradley Babson, *UNSCR 2270: The Good, the Bad, and Perhaps Surprising Opportunity for the North Korean Economy*, 38 NORTH (Mar. 21, 2016), <http://38north.org/2016/03/bbabson032116/> [<https://perma.cc/3S4M-FKVC>].

183. See Krishnadev Calamur, *How North Korea Cheats Sanctions*, THE ATLANTIC (Aug. 8, 2017), <https://www.theatlantic.com/international/archive/2017/08/north-korea-cheats-sanctions/536169> [<https://perma.cc/CC95-SXH6>].

184. See *Anti-Money Laundering Body Calls for Cutting Ties with N. Korean Banks*, YONHAP (Oct. 24, 2016, 4:24 PM), <http://english.yonhapnews.co.kr/northkorea/2016/10/24/0401000000AEN20161024008800320.html> [<https://perma.cc/HH9K-3UBF>].

185. *Id.*

186. See U.N. 1718 Sanctions Committee (DPRK), *supra* note 173 at 115.

187. See YONHAP, *supra* note 184.

skillful at working around UN sanctions—a disturbing assessment.<sup>188</sup>

In 2017, SWIFT, the worldwide inter-bank messaging system based in Belgium, banned several North Korean banks from participating in its system.<sup>189</sup> For anyone who sends or exchanges money overseas (as addressed earlier), SWIFT is well known and must be used if one is to be able to easily access banks using inter-country telecommunications.<sup>190</sup> The SWIFT system probably (at least in my view) finally took the action because of recent information confirmed and released by the UN in 2017 documenting North Korean use of the system.<sup>191</sup> While North Korea will likely still be able to access the system using foreign intermediaries (as the DPRK has done for numerous other worldwide financial activities), the action taken by SWIFT will still make it more difficult for Pyongyang to abuse the international financial system.

It appears that there has been no shortage of international action taken against North Korea—particularly since North Korea detonated its first nuclear device in 2006 (more UN sanctions followed in the summer of 2017).<sup>192</sup> The issue is not whether or not the international community has issued initiatives or, in the case of the UN, resolutions. Many resolutions and initiatives have been issued, and in fact, their seriousness has increased over time. How effective have banks and financial institutions around the world been at containing North Korean illicit and illegal activities and banking practices? The answer appears to be that thus far, there are many issues with containing the billions of dollars that North Korea continues to successfully raise each year, put into international banking institutions, and funnel back to the DPRK and Kim Jong-un's slush funds. The key is enforcement. There continue to be many issues with the enforcement of what can legitimately be considered far reaching measures taken by the international community in an effort to contain North Korea's rogue state actions. Unless and until enforcement becomes the focus of these measures, North Korea will continue to maintain and perhaps enhance, its ability to maintain a worldwide proliferation, illicit activities, and underground financial network, which have been thus far proven a

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188. See Benjamin Katzeff Silberstein, *The November 2016 North Korea Sanctions: Some Perspective*, NORTH KOREAN ECON. WATCH (Dec. 1, 2016, 3:48 PM), <http://www.nkeconwatch.com/2016/12/01/the-november-2016-sanctions-some-perspective/> [<https://perma.cc/T49C-ESJ7>]; see also Kang Mi Jin, *How Sanctions Affected North Korea's Economy in 2016*, DAILYNK (Dec. 26, 2016, 3:07 PM), <http://www.dailynk.com/english/read.php?num=14270&catId=NK02900> [<https://perma.cc/255T-E3FJ>].

189. See Don Weinland, *North Korean Banks Barred From Swift Transaction System*, FIN. TIMES (Mar. 8, 2017), <https://www.ft.com/content/69dd9512-03d9-11e7-ace0-1ce02ef0def9> [<https://perma.cc/94PP-WD8H>].

190. See *id.*

191. See *id.*; see also Jeremy Wagstaff & Tom Bergin, *SWIFT Messaging System Bans North Korean Banks Blacklisted by U.N.*, REUTERS (Mar. 8, 2017), <http://www.reuters.com/article/us-northkorea-banks-swift-idUSKBN16F0NI> [<https://perma.cc/8CUH-5N KU>].

192. See (3rd LD) U.N. Security Council Unanimously Adopts New Sanctions of N. Korea, YONHAP (Aug. 6, 2017), <http://english.yonhapnews.co.kr/northkorea/2017/08/06/0401000000AEN20170806000453315.html> [<https://perma.cc/9LMA-M2KZ>].

successful way to maintain the Kim Family Regime.<sup>193</sup> As a report released in September 2017 from the UN Panel of Experts says, “[l]ax enforcement of the sanctions regime coupled with the DPRK’s evolving evasion techniques are undermining the goals of the resolutions that the DPRK abandon all WMD and cease all related programs and activities.”<sup>194</sup>

There has also been a plethora of UN sanctions against North Koreans—typically immediately after Pyongyang’s nuclear tests, or test-launches of long-range ballistic missiles. Two recent resolutions in 2017 were 2375, issued in September, 2017, and 2397, issued in December, 2017. Both of these resolutions focused on limiting North Korea’s access to refined petroleum products and sets standards for repatriating DPRK workers overseas (among other measures). The North Korean overseas workers are not an “illicit” activity, since, at least for now, this is a legal function. But it is also a big money maker for the regime and much of this money earned is probably used for weapons development and the sponsorship of the elite. Supposedly, workers will be gone from countries where they are employed twenty-four months from December 2017.<sup>195</sup>

For a variety of reasons, these sanctions have been largely ineffective. But the most important reason is because China and Russia are permanent members of the UN Security Council and have insisted on watering down sanctions against North Korea every time they occur.<sup>196</sup> This is unlikely to change. Another reason that these UN sanctions have thus far been largely ineffective at putting any real pressure on North Korea is because enforcement is weak—from countries like Russia and China but also from other nations such as several nation-states on the African continent.<sup>197</sup>

## VI. China’s Role in Containing North Korea’s Illicit Activities

China is an interesting part of the puzzle both because many entities within its borders have been complicit in North Korea’s illicit activities, and because it has been accused (and apparently, justly so) of not being transparent in going along with UN resolutions to which Beijing is a signatory. It is this unusual role China plays in the North Korean illicit activities and

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193. See David S. Maxwell, *Is the Kim Family Regime Rational and Why Don’t the North Korean People Rebel?*, FOREIGN POL’Y RES. INST. (Jan. 27, 2012), <http://www.fpri.org/article/2012/01/is-the-kim-family-regime-rational-and-why-dont-the-north-korean-people-rebel/> [https://perma.cc/M9LU-ZJUF].

194. See Midterm Rep. of the Panel of Experts Established Pursuant to Resolution 1874 (2009), transmitted by Letter Dated 28 August 2017 from the Panel of Experts Established Pursuant to Resolution 1874 (2009) Addressed to the President of the Security Council, U.N. Doc. S/2017/742, at 5 (Sept. 5, 2017).

195. See *Resolutions*, UNITED NATIONS SECURITY COUNCIL (Dec. 2017), <https://www.un.org/sc/suborg/en/sanctions/1718/resolutions> [https://perma.cc/DS7B-RA3L].

196. See Demetri Sevastopulo & Katrina Manson, *UN Agrees Stronger Sanctions Against North Korea*, FIN. TIMES (Sept. 11, 2017), <https://www.ft.com/content/f07c6800-9736-11e7-b83c-9588e51488a0> [https://perma.cc/97PS-Q6Y3].

197. See Ham Jiha and Jenny Lee, *Will New Sanctions Restrain Kim Jong Un? Maybe Not*, VOICE OF AMERICA (Aug. 9, 2017, 12:28 AM), <https://www.voanews.com/a/will-new-sanctions-restrain-kim-jong-un-maybe-not/3978217.html> [https://perma.cc/EKS2-T5D9].



underground financial networks that I will address in this section. For many years, American policy makers have been calling for China to play a bigger role in putting pressure on North Korea for its many rogue state activities.<sup>198</sup> But there are some analysts (like myself) who assess, based on the evidence, that the government in China has no intention (at least not yet) of putting any strong pressure on North Korea economically (including proliferation and illicit activities) or politically. In fact, as the evidence in this section will show, if one were to make one statement on what China does about entities within its borders who deal with North Korea, or about the illegal activities of its own banks, that one statement would be, “they look the other way.”

While there have been many muted hints by academics and others that China may have been somewhat supporting North Korea militarily over the years, in 2013, a disturbing analysis of North Korean transporter-erector-launchers carrying ICBM's in a parade in Pyongyang revealed that these vehicles came from China.<sup>199</sup> Beijing, of course, claimed that they were selling Pyongyang “lumber transporters,” and everyone then moved on.<sup>200</sup> In 2014, a variety of reports stated that the Chinese had put in place a number of plans regarding what to do in the case of North Korean collapse.<sup>201</sup> The plans reportedly included such things as reconnaissance units along the border to monitor any crossings, and setting up camps in China near the border. The plans also reportedly take into account what to do if other powers (presumably the United States) cross into North Korea during a crisis. Many analysts believe that China considers North Korea a buffer against South Korea, and of course the American troops who are stationed there.<sup>202</sup> China is said to supply ninety percent of North Korea's oil. Russia supplies some, but on a much smaller scale.<sup>203</sup> Thus, it was undoubtedly disturbing to Pyongyang when China temporarily suspended

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198. See Christopher P. Twomey, *China Policy Towards North Korea and Its Implications for the United States: Balancing Competing Concerns*, STRATEGIC INSIGHTS 7 (Sept. 2006), <https://www.hsdl.org/?view&did=466572> [<https://perma.cc/T8EL-KUFH>].

199. See N. Korea ‘Deliberately Breached’ Chinese Contract Over Missile Vehicles: U.N. Report, YONHAP (June 26, 2013, 3:05 PM), <http://english.yonhapnews.co.kr/news/2013/06/26/50/0200000000AEN20130626005000315F.HTML> [<https://perma.cc/284M-2VYH>].

200. *Id.*

201. Parris Chang, *China Manipulating Both Koreas*, TAIPEI TIMES (June 21, 2014), <http://www.taipetimes.com/News/editorials/archives/2014/06/21/2003593271> [<https://perma.cc/TJ79-ZTE4>]; Jin Dong Hyeok, *Report: China's Military Prepared for Collapse Scenario*, DAILYNK (May 5, 2014), <https://www.dailynk.com/english/read.php?num=11836&catald=NK00100> [<https://perma.cc/4SEG-Y35Q>]; Yun Sun, *The North Korean Contingency: Why China will not Cooperate*, 38 NORTH (July 25, 2014), <http://38north.org/2014/07/ysun072514/> [<https://perma.cc/P2Q6-8SNC>]; see *China Mulls Impact of North Korea Regime Collapse on Border Area*, KYODO NEWS INTERNATIONAL (May 4, 2014), <http://www.globalpost.com/dispatch/news/kyodo-news-international/140504/china-mulls-impact-n-korea-regime-collapse-border-area>.

202. See KYODO NEWS INTERNATIONAL, *supra* note 201.

203. Kim Ga Young, *A North Korea without Chinese Oil Supplies*, DAILYNK (Jan. 15, 2016), <http://www.dailynk.com/english/read.php?catald=NK00400&num=13698> [<https://perma.cc/M32X-VN22>].

supplying North Korea with aviation fuel in 2014.<sup>204</sup> But China reportedly resumed supplying North Korea with aviation fuel in late 2014, moving into 2015.<sup>205</sup> This was no doubt a relief for the North Korean air force, which is reliant on the fuel for its exercises and operations, and also has stockpiled aviation fuel (but not an unlimited supply).<sup>206</sup>

Perhaps because of what I would consider largely token actions taken by China in 2014, North Korean exports to Russia reportedly rose thirty-two percent in that year.<sup>207</sup> Despite this reporting, it is important to note that in May of 2015, according to an imagery analysis, North Korea was constructing a new transport corridor in order to conduct trade with China.<sup>208</sup> Despite some increases in trade with Russia, China remained the most significant trade partner with the DPRK during 2015.<sup>209</sup> Since then, China has continued to be a valuable trade partner, and also “allowed” things to happen that enable North Korea’s illicit activities and underground finance. Moving into 2016, there were many revelations regarding the unique China-North Korea relationship. In March of 2016, China “implemented” financial sanctions against the DPRK following a North Korean nuclear test; however, according to a source reporting from China, money continued to flow across the border on trains, often hidden in luggage.<sup>210</sup> The Chinese government appears to have simply, “looked the other way.”<sup>211</sup> During April of 2016, military supplies continued to be smuggled across the China-North Korea border despite sanctions.<sup>212</sup> In fact, front companies working for North Korea’s military were reported to

204. See Jeong Yong-Soo, *China Suddenly Gives North Fuel for Planes*, JOONGANG ILBO (Jan. 31, 2015), <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3000349> [<https://perma.cc/ME4G-8PNY>].

205. See *id.*

206. See Peter Hayes et al., *Sanctioning Kerosene and Jet Fuel in North Korea*, NAUTILUS INST., NAPSNET POL’Y FORUM, (Mar. 10, 2016), <http://nautilus.org/napsnet/napsnet-policy-forum/sanctioning-kerosene-and-jet-fuel-in-north-korea/> [<https://perma.cc/XPH4-RKNW>].

207. See Grace Oh, *N. Korea’s Exports to Russia Jump 32 pct in 2014: Report*, YONHAP (Mar. 18, 2015), <http://english.yonhapnews.co.kr/full/2015/03/18/99/1200000000AEN20150318002300315F.html>.

208. See Curtis Melvin, *North Korea Building New Transport Corridor and Border Crossing*, 38 NORTH (May 4, 2015), <http://38north.org/2015/05/cmelvin050415/> [<https://perma.cc/P6AL-D78P>].

209. See Anna Fifield and Michael Birnbaum, *North Korea Might Be Courting Russia, But China Still Looms Larger*, WASH. POST (May 5, 2015), [https://www.washingtonpost.com/world/north-korea-might-be-courting-russia-but-its-still-no-match-for-china/2015/05/04/6ca7bd46-c90d-4c99-8fce-de58d93608a7\\_story.html?utm\\_term=.71f19f6239c5](https://www.washingtonpost.com/world/north-korea-might-be-courting-russia-but-its-still-no-match-for-china/2015/05/04/6ca7bd46-c90d-4c99-8fce-de58d93608a7_story.html?utm_term=.71f19f6239c5) [<https://perma.cc/GC25-MKZM>].

210. See Seol Song Ah, *Traders Send Piles of Cash by Train to Evade Remittance Block*, DAILY NK (Mar. 31, 2016), <http://www.dailynk.com/english/read.php?num=13837&catald=NK01500> (regarding the *modus operandi* for moving cash across the China-North Korea border in 2016) [<https://perma.cc/S4WH-ZHZ4>].

211. For more about the *modus operandi* for moving cash across the China-North Korea border in 2016, see *id.*

212. See Choi Song Min, *Military Items Smuggled Through Chinese Customs Despite Sanctions*, DAILY NK (Apr. 4, 2016), <http://www.dailynk.com/english/read.php?num=13839&catald=nk01500> [<https://perma.cc/U9JW-UAG8>].

be continuing operations in China despite sanctions.<sup>213</sup> Thus, although China had supposedly implemented sanctions against North Korea, by April of 2016, it was clear that these sanctions would not be seriously enforced.<sup>214</sup>

China's official list of sanctions against North Korea was released in April 2016.<sup>215</sup> This list was released following the UN resolution that was issued because of North Korea's first nuclear test of that year. Although the list was quite extensive, it is important to focus on what was excluded from the list. Many items were allowed to be traded for "public welfare purposes."<sup>216</sup> In addition, there were loopholes for trading aircraft fuel.<sup>217</sup> The Chinese government also allowed for trade dealing with several key items as long as the trade benefited "livelihood purposes" and did not support nuclear or missile programs.<sup>218</sup> One wonders how a nation could determine such a thing. First quarter trade between China and North Korea was up twenty percent over 2015 in 2016 before sanctions were "enforced."<sup>219</sup> However, transparency is key here, and it is likely that a great deal of trade occurred in secret after the sanctions were implemented. Despite the seemingly rigorous official sanctions that China had placed on North Korea on the export of oil, a reporter from a South Korean newspaper visiting the Chinese city of Dandong, during May of 2016, witnessed oil being prepared for shipping to the DPRK.<sup>220</sup> During June of 2016, North Korean envoy Ri Su-young visited with China's leader, Xi Jinping.<sup>221</sup> At the request of the North Korean envoy, China reportedly agreed to provide 500,000 tons of food supplies to its neighbor to the south (about half of what the North Koreans reportedly requested).<sup>222</sup> In addition to the oil flowing across the border, there have also been reports that goods and

213. *See id.*

214. *See id.*; *see also* John Bacon, *China Joins Global Effort to Squeeze North Korea*, USA TODAY (Apr. 5, 2016), <http://www.usatoday.com/story/news/world/2016/04/05/china-joins-global-effort-squeeze-north-korea/82653582/> [<https://perma.cc/3BHU-4MH5>].

215. *See* Kim Oi-hyun, *China Issues Official List of North Korea Embargo Products*, HANKYOREH ILBO (Apr. 6, 2016), [http://english.hani.co.kr/arti/english\\_edition/e\\_north\\_korea/738498.html](http://english.hani.co.kr/arti/english_edition/e_north_korea/738498.html) [<https://perma.cc/9JDS-FZSB>].

216. *See id.*

217. *See id.*

218. Yeh Young-june, *Beijing Implements UN Sanctions*, JOONGANG ILBO (Apr. 7, 2016), <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3017197> [<https://perma.cc/Z3CA-CXB2>]; *China Imposes Trade Sanctions on N. Korea*, CHOSUNILBO, (Apr. 6, 2016), [http://english.chosun.com/site/data/html\\_dir/2016/04/06/2016040601266.html](http://english.chosun.com/site/data/html_dir/2016/04/06/2016040601266.html) [<https://perma.cc/8L2G-CN66>]; *see id.*

219. *See* Elizabeth Shim, *China Trade with North Korea up 20 Percent - Before Sanctions*, UPI (Apr. 13, 2016), [http://www.upi.com/Top\\_News/World-News/2016/04/13/China-trade-with-North-Korea-up-20-percent-before-sanctions/1431460560493/](http://www.upi.com/Top_News/World-News/2016/04/13/China-trade-with-North-Korea-up-20-percent-before-sanctions/1431460560493/) [<https://perma.cc/EHB8-4RWZ>].

220. *See* Shin Jin-ho, *Despite Official Claims, Crude Still Flows from China*, JOONGANG ILBO (May 16, 2016), <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=3018740> [<https://perma.cc/6YHE-AEVH>].

221. *See* Sarah Kim, *China-North Korea Ties get some Momentum*, JOONGANG ILBO (June 3, 2016), <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3019552> [<https://perma.cc/TYH6-2LHX>].

222. *Id.*

commodities banned under the UN resolution were also crossing into North Korea as of June, 2016.<sup>223</sup>

In the fall of 2016, the South Korean press reported that trade between North Korea and China in August of that year had actually gone up nearly thirty percent over the previous year.<sup>224</sup> The reported trade figures indicated that China had found many “loopholes” to get around the UN sanctions that they had supported and still claimed to be enforcing.<sup>225</sup> Reportedly, North Korea made \$1.1 billion in sales of coal to China during 2016.<sup>226</sup> During late September of 2016, at a Senatorial hearing, both senators and those testifying from the Obama administration State Department acknowledged that China was not forcefully enforcing sanctions.<sup>227</sup> Senator Rubio even remarked that no Chinese entities had yet to be sanctioned (likely a reference to the fact that it was already an accepted fact that there are many Chinese front companies, individuals, and banks who continued then and now to cooperate with the North Koreans).<sup>228</sup> In October of 2016, North Korea and China reportedly engaged in clandestine maritime trade near the coastal North Korean city of Cholsan, bringing dozens of Chinese ships, and trading a variety of goods, presumably choosing this setting to avoid being seen along the land border.<sup>229</sup> Other reports showed that by September of 2016, Chinese exports of jet fuel to the DPRK jumped 391% when compared to a year earlier.<sup>230</sup> This data was published by the Korea International Trade Association.<sup>231</sup>

At the same September Senatorial hearing referenced above, the U.S. State Department’s coordinator for sanctions policy, Daniel Fried, admitted that there were several Chinese firms under investigation.<sup>232</sup> It was in Sep-

223. See Gordon Chang, *China Likely Cheating, Again, on North Korean Sanctions*, WORLD AFF. J. (June 15, 2016), <http://www.worldaffairsjournal.org/blog/gordon-g-chang/china-likely-cheating-again-north-korea-sanctions> [<https://perma.cc/K7YB-S4ZH>].

224. See *China-N.K. Trade Surges in August*, YONHAP (Sept. 22, 2016), <http://english.yonhapnews.co.kr/news/2016/09/22/0200000000AEN20160922006100315.html> [<https://perma.cc/3NE9-ZQAR>].

225. *Id.*

226. See Jane Perlez, Yufan Huang, & Paul Mozurmay, *How North Korea Managed to Defy Years of Sanctions*, N.Y. TIMES (May 12, 2017), [https://www.nytimes.com/2017/05/12/world/asia/north-korea-sanctions-loopholes-china-united-states-garment-industry.html?\\_r=0](https://www.nytimes.com/2017/05/12/world/asia/north-korea-sanctions-loopholes-china-united-states-garment-industry.html?_r=0) [<https://perma.cc/J8YJ-HDSS>].

227. See Hamish Macdonald, *China Accused of Inaction on N. Korea Sanctions in Senate Hearing*, NK NEWS (Sep. 28, 2016), <https://www.nknews.org/2016/09/china-accused-of-inaction-on-n-korea-sanctions-in-senate-hearing> [<https://perma.cc/6EN8-5UR2>].

228. See *id.*

229. See Kim Myong-song, *N. Korea, China in Clandestine Trade in Coastal Waters*, CHOSUNILBO (Oct. 21, 2016), [http://english.chosun.com/site/data/html\\_dir/2016/10/21/2016102101270.html](http://english.chosun.com/site/data/html_dir/2016/10/21/2016102101270.html) [<https://perma.cc/3ACS-RU7S>].

230. *China Exports of Jet Fuel to N. Korea up Nearly 400 PCT in September: Data*, YONHAP (Oct. 26, 2016), <http://english.yonhapnews.co.kr/news/2016/10/26/0200000000AEN20161026006300320.html> [<https://perma.cc/E3H6-EH6M>].

231. *Id.*; see Kim Myong-song, *N. Korea, China in Clandestine Trade in Coastal Waters*, CHOSUNILBO (October 21, 2016), [http://english.chosun.com/site/data/html\\_dir/2016/10/21/2016102101270.html](http://english.chosun.com/site/data/html_dir/2016/10/21/2016102101270.html) [<https://perma.cc/AZ5T-7VJ8>].

232. See Macdonald, *supra* note 227.

tember that the United States sanctioned Chinese based Hongxiang Industrial Development Company.<sup>233</sup> The Treasury Department froze all U.S. based assets of the company, and the Justice Department pressed charges against four individuals.<sup>234</sup> The Hongxiang Company is an interesting case study in how Chinese companies get around sanctions while making big profits working with North Korean entities to make and process cash for the Kim regime. This is likely only the tip of the iceberg because many other companies, banks, and individuals are likely involved in these types of illicit activities.

According to an official report by the U.S. Department of Justice, “[f]our Chinese nationals and a trading company based in Dandong, China, were charged by criminal complaint unsealed today with conspiring to evade U.S. economic sanctions and violating the Weapons of Mass Destruction Proliferators Sanctions Regulations (WMDPSR) through front companies by facilitating prohibited U.S. dollar transactions through the United States on behalf of a sanctioned entity in the Democratic People’s Republic of Korea (North Korea) and to launder the proceeds of that criminal conduct through U.S. financial institutions.”<sup>235</sup> The report stated, “[i]n addition, the [Treasury] department filed a civil forfeiture action for all funds contained in 25 Chinese bank accounts that allegedly belong to DHID and its front companies. The department has also requested that the federal court in the District of New Jersey issue a restraining order for all of the funds named in the civil forfeiture action, based upon the allegation that the funds represent property involved in money laundering, which makes them forfeitable to the United States. There are no allegations of wrongdoing by the U.S. correspondent banks or foreign banks that maintain these accounts.”<sup>236</sup> It is also important to note that the report states, “[t]he charges and forfeiture action announced today allege that defendants in China established and used shell companies around the world, surreptitiously moved money through the United States and violated the sanctions imposed on North Korea in response to, among other things, its nuclear weapons program,” said Assistant Attorney General Caldwell.<sup>237</sup> Assistant Attorney General Carlin remarked, “[d]enying the use of the U.S. financial system can greatly curtail illegal activities and disrupt efforts to provide weapons of mass destruction to terrorists and rogue nations.”<sup>238</sup> I completely agree with the last part of this quote. By using the U.S. financial system to curtail support that Chinese entities provide North Korea,

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233. See 임정요, *US Actively Investigating More Chinese Firms for Dealings with N. Korea*, KOREA HERALD (Sept. 29, 2016), <http://www.koreaherald.com/view.php?ud=20160929000250> [https://perma.cc/6BJE-RX3M].

234. See *id.*

235. *Four Chinese Nationals and China-Based Company Charged with Using Front Companies to Evade U.S. Sanctions Targeting North Korea’s Nuclear Weapons and Ballistic Missile Programs*, U.S. DEP’T JUST. (Feb. 8, 2018), <https://www.justice.gov/opa/pr/four-chinese-nationals-and-china-based-company-charged-using-front-companies-evade-us> [https://perma.cc/F58N-P7TK].

236. *Id.*

237. *Id.*

238. *Id.*

real pressure can be put on the Kim regime. With only minor exceptions like the prosecuting of the Hongxiang Company, this largely did not happen during the Obama Administration. In early 2017, it was revealed that China was still importing minerals from North Korea banned under UN sanctions.<sup>239</sup> Around the same time, it was also reported that China had continued to export items banned under the UN sanctions (valued at several million dollars) to North Korea the previous year.<sup>240</sup>

China reportedly banned North Korean citizens residing in China from opening new accounts in several banks and ordered the closing of existing accounts in these banks as well.<sup>241</sup> The governmental order was released during September of 2017.<sup>242</sup> It is not clear how this affected smaller banks where North Korean operatives or their intermediaries often launder their money. In addition, given the modus operandi North Korean operatives follow of using paid intermediaries and other loopholes, the successful results of this move can easily be called into doubt.<sup>243</sup> China agreed to the sanctions in 2017 that would severely limit North Korea's imports of Petroleum products, but anecdotal evidence (including imagery) suggests China continues to allow its traders to export these products to the DPRK—on what scale this is occurring is unknown.<sup>244</sup>

## Conclusion

If one is to look back at the actions of the North Korean regime in recent years, it is clear that this is a regime which engages in rogue state behavior in so many ways that one almost loses count. But one must consider that North Korea's illicit activities and its illegal financial networks that support them are not just a small aspect of the Kim regime. Rather, these activities are a key part of what the North Korean leadership infrastructure needs to do in order to survive. North Korea is more heavily sanctioned than most nations on earth. Thus, in order to survive, the government must literally work as a criminal entity in order to raise money for the regime. This explains both North Korea's many clever TTP's, as well as its ties to international crime networks.<sup>245</sup>

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239. See *China Keeps Importing U.N.-Sanctioned Minerals from N.K.*, YONHAP (Mar. 29, 2017), <http://english.yonhapnews.co.kr/northkorea/2017/03/29/0401000000AEN20170329005400315.html> [https://perma.cc/Y8R5-D5NN].

240. See *China Exports US\$4.25 MLN Banned Items to N. Korea Last Year*: VOA, YONHAP (Mar. 9, 2017), <http://english.yonhapnews.co.kr/northkorea/2017/03/09/53/0401000000AEN20170309008100315F.html> [https://perma.cc/Q93F-C9PU].

241. *Beijing Orders Banks to Close Accounts for North Koreans*, DAILY NK (Sept. 9, 2017), <http://www.dailynk.com/english/read.php?num=14709&catald=NK01500> [https://perma.cc/5VX2-CXDY].

242. See *id.*

243. See *id.*

244. For an example of anecdotal evidence suggesting that China has been violating UN sanctions in order to keep North Korea supplied with petroleum products, see *North Korea: South Seizes Ship Amid Row over Illegal Oil Transfer*, BBC (Dec. 29, 2017), <http://www.bbc.com/news/world-asia-42510783> [https://perma.cc/B2X3-BTDV].

245. See Keegan Hamilton, *North Korean Meth, Motorcycle Gangs, Army Snipers, and a Guy Named Rambo*, VICE NEWS (Mar. 18, 2014), <https://news.vice.com/article/north->

The United States has tried several initiatives, from PSI to unilateral sanctions, to the Treasury Department actions, and to joining with the international community to bring about the UN sanctions. Many of these actions, however, have not produced results for two key reasons. First, the United States has frequently failed to sufficiently enforce initiatives that could contain North Korea's proliferation, illicit sales of illegal goods, and its illegal banking activities. Next, North Korea does not "play by the rules" in the international system so it is often able to escape enforcement. American sanctions have historically been important. In 2005, the United States, largely through the Treasury Department, successfully pressured Banco Delta Asia ("BDA") into freezing its North Korean assets. The U.S. officials then were able to contain North Korean efforts to move funds to places like Europe, Vietnam, Singapore, and Mongolia.<sup>246</sup> The threat of banks being "blacklisted" by the United States was enough to get many banks to turn down North Korean deposits.<sup>247</sup> The snowball effect from America's actions was quite compelling. Even banks in China were known to freeze North Korean accounts.<sup>248</sup> The actions (and the freezing) ended when the United States "unfroze" the accounts in BDA. Since that time (and the failed nuclear agreement that followed the "unfreezing" of the BDA accounts), North Korea has diversified its banking practices, and has spread its spider-web financial network to places like Russia, China, South-east Asia, Singapore, and elsewhere.<sup>249</sup> Thus, to take actions that will once again truly contain or at least slow down North Korea's proliferation and illegal financial activities, the United States would need to target several banks (usually smaller banks) in places all over Asia, Europe, Africa, and even the Middle East. To date, this has not happened on a large scale, but things may be changing.

On May 16, 2017, the UN Ambassador Nikki Haley announced that the United States would be tightening sanctions on North Korea.<sup>250</sup> She also announced that the United States would go after entities in third countries who were helping with North Korea's proliferation and its illicit financial activities that support it.<sup>251</sup> In June of 2017, the Treasury and State Departments imposed new sanctions on North Korean entities and individ-

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korean-meth-motorcycle-gangs-army-snipers-and-a-guy-named-rambo [https://perma.cc/BW6Q-S9P2].

246. See Josh Meyer, *Squeeze on North Korea's Money Supply Yields Results*, L.A. TIMES (Nov. 2, 2006), <http://www.latimes.com/world/la-fg-macao2nov02-story.html> [https://perma.cc/2FES-YYDF].

247. See *id.*

248. See *id.*

249. Daniel Wertz & Ali Vaez, *Sanctions and Non-Proliferation in North Korea and Iran: A Comparative Study 8*, FAS (June 2012), [https://fas.org/pubs/\\_docs/IssueBrief-Sanctions.pdf](https://fas.org/pubs/_docs/IssueBrief-Sanctions.pdf) [https://perma.cc/7BED-RVKQ]; see Sangwon Yoon, Sam Kim, & Andrea Tan, *China is at the Heart of North Korea's Illicit Cash-Flow Funnel*, BLOOMBERG (Feb. 21, 2016), <https://www.stripes.com/news/pacific/china-is-at-the-heart-of-north-korea-s-illicit-cash-flow-funnel-1.395525> [https://perma.cc/3ACP-ETFM].

250. U.S. to Further Tighten Sanctions on N. Korea, *Go After Third Country Entities*, YONHAP (May 17, 2017, 6:08 AM), <http://english.yonhapnews.co.kr/northkorea/2017/05/17/0401000000AEN20170517000451315.html> [https://perma.cc/LF7F-V95R].

251. *Id.*

uals—including Tangun Trading Corporation and one of its partners in Moscow that had been operating in violation of sanctions.<sup>252</sup> According to the Treasury Department release, “Treasury is working with our allies to counter networks that enable North Korea’s destabilizing activities, and we urge our partners to take parallel steps to cut off their funding sources.”<sup>253</sup> Thus, one is led to believe that a new Presidential Administration may finally take the necessary steps to make enforcement of sanctions a high priority. If focus on enforcement becomes a reality, “secondary sanctions” on countries outside of North Korea will become key. These sanctions need to be on entities within countries like China, Singapore, Vietnam, Russia, and Iran (to name several of many countries that house entities supporting North Korea’s proliferation through illicit financial activities). Exactly what are we referring to when we say “secondary sanctions”? To quote Aaron Arnold of Curry College, “[s]econdary sanctions, sometimes referred to as extraterritorial sanctions, are an often discussed but rarely understood policy instrument. Whereas primary sanctions apply restrictions directly to U.S. persons and companies, secondary sanctions leverage the strength and role of the U.S. financial system to target businesses and persons outside the typical jurisdiction of the United States. Generally, these types of sanctions focus on blocking or restricting foreign banks’ access to the U.S. financial system.”<sup>254</sup> These sanctions can be used particularly well by the United States because of the power of the dollar in financial markets.

The first year of the Trump Presidency has reflected more real action against North Korea’s proliferation than the entire eight years of the Obama Administration. This is not a political statement. It is simply a statement of facts. There are two reasons that this is so compellingly true; enforcement, and imposition of secondary sanctions with teeth. Moves that the Trump Administration made during 2017 were important. It must be pointed out, however, that while this is a good start, much broader initiatives must occur if we are to truly pressure North Korea. In June of 2017, for the first time since the Treasury Department took action against BDA in 2005, they again took action against a Chinese bank—the Bank of Dandong.<sup>255</sup> The U.S. Treasury designated the bank a primary laundering concern and stated that it was an entity that facilitated funds used by front companies that were operating in support of North Korea’s WMD programs.<sup>256</sup> This means that the Bank of Dandong will not have access to the

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252. Press release, *Treasury Sanctions Suppliers of North Korea’s Nuclear and Weapons Proliferation Programs*, U.S. DEP’T TREASURY (June 1, 2017), <https://www.treasury.gov/press-center/press-releases/Pages/sm0099.aspx> [<https://perma.cc/P8W8-XK4G>].

253. *Id.*

254. Aaron Arnold, *Watch Out for the Blowback of Secondary Sanctions on North Korea*, THE DIPLOMAT (Apr. 28, 2017), <https://thediplomat.com/2017/04/watch-out-for-the-blowback-of-secondary-sanctions-on-north-korea/> [<https://perma.cc/73UA-USTP>].

255. See Press release, *Treasury Acts to Increase Economic Pressure on North Korea and Protect the U.S. Financial System*, U.S. DEP’T TREASURY (June 29, 2017), <https://www.treasury.gov/press-center/press-releases/Pages/sm0118.aspx> [<https://perma.cc/GRV8-THVA>].

256. See *id.*



U.S. financial system.<sup>257</sup> The government of China of course protested the move, but the U.S. government made it clear at the time that they were going after illicit entities not governments (including China).<sup>258</sup>

According to press reports in mid-July 2017, Washington was preparing still more initiatives and sanctions against other Chinese banks as well as other entities in China.<sup>259</sup> State Department officials also visited Singapore and other countries in Southeast Asia during mid-July of 2017, reportedly to gain help in going after entities (banks and front companies) working with North Korea in their countries.<sup>260</sup> The expected actions came in late August of 2017 when the United States Treasury specifically targeted entities in Russia, China, Singapore, and even Namibia that were either directly dealing in trade with North Korea's arms programs, including their WMD and ballistic missile programs, or raising funds that could be used to provide financial support for arms programs, or helping to launder the money.<sup>261</sup>

In June and August of 2017, the U.S. Attorney's Office in Washington, DC filed three civil forfeiture actions worth millions of dollars against shell companies that were accused of laundering funds used to finance North

257. See *id.*

258. *Id.*; Ken Bredemeier, *US Blacklists Chinese Bank It Says Has Been Funding N. Korean Weapons Development*, VOA NEWS (June 29, 2017, 6:30 PM), <https://www.voanews.com/a/us-blacklists-chinese-bank-it-says-has-been-funding-north-korean-weapons-development/3921814.html> [<https://perma.cc/2U79-5RQ6>]; Tony Munroe and Shu Zhang, *Blacklisted China Bank Cited as a North Korea Conduit to Global Finance*, REUTERS (June 30, 2017, 7:59 AM), <https://www.reuters.com/article/us-usa-northkorea-china-sanctions-dandon-idUSKBN19L1MD> [<https://perma.cc/52XQ-4C52>]; Elizabeth Shim, *China Condemns U.S. Sanctions Against Entities with Suspected North Korea Ties*, UPI (June 30, 2017, 10:41 AM), <https://www.upi.com/China-condemns-US-sanctions-against-entities-with-suspected-north-korea-ties/3361498829713/> [<https://perma.cc/LT28-7J4T>]; see *Treasury Sanctions 4 Chinese Entities, Targeting North Korea*, THE WHIM (July 4, 2017), <http://www.thewhim.com/treasury-sanctions-4-chinese-entities-targeting-north-korea/> [<https://perma.cc/NPT2-BSQQ>].

259. Brett Wolf, *U.S. Treasury Targets Chinese Bank Over Purported Ties to North Korea, New Sanctions Risk Emerges*, REUTERS (July 6, 2017, 10:22 PM), <https://www.reuters.com/article/bc-finreg-chinese-banks-north-korea/u-s-treasury-targets-chinese-bank-over-purported-ties-to-north-korea-new-sanctions-risk-emerges-idUSKBN19S09B> [<https://perma.cc/NB9G-BBXJ>].

260. See, e.g., Matt Spetalnick & David Brunnstrom, *Exclusive: U.S. Prepares New Sanctions on Chinese Firms over North Korea Ties - Officials*, REUTERS (July 13, 2017, 1:03 PM), <http://www.reuters.com/article/us-northkorea-usa-sanctions-exclusive-idUSKBN19Y28> [<https://perma.cc/WKK3-JAAH>]; see also Joshua Berlinger, *Guns and Money: Why US' Top North Korea Diplomat is in Southeast Asia*, CNN (July 17, 2017, 7:16 AM), <http://www.cnn.com/2017/07/16/asia/north-korea-myanmar-singapore/index.html> [<https://perma.cc/P5C4-VV3G>].

261. For details on the entities and individuals targeted by the Treasury Department in August of 2017, see *Treasury Targets Chinese and Russian Entities and Individuals Supporting the North Korean Regime*, U.S. DEP'T TREASURY (Aug. 22, 2017), <https://www.treasury.gov/press-center/press-releases/Pages/sm0148.aspx> [<https://perma.cc/FZ2L-56FT>]; see also *North Korean Designations*, U.S. DEP'T TREASURY (Aug. 22, 2017), <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20170822.aspx> [<https://perma.cc/ZK4A-NTL7>].

Korea's WMD programs.<sup>262</sup> A public report from Department of Justice addressed one of the front companies based in China. According to the report, "[t]he United States has filed a complaint to civilly forfeit \$1,902,976 from Mingzheng International Trading Limited (Mingzheng), a company based in Shenyang, China," further stating, "[t]his complaint alleges that parties in China established and used a front company to surreptitiously move North Korean money through the United States and violated the sanctions imposed by our government on North Korea, said U.S. Attorney Phillips."<sup>263</sup> Finally, the report states, "[s]pecifically, despite strengthened financial sanctions, North Korean networks are adapting by using greater ingenuity in accessing formal banking channels. This includes maintaining correspondent bank accounts and representative offices abroad, which are staffed by foreign nationals making use of front companies. These broad interwoven networks allow the North Korean banks to conduct illicit procurement and banking activity."<sup>264</sup>

On September 21, 2017, the United States took action that was, in my view, the most important and potentially damaging to North Korea's rogue state behavior since the Banco Delta Asia initiative in 2005. This is not an exaggeration. On that day, President Trump issued an Executive Order that essentially gave the Treasury Department full authorization to completely cut off North Korea's access to the U.S. dollar—and thus to go after any front company, bank, or individual who was attempting to do so.<sup>265</sup> In other words, if any institution is caught doing business with North Korea, they will not be allowed to do business with the United States. This action mirrors the type of initiatives taken by the Treasury against North Korea in 2005 that had North Korea on the ropes by late 2006.<sup>266</sup> The difference is, this action is expected to be more comprehensive and much more widespread—because North Korea's illicit financial networks are much more diversified and widespread than they were in 2005-2006. The United States can—and likely will—go after banks and front companies all over China, but also in places such as Singapore, Malaysia, and several countries in Africa (and elsewhere). Now that the Executive Order has

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262. Stefan D. Cassella & Michael Zeldin, *On Russia and North Korea, Shell Companies Conceal the Truth*, CNN (Sept. 8, 2017, 12:22 PM), <http://www.cnn.com/2017/09/08/opinions/shell-companies-russia-probe-north-korea-opinion-zeldin-cassella/> [<https://perma.cc/E36F-9XHX>].

263. Press release, *United States Files Complaint to Forfeit More Than \$1.9 Million From China-Based Company*, U.S. DEP'T JUST. (June 15, 2017), <https://www.justice.gov/usao-dc/pr/united-states-files-complaint-forfeit-more-19-million-china-based-company-accused-acting> [<https://perma.cc/6DLV-R7US>].

264. *Id.*

265. See *Turning the Screws on North Korea*, WALL ST. J. (Sept. 22, 2017, 6:13 PM), <https://www.wsj.com/articles/turning-the-screws-on-north-korea-1506118397> [<https://perma.cc/V6YC-NZSA>].

266. For detailed analysis of the Executive Order issued by President Trump and the potential for real pressure on North Korea, see *id.*; see also Donald J. Trump, *Presidential Executive Order on Imposing Additional Sanctions with Respect to North Korea*, WHITE HOUSE (Sept. 21, 2017), <https://www.whitehouse.gov/the-press-office/2017/09/21/presidential-executive-order-imposing-additional-sanctions-respect-north> [<https://perma.cc/7VL2-LU8Z>].

been issued, and therefore, the specific targeting of those entities who are laundering North Korea's dirty money needs to be designated, an action that is likely to be ongoing and large-scale.

All of these are important moves and a good start. But widespread and comprehensive action must be taken against a wide variety of banks, front companies, and individuals—and it is important to remember that these elements exist all over Asia, Africa, and the Middle East, not just in China. It is also important to remember that token action (as was often taken in past years leading to 2017) is nothing more than exactly that—token action. This action must cover all known entities and individuals who are supporting North Korea's illicit programs, and it must be a series of routine and continuous acts that constantly apply pressure and readjust as North Koreans readjust.

The international community is another matter. The U.S. remains the world's economic leader, but many other international organizations and nation-states continue to be very critical of North Korea's financial activity. Key among the international community in recent years has been the UN. The UN sanctions are now as tough as they have ever been and many have expressed a hope that these sanctions may actually bring about a change in the DPRK's behavior.<sup>267</sup> Despite the fact that the international community is now (in my opinion) more serious than it has ever been about containing and/or slowing North Korea's illicit trade, illegal banking, and military proliferation, the country that could make the biggest dent in these practices continues to be at best, reluctant to take full measures against Pyongyang. China remains at a crossroads, where it can choose either to join the international community in putting real pressure on North Korea, or to simply maintain the status quo.<sup>268</sup> At least for now, the latter appears to be the most likely option.<sup>269</sup> Thus, North Korea's rogue state activities as a nation-state acting like a "crime family" are likely to continue until sanctions and other initiatives by nations outside of China put real pressure on Pyongyang.

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267. See generally Dwayne Melendez, *Financial Sanctions on North Korea: Prospects and Challenges in the Age of the Tax Havens*, N. KOR. REV. (Aug. 7, 2016), <https://www.northkoreanreview.net/single-post/2016/08/08/Financial-Sanctions-on-North-Korea-Prospects-and-Challenges-in-the-Age-of-the-Tax-Havens> [https://perma.cc/JVN2-WH37].

268. Patrick McClanahan, *North Korea: China's Liability?*, HARV. POL. REV. (Nov. 13, 2016), <http://harvardpolitics.com/world/north-korea-chinas-liability/> [https://perma.cc/L8XD-C9JD].

269. See *id.*

