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Source: *Asia Policy*, JULY 2018, Vol. 13, No. 3 (JULY 2018), pp. 42-48

Published by: National Bureau of Asian Research (NBR)

Stable URL: <https://www.jstor.org/stable/10.2307/26497788>

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Making Sanctions Smart Again: Why Maritime Sanctions Have Worked against North Korea

Robert Huish

Following a period of escalating tension between the United States and the Democratic People's Republic of Korea (DPRK), in which the Kim regime conducted a series of ballistic missile and nuclear tests and the Trump administration pursued a policy of maximum pressure, Donald Trump and Kim Jong-un met for a historic summit in Singapore on June 12. What changed to bring the two leaders together?

The main reason North Korea sat down at the bargaining table was not sports diplomacy at the Winter Olympics or Trump's Twitter barrages. It was that the country is out of resources as a result of the international maritime sanctions.¹ These sanctions have worked, and worked well, by targeting the environment on which the Kim regime depended to acquire belligerent materials. The 2017 maritime sanctions against North Korea, particularly U.S. Executive Order 13810 and UN Security Resolution 2397, worked for three reasons.² First, owing to its unique geography, North Korea was almost entirely dependent on illicit maritime trade for its weapons programs, which stands in contrast to long-held claims that most military hardware came overland from China.³ Second, some argue that North Korea's already hollowed-out, authoritarian economy created an "inner isolation" among most of the country's nearly 26 million inhabitants.⁴ Sanctions are often responsible for increased suffering; however, most North Koreans survive through limited self-sufficiency or black markets that are often unaffected

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¹ Robert Huish, "How to Sink the Hermit Kingdom: Improving Maritime Sanctions against North Korea," *Canadian Naval Review* 13, no. 2 (2017): 5–10; and Robert Huish, "The Failure of Maritime Sanctions Enforcement against North Korea," *Asia Policy*, no. 23 (2017): 131–52.

² "Presidential Executive Order on Imposing Additional Sanctions with Respect to North Korea," White House, September 21, 2017 ~ <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-imposing-additional-sanctions-respect-north-korea>; and "Security Council Tightens Sanctions on Democratic People's Republic of Korea, Unanimously Adopting Resolution 2397," UN Security Council, Press Release, December 22, 2017 ~ <https://www.un.org/press/en/2017/sc13141.doc.htm>.

³ Eleanor Albert, "The China–North Korea Relationship," Council on Foreign Relations, Background, March 28, 2018 ~ <https://www.cfr.org/background/china-north-korea-relationship>; and Gregory J. Moore, "How North Korea Threatens China's Interests: Understanding Chinese 'Duplicity' on the North Korean Nuclear Issue," *International Relations of the Asia-Pacific* 8, no. 1 (2008): 1–29.

⁴ Joseph M. Dethomas, "Early Returns Show North Korea Sanctions Hold Promise," *Hill*, March 7, 2018..

by formal sanctions or the country's international economic environment. Third, sanctions that targeted foreign companies, in particular maritime insurance companies that may have provided protection and indemnity (P&I) insurance to North Korean vessels, provoked a swift reaction by the insurers to absolve themselves from dealings with North Korea.

The important message of the sanctions imposed in 2017 is that this focus on pressuring the maritime industry led to a noticeable behavioral change in North Korea. The remainder of this essay examines what lessons about the efficacy of smart sanctions can be drawn from the case of maritime sanctions against North Korea. The next section will describe the 2017 sanctions from a maritime standpoint and analyze why they worked. The essay concludes by considering the potential to effectively apply similar sanctions to other targets.

Have You Been to Sea?

To understand why maritime sanctions worked so well against North Korea, two issues must be discussed. First, what are effective sanctions? And second, what role does China play in enabling North Korea to outsmart sanctions? For years, the international community made two major errors in dealing with North Korea. Many experts believed, first, that any sort of sanction would be a good measure against the Kim dynasty and, second, that China is the sole provider of resources, including military resources, to North Korea. Both of these claims are problematic.

Sanctions aim to encourage a behavioral change of a target nation or its leadership. Traditional, or "dumb," sanctions either prohibit the target from any financial dealings with the issuer's market or seize the target's assets in the issuer's territory. Such ham-fisted sanctions often do more to further the suffering of the population than apply pressure on the leadership. In the 1990s, then secretary-general of the United Nations Kofi Annan encouraged the use of "smart" sanctions in order to overcome such blunders. Speaking in hindsight of the tragedies in Iraq, the Balkans, and East Africa, Annan argued that economic policy could be crafted so that despotic leaders are pushed toward behavioral change given that their own personal assets were at risk.⁵ In the 1990s this logic made sense because many dictators had offshore assets that could be directly targeted. Even so, many tyrants, including members of the Kim dynasty, managed to acquire

⁵ Joy Gordon, "Smart Sanctions Revisited," *Ethics and International Affairs* 25, no. 3 (2011): 315–35.

luxury goods and odious resources through shady networks involving fake currency production, narcotics trafficking, weapons smuggling, and insurance scams. Moreover, sanctions did not deter the Kims from pursuing nuclear tests or overseeing brutal human rights violations.

One of the faultiest assumptions about North Korea in the international relations literature was that North Korea and China enjoyed a comfortable, mutually beneficial relationship. In the early 2000s, trade did quite well between the two countries, even to the point of North Korea establishing a casino in Pyongyang for Chinese tourists, sending thousands of temporary contract workers to China, and overseeing the construction of the Chilbosan Hotel in Shenyang.⁶ The hotel closed in January 2018 as a result of a UN blacklist that named the Chinese shareholders of Liaoning Hongxiang Group connected to the hotel. Yet long before this happened, relations between China and North Korea had grown cold. Several reports emerged between 2012 and 2014 of the North Korean military organizing smuggling and pillaging runs into Chinese border towns, with some claiming that North Korea even used cell-phone-blocking technology to prevent a swift response from the Chinese authorities.⁷

For China, the Kim regime's belligerence was problematic. Missile launches and nuclear tests gave license for more U.S., South Korean, and Japanese surveillance and a greater maritime presence in Northeast Asia. Simply put, a hostile North Korea is not in China's interest. Thus, the idea that China would actively supply North Korea with missile hardware or nuclear devices across its land border is naive at best. But neither is an economically failing regime in China's interest. In late 2017, China turned sod in preparation for refugee camps along the 880-mile border with North Korea in the event that the regime collapsed.⁸

How, then, was North Korea getting access to military resources? North Korea is economically isolated, and the Kim regime has little capacity to produce weapons materials domestically, as satellite images show that the country is almost entirely blacked out at night from a lack of power and infrastructure. The answer lies at sea, especially in the two main ports

⁶ Lee Kil-seong, "North Korean Hotel in China Forced to Close," *Chosun Ilbo*, January 10, 2018 ~ http://english.chosun.com/site/data/html_dir/2018/01/10/2018011001157.html.

⁷ Elizabeth Shim, "North Korea Blocks Mobile Phone Signals along China Border," United Press International, September 22, 2015 ~ https://www.upi.com/Top_News/World-News/2015/09/22/North-Korea-blocks-mobile-phone-signals-along-China-border/5011442942128.

⁸ Tom Phillips, "China Building Network of Refugee Camps along Border with North Korea," *Guardian*, December 12, 2017 ~ <https://www.theguardian.com/world/2017/dec/12/china-refugee-camps-border-north-korea>.

of Sinpo and Nampo. For years North Korea relied on shipping traffic, using either its own nationally flagged ships or ships flying under flags of convenience, to acquire resources. A famous case took place in 2014 when a North Korean ship, the *Chong Chon Gang*, a vessel with a long track record of smuggling, was intercepted leaving the Panama Canal.⁹ When authorities boarded the vessel, they discovered a missile shaft buried in the hull below crates of Cuban sugar. Another vessel was seized by Australian authorities for smuggling in heroin in 2003.¹⁰ If North Korea succeeded at gaining access to markets and resources, albeit shady ones, through the seas, how could sanctions be more effective?

Between May 2016 and January 2018, I collected data to explore this question by scanning maritime traffic entering North Korean waters.¹¹ Relying on automatic identification software, a tool used in the maritime industry to monitor and identify ships over a certain length and weight, I tracked the vessels entering North Korean waters and gathered information on their previous destinations, flags, owners, managers, and insurance providers. Other North Korea watchers and various government agencies also used this method to build a sense of what was going in and out of North Korea.

Maritime traffic into North Korea revealed three important findings. First, most ships entering North Korea either were DPRK-flagged or were North Korean vessels sailing under flags of convenience that were often managed by shell companies based in Hong Kong, Singapore, or various offshore tax havens. Second, vessels entering North Korean waters would often practice deceptive tactics, such as blacking out their transmitters, setting fake destination ports, or falsifying previous destinations. Third, almost all North Korean vessels claimed to have P&I certificates from legitimate insurance companies, many operating in Europe. The first two factors are common tactics that smugglers use in the maritime industry; as a result, there is extensive expertise on how to avoid authorities. However, the use of legitimate insurance companies to certify vessels opens an important pressure point against the Kim regime.

⁹ “N. Korean Ship Seized with Cuban Weapons ‘Free to Leave’ Panama,” BBC, February 9, 2014 ~ <https://www.bbc.com/news/world-latin-america-26103467>.

¹⁰ “N Korean Heroin Ship Sunk by Jet,” BBC, March 23, 2006 ~ <http://news.bbc.co.uk/2/hi/asia-pacific/4837484.stm>.

¹¹ For more information on the research discussed in this section, see Huish, “How to Sink the Hermit Kingdom”; and Huish, “The Failure of Maritime Sanctions Enforcement against North Korea.”

Every vessel over a certain weight and length needs P&I insurance to protect against open-ended risk and catastrophic loss, and it is required by most harbors in order to load and offload materials. It is issued through what are essentially not-for-profit clubs where all members (that is, the owners and managers of vessels) contribute annual “calls,” which are large financial buy-ins each year into a community pot. If a member experiences loss, it draws from the pot, and the following year its call is often inflated if it is welcomed back. The pots can reach sums in the hundreds of millions. Because such large sums of money are at stake, most P&I clubs are located near financial hubs in Europe or Asia.

If a particular vessel management company is operating without P&I insurance, it will be blocked from entering most international ports. Likewise, because P&I clubs have communal assets, if a member violates sanctions or various laws, its assets in the P&I club could be subject to seizure, which would be incredibly complicated as the funds are held collectively. This would only occur if sanctions specifically targeted the insurance provision of vessels, which is exactly what U.S. Executive Order 13810 and UN Security Resolution 2397 do. As a result, P&I insurance companies took drastic steps in 2017 and 2018 to ensure that their clubs were not insuring North Korean vessels, even those under flags of convenience. Previously, sanctions had blacklisted particular vessels from doing business in the issuers’ territory, but the role of P&I clubs remained ambiguous. The 2017 sanctions specifically included clauses against insurers of North Korean vessels, which forced the industry to acknowledge its role and respond. Legitimate P&I firms in the United Kingdom, Norway, and the Netherlands did due diligence to ensure that they had no connections to North Korean vessels, even to the point of contacting the automatic identification software databases to verify that their records were up to date. However, many P&I insurer websites continue to post information for claimant contacts in Pyongyang, suggesting that the relationship has not entirely been severed. Local agents would be responsible for channeling funds in the event of a claim, and this raises questions about whether financial linkages persist between North Korea and some of the P&I clubs.

Targeted sanctions against insurance providers were incredibly effective. Because the sanctions denied P&I certificates to North Korean vessels, the DPRK’s commercial fleet was prohibited from almost every port in the world. The European Union employed a similar strategy against Iranian tankers in 2005, when sanctions prohibited European insurers from covering those vessels. These sanctions stopped Iranian energy exports to

Europe within hours. When the 2017 sanctions took effect, North Korea lost almost all of its capacity for international trade, aside from some small-vessel traffic into Chinese waters. The Kim regime complained that the sanctions were overbearing, and shortly thereafter talks began about a joint Team Korea delegation for the 2018 Winter Olympics.

Even with stronger sanctions against North Korea's trading environment, the regime continued attempts to evade the pressure. In one case, it managed to actually export coal to South Korea by using a midway dumping station in Russia.¹² But this was largely an exception to the increasing isolation of the Kim regime. In early 2018, U.S., French, and Canadian military surveillance revealed that to avoid scrutiny at foreign ports, North Korean vessels were loading and offloading goods through high-risk sea-to-sea transfers.¹³ This kind of operation is dangerous, as the weather conditions must be nearly calm and crane operators must be highly skilled, while the volume of cargo that can be offloaded is minimal. Whereas a vessel in dock can offload thousands of tons of goods, at sea it can only transfer hundreds of tons. Thus, while this tactic may supply some material to the regime, it is hardly sufficient to match the quantities that were previously imported.

Second Time Lucky?

Could the maritime sanctions placed on North Korea be applied to other targets? Invoking smart sanctions is tough. Despotic leaders have extensive financial networks to avoid any direct pain from sanctions, while poor and marginalized populations often suffer greatly when food and medicine imports dry up. North Korea is one of the most unique geopolitical quagmires in the world. Completely isolated on its southern border, the country was also partially ostracized on its northern border with China, leaving it dependent on maritime trade and illicit trafficking by sea and a handful of functioning DPRK ports. In addition, some argue that the authoritarian economy left many North Koreans disconnected from any imports from the outside world, meaning that tighter sanctions did not significantly worsen their already miserable state of poverty and suffering.

¹² Guy Faulconbridge, Jonathan Saul, and Polina Nikolskaya, "Exclusive: Despite Sanctions, North Korea Exported Coal to South, Japan via Russia—Intelligence Sources," Reuters, January 25, 2018 ~ <http://www.reuters.com/article/us-northkorea-missiles-coal-russia/exclusive-despite-sanctions-north-korea-to-south-japan-via-russia-intelligence-sources-idUSKBN1FE35N>.

¹³ "Photos: North Korean Ship-to-Ship Fuel Transfer," *Maritime Executive*, February 27, 2018 ~ <https://www.maritime-executive.com/article/photos-north-korean-ship-to-ship-fuel-transfer#gs.MSLN4oA>.

The 2017 sanctions have thus far showed potency against North Korea, with maritime sanctions choking Kim's financial networks to the point that he was forced to change his tune from bellicose isolation to engaged diplomacy. From this experience, there is a lesson for designing effective sanctions that apply pressure to the target's environment rather than the target directly. How such sanctions are designed and executed matters a great deal, although, depending on the size of the target and the regional geography, they may be difficult to enforce.

To say that maritime sanctions that target P&I clubs are the definitive solution for smart sanctions is too broad. Because of North Korea's unique dependence on maritime trade, they proved effective, but a landlocked country, or a country with open land borders or a sizeable navy, would easily be able to skirt such sanctions. Moreover, blanket pressure on P&I clubs may cause serious disruption to international maritime trade. Indeed, there are already questions about the legitimacy of some P&I clubs and how money is stored, invested, and transferred. However, given that all major vessels rely on this form of unlimited liability protection, overbearing pressure could result in less transparency, underhanded practices, or complete chaos within the industry. Furthermore, considering that the maritime industry is laden with deceptive practices—from falsifying registries and flying flags of convenience to deceptive navigation practices—the P&I insurance clubs serve as a universal medium to ensure accountability. As such, governments should be wary of direct interference with the clubs or needless scrutiny. The case of North Korea demonstrates their tremendous capacity to self-regulate against sanctioned regimes.

Sanctions outsmarted Kim Jong-un. They also gave President Trump a unique opportunity to directly engage with Kim to attempt to change the regime's behavior. Whether the U.S. president will be able to take advantage of this opportunity is yet to be seen. Can sanctions be effective against other hostile targets? Indeed they can, as long as careful attention is paid to the economic and social geography in which the target operates. There may be better opportunities within maritime sanctions to scrutinize arms and drug trafficking through P&I insurance than to actually change the behavior of undesirable heads of state. But in this case at least, sanctions led to a strong victory through clever policy. ◆