

EVALUATING THE TRUMP ADMINISTRATION'S APPROACH TO SANCTIONS CASE: NORTH KOREA

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Introduction

Since taking power in January 2017, the Trump administration has overseen a dramatic escalation of sanctions¹ to pressure and punish US adversaries, including high profile cases against Iran, North Korea, Russia, and Venezuela.

Against this background, the Center on Global Energy Policy has launched a short series of critiques of the Trump administration's sanctions in the four cases mentioned. The series uses findings from the author's book, *The Art of Sanctions*, which recommends policy makers evaluate their sanctions decisions regularly to assess whether they are using sanctions effectively. It counsels that policy makers should have alternative strategies under development for use if they determine sanctions have or will likely fail to achieve their objectives. Further, the author enjoins those intent on using sanctions to recall that, like all foreign policy instruments, sanctions are only as good as the underlying strategy being pursued.

This commentary, the second in the series, examines the effectiveness of the sanctions put in place against North Korea. It assesses the sanctions approach within the parameters of the framework outlined in *The Art of Sanctions* and concludes with two recommendations for the Trump administration.

The author has been critical of the Trump administration's North Korea policy, but usually less so than with its approach to Iran when it comes to the development and execution of North Korea sanctions. In fact, the Trump administration has shown substantial inclination to work within the international system to apply sanctions against North Korea and receptivity to negotiations that it has not shown in other circumstances. Rather, the problems in US policy with respect to North Korea, particularly as it relates to the employ of sanctions, predate the Trump administration but have been lamentably exacerbated since 2018.

Assessing the Trump Administration's Sanctions Approach for North Korea

The *Art of Sanctions* recommends "a six-element process for developing a case-by-case approach for the imposition of sanctions."² Under these best practices, a state considering or

developing a sanctions regime should do the following:

1. Identify objectives for the imposition of pain and define minimum necessary remedial steps that the target state must take for pain to be removed;
2. Understand as much as possible the nature of the target, including its vulnerabilities, interests, commitment to whatever it did to prompt sanctions, and readiness to absorb pain;
3. Develop a strategy to carefully, methodically, and efficiently increase pain on those areas that are vulnerabilities while avoiding those that are not;
4. Monitor the execution of the strategy and continuously recalibrate its initial assumptions of target state resolve, the efficacy of the pain applied in shattering that resolve, and how best to improve the strategy;
5. Present the target state with a clear statement of the conditions necessary for the removal of pain, as well as an offer to pursue any negotiations necessary to conclude an arrangement that removes the pain while satisfying the sanctioning state's requirements; and
6. Accept the possibility that, notwithstanding a carefully crafted strategy, the sanctioning state may fail because of inherent inefficiencies in the strategy, a misunderstanding of the target, or an exogenous boost in the target's resolve and capacity to resist. Either way, a state must be prepared to acknowledge its failure and change course or to accept the risk that continuing with its present course could create worse outcomes in the long run.

Identify Objectives

The sanctioning state should identify objectives for the imposition of pain and define minimum necessary remedial steps that the target state must take for pain to be removed.

The Trump administration has been admirably clear about its objectives for the imposition of sanctions against North Korea: to compel the North Koreans to negotiate away their existing nuclear and missile programs, including their nuclear weapons and means of producing more. The Trump administration resurrected the previous US policy of seeking the comprehensive, verifiable, and irreversible dismantlement (CVID) of these programs, with the occasional exchange of the word “dismantlement” for “denuclearization,” offering a touch of ambiguity with respect to the missile program. This policy is also in accordance with a decision adopted by the UN Security Council (UNSC) in 2006, resolution 1718, that “decided” North Korea “shall abandon all nuclear weapons and existing nuclear programs in a complete, verifiable, and irreversible manner,” with a similar decision reached on other weapons of mass destruction and missile programs.³ By and large, the Trump administration has persisted in its presentation of the immutability of this objective, despite myriad opportunities to water it down in furtherance of negotiations. Even when challenged on the feasibility of this approach and the potential desirability of an incremental approach that postpones CVID until a later stage of negotiations or agreement implementation, the Trump administration has largely underscored that even if tactical considerations prompt them to seek something short of CVID in the interim, the objective of US policy remains CVID.



Understand the Target

The sanctioning state should understand as much as possible the nature of the target, including its vulnerabilities, interests, commitment to whatever it did to prompt sanctions, and readiness to absorb pain.

The real problem with the US strategy vis-à-vis North Korea is that it completely fails to take into account North Korean perceptions of North Korean national security interests. As the North Koreans have made clear for many years, they perceive the national security of their country to be inextricably linked to its ability to threaten disproportionate violence against potential adversaries. On one end of the spectrum, this finds realization via the ability of North Korea to attack Seoul with many thousand conventional artillery pieces, which could inflict hundreds of thousands of casualties on South Korea. On the other end of the spectrum, North Korea now possesses nuclear weapons and missiles that would permit it to attack a variety of targets in Japan, the Pacific Ocean, and potentially the West Coast of the United States. North Korea is also closing in on the ability to field an intercontinental ballistic missile (ICBM) that could conceivably target most of the rest of the United States. North Korea may believe it is only this ability to deliver unacceptable death tolls on the United States and its allies that has prevented the use of force against it for purposes of regime change. This is something one fellow member of the “Axis of Evil”—Iraq—experienced in 2003, and the other—Iran—has been threatened with several times in the last few decades. North Korea may also see Libya and Syria as cautionary examples of what happens to autocracies when stripped of their potential ability to produce nuclear weapons.

Regardless of its motivations, North Korea has been extremely reluctant to offer any serious proposals for the near-term elimination of its nuclear and missile programs, at least recently. In 2005, North Korea agreed to a joint statement at the six-party talks, in which it joined the other parties in “reaffirm[ing] that the goal of the six-party talks is the verifiable denuclearization of the Korean Peninsula in a peaceful manner.”⁴ In 2018, however, the North Koreans were prepared only to say they would commit “to work toward complete denuclearization of the Korean Peninsula.”⁵ As a variety of observers on both sides of the political spectrum have pointed out,⁶ this is a far weaker commitment than the previous one and suggests that North Korea believes its nuclear weapons programs provide it enhanced security and diplomatic benefits it would be reluctant to give up.

For this reason, though the sanctions strategy does target North Korean economic vulnerabilities with considerable precision (e.g., in the UNSC-issued prohibitions on North Korean foreign laborers after December 2019 and the persistent targeting of North Korean energy trade), it has yet to acknowledge that for North Korea, the benefits of possessing deliverable nuclear weapons are considerable, and their removal would present far more serious risks to the future of the regime than what sanctions promise.

Develop a Strategy

The sanctioning state should develop a strategy to carefully, methodically, and efficiently increase pain on those areas that are vulnerabilities while avoiding those that are not.

The absence of a coherent objective is a pity because the Trump administration’s sanctions



strategy, at least until early 2018, was efficient and well constructed. Eschewing its normal skepticism for the multilateral process, the Trump administration pursued multiple rounds of UN sanctions against North Korea through 2017. At the time, contacts within the UNSC's other delegations remarked to the author that the United States was very effective diplomatically in persuading other UNSC members to agree to the sanctions measures sought. Likewise, the United States showed considerable patience and persistence in its expansion of those sanctions, accepting partial measures initially and then using further North Korean missile or nuclear tests to argue convincingly in favor of the expansion of those provisions. A good example is the sanctions progression in energy related trade in 2017. On September 11, 2017, the UNSC voted in resolution 2375 to ban North Korea's import of all refined petroleum products above identified thresholds (500,000 barrels between October and December 2017 and 2 million barrels per year thereafter). This effectively created a cap on what North Korea could import for the remainder of 2017 and into the future. Three months later, the UNSC adopted a resolution (2397) that reduced the petroleum product cap to 500,000 barrels per year. Other provisions were included in both resolutions that tightened sanctions on North Korea progressively (such as relates to its export of seafood), but the overall principle was the same: the United States was prepared to tighten sanctions incrementally, as the international political atmosphere permitted. The United States also added its own complementary authorities during this time, with new executive orders combining with the provisions of 2017's Countering America's Adversaries Through Sanctions Act to create a multifaceted sanctions regime that effectively permits the targeting of sanctions on North Korea's primary economic sectors as well as those who seek to evade or facilitate the evasion of US sanctions. However, the cupboard of new ideas for sanctions is increasingly bare as a result of these efforts.⁷

Put simply, there is no further US legislation necessary to generate maximum pressure on North Korea; the imperative now is on action and—more specifically—on enforcement of measures against North Korea's enablers and business partners around the world. If pressure is to be maximized, new UNSC sanctions are not necessary; recommitment to them by UN member states is what is required. Likewise, for the United States, intelligence gathering, sanctions case building, and execution are what is missing today, not law.

Monitor Implementation

The sanctioning state should monitor the execution of the strategy and continuously recalibrate its initial assumptions of target state resolve, the efficacy of the pain applied in shattering that resolve, and how best to improve the strategy.

Monitoring has been at the core of the US and UNSC sanctions strategy. Unfortunately, the reports coming out of this monitoring have been disappointing: the UN Panel of Experts, tasked by the UNSC with observing and reporting on sanctions implementation, continues to report widespread evasion of UN sanctions against North Korea, including across all the major elements of the pressure campaign, especially in finance, energy, and arms.⁸ Likewise, the United States has imposed several rounds of sanctions against a number of front companies and other entities engaged in sanctions evasion and smuggling activities. A preponderance of these entities has been based out of China and Russia, which—coming from permanent members of the UNSC—is particularly pernicious to sending a strong message of UNSC unity



to North Korea and other members of the international community.

The question, therefore, becomes what to do with these frequent, persistent indications of disregard for UNSC sanctions.

As strange as it may sound, one common theme offered by Trump administration critics and supporters alike is that previous administrations have been largely content to let existing sanctions pressure and attempts to negotiate do their work for them. There have been moments when predecessors have been forced to deal with North Korea or have made concerted efforts to address its myriad challenges, but underlying much of it all has been a sense of assurance that two facts are immutable: North Korea is on the precipice of collapse, and until then, it can be contained and managed. If it can be contained and managed until that collapse arrives—borne by the innumerable contradictions of the North Korean system and difficulty operating as it does in the modern era—then bold policy steps are less urgently needed. In fact, even when North Korea occupied very senior level interest (e.g., when Bill Clinton considered whether to seek a missile related deal with North Korea at the end of his term,⁹ or the six-party talks during George W. Bush's administration), the sense that North Korea could wait for a later date often took away from the imperatives presented by the country and its threats.

As a consequence, though the United States has imposed sanctions on North Korea and against some of its enablers in other parts of the world, the United States has yet to put forward the same sort of “whole of government” sanctions and diplomatic pressure strategy it enlisted from 2006 through 2013 against Iran, for example.¹⁰ The United States has also yet to prioritize North Korea such that it moves other topics farther down the list and is prepared to accept risk and damage from the use of the sanctions tools it wields. The international community has become somewhat desensitized to what such pressure could look like and no longer puts North Korea-related risks high on its list of concerns. In conversations with international banks and companies, the focus is less on the risk of North Korea-related sanctions and compliance challenges and more on Iran, Russia, and Venezuela. To regain the initiative and international attention, the United States is going to have to move beyond rhetoric to convince banks and companies to avoid doing business with North Korea and those who facilitate its activities. Contrast this, for example, with Iran-related sanctions, when even limited sanctions on a subsidiary of a Chinese shipping company created ripples in the global transportation sector that linger to this day.¹¹

In all likelihood, use of such sanctions measures will come at a cost for the United States, potentially imperiling its ability to secure a trade deal with China as well as managing other sanctions cases of interest (i.e., Iran and Venezuela). Likewise, by placing North Korea at the top of the agenda, the United States would have to prioritize it over “great power competition” related topics—such as those involving the South China Sea or technology transfer—that is, at best, inconsistent with the stated national security strategy of the United States. Such steps can be taken, of course, but should be done only in the context of a realistic appraisal of what costs would be borne as a consequence.

Until the United States is prepared to truly focus on North Korea, it will likely have to accept the halting implementation of measures that has been the hallmark of North Korea sanctions for over a decade.



Explain Removal

The sanctioning state should present the target state with a clear statement of the conditions necessary for the removal of pain as well as an offer to pursue any negotiations necessary to conclude an arrangement that removes the pain while satisfying the sanctioning state's requirements.

As with the identification of its objectives, the Trump administration has been relatively clear about the terms under which it would remove *all* the sanctions in place against North Korea. The greater difficulty has come in its elucidation of the possibility of incremental sanctions removal in exchange for incremental nuclear or missile concessions by North Korea. A variety of press reports indicate that the United States has either made such an offer or would be prepared to do so, which US envoy to North Korea Steve Biegun seemed to confirm in a speech at Stanford in January 2019 when he said, “We have communicated to our North Korean counterparts that we are prepared to pursue—simultaneously and in parallel—all of the commitments our two leaders made in their joint statement at Singapore last summer.”¹²

Subsequently, however, Biegun said, “We are not going to do denuclearization incrementally.”¹³ Moreover, the stance taken by Donald Trump during his meeting with North Korea's leader, Kim Jong Un, in Hanoi, Vietnam, in February 2019 was decidedly against an incremental approach, with Trump himself reportedly seeking one single agreement and steps taken by both sides to not only denuclearize North Korea but also restore relations, end the Korean War, and end sanctions against North Korea.¹⁴

Although seeking one grand bargain is probably unrealistic on the simple grounds of a lack of confidence between the United States and North Korea, it is reasonable to argue that this at least is a clear and accurate statement of the conditions for sanctions removal. That is admirable and provides North Korea with an unmistakable understanding of the US negotiating objectives and terms for a deal. The problem, as outlined above, is that these objectives are directly counter to North Korea's own and could contribute to a North Korean perception that the United States is attempting to deceive the North Koreans into capitulation. It is possible that North Korea is also sobered by the possibility that an agreement reached with the Trump administration may not be sustained after Donald Trump is out of office, as the Iran case demonstrates. For this reason, though the Trump administration has gained some of the benefits of clarity in its sanctions removal position, the juxtaposition of its demands may undermine its value.

Prepare Alternatives

The sanctioning state should accept the possibility that, notwithstanding a carefully crafted strategy, it may fail because of inherent inefficiencies in the strategy, a misunderstanding of the target, or an exogenous boost in the target's resolve and capacity to resist. Either way, a state must be prepared to acknowledge its failure and change course or to accept the risk that continuing with its present course could create worse outcomes in the long run.

More than anything, the problems with the US strategy pursued before the Trump administration and certainly throughout it stem from an inability or unwillingness to consider thoroughly alternative policy approaches or to commit fully to the course of action elected. The



result has been half-hearted sanctions that have expanded along with a North Korean nuclear and missile capability that continues to be enhanced in real terms and as a national priority.

The author has suggested, in several commentaries on the website 38 North, a reexamination of US policy goals with respect to North Korea and has recommended consideration of an approach that emphasizes strategic stability, arms control, and crisis mitigation.¹⁵

However, *even in the context of the existing strategy*, the United States can probably do more to incentivize North Korean participation in serious talks. According to various accounts, the offers made to North Korea in Hanoi were so robust and far reaching that they were considered unworkable by Kim Jong Un.¹⁶ The attempt made by Steve Biegun in Stockholm was, by contrast, described by Kim as “sickening,”¹⁷ probably because—according to Chinese and US experts briefed on the talks—the offer made was of exceptionally limited scope, involving a vague offer to consider a peace declaration for the Korean War, setting up interest sections in each other’s capitals, and promising to consider sanctions relief.

The United States should invest the time and effort now into developing a detailed, thorough, sequenced approach to first stabilizing and then improving the situation. This can and should start with an elaboration to North Korea of the dual track strategy the United States intends to pursue, depending on how North Korea itself responds. This would include a clear statement of the potential for the pressure track and a description of the types of sanctions steps that may be involved but, importantly, also a description of the types of sanctions relief steps that would be on offer as well as other incentives. The United States could make an attempt to pair some of the nuclear-related concessions it would request of North Korea with sanctions relief items, but the emphasis ought to be on key principles: that a negotiation could result in an agreement with a step-by-step format for confidence building and verification, that initial good faith steps by North Korea would be matched in turn, and that sanctions relief early on in the process would provide immediate value to North Korea. It could identify such steps explicitly, such as the suspension of UNSC sanctions on North Korean exports, imports of luxury goods and fuel, and foreign laborers. The approach could also identify longer-term sanctions relief options, as well as the sorts of implementation challenges that would be involved in executing them and the reforms North Korea might be required to make to bring relief to fruition (including banking reform, compliance with international standards to prevent money laundering and illicit activity, etc.). Finally, the outline would also—ideally—provide some color on the types of explicit steps that the United States, UNSC, and other parties would have to take to make sanctions relief a reality.

Put another way, if maximum pressure is to work, the United States would have to demonstrate to North Korea the other side of the equation, not with overly optimistic videos of commercial and economic vitality but rather with detailed, well-thought-out, and articulated plans for implementation.

Conclusions

2020 may see a return of “fire and fury” rhetoric from Washington and the launching of new missiles—or even nuclear weapons tests—by North Korea. Beyond serving as a regrettable reset in relations to their previous deep chill, the absence of progress in the diplomatic track and at such a senior level would be very damaging to the prospects of diplomacy



altogether. As many other observers and the author have noted, when Trump elected to begin negotiations with North Korea at the summit level, the risk of failure was that both Trump and Kim would assume that if they could not achieve success, no one could. Such delegitimization of diplomacy could very well mean that, so long as Trump is president, it will be difficult to restart serious talks between the two sides. Given that sanctions are intended to support the diplomatic process, this would also not augur well for the effectiveness of sanctions as a tool, especially in the context of lackluster implementation.

The Trump administration should take advantage of the narrowing window it has for a real diplomatic process to offer the North Koreans a serious, substantive, incremental proposal that—if executed—would build confidence on both sides in that process and permit a real relaxation of tensions. The United States should also use the time required to digest this proposal to begin laying the groundwork with partners for not only an escalation of sanctions pressure but a recommitment to it by the United States, its UNSC counterparts, and other members of the international community. This may require shifting other priorities farther down the list or seeking to resolve them sooner rather than later to clear space in diplomatic channels for the North Korean issue. More than anything, the United States should stop behaving and planning as if North Korean capitulation or collapse is an inevitability, and it should treat the country—and its leadership—as perhaps unfortunate but likely a long-term reality of international relations that merit sober, serious engagement.

Acknowledgments

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Notes

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