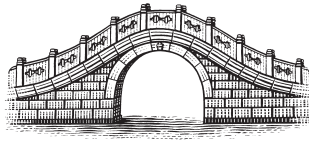


# The Failure of Maritime Sanctions Enforcement against North Korea

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**KEYWORDS:** NORTH KOREA; SANCTIONS; HUMAN RIGHTS; MARITIME TRAFFIC

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## EXECUTIVE SUMMARY

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This article examines the ineffectiveness of current sanctions on marine traffic into the Democratic People's Republic of Korea (DPRK) by identifying four weaknesses that allow traffic there to continue: flags of convenience, misidentification or false registration, offshore ownership, and shell-firm owners, managers, and insurers.

### MAIN ARGUMENT

Based on a review of automatic identification system data tracking approximately 70 vessels that entered DPRK ports between April 2016 and October 2016, current sanctions on North Korea do not appear to be impeding marine traffic into the country. The majority of marine traffic into the DPRK during this period was from Chinese ports by vessels flagged by several countries in Africa, the Caribbean, and the DPRK. The registration and flagging of vessels trading with North Korea occurs via offshore firms that are based outside sanctions enforcement zones in places such as Hong Kong, the British Virgin Islands, and the Seychelles. Sanctions against North Korea are thus largely symbolic gestures of disapproval that do not demonstrate any capability to change the political behavior of the Kim Jong-un regime. For sanctions to influence the regime's behavior, it would be necessary to pursue restrictions on the capital flows that allow marine traffic to enter the country rather than sanctioning the regime itself.

### POLICY IMPLICATIONS

- The role of offshore capital reduces the potency of smart sanctions and recent financial measures against North Korea. If offshore interests are not taken into consideration, then it is unlikely that these policies will have any real effect on the regime's political behavior.
- The intermediaries of vessel owners, managers, and insurers are all financially gaining from trade with the DPRK, which presents an important target for financial measures. Insurers of some of these vessels are situated in countries that do uphold sanctions, notably the United Kingdom, Switzerland, the Netherlands, South Korea, and New Zealand.
- The Banco Delta Asia case demonstrates an important aperture in sanctions enforcement by relying on financial measures that do not target the regime itself but go after the surrounding capital networks on which it relies.

In February 2016 the United States escalated its enforcement of sanctions against the Democratic People's Republic of Korea (DPRK), and in June 2016 it imposed a new set of prohibitions on the regime, citing evidence of gross human rights violations.<sup>1</sup> Sanctions, in the form of financial restrictions and the prohibition of marine traffic, have been increasingly imposed on a global scale against the DPRK in the past several years.<sup>2</sup> Many scholars and policy analysts have long questioned the efficacy of sanctions to alter the behavior of hostile countries or thwart human rights abuses.<sup>3</sup> This article analyzes the efficacy of current sanctions on the DPRK, specifically those focused on curtailing marine traffic into the country.

Despite the latest round of UN Security Council sanctions in March 2016 and U.S. sanctions in June 2016, marine traffic into the DPRK continued throughout 2016. Between April 2016 and October 2016, I used automatic identification system (AIS) software from the International Maritime Organization (IMO) to analyze marine traffic into active DPRK ports and identified approximately 70 incoming vessels, mostly arriving from Chinese ports but also from other locations, including a vessel that traveled to Sinpo harbor from Vancouver, Canada. While the methods used in this article are insufficient to produce a conclusive account of all marine traffic into the DPRK, this study finds that, despite the existence of sanctions, marine traffic regularly enters DPRK ports owing to the reflagging of vessels under flags of convenience and ownership of vessels by offshore capital management firms. This suggests that the Kim Jong-un regime has the means to bypass many of the sanctions that are currently in place.

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<sup>1</sup> UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review—Democratic People's Republic of Korea," January 4, 2010 ~ [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KP/A\\_HRC\\_13\\_13\\_PRK\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KP/A_HRC_13_13_PRK_E.pdf); Elise Lobbott and Ryan Browne, "U.S. Sanctions North Korean Leader for First Time over Human Rights Abuses," CNN, July 8, 2016 ~ <http://edition.cnn.com/2016/07/06/politics/north-korea-kim-jong-un-human-rights/>; Kim Tae-woo, "Human Rights in North Korea: The Real Key to Denuclearization," *Diplomat*, July 26, 2016 ~ <http://thediplomat.com/2016/07/human-rights-in-north-korea-the-real-key-to-denuclearization/>; and "Treasury Sanctions North Korean Senior Officials and Entities Associated with Human Rights Abuses," U.S. Department of the Treasury, Press Release, July 6, 2016 ~ <https://www.treasury.gov/press-center/press-releases/Pages/jl0506.aspx>.

<sup>2</sup> Carol Morello, "U.S. Sanctions North Korean Leader Kim Jong Un," *Washington Post*, July 6, 2016 ~ [https://www.washingtonpost.com/world/national-security/us-sanctions-north-korean-leader-kim-jong-un/2016/07/06/af0da71c-4390-11e6-bc99-7d269f8719b1\\_story.html](https://www.washingtonpost.com/world/national-security/us-sanctions-north-korean-leader-kim-jong-un/2016/07/06/af0da71c-4390-11e6-bc99-7d269f8719b1_story.html); and "Treasury Sanctions North Korean Senior Officials."

<sup>3</sup> See, for example, Navin A. Bapat and Bo Ram Kwon, "When Are Sanctions Effective? A Bargaining and Enforcement Framework," *International Organization* 69, no. 1 (2015): 131–62; A. Cooper Drury, "Sanctions as Coercive Diplomacy: The U.S. President's Decision to Initiate Economic Sanctions," *Political Research Quarterly* 54, no. 3 (2001): 485–508; Nikolay Marinov, "Do Economic Sanctions Destabilize Country Leaders?" *American Journal of Political Science* 49, no. 3 (2005): 564–76; and Alex Vines, "The Effectiveness of UN and EU Sanctions: Lessons for the Twenty-First Century," *International Affairs* 88, no. 4 (2012): 867–77.

By illuminating these marine traffic patterns and analyzing how they undermine the efficacy of sanctions, this article contributes to the current policy debates on both North Korea and the effectiveness of sanctions more generally. UN and state sanctions all directly target marine traffic into the DPRK by taking financial measures against the owners, insurers, and managers of the vessels that are connected to the regime. This article identifies several trading entities that supply the regime and suggests that in many cases the firms are offshore shell companies that fall outside direct sanctions enforcement. There are also cases of sanctions violations by vessels that are insured or owned within UN-complying jurisdictions, but no evidence exists to suggest any attempt to enforce sanctions by seizing assets or imposing financial penalties on the owners. This article thus demonstrates that sanctions, taken together, fall short of their desired efficacy due to the DPRK's offshore capital networks and the lack of political will for enforcement. It is organized into the following four sections:

- ≈ pp. 134–37 provide an overview of sanctions theory.
- ≈ pp. 137–45 describe recent sanctions enacted against the DPRK.
- ≈ pp. 145–50 examine maritime traffic into North Korea and analyze four weaknesses in the sanctions regime related to vessel reflagging, false identification, offshore vessel ownership, and poor oversight of maritime insurance companies.
- ≈ pp. 150–52 consider potential options for addressing these weaknesses to make sanctions against the Kim regime more effective.

#### THE THEORY OF SANCTIONS FROM “NAIVE” TO “SMART”

The proximity of South Korea's population to a hostile North is a unique geopolitical quandary, which has resulted in soft engagement, rather than hard military engagement, with the regime, most recently through sanctions. The instrumental theory of sanctions suggests that denying resources to hostile regimes, or excluding the target from the foreign community, will invoke behavioral change.<sup>4</sup> George Lopez and David Cortright interpret instrumental sanctions as assuming that a repressed population in a target

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<sup>4</sup> William H. Kaempfer and Anton D. Lowenberg, “The Theory of International Economic Sanctions: A Public Choice Approach,” *American Economic Review* 78, no. 4 (1988): 786–93.

state “will redirect the pain of sanctions onto authoritarian political leaders” to bring about policy changes.<sup>5</sup>

Many scholars, however, suggest that sanctions do not result in behavioral change; if anything, they lead the target state to create new geopolitical relationships with nations not directly in the line of sight of the sanctions.<sup>6</sup> Johan Galtung called the intentions of such sanctions “naive” in hoping for a “proportionate relation” between value deprivation and political disintegration.<sup>7</sup> Peter van Bergeijk argues that sanctions can only have a real effect if a target nation is an active participant in free-market, liberalized geographies of trade.<sup>8</sup> Cuba, for example, faces one of the longest, and often well-enforced, packages of economic sanctions in history, yet many scholars agree that this policy has done little to influence the Cuban government. If anything, the measures strengthened its position of power.<sup>9</sup> As Navin Bapat and Bo Ram Kwon suggest, many nations that impose sanctions do not have the political appetite to enforce penalties on their own citizens and entities that violate them.<sup>10</sup> And even if enforcement is carried out, often the leaders of hostile governments will have the personal capacity to circumvent sanctions, while the general population suffers greatly due to a broader lack of resources.<sup>11</sup>

Considering this existing scholarship, the pursuit of targeted financial measures, or “smart” sanctions, has been lauded as a means of geopolitical influence by limiting access to resources used by the governing authorities

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<sup>5</sup> George A. Lopez and David Cortright, “Financial Sanctions: The Key to a ‘Smart’ Sanctions Strategy,” *Die Friedens-Warte* 72, no. 4 (1997): 327–36.

<sup>6</sup> Abel Escribà-Folch, “Authoritarian Responses to Foreign Pressure: Spending, Repression, and Sanctions,” *Comparative Political Studies* 45, no. 6 (2012): 683–713; Dean Lacy and Emerson Niou, “A Theory of Economic Sanctions and Issue Linkage: The Roles of Preferences, Information, and Threats,” *Journal of Politics* 66, no. 1 (2004): 25–42; David Lektzian and Mark Souva, “An Institutional Theory of Sanctions Onset and Success,” *Journal of Conflict Resolution* 51, no. 6 (2007): 848–71; T. Clifton Morgan, “Hearing the Noise: Economic Sanctions Theory and Anomalous Evidence,” *International Interactions* 41, no. 4 (2015): 744–54; and Manuel Oechslin, “Targeting Autocrats: Economic Sanctions and Regime Change,” *European Journal of Political Economy* 36 (2014): 24–40.

<sup>7</sup> Johan Galtung, “On the Effects of International Economic Sanctions, with Examples from the Case of Rhodesia,” *World Politics* 19, no. 3 (1967): 378–416.

<sup>8</sup> Peter A.G. van Bergeijk, *Economic Diplomacy and the Geography of International Trade* (Northampton: Edward Elgar, 2009).

<sup>9</sup> Daniel W. Fisk, “Economic Sanctions: The Cuba Embargo Revisited,” in *Sanctions as Economic Statecraft*, ed. Stephen Chan and A. Cooper Drury (London: Palgrave MacMillan, 2000); and William M. LeoGrande, “Normalizing U.S.-Cuba Relations: Escaping the Shackles of the Past,” *International Affairs* 91, no. 3 (2015): 473–88.

<sup>10</sup> Bapat and Kwon, “When Are Sanctions Effective?”

<sup>11</sup> Drury, “Sanctions as Coercive Diplomacy.”

rather than the entire population.<sup>12</sup> This involves policies that would either cause personal discomfort to leaders in the target nation or deny the availability of resources for their hostile objectives.<sup>13</sup> William Kaempfer and Anton Lowenberg argue that sanctions of minimal economic hardship can invoke political change if they are targeted at specific interest groups or ruling classes.<sup>14</sup>

Despite the enthusiasm for smart sanctions, challenges remain. There is the risk that financial measures could be overused, abused, or misused as a go-to foreign policy solution, which could seriously compromise their credibility and effectiveness.<sup>15</sup> Targeted sanctions on arms create a black market, visitor travel bans have no effect on persons with multinational citizenship, targeted trade sanctions can disrupt local economies for vulnerable populations, and financial sanctions are difficult to enforce considering the role of offshore capital.<sup>16</sup> A study by Daniel Drezner concluded that “no systematic evidence” exists to demonstrate that “smart sanctions will yield better policy results vis-à-vis the targeted country.”<sup>17</sup>

Moreover, smart sanctions that propose a targeted approach on key actors still assume a narrow geopolitical view by focusing on the relationship between the issuer and the target. T. Clifton Morgan argues that a new theory of sanctions is needed where instead of imposing sanctions “as an effort to induce the target to act differently...we should view sanctions as an effort to have a direct effect on the environment in which the target makes its decisions.”<sup>18</sup> As Lopez and Cortright argue, financial sanctions have little effect if the target has time to move assets to secure locations.<sup>19</sup> The role of offshore capital, as will be further discussed in this article, has reduced the potency of recent financial measures and other smart sanctions against North Korea inasmuch as the offshore companies that facilitate trade with

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<sup>12</sup> Joy Gordon, “Smart Sanctions Revisited,” *Ethics and International Affairs* 25, no. 3 (2011): 315–35; Gary Clyde Hufbauer and Barbara Oegg, “Targeted Sanctions: A Policy Alternative?” (paper presented at the Peterson Institute for International Economics symposium “Sanctions Reform? Evaluating the Economic Weapon in Asia and the World,” Washington, D.C., February 23, 2000); and Arne Tostensen and Beate Bull, “Are Smart Sanctions Feasible?” *World Politics* 54, no. 3 (2002): 373–403.

<sup>13</sup> Michael Brzoska, “From Dumb to Smart? Recent Reforms of UN Sanctions,” *Global Governance* 9, no. 4 (2003): 519–35.

<sup>14</sup> William H. Kaempfer and Anton D. Lowenberg, “The Theory of International Economic Sanctions: A Public Choice Approach,” *American Economic Review* 78, no. 4 (1988): 786–93.

<sup>15</sup> Sue E. Eckert, “The Use of Financial Measures to Promote Security,” *Journal of International Affairs* 62, no. 1 (2008): 103–11.

<sup>16</sup> Gordon, “Smart Sanctions Revisited.”

<sup>17</sup> Daniel W. Drezner, “Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice,” *International Studies Review* 13, no. 1 (2011): 96–108.

<sup>18</sup> Morgan, “Economic Sanctions Theory.”

<sup>19</sup> Lopez and Cortright, “‘Smart’ Sanctions Strategy.”

the Kim regime are largely immune from sanctions or enforcement.<sup>20</sup> While sanctions theory has evolved considerably, sanctions practice against North Korea remains narrow by targeting capital flows between the regime and the sanctioning countries themselves, which has proved insufficient.<sup>21</sup>

## RECENT SANCTIONS AGAINST NORTH KOREA

The dual purpose of international sanctions on vessel traffic and trade to the DPRK is to encourage the regime to abandon its nuclear program and to punish it for evident human rights violations. The severity of the human rights crisis in North Korea has been described as “deeply disturbing” at best and “unimaginable” at worst.<sup>22</sup> Some 200,000 political prisoners are held in labor camps.<sup>23</sup> The country abides by a feudal system of order and control known as the *songbun* system, a class-based ranking of persons into “loyal,” “wavering,” or “hostile” to the Kim dynasty.<sup>24</sup> Evidence suggests that the regime systematically holds public executions, institutes capital punishment without judicial process, engages in torture and intimidation, enacts censorship, and organizes state-authorized violence against civilians.<sup>25</sup>

What’s more, the Kim regime continues to pursue nuclear proliferation, despite international laws that prohibit it. In 2009 the DPRK declared that it possessed nuclear weapons and delivery vehicles. Outside North Korea, the Kim regime’s pursuit of nuclear technology is a security concern that routinely frustrates the international community. However, within the DPRK, the nuclear program is a dominant force in the cultural hegemony of the regime. The government routinely celebrates the program as a needed protection for the autonomy of the country. North Korea spends a quarter of its GDP on military activities, yet it cannot ensure the most basic resources for its own population.

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<sup>20</sup> Mark P. Hampton and John Christensen, “Offshore Pariahs? Small Island Economies, Tax Havens, and the Re-configuration of Global Finance,” *World Development* 30, no. 9 (2002): 1657–73.

<sup>21</sup> Tostensen and Bull, “Are Smart Sanctions Feasible?”

<sup>22</sup> Robert M. Collins, *Marked for Life: Songbun, North Korea’s Social Classification System* (Washington, D.C.: Committee for Human Rights in North Korea, 2012); Vaclav Havel, Kjell Bondevik, and Elie Wiesel, “Turn North Korea into a Human Rights Issue,” *Spiegel*, October 31, 2006 ~ <http://www.spiegel.de/international/opinion-turn-north-korea-into-a-human-rights-issue-a-445594.html>; and “North Korea: Events of 2015,” Human Rights Watch, World Report 2016, 2016 ~ <https://www.hrw.org/world-report/2016/country-chapters/north-korea>.

<sup>23</sup> Tania Branigan, “North Korea Holds 200,000 Political Prisoners, Says Amnesty,” *Guardian*, May 4, 2011 ~ <https://www.theguardian.com/world/2011/may/04/north-korea-political-prisoners-amnesty>.

<sup>24</sup> Collins, *Marked for Life*.

<sup>25</sup> UN Human Rights Council, “Report of Working Group.”

**Table 1** provides an overview of sanctions on DPRK vessels. These restrictions are meant to restrict the movement of any vessel owned, managed, or operated by the Kim regime. The United Nations listed 31 North Korean “blacklisted” vessels under Resolution 2270.<sup>26</sup> This list is meant to include vessels that are flagged in the DPRK or owned by the Kim regime under the Pyongyang-based company Ocean Maritime Management, as well as those that are sailing under flags of convenience but that are ultimately operated by the regime (see **Table 2**).<sup>27</sup> However, many vessels on this list have since been reflagged in third countries, and ownership data suggests that they are controlled by offshore shell companies, some of which are traceable through the International Consortium of Investigative Journalists’ Offshore Leaks Database, which contains information from the Panama Papers.<sup>28</sup> Many vessels on this list continue to facilitate trade with Pyongyang while being insured by European, UK, and U.S. companies.

On July 7, 2016, the U.S. Treasury Department enacted new sanctions specifically targeting Kim and ten other top officials in the DPRK.<sup>29</sup> The recent seizure orders by the United States exhibit a political willingness to act in response to the human rights crisis in North Korea, in addition to addressing the nuclear proliferation threat from the Kim regime. The sanctions freeze any property that Kim or his colleagues have in U.S. jurisdictions. The Treasury Department bases the sanctions on “North Korea’s notorious abuses of human rights...and to further our efforts to expose those responsible for serious human rights abuses and censorship in North Korea.”<sup>30</sup> Executive Orders 13722 and 13687 target individuals who “have engaged in, facilitated, or been responsible for an abuse or violation of human rights by the Government of North Korea or the Workers’ Party of Korea” and who could assist in the regime’s nuclear proliferation goals.<sup>31</sup> This executive order aims to punish these officials by confiscating any assets that they may have in the United States and U.S. territories.<sup>32</sup>

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<sup>26</sup> “Security Council Imposes Fresh Sanctions on Democratic People’s Republic of Korea, Unanimously Adopting Resolution 2270 (2016),” UN Security Council, Press Release, March 2016.

<sup>27</sup> “Flag of convenience” is a term applied to a vessel that is flagged under a foreign country, without any real connection to it, in order to avoid financial restrictions.

<sup>28</sup> “Orion House Services HK,” Offshore Leaks ≈ <https://offshoreleaks.icij.org/nodes/11001746>.

<sup>29</sup> “Treasury Sanctions North Korean Officials.”

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> Lobbott and Browne, “U.S. Sanctions North Korean Leader.”





TABLE 1  
*Marine Vessel Sanctions against North Korea*

Country/organization	Vessel registration	Insurance	Flagging	Ownership	Leasing	Management	DPRK-flagged vessels banned from domestic ports	Ban on imports from and exports to the DPRK	Acts and laws
Canada	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Yes	Prohibited	Adoption of UN Resolution 2270, Special Economic Measures Act
China	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Mandatory inspections of vessels for contraband items	Prohibition on imports of North Korean coal and iron	Adoption of UN Resolution 2270, Special Economic Measures Act
European Union	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Yes	Partial ban on exports and imports related to military use	EU Regulation 2016/682
Japan	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Total ban on all vessels that have entered North Korean ports regardless of flagging	Prohibited since early 2016	Adoption of UN Resolution 2270
New Zealand	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Mandatory inspections of vessels for contraband items	Prohibited	Adoption of UN Resolution 2270
Norway	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Mandatory inspections of vessels for contraband items	Partial ban on exports and imports related to military use	Adoption of UN Resolution 2270

Table 1 continued

Country/organization	Vessel registration	Insurance	Flagging	Ownership	Leasing	Management	DPRK-flagged vessels banned from domestic ports	Ban on imports from and exports to the DPRK	Acts and laws
South Korea	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Total ban on all vessels that have entered North Korean ports within 180 days	Other than special economic cooperation programs, all imports and exports are prohibited	Adoption of UN Resolution 2270 with additional measures
United Kingdom	Prohibited	Applications can be made for special circumstances, otherwise not permitted	Prohibited	Prohibited	Prohibited	Prohibited	Special circumstances only	Partial ban on imports; ban on exports related to military use	Export Control Orders 2008 (SI 2008/3231), 2007 (SI 2007/1334)
United Nations	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Mandatory inspections of vessels for contraband items	Ban on importing materials for military use; ban on exporting goods that could generate profit for the regime; prohibition of luxury goods	UN Resolution 2270; Security Council Decision 2016/476
United States	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Yes	Total ban on all imports; ban on certain exports, notably arms and luxury goods	Executive Order 13466

TABLE 2  
*List of Ships Blacklisted by the UN Security Council under Resolution 2270*

IMO	Name	Management	Insurance	Home port	Flagged	Notes
7640378	<i>Tan Chon</i>	Myongsan Marine	Unknown	Pyongyang	North Korea	-
7937317	<i>Chong Chon Gang</i>	Chong Chon Gang Shipping	Unknown	Pyongyang	North Korea	-
8018900	<i>Ji Hye San</i>	Haejin Ship Management	London P&I	Pyongyang	North Korea	-
8018912	<i>Ryong Rim</i>	Haejin Ship Management	London P&I	Pyongyang	North Korea	AIS Broadcast as Nauticast; harbored in Buenaventura (COBUN), Colombia, on October 10, 2016
8133530	<i>Song Jin</i>	Haejin Ship Management	South of England P&I	Pyongyang	North Korea	-
8330815	<i>Hu Chang</i>	Myongsan Marine	Unknown	Pyongyang	North Korea	-
8405270	<i>Hui Chan</i>	Pyongjin Ship Management	West of England P&I	Pyongyang	North Korea	-
8405402	<i>Gold Star 3</i>	Hua Heng Shipping	West of England P&I	Hong Kong	Cambodia	Removed from list; heading to Nampo harbor as of October 12, 2016; connections to Orion House in the Offshore Leaks Database
8412467	<i>South Hill 2</i>	Hua Heng Shipping	West of England P&I	Hong Kong	Sierra Leone	-
8511823	<i>Grand Karo</i>	East Grand Shipping	Unknown	Hong Kong	Cambodia	-
8606173	<i>Chol Ryong</i>	Haejin Ship Management	Unknown	Pyongyang	North Korea	-

Table 2 continued

IMO	Name	Management	Insurance	Home port	Flagged	Notes
8602531	<i>JH 86</i>	Heng Li Marine	West of England P&I	Yantai	Cambodia	Removed from list; owned by Heng Li Marine, an offshore firm connected to Orion House
8625545	<i>Ra Nam 2</i>	Korea Samilpo Shipping	West of England P&I	Pyongyang	North Korea	Destined for Japanese port of Nakanoseki as of October 12, 2016
8661575	<i>Tong Hung 1</i>	Tong Hung Shipping and Trading	Unknown	Pyongyang	North Korea	–
8713471	<i>Mi Rim</i>	Mirim Shipping	West of England P&I	Pyongyang	North Korea	Ties to Mirim Limited in the British Virgin Islands, according to the Offshore Leaks Database
8819017	<i>Se Pho</i>	Haejin Ship Management	Unknown	Pyongyang	North Korea	–
8829555	<i>Po Thong Gang</i>	Ocean Marine Management	Unknown	Pyongyang	North Korea	Broadcasting as <i>O Rang</i>
8829593	<i>Kang Gye</i>	Ocean Marine Management	Unknown	Pyongyang	North Korea	Double broadcast of IMO number as a U.S. military ship named ATLS-9701 (MMSI number)
8909575	<i>Chong Bong</i>	Hua Heng Shipping	Steamship Mutual P&I	Hong Kong	North Korea	Links to Orion House, according to the Panama Papers
8914934	<i>Everbright 88</i>	Bali Shipping	Korea P&I Club	Hong Kong	Sierra Leone	Removed from list; formerly named <i>J Star</i>
8916293	<i>Chong Rim 2</i>	Ocean Bunkering	Unknown	Pyongyang	North Korea	–
8987333	<i>Ryo Myong</i>	Korean Polish Shipping	Unknown	Pyongyang	North Korea	–
9009085	<i>Thae Phyoung San</i>	Hua Heng Shipping	Korea P&I Club	Hong Kong	North Korea	–
9041552	<i>Hoe Ryong</i>	Hoe Ryong Shipping	Unknown	Pyongyang	North Korea	–



Table 2 continued

IMO	Name	Management	Insurance	Home port	Flagged	Notes
9110236	<i>First Gleam</i>	Sinotug Shipping	American Club P&I	Marshall Islands	Tanzania	Removed from list; formerly named the <i>Dawnlight</i> ; left Chongjin destined to Hungnam on October 10, 2016
9138680	<i>South Hill 5</i>	Hua Heng Shipping	Skuld P&I	Hong Kong	Palau	Removed from list
9163154	<i>Jin Tai</i>	Blue Ocean Management	West of England P&I	Wendeng	Belize	Removed from list; ship broadcasting as <i>Sheing Da 6</i> ; CST Administration (Bahamas) is the director, according to the Offshore Leaks Database; Credit Suisse Trust is the intermediary
9163166	<i>Jin Teng</i>	Golden Soar Development	West of England P&I	Hong Kong	Belize	Removed from list; ship broadcasting as <i>Sheng Da 8</i> ; Golden Soar listed in the Panama Papers and linked to Orion House in Hong Kong (jurisdiction, British Virgin Islands)
9314650	<i>Ra Nam 3W</i>	Korea Samilpo Shipping	Steamship Mutual P&I UK	Pyongyang	North Korea	–
9333589	<i>Orion Star</i>	Bene Star Shipping	American Club P&I	Hong Kong	Mongolia	Removed from list; traveled from Wonsan to Chongjin between October 2 and 5, 2016
9361407	<i>Mi Rim 2</i>	Mirim Shipping	Unknown	Pyongyang	North Korea	–

The question remains as to whether any of those named in the executive orders actually have property or assets in the United States. Assets held in offshore accounts set up by third-party intermediaries often cannot be seized under such measures. In addition to the eleven individuals named in Executive Orders 13722 and 13687, five firms are also included. However, all these entities are DPRK government departments, with no mention of banks, transportation firms, merchants, or suppliers. Previous U.S. executive orders have targeted DPRK banks and firms for seizure based on nuclear security concerns.<sup>33</sup>

The financial measures that involve maritime vessels are aimed at reducing the importation of military goods and luxury items. The U.S. Office of Foreign Assets Control passed Executive Order 13551 in June 2015 to target the maritime transport of goods to North Korea, with a specific focus on military material and resources. This executive order uses an assets seizure clause for anyone who has “imported, exported, or re-exported any arms or related material”; provided “training, advice, or other services” related to arms materials; or “imported, exported, or re-exported luxury goods into North Korea.”<sup>34</sup> Executive Order 13466 “prohibits persons from registering vessels in North Korea, obtaining authorization for a vessel to fly the North Korean flag, and owning, leasing, operating, or insuring any vessel flagged by North Korea.”<sup>35</sup> This 2015 legislation, while aimed at stopping arms trafficking into the country, has the ability to target individuals who are profiting from business with the Kim regime. It thus could disrupt trade with the DPRK if the stakeholder also has direct dealings with the United States.

Other countries have imposed sanctions on marine vessel traffic into the DPRK. The European Union, Canada, and New Zealand all follow the UN sanctions to restrict trade and financial transactions with the Kim regime. The UK Treasury has a list of 66 North Korean individuals whose assets are subject to seizure.<sup>36</sup> In addition, the British government names 42 DPRK entities, including banks, firms, and merchants. Effectively enforcing these sanctions remains a problem, however, given that the entities targeted likely have their assets outside UK jurisdiction. Although heralded as a worthwhile

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<sup>33</sup> “North Korea Designations,” Office of Foreign Assets Control, July 6, 2016 ~ <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20160706.aspx>.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> “Consolidated List of Financial Sanctions Targets in the UK,” HM Treasury, Office of Financial Sanctions Implementation (UK), September 6, 2016 ~ [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/528488/northkorea.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/528488/northkorea.pdf).

political move, such executive orders to freeze assets do not actually apply much pressure on their targets and thus have little value in curbing human rights abuses or deterring nuclear proliferation.

A notable change in tone exists with the recent U.S. financial measures to focus on human rights as the impetus for the sanctions rather than previous efforts that solely aimed at quelling nuclear proliferation or tactical security concerns. These measures do not target third parties, whereas the 2015 legislation provides the capacity to take action on those trading and dealing with the regime via marine traffic. In both cases, the fundamental purpose of the sanctions is to bring about behavioral change; yet unless the financial networks on which the Kim regime depends are targeted, this is unlikely to occur.

#### CURRENT MARINE TRAFFIC INTO NORTH KOREA

Between April 2016 and October 2016, I used IMO's AIS software—a system that tracks the recorded position and destination of merchant marine vessels—to record approximately 70 vessels that entered DPRK ports. This figure may not include all traffic, but it certainly captures the majority of it. Of the seventeen ports in the DPRK, most marine traffic enters the port of Nampo, located down river from Pyongyang. Other active ports include Daeson, Chongjin, Wonsan, and Sinpo. The vessels' IMO numbers and call signs were recorded, along with country flag, home port, past track, and itinerary history. The analysis also recorded the management companies, owners, and insurers of the vessels. Taken together, the data demonstrates that despite imposed sanctions, marine traffic continues to Nampo, which is a supply port for the capital, and Sinpo, which includes a submarine pen that is being expanded.<sup>37</sup> This finding exposes four challenges to enforcement of the sanctions regime: the use of flags of convenience, false or misleading vessel identification and registry, offshore ownership, and the failure of maritime insurance companies to monitor compliance with sanctions requirements.

#### *Flags of Convenience and False Identification*

The container ships entering DPRK ports are almost entirely arriving from either Chinese ports or the Russian port of Vladivostok. The exceptions

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<sup>37</sup> Nick Hansen and Jeremy Binnie, "North Korea Building New, Larger Submarine Pens," *IHS Jane's Defence Weekly*, July 26, 2016  <http://www.janes.com/article/62516/north-korea-building-new-larger-submarine-pens>.

are the vessels *Cheyenne* (IMO 9706504) and *Ryong Rim* (IMO 8018912) that left the Japanese ports of Kashima and Yokohama, respectively, in early May 2016. Dailan, Bayuquan, Tianjin, Jingtang, and Lianyungang are all Chinese ports from which vessels have departed for the DPRK. Yet despite the number of ships arriving from Chinese ports, no Chinese-flagged vessels were found to have entered DPRK ports during the period of time examined. Rather, nineteen ships were flagged under the DPRK, six were flagged under Panama colors, six were flying Tanzanian flags, four were flagged in Russia, and four carried Mongolian colors. Other arriving vessels were flagged in Jamaica, Liberia, India, Togo, Taiwan, the Bahamas, and Cambodia. No data on the cargo the ships carried is publicly available.

While some vessels are linked to the regime or connected to offshore capital, some are not and instead rely on misleading travel plans, misidentification, or false registries. The *Voge Challenger* (IMO 9490454), a Liberian-flagged vessel owned by TSC Ship Management out of Hamburg, traveled from Bahia Blanca, Argentina, to Sinpo, North Korea, on April 16, 2016. On June 18, it left Vancouver, Canada, broadcasting its destination as Port Qasim in Pakistan. AIS tracking confirmed the ship's anchorage 38 days later in Port Qasim for a twelve-hour period on August 3. However, the tracking information also shows that the vessel stopped in Sinpo between July 17 and July 26, which constitutes a sanctions violation under Canadian and European law. According to Canadian law, vessels cannot leave Canadian ports carrying goods destined for the DPRK, while the EU prohibits companies from insuring, owning, or managing vessels trading with the DPRK.

Other ships entering North Korean waters may have violated regional regulations, including those imposed by China and South Korea. In March 2016, Japanese media reported that China banned DPRK-flagged vessels from entering six of its ports.<sup>38</sup> The DPRK-flagged vessel *Su Song*, formerly the *Sun Orion* (IMO 9024889), entered the port of Weifang, one of the allegedly banned Chinese ports, on July 19, 2016. Chinese authorities later denied that the ports were given instructions to prohibit DPRK-flagged vessels.<sup>39</sup> The vessel *Chon Un 68* (IMO 9001021) is a Tanzanian-flagged cargo ship with a capacity of four thousand tons. AIS tracking shows that on July 10, 2016, the vessel docked at Nampo port, and on July 18 it was docked at Weifang.

<sup>38</sup> Takuya Hiraga, "China Expands Embargo on North Korea Vessels to 6 Ports," *Asahi Shimbun*, March 22, 2016 ~ <http://www.asahi.com/ajw/articles/AJ201603220043.html>.

<sup>39</sup> "China Denies Reports of Entry Ban on All North Korean Vessels," *Yonhap*, March 23, 2016 ~ <http://english.yonhapnews.co.kr/news/2016/03/23/0200000000AEN20160323008200315.html?92265450>.



On July 29, 2016, the ship registered its destination as Barra, a small passenger ferry terminal in the western Hebrides of Scotland. This, however, was a false registry by the ship's management meant for distraction. On October 10, 2016, the *Chon Un 68* was sailing for Nampo, once again with its registered destination as Barra.

### *Offshore Ownership and Weak Oversight of Maritime Insurance Companies*

The companies that own and manage these vessels are mostly based in Hong Kong, Singapore, or Pyongyang and registered in offshore locations such as the British Virgin Islands, Samoa, Hong Kong, Seychelles, Panama, and the Bahamas. The companies that own the vessels—including Hunchun Sino Unity, Hua Heng Shipping, Korea Kumunsan Trading, Fortune Shipping International, Nanjing Ocean Shipping Co., World Merge Shipping, and Dorian—are all mentioned in the Offshore Leaks Database (also known as the Panama Papers).<sup>40</sup> These firms are established in offshore locations with the assistance of third-party intermediaries, many of which are based in Hong Kong or Singapore. The Hong Kong company Orion House is cited as the intermediary for several of these shipping firms, including four North Korean vessels on the United Nation's blacklist.<sup>41</sup> Since these firms are registered in offshore locations, the United States, South Korea, and the EU are unable to pursue enforcement of sanctions.<sup>42</sup> Offshore firms are incredibly opaque, especially with respect to identifying their stakeholders or boards of directors. Intermediaries play an essential role in establishing offshore holdings, and the system could not function in its current form without their assistance. There is little, however, that authorities can do to penalize or otherwise stop intermediaries. As long as they exist, marine traffic will continue to flow to the DPRK.

Most of the vessel traffic into the DPRK relies on this murky network of offshore capital. However, companies that do not rely on third-party offshore firms own some vessels that enter DPRK ports. The vessel *Badri Prasad* (IMO 8903284) was owned by Essar Shipping, an Indian company that is affiliated with Essar Energy, a power-generation company in India. In April 2016, the *Badri Prasad* docked in Sinpo port, stopped in Yantai port in China, and then traveled to Pakistani waters. As of

<sup>40</sup> "Heng Li International Limited," Offshore Leaks ∞ <https://offshoreleaks.icij.org/nodes/10002681>.

<sup>41</sup> Ibid.

<sup>42</sup> "Orion House Services HK."

December 2016, the vessel appears to be decommissioned. The CEO of Essar Power, K.V.B. Reddy, was featured by the North Korean media in early 2016.<sup>43</sup> Although Essar's traffic between India and Pakistan may be a concern for Indian authorities, the Indian government's Act East policy has encouraged more trade with the DPRK.<sup>44</sup> Ri Su-young, the DPRK's foreign minister, visited India in 2015, and since then relations seem to be warming.<sup>45</sup>

Another factor is that many of the marine protection and indemnity (P&I) insurance companies connected to vessel traffic into North Korea are able to operate in violation of sanctions because mechanisms of enforcement are not rigorously applied. Some of these insurance firms are questionable shell companies themselves with offshore holdings, but others are legitimate. Yet even when the management firms dealing with North Korea exist outside sanctions jurisdictions, the firms insuring the vessels are registered within enforceable territories. West of England P&I, for example, is headquartered in Luxembourg and has an office in London. It is the insurance provider for dozens of vessels traveling to North Korea, including the *Mi Yang 8* (IMO 8863733), a DPRK-flagged vessel owned by Miyang Shipping in Pyongyang. Likewise, Raetsmarine Insurance, a Dutch company, insures the DPRK-flagged vessel *Kum San Bong* (IMO 8810384), and Britannia Steam Ship Insurance covers the *Zhang Hong No. 1* (IMO 8307894), a Taiwan-owned and -flagged vessel that entered Nampo on July 30, 2016. The Norwegian firm Skuld P&I currently insures the *Tian Zhu* (IMO 9338981), a formerly DPRK-flagged vessel owned by Hunchun Sino Unity Shipping in Hong Kong. On July 19, 2016, Skuld posted a page on its website stating that U.S. and EU sanctions prevent firms from offering marine insurance to DPRK-flagged vessels.<sup>46</sup> As of August 1, 2016, the IMO broadcast signal reported that the name of the *Tian Zhu* had changed to *Chang Phyong* and that the vessel is now sailing under the flag of Kiribati—a flag of convenience.<sup>47</sup> The *Chon Un 68*, mentioned above, is owned by Hua Heng Shipping and K&H Shipping based in Hong Kong. However, the ship is insured by a South Korean firm, Korea P&I Club, based in Seoul, despite the fact that South Korean law prohibits the

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<sup>43</sup> “KVB Reddy Takes Charge for New Initiatives at Essar Power MP Limited,” *North Korea Times*, March 8, 2016 ~ <http://www.northkoreatimes.com/index.php/sid/242005081>.

<sup>44</sup> Jimmy Youn, “NK-India Relationship,” *Korea Times*, January 6, 2016 ~ [http://www.koreatimes.co.kr/www/news/opinion/2016/03/162\\_194809.html](http://www.koreatimes.co.kr/www/news/opinion/2016/03/162_194809.html).

<sup>45</sup> *Ibid.*

<sup>46</sup> Daria Avdeeva, “North Korea Sanctions,” Skuld, July 19, 2016 ~ <https://www.skuld.com/topics/voyage--port-risks/sanctions/insight/insight-north-korea-sanctions/north-korea-sanctions>.

<sup>47</sup> This is a common marine practice where a merchant vessel is registered in a country that is different from the country of the ship's owners. This is done to avoid sanctions, as well as taxes and excise costs in various countries.

insurance of ships entering North Korea. Other insurers of vessels entering the DPRK include Steamship Mutual P&I, North of England P&I, and Standard Club in the United Kingdom.

A noteworthy example of poor compliance with sanctions by maritime insurance companies involves the *Sun Unity*, now named the *Sun Rizhao* (IMO 8736382), which traveled from a Chinese anchorage to Nampo port on August 2, 2016. The vessel is owned by a Hong Kong-based firm and insured by Maritime Mutual Insurance Association, a New Zealand-based company. In 2005, the government of Japan complained to the government of New Zealand that Maritime Mutual had exploited a loophole in sanctions law in order to profit from insuring DPRK vessels entering Japanese waters. The company calls itself an insurance agent even though it is not registered as one in New Zealand. The directors of Maritime Mutual are thought to be based in Liechtenstein and on the island of Guernsey.<sup>48</sup> The company has insured DPRK vessels with impunity for over ten years. New Zealand responded to Japan's complaint against Maritime Mutual by maintaining that it could do nothing to prevent its corporations from insuring DPRK vessels.<sup>49</sup> In sum, European, Asian, and other marine insurance firms are actively providing coverage for vessels entering the DPRK and possibly for vessels using flags of convenience, which flaunts sanctions restricting the insurance of vessels tied to the Kim regime.

Shareholders and directors of offshore accounts or of intermediary firms could be targets for international pressure, but once again no real juridical authority exists within current sanctions law to pursue action. What is even more troubling is that it appears that insurance firms that fall within sanctions jurisdictions, including the New York-based insurance firm American Club P&I that insures the *First Gleam* (IMO 9110236) and *Orion Star* (IMO 9333589), continue business with impunity. Any firm with assets in the United States should be pursued under Washington's executive orders, but there is no evidence of such actions being taken. The lack of political will to enforce sanctions against violating vessels and their associated entities becomes obvious when vessels like the *Voge Challenger* and the *Cheyenne* enter U.S. waters after docking at a DPRK port. The *Cheyenne* was reported in DPRK ports in May 2016 but returned to U.S. ports in August 2016.

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<sup>48</sup> "Lax NZ Laws Provide Rogue State with a Loophole," *Sunrise Exchange News*, March 8, 2005 ~ <http://www.insurancenews.com.au/local/lax-nz-laws-provide-rogue-state-with-a-loophole>.

<sup>49</sup> *Ibid.*

In sum, marine traffic continues to flow into North Korea, with most of the vessel owners flying flags of convenience and registering with offshore firms, some not accurately disclosing their port calls, and some being insured by marine P&I companies that are merely shells. In the latter case, the insurance companies are in violation of UN sanctions and domestic financial regulations. The *Badri Prasad* case discussed above demonstrates emerging relations between India and North Korea regardless of international sanctions. The activities of the *Voge Challenger* and the *Chon Un 68* could also be challenged as violations of current sanctions inasmuch as these vessels are operating in jurisdictions with specific sanctions laws against the DPRK. However, many of the owners and managers of vessels entering the DPRK are connected to offshore capital, and additional financial regulations would be needed to target the flow and exchange of money between the regime and the vessel operators. This would involve targeting the offshore firms rather than the regime itself. The lack of action to strengthen enforcement demonstrates a phenomenal indifference to the issue or an embarrassing inability to enforce sanctions on vessels. In either case, the current state of active marine traffic into the DPRK exposes the weaknesses of the recent sanctions aimed at the Kim regime, as the deep involvement of offshore holding companies, combined with lax enforcement, outmaneuvers current sanctions.

### CONCLUDING THOUGHTS

This article demonstrates that marine traffic into the DPRK continues despite many international sanctions against the Kim regime. Current sanctions target DPRK-flagged vessels rather than the capital flow between the regime, offshore entities, and marine vessels flying flags of convenience. By examining vessel traffic into the DRPK, this article exposes four major obstacles in the practical enforcement of sanctions as they currently stand: the use of flags of convenience, false or misleading registration, offshore ownership, and lax oversight of maritime insurance firms. Offshore holding companies are connected to the majority of marine traffic into the DPRK, and additional financial measures are required to effectively monitor these companies' compliance with sanctions. Despite the fact that some vessels and their insurers are openly in violation of sanctions, there is no evidence of enforcement against these companies. Beyond the design of smart sanctions against the Kim regime, actual enforcement is lacking. The July 2016 voyage of the *Voge Challenger* discussed above is an example of an easy target for

sanctions enforcement, yet the vessel sailed unhindered to a DPRK port that is pursuing aggressive military expansion.

As it stands, the intersection of sanctions and geopolitics suggests great difficulty in effectively enforcing sanctions. In 2005 the United States imposed financial sanctions on the Banco Delta Asia, an offshore bank that received millions in cash deposits from North Korea, to block any financial dealings with the North Korean regime.<sup>50</sup> This led to a run on the bank's accounts as clients feared having their assets frozen under the sanctions.<sup>51</sup> Rachel Loeffler has argued that targeting the financial system rather than the DPRK government itself adds significant cost to the regime and reduces its ability to pursue hostile activities.<sup>52</sup> Aaron Arnold likewise points to the efficacy of measures that isolate financial entities from global capital and the U.S. market rather than attempting to isolate the target country itself.<sup>53</sup> Still, even when enacted, such financial measures have merely added expense to the regime rather than deterring North Korea from pursuing its nuclear ambitions.

The pressure put on the Banco Delta Asia demonstrates an important aperture in the enforcement of sanctions by not targeting the regime itself but rather going after the surrounding capital networks on which it relies. This approach could be effective in putting pressure on the DPRK by eliminating or restricting funds transferred between the Kim regime and shipping companies doing business in Nampo and Sinpo harbors. The challenge remains to advance such sanctions from being merely annoying to the regime to actually deterring malicious behavior. Achieving behavioral change will require greater attention to the financing networks on which the regime relies, notably subaltern trade and offshore capital.<sup>54</sup> Unfortunately, as the ineffective enforcement on sanctions of marine traffic to the DPRK demonstrates, as long as offshore capital remains outside sanctions enforcement and insurance providers are not pursued through financial measures, the regime will not likely change its behavior.

Three potential avenues exist for governments to address the challenge posed by offshore capital. First, they could target any banks or financial

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<sup>50</sup> Daniel Wertz, "The Evolution of Financial Sanctions on North Korea," *North Korean Review* 9, no. 2 (2013): 69–82.

<sup>51</sup> *Ibid.*

<sup>52</sup> Rachel L. Loeffler, "Bank Shots: How the Financial System Can Isolate Rogues," *Foreign Affairs*, March/April 2009, 101–10.

<sup>53</sup> Aaron Arnold, "The True Costs of Financial Sanctions," *Survival* 58, no. 3 (2016): 77–100.

<sup>54</sup> Saul B. Cohen, *Geopolitics: The Geography of International Relations* (Lanham: Rowman and Littlefield, 2008).

firms that are known to have a connection to North Korean capital flows. Tracking the DPRK accounts themselves may be difficult, but as the Banco Delta Case demonstrates, it is possible to pursue such actions. Second, governments could target the marine owners, managers, and insurance providers that operate vessels bound for the DPRK. Payments must be made to the owners and managers of vessels entering North Korean ports, and if governments identified and targeted this revenue stream, their enforcement of sanctions would be much more effective. Finally, governments could target offshore intermediaries like Orion House that profit from setting up holding companies. In all three policy options, the target would not be the DPRK itself but the flow of money from the regime to third parties.

If the international community is to continue to employ financial sanctions against the Kim regime as a deterrent to nuclear proliferation or human rights abuses, these connections to offshore capital must be addressed in a way that impedes capital flows between the regime and vessel owners. Measures that simply target the regime itself have not proved effective. The human rights crisis in the DPRK may be beyond imagination, but it is not beyond resolve. Effectively addressing this crisis, as well as North Korea's growing nuclear weapons program, requires actions that expose the links to broader networks of subaltern capital. The failure to do so will enable the Kim regime's survival and the North's continued violation of human rights and nuclearization. ◆