



**Statement before the
House Committee on Foreign Affairs
Subcommittee on Asia and the Pacific**

***“The U.S. Response to North Korea’s
Nuclear Provocations”***

A Testimony by:

Dr. Victor D. Cha

Professor of Government, Georgetown University
Senior Adviser and Korea Chair, Center for Strategic and
International Studies
and Fellow in Human Freedom, George W. Bush Institute

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Chairman Salmon, Representative Sherman (ranking Democrat) and distinguished members of the committee, it is a distinct honor to appear before this committee to discuss the challenges posed by North Korea and the U.S. response to this threat.

As Bob Gallucci and I argued in the *New York Times* last Friday, there is a path forward for the U.S. after the fourth nuclear test. I would like to start off with the same quote that we used in that op-ed, where a North Korean diplomat unintentionally offered us a valuable insight into his country's nuclear policy. That diplomat, in 2005, said: "The reason you attacked Afghanistan is because they don't have nukes. And look at what happened to Libya. That is why we will never give up ours."

Now flash forward to 2016. The North Koreans can point to Libya again in 2011, and to Syria in the past year to defend the necessity of their nuclear program. Kim Jong-un himself is probably feeling pretty comfortable and secure believing that he has the ultimate insurance policy, a nuclear weapons program his father started, and one that he has spent considerable resources to develop since taking over four years ago.

But therein lies the problem. Kim Jong-un believes that a bigger and more modern nuclear arsenal purchases him more security by deterring others from attacking him despite anything he might do. That belief is deadly wrong, dangerous, and could cost many lives. Successes and improvements in the nuclear and the missile program in the past few years, moreover, may have inflated that self-belief, to a point where a miscalculation, potentially in the form of "grey zone" coercive military action at lower levels of escalation like the sinking of a ROK or U.S. ship to extort food or benefits, can lead to retaliation. The most worrying thing about North Korea today is not that it did a fourth nuclear test last week, but that it does not recognize the limitations and risks the nuclear program poses. His false confidence could well start a war with an angry Seoul that will respond kinetically to future acts of violence.

How do we convince a rogue regime, run by a young, insecure and inexperienced leader with a penchant for big nukes and expensive weapons systems that he cannot develop both nuclear weapons and the economy at the same time? And how do we convince him that he must give up his weapons in order to bring genuine economic reforms and changes to a long suffering country?

Distinguished members of the committee, I bring before you today three sets of comments that hopefully will offer a window for the U.S. to help solve that problem. The first is to recognize the threat posed by North Korea; the second is to sketch the path forward on both weapons and human rights; and the third is to bring North Korea back to the table in order to contend with this very difficult problem.

North Korean Threat

We must first recognize that North Korea remains one of the greatest threats to the security of the American homeland today. It also continues to be the greatest proliferation threat in the world today, more so than Syria, and more so than Iran. Which begs the question, why have we not done more to stop this?

This administration's policy of "strategic patience" for the past seven years had placed this problem on the back burner. In the administration's own words, this policy was meant to accomplish two objectives in rolling back the North's programs. First, the United States would seek to break the cycle of provocations-for-negotiations that was the flaw of past administrations' policies by not reacting to every action by the North. Second, the consistent application of pressure would create a situation where Pyongyang would eventually feel compelled to return to the negotiating table genuinely motivated to uphold its denuclearization commitments. While the administration did make genuine efforts to engage with North Korea, these offers were rejected by the regime.

In the meantime, Kim Jong-un has been diligently improving his regime's capabilities over the course of this policy's application to disrupt and ultimately alter the strategic balance on the peninsula and in the region while our attention was directed elsewhere. But the issue should have been on the front-burner from day one, even if choices had to be made between options that were bad, and options that were worse. This problem cannot be punted to another administration, yet with just a year left, it is unlikely that the current administration has the capacity to engineer a breakthrough. Unfortunately "strategic patience" turned to "benign neglect," and allowed space for North Korea to make technological progress in their programs unhindered. There have been four nuclear tests; three of them in the Obama administration; and two of them in the days preceding the President's State of the Union Speech.

My main concern is that North Korea does not fully comprehend the consequences of their drive to become a modern nuclear weapons state. It is not clear to me that they understand that nuclear weapons' value is in their strategic non-use. It is also probable that the young and inexperienced leader will make miscalculations because of his inflated and ill-informed view of the deterrent strength of these weapons to keep the United States and allies at bay. If the day ever comes when Kim Jong-un miscalculates the capability of his nuclear weapons stockpile, or his ever-improving long-range delivery capability, there will be no doubt horrible consequences for everyone. Then the whole world will wonder why regional powers – especially the U.S. – did not stop them before it was too late. We must not let that happen.

Therefore, we must first recognize that North Korea remains an ever-present threat to our nation's security and prosperity. Despite downsizing of conventional military capabilities in recent years to allocate more resources to its pursuit of nuclear weapons and to improve its asymmetric capability, the North Korean regime is still backed by a loyal army comprised of about 1.2 million active duty military personnel and 600,000 reservists, and possibly the largest number of Special Forces in the world.¹ According to the Department of Defense, approximately 70% of North Korea's ground forces and 50% of its air and naval forces are deployed within 100 kilometers of the de-militarized zone (DMZ), a tremendous threat not only to our troops stationed on the other side of the border, but also to the citizens of our trusted ally, South Korea.

Furthermore, open-source reporting on North Korea's ballistic missile program also reveals some troubling numbers; an estimated 700 SRBMs (capable of reaching South Korea), some 200 Nodong MRBMs (capable of reaching Japan), about 100 Musudan IRBMs, the potential successful development of ASCM and SLBM technologies (subject of two flight tests in May

¹ *The Military Balance 2015*, International Institute for Strategic Studies, p. 261.

and November 2015) and two types of ICBMs², the Taepodong-2 and the untested road-mobile KN-08, the latter which was subject of much speculation in 2015 when senior Department of Defense officials admitted to its potential completion.³

North Korea's growing cyber capabilities are something that we should pay more attention to. The November 2014 Sony incident finally brought this new threat to the consciousness of American policymakers and of the public. Our CSIS study completed last September found that the North is developing its cyber capabilities in tandem with its other asymmetric threats, and has embedded them within the very same party and military institutions that were responsible for provocative acts like the 2010 *Cheonan* sinking.⁴ In the future, cyber-attacks could well be an integral part of a North Korean military strategy designed to disrupt and weaken U.S. military systems.

The 4th nuclear test last Wednesday reiterated that the threat from North Korea's nuclear program and growing asymmetric capabilities is very real. There is no comfort to be taken in scientists' skepticism of whether the hydrogen nuclear test succeeded. The test still had a yield more powerful than the previous three tests, which indicates technological progress in the nuclear program despite the sanctions regime. It is only a matter of time before they succeed.

Kim Jong-un must be made to understand the "non-utility" of his nuclear arsenal and that any such use would ultimately lead to his regime's final destruction. The one lesson from the nuclear revolution is that states with nuclear weapons do not use them. But whether the Kim regime understands the fundamentals of nuclear deterrence is questionable, and therefore remains a cause of tremendous concern. He must also understand the dangerous pathologies of being a nascent nuclear state. There will be temptation to transfer weapons, fissile material, or this technology to other states or terrorist groups to gain the foreign currencies his regime needs. His regime already has a history of selling its weapons systems.

So how do we "educate" the North of those pathologies of being a nuclear state? A better approach.

A New Approach – Asymmetric Pressure Points

A new approach to North Korea must focus on asymmetric pressure points. Two cases in recent history outline the effectiveness of such strategy, first was the September 2005 Banco Delta Asia (BDA) case where the Treasury Department undertook actions that led to the freezing of the assets of North Korean bank accounts in Macao. The second was the United Nations Commission of Inquiry report on North Korean human rights released in February 2014, which unequivocally called on the UN Security Council to refer the North's leadership to the International Criminal Court for a laundry list of crimes against humanity. Just a month

² SRBM stands for a short-range ballistic missile, MRBM for a medium-range ballistic missile, IRBM for an intermediate-range ballistic missile, ASCM for an anti-ship missile, SLBM for a submarine-launched ballistic missile, and ICBM for an intercontinental ballistic missile.

³ Department of Defense Press Briefing by Admiral Gortney in the Pentagon Briefing Room, April 7, 2015.

<http://www.defense.gov/News/News-Transcripts/Transcript-View/Article/607034>

⁴ An executive summary of the CSIS cyber team report can be found here - Victor Cha, James Lewis, et al "Executive Summary: North Korea's Cyber Operations: Strategy and Responses," November 2015.

<http://csis.org/publication/executive-summary-north-koreas-cyber-operations-strategy-and-responses>

ago the UN Security Council held the second meeting on human rights in North Korea, despite attempts again by the Chinese and the Russians to remove it from the agenda. And in both of those cases, the Kim regime – whether the father or the son – were truly frazzled, and completely caught off guard by outside actions. A strategy that creates costs for continued North Korean bad behavior and that affects a change in their direction must build on these pressure points.

Sanctions: The sanctions against North Korea pale in comparison to the level of sanctioning against Iran. Although there are 4 UNSCRs each directed at both Iran and North Korea, there are only 6 presidential executive orders for North Korea, while there are 17 for Iran. The number of individuals and entities sanctioned by the U.S. and UN are vastly disparate as well, 843 (U.S.) and 121 (UN) for Iran, but only 100 (U.S.) and 31 (UN) for North Korea (more information on these numbers are found in Appendix A). A new sanctions portfolio must fully exercise the authorities created in Presidential Executive Order 13687 – in response to the November 2014 Sony hack – to target additional individuals or entities for proliferation, human rights abuses and cyber-related activities. The E.O. was an innovation in that it was deliberately broad in scope to allow Treasury and U.S. law enforcement agencies to go after a range of behavior. Why it has not been used more fully to this point is puzzling.

Secondary sanctioning has been discussed in the policy community for some time as a significant escalation of the sanctions regime. This should be given positive consideration now to include third-party entities and individuals that facilitate North Korea's illegal and illicit activities. This will certainly complicate our relationships with China, the European Union, and countries in Southeast Asia, South America or Africa, but it is also certain that these entities will comply when given the choice between dealing with the North or with losing access to U.S. financial institutions.

Third, trade and commodity sanctions should be expanded to include sanctions of rare-earth minerals, coal and steel or goods like timber and agricultural products that are exported to other countries to earn foreign currencies for the North Korean regime. Expert estimates put rare earth minerals and steel exports at around \$1.8 billion and \$245 million respectively.⁵ Again, this will complicate things for China, but the single most important causal factor for the growth of cash and a more stable economy in Pyongyang have been the extractive industry contracts signed between China and North Korea in 2008.

The U.S. government can work with the UN and countries in Northeast Asia to target and enhance sanctions enforcement against ports, shipping companies, and airline carriers that facilitate North Korea's illegal activities such as bulk cash smuggling and arms shipments. The U.S. can strengthen efforts to sanction these third party entities under the current regime or create additional measures that would prohibit ships flying North Korean flags or North Korean air carriers from accessing certain ports and airports around the world.

⁵ Korea Trade Investment Promotion Agency (KOTRA), "Trends in 2013 North Korean Trade," July 2014, accessible here http://www.globalwindow.org/gw/publishdata/GWPDIN020M.html?BBS_ID=30&MENU_CD=M10503&UPPER_MENU_CD=M10501&MENU_STEP=2&ARTICLE_ID=5018281

Primary Money Laundering Concern & State Sponsor of Terrorism: The U.S. should give serious consideration to designating North Korea or banks that do illicit business with North Korea as a jurisdiction or institution of primary money laundering concern. This was the key to the set of actions that led to freezing of North Korean assets in the 2005 BDA case. This would have a similar effect to imposing secondary sanctions on third party banks that facilitate North Korea's illegal activities.

U.S. officials should also give serious consideration to putting North Korea back on the State Sponsor of Terrorism list. State Department lawyers may disagree citing legal criteria, but the cyber actions against both South Korea and the United States in particular should be investigated as grounds for relisting. These cyber-attacks were ill-advisedly characterized by the administration as "criminal" acts but CSIS research shows these activities as instigated by the same entities in North Korea responsible for military aggression and terrorist acts.

Slave Labor: Human rights must complement sanctions as part of this asymmetric strategy. One of the potential targets would be North Korean slave labor. According to Marzuki Darusman, the UN special rapporteur on human rights in North Korea in October 2015, the regime has forced more than 50,000 people to work abroad in mining, logging, textile and the construction industries. These forced laborers are sent to places in Africa, Europe, the Middle East and Southeast Asia, but especially to Russia and China.⁶ They are sent abroad with the sole rationale of circumventing sanctions and earning the regime currencies it sorely needs. Lower estimates put the number at about \$150 – 250 million, but higher estimates put it between \$1.5 – 2.5 billion annually. That is a substantial amount of money that we have reasonable cause to believe goes into bankrolling the North's nuclear and missile programs. This is an asymmetric pressure point that the international community and UN can, and must target. We have to call out, and pressure these countries, including China and Russia, to enforce ILO standards for the North Korean workers in host countries or to stop accepting them.

Kaesong Industrial Complex: Another useful asymmetric pressure point is the Kaesong Industrial Complex. A legacy of the sunshine policy, this project now provides \$90 million in annual wages (around \$245.7 million from December 2004 to July 2012) of hard currency to North Korean authorities with little wages actually going to the factory workers.⁷ The South Korean government will be opposed to shutting this down, as even conservative governments in South Korea have grown attached to the project as symbolic of the future potential of a united Korea, but difficult times call for difficult measures.

Information: North Korea, under a young and insecure leadership, is hyper-sensitive to external criticism that hits at the heart of the regime's legitimacy and shatters the myth of its benign care of the Korean people. Nowhere has this been more apparent than in Pyongyang's

⁶ "UN investigator: North Koreans doing forced labor abroad to earn foreign currency for country," *Associated Press*, October 28.

www.usnews.com/news/world/articles/2015/10/28/un-investigator-north-koreans-doing-forced-labor-abroad

⁷ These numbers were cited in Yang Moon-soo, "Kaesong Industrial Complex as Key to Peace on Korean Peninsula," *Korea Focus*, 2013, available at

http://www.koreafocus.or.kr/design2/layout/content_print.asp?group_id=104914

Cumulative numbers for 2004 – July 2012 were cited in this *Chosun Ilbo* article here (In Korean)

http://news.chosun.com/site/data/html_dir/2012/10/08/2012100800446.html?Dep0=twitter&d=2012100800446

reaction to the screening of the movie *The Interview*, and its mad diplomatic scramble in response to the UN Commission of Inquiry recommendations for the regime to be referred to the ICC for crimes against humanity. In this regard, leader Kim is probably more incensed about the restart of loudspeaker broadcasts across the DMZ last Friday than he is about U.S. dispatching of a B-52 bomber to the peninsula over the weekend. With renewal of the North Korean Human Rights Act coming onto Congress's agenda, it would be prudent to increase both funding and means of information dissemination into North Korea. As I have argued before, the U.S. and South Korea should create a comprehensive strategy for breaking down North Korea's information barriers to reach a population with an insatiable thirst for news about the outside world.⁸

Diplomacy: The most useful diplomatic action at this point is not to put another deal on the table for the North. The Clinton and Bush presidencies did this. And the current administration, as evidenced by its outreach to Cuba, Myanmar, and Iran, has not been averse to putting packages in front of isolated regimes. Indeed, more than a couple of packages of proposals have already been put before Pyongyang by this administration. The problem is that North Korea is not interested in talking.

The five members of the Six-Party Talks, China, Japan, South Korea, Russia and the U.S. should convene to discuss steps forward and potential contingencies. The five parties should confirm the 2005 Six Party Joint Statement as the only written document in which the North has pledged in writing "to abandon all nuclear weapons and existing nuclear programs." It is important for the UN also to reaffirm the validity of this document and North Korea's pledge as a political response to Kim's actions. They have to be prepared for North Korean responses to new sanctions. We need to have a more open discussion about the future of the Korean Peninsula and unification.

The region: A new U.S. approach cannot realistically bank on China abandoning the Pyongyang regime or cutting off all energy shipments, as dissatisfied as Beijing may be with Kim's behavior. Indeed, the U.S. should not want to entirely subcontract this vital national security issue to its principal competitor in the Asia-Pacific. But the U.S. can push for Beijing to titrate its sustenance to the regime. China could first undertake an internal audit of all private and state-owned companies doing business on the Sino-North Korean border to understand the scope of the problem. At the official level, it can commit not to cease all ongoing economic projects and reject calls for any new ones until the regime returns to negotiations. Beijing could commit to abstain from (i.e., not obstruct) any UN Security Council discussions on human rights abuses in the North. But none of this would be remotely possible until Washington frames the North Korea issue (not just climate change) as a major metric of cooperation in US-China relations.

The nuclear test last week also underlines the need for the United States to be able to coordinate seamlessly with its two key allies, Japan and South Korea. Improving the ability of the three to share intelligence is critical and agreements to this effect need to be forged. Though South Korea has expressed reluctance in the past, it is necessary to have a discussion

⁸ Victor Cha, "Light Through the Darkness," The Bush Institute at George W. Bush Presidential Center, January 2015, available at http://www.bushcenter.org/sites/default/files/gwb_north_korea_report_call_to_action.pdf

about better missile defense cooperation, including the emplacement of THAAD on the peninsula.

If implemented correctly, such a strategy could strangle the regime. But it could also show the North that their weapons are unusable and that the only exit is a process of negotiation in which all issues, including security, human rights, and economics, are addressed.

Appendix A: Comparison of Sanctions on Iran and North Korea

	Iran	North Korea
<i>U.S. Executive Orders*</i>	17	6
<i>U.S. Sanctions Listed Entities & Individuals*</i>	843	100
<i>UNSC Resolutions (imposing sanctions)</i>	4	4
<i>UN Sanctions Listed Entities & Individuals* (as of 2013)</i>	78 entities & 43 individuals	19 entities & 12 individuals

*U.S. numbers are drawn from the OneFreeKorea blog, the Department of Treasury, Office of Foreign Assets Control’s Specially Designated Nationals List for North Korea and Iran, and the Congressional Research Service, while the UN numbers are drawn from the UN Special Research Report on UN Sanctions (2013).

