

Testimony before the Senate Foreign Relations Subcommittee
on East Asia, the Pacific, and International Cybersecurity Policy
Hearing on Assessing the North Korea Threat and U.S. Policy

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Over the last 21 years, since President Clinton signed a nuclear freeze agreement with North Korea, (known as the Agreed Framework), the ironically-named Democratic People's Republic of Korea has become a nuclear state. The consensus among experts is that North Korea now possesses approximately 6-8 plutonium nuclear weapons and 4-8 uranium nuclear weapons.¹ And earlier this year, United States Admiral Bill Gortney, who is in charge of the North American Aerospace Defense Command (NORAD), announced that North Korea has developed the ability to miniaturize nuclear warheads and launch them at the US, though there is no evidence that the regime has tested the necessary missile yet. It is also widely known that North Korea proliferates its nuclear technology. In 2007, Israel destroyed a nuclear facility in Syria that had been the beneficiary of North Korean nuclear technology, and this past spring, Secretary of Defense Ashton Carter stated that North Korea and Iran "could be" cooperating to develop a nuclear weapon. There is no doubt, therefore, that North Korea now poses a grave threat to those well beyond South Korea, next to whose border a significant portion of North Korea's million-man army is permanently stationed.

Nor can one honestly say that with North Korea, its threats are merely bluster. It conducted nuclear weapons tests in 2006, 2009, and 2013. It has also engaged in unprovoked conventional acts of warfare with its neighbor to the south, sinking a South Korean warship, the Cheonan, in 2010, and killing 46 sailors; and then shelling the South Korean island of Yeonpyeong that same year, killing four South Koreans and injuring 19 others. In 2013, the regime was discovered to have been trading in weapons with Cuba, when Panama impounded a North Korean ship.

¹ http://isis-online.org/uploads/isis-reports/documents/North_Korea_Nuclear_Futures_26Feb2015-Master-ISIS_Final.pdf; <http://38north.org/wp-content/uploads/2015/02/NKNF-NK-Nuclear-Futures-Wit-0215.pdf>; Blumenthal, Dan, chapter published in "Choosing to Lead: American Foreign Policy for a Disordered World." The John Hay Initiative, 2015.

And, of course, there was the cyber-attack on Sony Pictures Entertainment in 2014, which, despite North Korea's protestations of innocence, has been attributed by the FBI to North Korea.

We should not be surprised that a government that behaves this way mistreats its own citizens. And, as is by now well documented, there is no nation in the world with a more egregious human rights record than North Korea. Its citizens have no say in their government's conduct; and they have extremely little say in their own lives. To live in North Korea is to be subjected to the total suppression of freedom of speech, freedom of expression, and freedom of religion. The regime operates a network of political concentration camps, where as many as 200,000 North Koreans are incarcerated without any due process and subjected to systematic rape and torture, the intentional destruction of families, and even executions. Access to outside information is so restricted that citizens must report purchases of radios and TVs, and the police often make inspections to ensure sets are tuned to official programming with draconian consequences for those who disobey the law. Possession of foreign books, magazines and newspapers also is forbidden, although increasingly news of the outside world filters in through illegal radios and cell phones that are smuggled into the country and used near the borders.

To be sure, there is no trust even between the nation's Supreme Leader and his most senior diplomats. During my tenure as Special Envoy for Human Rights in North Korea, I recall vividly speaking with a North Korean ambassador to a major European nation who told me about his wife and children, who were being held hostage in North Korea during his tenure as ambassador, because the regime could not trust even its senior officials not to defect.

It is against this backdrop that United States officials have wrestled with crafting a policy toward North Korea over the last two decades. While Presidents Clinton, Bush, and Obama have all spoken harshly at times about North Korea's nuclear ambitions and human rights violations, none of them have been willing to take serious steps to effectuate a regime change for fear of seriously destabilizing the region. And for good reason. Without a North Korean public ready and able to take control of its own destiny, a sudden regime collapse would create a highly unstable and potentially intolerable situation for China, South Korea, and Japan, the three largest and most powerful neighbors in the immediate vicinity. Both China and Japan would be very concerned about North Korea's nuclear facilities falling into the hands of South Korea, which, were it to re-unify the peninsula consistent with its stated policy of reunification would suddenly double in size and become a nuclear power. At the same time, South Korea would be very concerned about the prospect of millions of poor and under-nourished North Korean refugees

suddenly streaming across the border and putting enormous financial demands on South Korea. In short, while none of North Korea's neighbors may be happy with the current state of affairs in North Korea, the status quo may well be more attractive to each of them than the uncertain future of a sudden regime collapse.

In lieu of a policy of rollback or of mere acquiescence in the status quo, successive American governments have adopted a policy of engagement and containment intended, first and foremost, to prevent North Korea first from acquiring, and after that failed, from further developing, nuclear weapons. First there was President Clinton's Agreed Framework, which was his Administration's response to North Korea's announcement in 1993 that it would withdraw from the Nuclear Non Proliferation Treaty (NPT) to which it had become a party only eight years earlier. Pyongyang promised to dismantle its plutonium processing plant at Yongbyon in exchange for up to \$4.5 billion in aid, assistance in building two civilian nuclear reactors, and potential entry into the World Bank and IMF. President Clinton declared: "This is a good deal for the United States. North Korea will freeze and then dismantle its nuclear program. South Korea and our other allies will be better protected. The entire world will be safer as we slow the spread of nuclear weapons."

In reality, the Agreed Framework was flawed from the start. Like the recently negotiated Iran nuclear deal, it was an executive agreement, rather than a treaty, and it had no real bipartisan support. When, predictably, the North Koreans started cheating by trying to develop nuclear material through another method, the Bush Administration terminated a supply of fuel oil that was essential to the agreement, which prompted the North Koreans to kick out the U.S. inspectors and restart the nuclear plant. And as we now know, only 12 years later Pyongyang conducted its first nuclear test.

Next came the Bush Administration's Six Party Talks, which began shortly after the collapse of the Agreed Framework when North Korea formally withdrew from the NPT. These talks followed much the same pattern as previous negotiations with North Korea: In exchange for financial assistance, Pyongyang would make promises to cease certain activities or allow inspections of certain facilities. Inevitably, North Korea would renege on such promises and engage in provocations intended to propel the United States to offer additional assistance in an effort to induce North Korea to make additional accommodations. Thus, by way of example, in September 2005, after two years of talks, North Korea agreed to give up its weapons in exchange for aid. A small amount was provided but then the same cycle restarted, with North Korea testing its first nuclear weapon in

October 2006. The international community responded sharply with more talk of sanctions. The UN Security Council enacted additional sanctions although enforcement was questionable, especially by China. Then, in February 2007, North Korea promised to end its nuclear program in exchange for aid, which began to flow in significant amounts in 2008. Finally, during the waning months of the Bush Administration, in response to North Korea's agreement to let inspectors visit certain nuclear facilities, North Korea was rewarded by being removed from the United States' official list of state sponsors of terrorism. But by January 2009, as the Bush Administration came to an end, North Korea had reneged on its 2007 agreement.

Nor has this pattern changed during Obama Administration. In May 2009, as a welcome to the new President, North Korea conducted another underground nuclear test. Then, in March 2010, it raised the stakes regionally by sinking the South Korea warship Cheonan, which left 46 sailors dead. But in February 2011, the food situation took a turn for the worse as foot and mouth disease spread throughout the north and once again, the regime was eager to talk about making concessions. This led to the agreement in February 2012 where, in return for food aid from the United States, North Korea agreed to stop nuclear activity at its main facility in Yongbyon. Yet no sooner was the ink dry on this agreement than North Korea launched a missile in April leading to the suspension of food shipments.

By 2004, Congress had begun to recognize that the United States' twin policies of constructive engagement with containment were yielding neither a constructive dialogue with Pyongyang nor effective containment. As a result, and taking from the history of the latter days of the Cold War when the United States employed a policy of linkage in its approach to the Soviet Union, negotiating on military, economic, and human rights issues side by side, Congress passed the North Korean Human Rights Act without dissent and with key support from members of both parties. I was privileged to be appointed by President Bush as the first Special Envoy pursuant to the Act.

In my role as Special Envoy, I tried to spotlight the regime's human rights abuses and in particular, assist those brave North Koreans who managed to escape and make their way across the border into China. Our Administration worked closely with our friends and allies in the region to help accommodate increasing numbers of refugees, and on those occasions when China violated international law by sending captured North Korean refugees back into North Korea, we called them out on their unlawful conduct loudly and clearly. We also worked to expedite

family reunifications for Korean families who live on opposite sides of the 38th parallel, and we increased our efforts, both governmental and in support of NGOs, to broadcast news from free nations into North Korea. President Bush also sought to put his personal spotlight on North Korea's human rights abuses by meeting very publicly with defectors such as Kang Chol-hwan, the author of *Aquariums of Pyongyang*, and Kim Seong Min, the founder of Free North Korea Radio.

What we were unable to do sufficiently, however, and what the Obama Administration has likewise failed to do, is link our focus on human rights issues to the broader security dialogue that we were having with Pyongyang. Where, during the latter years of the Cold War, the United States regularly raised the issue of human rights in its direct dialogue with the Soviets (and even spoke directly to the Soviet Premiers about the plight of particular Jewish refuseniks), and Congress in 1974 passed the Jackson-Vanik law, an amendment to the Trade Act that impose limitations on U.S. trade with countries that restricted freedom of emigration and violated other human rights, the United States has thus far refused to adopt a similar policy of linkage with North Korea. This is regrettable. While changing the human rights situation in North Korea, though clearly a commendable goal, may not be an appropriate end in itself for our policy toward Pyongyang, there is surely a role for human rights in a multi-faceted strategy toward North Korea. The Helsinki Accords in the 1970s demonstrated that an emphasis on human rights can well be a productive means toward a national security objective.

Unfortunately, the Obama Administration has barely paid lip service to the human rights situation in North Korea or to China's treatment of North Korean defectors. During Secretary Clinton's trip to China in 2009 shortly after she became Secretary of State, she gingerly addressed the human rights issue, never once even mentioning China's practice of sending defectors back across the border, and spoke instead more generally about Tibet and Taiwan. Moreover, she was quick to point out that she would not let human rights issues play a serious role in her dialogue with China, noting that "our pressing on those issues can't interfere with the global economic crisis, the global climate change crisis, and the security crisis."

At the same time, the Obama Administration has repeated many of the same mistakes of its predecessors, vacillating between support and sanctions. After offering North Korea an "outstretched hand" in his first inaugural address, which Pyongyang flatly rejected (refusing even to continue the Six Party Talks), President Obama's approach gradually shifted to one that he outlined in a 2015 statement on his foreign policy as one of "strategic patience." To be sure, his administration has now cut off even food aid to the regime, which given

Pyongyang's practice of diverted such aid to its military is a welcome step, one wonders whether patience is really the best approach to a North Korea intent on growing its nuclear capabilities. Perhaps the Obama Administration should learn a lesson from one of the missteps of the Bush Administration, which was to lift the economic sanctions on Banco Delta Asia, a Macao-based bank that in 2007 the United States determined was holding \$25 million in laundered North Korean assets. The effort to freeze these assets, perhaps more than any U.S. action before or since, got Pyongyang's attention. Yet inexplicably, without any progress on the nuclear talks, the U.S. lifted those sanctions in 2007.

Because we are on the verge of a new nuclear agreement that bears many hallmarks of President Clinton's Agreed Framework, I will conclude by observing that while our record of deterring nuclear attacks has been successful to date, our record of containing new nuclear regimes is not faring as well. At the same time, just as we have largely abandoned the human rights issue as a tool with which to pressure North Korea and build a multi-lateral coalition against the regime, we have also largely abandoned the promotion of dissent in Iran, even though events in recent years have demonstrated that a large percentage of the population is eager for reform. Indeed, the Iranian population is much more open to western influences than the North Koreans. With respect to both countries then, a serious national security strategy should incorporate human rights as one of our tools.

So what should the United States do? While a policy of regime change is still premature, a policy focused only on containment is not likely to succeed, given North Korea's increasing offensive capabilities and belligerence, and the unwillingness of China to cut trade with Pyongyang. Instead, the United States should remain open to a policy of constructive engagement alongside containment, but with engagement on all issues, security, economic, and human rights. Ultimately, security will only come when North Korean citizens are empowered to take their destiny into their own hands.

This means the United States should support the instincts and desires for self-governance that we know from defectors many North Koreans possess, and giving non-violent, non-military tools of statecraft a chance. Congress should pass the North Korean Sanctions Enforcement Act; make available significantly more financial resources for independent civilian broadcasts like Free North Korea Radio; help those North Koreans who defect travel safely to South Korea or other safe havens; and promote family reunification visits (ideally on both sides of the DMZ), and cultural exchanges with the West. The President should also use the bully pulpit to speak clearly about the threat posed by North Korea and about China's enablement of the North Korean government. And because China has

greater influence over North Korea than any other nation, our North Korea policy must be part and parcel of our China policy.

As we saw from the experience of the captive nations of Eastern Europe toward the end of the Cold War, the promise of peacefully changing the situation in North Korea does not have to be a pipe dream. Military deterrence is crucial, and we need to work assiduously to build an international coalition aimed at preventing nuclear proliferation by North Korea. But we should also open the door to promoting evolution within the regime, and signaling our friendship and support to would-be reformers. In that light, it would be useful to take President Park's comments about the long-term goal of peaceful reunification seriously. As she travels to Washington D.C. later this month, the Congress should explore not only more effective strategies to address North Korea's nuclear ambitions, but also what a strategy that focused on peaceful reunification would entail.