U.S. Economic Sanctions Against North Korea: An Unsuccessful and Sanctimonious Policy Ripe for Modification

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U.S. ECONOMIC SANCTIONS AGAINST NORTH KOREA: AN UNSUCCESSFUL AND SANCTIMONIOUS POLICY RIPE FOR MODIFICATION

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Abstract: The United States designated North Korea as a state supporter of terrorism under the Export Administration Act of 1979, after the North Korean bombing of a Korean Airlines flight in 1987. As a result, the United States imposed tough economic sanctions against North Korea. Today, North Korea retains the designation of a state supporter of terrorism as a result of its weapons trade, even though it is not known to have sponsored any terrorist acts since 1987. The United States' designation of a state as a supporter of terrorism is arbitrary as no standard is set out in the U.S. Code. The test of a terrorist state is not whether the state has supported terrorism or traded in weapons of mass destruction, but is based on a state's willingness to participate in the U.S.-led war on terrorism. This criterion is improper, and therefore North Korea should not be designated as a state supporter of terrorism and be subject to economic sanctions imposed under the Export Administration Act. In addition, economic sanctions against North Korea do not fulfill U.S. foreign policy goals. Due to its internal characteristics, North Korea is not an ideal target for the imposition of economic sanctions, and the United States' economic sanctions have been of limited effectiveness in influencing North Korea's behavior in recent crisis situations. Just as the Nixon administration indicated its interest in improving relations with China through diplomatic steps in the 1970s, the United States could similarly signal its intention to improve relations with North Korea by ending unjustified economic sanctions.

I. INTRODUCTION

In November 1987, a man and a woman disembarked from Korean Airlines Flight 858 in Abu Dhabi and were stopped by security guards. They immediately bit into cyanide-laced cigarettes, but the woman, Kim Hyun Hee, survived. Meanwhile, Flight 858 exploded in mid-air, killing all 115 people on board. Kim confessed that she and her partner were intelligence agents of the Democratic People's Republic of Korea ("North Korea"), who planted the bomb that caused the plane's explosion. They

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3 Id. at 283.

4 Id. at 282.

5 Id. at 284.
were attempting to destabilize the Republic of Korea ("South Korea") during its presidential election campaign, and to interfere with South Korea’s hosting of the 1988 Olympics. International condemnation for this North Korean action was swift. The United States subsequently designated North Korea a state supporter of terrorism under the Export Administration Act of 1979 ("EAA") and subjected it to stringent trade controls.

Since the bombing of Flight 858, however, North Korea is not known to have sponsored any terrorist activities. Nevertheless, the U.S. Secretary of State continues to list it as a state supporter of repeated terrorism pursuant to section 6(j) of the EAA. The EAA contains no definition of "terrorism" and definitions elsewhere in the U.S. Code are varied and vague. According to the U.S. Department of State ("State Department"), North Korea’s continued presence on the list is tied to its participation in the proliferation of weapons of mass destruction ("WMD"). Using such a standard results in uneven application of the law, however, because other producers of weapons are not designated as state supporters of terrorism. The Secretary of State’s actual standard for determining whether or not a country is a terrorist state is whether it cooperates in the United States’ war on terror, and because North Korea has not actively supported U.S. efforts, it is still listed as a state supporter of terrorism.

Such a standard uses an arbitrary and expansive meaning of “terrorism.” Additionally, the listing of North Korea as a state supporter of terrorism and the subsequent strict trade controls fail to achieve U.S. foreign policy goals. Given that the EAA purports to impose export controls in furtherance of American policy goals, and no such goals are served with North Korea’s terrorist designation, North Korea should be de-classified as a state supporter of terrorism.

Part II of this Comment gives a brief overview of North Korea’s relevant history. Part III explores the policy and law that support the

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6 Id. at 282-85.
9 See infra Part III.C.2. It should be noted that the 1979 statute has been upheld despite constitutional challenges. See, e.g., United States v. Bozarov, 974 F.2d 1037 (9th Cir. 1992) (upholding the constitutionality of the EAA despite its preclusion of judicial review); Trane Co. v. Baldrige, 552 F.Supp. 1378 (D.Wis. 1983) (holding that the EAA did not violate the First, Fifth, or Ninth Amendments).
10 See infra Part III.C.2.
11 See infra Part III.C.2.
12 See infra Part III.C.
imposition of economic sanctions, examines North Korea’s initial listing as a state supporter of terrorism under the EAA, and challenges the validity of its continued designation. Part IV argues not only that the economic sanctions by virtue of North Korea’s designation as a supporter of terrorism are unjustified on policy grounds, but also that they should be discontinued because of their limited effectiveness. Finally, Part V suggests that the Nixon administration’s decision to open relations with China could provide a useful model for improving relations with North Korea.

II. NORTH KOREA’S HISTORY DEMONSTRATES A PATTERN OF AGGRESSION

In its nearly sixty-year history, North Korea has repeatedly threatened and attacked its neighbors, most notably South Korea. North Korea not only instigated a full-scale war against South Korea in 1950, but has also engaged in numerous terrorist activities. Additionally, its weapons proliferation programs have elicited widespread concern.

A. North Korea’s Attack Against South Korea Shows Its Early Belligerent Tendencies

North Korea’s founding has its roots in the Cold War and power politics. With the acquiescence of the United States, Japan occupied the Korean peninsula from 1905 until its defeat in World War II. In 1945, due to competing U.S. and Soviet interests, the peninsula was split along the thirty-eighth parallel. The northern half became the communist, Soviet-allied North Korea, while the southern half became the Western-oriented, United States-allied Republic of Korea (“South Korea”). Kim Il Sung, a well-known anti-Japanese guerilla fighter, became the “Great Leader” of North Korea and implemented a highly centralized communist government with juche (“self-reliance”) ideology at its center.

14 See infra Part II.A & Part IV.C.
15 See infra Part IV.C & Part IV.D.1.
17 BACKGROUND NOTE: NORTH KOREA, supra note 8.
18 Id.
20 BACKGROUND NOTE: NORTH KOREA, supra note 8.
21 For a brief discussion of juche, see infra Part IV.B.
North Korea invaded South Korea on June 25, 1950, with a surprise attack and overran much of the country until the United Nations ("UN") sent a multinational force to South Korea’s aid under the aegis of the United States.\textsuperscript{22} Although armistice negotiations began in July 1951, hostilities continued until 1953,\textsuperscript{23} when the fighting parties signed an armistice agreement at Panmunjom.\textsuperscript{24} However, hostilities still persist on the peninsula because no comprehensive peace agreement has replaced the 1953 armistice pact.\textsuperscript{25}

B. As North Korea Moved from Relative Prosperity to Increased Isolation and Economic Downturn, Terrorism, Rather Than Full-Scale War, Became Its Primary Intimidation Tactic

The post-Korean War period was an era of North Korean nation-building and strategic acts of hostility. From 1953 until about 1974, while South Korea was plagued by economic and democratic development problems,\textsuperscript{26} North Korea’s economic output and development outpaced that of its southern counterpart.\textsuperscript{27} In this time of relative prosperity, North Korea benefited from its alliances with China and the Soviet Union, receiving economic and military development assistance\textsuperscript{28} and nuclear technology.\textsuperscript{29}

During this period, North Korea also engaged in significant hostile acts, primarily aimed at South Korea.\textsuperscript{30} From 1954 to 1992, 3693 armed agents from North Korea infiltrated South Korea.\textsuperscript{31} In February 1958, North Korean agents hijacked a South Korean flight and kept passengers, including

\textsuperscript{22} CHAE-JIN LEE, CHINA AND KOREA: DYNAMIC RELATIONS 12 (1996). The multinational force was called the United Nations Command. \textit{Id.}
\textsuperscript{23} See BACKGROUND NOTE: NORTH KOREA, supra note 8.
\textsuperscript{24} Korean Armistice Agreement, 4.1. U.S.T. 234 (1953).
\textsuperscript{25} See BACKGROUND NOTE: NORTH KOREA, supra note 8.
\textsuperscript{26} See, e.g., JOHN KIE-CHIANG OH, KOREAN POLITICS: THE QUEST FOR DEMOCRATIZATION AND ECONOMIC DEVELOPMENT 24-89 (1999) (reporting that South Korea went through much domestic turmoil surrounding the undemocratic and repressive regimes of Syngman Rhee, Park Chung Hee, and Chun Doo Hwan).
\textsuperscript{27} When Korea was divided in 1945, the North was more economically developed and its gross domestic product ("GDP") was larger. See MARCUS NOLAND, AVOIDING THE APOCALYPSE: THE FUTURE OF THE TWO KOREAS 59-60 (2000) [hereinafter AVOIDING THE APOCALYPSE].
\textsuperscript{28} See \textit{id.} at 145.
\textsuperscript{29} See Seung-Ho Joo, Russia and Korea, in THE KOREAN PENINSULA AND THE MAJOR POWERS 105-06 (Bae Ho Hahn & Chae-Jin Lee eds., 1998).
\textsuperscript{30} There were hostile acts against the United States as well, but these usually centered around the Demilitarized Zone and do not appear to reflect a North Korean policy of terrorism against the United States. See DICK K. NANTO, CONGRESSIONAL RESEARCH SERVICE, NORTH KOREA: CHRONOLOGY OF PROVOCATIONS, 1950-2003 (2003).
\textsuperscript{31} \textit{Id.} Nanto also notes that North Korean provocations were most intense in the latter half of the 1960s. \textit{Id.}
one American, hostage for weeks before releasing most of them.\textsuperscript{32} A North Korean squad nearly attacked the residence of the South Korean President before being repelled by South Korean police in January 1968.\textsuperscript{33} Two days later,\textsuperscript{34} North Korea fired upon the U.S. ship USS Pueblo while it was in international waters and held the crew captive for nearly a year until a diplomatic solution was reached.\textsuperscript{35} North Korea's assassination attempts included efforts to kill South Korean President Park Chung Hee in 1968 and 1974,\textsuperscript{36} and South Korean President Chun Doo Hwan in a bombing incident in Rangoon, Myanmar (Burma) in 1983.\textsuperscript{37} North Korea also bombed Korean Airlines Flight 858 in 1987—its last known sponsored act of terrorism.\textsuperscript{38}

Beginning in the 1970s, North Korea suffered an economic downturn,\textsuperscript{39} just as South Korea's economy began to rapidly develop.\textsuperscript{40} As the North Korean economy slowed down, its Gross National Product fell,\textsuperscript{41} and the country encountered great economic difficulties. North Korea's economic situation has remained bleak while its international terrorist activities have abated.

C. From 1992 to the Present, Internal Humanitarian Crises and International Opposition to Its Weapons Programs Have Dominated North Korea's International Affairs

Since 1992, North Korea's international relations have been dominated by its need for food and oil aid to prevent overwhelming starvation,\textsuperscript{42} and U.S.-led opposition to its weapons programs. North Korea has suffered from

\textsuperscript{32} See id. at 3.
\textsuperscript{33} See MITCHELL B. LERNER, THE PUEBLO INCIDENT: A SPY SHIP AND THE FAILURE OF AMERICAN FOREIGN POLICY 60 (2002). Thirty-one North Korean army officers disguised as South Korean soldiers reached the South Korean presidential residence, and prepared to launch their assassination attempt against South Korean President Park Chung Hee when a South Korean policeman stopped them. The North Koreans either fled or were killed in the ensuing gunfight. \textit{Id.}
\textsuperscript{34} NANTO, supra note 30, at 4.
\textsuperscript{35} LERNER, supra note 33, at 2. One man and several others were wounded in the attack. \textit{Id.} at 81. The crew was also tortured in North Korean custody. \textit{Id.} at 170-79. Additionally, North Korea shot down an American reconnaissance plane on April 14, 1969, over the Sea of Japan. \textit{Id.} at 233.
\textsuperscript{36} NANTO, supra note 30, at 4, 6.
\textsuperscript{37} \textit{Id.} at 8.
\textsuperscript{38} BACKGROUND NOTE: NORTH KOREA supra note 8.
\textsuperscript{39} The North Korean economy started to decline from the early 1970s. See AVOIDING THE APOCALYPSE, supra note 27, at 4.
\textsuperscript{40} See id. The decline may primarily be attributed to North Korea's inability to raise the productivity of existing assets. \textit{Id.}
\textsuperscript{41} See JANG C. JIN, Openness and Growth in North Korea: Evidence from Time Series Data, in NORTH KOREA IN THE WORLD ECONOMY 201-02 (E. Kwan Choi, et. al. eds., 2003).
severe food shortages due to natural disasters, an economic downturn, the collapse of the Soviet Union, and policies placing greater importance on military spending than civilian welfare. Although they have opposed North Korea's weapons programs, the United States, China, Japan, and South Korea have continued to send humanitarian aid to North Korea. North Korea threatened to withdraw from the Nuclear Non-Proliferation Treaty ("NPT") in 1993, touching off an international crisis that was temporarily resolved with the Geneva Agreed Framework in 1994. North Korea's domestic and international concerns continue to center around its weapons programs and need for foreign aid. Opposition to North Korea's nuclear weapons program also remains, as this crisis has yet to be resolved after North Korea's withdrawal from the NPT in January 2003.

III. JUSTIFICATION FOR U.S. POLICY TOWARD NORTH KOREA IS TENUOUS BECAUSE NORTH KOREA HAS NOT SPONSORED TERRORIST ACTS FOR MANY YEARS

Economic sanctions are commonly used to signal resolve and exert pressure for policy changes because they are a less risky means of imposing costs on a target state than military action. Sanctions satisfy the domestic political need for government action and reinforce commitment to a behavioral norm. In situations where the American public is reluctant to use force, sanctions provide a visible and less expensive alternative to military intervention, while also providing an alternative to doing nothing or mere rhetoric.

Economic sanctions are commonly defined as the deliberate, government-inspired withdrawal, or threat of withdrawal, of customary trade or financial relations that would probably have occurred in their absence.

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43 See id.
44 The amount of trade between North Korea and the Soviet Union, historically North Korea's principal patron, declined significantly as relations worsened and the Soviet economy imploded. See AVOIDING THE APOCALYPSE, supra note 27, at 95-99.
45 See WORLD FACTBOOK: NORTH KOREA, supra note 19.
47 See infra Part IV.C.
48 See infra Part IV.D.
51 Id.
They "seek to lower the aggregate economic welfare of a target state by reducing international trade in order to coerce the target government to change its political behavior." Legislation such as the Trading with the Enemy Act, International Emergency Economic Powers Act, EAA, Export-Import Bank Act, and Arms Export Control Act provide the basis for many of the sanctions imposed by the United States. The power to impose or amend sanctions is within the purview of the executive branch.

The United States puts forth four justifications for its current economic sanctions against North Korea:

1. North Korea poses a threat to U.S. national security, as determined by the President and reviewed annually under the terms of the Trading with the Enemy Act and the National Emergencies Act;
2. North Korea is designated by the Secretary of State as a state sponsor or supporter of international terrorism, pursuant to the Export Administration Act of 1979;
3. North Korea is a Marxist-Leninist state, with a Communist government, classified as such in the Export-Import Bank Act of 1945, and further restricted from access to economic assistance under the Foreign Assistance Act of 1961; and
4. North Korea had been found by the State Department to have engaged in proliferation of weapons of mass destruction pursuant to the Arms Export Control Act, Export Administration Act of 1979, and Iran Proliferation Act of 2000.

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In 1999, President Clinton announced the easing of banking, trade, and travel sanctions against North Korea in order to improve relations, support the 1994 Geneva Agreed Framework, and encourage North Korea to continue to refrain from testing long-range missiles. Since this announcement, U.S. sanctions policy towards North Korea has not significantly changed, and the Bush administration has given little indication that it will further ease sanctions.

A. The EAA Limits International Trade Due to National Security and Foreign Policy Concerns

The most significant legal justification for sanctions against North Korea is the Export Administration Act of 1979, which regulates dual-use items. Section 6(j) of the EAA prohibits U.S. trade in dual-use goods with countries the State Department has listed as state supporters of international terrorism. Additionally, a section 6(j) listing compels the United States to oppose that country’s application for membership in international financial institutions. North Korea has expressed interest in joining the Asian Development Bank, the World Bank, and the International Monetary Fund. Such membership could greatly contribute to liberalizing North Korea’s economy and possibly bring about a fall of the current regime. However, the United States will not support North Korea’s membership in

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62 See infra Part III.C.  
63 This is particularly so after President Clinton’s steps to end the total trade embargo against North Korea in 1999, and to ameliorate the Trading with the Enemy Act’s effect. However, Clinton’s policy did not affect anti-terrorism or nonproliferation export controls. See RENNACK, supra note 60, at 6.
64 Dual-use items are goods, technologies, and services with both military and commercial application. H.R. Rep. 107-297 (II) 7 (2002).
68 North Korea has periodically expressed interest in joining the World Bank and International Monetary Fund (“IMF”), but membership talks have not progressed, due in part to North Korea’s unwillingness to provide access to economic data and to the opposition of influential countries such as the United States and Japan. See MARCUS NOLAND, KOREA AFTER KIM JONG-IL 58 (2004).
69 North Korea has recognized the prospect that market liberalization could lead to the communist regime’s fall. See Nicholas Eberstadt, The Persistence of North Korea, 127 POLICY REVIEW 23, 39 (2004).
these institutions so long as North Korea remains on the state sponsors of terrorism list.

First enacted in 1969, the EAA authorized government control over exports for three reasons: national security, foreign policy, and short supply.\textsuperscript{70} The legislative history of the 1969 EAA has strong Cold War overtones, reflecting the United States' goal to "formulate a unified commercial and trading policy to be observed by the non-Communist-dominated nations or areas in their dealings with the Communist-dominated nations."\textsuperscript{71} Due to their status as communist states, China and North Korea were included as countries which could not import dual-use items.\textsuperscript{72}

The 1979 EAA built upon the 1969 version. The Senate noted that "[t]here are circumstances in which the economic benefits and the presumption against government interference with participation in international commerce by U.S. citizens are outweighed by the potential adverse effect of particular exports on the national security, foreign policy, or economy of the United States."\textsuperscript{73} Thus, the EAA's prevailing purpose was to prevent exports from making "a significant contribution to the military potential of any nation which would prove detrimental to United States national security."\textsuperscript{74} To fulfill this policy, the Secretary of State could, pursuant to section 6(j), impose trade restrictions on countries that he or she determined were state supporters of international terrorism.\textsuperscript{75} Although the 1979 EAA expired on August 20, 1994,\textsuperscript{76} the section 6(j) designation framework influences other significant laws pertaining to economic sanctions.\textsuperscript{77}

\textsuperscript{71} Id.
\textsuperscript{72} Id. citing section 2(2) of the Export Control Act of 1949.
\textsuperscript{74} Id. at 3.
\textsuperscript{77} Section 6(j) is cross-referenced in several other laws. See, e.g. 18 U.S.C. § 2332(d) (2000) (prohibiting financial transactions with a section 6(j) country). Anti-terrorism controls apply against most countries designated as state supporters of international terrorism—Cuba, Iran, Libya, North Korea, Sudan, and Syria—but not against Iraq. Export Administration Regulations, 15 C.F.R. § 742.1 (2004). It is generally considered that the list maintained pursuant to the Export Administration Act of 1979 applies to the Arms Export Control Act and the Foreign Assistance Act of 1961. RENNACK, supra note 60, at 7 n.15.
B. North Korea's Initial Listing As a State Supporter of Terrorism Was Justified Due to Its Substantial Terrorist Activities Prior to 1988

Prior to 1988 North Korea committed significant terrorist acts against South Korea, including three presidential assassination attempts and the construction of tunnels into South Korea. However, no overt terrorist activities were aimed at the United States. Outraged by the 1987 terrorist bombing of Korean Airlines Flight 858, the State Department listed North Korea as a state supporter of terrorism under the 1979 EAA. The House of Representatives and Senate unanimously passed resolutions condemning North Korea's involvement in the bombing and expressing support for North Korea's inclusion on the list of state supporters of terrorism because of its past history of terrorist activities. Thus, North Korea's involvement in terrorist activities justified its initial designation by the Secretary of State as a state supporter of terrorism.

C. North Korea's Present Listing Is Not Justified Because It Has Not Provided Support to International Terrorism Since 1987

More than fifteen years after its last known terrorist attack, however, North Korea remains on the list of countries that the Secretary of State has determined to have "repeatedly provided support for acts of international terrorism." Based on the Secretary of State's designation as such, North Korea presently falls under section 6(j) of the EAA and is subject to economic sanctions. North Korea's designation as a state supporter of terrorism is not justified simply by terrorist activities that were characteristic of its past, but is actually based on its weapons trade and refusal to participate in the U.S.-led war on terror.

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78 See NANTO, supra note 30.
79 See id.
80 See NANTO, supra note 30, at 10.
83 22 C.F.R. § 126.1(d).
1. **North Korea Has Not Recently Supported Terrorism**

North Korea previously engaged in terrorist activities, but has not sponsored any known terrorist acts since 1987. The North Korean Human Rights Act of 2004, the most recent piece of U.S. legislation regarding North Korea, does not include any mention of North Korea’s involvement in terrorist activities. Under this law, the United States will provide US $124 million each year over the 2005-08 period to provide support for North Korean refugees and grants for private, nonprofit organizations to promote human rights, democracy, rule of law, and the development of a market economy in North Korea. Omission of North Korea’s prior involvement in international terrorism may indicate that North Korea generally is no longer thought of as a terrorist state, although it may be an “evil” one.

Prior to September 11, 2001, there were serious discussions within the State Department about taking North Korea off the list of designated state supporters of terrorism. In October 2000, the United States and North Korea jointly stated that North Korea accepted the three conditions the United States demanded for removing North Korea from the list of state supporters of terrorism. The three conditions consisted of: (1) North Korea’s opposition to terrorism and a commitment not to support it; (2) participation in all international anti-terrorism conventions; and (3) resolving the issue of kidnapped Japanese nationals and North Korea’s harboring of the Japanese Communist League-Red Army guerrilla members who hijacked a Japan Airlines flight in 1970.

Despite these improvements, the State Department again listed North Korea as a state sponsor of terrorism in 2001. Although North Korea has stated its opposition to terrorism, the State Department noted that North Korea harbors Japanese communist hijackers, and the Philippine government

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84 See NANTO, supra note 30.
85 PATTERNS OF GLOBAL TERRORISM (2004), supra note 82.
90 Yonhap News Agency, NORTH KOREA HANDBOOK 542 (Monterey Interpretation and Translation Services trans. 2003).
91 *Id*. 
stated that terrorist groups have bought weapons from North Korea using Middle East funding sources.\textsuperscript{92} According to the State Department, North Korea "has not taken substantial steps to cooperate in efforts to combat international terrorism,"\textsuperscript{93} despite pledging to do so in the Joint United States-DPRK Statement on International Terrorism.\textsuperscript{94} Consequently, the State Department has made no mention of removing North Korea from the list since April 2001,\textsuperscript{95} even though North Korea has not recently supported terrorist acts.

2. \textit{The EAA Does Not Define "Terrorism," and the United States Has Implemented an Arbitrary and Expansive Definition of Terrorism}

Terrorism, broadly defined, is premeditated, politically-motivated violence perpetrated against noncombatant targets by sub-national groups or clandestine agents; international terrorism involves the citizens or property of more than one country.\textsuperscript{96} The EAA lacks a definition of "terrorism" or "international terrorism," merely stating that the Secretary of State designates terrorist-supporting states.\textsuperscript{97} Other legislation, however, includes varying definitions of terrorism, thus providing no clear and definite standard that the Secretary may use in making such a determination.

The current definition in the Arms Export Control Act states that state-supported acts of international terrorism include:

All activities that the Secretary determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups, willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material, or willfully aid or abet the efforts of an individual or group to use,
develop, produce, stockpile, or otherwise acquire chemical, biological, or radiological weapons.\textsuperscript{98}

This definition is particularly pertinent because like the EAA, under the Arms Export Control Act, the Secretary of State determines whether a state has supported "international terrorism."\textsuperscript{99} Additionally, this seems to be the clearest definition of state-supported terrorism available, as American legislation lacks a precise definition of the term. Further, the U.S. Criminal Code provides that it is a crime of terrorism to use, threaten, attempt, or conspire to use a weapon of mass destruction.\textsuperscript{100}

Legally, North Korea’s status as a terrorist state appears to be related to its proliferation of weapons of mass destruction and its nuclear program.\textsuperscript{101} However, this stretches the definition of terrorism, because it goes far beyond the traditional understanding of terrorism as politically-motivated violence perpetrated against noncombatant targets. There is no evidence that North Korea has undertaken, funded, or encouraged politically-motivated violence against noncombatant targets since 1987.\textsuperscript{102} Although North Korea’s arms trade has been a concern for the United States,\textsuperscript{103} it has only recently been tied to North Korea’s designation as a terrorist supporting state.

Given recent legislation aimed at countering terrorism, particularly with regard to export controls, it is unlikely that future EAAAs will include a

\textsuperscript{98} 22 U.S.C. § 2780(d) (West 2002).

\textsuperscript{99} See id.

\textsuperscript{100} 18 U.S.C. § 2332a (West 2002). The use of WMD is included under the crime of “terrorism.” 18 U.S.C. §§ 2331, 2332a-b, 2332d-f, 2333-2339C (West 2002). This section has been amended by the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638 (2004), but its definition remains essentially the same.

\textsuperscript{101} The inclusion of a statement against the proliferation of WMD in PATTERNS OF GLOBAL TERRORISM (2004) indicates that producing WMD is tied to a state’s status as a supporter of terrorism. See PATTERNS OF GLOBAL TERRORISM (2004), supra note 82. See also Perl, supra note 96, at 3-4 (North Korea may be termed a less active state-supporter of terrorism, and U.S. security concerns arguably focus more on the state’s WMD than on its support for terrorist activities).

\textsuperscript{102} North Korea’s harboring of a handful of aging Japanese communists is an exception to this statement. See BACKGROUND NOTE: NORTH KOREA, supra note 8.

\textsuperscript{103} See, e.g., 140 CONG. REC. S1845-01 (daily ed. Feb. 24, 1994) (statement of Sen. Bennett) (“The issue of North Korea’s nuclear weapons program has been of public interest for over a year”). See also Deputy Secretary of State Richard Armitage, Remarks Before the Senate Foreign Relations Committee Hearing on North Korea (Feb. 4, 2003), reprinted in U.S. Willing to Hold Direct Talks with North Korea, Armitage Says, DAILY WASHINGTON FILE, available at http://usembassy-australia.state.gov/hyper/2003/0204/epf202.htm (last visited Apr. 20, 2005) (noting that the Senate Foreign Relations Committee has been deeply concerned about North Korea’s development of WMD).

\textsuperscript{104} Cf. PATTERNS OF GLOBAL TERRORISM (2001), supra note 89; PATTERNS OF GLOBAL TERRORISM (2004), supra note 82. Current U.S. policy seeks to “pressure and isolate state sponsors so they will renounce the use of terrorism, end support to terrorists, and bring terrorists to justice for past crimes.” PATTERNS OF GLOBAL TERRORISM (2001), supra note 89.
narrower definition of terrorism. Efforts at reforming and replacing the 1979 EAA have emphasized national security, included a special grant of presidential authority in situations involving international terrorism, and provided stronger roles for the Departments of State and Defense in making export control decisions. A strong component of the 2001 Export Administration Act, passed by the Senate but stalled in the House of Representatives, was the United States' national security interest in controlling the export of dual-use goods to impede the proliferation of WMD and international terrorism. The general legislative trend seems to favor greater export controls against countries with any connection to terrorism.

Tying terrorism to weapons programs, however, is fraught with difficulties. The United States leads the world in arms transfers, and its arms sales are not always in the foreign policy interests of other countries. Recognizing this dichotomy, North Korea claimed that U.S. opposition to its weapons program showed its policy of double standards, and labeled the United States a "nuclear criminal" itself. The United States has not listed France, the United Kingdom, Germany, or Italy as state sponsors of terrorism, although collectively they delivered US $34,200 million of arms to Saudi Arabia—the state of origin for most of the September 11 terrorists—between 1995 and 2002.

The actual U.S. standard for determining which states support terrorism, however, does not turn on the identity of the arms buyer, but on whether the seller has aided the United States in its "war on terror." President George W. Bush has repeatedly proclaimed that "nations are either

110 For example, China has opposed U.S. sales of military technology to Taiwan as being contrary to its foreign policy interests. EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA IN THE UNITED STATES OF AMERICA, CHINA STRONGLY PROTESTS U.S. ARMS SALES TO TAIWAN (Apr. 25, 2001), available at http://www.china-embassy.org/eng/zt/wwt/t36739.htm (last visited Apr. 20, 2005).
with us or against us in the war on terror," indicating that the United States will judge states as being supporters of terrorism by their lack of participation in, and support of, the U.S.-led war on terrorism. Such support seems to absolve states from the sins of their previous terrorist acts and weapons sales. Although Pakistan conducted nuclear tests in 1998 despite U.S. opposition, and significantly collaborated in weapons development with North Korea, it has benefited from significant U.S. economic aid due to its support of the U.S.-led war on terror. North Korea suffered sanctions from its sale of missile technology to Yemen, while Yemen did not. The United States indicated that the sanctions against Yemen were waived because of nonproliferation "commitments [it] made and in consideration of [its] support for the war on terrorism." Due to North Korea's continued nuclear and WMD proliferation programs and its mere lip service in support of the United States' war on terrorism, North Korea remains a designated state supporter of terrorism.

IV. ECONOMIC SANCTIONS HAVE NOT ACHIEVED U.S. FOREIGN POLICY OBJECTIVES

Under the 1979 EAA, the President can amend export controls based on their likelihood of achieving the intended foreign policy purpose and "[compatibility] with the foreign policy objectives of the United States." Sanctions against North Korea are not successful due to its poor command economy, the availability of other trading partners, and unique nationalist juche ideology. Therefore, the United States should move towards less stringent economic sanctions and other means of achieving its foreign policy goals.

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118 Americans have been the target of several attacks in Pakistan, including an attack on the American Center in Islamabad in 1989. See BACKGROUND NOTE: PAKISTAN, supra note 116.
119 North Korea was sanctioned under the 1979 EAA, 50 U.S.C. app. § 2401b(b)(1), and the Arms Export Control Act, 22 U.S.C. § 2797b(a)(1) for engaging in missile technology proliferation activities. 67 Fed.Reg. 164 (Aug. 23, 2002).
121 See PATTERNS OF GLOBAL TERRORISM (2004), supra note 82.
A. There Are Established Criteria to Evaluate the Effectiveness of Economic Sanctions

Although the utility and effectiveness of economic sanctions are widely debated, several common criteria emerge for such an evaluation. To determine how effective sanctions are, it is important to conduct a comparative cost-benefit analysis with other alternatives. In order to maximize the effectiveness of economic sanctions, experts recommend they be used mostly for modest aims, have multilateral support, emphasize precision and narrowness, and allow for humanitarian exemptions. Additionally, sanctions tend to be more effective against free market economies without other available trading partners, because states with planned economies mitigate against the sanctions with adjustments such as substitution and conservation. Finally, economic sanctions may be termed successful where: (1) the target state conceded to significant demands made by the coercer; (2) economic sanctions were threatened or actually applied before the target changed its behavior; and (3) no more-credible explanation exists for the target’s change of behavior.

B. North Korea’s Political and Economic Ideologies Render Sanctions Ineffective

As one of the world’s most centrally planned and isolated economies, North Korea’s government controls and sets the economy’s means of production and development. Accordingly, outside economic forces, such as sanctions, have considerably less influence on North Korea compared to a free market economy, and have little effect on private citizens.

North Korea’s economic state is dire, and it suffers from poor infrastructure, a collapsed energy sector, and chronic food shortages.

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123 Hufbauer made a case for sanctions’ ability to achieve foreign policy goals in his influential study on economic sanctions. See HUFBAUER, supra note 52. One of the prominent criticisms of economic sanctions and of Hufbauer’s study is Robert A. Pape. See Pape, supra note 53.
125 Id. at 3-6.
127 Pape, supra note 53, at 107.
128 Id. at 97.
129 WORLD FACTBOOK: NORTH KOREA, supra note 19.
130 MIYAGAWA, supra note 126, at 26.
131 BACKGROUND NOTE: NORTH KOREA, supra note 8. In comparison, South Korea’s per capita gross domestic product (“GDP”) is eighteen times that of North Korea’s, its annual exports total about US$ 201.3 billion, and its imports are annually US$ 175.6 billion. See U.S. CENTRAL INTELLIGENCE AGENCY, WORLD
Considerably smaller than its neighbors, North Korea’s economy has fewer available resources. With its command economy, North Korea’s engagement in international trade is also limited. As a result, its lack of trade with the United States does not punish North Korea—the world’s most autarkic country. Because international trade does not constitute a large part of North Korea’s economy, economic sanctions do not significantly hurt the North Korean economy.

In addition to these factors, North Korea’s juche nationalist ideology makes sanctions even less effective. The country’s greatest strength in resisting external economic pressure lies in its juche ideological solidarity. Unlike Marxist-Leninist ideology that promotes world revolution, juche is not concerned with revolution. Juche generally means self-reliance; external dependence is suppressed.

Such nationalism often makes states willing to endure punishments rather than abandon their policies. Indeed, even in weak states, “external pressure is more likely to enhance the nationalist legitimacy of rulers than to undermine it.” North Korea is no exception, as it has prepared for economic isolation since its inception, and there is no great domestic demand for foreign goods. The regime considers luxury harmful to human development and thus discourages production of commodities and

\begin{footnotesize}
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\item See AVOIDING THE APOCALYPSE, supra note 27, at 61.
\item See HAN S. PARK, NORTH KOREA: THE POLITICS OF UNCONVENTIONAL WISDOM 124 (2002).
\item North Korean leader Kim Il Sung thought that little encouragement would be need for South Korea to embrace socialism and North Korea’s juche ideology. See Victor D. Cha, Assessing the North Korean Threat, in NORTH KOREA AND NORTHEAST ASIA 228 (Samuel S. Kim and Tai Hwan Lee eds., 2002). See also DON OBERDORFER, THE TWO KOREAS: A CONTEMPORARY HISTORY 99 (1997).
\item Pape, supra note 53, at 106.
\item Id. at 106-07.
\end{itemize}
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consumer goods.\textsuperscript{141} Although limited international trade has been accepted as a necessary evil,\textsuperscript{142} North Korea's \textit{juche}-based policy of economic self-reliance has largely deterred economic growth and resulted in isolation.\textsuperscript{143} Accordingly, North Korea's uniquely self-reliant economy renders economic sanctions largely ineffective.

C. \textit{The Use of Sanctions by the United States in the 1993-1994 Nuclear Crisis with North Korea Reflects the Limits of Their Effectiveness}

North and South Korea signed the Joint Declaration of the Denuclearization of the Korean Peninsula on December 31, 1991.\textsuperscript{144} In 1992, North Korea joined the International Atomic Energy Agency ("IAEA") Safeguards Agreement allowing international inspections of its nuclear facilities.\textsuperscript{145} IAEA inspections subsequently revealed discrepancies indicating that North Korea may have stored weapons-grade plutonium in violation of the IAEA Safeguards Agreement.\textsuperscript{146} When the IAEA requested permission to conduct more inspections at suspected nuclear waste storage sites, North Korea refused, viewing the IAEA as "simply a United States tool, [that] was attempting to place increased pressure on [North Korea]."\textsuperscript{147} When the IAEA called on North Korea to allow IAEA inspections,\textsuperscript{148} North Korea announced that it would back out of the NPT after the obligatory ninety day notification period—the first withdrawal in the NPT's history.\textsuperscript{149}

Concerned that North Korea's NPT withdrawal might spur other countries to also withdraw,\textsuperscript{150} the United States sought to enjoin North Korea's action.\textsuperscript{151} As President Clinton stated, North Korea's becoming a nuclear power would be "a very grave development, not just for South Korea

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  \item<sup>141</sup> PARK, supra note 135, at 93.
  \item<sup>142</sup> Marcus Noland, \textit{North Korea's External Economic Relations: Globalization in 'Our Own Style,'} in \textit{NORTH KOREA AND NORTHEAST ASIA} 165 (Samuel S. Kim and Tai Hwan Lee eds., 2002).
  \item<sup>143</sup> PARK, supra note 135, at 23-24.
  \item<sup>144</sup> Democratic People's Republic of Korea-Republic of Korea: Joint Declaration on Denuclearization of the Korean Peninsula, 33 I.L.M. 569 (1994).
  \item<sup>146</sup> See OBERDORFER, supra note 136, at 275-76.
  \item<sup>147</sup> WILLIAM E. BERRY, JR., INSTITUTE FOR NATIONAL SECURITY STUDIES, NORTH KOREA'S NUCLEAR PROGRAM: THE CLINTON ADMINISTRATION'S RESPONSE 7 (1995).
  \item<sup>148</sup> OBERDORFER, supra note 136, at 279-80.
  \item<sup>149</sup> Id. at 280.
  \item<sup>150</sup> See, e.g., Henry A. Kissinger, \textit{Why We Can't Withdraw from Asia}, WASH. POST, June 15, 1993, at A21 ("Too many concessions to Pyongyang will only encourage other nations to blackmail us by entering the nuclear field.").
  \item<sup>151</sup> See OBERDORFER, supra note 136, at 285-86.
\end{enumerate}
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but for Japan as well and for all of Asia,”¹⁵² because it could destabilize the balance of power in the region.¹⁵³ The Clinton administration pursued coercive diplomacy that addressed military and economic concerns.¹⁵⁴ With Japanese and South Korean input, the United States pursued a carrot-and-stick policy consisting of "the threat of sanctions plus certain face-saving inducements [to] help [North Korea] comply," and the added threat of military action if it proved recalcitrant.¹⁵⁵ This policy was not very effective, however, as the United States and its allies could not agree on the incentives to be used.¹⁵⁶

Neither was there agreement over the means to induce North Korea to comply with the IAEA Safeguards Agreement. South Korea, Japan, and China hesitated to impose sanctions and opposed a U.S. military attack.¹⁵⁷ The United States lobbied Beijing to exert pressure on Pyongyang, playing on Beijing's reluctance to support sanctions.¹⁵⁸ However, even economic sanctions were risky because there was the "likelihood that sanctions would prove politically provocative and economically ineffective."¹⁵⁹

The carrot-and-stick approach nearly became moot following North Korea's announcement that it was removing eight thousand spent fuel rods from its Yongbyon reactor without IAEA approval.¹⁶⁰ The United States considered imposing economic sanctions without U.N. Security Council

¹⁵² President William J. Clinton, Remarks and a Question-and-Answer Session at Waseda University in Tokyo, PUB. PAPERS 1019, 1025 (July 7, 1993).
¹⁵³ See HENRY KISSINGER, DOES AMERICA NEED A FOREIGN POLICY: TOWARD A DIPLOMACY FOR THE 21ST CENTURY 132-34 (2001). For example, failure to resolve the North Korean nuclear threat could lead to the nuclear armament of Japan. See id. at 127.
¹⁵⁶ Sigal, supra note 155, at 73.
¹⁵⁷ The threat of sanctions posed a particular problem for Japan, as there were approximately 300,000 pro-DPRK Koreans residing in Japan, making contributions to North Korea estimated at US$ 600 million to US$1.6 billion annually in the form of hard currency sent to relatives, equipment, and spare parts. See David E. Sanger, Japan Split Over Role in a North Korea Showdown, N.Y. TIMES, Apr. 24, 1994, sec.1, p.3.
¹⁵⁸ LEON V. SIGAL, DISARMING STRANGERS: NUCLEAR DIPLOMACY WITH NORTH KOREA 58 (1998) [hereinafter DISARMING STRANGERS].
¹⁵⁹ Sigal, supra note 155, at 76.
endorsement, but the limited receptiveness of other countries led Washington to emphasize political pressure in its dealings instead. North Korea’s subsequent withdrawal from the IAEA, however, provoked the United States to advocate U.N. Security Council sanctions despite North Korea’s warnings that sanctions would amount to a declaration of war.

The Clinton administration adopted a policy of gradual sanctions, with the first stage consisting of non-economic sanctions, the second halting remittances from abroad, and the last being a near total embargo.

Former President Jimmy Carter preempted this policy when he flew to Pyongyang to meet with Kim Il Sung amidst controversy. Carter triumphantly announced that he had the makings of an agreement and criticized the Clinton administration’s proposed sanctions as a “serious mistake.” Carter’s public disavowal of sanctions led to the diffusion of the immediate crisis and the possibility of a diplomatic give-and-take.

In August 1994, North Korea announced its intentions to remain a party to the NPT and to implement IAEA safeguards, and the United States extended a negative security guarantee to North Korea, assuring North Korea that it would not use nuclear weapons against it. The subsequent Geneva Agreed Framework committed a U.S.-led consortium to fund and build two light water reactors, and supply North Korea with heavy crude oil until the light water reactors were completed. In exchange, North Korea agreed not to back out of various nonproliferation commitments, and both countries agreed to open liaison offices in the other’s capital and reduce trade barriers. Such an agreement, brought about by the United States’ willingness to give up its threat of multinational sanctions, illustrates the

161 OBERDORFER, supra note 136, at 318.
164 OBERDORFER, supra note 136, at 318.
165 OBERDORFER, supra note 136, at 318.
166 Id.
167 Id. With Carter as the mediator, both Korean leaders, Kim Il Sung and Kim Young-Sam, agreed to a summit meeting. See id., supra note 136, at 333-34. In addition, North Korea and the United States resumed high-level bilateral talks in July 1994. North Korea promised not to extract plutonium from the fuel rods or refuel its five megawatt reactor, and agreed to allow IAEA inspectors at Yongbyon. Id. at 332. However, due to Kim Il Sung’s sudden death in July 1994, the two-Korea summit was canceled and the talks were postponed until August 1994. Id. at 343, 351.
169 Id.
171 Id. North Korea also agreed to discontinue construction on larger reactors and not reprocess the spent fuel from the five megawatt Yongbyon reactor. Id.
limited effectiveness of U.S. sanctions in resolving the 1993-94 nuclear crisis.

D. The Use of Sanctions Should Be Discontinued

The United States should discontinue, or at the very least, significantly reduce its economic sanctions against North Korea. Not only are economic sanctions ineffective, but North Korea’s 2003 withdrawal from the NPT also necessitates a viable resolution of the crisis. The United States could resolve this crisis through a strategy of engagement. Only after making changes to its sanctions against North Korea and the country’s designation as a state supporter of terrorism, however, can the United States seriously pursue such a strategy of engagement.

1. North Korea’s 2003 Withdrawal from the NPT Necessitates a Resolution of the Crisis

In October 2002, confronted with U.S. intelligence, North Korean officials admitted having a secret nuclear weapons program and possessing “more powerful things as well,” ostensibly to protect themselves from a perceived U.S. threat. North Korea also notified the United States that, from its point of view, American delays in its implementation nullified the 1994 Geneva Agreed Framework.

The Bush administration called on North Korea to eliminate its nuclear weapons program, comply with the NPT, and reiterated that the United States would not tolerate North Korea’s possession of WMD. North Korea’s press release in response to the American allegations and actions stated that it was ready to negotiate the nuclear issue if the United States recognized its sovereignty, assured North Korea of nonaggression, and agreed not to hinder North Korea’s economic development.

Reluctant to engage in talks, the United States scrapped the 1994 Agreed Framework and ended its oil shipments. American, South

\begin{flushright}
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173 Id.
174 Id.
175 Id.
177 MICHAEL O’HANLON & MIKE MOCHIZUKI, CRISIS ON THE KOREAN PENINSULA: HOW TO DEAL WITH A NUCLEAR NORTH KOREA 15-16 (2003).
\end{footnotesize}
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Korean, and Japanese officials threatened North Korea with grave consequences, including the possibility of sanctions, unless North Korea abandoned its nuclear program. \(^\text{179}\) North Korea responded by expelling IAEA inspectors, withdrawing from the NPT, and reprocessing spent nuclear fuel rods. \(^\text{180}\)

No progress has been made towards a resolution of the crisis. A need for greater cooperation between the United States and its allies in forming a coherent strategy continues. April 2003 negotiations mediated by China produced no results. \(^\text{181}\) Similarly, February 2004 six-party talks did not lead to any real progress. \(^\text{182}\) In June 2004, Japan and South Korea, with American approval but not participation, offered North Korea a package of energy and economic aid in exchange for terminating its nuclear program. \(^\text{183}\) North Korea, however, has balked, demanding U.S. participation in exchange for returning to six-party negotiations. \(^\text{184}\) As no progress has been made on resolving the crisis, the United States should try to engage North Korea in meaningful negotiations by offering to consider ending economic sanctions. \(^\text{185}\)

2. **A Strategy of Engagement Supports the Ending of Sanctions**

By ending sanctions, the United States can create goodwill and political capital, which are particularly necessary because its enthusiasm for


\(^{180}\) IAEA, *supra* note 160.

\(^{181}\) ANDREW SCOBELL, *STRATEGIC STUDIES INSTITUTE, CHINA AND NORTH KOREA: FROM COMRADES-IN-ARMS TO ALLIES AT ARM'S LENGTH* 10-11 (2004). The three-party talks were a compromise between North Korea’s insistence on bilateral talks with the United States and United States’ insistence on multilateral talks which would have also included Japan, South Korea, and Russia. *Id.*

\(^{182}\) *Id.*


\(^{184}\) *Id.*

\(^{185}\) This is particularly so because North Korea could interpret economic sanctions as a prelude to war. See *Sanctions on North Korea by U.S. Nixed*, JAPAN TIMES, Jan. 19, 2005, available at [http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050119a3.htm](http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050119a3.htm) (last visited Apr. 20, 2005) (referencing statements U.S. Congressman Curt Weldon).
sanctions has not been shared by its Asian allies. It is important that the United States has support for its policy from Japan, South Korea, and China.\textsuperscript{186} The United States should also hold out the possibility of cooperation with North Korea, while taking a strong stance if North Korea continues to spurn the nonproliferation regime.\textsuperscript{187} Given the Bush administration's propensity for unilateralism,\textsuperscript{188} a good faith demonstration of the United States' willingness to work with its allies is doubly important. A hegemonic, unilateral, nonproliferation strategy is ineffective, and "no nonproliferation policy can work if it is at odds with the interests of the very countries it is designed to protect."\textsuperscript{189}

Assuming that peace and stability on the Korean peninsula are the goals, the logical policy course for the United States is more engagement,\textsuperscript{190} particularly because it implicitly recognizes the importance of a nuclear program to North Korea.\textsuperscript{191} Collapse of the North Korean regime is undesirable due to the instability and the economic costs which would inevitably follow.\textsuperscript{192} The United States should seek China's cooperation, because China's security interests favor North Korea's continued, non-nuclear existence.\textsuperscript{193} Military conflict would not only put American troops at China's doorstep, but could also trigger massive refugee inflows, affect social stability, and panic foreign investors.\textsuperscript{194}

A key component of such an engagement policy is the retraction of economic sanctions. Currently, North Korea has little to lose in its relations with the United States, which may make it more willing to pursue a

\textsuperscript{188} President George W. Bush's administration has demonstrated a unilateralist approach to foreign policy. \textit{See} Banning Garrett, \textit{The Post-September 11\textsuperscript{th} Strategic Situation and its Implications for the United States, China and Sino-American Relations}, in U.S.-CHINA RELATIONS AND THE BUSH ADMINISTRATION: A NEW PARADIGM OR CONTINUING MODALITIES 31 (Arthur Lewis Rosenbaum, ed. 2003).
\textsuperscript{189} Mazarr, supra note 186, at 110.
\textsuperscript{191} Id. at 200.
\textsuperscript{192} See Cha, supra note 136, at 220.
belligerent and damaging course of action. Lifting economic sanctions would not unduly reward North Korean bad behavior, but would give North Korea a greater stake in a non-nuclear status quo. Ending sanctions could help a militarily-inclined American administration achieve its objectives, because engagement, more than containment, “better equips the hawk for her desired objective.”

North Korea has long complained that the United States failed to uphold its part of the Geneva Agreed Framework, particularly its promise to normalize relations. This slight, coupled with North Korean concerns about its security and American hostility, may explain its motives in continuing its nuclear program. North Korea has stated that the United States must leave North Korea out of its “axis of evil,” lift economic sanctions, and annul the North Korean Human Rights Act of 2004 before North Korea will participate in six-party talks.

Without appearing weak or conciliatory, the United States could lift economic sanctions and build political capital with its allies in the process. Ending economic sanctions imposes no real costs on the United States because sanctions have not been effective, and the benefit of lifting the sanctions as a symbolic gesture could be great.

V. THE NIXON ADMINISTRATION’S OPENING OF RELATIONS WITH CHINA CAN SERVE AS A MODEL FOR IMPROVING RELATIONS WITH NORTH KOREA

The United States has previously embarked on a bold international relations experiment when it opened relations with China, an unfriendly, communist country, in 1970. The United States’ experience with China can serve as a useful model for entering into an age of greater cooperation with North Korea to prevent the proliferation of WMD.

195 See Cha, supra note 136, at 221-25.
196 See id. at 236.
A. Punitive U.S. Policies Sought to Isolate China

The United States refused to recognize the communist People’s Republic of China (“PRC”) twenty years after it was formally established, because the defeat of the American-supported Nationalists was a blow to American power and prestige. Instead, popular anti-communist sentiment in the United States reinforced the official American position that the Nationalist government of Taiwan was the true representative of China. A conservative, pro-Taiwan “China Lobby” helped shape these attitudes and vigorously opposed trade with communist China. The PRC’s support for communist revolutions in Southeast Asia—and its role in the Vietnam War in particular—also frustrated the American policy of containment. As a result of the PRC’s support for North Korea in the Korean War, the United States imposed a complete trade embargo against the PRC, barred personal imports from the PRC, and banned travel to mainland China. In addition, the United States blocked China’s admission to the United Nations.

During this period, the United States pursued multilateral economic sanctions against the PRC with limited success. U.S. power in punishing the PRC economically was limited because not all American allies followed U.S. policies. Consequently, only limited UN sanctions were imposed. Although the embargo’s effect on the Chinese economy was minimal, the sanctions cost the United States political capital with its allies. The PRC’s economic embargo against the PRC economically was limited because not all American allies followed U.S. policies. Consequently, only limited UN sanctions were imposed. Although the embargo’s effect on the Chinese economy was minimal, the sanctions cost the United States political capital with its allies. 

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203 ZHANG, supra note 201, at 24. It should also be noted that public opinion was not in favor of rapprochement with China. See HENRY KISSINGER, WHITE HOUSE YEARS 167 (1979).
204 See ZHANG, supra note 201, at 30.
205 Under containment, the United States deemed it necessary to keep peace while preserving the balance of power by producing intangible assurances to democracies as well as tangible reinforcement. See JOHN LEWIS GADDIS, WE NOW KNOW: RETHINKING COLD WAR HISTORY 37-38 (1997).
206 HOLDRIDGE, supra note 202, at 7.
207 KISSINGER, supra note 203, at 719.
208 ZHANG, supra note 201, at 34-49.
209 Even the Consultative Group, a consortium of Western nations that imposed trade controls on communist countries, did not favor economic sanctions against the PRC to the extent that the United States did. ZHANG, supra note 201, at 139. The Consultative Group equalized the level of trade controls between the PRC and the Eastern European bloc in 1955; the United States supported stronger controls against the PRC. Id.
210 ZHANG, supra note 201, at 34-49.
211 See id. at 202.
participation in the world economy during the 1960s was limited due to the Great Leap Forward and Cultural Revolution campaigns. In 1970, China’s total trade amounted to US $4.59 billion, a mere 0.7% of the global economy. However, the United States recognized that the PRC would eventually become an economic power and needed to be engaged.

The American policy shift towards engaging the PRC was predicated on geopolitics and Cold War concerns. Nixon and National Security Advisor Henry Kissinger thought the United States could benefit from having closer relations with both the Soviet Union and the PRC than the two communist states shared with each other. For about twenty years, however, virtual isolation and ideological hostility dominated relations between the United States and the PRC. Following the purges of the McCarthy era, policymakers viewed the PRC as a “brooding, chaotic, fanatical, and alien realm difficult to comprehend and impossible to sway.” Although there was talk of pursuing rapprochement with the PRC in academic circles and Democrats supported such a move, there was little progress towards it. In such a political and social environment, the opening to China was a political coup for the Nixon administration and transformed the structure of international politics.

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213 The basis of the Great Leap Forward was that China could rapidly develop through the mobilization of the masses and turn labor into capital without much investment in technology. See KENNETH LIEBERTHAL, GOVERNING CHINA: FROM REVOLUTION THROUGH REFORM 102-08 (1995). However, roughly thirty million people starved to death and the Chinese economy went into a deep depression as the agriculture sector collapsed and the Soviet Union cancelled its aid program to China. Id. at 108.
214 Although Mao Zedong sought to renew China’s revolutionary spirit, his Cultural Revolution threw Chinese society into violent upheaval, destruction, and economic stagnation. See id. at 111-16.
215 Id.
217 See JAMES MANN, supra note 216.
218 KISSINGER, supra note 203, at 712.
219 Id. at 165.
220 Id. at 685.
221 See, e.g., James C. Thomson, Jr., On the Making of U.S. China Policy, 1961-9: A Study in Bureaucratic Politics, 50 THE CHINA QUARTERLY 220 (1972) (reporting that the Department of State, Lyndon B. Johnson administration, and several Democrats indicated an interest in easing tensions and increasing interaction with China).
222 MANN, supra note 217, at 28-29.
223 KISSINGER, supra note 203, at 163.
B. The Nixon Administration Boldly Signaled a Desire to Begin a Strategic Partnership with China

As border clashes between China and the Soviet Union erupted along the Ussuri River\textsuperscript{224} in 1969, Kissinger speculated that the PRC might be ready to reenter the diplomatic arena and soften its hostility towards the United States.\textsuperscript{225} Furthering this opportunity to exploit the Sino-Soviet split, Henry Kissinger advocated a modification of the U.S. trade embargo against the PRC due to this action’s symbolic value.\textsuperscript{226} Accordingly, in 1969 the State Department announced an easing of restrictions on trade and travel to the PRC, one of several signals to Beijing indicating the administration’s desire to improve relations.\textsuperscript{227} In this way, the United States began to change its legal classification of the Chinese regime.

The low-level signals continued, and in 1970 correspondence increased between the Nixon administration and the PRC.\textsuperscript{228} The United States relaxed most of the official restrictions against travel to the PRC, as well as further easing trade controls.\textsuperscript{229} In his 1971 Foreign Policy Report to Congress, Nixon noted that such measures were taken to indicate a desire to establish a serious dialogue with the PRC.\textsuperscript{230} In addition to reducing travel and trade restrictions, Nixon sought to stimulate greater U.S.-PRC interaction by terminating controls on some non-strategic exports and imports.\textsuperscript{231} In this manner, the United States’ opening to China was implemented through Nixon’s broad use of his executive powers, without much consultation with other branches of government or governmental agencies.\textsuperscript{232}


\textsuperscript{225} KISSINGER, supra note 203, at 177.

\textsuperscript{226} Id. at 179 ("The time had come to modify our trade embargo against China. The actual change was unimportant but the symbolism was vast.").

\textsuperscript{227} Id. at 180-81. In a series of ad hoc decisions, the Nixon administration indicated its interest by unilateral steps, intermediaries, and public declarations. See id. at 182.

\textsuperscript{228} See id. at 182, 684-703.

\textsuperscript{229} RICHARD M. NIXON, THE MEMOIRS OF RICHARD NIXON [hereinafter MEMOIRS OF RICHARD NIXON] 545 (1978). See also KISSINGER, supra note 203, at 723.

\textsuperscript{230} President Richard M. Nixon, Second Annual Report to the Congress on United States Foreign Policy, supra note 216, 219, 278 (Feb. 25, 1971).

\textsuperscript{231} See id. See also President Richard M. Nixon, Statement Announcing Changes in Trade and Travel Restrictions With the People’s Republic of China, supra note 216, 530, 530-31 (Apr. 14, 1971). President Nixon announced, among other things, that visas for visitors from the PRC would be expedited, U.S. currency controls would be relaxed, and that U.S. vessels could carry Chinese cargo between non-Chinese ports.

\textsuperscript{232} See, generally, ARTHUR SCHLESINGER, JR., THE IMPERIAL PRESIDENCY 212-18 (1973) (arguing that Nixon sought the consolidation of power in the executive branch of government). Kissinger, of course,
Although public signaling was done by the Nixon administration, most of the dialogue occurred through back-channel diplomacy and third-country messengers—not through normal diplomatic and institutional processes. Amidst much secrecy, Kissinger completed a 1970 visit to Beijing, which paved the way for Nixon’s 1972 trip, the subsequent Shanghai Communiqué stating both parties’ foreign policies, and the normalization of relations in 1979. Such developments could not have been possible if the Nixon administration had not signaled, through increased contacts and reduced trade restrictions, its intention to improve relations.

Prior to his assumption of the presidency, Nixon wrote in 1967 that “we simply cannot afford to leave China forever outside the family of nations, there to nurture its fantasies, cherish its hates and threaten its neighbors.” Kissinger noted that what the PRC really wanted was not exchange, recognition, or U.N. membership, but “strategic reassurance, some easing of their nightmare of hostile encirclement.” The same can be said of North Korea in 2005. Since its neighbors include South Korea and Japan, close U.S. allies, North Korea is surrounded by hostile countries. North Korea does not belong to many international organizations, and China’s recent pressure on North Korea to change its weapons proliferation programs may exacerbate its feelings of isolation. With this in mind, North Korea has repeatedly stated that it wants a guarantee that the United States will not invade. As with China, the effective way of resolving the


234 MEMOIRS OF RICHARD NIXON, supra note 229, at 551-52.


236 See Original Note: China, supra note 200.

237 Richard Nixon, Asia After Viet Nam, 46 FOREIGN AFF. 111, 121 (1967).

238 Kissinger, supra note 203, at 685.

239 North Korea is a member of the UN. UNITED NATIONS, List of Member States, available at http://www.un.org/Overview/unmember.html (last visited Apr. 20, 2005). North Korea is not, however, a member of the World Bank or International Monetary Fund. See NOLAND, supra note 68, at 58. It is also not a member of the World Trade Organization. See WORLD TRADE ORGANIZATION, Understanding the WTO: The Organization, Members and Observers (2005), available at http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Apr. 20, 2005).

240 See SCOBELL, supra note 181, at 10-12.

241 See, e.g. Agreement Between the U.S.A. and the D.P.R.K., Aug. 12, 1994, in DISARMING STRANGERS, supra note 158 (“The U.S. is prepared to provide the D.P.R.K. with assurances against the threat or use of nuclear weapons by the U.S.”), at 261; Agreement Between the United States of America and the Democratic People’s Republic of Korea, Oct. 21, 1994, supra note 170 (“The U.S. will provide formal assurances to the D.P.R.K. against the threat or use of nuclear weapons by the U.S.”);
political crisis may be a bold change in foreign policy, beginning with the delisting of North Korea as a state sponsor of terrorism.

VI. CONCLUSION

Although North Korea was designated as a state supporter of terrorism under the EAA, the subsequent economic sanctions imposed by the United States against it have not been effective. Just as the Nixon administration’s opening to China, a previously closed and hostile country, paved the way for a new U.S.-China relationship,\(^\text{242}\) so too may the easing of economic sanctions catapult U.S.-North Korean relations into a more cooperative era. Given that the end of North Korea’s listing as a state supporter of terrorism will not impose a high economic cost on the United States but will engender good will with North Korea and the United States’ Asian allies, the United States should end its sanctions against North Korea. Even if diplomacy fails, pursuing a policy of engagement will give the United States the political capital it needs to seek international action and approval for the use of force.\(^\text{243}\) By ending North Korea’s designation as a terrorist state, therefore, the United States would not only lay a foundation for a greater dialogue, but also help secure international support in case military force became necessary to achieve its objectives of a nuclear-free North Korea.\(^\text{244}\)

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\(^{242}\) Preston, supra note 176. North Korea has stated that it is ready negotiate the nuclear issue if the United States assures North Korea of nonaggression.


