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How to Sink the Hermit Kingdom: Improving Maritime Sanctions against North Korea

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Kim Jong-un stands in the conning tower of a North Korean Romeo-class submarine during an inspection of the Korean People’s Army Naval Unit 167, June 2014.

Kim Jong-un, the ‘Supreme Leader’ of the Democratic People’s Republic of Korea (DPRK)/North Korea, boasts of his ability to burn “Manhattan to ashes.” He also states that “[w]e will not hesitate to slap them with a pre-emptive nuclear strike,” and notes that “any cesspool of evils in the earth, including the U.S. mainland [are] within our striking range.” Hot-headed, unpredictable and ever-ready to threaten nuclear holocaust through bellicose rhetoric, North Korea is a dangerous player in the international community. Beyond the belligerent balderdash, North Korea engages in a collection of dangerous and illicit activities on the world stage. The country’s economy mostly consists of weapons trafficking, insurance scams, crystal methamphetamine production, and even orchestrating rhino hunting in Tanzania. At home, some 200,000 of North Korea’s 26 million people are imprisoned in political labour camps, many only because their parents or grandparents badmouthed the Kim dynasty. The severity of the human rights crisis in North Korea has been described at best as “deeply disturbing” and at worst as “unimaginable.”

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The Supreme Leader clearly indicates that he’s willing to attack, but does North Korea have the capability to do so? In addition to the nuclear weapons, it has developed, it has the third largest standing army in the world, and a submarine-equipped navy with a track record of torpedo-doing South Korean vessels and kidnapping Japanese nationals. North Korea shows capacity to engage in hostile actions against its adversaries with little remorse for the consequences.

Out of all the political, strategic and economic responses to pursue against North Korea, the international community, in particular the United States and the United Nations, rely on maritime sanctions as a favoured means of
pressuring the Kim regime. But are maritime sanctions the most effective method to de-escalate security concerns, to promote human rights and to curb the contentious behaviour of the regime?

This article argues that current maritime sanctions against North Korea are not effective in achieving the desired behavioural change as the Kim regime comfortably circumvents them. North Korea pursues underhanded actions of using flags of convenience for its vessels, false or misleading vessel identification, shoddy registry information, offshore shell-company ownership of vessels, and the continued circumvention of sanctions via insurance clubs. However, if the international community were to add financial measures to third parties, namely the maritime protection and indemnity (P&I) insurance clubs that facilitate vessel traffic into the country, this could be powerful in curtailing North Korea’s dangerous behaviour.

In order to spur behaviour change in the Kim regime it is necessary to pursue financial measures on the maritime environment that facilitates the regime’s activities, rather than aiming measures at North Korea itself. Current sanctions are only concerned with vessel traffic between the issuer and target, which has little impact on the Kim regime’s murky trade and financial networks. This is to say that current sanctions against North Korea are only effective if a North Korean-flagged, owned, or operated vessel enters the waters of the United States, the European Union, or a country willing to enforce the UN sanctions. Financial measures focused on the P&I insurance clubs that cover the ‘open-ended risks’ of sending vessels into North Korean waters would have a better impact on the regime. Such an approach has long been overlooked in sanction policy. Now, in an era with increased hostilities on the Korean Peninsula, and dubious US foreign policy towards Asia, such measures may be an important step for the international maritime community to take against the threats that North Korea poses to its own people and to the world.

This article is based on work conducted between May 2016 and June 2017 to track marine traffic into North Korean ports after increased sanctions were imposed against North Korea by the United States and the United Nations in early 2016. Vessels were tracked using Automated Identification System (AIS) International Maritime Organization (IMO) tracking numbers. Monitoring revealed that most vessels were running under flags of convenience, were owned and managed by offshore shell companies in Asia and the Pacific, and were backed by P&I insurance clubs in Europe, South Korea and New Zealand. The research suggests that North Korea continues to benefit from maritime trade and traffic despite the new sanctions, hence creating a need for more innovative maritime responses.
Sanctions, Insurance and Mischief
On 7 July 2016 the US Treasury Department enacted new sanctions on Kim Jong-un, along with 10 other top officials in the DPRK. A previous round of financial measures in June 2015 targeted maritime traffic to North Korea, with a specific focus on military material and resources. Executive Order 13466 of 2016 enhances the 2015 sanctions by “prohibiting persons from registering vessels in North Korea, obtaining authorization for a vessel to fly the North Korean flag, and owning, leasing, operating, or insuring any vessel flagged by North Korea.” The United Kingdom Treasury similarly issued financial measures on a list of 66 North Korean individuals and 42 DPRK entities with threat of asset seizure.

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Sanctions typically deny resources to hostile regimes, or exclude them from the international community. Many scholars, however, suggest that sanctions do not often lead to behaviour change of the target, and if anything they create murkier geopolitical relationships between the target and its trading partners not directly in the line of sight of sanction enforcement. As well, when sanctions are enforced, often the leaders of hostile governments can circumvent them, and typically it is the general population that suffers due to trade restrictions. Sanctions are only effective if the target state actually wants to be a good citizen of the international community. North Korea has little interest in being a good global citizen. The policy of Juche or self-reliance abhors formal cooperation or partnerships with other countries, and instead praises national seclusion under the Supreme Leader’s ability to protect the nation from all outside evils.

The pursuit of target-specific financial measures or ‘smart sanctions’ is lauded as a means of strategic pressure by limiting the ability of government authorities to access resources rather than the entire population. Even still, there is debate about the nature and extent of smart sanctions, including maritime sanctions, and they have not always been successful. This is why a new approach to maritime sanctions against North Korea is needed.

Doing Business with the Hermit Kingdom
North Korea circumvents maritime sanctions through four methods: (1) sailing vessels under flags of convenience; (2) broadcasting false or misleading vessel identification and registry; (3) setting up offshore shell-company ownership of vessels; and (4) relying on maritime P&I club insurance. I’ll briefly discuss all of these, but will focus in particular on number 4.

Between May 2016 and June 2016 some 70 vessels demonstrated disingenuous behaviour in dealing with North Korea. Chon Un 68 (IMO: 9001021), a North Korean vessel operating under a flag of convenience, and Voge Challenger (IMO: 9490454), a European-based vessel doing business with the Kim regime, are examples of vessels bypassing maritime sanctions.

Chon Un 68 is a North Korean-named, but Tanzanian-flagged cargo vessel with a 4,000 ton capacity. On 10 July 2016, according to AIS it was in Nampo, North Korea, and on 18 July it was docked in Weifang, China. On 29 July 2016 the ship registered its destination as Barra, a small passenger ferry dock in the Western Hebrides of Scotland. This is a false registry by the ship’s management meant for distraction. On 10 October 2016 Chon Un 68 was sailing for Nampo, once again with its destination as Barra, demonstrating a consistent pattern of mendacious behaviour.

Chon Un 68 is managed by Hua Heng Shipping, owned by K&H Shipping, and is insured by a Korean P&I club out of Seoul, South Korea. Hua Hang and K&H are
based in Hong Kong. Upon first glance, nothing is particularly sinister about a Tanzanian-flagged vessel owned and managed in Hong Kong carrying insurance from a South Korean P&I club. However, according to the Offshore Leaks database, Hua Heng is a shell company set up by Capture Advantage Co. Ltd., a British Virgin Islands shell company that remains unaffected by sanctions. In June 2017, the United States specifically targeted a similar shell company, Dalian Global Shipping for operating Sea Star 7 (IMO: 8310396), a Panamanian-flagged vessel that frequented North Korean ports. Chong Un is frequently in North Korean waters, and despite strict South Korean regulations against insuring vessels entering North Korea, it carries out operations with impunity thanks to a Hong Kong-based shell company, a P&I club insurance invoice and a Tanzanian flag of convenience.12

Broadcasting false destinations is routine for vessels coming and going from North Korea. For example, the vessel Vogue Challenger, sailing under a Liberian flag, owned by TSC Ship Management out of Hamburg, traveled from Vancouver, Canada, on 18 June 2016 broadcasting a false destination of Port Qasim anchorage in Pakistan. AIS tracking confirmed its location in the Port Qasim anchorage in Pakistan for a 12-hour period on 3 August. However, AIS tracking showed that Vogue Challenger stopped in Sinpo, North Korea, between 17 July and 26 July before carrying on to Pakistan.

**Closing down North Korea’s Open-Ended Risk**

Continued maritime traffic into North Korea opens the door for corruption within P&I insurance clubs. Aside from counterfeiting foreign currency, trafficking weapons and exporting narcotics, a centrepiece to North Korea’s economy is insurance fraud. In 2009 to celebrate Kim Jong-il’s birthday, two North Korean insurance managers stuffed $20 million USD into canvas bags and shipped them from a Singapore insurance firm through Beijing to Pyongyang.13 In 2005 North Korea was challenged in court when Allianz Insurance, a German firm, and Lloyd’s Insurance, a British firm, disputed the claim of a North Korean helicopter crashing into a warehouse in Pyongyang. The firms maintained that the crash was staged by the Kim regime in order to receive a generous payout. Western insurers and US officials say the North Korean government has collected hundreds of millions of dollars from some of the world’s largest insurance companies.14 The regime made many suspicious claims for transportation accidents, factory fires, flood damage and other alleged disasters against European insurance firms like Allianz. No charges have been put forward to date against North Korea scamming P&I insurance clubs, but considering that the clubs do not have underwriters and insure ‘unlimited risk,’ the conditions are excellent for fraud by the regime.

P&I insurance is essential for maritime operators as without it shipowners cannot properly operate. The ‘opened-ended’ insurance clubs have reduced risk and facilitated maritime traffic since the 19th century, yet the unique financial model of not using insurance underwriters, but requiring members to pay annual ‘calls’ into a lump community pot has routinely been called into question over due diligence and transparency. A regular insurance firm that provides insurance on measurable risks would scrutinize and assess a claim in detail with the use of underwriters. P&I insurance clubs insure indeterminate risks, such as third-party liability, including loss of cargo, damage, or involvement in acts of war. If a club member draws a ‘call,’ third-party underwriters are hired to assess the damage, and the claimant would be expected to contribute a larger call in the following year.

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Some level of insurance is required for vessels to enter international ports, and North Korean-flagged vessels, or North Korean vessels running under flags of convenience, are no exception. P&I clubs offer insurance for open-ended risks which most registered insurers are not willing to assume. Skuld, a Norwegian P&I club, recently reported that fraud in the P&I business was on the increase, especially in ports not adhering to due diligence in offloading procedures.15 There are a number of known scams in the industry, including bunkering fraud, cargo and document fraud and port-related fake agency invoice frauds, that would all involve P&I claims. P&I club insurers provide very high payouts, usually with open-ended risk policies reaching into the billions of US dollars.

As noted, North Korea has a track record of insurance fraud, and the P&I club industry is a target for the cash-strapped regime to gain hard currency. Given that many
traditional insurance firms with underwriters avoid dealings with North Korea, P&I clubs should have the same incentive to avoid contracts with the Kim regime. Yet, business is booming, as North Korean vessels secure club membership through offshore shell companies, and they are willing to pay the annual calls to the clubs. So far, there is little political appetite to discipline insurance clubs that violate sanctions. Maritime P&I clubs connected to vessel traffic into North Korea are often operating in violation of sanctions, but few mechanisms of enforcement are rigorously applied. Navigators, a British P&I club, was charged by the United States on 48 sanctions violations in 2016 for insuring vessels doing trade with North Korea, Cuba, Iran and Sudan. (Interestingly enough, the sanction violations were caught through the Cuban Assets Control Act (1963) against vessel traffic to Cuba, and not through any sanctions against North Korea.) The P&I club was charged $275,000 USD for the violations. Yet the company received over $1 million USD in premiums from North Korea for 24 P&I insurance policies to the regime. Such a small financial penalty is hardly a deterrent for P&I clubs to do business with North Korea.16 From the point of view of P&I clubs, money received from North Korea’s annual calls outweighs the risk of sanction penalty or of fraud.

Many P&I clubs ensure North Korean vessels, and the following clubs only represent a sample. West of England P&I, headquartered in Luxembourg, has P&I contracts for dozens of vessels traveling to North Korea. It insures Mi Yang 8 (IMO: 8863733), a North Korean-flagged vessel owned by Miyang Shipping, a Pyongyang entity. Skuld P&I, a Norwegian P&I club, currently insures Tian Zhu (IMO: 9338981) a formerly North Korean-flagged vessel owned by the Hunchun Sino Unity Shipping concern in Hong Kong.17 Other P&I clubs connected to North Korea include Steamship Mutual P&I, North of England P&I, and Standard Club in the UK, all of which are in jurisdictions with sanctions prohibiting the insurance of North Korean vessels.

Sun Unity (IMO: 8736382) traveled from a Chinese port to Nampo, North Korea, on 2 August 2016. The vessel is owned by a Hong Kong firm, and insured by Maritime Mutual Insurance Association, a P&I club with an office in Auckland, New Zealand. In 2005 the government of Japan complained to the government of New Zealand that Maritime Mutual exploited a loophole in sanction law to profit from insuring North Korean vessels to enter Japanese waters. The P&I club calls itself an insurance agent, even though it is not registered as one in New Zealand. The directors of Maritime Mutual are thought to be based in Liechtenstein and the island of Guernsey.18 The club has insured North Korean vessels for over 10 years.19

Skuld P&I and West of England P&I both have statements on their websites about sanctions against North Korea. The statements caution against the transportation of precious metals, rare earths, rock fuels, luxury goods and weapons. They also caution against owning or operating North Korean-flagged vessels, or “vessels owned, operated or crewed by North Korea.” West of England P&I notes that “[m]embers considering any business involving voyages to North Korea or North Korean persons are strongly advised to read all the materials referred to on this webpage and to contact the Managers for further advice before fixing.”20 The message is not for owners and managers to avoid dealings with North Korea, but to deal with them with caution.

Two risks exist with North Korea continuing to participate in P&I clubs. First, the P&I club memberships allow North Korean-associated vessels to enter international harbours, which undermines US and UN sanctions against the Kim regime. Second, the Kim regime is famous for insurance fraud to traditional insurance firms, and P&I clubs themselves are at risk of being taken as victims of such fraud. It is why P&I clubs would benefit by reducing their assumed risk in not insuring North Korean vessels, or those operating under flags of convenience. Individual actors may be willing to circumvent international rules, much in the same way as North Korea skirts sanctions, but “collective international action to exclude them from the benefits of doing so can improve global regulatory efforts.”21

There are three options to improve the efficacy of maritime sanctions against North Korea. First, P&I clubs
could voluntarily agree not to insure North Korean vessels. The challenge with this option, however, is that the regime is willing to pay for policies, creating a lucrative market. The regime needs P&I insurance to move vessels in and out of its ports, and this is why it is willing to go to the lengths of managing vessels through shell companies, and of paying large sums for annual calls to the P&I clubs. Second, sanctions aimed at P&I clubs could prevent further insurance of North Korean vessels. Third, sanctions issuers could go even further by compensating P&I clubs if they cancel policies with North Korean vessels, effectively delivering no financial loss to the P&I club, and yet immediately freezing North Korean vessels from entering foreign ports.

Conclusions

North Korea is a danger to itself and to the world. Kim Jong-un threatens to set Manhattan alight with nuclear weapons, while committing human rights abuses at home. Of all of the available tools in the international community’s repertoire to deal with the irrational and unpredictable regime, the UN and the United States rely on maritime sanctions as the preferred offensive to invoke behavioural change in Kim Jong-un’s regime. However, not only are the current maritime sanctions ineffective, they encourage the regime to pursue disingenuous behaviour of reflagging vessels, inaccurately broadcasting AIS data, and potentially taking advantage of the P&I club system.

This article suggests that a way forward in putting pressure on North Korea through maritime sanctions would be to focus on, and directly involve, P&I clubs that insure North Korean vessels. This article demonstrates how easily North Korea benefits from the complexity of the global shipping industry. Flags of convenience, shell companies and P&I clubs all allow the regime to continue its nuclear proliferation plans and human rights abuses, without much interference. This article also illuminates how easy it is for insincere parties to pursue illicit activities through international maritime shipping. The AIS system, established after 11 September 2001 was designed to be a means to counter terrorism. However, as North Korea demonstrates, it takes very little to broadcast inaccurate information with impunity.

Considering that North Korea continues to pursue irrational and dangerous activities on the world stage, it may be time for maritime scholars and experts to consider policy solutions that enhance the integrity of maritime sanctions against Kim Jong-un’s regime with additional pressure on P&I clubs. Failing to do so will only ensure that the regime continues its security violations and unbridled human rights abuses.

Notes

12. Ibid.
14. Ibid.
17. Ibid. As of 1 August 2016 the IMO broadcast reported a name change of the vessel to Chang Phyoong, and the vessel sailing under the flag of Kiribati, a flag of convenience.

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