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The APUNCAC Strategy to Counter DPRK Sanctions Evasion

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Abstract

Transnational organized criminal groups operate in ways that are resistant to prosecution. In response, a proposed change in domestic law would aim to ensnare front men who serve to hide the identities of criminals, enabling prosecutors to flip them via cooperation agreements, thereby unraveling transnational criminal schemes. The proposal would require the ultimate beneficial sender, and ultimate beneficial recipient, to certify beneficial ownership (as sender and recipient) when funds are transacted in amounts exceeding USD 3000; and would require foreign financial institution personnel, who handle transactions with a nexus to a party to the Rule, to collect and submit, to a central law enforcement database, certifications by the ultimate beneficial sender and recipient of covered funds that are deposited, transmitted, transferred, or paid. Analysis of the proposed change in law indicates that it may be effective in addressing the impunity that prevails when organized criminal groups operate in China and North Korea in ways that appear to be outside the reach of domestic U.S. law enforcement authorities.

Keywords: North Korea; transnational organized crime; money laundering; oil smuggling; APUNCAC beneficial owner rule; banking; regulation

1. Introduction

A mainstream view is that the Democratic People's Republic of Korea (DPRK), i.e., North Korea, has engaged in persistent violations of international law. In June 1950, DPRK invaded the Republic of Korea (South Korea), causing approximately three million fatalities (Cumings 2011, p. 35). DPRK has engaged in acts of terrorism, including the attempted assassination of Chun Doo-hwan, the fifth president of South Korea (Jong-yil 2022), and the bombing of Korea Air Flight 858 (Bermudez 1990; Wang et al. 2003). The regime has repeatedly threatened to use nuclear weapons and has engaged in nuclear proliferation (Perry 2006; Pollack 2017; Popoola et al. 2019). Studies based on interviews with DPRK defectors indicate that DPRK continues to engage in systematic torture, rape, forced abortion, starvation, extrajudicial executions, and violations of human rights (KoreaFuture 2023, 2024; Yang 2018). In response, the U.S., South Korea, Japan, the European Union, and the United Nations (UN) implemented sanctions (Fifield 2016; Rennack 2023).

DPRK, however, rejects conclusions based on interviews with DPRK defectors. In a letter to the UN Security Council, DPRK ambassador Ja Song Nam asserted that these conclusions are based on misinformation:

> What matters is that the noisy "human rights" racket of the United States against the Democratic People's Republic of Korea is nothing but hysteria kicked up by the human scum who fled to south Korea after having been forsaken even by their kith and kin for all their evil doings and vices perpetrated in their hometowns. In

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> other words, it is a charade staged on the basis of the misinformation provided by them. (Quoted in Fahy 2019a, p. 212)

DPRK's official Korean News Agency rejected as "fabrications" human rights charges against DPRK set forth in a UN resolution:

> The recent farce orchestrated at the UN is a shameless political chicanery to put down justice with injustice and conceal truth with lies and the height of brazen-faced burlesque to deceive the world people with intrigues and fabrications. (Fahy 2019b, p. 197)

Thus, an alternative view is that "the capitalist mass media" have unfairly demonized DPRK (Gowland 2014). Moon (2008) argues that there is a need to move beyond demonization. DPRK is, indeed, a party to international conventions protecting the rights of women. However, it has entered reservations and disputed the binding nature of various provisions. When DPRK ratified the Convention on the Elimination of All Forms of Discrimination Against Women, it made several reservations (Yang 2018, p. 222).[1] Under international law, a party to a convention may enter a reservation, meaning that it rejects the binding nature of specified provisions.

The alternative view suggests that the threat to world order has been exaggerated. For example, Mueller argues that "It has been common, at least since 1945, to exaggerate and to overreact to foreign threats" (Mueller 2005, p. 208). Cormac argues that "Threat exaggeration can have harmful consequences" (Cormac 2013, p. 490). Fidas cautions that "the terrorist threat to the United States and globally is real but exaggerated (Fidas 2008, p. 520). Similarly, Moore argues that "the threat. . . of nuclear terrorism. . . is greatly exaggerated" (J. Moore 2006, p. 122). Bandow (2017) argues that DPRK is justified in projecting a bellicose posture to deter genuine enemies such as the U.S.

Regardless, the mainstream view is that sanctions on DPRK are warranted. U.S. sanctions on DPRK involve prohibitions on trade and financial transactions with specified DPRK persons and entities (Rennack 2023, p. ii). U.S. persons are prohibited from providing financial services for the purpose of evading sanctions, or providing financial services to a person or entity on the list of persons and entities designated for sanctions published by the U.S. Treasury Office of Foreign Assets Control (OFAC) (Rennack 2023, p. ii). Non-U.S. persons and entities that evade U.S. or UN sanctions on DPRK may find their U.S.-based assets blocked, transactions and contracts with U.S. persons prohibited, use of the U.S. financial system denied, and U.S. support in international financial institutions curtailed (Rennack 2023, p. iii). Despite these sanctions, organized criminal groups, posing as legitimate businessmen, continue to engage in prohibited activities, enabling circumvention of UN sanctions.

Prior analyses suggest that a specific domestic legal reform may be effective in addressing this issue and countering international organized crime (Yeh 2015, 2020a, 2020b, 2020c, 2021, 2022a, 2022b, 2023). Analysis suggested that the proposed reform would be internationally legal, feasible, and practical (Yeh 2023). This article evaluates the degree to which the proposed APUNCAC Rule would effectively counter organized criminal groups that facilitate DPRK sanction evasion, drawing on secondary sources selected for their relevance in assessing jurisdictional, legal, and practical barriers. Section 2 of this article analyzes an example, involving oil smuggling, to illustrate the nature of the problem. Section 3 analyzes the role of international organized criminal groups, operating as middle-

[1] *See* Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, U.N.T.S. 13 [hereinafter CEDAW]. *See also* Comm. on the Elimination of Discrimination against Women, Declarations, Reservations, Objections and Notifications of Withdrawal of Reservations relating to the Convention on the Elimination of All Forms of Discrimination Against Women, at 24, CEDAW/SP/2004/2 (2004). In general, DPRK "does not consider itself bound by the provisions [of] article 29" of CEDAW (Yang 2018, fn 20).

men to facilitate the illegal transactions. Section 4 analyzes the role of DPRK pseudo-state enterprises (PSEs) in illicit activity. Section 5 analyzes the role of DPRK diplomats in illicit activity. Section 6 documents expulsions, sanctions, recalls, and arrests of DPRK diplomats engaged in contraband smuggling. Section 7 analyzes the implications of Sections 2–6. A change in U.S. law, requiring beneficial senders and recipients of covered funds to certify ownership and transmit those certifications to a central law enforcement database (the "APUNCAC Rule"), could be implemented to exploit a weakness in DPRK schemes to evade UN sanctions.[2] Section 8 analyzes the jurisdictional applicability of the proposed change in U.S. law. Section 9 analyzes the alignment of this approach with China's UN, Financial Action Task Force (FATF), and UNTOC obligations, anti-money laundering laws, internal dynamics, record of sanctions against DPRK, editorial opinion, scholarly opinion, and public opinion against DPRK, view of its role as a "responsible great power," and existing U.S. sanctions against DPRK. Section 10 analyzes the limits of diplomatic immunity and implications for the analysis. Section 11 analyzes the putative effectiveness of the proposed change in law, drawing upon the preceding analysis in Sections 2–10, and potential barriers. Section 12 concludes.

2. Oil Smuggling

Smuggling of fuel oil illustrates the nature of international organized criminal activities that support the North Korean regime. North Korea relies on fuel imported from the outside world to maintain its armed forces, develop weapons of mass destruction, and perpetuate its regime (Byrne et al. 2021, p. 8).

North Korea circumvents sanctions on deliveries of fuel oil by obtaining fuel via black market channels involving criminal groups (Davies et al. 2023). A prime source is Taiwan, which provides subsidized diesel and marine fuel oil for sale to domestically flagged fishing vessels to support domestic fishermen and fisheries (Byrne et al. 2021, p. 11). To encourage maritime free trade and use of Taiwan's ports, the government has sought to attract foreign tankers by allowing them to purchase diesel fuel at selected Taiwanese ports duty free (Byrne et al. 2021, p. 11). Smugglers purchase cheap Taiwanese oil to sell at inflated prices in China and North Korea.

In circumvention of sanctions, the oil is procured at Taiwanese ports, then sold and transferred at sea in Taiwan's exclusive economic zone (EEZ) or in nearby international waters to tankers that sail directly to North Korean ports (Byrne et al. 2021, pp. 12–38). In 2020, approximately 1.5 million barrels of oil were smuggled into North Korea (Byrne et al. 2021, p. 18).[3]

To evade sanctions, smugglers hide their tracks. Direct delivery vessels—i.e., vessels that deliver oil directly to North Korean ports—are deliberately registered and flagged in secrecy jurisdictions such as Sierra Leone, Samoa, or Seychelles that tolerate opacity in beneficial ownership records (Byrne et al. 2021, pp. 29–30). The vessels are often owned or operated by companies registered in Hong Kong that exhibit features associated with front companies, such as using a corporate secretary address in place of a physical office in Hong Kong, having no demonstrable online business profile, and using nominee shareholders or directors (Byrne et al. 2021, p. 23). Many of the shareholders and directors of these

[2] A pseudo-state enterprise (PSE) is officially a DPRK state-owned and operated enterprise but in practice financed, managed, and controlled by private interests to which much of the profits accrue (Lankov et al. 2017, p. 51; Lim and Yoon 2011, p. 85). A PSE may be embedded within a foreign trade company (FTC) (also known as a state-owned trading company or STC) established by a North Korean state-owned enterprise or government agency (Lankov et al. 2017, p. 54). A PSE is typically a dysfunctional state-owned enterprise that has been transformed and rejuvenated by a private entrepreneur who invests his own capital (Lim and Yoon 2011, p. 85).

[3] The middle estimate of two million barrels minus 500,000 barrels permitted under the sanction regime.

Hong Kong companies are Chinese nationals from small, provincial villages, with no apparent previous connections as directors or shareholders to the oil or shipping industry (Byrne et al. 2021, p. 23).

In many instances, the vessels exhibit similarities in size, age, specifications and patterns in ownership, registration, and operation characteristic of illicit activities (Byrne et al. 2021, p. 23). These vessels turn off their Automatic Identification System (AIS) so they cannot be tracked when conducting illicit ship-to-ship oil transfers or when traveling to North Korean ports. This violates maritime regulations and is dangerous, increasing the risk of collisions.

3. Middlemen

Starting in the early 1980s, North Korea launched state trading companies (STCs), also known as foreign trade companies (FTCs), as a means for earning foreign currency (Park 2014, p. 206).[4] Since 2004, STCs evolved to capitalize on the dramatic rise in commerce and trade between China and North Korea (Park 2014, p. 206). DPRK uses funds from various illicit enterprises to pay for its purchases (Park and Walsh 2016, p. 19).

These trade networks mix licit and illicit procurement and utilize middlemen to evade sanctions. Key details have been supplied by a small group of former DPRK managers and senior officials who have defected, are currently living in South Korea, and have operational experience working in DPRK STCs (Park and Walsh 2016; Park 2014).

Starting in 2006, UN and U.S. sanctions forced large North Korean STCs to pay higher and higher commission fees that attracted sophisticated Chinese middlemen to assist in the illicit procurement of goods and services (Park 2014, pp. 206–7). Defectors reported that commissions spiked from the previous 5 percent commission rate to a current average of 15 percent (Park 2014, p. 207). Significantly, these commissions attract Chinese middlemen who are willing to engage in illicit activities, possess dual North Korean-Chinese residency, speak Korean, and operate inside China.

In some cases, the middlemen are Chinese nationals of Korean ethnicity (Park and Walsh 2016, p. 19). Regardless, they are bilingual, operate in China, and are willing to engage in illicit activities. Agents working for North Korea's STCs make frequent but brief trips to China to arrange the transactions (Park and Walsh 2016, p. 19). "For an extra fee, Chinese middlemen often manage procurement logistics for their North Korean clients, including receipt from a supplier and shipment to the DPRK" (Park and Walsh 2016, p. 23).

Defectors reported that a Sino-DPRK commercial deal typically involves three stages. First, a DPRK state trading company affiliated with the Workers' Party of Korea (WPK) issues a tender in a trade association newspaper in a large Chinese city to procure a specified item, such as industrial equipment or fuel oil (Park 2014, p. 208).

In stage two, the Chinese middleman arranges and completes the purchase of the item from a China-based foreign vendor (Park 2014, p. 208). The middleman arranges all sales documentation as well as insurance on the consignment prior to shipping (Park 2014, pp. 208–9). "The middleman then sub-contracts another private Chinese company to handle all the logistics of final delivery to the previously agreed city in North Korea on a specified date" (Park 2014, p. 209).

"In stage three, the North Korean [pseudo-state enterprise (PSE)] head office inspects the consignment, and if satisfied, acknowledges receipt of the consignment in North Korea. The North Korean state trading company then delivers the remaining portion of the

[4] Both Park (2014), and Park and Walsh (2016), use the term "STC" while Lankov et al. (2017) use the term "FTC," to describe DPRK state-owned trading companies. The analysis in Section 3 is presumed to apply equally to both STCs and FTCs, as well as PSEs (where a PSE is understood as a unit of an FTC or STC).

15 percent commission fee to the Chinese middleman, which marks the conclusion of the transaction" (Park 2014, p. 209).

DPRK and their middlemen may utilize front, or shell, companies to hide the connections between DPRK and foreign vendors. Significantly, "the DPRK can now structure contracts that allow North Korean representatives to pay for the bulk of the transaction—approximately 80–90%—upon final delivery to North Korea. In the interim, the [People's Republic of China] firm directly pays for the procured item" (Park and Walsh 2016, p. 24). If the procured item is traded in USD, the item is procured using USD. Oil is typically procured using USD.[5] The legal significance, and implications regarding U.S. jurisdiction and application of U.S. law, are discussed in Section 8, below.

North Korean STC managers are increasingly located in mainland China and utilize the Chinese banking system (Park and Walsh 2016, p. 24). "Korean STCs have become embedded in China, where they are part of the normal Chinese business environment" (Park and Walsh 2016, p. 30).

DPRK utilizes bases in China and Hong Kong to facilitate the use of Chinese middlemen to execute contracts and transport illicit goods (Park and Walsh 2016, p. 26). DPRK utilizes Chinese middlemen to perform the necessary financial transactions (Figure 1).

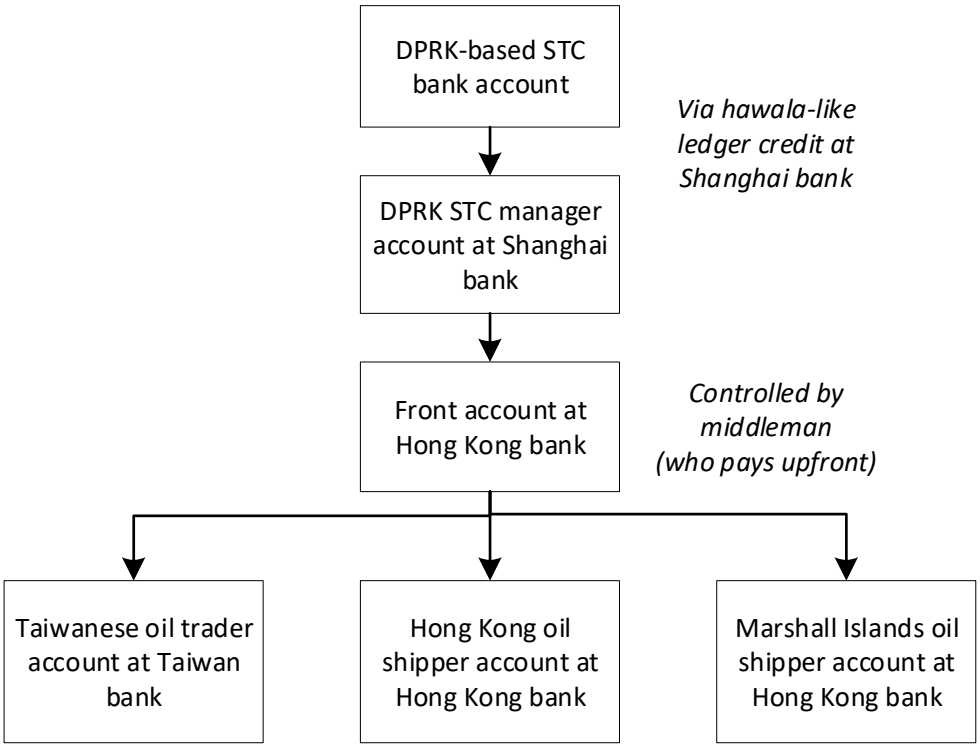


Figure 1. DPRK use of front accounts and middlemen to hide DPRK involvement (source: author).

The scheme utilizes DPRK STC officials, doubling as diplomats, operating via Chinese *hwa-gyo* middlemen, to purchase Taiwanese fuel oil via U.S. dollar-denominated transactions and deliver the oil to DPRK (Figure 2).

[5] See for example, Mi (2023), regarding a Chinese middleman who used USD to purchase Taiwanese fuel oil ("Guo Ji-cheng. . .used fake transaction documents to pay for oil in U.S. dollars").

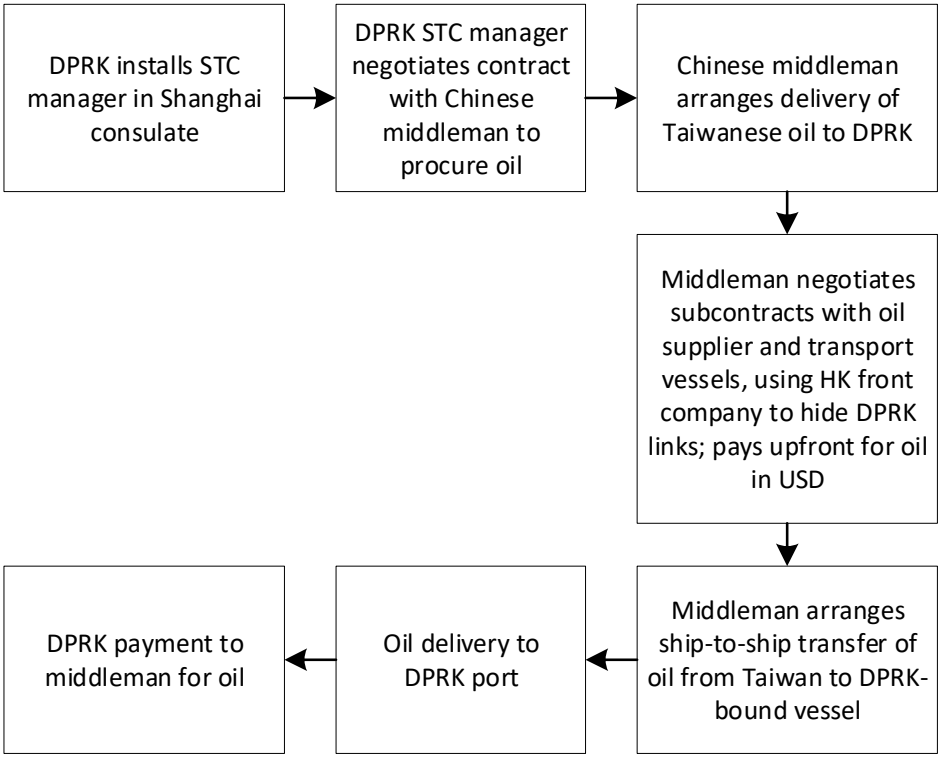


Figure 2. Oil is procured from Taiwanese oil trader in a dollar-denominated transaction (source: author).

4. DPRK Pseudo-State Enterprises and Illicit Activity

A pseudo-state enterprise (PSE) is officially a DPRK state-owned and operated enterprise but in practice financed, managed, and controlled by private interests to which much of the profits accrue (Lankov et al. 2017, p. 51; Lim and Yoon 2011, p. 85). A PSE may be embedded within a Foreign Trade Company (FTC) established by a North Korean state-owned enterprise or government agency (Lankov et al. 2017, p. 54). A PSE is typically a dysfunctional state-owned enterprise that has been transformed and rejuvenated by a private entrepreneur who invests his own capital (Lim and Yoon 2011, p. 85).

> From the early 1990s, FTCs began to enter into agreements with private individuals and businesses. The latter would provide expertise and capital, and in return they were appointed as managers of divisions (*kiji*, literally "bases") of these companies. Typically, an FTC would have several divisions, semi-autonomous, and all paying a portion of their declared profits to the central office of the company. . . the divisional managers effectively pay for the right to use the FTC name in the form of a portion of the profits, while keeping most residual income and control over day-to-day operations. At the same time, the central offices are, in most cases, headed by people with good political connections who are members of North Korea's semi-hereditary party/state/military elite. (Lankov et al. 2017, p, 54)

> [T]he entrepreneur is usually the main investor and also the manager who can hire and fire personnel more or less at will. In this way, the entrepreneur does possess substantial control rights, as well as income rights. . . arrangements between superior state organizations and the entrepreneur take the form of informal contracts, and most of the transactions are unofficial, based on oral agreements, and done in cash with little or no paper trail. . . the state organization and the entrepreneur usually agree on a certain fixed amount that the organization shall receive from the entrepreneur on a monthly or annual basis. (Lankov et al. 2017, p. 55)

4.1. Black Market Activity

A DPRK PSE manager relies upon commissions earned from black market deals, taking 40 to 50 percent of any commissions as monthly income (Breuker and van Gardingen 2017, p. 15). The rest is paid as FTC "management fees" (bribes) of as much as one million won every two or three months (Breuker and van Gardingen 2017, p. 15).

Entrepreneurs contribute start-up capital as well as useful experience and connections (Lankov et al. 2017, p. 56). The required start-up capital is approximately USD 10,000, or 20–30 times the annual income of an average DPRK family (Lankov et al. 2017, p. 57). To placate officials who might otherwise cause trouble by implicating the entrepreneur in charges of impropriety, misuse of state assets, and black market activity, the entrepreneur typically engages in "prophylactic bribery," involving payments made to officials with the power to disrupt the operation of PSEs, including key figures in the local criminal and political police, party bureaucracy, and city/county administration (Lankov et al. 2017, pp. 55, 61).

The DPRK central bureaucracy occasionally starts campaigns aimed at eradicating, or at least restricting, the activities of PSEs, requiring hefty bribes to avoid prosecution for irregularities (Lankov et al. 2017, p. 62). These fees are the cost of doing business. These costs of operating as a manager of a PSE connected to a state-owned enterprise are offset by the benefits, i.e., a degree of protection from law enforcement authorities who would otherwise pose a threat because the day-to-day activities pursued by entrepreneurs technically constitute crimes (often capital crimes) under the existing legal regime (Lankov et al. 2017, p. 58).

4.2. Risks of Arrest and Imprisonment

In a socialist system, the arbitrary disposal of residual income and property is strictly forbidden (Lim and Yoon 2011, p. 86). Technically, any scheme where a PSE manager collects residual income for his own benefit while serving in the role of a manager of an official state-owned enterprise is illegal (Lim and Yoon 2011, p. 86). Furthermore, a PSE lacks legal status, has no legal personality, has no corresponding rights or duties, and operates in an extralegal fashion, e.g., when engaged in bribery (Lim and Yoon 2011, p. 86). An entrepreneur who assumes control of a state-owned enterprise and uses it to collect rents for his personal benefit is guilty of misappropriation of state assets and large-scale embezzlement (Haggard and Noland 2012, pp. 664–65; Lim and Yoon 2011, pp. 86–87).

The risks are substantial. "[A private PSE manager] can be arrested and executed at any time in strict accordance with the North Korean law" (Lankov et al. 2017, p. 62). "Out of the nine private entrepreneurs especially prominent in Pyongyang around 1990 when the unofficial economy began to grow in earnest, only two have survived up until this day. All the others have been arrested and/or executed" (Lankov et al. 2017, p. 62). One estimate is that 5 to 10 percent of PSE private entrepreneurs have either been executed or have perished in prison (Lankov et al. 2017, p. 62). In the absence of the veneer of legitimacy afforded by association with the FTC name, the risk of arrest, imprisonment, and execution would be significant (Lankov et al. 2017, pp. 58, 62).

The entrepreneur's task is to use his own money, connections, and negotiating skills to make profits by buying and reselling goods, such as fuel oil, that are not easily obtained in North Korea. Each month, after paying a fixed amount of money to the state FTC that has authorized the PSE, the entrepreneur, by agreement, is entitled to keep any residual income for his own use, i.e., his living and business expenses (Lankov et al. 2017, p. 59). Failure to pay the obligatory fixed amounts to the state FTC could have severe consequences.

> The superior state organization can shut the PSEs down at any moment or even, in more extreme cases, initiate an investigation of the PSE activities, and thus has efficient means to penalize the entrepreneur if s/he does not make agreed

> payments. . . the threat was real [because] every PSE-operating entrepreneur is technically guilty of large-scale embezzlement as well as a multitude of other "economic crimes," many punishable with death. (Lankov et al. 2017, p. 59)

To make the required payments and earn a living, the PSE manager depends on his capacity to operate freely throughout China to negotiate deals and earn commissions. Elimination of this capacity would eliminate his capacity to make the required payments and earn a living.

5. DPRK Diplomats and Illicit Activity

The schemes that are the focus of the current article utilize DPRK STC officials, doubling as diplomats, operating via Chinese *hwa-gyo* middlemen, to purchase contraband via U.S. dollar-denominated transactions and deliver the contraband to DPRK. While the intent is to shield these individuals, DPRK diplomats are not invulnerable.

A DPRK diplomat is heavily reliant on income from black market activity, which is a weakness that could be exploited by U.S. law enforcement. A diplomat's primary source of income involves a range of black market income-generating activities undertaken in parallel with official duties. "From the 1970s onward, North Korean officials posted overseas were expected to provide for both themselves and the regime back home, by whatever means necessary" (Hastings 2016, p. 9). Consequently, "state officials have used their positions to engage in creative private income generation" (Hastings 2016, p. 9). "[M]uch official trade is done through multifunctional diplomatic outposts" (Hastings 2016, p. 9). "Low and even mid-ranking officials of state organizations have been left to fend for themselves, and they often function essentially as private traders, using their positions and connections to make money" (Hastings 2016, p. 20). "Regional hubs have also been used by North Korea to span different markets, with diplomatic personnel frequently operational across multiple jurisdictions" (Salisbury 2022, p. 20).

> North Korean diplomats have been involved in smuggling sanctioned and non-sanctioned commodities. . . the UN Security Council's Panel of Experts on the DPRK has repeatedly recognized the role played by diplomats in evading sanctions, illicit procurement and breaching the arms embargo. . . diplomats, missions and trade representatives of the Democratic Peoples' Republic of Korea systematically play key roles in prohibited sales, procurement, finance and logistics. (Salisbury 2021, pp. 314–15)

According to defectors, the DPRK co-locates shell companies with its overseas embassies and credentials state trading company (PSE) officials as diplomats (Park and Walsh 2016, p. 27). Diplomats are accorded privileges including immunity from arrest and the use of diplomatic "pouches" that cannot be searched. This facilitates the use of diplomatic personnel as agents engaged in illicit procurement and transportation of unreported cash (Park and Walsh 2016, pp. 26–27). If caught, however, they can be expelled (Park and Walsh 2016, p. 27). UN Security Council Resolution 2270 requires UN member states to expel diplomats involved in sanction evasion.[6]

According to Hong Soon-kyung, a former DPRK diplomat who was posted in Pakistan and Thailand, smuggling was commonplace (Rademeyer 2017, p. 18). He stated:

[6] UN Security Council Resolution 2270 (2016) ("The Security Council. . . *Decides* that if a Member State determines that a DPRK diplomat, governmental representative, or other DPRK national acting in a governmental capacity, is working on behalf or at the direction of a designated individual or entity, or of an individual or entities assisting in the evasion of sanctions or violating the provisions of resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or this resolution, then the Member State shall expel the individual from its territory for the purpose of repatriation to the DPRK.")

> We do not get any payment or any kind of support from the North Korean regime, so how would the diplomats make a living? What they do is illegal trading. What I did, for example, is we smuggled tax-free alcohol and cigarettes and we sold them in Pakistan. This way, because we don't pay any tax, we would be able to make four or five times as much profit. In Africa, they sell material such as rhino noses [horns] and teak to China, and that's the way they gain money. What embassies do in the end is to help the North Korean regime. (Rademeyer 2017, p. 18)

Thus, "diplomats and diplomatic outposts functioned. . . as brokerage and command and control centers" arranging contracts and payment for shipping (Hastings 2016, p. 80). "They. . . have become experts at operating in the blurred zones between licit and illicit" activities (Hastings 2016, p. 9). "The result is that the North Korean state and North Korean state officials depend on activities that are technically illegal even within North Korea" (Hastings 2016, p. 13; see also Lim and Yoon 2011, p. 86). "North Korea's diplomatic corps certainly has one of the worst reputations globally, if not the worst, for criminal activity" (Salisbury 2022, p. 20).

While diplomats receive official salaries, those salaries, according to a former North Korean embassy secretary, are "paltry," making it "very difficult and hard" to survive (Rademeyer 2017, p. 17). According to the former secretary:

> The monthly paycheck for ambassadors does not exceed $1000.[7] Depending on whether you are the first or third secretary, you can get between $400 and $700 [a month]. . .Even if we do have some money, we can't use it because it is not enough and on top of that we have to try and save. For example, instead of going to restaurants, I will just have to eat white rice. (Rademeyer 2017, p. 17)

According to the North Korean secretary, diplomats are frequently forced to resort to illicit activity (Rademeyer 2017, p. 17). "When we get the opportunity to go abroad, we will do anything to earn as much money as possible. . . Many [diplomats] choose to exploit their positions for personal gain" (Rademeyer 2017, p. 17). According to the secretary:

> There are many ways to earn money. In China and Southeast Asia, [North Korean diplomats] get money by exporting and importing goods. In Nepal, you can get good quality gold and sell it in Singapore for a good profit. In Europe, diplomats are allotted alcohol by the ministry, and they can either sell them on the black market or export them to countries where these products fetch high prices. In the Middle East, they also sell alcohol and in Africa they get ivory goods such as spoon and chopstick sets which are very popular in China. . . Usually they only take as much as they can fit into a travelling suitcase. There are always customs officials who have to check these products and many times they are bribed. Diplomats can usually get away with a lot of stuff [because] they have immunity. They don't really get screened. (Rademeyer 2017, p. 17)

According to the secretary, finding local business partners is relatively easy because corruption "exists everywhere" (Rademeyer 2017, p. 17).

> In some cases, the person who was in your position previously provides you with links to business partners. . . In cases where you do illegal trade, there are always people who are up for it. . . You meet them for tea or coffee, get to know them and when you become close enough, you can ask secretly if they will do business.

[7] This statement is consistent with a statement by Thae Yong-ho, DPRK's second-highest ranking diplomat in London, who defected to South Korea in August 2016. Thae stated that "North Korea paid its ambassadors only $900 to $1100 a month, making its diplomats desperate for an extra income through work outside the embassy" (Sang-Hun 2016).

> Sometimes you can just tell that they do these kinds of businesses. Some people will say they don't know anything about it, but others welcome the opportunity. It is really not difficult to get these links. (Rademeyer 2017, pp. 17–18)

Diplomats are required to return the bulk of the profits to Pyongyang.

> [D]iplomats are required to return a majority of the profits from any activity to Pyongyang as 'loyalty money', sent via the country's clandestine financial network. According to a US government estimate, these payments are around 70–90% of funds earned. The remainder of the funds are at the disposal of the diplomats themselves, to support embassy work and personal needs. (Redhead and Erskine 2022, p. 17) (citations omitted)

Park Ji-wan, a former DPRK diplomat who was posted in China but defected to South Korea, stated that the amount of 'loyalty money' that he was required to pay increased as his business earnings grew (Rademeyer 2017, pp. 15–16).[8]

> In the first year, they asked me to pay $30,000. The next year it went up to $60,000. The loyalty money is a requirement for doing business. This is the cycle of economic life for all the North Korean traders and those who are doing business. Everyone who does business outside North Korea is required to pay loyalty money to the government. . . I kept 30% of the profits for myself to afford my livelihood and the other 70% was loyalty money. (Rademeyer 2017, p. 16)

Park stated that a portion of his earnings came from his role as intermediary for illicit smuggling of rhino horn, ivory, and gold (Rademeyer 2017, p. 16). According to Park, a North Korean trade official based in Harare, Zimbabwe traveled to Beijing at least twice a year and made so much money that "in 2013 and 2014 he paid loyalty money of $200,000" (Rademeyer 2017, p. 16). "Over the course of several years, beginning around 2010, Park. . . regularly facilitated transactions between diplomats based in Africa and Chinese organised crime networks" (Rademeyer 2017, p. 16). Park stated that "in most cases. . . 'he made 5% commission off each deal'" (Rademeyer 2017, p. 17). "After closing the deal, [the diplomats] would get their cash and if they wanted to send it as loyalty money, they would ask me to get it to Pyongyang or they would take it themselves. . . Usually they would keep 15% to 20% for themselves and the rest would be paid as loyalty money" (Rademeyer 2017, p. 17).

In addition to the 70–90 percent of earnings that are remitted to Pyongyang, diplomats pay prophylactic bribes to DPRK State Security officials to secure their tacit silence (Rademeyer 2017, p. 18). Bribery, however, does not guarantee safety. Diplomats who are caught smuggling may be demoted and exiled to work on farms or in factories, depending on the seriousness of the case, the damage to North Korea's global image, the level of exposure by international media, and the degree of international controversy. According to the North Korean embassy secretary:

> It depends on the seriousness of the case and how much damage it has done to the global image of North Korea. If what you have done is reported by the media around the world and causes a lot of controversy, then you cannot work as a diplomat or in public service. You are sent to remote regions in the countryside where you have to work on a farm or in a factory. You are completely demoted. (Rademeyer 2017, p. 18)

DPRK diplomats who are implicated in smuggling "are punished for the damage they have done to North Korea's national status in the world" (Rademeyer 2017, p. 17). In sum, DPRK diplomats who are caught in flagrant, high-profile, highly publicized smuggling

[8] 'Park Ji-wan' is the name that the former diplomat currently uses but is not his real name (Rademeyer 2017, p. 15).

schemes that create international controversy and damage North Korea's global image are purged and exiled because abuse of diplomatic privileges, in violation of the Vienna Convention on Diplomatic Relations, is a serious offense that typically results in expulsion or arrest (Rademeyer 2017, p. 18).[9]

6. Expulsions, Recalls, Sanctions, and Arrests of DPRK Diplomats

Abuse of diplomatic privileges, in violation of the VCDR, is a serious offense. Diplomats caught in this type of scandal are typically expelled by the host state. For example, when Park Chol-jun, a high-ranking North Korean diplomat, was accused of abusing his diplomatic immunity and his embassy's diplomatic bag to smuggle rhino horn out of South Africa, he was expelled from the country (Rademeyer 2015). The rhino horn was sent to China where it was sold as medicine on the black market (Rademeyer 2015). The revenue was utilized to operate the North Korean embassy. The case illustrates the abuse of diplomatic privileges by DPRK diplomats and the use of embassies for illicit purposes. "The exposure of a senior North Korean diplomat's involvement in rhino horn trafficking is the fourth diplomatic scandal of its kind on record in South Africa in the past nine years" (Rademeyer 2015).

In 1992, Han Tae-song, a North Korean diplomat posted in Zimbabwe, was expelled for smuggling rhino horn out of the country in a diplomatic bag (Rademeyer 2017, p. 3). Han was deported "as an undesirable character whose activities are incompatible with his status as an accredited diplomat" (UPI 1992). In December 2023, Han was recalled by North Korea from his post as Ambassador to Switzerland for involvement in an elephant tusk smuggling operation that attracted international attention (Kang 2023).

> Botswana, along with South Africa, Zimbabwe, and Mozambique, had been probing this North Korean-affiliated ivory and rhino horn smuggling operation for over a year. The ring is accused of pilfering at least 19 elephant tusks and 18 rhino horns from Botswana on two occasions last year and this year and then channeling them through South Africa and Zimbabwe to Mozambican buyers linked to North Korea… the investigation discovered two buyers from North Korea were central to a major smuggling operation involving wildlife products. One of these individuals, Yi Kang Dae, confirmed as an intelligence official in North Korea's state security, collaborated with Ambassador Han. (Kang 2023)

In 1990, Pak Su-yong, a North Korean diplomat, was expelled by Zimbabwe for smuggling rhino horn (UPI 1992). In 1992, Pak was again expelled by Zimbabwe for smuggling rhino horn (Redhead and Erskine 2022, p. 11). In 2016, Kim Chung-su, a North Korean diplomat, was expelled by South Africa for smuggling ivory bangles (Redhead and Erskine 2022, p. 11). In 2016, Han Son Ik, a North Korean diplomat posted in Bangladesh, was expelled by the host country for smuggling one million cigarettes as well as electronics in a shipping container (Aljazeera 2016). In 1996, Sweden expelled three North Korean diplomats for smuggling large quantities of cigarettes (UPI 1996). In sum, smuggling, in violation of the VCDR prohibition on commercial activity for profit, is a serious offense that typically results in expulsion.

> North Korean diplomats have been expelled from, or asked to leave, other states because of involvement in illicit procurement, sanctions-busting or links to designated entities. These include: the expulsion of Ri Yun Thaek from Germany in 2012–13 for WMD-related illicit procurement (the gas monitor discussed above);

[9] Vienna Convention on Diplomatic Relations, *opened for signature* 18 April 1961, 500 UNTS 95 (hereinafter VCDR), art. 42 ("A diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity").

> the ejection of two Myanmar-based and two Uganda-based diplomats in 2016 and 2017, all four having acted as KOMID representatives; and the ejection of a Green Pine representative from Angola in 2017. (Salisbury 2022, pp. 22–23)

Nor are DPRK diplomats immune from international sanctions. The UN has designated DPRK diplomats and a trading corporation operated by a former diplomat for sanctions: specifically, "two Syria-based representatives of Tanchon Commercial Bank with diplomatic passports; and Namchongang Trading Corporation, a procurement entity for the nuclear programme run by a former diplomat who served as the North Korean representative to the International Atomic Energy Agency in the early 1990s" (Salisbury 2022, p. 21).[10]

In addition to being recalled, expelled, and sanctioned, DPRK diplomats who are caught in smuggling schemes are vulnerable to arrest. In 2015, Son Young Nam, a DPRK diplomat, was arrested for smuggling gold into Bangladesh (Groll 2015). In 2009, Swedish police arrested two North Korean diplomats, posted in Russia, for smuggling 230,000 cigarettes into Sweden (Reuters 2009). In 2011, three DPRK diplomats posted in Poland were arrested by Ukrainian authorities for smuggling cigarettes into Poland (UPI 2011). In 2004, North Korea recalled Ryang Thae Won and Kim Song Jin, two DPRK diplomats posted in Bulgaria who were arrested and accused of smuggling drugs in neighboring Turkey (RFA 2004).

Worldwide, "at least 50 North Korean diplomats have been arrested for drug-smuggling over the last two decades" (RFA 2004). Section 10.2, below, explains that diplomats may be prosecuted and imprisoned by third countries for violations of third country laws. Diplomatic immunity does not extend to violations of third country laws.

Significantly, Chinese authorities arrested a North Korean diplomat in January 1995 for smuggling opium (Cook 2007, n23; North Korea Advisory Group 1999, p. 45). This case demonstrates (a) diplomatic immunity does not protect diplomats involved in smuggling, and (b) Chinese authorities have demonstrated willingness to arrest DPRK diplomats involved in smuggling. DPRK diplomats involved in smuggling are not immune to arrest by Chinese authorities.

In a second case, Chinese authorities arrested Mohammed Ramadan, a former Palestinian diplomat posted in Beijing, on 12 September 2014, for smuggling automobiles into China (Chan 2016). Prior to his arrest, Ramadan was stripped of his diplomatic privileges (Chan 2016). Ramadan was sentenced to five years imprisonment and fined RMB 1,000,000 (Chan 2016). A Chinese court recommended expulsion after his term in prison (Chan 2016).

In sum, international norms and expectations are that China would expel a DPRK diplomat who is identified, via testimony by a cooperating Chinese national, as the principal of a private, for-profit scheme to violate the Vienna Convention on Diplomatic Relations (VCDR) prohibition against commercial activity by diplomats, violate international law, and violate UN Resolution 2397 by smuggling fuel oil into DPRK.[11] China has demonstrated its willingness and capacity to arrest DPRK diplomats involved in smuggling. International expectations and norms, and China's demonstrated record of arresting a DPRK diplomat involved in a flagrant scheme to smuggle contraband, suggest that China would, at a minimum, expel a DPRK diplomat who is undeniably identified as the principal of a private for-profit scheme to smuggle fuel oil into DPRK in violation of the VCDR and UN Resolution 2397.

[10] The sanctions list includes Jang Bom Su and Jon Myong Guk of Tanchon Commercial Bank, and Yun Ho Jin, Director of Namchongang Trading Corporation. See UN Security Council, "United Nations Security Council Consolidated List," available at https://www.un.org/securitycouncil/content/un-sc-consolidated-list (accessed on 15 December 2023).

[11] VCDR (1961), *supra* note 9.

7. Implications for U.S. Law Enforcement

The tenuous, illicit nature of DPRK PSE managers—including those posing as diplomats—is a weakness that could be exploited by U.S. law enforcement authorities. DPRK PSE managers posing as diplomats rely almost entirely on illicit activities and are vulnerable when discovered and exposed. A witness who cooperates with law enforcement authorities to expose this type of activity poses an existential threat to DPRK PSE managers, including those posing as diplomats, who are implicated in this type of activity. Law enforcement authorities outside of DPRK and outside of China could exploit this weakness.

Suppose, for example, that the U.S. adopted a law, in the form of a rule (the "APUNCAC Rule"), that would require the following:

(a) the ultimate beneficial sender, and ultimate beneficial recipient, to certify beneficial ownership (as sender and recipient) when funds are transacted in amounts exceeding $3000; and

(b) foreign financial institution personnel, who handle transactions with a nexus to a party to the Rule, to collect and submit, to a central law enforcement database, certifications by the ultimate beneficial sender and recipient of covered funds that are deposited, transmitted, transferred or paid.[12]

The Rule envisions that each participating jurisdiction would maintain its own database but would agree to share data across borders with authorized law enforcement authorities in selected partner jurisdictions via bilateral and multilateral data sharing agreements.

The ultimate beneficial sender might, for example, be a China-based DPRK PSE manager, doubling as a diplomat, who utilizes a middleman to purchase Taiwanese fuel oil via a U.S. dollar-denominated transaction and deliver the oil to DPRK.

An assertion of beneficial ownership by a front man is a false statement. Presumably, the APUNCAC database would be filled with false statements by front men. However, the database serves an important purpose. The existence of a database of beneficial owner certifications would permit a prosecutor to prosecute a front man whenever evidence is obtained contradicting the assertions in the database.

In principle, a U.S. prosecutor who suspects a middleman of acting in the role of a front man could arrange for the arrest and extradition of the front man upon crossing the borders of a cooperative jurisdiction. A front man might, for example, be arrested while on holiday in Singapore, Malaysia, or the Philippines (see USDOJ 2022).[13]

Upon arrest, the front man and his personal devices would be transferred to the custody of the requesting state (i.e., the U.S.). U.S. authorities could obtain legal authority to search the suspect's personal devices.[14] Presumably, those devices contain downloaded text messages and instructions to send or receive funds (because a front man always acts

[12] Anticorruption Protocol to the United Nations Convention against Corruption, arts. 21(2)(a)(H), 21(3)(a)(viii), 21(3)(b)(viii), 22(1)(a)(G), 30(b), available at https://tinyurl.com/y6bkpott, accessed on 30 May 2024 [hereinafter APUNCAC Rule]. APUNCAC is a draft protocol to the United Nations Convention against Corruption that originates from the author's prior research.

[13] Although China would not extradite a Chinese middleman, the capacity of U.S. law enforcement to obtain extradition of high-ranking Chinese nationals by luring them to cooperative jurisdictions is illustrated by the case of Yanjun Xu, a Chinese government intelligence officer who was arrested and extradited from Belgium to the U.S. in October 2018 (USDOJ 2022). Xu was convicted of conspiracy to commit economic espionage, conspiracy to commit trade secret theft, attempted economic espionage and attempted trade secret theft, and sentenced to 20 years imprisonment (USDOJ 2022). Xu was a career intelligence officer who rose to the rank of deputy division director at the Chinese Ministry of State Security (MSS), the intelligence and security agency for China (USDOJ 2022). Xu was lured to Belgium by an FBI agent posing as a GE Aviation employee (USDOJ 2022). The case illustrates that high-ranking Chinese nationals are not beyond the reach of U.S. law enforcement authorities.

[14] While the PSE manager might utilize an encrypted messaging platform, the U.S., UK, and Europol have demonstrated capacity to access those platforms (Caesar 2023; Davis 2021; NCA 2020).

on the instructions of a controlling person, and it is not uncommon for such instructions to be communicated via personal devices).

The existence of the APUNCAC database would demonstrate that the front man is asserting beneficial ownership over assets that are demonstrably not controlled by the front man. The front man would have a strong incentive to cooperate with a prosecutor and provide information that incriminates co-conspirators, including a PSE manager doubling as a diplomat who is directing the actions of the front man. Section 6, above, explained that DPRK would likely recall any diplomat involved in a high-profile, internationally embarrassing smuggling scandal. The diplomat would be at risk of exile involving hard labor on a farm or at a factory in the countryside. This would make the diplomat vulnerable to pressure to defect and cooperate with U.S. law enforcement authorities.

A concern is that DPRK may engage in retribution against family members of defectors. Threats of punishment permeate the entire careers of DPRK workers and managers (Gyupchanova 2018, p. 189). DPRK workers, managers, and their families may be arbitrarily imprisoned (Gyupchanova 2018, p. 189). Inmates have to perform hard labor (Breuker and van Gardingen 2017, pp. 3, 23). There is a real concern that family members of defectors could be arbitrarily imprisoned and forced to perform hard labor. While the possibility of DPRK retribution against family members of defectors cannot be denied, this cost would have to be weighed against the possible benefits of curtailing DPRK criminal activity, associated revenue streams, and the capacity of the DPRK regime to utilize state power to violate individual freedoms.

Regardless, the testimony of the middleman would provide the basis to obtain an INTERPOL Red Notice for arrest and extradition of the DPRK PSE manager. Section 10, below, explains that the PSE manager, doubling as a diplomat, could not invoke diplomatic immunity.

While China would not arrest and extradite the PSE manager to the U.S., China would likely be forced to expel him. China is obligated by UN Security Council Resolution 2270 to expel DPRK diplomats involved in sanction evasion, expulsion would be consistent with China's record of implementing sanctions against DPRK, and expulsion would be consistent with China's ambition to be viewed as a "responsible great power" that, as a permanent member of the UN Security Council, shoulders its international responsibilities in upholding the international order (Section 9, below).[15]

Upon expulsion, the manager could avoid arrest and extradition by sheltering within DPRK for the remainder of his life and avoiding travel to any jurisdiction willing to arrest and extradite him to the United States. However, he could be arrested and extradited if he was successfully lured to a cooperative jurisdiction that agreed to extradite him (see USDOJ 2023, regarding the case of Mun Chol Myong).[16]

Regardless, he would be unable to negotiate commercial contracts and unable to earn commissions, unable to earn a living, unable to make the required payments to the FTC, unable to pay loyalty money, unable to pay prophylactic protection bribes, unable to pay required Korean Workers' Party (KWP) dues and, as described above, would be at risk of arrest for large-scale embezzlement as well as a multitude of other economic crimes, many punishable with death.

[15] UN Security Council Resolution 2270 (2016), *supra* note 6.

[16] Although DPRK would not extradite a DPRK national, the capacity of U.S. law enforcement to obtain extradition of DPRK nationals by luring them to cooperative jurisdictions is illustrated by the case of Mun Chol Myong, a DPRK national affiliated with DPRK's primary intelligence organization, the Reconnaissance General Bureau, which is the subject of U.S. and UN sanctions. Mun was lured to a cooperative foreign jurisdiction where he was arrested and extradited to the U.S., then convicted and sentenced to 45 months imprisonment for laundering funds through the U.S. financial system (USDOJ 2023). The case illustrates that DPRK nationals are not beyond the reach of U.S. law enforcement authorities.

He would be exposed to a risk of arrest and imprisonment in DPRK's gulags for engagement in unsanctioned black market trading and bribery, unemployment, or arbitrary reasons. "The punishment for being unemployed or failing to attend work is being sent to a labour training camp" (Breuker and van Gardingen 2017, p. 2). DPRK workers, managers, and their families may be arbitrarily imprisoned (Gyupchanova 2018, p. 189).

Unemployment lasting longer than 15 days is punishable by loss of rations, followed by assignment to a labor training camp (Breuker and van Gardingen 2017, p. 3). "Any unemployed adult North Korean male or unmarried adult female runs the risk of being sentenced to a period (often between three to twelve months) in a labour training camp" (Breuker 2018, p. 9). "Labour training camps are prisons where North Koreans who are without officially registered employment for more than 15 days can be sent as punishment. Inmates have to perform hard labour, reportedly for a minimum of six months" (Breuker and van Gardingen 2017, pp. 3, 23). "Workers are provided with food rations, which can be withheld as punishment" (Breuker and van Gardingen 2017, p. 2). The result is a state-sponsored system of forced labor (Breuker and van Gardingen 2017, p. 3).

An unemployed PSE manager would be extremely vulnerable to extortion by anyone with knowledge of his situation. Extortion is common because the legal system is arbitrary and capricious, the penal system is barbarous, and extortion is uncontrolled. Extortion by any person could potentially be employed against the manager to force him to vacate his residence in Pyongyang. Forced to leave Pyongyang, the manager would be exiled outside Pyongyang and the opportunities and privileges afforded by life in Pyongyang. In sum, an unemployed DPRK PSE manager would be intensely fearful of exile, arrest, imprisonment in a labor camp, and extortion. He would risk a dramatic collapse in his capacity to earn a living, support his family, maintain his position and social status, and avoid hard labor in a prison camp. Travel to another country would risk arrest and extradition. The PSE manager would be vulnerable to pressure to defect and cooperate with U.S. law enforcement authorities.

In principle, defection could be encouraged by dangling cooperation agreements, where defectors who cooperate with U.S. prosecutors receive immunity from prosecution (or deferred prosecution), plus protection for their families, in exchange for testimony and information regarding other DPRK PSE managers, DPRK trading networks, and financial institutions involved in money laundering. In principle, U.S. prosecutors could then leverage this information to repeat the process, leading to serial expulsion and defection of DPRK PSE managers, disruption of DPRK trading networks and revenue streams, identification of financial institutions involved in money laundering, and evidence in support of requests to designate specific individuals and institutions for UN sanctions.

While DPRK has, in the past, successfully re-posted diplomats who are expelled from one country to a new post in another country, this tactic could be countered by establishing a public blacklist of DPRK diplomats involved in sanction evasion. A blacklist would ensure that these diplomats are not re-posted in states that would permit them to perpetuate their criminal activities and ensure they could not escape the consequences of expulsion, including the loss of income that would otherwise occur or the prospect of hard labor on a farm or in a factory (see Salisbury 2022, p. 25). This prospect would make the diplomat susceptible to an agreement to defect and cooperate with U.S. law enforcement authorities, enabling U.S. law enforcement to unravel networks that supply DPRK.

Significantly, DPRK PSE managers who defect to the West report that a major reason for defection is the constant risk of arrest, imprisonment, or execution (Lankov et al. 2017, pp. 62–63; Park 2014, p. 205). "[I]n recent years there have been a number of diplomat defections" (Salisbury 2022, p. 19). "For example, Thae Yong Ho, former deputy head of the North Korean embassy in London, and one of the most senior diplomatic defectors,

defected in 2016" (Salisbury 2022, fn 74). "Kim Jong Ryul, a European-based diplomat, defected in the 1990s, having taken a three percent cut of all the procurement deals he undertook for dual-use goods, commodities and luxury items" (Salisbury 2022, fn 74).

Ryu Hyon U, Pyongyang's acting ambassador to Kuwait, defected in September 2019 with his wife and daughter and has been living in South Korea (Jeong 2021). Jo Song Gil, Pyongyang's acting ambassador to Italy, defected in July 2019 (Jeong 2020). The defection of Ri Il Gyu, North Korea's No.2 diplomat in Cuba, was revealed in July 2024 (H.-J. Kim 2024). Ri was the highest-ranking North Korean to defect to South Korea since Tae Yongho, a former minister of the North Korean Embassy in London, arrived in South Korea in 2016.

The proposed legal reform would, in principle, permit the U.S. to exert control over criminals, middlemen based in China, and DPRK diplomats who engage in sanction-busting activities. In this view, offenses would be easier to prosecute than money laundering because a prosecutor would not need to prove a predicate crime or the illicit origin of funds. Instead, a U.S. prosecutor who manages to obtain access to instructions directing the person who makes an assertion of beneficial ownership could prove that a false certification was made.

The U.S. could, in principle, implement the Rule and prosecute violations of the Rule. Whether China adopts the Rule is immaterial (see Section 9.8, below). The success of the Rule does not depend on China's willingness to adopt the Rule. Regardless, China might, for its own internal reasons, i.e., strong desire to fight money laundering, wish to adopt the Rule.

The reform seeks to enable prosecutors to arrest and extradite front men or recalcitrant financial service personnel upon crossing the borders of cooperative jurisdictions (Figure 3). The extradition provisions of the United Nations Convention against Transnational Organized Crime (UNTOC) could be utilized to achieve extradition.[17] Significantly, 192 states are parties to UNTOC, implying near universal jurisdiction.[18]

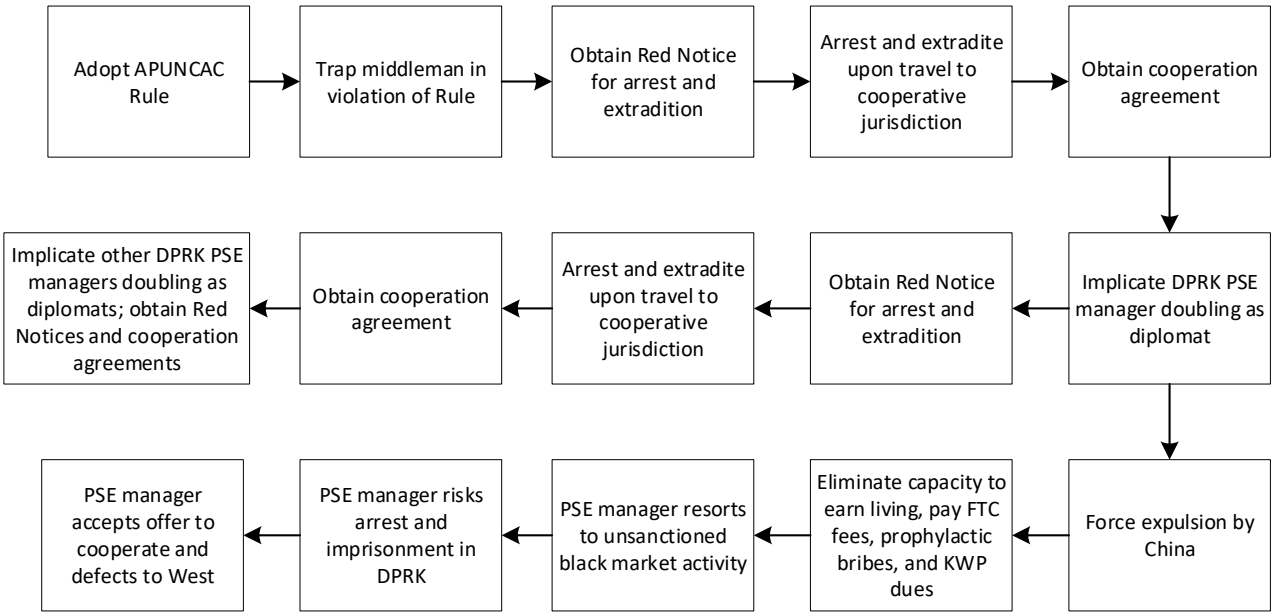


Figure 3. Securing the cooperation of a DPRK PSE manager doubling as a diplomat.

[17] United Nations Convention Against Transnational Organized Crime, opened for signature 12 December 2000, 2225 UNTS 277 [hereinafter UNTOC].

[18] Globally, all but four minor jurisdictions are parties to UNTOC. The only United Nations Member States that are not parties are Papua New Guinea, the Solomon Islands, Somalia, and Tuvalu (see Fung and Lam 2021).

8. U.S. Law Applies to Extraterritorial Dollar-Denominated Transactions

With few exceptions, fuel oil is traded via U.S. dollar-denominated transactions (J. Chen 2025; Firstpost 2023; Hughes 2018, p. 1). The significance is that dollar-denominated transactions generally require the involvement of a U.S. correspondent bank or other U.S. entity, triggering U.S. jurisdiction and applicable U.S. law. Similarly, the APUNCAC Rule is written such that U.S. adoption of the APUNCAC Rule would make the Rule applicable to non-U.S. persons and entities, regardless of their jurisdictional location, who engage in dollar-denominated transactions, because those transactions are generally processed via a U.S. entity. The Rule would trigger extraterritorial U.S. jurisdiction over non-U.S. persons and entities when they engage in dollar-denominated transactions. Violations of the Rule could be prosecuted by the U.S. whenever individuals or entities engage in dollar-denominated transactions that violate the Rule.

DPRK cannot avoid the APUNCAC strategy because the illicit goods and services that it desires to procure are typically traded in U.S. dollars, British pounds, euros, or currencies of nations that support UN sanctions on DPRK and, thus, might be expected to cooperate to enforce the APUNCAC prosecutorial strategy (J. Chen 2025; Crawford 2023; Elson 2021; Firstpost 2023; Hughes 2018, p. 1).[19] The strategy is explicitly designed to pierce complex offshore shell company structures. A false certification of beneficial ownership would be prosecuted as described in Sections 7 and 9.8.

8.1. Consistent with International Legal Norms

Extraterritorial U.S. application of the APUNCAC Rule to non-U.S. persons who engage in dollar-denominated transactions would not be inconsistent with international legal norms and practices. The relevant norms and practices are illustrated by extraterritorial U.S. application of its domestic anti-money laundering statutes to indict numerous North Korean and Chinese nationals for violations of U.S. law (Zagaris 2020, p. 215).

Extraterritorial U.S. jurisdiction, and the extraterritorial application of U.S. law, were triggered by unauthorized U.S. dollar-denominated transactions that were subsequently processed by U.S. correspondent banks, causing U.S. banks to export their banking services to a sanctioned entity in a way that violated U.S. law.[20] The transactions causing U.S. banks to violate U.S. law were violations of U.S. law.

In sum, extraterritorial U.S. jurisdiction, and the extraterritorial application of U.S. law, were triggered by U.S. dollar-denominated transactions conducted by North Korean and Chinese nationals operating outside the U.S. in a way that violated U.S. laws. The indictment laid a foundation to obtain INTERPOL Red Notices seeking the arrest and extradition of the accused individuals. While neither China nor North Korea will extradite their own nationals to the U.S., a Red Notice means that the accused individuals risk arrest and extradition if they travel, for business or leisure, to any cooperative jurisdiction. A Red Notice may be issued in a way that does not alert China, North Korea, or the indicted individuals that a Notice has been issued.[21]

It is not unusual for suspects to be arrested and extradited who were unaware of the issuance of a Red Notice for their arrest. Suspects have been arrested at an airport layover

[19] The *APUNCAC Rule* refers to the proposed law, while the *APUNCAC strategy* refers to the legal strategy, enabled by the proposed APUNCAC Rule, for prosecuting offshore criminals who currently operate beyond the reach of domestic authorities.

[20] U.S. v. Ko Chol Man, U.S. District Court for D.C., Case No. 1:20-cr-00032-RC, 5 February 2020.

[21] IRM § 9.4.12.18.1(2) ("INTERPOL Lyon ensures that each red notice meets international legal requirements, then issues it… to all INTERPOL member countries, unless the requesting INTERPOL member excepts certain countries.")

or on holiday (Thomas and Stefano 2016).[22] Thus, there is a genuine risk of arrest and extradition. "[B]ringing and unsealing the indictment enable the U.S. not only to enforce its sanctions against the defendants, but to also show the rest of the world the perils of violating the sanctions" (Zagaris 2020, p. 216).

8.2. TransTel

Extraterritorial U.S. jurisdiction, extraterritorial application of U.S. law, and prosecution of non-U.S. entities based on their engagement in U.S. dollar-denominated transactions are illustrated by the TransTel enforcement action (Abely 2019, p. 45). In sum, a non-U.S. party was held responsible for causing U.S. financial institutions to process U.S. dollar-denominated transactions involving blocked parties. Notably, neither CSE Global nor its subsidiary TransTel were financial institutions. They were not directly involved in the dollar clearing and settlement process, other than entering into the relevant U.S. dollar-denominated transactions. The mere fact of engaging in U.S. dollar-denominated transactions was sufficient to trigger U.S. jurisdiction and application of U.S. law.

8.3. Analysis

A Chinese middleman who purchases oil involving a U.S. dollar-denominated transaction on behalf of a DPRK PSE manager would be in violation of the prohibition against causing a violation of sanctions against DPRK. This action would cause U.S. correspondent banks or other U.S. entities to process a U.S. dollar-denominated transaction, for the benefit of DPRK, in violation of U.S. sanctions.

In principle, the middleman could be prosecuted on this basis. However, prosecution for a sanctions violation would require proof that the middleman arranged delivery of fuel oil to DPRK. While it is likely that the middleman signed a contract with the DPRK PSE manager, obtaining a copy of the contract would be difficult. It would also be difficult to prove that the fuel oil purchased by the middleman was ultimately delivered to DPRK on behalf of the DPRK PSE manager. This would require (a) U.S. spy satellite imagery to trace the ship-to-ship oil transfers, (b) fortuitous weather conditions where satellite images are unobstructed by clouds, (c) sophisticated analyses required for accurate identification of the ships involved in the ship-to-ship transfers, (d) sophisticated analyses required for accurate identification of the ship involved in the delivery of oil to DPRK, (e) analyses to determine that the delivery exceeds allowed quotas, and (f) accurate tracing of financial flows from the DPRK PSE manager to the Chinese middleman, to the Taiwanese oil trader, piercing the front companies, shell companies, nominee arrangements, devices, and stratagems employed to hide the flow of funds.

In contrast, prosecution for a violation of the proposed APUNCAC Beneficial Owner Rule would not require any of this. It would only require evidence, in the form of instructions from the DPRK PSE manager to the middleman, that the middleman was not in fact the true beneficial owner of the funds transmitted to the Taiwanese oil trader and was not acting independently but instead acting on instructions from the beneficial owner (i.e., the DPRK PSE manager).

[22] In 2013, for example, Romano Pisciotti, an Italian national and a former senior executive with Parker ITR, a marine hose manufacturer headquartered in Italy, was arrested by Germany while catching a connecting flight at Frankfurt airport (Thomas and Stefano 2016, p. 1). Pisciotti was unaware of having been placed on an INTERPOL Red Notice. "He had been indicted 'under seal' (i.e., filed with a court without becoming a matter of public record) in 2012 for various alleged antitrust violations, and was placed on an INTERPOL Red Notice by the U.S. government" (Thomas and Stefano 2016, p. 1). Germany arrested and extradited Pisciotti to the U.S. based on a DOJ charge of participating "in a conspiracy to suppress and eliminate competition by rigging bids, fixing prices and allocating market shares for sales of marine hose sold in the U.S. and elsewhere" (Thomas and Stefano 2016, p. 1). "Pisciotti pled guilty to the DOJ's charges, resulting in a two-year period of imprisonment and a $50,000 criminal fine" (Thomas and Stefano 2016, p. 1).

For example, a communication from the DPRK PSE manager to the middleman setting the date or port of delivery would be evidence that the DPRK PSE manager was directing the actions of the middleman and directing the purchase of oil, implying that a middleman who self-certified beneficial ownership of funds sent to the Taiwanese oil trader violated the Rule (because the Rule does not permit a middleman to self-certify beneficial ownership and, instead, requires the DPRK PSE manager to certify ownership of those funds). Prosecution would be obtained for an offense (i.e., a violation of the APUNCAC Rule) that is easier to prosecute, compared to prosecution for a sanctions-related offense.

A violation would exist regardless of the delivery of oil to DPRK. Delivery might be canceled, but prosecution could proceed because prosecution based on the Rule is independent of a predicate offense involving delivery of oil to DPRK. The Rule prohibits false declarations regarding the beneficial owner of the funds transmitted to the Taiwanese oil trader. If a middleman falsely certified beneficial ownership of those funds, the offense would be punishable by imprisonment. Prosecution would be easier, and the deterrent effect would be stronger (Figure 4).

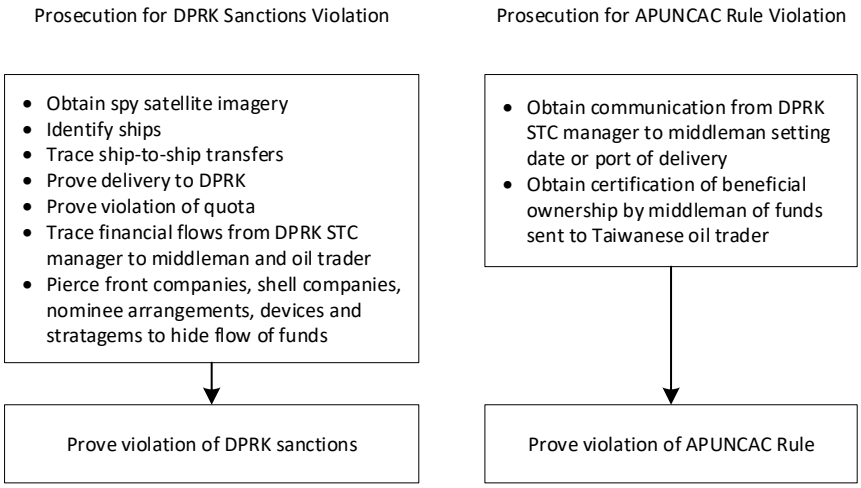


Figure 4. Prosecution is simplified for violation of APUNCAC Rule.

8.4. Access to Communications

The APUNCAC strategy requires that law enforcement authorities obtain access to communications between the DPRK PSE manager and the middleman. Europol, the UK's National Crime Agency (NCA), and the FBI have demonstrated law enforcement capacity to obtain access to encrypted communications, implying that the APUNCAC strategy would be feasible (Caesar 2023).

Law enforcement authorities could legally access communications involving front men, not involving foreign state consent and not involving the consent of suspects. Suspects could be arrested when traveling for business or leisure, when crossing borders of cooperative jurisdictions. Alternatively, suspects may be induced to travel to cooperative jurisdictions.

In either case, any personal devices in their possession would be seized and transferred to the control of the prosecuting authority. Cooperative jurisdictions may agree to extradite the suspects along with their devices to the requesting jurisdiction. Law enforcement personnel may (a) induce suspects to unlock their devices in exchange for leniency, or (b) utilize a device designed to unlock their phones (Franceschi-Bicchierai 2022). In practice, it is not uncommon for law enforcement authorities to utilize Mobile Device Forensic Tools (MDFTs) to unlock devices to access their contents (Casey 2002; Fukami et al. 2021). MDFTs can circumvent most security features in order to copy data (Koepke et al. 2020, p. 10).

MDFTs can extract and interpret data from encrypted messenger apps including Signal and Telegram (Koepke et al. 2020, pp. 16–17).

Suspects routinely carry their personal devices, and those devices routinely contain incriminating communications that would evidence violations of the APUNCAC Rule. The seized devices generally contain text communications on the devices that have been downloaded and, thus, are in the possession of suspects when they are arrested and are subject to search and seizure.

The APUNCAC Rule seeks to create an easily accessible global database of beneficial owner certifications that would permit a prosecutor to cross-check information from seized devices. In principle, a prosecutor who manages to seize a personal device on which a suspect has downloaded text messages directing the suspect to send or receive covered funds may be able to obtain a suspect's cooperation, then use the information to flip additional witnesses.

Regarding concerns related to privacy laws, data retention laws, and proportionality, over 195 jurisdictions worldwide have adopted regulations requiring beneficial owner identification, including regulations that apply to specific transactions (Yeh 2023, §§ 3.32–3.34). Those jurisdictions have determined that the need for beneficial owner identification is not inconsistent with, and is not superseded by, concerns about privacy, data retention, and proportionality.

8.5. U.S. Dollar-Denominated Transactions

Upon adoption, extraterritorial U.S. jurisdiction to apply the APUNCAC Rule and prosecute non-U.S. persons and entities violating the Rule would be triggered because the Rule is written in a way that imposes obligations on any person who handles a transmission of covered funds to, from, or through a U.S. party, or an entity that is within U.S. jurisdiction. A U.S. dollar-denominated transaction to buy or sell fuel oil would be settled via a U.S. correspondent bank and would trigger extraterritorial U.S. jurisdiction to apply the APUNCAC Rule. A violation of the APUNCAC Rule by a non-U.S. party would, therefore, be punishable under U.S. law.

As a practical matter, and for technical reasons, the settlement of dollar-denominated transactions involves U.S. correspondent banks or U.S. entities regardless of how those transactions are settled. Correspondent banking is an arrangement under which one bank (correspondent) holds deposits owned by other banks (respondents) and provides payment and other services to those respondent banks (Abely 2019, p. 58).

Most transactions are settled via two major U.S. payment systems, either Fedwire or the Clearing House Interbank Payments System, with a nexus to a U.S. entity (CHIPS) (Abely 2019, p. 57). Fedwire is operated by U.S. Federal Reserve Banks (Abely 2019, p. 58). Thus, any transaction involving Fedwire involves a U.S. Federal Reserve Bank. CHIPS transmits and settles U.S. dollar payments among participating banks (Abely 2019, p. 59). CHIPS is operated by the Clearing House Payments Company L.L.C., based in New York (Abely 2019, p. 59). The CHIPS system is governed by the law of the state of New York (Abely 2019, p. 59).

Offshore U.S. dollar clearing systems based in Singapore, Hong Kong, the Philippines, and Japan also involve a U.S. entity (Abely 2019, pp. 59, 64). "Within Singapore, the U.S. Dollar Cheque Clearing system (USDCCS) clears and settles U.S. dollar-denominated cheques drawn on banks in Singapore" (Abely 2019, p. 59). Citibank, a U.S. bank, is the settlement bank for USDCCS dollar clearing transactions (BIS 2003, p. 331). USD CHATS is an interbank payment system in Hong Kong for settling U.S. dollar transactions. "Settlement in the USD CHATS system takes place on the books of HSBC in New York City" (Abely 2019, p. 61). Offshore dollar clearing via the Philippines and Japan also operates

via a nexus to a U.S. bank. In sum, settlement via USDCCS, USD CHATS, PDDTS, or the Tokyo Dollar Clearing System takes place via U.S. entities.

In addition to a nexus with these U.S.-based entities, any foreign exchange transaction that is settled via the Continuous Linked Settlement (CLS) international payment system involves a U.S. entity because the CLS Bank is based in the U.S. (Cipriani et al. 2023, p. 17). The CLS Bank is a specialized financial intermediary that permits foreign exchange transactions in 18 currencies (Cipriani et al. 2023, p. 17). The CLS Bank operates the largest multi-currency cash settlement system, conducts millions of transactions and trades worth trillions of dollars a day (Cipriani et al. 2023, p. 19), and handles around half of all foreign exchange transactions in the world (Mägerle and Maurer 2009, p. 2).

Whether a U.S. dollar-denominated transaction involves Fedwire, CHIPS, or an offshore U.S. dollar clearing system, the transaction ultimately involves a U.S. settlement bank, i.e., a U.S. entity (Abely 2019, p. 64). Thus, a U.S. dollar-denominated transaction triggers U.S. jurisdiction over the parties involved with that transaction, meaning that U.S. law, and penalties for violating U.S. law, potentially apply to non-U.S. parties engaged in offshore U.S. dollar-denominated transactions.

The court in *U.S. v. Zarrab* upheld the authority of OFAC to reach transactions based on the use of U.S. dollars alone, even where those dollars are not held at U.S. financial institutions (Abely 2019, p. 65). The court noted: "the execution of money transfers on behalf of others from the United States to Iran may constitute the exportation or supply of a prohibited 'service,' in violation of the IEEPA and the ITSR."[23]

In sum, any type of cross-border economic activity, be it financial or real, requires access to the international payment system. Non-U.S. persons and entities that engage in dollar-based transactions are subject to U.S. laws that apply to non-U.S. persons and entities when they engage in dollar-based transactions. In principle, it would be possible to implement a law, in the form of the APUNCAC Rule, that would target middlemen and DPRK PSE managers who engage in dollar-based fuel oil transactions. This is the basis for the proposed APUNCAC strategy for reaching middlemen and DPRK PSE managers who currently operate beyond the reach of U.S. authorities.

9. Alignment with China's International Obligations, Internal Law, and Internal Dynamics

Upon adoption by the U.S., the APUNCAC Beneficial Owner Rule would apply to a dollar-denominated transaction involving the purchase of fuel oil by a Chinese middleman. A bank clerk who transmits funds to the account for the Taiwanese oil trader would be required to obtain and submit certification, by the ultimate beneficial sender, that the sender is the ultimate beneficial owner of the sending funds. The bank clerk who assists in posting the funds to the account for the Taiwanese oil trader would be required to obtain and submit certification, by the ultimate beneficial recipient, that the recipient is the ultimate beneficial recipient of the funds received. Under the Rule, both bank clerks would be required to obtain and submit the paired set of certifications to a designated law enforcement database. If one or both certifications are missing, the bank clerks would be obligated to halt the transaction. Violations would be criminal offenses punishable by imprisonment.

The requirement that both bank clerks submit a set of paired certifications means that any attempt to subvert the rule would require the participation of both bank clerks. Presumably, it would be difficult to obtain the cooperation of both bank clerks in a conspiracy that is punishable by imprisonment. In principle, this would deter violations of the Rule.

[23] Zarrab, 2016 WL 6820737 at *7 (quoting United States v. Banki, 685 F.3d 99, 106 (2d Cir. 2012)).

The Rule is aligned with China's UN and FATF obligations, China's Anti-Money Laundering (AML) Law, internal dynamics, and the need to control rampant money laundering and capital flight. The Rule would potentially permit U.S. prosecutors to reach DPRK PSE managers and Chinese middlemen who are currently beyond their reach. The APUNCAC strategy could potentially be replicated in a way that would threaten the illicit international activities and revenue streams utilized by DPRK to fund and support the regime, potentially offering an effective strategy for countering organized criminal groups facilitating evasion of UN sanctions.

9.1. Alignment with China's UN, FATF, and UNTOC Obligations

The APUNCAC Rule aligns with China's UN obligations. UN Security Council Resolution 2270 requires UN Member States to "ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of" "entities of the Government of the DPRK. . . or by entities owned or controlled by them" "or individuals or entities acting on their behalf or at their direction" that are associated with prohibited activities.[24] In sum, Resolution 2270 requires that each UN Member State ascertain whether any funds are being made available by their nationals for the benefit of individuals or entities acting on behalf or at the direction of entities of the Government of the DPRK or individuals or entities acting on their behalf or at their direction in association with prohibited activities.

If a DPRK PSE manager, doubling as a diplomat, was identified by a cooperating witness as the true beneficial sender of funds used to purchase and smuggle Taiwanese oil into DPRK, the U.S. could request expulsion by China.[25] China, as a Member State of the UN, is obligated to enforce UN sanctions on DPRK (UNSC 2024).[26] UN Resolution 2270 requires expulsion of DPRK diplomats involved in sanction evasion.[27]

China has publicly committed to implementation of Resolution 2270 (Lei 2016). Thus, China has committed to full implementation of Resolution 2270, including the provision requiring UN member states to expel DPRK diplomats involved in sanction evasion. China would become a target of ridicule if it failed to implement Resolution 2270 by failing to expel a DPRK PSE manager, doubling as a diplomat, who was named by a cooperating middleman as the principal of a private for-profit scheme, in violation of the VCDR prohibition on commercial schemes, to evade UN Resolution 2397.

China is not only a Member State of the UN but is a member of the UN Security Council (UNSC), whose 15 members constitute the UN Sanctions Committee that unanimously approved DPRK sanctions. As a member of the UN Sanctions Committee that drafted and unanimously approved Resolution 2270, China cannot ignore the language directing the members of the Committee to respond effectively to violations of the UN Security Council resolutions imposing sanctions on DPRK.

Failure to enforce Resolution 2270 would be antithetical to China's vote in favor of the language directing the members of the UNSC to "respond effectively to violations" of the sanction resolutions, antithetical to its commitments as a UN member state, and antithetical to its public commitment to full implementation of Resolution 2270. Public, high-profile

[24] See note 15 above.

[25] The request would be to declare the PSE manager, doubling as a diplomat or consular officer, *persona non grata.* See Vienna Convention on Diplomatic Relations (1961), art. 9; Vienna Convention on Consular Relations (1963), art. 23. The officer would have a grace period to voluntarily leave China and return to DPRK. Expulsion could occur upon expiration of the grace period. In practice, however, an officer who is declared *persona non grata* typically departs voluntarily. See (Ahmad et al. 2021).

[26] UNSC 2024 ("Under the Charter of the United Nations, all Member States are obligated to comply with Council decisions.").

[27] See note 15 above.

failure to expel a DPRK diplomat caught directing a flagrant private for-profit scheme to evade UN Resolution 2397, in violation of not only UN Resolution 2397 but the VCDR prohibition against commercial schemes, would invite ridicule and undermine China's brand and ambition to be viewed as a responsible great power.

The APUNCAC Rule also aligns with China's Financial Action Task Force (FATF) obligations. China is a member of FATF. Consequently, China officially embraces the FATF 40+9 anti-money laundering recommendations and standards, including standards regarding beneficial owner transparency and customer due diligence.

If FATF adopted the APUNCAC Rule, China and all other FATF members would be obligated to adopt the Rule. Alignment of the Rule with China's internal domestic anti-money laundering laws (Section 9.2) and internal dynamics (Section 9.3) suggest that China may indeed be motivated to adopt the Rule.

The APUNCAC Rule also aligns with China's commitments as a party to UNTOC.[28] UNTOC requires States Parties to implement requirements for customer identification and record-keeping to deter and detect money laundering.[29] These provisions apply to nationals and residents of all States Parties, including China. China is obligated, as a party to UNTOC, to implement requirements for customer identification, i.e., identification of beneficial ownership. The APUNCAC Beneficial Owner Rule aligns with China's pre-existing international commitments to implement requirements to identify beneficial ownership.

9.2. Alignment with China's AML Law

The APUNCAC Rule aligns with China's domestic law, which requires accurate information about originators and beneficiaries involved in financial transactions (Zhou and Leimin 2023 at § 3.14). In 2022, China implemented the Measures for the Administration of Customer Due Diligence and Preservation of Customer Identity Materials and Transaction Records by Financial Institutions (Order No.1 [2022] of the PBC, CBIRC and CSRC).[30] The 2022 CDD Measures strengthened requirements for the identification of beneficial owners and due diligence for remittances, transactions processed by agent banks, transactions where CDD is performed by third parties, and transactions related to high-risk countries or regions.

The forthcoming Amended AML Law implies that China would sanction Chinese nationals, and DPRK diplomats designated by the UN sanctions committee, who conduct financial transactions related to smuggling of illicit items, including fuel oil, into DPRK.[31]

9.3. Alignment with China's Internal Dynamics

The APUNCAC Rule aligns with internal pressures that would provide powerful motivation for China to adopt and enforce the APUNCAC Rule as a domestic law applicable to all Chinese citizens and nationals. In principle, this implies that a Chinese middleman

[28] China is a party to UNTOC. United Nations Convention against Transnational Organized Crime: Status as at: 11 January 2024. Available online: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en (accessed on 11 January 2024).

[29] UNTOC art. 7(1).

[30] See Measures for the Administration of Customer Due Diligence and Preservation of Customer Identity Materials and Transaction Records by Financial Institutions (Order No.1 [2022] of the PBC, CBIRC and CSRC), available at pbc.gov.cn/en/3688253/3689009/4180845/4688138/2022102411114677575.pdf (accessed on 4 June 2024) [hereinafter 2022 CDD Measures].

[31] China's commitment to enforce financial sanctions in accordance with international obligations, including UN sanctions on DPRK, contrasts sharply with China's resistance in cooperating with U.S. sanctions on DPRK. China's Ministry of Commerce (MOFCOM) has implemented MOFCOM Order No. 1 of 2021 on Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures (Blocking Rules) to prevent Chinese firms from complying with foreign sanctions that are deemed by MOFCOM to have been applied unjustly against a third state, such as U.S. sanctions against North Korea or Iran. See http://english.mofcom.gov.cn/article/policyrelease/announcement/202101/20210103029708.shtml (accessed on 10 November 2023).

who wired funds to the bank account for a Taiwanese oil trader would be required to obtain and submit certification of beneficial ownership by the true beneficial owner of those funds. If the middleman transmitted the funds on behalf of a DPRK PSE manager, but falsely certified beneficial ownership, he would risk imprisonment in China for a violation of Chinese law.

The internal pressure involves fears regarding business conditions and an unstable regulatory environment that have accelerated efforts by Chinese citizens and foreign companies to move funds out of China (Freifelder 2015). Money laundering is a large and growing problem that threatens to undermine the stability of the economy and the government. Illicit financial outflows have totaled USD 3.79 trillion since 2000 (UNCAC Coalition 2012). Capital flight is pervasive, amounting to USD 50 billion per month or USD 600 billion per year (Bradsher and Dong 2023).

Failure to address this issue would threaten China's capacity to service debts that now reach 280 percent of GDP (Y. Chen 2023). Consequently, China has an urgent need to halt rampant money laundering. China is highly motivated to implement effective anti-money laundering laws and regulations. It is not unlikely that China would, for internal reasons, embrace the APUNCAC Beneficial Owner Rule. In principle, the Rule would increase transparency regarding financial flows, permit Chinese regulators to track money laundering, and permit Chinese law enforcement authorities to identify and prosecute violators of China's capital controls. Anyone who substituted front men to skirt the Rule would be vulnerable to prosecution. The Rule would be an attractive strategy to regain control over money laundering and capital flight. Implementation would imply a risk of imprisonment for a Chinese national who falsely certified beneficial ownership of funds transmitted to Taiwan, e.g., in a scheme to smuggle fuel oil to DPRK in evasion of UN resolution 2397.

9.4. Lessons from China's Sanctions Against DPRK

China officially supports sanctions against DPRK. Paradoxically, smuggling persists, apparently facilitated by bribery. As described in Section 4.1, above, large-scale, systematic prophylactic bribery by DPRK PSE managers of law enforcement authorities enables smuggling to continue, explains how official policies to implement sanctions are circumvented, and plays a key role in sanction evasion (see Lankov et al. 2017, pp. 55, 61, regarding prophylactic bribery of law enforcement authorities). The inconsistency between China's official policy actions to enforce UN sanctions and the persistence of smuggling may be explained by large-scale systematic prophylactic bribery by PSE managers of law enforcement authorities.

Despite the persistence of smuggling, a valuable lesson may be drawn from China's official policy actions implementing sanctions against DPRK. These actions demonstrate China's interest and efforts to preserve its brand as a "responsible great power" (see Section 9.6, below). China has invested a great deal of effort in highly visible official policy actions to implement sanctions against DPRK, suggesting how it would act if confronted with undeniable, highly visible testimony by a cooperating Chinese middleman of a DPRK diplomat working on commission for private profit, pursuing commercial activities in violation of the VCDR, for the express purpose of violating UN sanction resolutions regarding DPRK.

9.4.1. China Acts to Preserve Its Reputation

To address persistent smuggling, the APUNCAC strategy seeks to obtain the type of undeniable evidence, via cooperating witnesses, that would make it difficult for senior government officials in any country to deny violations of UN sanctions on DPRK. Conclusive

identification via a cooperating witness of a DPRK diplomat working on commission, for personal profit, in violation of the VCDR and for the purpose of violating the UN DPRK sanction resolutions, would be difficult to deny, politically explosive, and require clear and decisive action by senior officials to avert ridicule and international embarrassment. The pressure to act would be immense. The pressure would be difficult to resist. Action would be necessary to preserve China's reputation and ambition to be viewed as a responsible great power (see Section 9.6).

9.4.2. China's Official Policies and Actions

The possibility that China would expel a DPRK diplomat who is identified as the principal of a private, for-profit scheme to evade UN sanctions is consistent with China's highly visible official actions in enforcing UN sanctions against DPRK.

China's official policies and actions are quite clear. "China has enforced United Nations Security Council (hereafter UN 2013, 2017) sanctions against North Korea faithfully since early 2017" (I. Kim 2020, p. 96). "Since the first [DPRK] nuclear test, China has abandoned its reluctance on the adoption of economic sanctions and has endorsed UNSC sanction resolutions following each nuclear test" (Li and Kim 2020, p. 616). "China has expressed a supportive attitude toward the adoption of UN sanction resolutions every time after a North Korean nuclear test" (Li and Kim 2020, pp. 615–16). China has adopted increasingly tougher measures toward North Korea (Li and Kim 2020, p. 611).

> "As of fall 2018, China's sanctions enforcement has remained robust... Beijing displayed its dissatisfaction with North Korea's nuclear and missile programs by voting repeatedly for sanctions by the UNSC between 2006 and 2017". (I. Kim 2020, p. 97)

9.4.3. The Effect on North Korea Was Staggering

China's implementation of sanctions on North Korea was devastating. "The effect on North Korea was staggering" (I. Kim 2020, p. 114). North Korea's exports to China plunged from USD 2.63 billion in 2016 to USD 48 million in 2020—a decline of 98.2 percent (Y. Kim 2022, Table 3). Over the same period, North Korea's imports from China fell 78.9 percent (Y. Kim 2022, Table 3). Total trade volume with China declined 87.3 percent (Y. Kim 2022, Table 3).

9.4.4. China's Response to DPRK Diplomat Doubling as a PSE Manager for Profit

UNSC resolution 2270 requires UN member states to expel DPRK diplomats engaged in sanction evasion.[32] It is not unlikely that China would implement this requirement if confronted with undeniable, highly visible testimony by a Chinese middleman regarding a DPRK diplomat working on commission for private profit, pursuing commercial activities in violation of the VCDR, for the express purpose of violating UN sanction resolutions regarding DPRK. Expulsion would be consistent with China's record of implementing UN sanctions against DPRK. This implies that violations of the APUNCAC Rule would be punished, even if violators are DPRK diplomats who assert diplomatic immunity.

9.5. Alignment with Editorial, Scholarly, and Public Opinion Against DPRK

The possibility that China would expel a DPRK diplomat who is identified by a cooperating Chinese national as the principal of a private, for-profit scheme to violate the VCDR, violate international law, and violate the UN resolution 2397 limits on importing fuel oil into DPRK is consistent with increasingly critical editorial statements (Li and Kim 2020, p. 621),

[32] See note 15 above.

public opinion (Li and Kim 2020, p. 622), and the views of Chinese scholars (Li and Kim 2020, pp. 621–22).

9.6. Alignment with China's View of Its Role as a "Responsible Great Power"

The possibility that China would expel a DPRK diplomat who is identified as the principal of a scheme to evade UN sanctions is consistent with China's ambition to be viewed as a "responsible great power" (Lee 2019, pp. 71–76). China's ambition to be viewed as a responsible great power influences its policy toward North Korea. China vies for the respect of the community of nations, especially those outside the orbit of the U.S., because it needs their support to achieve its goals.

China recognizes that it is reliant on imports of key products including food, agricultural products, oil, and semiconductors. It relies on good relations with countries that supply those products as well as countries in which it sells its exports. China recognizes the value of strategic alliances, trade agreements, access to ports, transportation networks, and sea lanes, and support for its positions in multilateral fora such as the UN and the WTO. For these reasons, China recognizes the value of cultivating an international persona that engenders respect and support, especially among nations not strongly aligned with the United States. In furtherance of this objective, and for cultural reasons, China seeks to establish itself as a "responsible great power" whose actions are worthy of esteem, admiration, and deference.

Toleration by China of undeniable evidence, via testimony by a cooperating Chinese national, that a specific DPRK diplomat was the principal of a private for-profit scheme to violate the VCDR, violate international law, and violate UN Resolution 2397 by smuggling fuel oil into DPRK on commission would threaten to undermine this achievement and cause other nations to lose respect. This type of egregious behavior by a DPRK diplomat, in violation of the VCDR, which prohibits professional or commercial activity for personal profit, and in violation of UN Resolution 2397, could not be ignored without damaging China's reputation as a responsible great power, risking a loss of respect that could lead non-aligned nations to side with the U.S. against China regarding crucial WTO and UN votes, agreements, and decisions.[33] China is likely to expel the DPRK diplomat rather than risk the threat to its legitimacy as a "responsible great power" that would exist if China failed to remove a DPRK diplomat engaged in gross violations of the conduct expected of a diplomat, gross violations of international law and the VCDR, and gross violations of UN Resolution 2397, a resolution that it had co-authored, supported, and voted in favor.

The possibility that China would expel a DPRK diplomat who is identified as the principal of a scheme to evade UN sanctions is consistent with China's view of North Korea as a "burdensome friend" (Lee 2019, pp. 86, 88). "North Korean actions create a strategic burden for China, in that China must shoulder pressure from the international community, including the U.S., due to North Korea's wrongdoings" (Lee 2019, p. 88). That 'burden' has been demonstrated in official pronouncements found in the Chinese Foreign Ministry Spokesperson Archive (CFMSA). Regarding DPRK nuclear tests conducted during a period when diplomatic negotiations had stalled, and in the face of pressure for increased UN sanctions, Chinese Foreign Ministry spokesperson Lu Kang stated: "DPRK slapped the relevant country across the face. As for whose face the DPRK slapped, the country itself knows well" (Hankyoreh 2016). The statement expressed the vehemence of China's displeasure.

In March 2003, China shut down the oil pipeline to North Korea for three days in response to DPRK's rejection of China's efforts to mediate the dispute between DPRK and the U.S. (Lee 2019, p. 154). Given the dependence of North Korea on imported oil, this

[33] VCDR (1961), *supra* note 9; See Section 10.1 regarding violations of international law and the scope of diplomatic immunity *ratione materiae*.

action is surprising. It indicates China's willingness to punish DPRK when China believes that DPRK is acting disrespectfully, i.e., in ways that damage China's global brand as a responsible great power (Lee 2019, pp. 155–56). China employed harsh punishment when the actions of DPRK, its putative friend, served to humiliate China on the world stage (Lee 2019, p. 157).

This pattern was repeated when, in response to the launch of the Taepodong-2 ICBM on 5 July 2006, China punished DPRK, reducing its oil exports to North Korea in September 2006 (Lee 2019, pp. 167–68). The reduction was extreme—any further reduction could have caused structural damage to the oil feed pipe, causing the pipe to become unusable (Twomey 2008, p. 417). Pointedly, the entire amount of China's oil exports in September was sent to the U.S. (G. J. Moore 2014, p. 88).

In addition, China froze DPRK financial transactions conducted via its four largest banks: Bank of China, Shanghai Pudong Development Bank, China Construction Bank, and CITIC Bank (Fairclough and King 2006; G. J. Moore 2014, pp. 88–89). All transactions, including company-to-company and person-to-person transactions, were blocked (Fairclough and King 2006), causing trade to grind to a halt.

This extraordinary sequence underlines China's anger. "China lost face because North Korea did not pay deference to her, but instead ignored China's call for restraint from any provocation" (Lee 2019, p. 177).

A Chinese diplomat confessed: "We have had enough" (Funabashi 2007, p. 336). The message was not lost on North Korea. DPRK Deputy Foreign Minister Kim Gye-gwan said, "What I hear is, Big Brother is telling Little Brother, 'Don't do that.' But we are not boys. We are a nuclear power" (Chinoy 2008, p. 280).

In sum, China has demonstrated that it will not hesitate to punish DPRK for actions that embarrass China and endanger its global reputation. The implication is that China would, in order to save face and preserve its global brand as a responsible great power, not hesitate to expel a DPRK diplomat who is identified, via the testimony of a cooperating Chinese national, as the principal of a private, for-profit scheme to smuggle fuel oil, in violation of the proper conduct expected of a diplomat and in violation of international conventions and UN resolution 2397. If the international community was made aware that China had tolerated such a brazen scheme and had failed to implement the UN resolution 2270 requirement to expel a guilty DPRK diplomat, China would risk ridicule as a permanent member of the UN Security Council and member of the UN Sanctions Committee that drafted resolution 2270 and voted in favor.

9.7. Alignment with U.S. Sanctions Against DPRK

The APUNCAC strategy, which targets individuals and entities engaged in sanctioned activities, aligns with U.S. sanctions against DPRK that target individuals and entities engaged in sanctioned activities. The APUNCAC Rule would increase transparency regarding individuals and entities engaged in sanction violations and facilitate prosecution, in American courts, of individuals and entities involved in sanction evasion. This would give U.S. prosecutors leverage to negotiate cooperation agreements. The information obtained from cooperating witnesses could then be used to pressure China to expel DPRK diplomats doubling as for-profit smugglers of fuel oil and other banned items. Expulsion would greatly increase the risk that they and their families would be purged, imprisoned, or compelled to defect to the West.

9.8. U.S. Enforcement Does Not Depend on China

It would not be necessary to rely on China to adopt, implement, and enforce the APUNCAC Rule. The U.S. could adopt, implement, and enforce the Rule independently of

China's actions. If a middleman, in violation of the APUNCAC Rule, made a false assertion of beneficial ownership of a payment to an oil trader, the middleman would be guilty of a false declaration of beneficial ownership. As described in Section 8.4, U.S. law enforcement agencies could potentially obtain evidence of this violation by accessing communications between a DPRK PSE manager directing a middleman regarding details of a scheme to purchase oil from the oil trader. As described in Section 8.3, the advantage of the Rule is that a violation would be relatively easy to prove, compared to the difficulty of proving fuel oil smuggling to DPRK.

A prosecutor could obtain an INTERPOL Red Notice for the arrest and extradition of the middleman. The middleman would be arrested and extradited if he traveled, for business or leisure, to any cooperative jurisdiction willing to extradite the middleman. Globally, all but four minor jurisdictions are parties to UNTOC. The only United Nations Member States that are not parties are Papua New Guinea, the Solomon Islands, Somalia, and Tuvalu (see Fung and Lam 2021). UNTOC obligates 192 jurisdictions to adopt rules regarding the proper identification of beneficial ownership. Significantly, UNTOC contains provisions permitting extradition for any offense covered by UNTOC, or aiding and abetting a serious crime, involving a maximum term of imprisonment of four or more years. A middleman who falsely certified beneficial ownership could be charged with aiding and abetting money laundering. A Red Notice could be obtained, facilitating arrest and extradition from any of the 192 jurisdictions that have adopted UNTOC. Thus, the risk of arrest and extradition of any person, including a non-U.S. person, e.g., a Chinese middleman who violated the APUNCAC Rule, would be genuine.

If a Red Notice is issued for a middleman, the middleman would be arrested and extradited upon travel to a cooperative jurisdiction. For example, a suspect who traveled for business or leisure to Thailand, Malaysia, the Philippines, Japan, or Australia could be arrested and extradited to the United States, along with his personal devices.[34] Acting upon existing authorization, or after obtaining legal authorization, U.S. law enforcement authorities would search the devices. The devices would likely contain downloaded text messages directing the middleman to send or receive covered funds, thereby implicating the middleman in violations of the Rule. A middleman who falsely certified beneficial ownership would be implicated in the crime of making a false certification, since a true beneficial owner does not accept instructions. Instead, a true beneficial owner issues instructions.

10. Limits of Diplomatic Immunity

While diplomats may assert diplomatic immunity, there are limits on (a) subsisting diplomatic immunity *ratione materiae* that normally protects former diplomats after their terms of service, and (b) diplomatic immunity regarding violations of the laws of a third state.

10.1. The Limits of Diplomatic Immunity Ratione Materiae

A DPRK PSE manager who is properly accredited as a diplomat and contracts to deliver fuel oil to DPRK on commission would be in violation of the VCDR. He could assert diplomatic immunity during his term of service regarding arrest and prosecution by the receiving state, i.e., China, for violations of China's domestic laws. China could, however,

[34] Many of the world's most popular resorts for vacation and leisure are located in cooperative jurisdictions. The Ritz-Carlton, Langkawi is located in Malaysia; the El Nido Resorts are located in the Philippines; the Shangri-La Boracay is located in the Philippines; the Datai Langkawi is located in Malaysia; the Shangri-La Rasa Sayang, Penang is located in Malaysia; the Shangri-La Mactan, Cebu is located in the Philippines; the Pangkor Laut Resort is located in Malaysia. *See* Top 20 Resorts in Asia: Readers' Choice Awards. 2023. Available online: https://www.cntraveler.com/gallery/asia-top-resorts, accessed 17 May 2024. A suspect who traveled for leisure to any of these destinations would risk arrest and extradition.

choose to declare the diplomat *persona non grata*. Upon expulsion, the diplomat could not assert the type of diplomatic immunity that would normally protect former diplomats (i.e., diplomatic immunity *ratione materiae*).

First, the conventions that govern diplomatic immunity deny diplomatic immunity *ratione materiae* for acts involving professional or commercial activity for personal profit. Article 42 of the VCDR prohibits the practice of professional or commercial activity by diplomatic agents for personal profit.[35] Article 57 of the Vienna Convention on Consular Relations (VCCR) prohibits the practice of professional or commercial activity by career consular officers for profit.[36] Thus, professional or commercial activity for profit is excluded from the scope of acts that may legally be performed in the exercise of a diplomat's functions and, thus, the scope of acts covered by diplomatic immunity *ratione materiae*. The intention to deny diplomatic immunity *ratione materiae* regarding for-profit activity is made explicit by Article 57 of the VCCR, which denies immunity (a) "to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State," (b) to their family members or members of their private staffs, or (c) "to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State."[37]

Second, serious violations of international law are excluded from the scope of diplomatic immunity *ratione materiae*. "[A]n examination of the drafting history of [VCDR Article 3(1)] reveals that state parties at the Vienna Conference generally agreed that all diplomatic functions must accord with international law" (Behrens 2021, p. 51).[38] "[I]t would be difficult to argue that serious violations of international law could be interpreted as one of the functions of a diplomatic mission" (Behrens 2021, p. 52). "[C]rimes in international law cannot be regarded as a legitimate diplomatic function under Article 3(1) and thus covered by diplomatic immunity *ratione materiae*" (Shi 2021, p. 250). "[S]erious violations of international law cannot be protected by diplomatic immunity *ratione materiae* even if they are committed under the instruction of the sending state" (Behrens 2021, p. 65). A violation of UN Resolution 2397 would be a violation of a multilateral international agreement unanimously endorsed by the 15 members of the UN Security Council (UN 2017). UN Security Council resolutions are binding on all 193 UN member states (UN 2020). A violation of Resolution 2397 would therefore violate a peremptory norm of general international law (*jus cogens*) and would therefore be excluded from the scope of diplomatic immunity *ratione materiae*.[39]

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35 See note 11 above.

36 Vienna Convention on Consular Relations, *opened for signature* 24 April 1963, 596 UNTS 261 (hereinafter VCCR), art. 57 ("Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State").

37 *Id.*

38 See, e.g., the statement made by the representative of Soviet Union, France, Tunisia, United Kingdom, United States, Hungary, Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities, Vol. I, at pp. 80–81.

39 Rep. of the Int'l Law Comm'n, 71st Sess, 2019, UN Doc. A/74/10 ch. 5(C)(1) ("A peremptory norm of general international law (*jus cogens*) is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. . . Acceptance and recognition by a very large majority of States is required for the identification of a norm as a peremptory norm of general international law (*jus cogens*); acceptance and recognition by all States is not required. . . Evidence of acceptance and recognition that a norm of general international law is a peremptory norm (*jus cogens*) may. . . include. . . resolutions adopted by an international organization or at an intergovernmental conference. . . No State shall recognize as lawful a situation created by a serious breach by a State of an obligation arising under a peremptory norm of general international law (*jus cogens*), nor render aid or assistance in maintaining that situation.").

10.2. Diplomatic Immunity Regarding Violations of the Law of a Third State

Significantly, a diplomat could not assert any type of diplomatic immunity, during or after a term of service, regarding prosecution by a third state for a violation of the law of the third state, except during a term of service when he is traveling to assume his diplomatic post, return to his post, or return to the state that dispatched him.[40] Diplomatic immunity is extended by a receiving state regarding prosecution by the receiving state for acts performed in the exercise of a diplomat's functions in the receiving state. In general, immunity does not extend to prosecution by a third state for a violation of the law of the third state. Diplomatic immunity could not be extended by China to a DPRK diplomat posted in China in a way that would immunize the diplomat from prosecution by the U.S. for a violation of U.S. law.

DPRK diplomats have been arrested for smuggling, in violation of the VCDR (see Section 6, above). In many of these cases, the diplomats were recalled or expelled but not imprisoned. However, numerous cases demonstrate that a diplomat is not immune from prosecution and imprisonment by a third country for violation of the laws of a third country.

To illustrate, Iranian diplomat Assadollah Assadi was arrested in July 2018 by the German police while returning to his post in Vienna, Austria (Masoudianvarzaneh and Aghabagheri 2021, p. 2). "The arrest was prompted by a European arrest warrant issued by a Belgian court" (Masoudianvarzaneh and Aghabagheri 2021, p. 2). The diplomat was suspected of involvement in a Paris bombing plot (BBC 2018). A German court ruled that diplomatic immunity did not apply, since Assadi was arrested while on holiday outside Austria, his host state, and not traveling between his host country and the state that dispatched him (BBC 2018). On 2 October 2018, Assadi was extradited to Belgium, where he was tried, convicted, and sentenced to 20 years imprisonment by a Belgian court for attempted murder and involvement in terrorism (Masoudianvarzaneh and Aghabagheri 2021, pp. 3–4). The case illustrates that diplomatic immunity does not protect a diplomat from prosecution by a third state for a violation of the law of the third state. Diplomatic immunity does not protect a diplomat if he travels to a third state on holiday or for any reason other than assuming his diplomatic post, returning to his post, or returning to the state that dispatched him.

A second case involved the arrest in New York of Mauricio Rosal, the Guatemalan Ambassador to Belgium and the Netherlands, on 3 October 1960, for smuggling narcotics (1964, p. 1). Rosal asserted that he was enroute to his homeland and therefore should be immune from arrest. A New York court held that the accused was in New York on 3 October 1960, did not intend to fly to Guatemala, and had reserved his return ticket not back to his post but to Paris on 4 October 1960 (Masoudianvarzaneh and Aghabagheri 2021, p. 9). Rosal was denied diplomatic immunity and was sentenced to 15 years imprisonment (NYT 1964, p. 1).

[40] If a diplomat from country A is to be sent by the country A government to represent A in country B, country A would request a diplomatic visa from a country B consulate, which would allow the individual to travel to and enter country B. After the person arrives in B, the Embassy of A would then request that the government of B give the individual the appropriate privileges and immunities, and B would issue a diplomatic ID document (not a passport) for the individual, thereby giving the individual diplomatic immunity in country B regarding prosecution by country B for acts performed in the exercise of the individual's functions. The immunity provided by the document does not extend to prosecution by a third state for a violation of the law of the third state except when "a diplomatic agent passes through or is in the territory of a third State. . . while proceeding to take up or to return to his post, or when returning to his own country" (VCDR art. 40, *supra* note 9) or when "a consular officer passes through or is in the territory of a third State. . . while proceeding to take up or return to his post or when returning to the sending State" (VCCR art. 54, *supra* note 36). Excepting these circumstances, a diplomatic or consular agent would be unable to assert diplomatic immunity regarding prosecution by a third state for a violation of the law of the third state. Unless such agent is proceeding to take up or return to his post, or when returning to the sending state, an agent found in the territory of a third state could be arrested and extradited to a fourth state.

A third case involved the arrest by Chinese authorities of Mohammed Ramadan, a former Palestinian diplomat posted in Beijing, on 12 September 2014, for smuggling automobiles into China (Chan 2016). Prior to his arrest, Ramadan was stripped of his diplomatic privileges (Chan 2016). Ramadan was sentenced to five years imprisonment and fined RMB 1,000,000 (Chan 2016). A Chinese court recommended expulsion after his term in prison (Chan 2016).

A fourth case involved the arrest in New York of Salvador Pardo-Bolland, the Mexican Ambassador to Bolivia, and Juan Carlo Aritzi, an employee of the Uruguayan Foreign Ministry in Montevideo, on 21 February 1964, on charges of conspiring to illegally transport, receive, and sell heroin (NYT 1964, p. 1). Pardo-Bolland was sentenced to 18 years, and Aritzi was sentenced to 10 years, imprisonment (Ranzal 1964, p. 24).

A fifth case involved the arrest in London of Amelework Wondemagegne, an Ethiopian diplomat posted in Washington DC, on 7 April 2012, for possession of large quantities of cannabis (Masoudianvarzaneh and Aghabagheri 2021, p. 10). "Immunity was denied and she was jailed for thirty-three months" (Masoudianvarzaneh and Aghabagheri 2021, p. 10).

A sixth case involved denial of diplomatic immunity by a Dutch court to J. B. Chiwende, a diplomatic agent in the Zambian Embassy in Kenya who was traveling in The Netherlands but not for the purpose of taking up his post or returning to his own country (Masoudianvarzaneh and Aghabagheri 2021, pp. 10–11; NYT 1984). The court denied immunity from a charge of smuggling heroin (Masoudianvarzaneh and Aghabagheri 2021, p. 11).

A seventh case involved the issuance of a warrant on 21 July 1994, by a Berlin court of the Federal Republic of Germany for the arrest of S., the former Ambassador of Syria to the German Democratic Republic (GDR), on charges of having assisted in the commission of murder and the bringing about of a bomb explosion in West Berlin in August 1983 (Fassbender 1998, p. 74). The Ambassador appealed to the Federal Constitutional Court, asserting subsisting diplomatic immunity *ratione materiae* for acts performed in the exercise of a diplomat's functions. The appeal was rejected (Fassbender 1998, p. 75). In the judgment of the court, "Diplomatic immunity is only effective in the receiving state. Third states have not consented to the diplomat's activity."[41]

The practical, if counterintuitive, result is that "Diplomatic agents are subjected to the jurisdiction of all states but the receiving state, even with respect to acts committed in the receiving state" (Fassbender 1998, p. 77).

In sum, while diplomats may assert diplomatic immunity, there are limits on (a) subsisting diplomatic immunity *ratione materiae* that normally protects former diplomats after their terms of service, and (b) diplomatic immunity regarding violations of the laws of a third state.

10.3. Control over DPRK Diplomats

The review of cases in Section 10.2 affirms that a DPRK diplomat posted in China would not be protected by diplomatic immunity from prosecution by the U.S. for a violation of U.S. law. The diplomat could be expelled by China because professional or commercial activity for profit is prohibited by the VCDR and the VCCR, and because fuel oil smuggling to DPRK in violation of the limits set by UN resolution 2397 is a violation of international law, which is excluded from the scope of diplomatic immunity *ratione materiae*. Expulsion would fulfill China's commitments as a UN member state bound by UN Resolution 2270,

[41] 24 Europäische Grundrechte-Zeitschrift 436, sec. B II, para. 3(a)(bb) [hereinafter Decision]. *See also* the decision of the Federal Constitutional Court of 10 June 1997, Former Syrian Ambassador to the German Democratic Republic, 115 International Law Reports, p. 611 ("Diplomatic immunity applies only in the receiving State. Third States have not consented to the activities of diplomats who have no duties to fulfill there.").

align with China's implementation of sanctions against DPRK, and align with China's ambition to be viewed as a responsible great power.

The diplomat could be arrested at any time upon traveling to any cooperative jurisdiction outside China for any reason other than assuming his diplomatic post in China, returning to his post, or returning to DPRK, the state that dispatched him. Upon arrest, he could be extradited for prosecution by a requesting state—e.g., the United States, for a violation of U.S. law. Assuming U.S. adoption of the APUNCAC Rule, the DPRK diplomat could be arrested and extradited for a violation of the Rule. A DPRK diplomat who violates U.S. law may not evade U.S. prosecution by asserting diplomatic immunity. This implies that the U.S. could, by adopting the Rule, exert control over a DPRK diplomat who engages in sanction-busting activities.

11. Effectiveness and Potential Barriers

In principle, the APUNCAC strategy could be effective in exerting control over criminals, middlemen, and DPRK diplomats doubling as PSE managers who are pursuing private professional and commercial activities for profit. The strategy could be used to obtain evidence of financial crimes and sanction evasion, place targeted individuals and entities on UN and U.S. Treasury sanction lists, and break up the networks that support the DPRK regime.

The mere threat of sanctions can be very effective. From the 1990s until Banco Delta Asia (BDA) was sanctioned in 2005, BDA had handled trade and financial transactions for DPRK government companies and entities (Lague and Greenlees 2007). In response to BDA's suspected involvement in DPRK's illicit activities, the U.S. Treasury Department designated BDA as "a financial institution of primary money laundering concern" (Zhao 2014, p. 369).

Shortly thereafter, BDA suffered a devastating loss of confidence. Panicked customers withdrew one-third of BDA's total deposits (Gaylord 2008, p. 298; Zhao 2014, p. 369). International banks, not only those in the U.S. but from other nations, refused to engage with DPRK on legal business ventures for fear that they could also become targets of U.S. sanctions (Zhao 2014, p. 373).

> [T]he practical effect of the US's action was to make all US banks and the international financial system 'voluntarily' cease transactions with BDA. Not surprisingly, without the ability to acquire dollars, the bank nearly collapsed. . . For Banco Delta Asia, the consequences of the Treasury Department's finding against it were all too real. (Gaylord 2008, p. 299)

In response, Macau passed a 12-article bill on the prevention and repression of money laundering incorporating aspects of the revised Financial Action Task Force's (FATF) Forty Recommendations.

In sum, the mere threat of U.S. Treasury sanctions triggered a loss of confidence in BDA, a run on the bank, Macau's seizure of BDA and freezing of North Korean accounts to protect the Macanese financial system, and a host of significant reforms to Macau's AML regulatory regime. This suggests a path whereby implementation of the APUNCAC strategy could potentially be leveraged to designate implicated individuals and entities, implement U.S. Treasury sanctions, trigger broad reforms, and reach transnational organized crime networks.

Potential resistance to the proposed Rule could arise from two concerns. First, financial institutions may be concerned about transaction friction. Concerns about transaction friction may be addressed via existing technology, involving digital IDs, public key cryptography, and preauthorized certifications that would operate in the same way that

pre-authorized credit card transactions are automatically executed, with minimal friction, whenever specified criteria are met.

An account holder would certify, upon opening an account, that he is the ultimate beneficial sender for all funds sent from the account, and the ultimate beneficial recipient for all funds received by the account. A software application would automatically transmit the required digital certification whenever funds are sent or received. This would occur automatically, without the attention of the client or the financial institution.

A messaging standard would specify the exact format of the certification and the message. An approved software application would transmit the certification in the required format. The technology to implement this type of application is widely used across the globe, across the 165 member states of the Global Forum that are already collecting and mutually exchanging beneficial owner information via this type of digital application.

A second issue involves a concern that transparency regarding beneficial ownership invades privacy. However, there are reasons to think that global acceptance of the proposed Rule would not be a barrier. At least six multilateral agreements, involving 165 Global Forum member states, currently obligate state parties to collect and mutually exchange beneficial owner information (OECD 2016, pp. 21–24; OECD 2021, pp. 22, 28; Yeh 2023). Thus, 165 member states have already agreed that the public interest in transparency overrides private interests regarding privacy.

12. Conclusions

In principle, the APUNCAC strategy offers a promising way to address the impunity that prevails when DPRK diplomats violate international conventions and UN resolutions but operate in jurisdictions that appear to be outside the reach of U.S. law enforcement authorities. The strategy involves a change in domestic U.S. law. The APUNCAC strategy aligns with China's international obligations, China's AML Law, and China's internal dynamics and need to control money laundering.

The strategy involves an assertion of extraterritorial U.S. jurisdiction in a way that aligns with existing international legal norms and practices. China has arrested or expelled diplomats involved in smuggling, in violation of the VCDR and VCCR. China is not unlikely to expel DPRK diplomats who are named by cooperating Chinese middlemen as the principals of illegal schemes to smuggle Taiwanese fuel oil into DPRK. In principle, China would do so because expulsion aligns with China's view of its role as a "responsible great power."

Expulsion by China would largely eliminate the capacity of DPRK diplomats, doubling as PSE managers, to earn a living and pay required loyalty money, prophylactic bribes, FTC management fees, and KWP dues, greatly increasing the risk that they and their families would risk arrest and imprisonment in DPRK's gulags. This risk may compel many DPRK PSE managers to defect to the West. This could be encouraged by dangling cooperation agreements, where defectors who cooperate with U.S. prosecutors receive immunity from prosecution (or deferred prosecution), plus protection for their families, in exchange for testimony and information regarding other DPRK PSE managers, DPRK trading networks, and financial institutions involved in money laundering.

In principle, U.S. prosecutors could then leverage this information to repeat the process, leading to serial expulsion and defection of DPRK PSE managers, identification of financial institutions involved in money laundering, collection of evidence in support of requests to designate specific individuals and institutions for UN sanctions, prosecution of organized criminal groups facilitating UN sanction evasion, and disruption of illicit financial networks, organized criminal networks, and DPRK trading networks and revenue streams.

This strategy could potentially be replicated regarding any of the other DPRK PSE managers who engage in illicit international trading and use middlemen to hide their activities. Since DPRK depends on these illicit international activities to maintain the revenue streams supporting the DPRK regime, any strategy that halts these activities would offer a promising strategy to fight organized criminal groups facilitating evasion of UN sanctions.

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