

How the ‘Strategic Competition Act’ Could Actually Stonewall Talks with North Korea

Tucked into this 400-page document is a recipe for keeping ‘maximum pressure’ on Kim Jong Un and a 70-year war going.

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This is the third installment in a multi-part Quincy Institute series on the Strategic Competition Act (S. 1169), a bill under consideration that would effectively constitute a declaration of a cold war on China by the U.S. Congress. The introduction to this series critiquing the overall approach of the bill can be read [here](#).

Read the first two installments of the series:

[*The ‘Strategic Competition Act’ is a dangerous declaration of cold war on China*](#)

[*Stability in the Taiwan Strait at risk under ‘Strategic Competition Act’*](#)

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Tucked inside the massive 400-page Strategic Competition Act (SCA) is a declaration that it is the United States’ policy to maintain “sustained maximum economic pressure” against North Korea until it takes “complete, verifiable, and irreversible actions toward denuclearization.” The bill also creates new congressional reporting requirements for negotiations between the United States and other countries, which, in the case of North Korea, could disincentivize American policymakers and diplomats from talking to North Koreans early and often.

A declarative statement that it is U.S. policy to sustain not just economic pressure but “maximum” economic pressure until North Korea gives up all of its nuclear weapons suggests a finality to the issue in ways that are highly misleading. While U.S. and UN sanctions have been a key component of Washington strategy toward North Korea in the past, they have proven to have limited impact in curbing North Korea’s nuclear weapons development. Sustained sanctions also have a secondary order impact of stigmatizing [legitimate humanitarian activities](#) to help North Koreans. Encouraging their use without mitigating, or at least acknowledging, serious consequences of broad economic sanctions

plays into North Korea's narrative on the need for nuclear weapons.

Further, Sec. 234 of the SCA glosses over the fact that there are major differences between the United States and China on how best to deal with the North Korea challenge. China does not want instability along its borders and it will take a [tough stance](#) if North Korea crosses the line. Chinese leaders have long made it clear that they support a peace process with North Korea.

For example, in December 2019, China and Russia jointly [proposed](#) lifting several of the UN Security Council's ban on North Korea exporting statues, seafood and textiles, and other restrictions. The United States opposed the draft measure, leading to its demise. On May 3, China's Ambassador to the United Nations Zhang Jun [reiterated](#) China's preference for the United States and North Korea to return to the negotiating table.

A blanket assertion that "maximum" economic sanctions will be in place until North Korea gives up all of its nuclear weapons is being made without public debate or scrutiny. It does not appear to take into account how countries in the region, such as South Korea, think about this approach, and how it could reduce room for inter-Korean diplomacy. U.S. Secretary of State Tony Blinken recently [stated](#) that it is up to North Korea to decide whether or not it wants to engage with the United States diplomatically. If that is the case, Washington should avoid giving North Koreans an excuse to doubt its sincerity by sending mixed signals. Unfortunately, that is precisely what Sec. 234 would do.

It is not a foregone conclusion that maximum economic pressure provides the best chance to denuclearize North Korea. It is simply an assumption made by a group of senators. According to Siegfried S. Hecker, a Stanford professor who once directed the Los Alamos National Laboratory, North Korea nuclear disarmament could take [10 to 15 years](#) to complete. Much can happen during that time, especially if the Biden administration were to lift the travel ban and allow more Americans to engage with North Koreans beyond governmental level. As Keith Luse, who traveled to North Korea five times as a senior staff member on the Senate Foreign Relations Committee, [observed](#), "the development of North Korean leaders' attitudes and policy development toward the U.S. were based on faulty or incomplete analysis...[and] American officials are afflicted with the same dilemma in their consideration of North Korea."

Another provision in the SCA that could influence US's North Korea policy is in Section 310. This language would require the executive branch to submit written details of any international agreement or qualifying "non-binding instrument" reached with another country to Congress after an agreement is reached. [According](#) to legal scholars [Curtis Bradley](#), [Jack Goldsmith](#), and [Oona Hathaway](#), requiring the executive branch to share various aspects of negotiations with foreign countries with relevant congressional committees is good for transparency, but Sec. 310 goes above and beyond their recommendation. The provision as it is written could create serious logistical and political barriers for negotiators. For instance, the bill does not explain what constitutes a "non-binding instrument" and how it differs from international agreements. Does the former include exchanges during official negotiations? Near-final agreements? Agreements approved at the highest levels of the U.S. government? In the context of U.S.-North Korea talks, this provision could be misused by members of Congress to slow walk negotiations, second-guess negotiators' actions, and disincentivize rigorous exploration of what the North Koreans want and are willing to give up.

Given the long history of mismatched expectations between the administration and Congress on North Korea policy dating back to the 1994 Agreed Framework, it is imperative for the White House and Congress to work collaboratively on the North Korea issue. When there is disconnect, no agreement can survive. As Ambassador Stephen Bosworth [described](#), the low level of trust between the executive branch and the legislative branch turned the Agreed Framework between the U.S. and North Korea into “a political orphan” between the Democratic President Bill Clinton and the Republican-controlled Congress.

To avoid repeating that experience, both branches of government must do better. For the executive branch, that means having the ability to negotiate with foreign countries without overly-burdensome congressional requirements. For the legislative branch, that means getting sufficiently briefed on the issue to conduct timely oversight on issues and hold the administration accountable to its stated goals. Protecting these constitutional prerogatives is not just good for North Korea policy. It is vital for our democracy.

In general, a more restrained posture that creates space for diplomacy with North Korea, rather than the threat of broad, indiscriminate sanctions, would better promote U.S. interests in a stable Korean Peninsula. The House companion bill should consider the serious consequences of Sections 234 and 310 in U.S.-North Korea negotiations, as well as consider alternative approaches, such as one that [prioritizes peace and tension reduction](#) toward the long-term goal of denuclearization.

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