



Sanctions against North Korea: A tricky dilemma

by Bernt Berger

The Democratic People's Republic of Korea (DPRK) is one of the most heavily sanctioned countries in the world. Yet the sanctions have been costly and technically difficult to implement. And since North Korea deems its nuclear programme to be essential for its national security (and therefore non-negotiable), their effectiveness in terms of non-proliferation has been limited.

Pyongyang also believes itself to be party to a ceasefire, and thus regards sanctions as measures which hamper any peace or reconciliation process.

The UN and bilateral sanction parties are thus confronted with a dilemma: preventive sanctions cannot be lifted without risks and there is no guarantee that diplomatic efforts will succeed.

An expectation-capability gap?

Sanctions toward the DPRK are controversial. Although the current sanctions regime has clearly defined political objectives, the expectations of some go far beyond. However, regime change or even collapse is not the actual aim of the restrictive measures.

Similarly, the timing of UN sanctions – in the wake of nuclear or missile tests – gave the impression that they are punitive measures. So far, however, the UN sanctions against North Korea were geared towards preventing the proliferation of nuclear, chemical or biological weapons and delivery systems (UNSCR 1540, 28 April 2004), as well as transactions involving technology, material or financial resources connected to its weapons of mass destruction (WMD) and missile programmes (UNSCR 1695, 15 July 2006). After North Korea's first nuclear test in 2006, an embargo was imposed on military and technological materials, as well as luxury goods. In addition, UNSCR 1718 (14 October 2006) demanded the freezing of financial assets abroad.

Obstacles in implementing these measures reflect systemic challenges in the UN and are not case-specific. Sanctions are considered an effective tool for enforcing international law and maintaining peace. Yet the responsibility for implementing and enforcing restrictive measures lies with each individual state.

The implementation of UN sanctions poses a range of technical problems. In order to monitor the implementation of DPRK sanctions, the

Security Council has established two control mechanisms: the Panel of Experts (PoE, ESCR 1874, 2009) and the Sanctions Committee (ESCR 1718, 2006). The former acts under the auspices of the latter and is mandated to examine and gather information from UN member states regarding sanction implementation and non-compliance. It also analyses best practice of enforcement and submits, upon agreement of the Committee, a final annual report to the Council.

Four issues complicate the implementation of sanctions: capacities, reporting, organisation, and definitions.

Due to the increasing complexity and number of sanction regimes, many states, especially small ones, lack implementation and enforcement capacities. This is often further complicated by weak financial institutions, poor customs and export control systems and a lack of awareness among companies and officials.

This lack of capacity contributes – political considerations aside – to the poor record of reporting to the PoE. Although UN members are obliged to submit their implementation reports to the body, in 2015 only 18% (35 countries out of 193) of states did so on the three DPRK-related UNSCRs. About half – mostly developing countries or ‘countries of concern’ – did not submit any report whatsoever.

Additional hold ups exist due to the manner in which the UN communicates internally. The Sanctions Committee’s slow response to the PoE’s submission of recommendations has, for example, frequently slowed down progress. And the definitions of sanctioned items are often not precise: such items as ‘luxury goods’ or ‘economic assets’ (UNSCR 1718) need greater clarification.

The general goal of the UN sanctions is to prevent North Korea from conducting further nuclear tests and launching ballistic missiles. It is prohibited from supporting nuclear programmes through financial transactions, providing related materials, equipment, goods and technology, technical training, advice, and

services or assistance. Furthermore, it is forbidden to sell or transfer small arms and light weapons (SALW), conventional arms, or related materials, including spare parts.

In addition, the UNSCRs demand the suspension of North Korea’s ballistic missile programme; the reversal of the country’s withdrawal from the 2003 Non-Proliferation Treaty (NPT) and the return to the International Atomic Energy Agency (IAEA) safeguards.

Pyongyang’s response

According to the NPT, the DPRK cannot have the status of a nuclear weapons state. Yet, in 2012, Pyongyang adopted a constitutional amendment declaring the DPRK to be a nuclear-armed state and ignored pledges by the Security Council to refrain from a new series of tests and provocations.

So far, interpretations about the status of North Korea’s nuclear programme and its progress in developing weapons capabilities vary. There have been no signs that the North Korean leadership will abandon its missile and nuclear programmes. Instead, there are even indications that nuclear technologies have advanced. Pyongyang has, in turn, exploited this uncertainty surrounding its capabilities for the purposes of tactical coercion and bargaining.

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Despite the Six Party Talks’ (6PT) Agreement of 13 February 2007, the development of a key nuclear facility on the Yongbyon site continues. The suspicion is that North Korea has not disclosed all of its nuclear facilities, particularly uranium-enrichment

sites. Pyongyang has developed a nuclear fuel cycle that can produce fissile materials based on both plutonium and enriched uranium. In 2010, it unveiled a low enrichment uranium programme for power reactors, and in 2015, announced that it had developed a miniature device for nuclear warheads.

The PoE has repeatedly voiced concerns about sanction evasion techniques and non-compliance: according to its 2014 report, North Korea has developed ‘multiple and tiered

circumvention techniques'. Largely because of the weak control of dual use items, North Korea was able to build up a system for smuggling arms and illicit materials from and to the country. It makes use of weak transshipment regulations, falsified cargo declarations and shipping documents, reflagging and disguised materials in order to conceal the movement of banned materials. A sophisticated network of letterbox companies abroad makes it difficult to trace ownership and transfers of funds, and DPRK embassies were also thought to be involved.

Pyongyang has positioned itself on the international market as a major supplier of low-tech military equipment for cheap prices. And, for financial transactions, the country is believed to have developed evasion measures similar to trafficking organisations. So far, however, UN sanctions have mainly targeted companies in North Korea: firms abroad and transportation companies have drawn attention only recently.

On the whole, the UN's sanctions against the DPRK have been relatively efficient, considering the limited framework and tools at hand. Since North Korea was able to set up a sophisticated system to circumvent sanctions, international coordination has become even more important. In order to strengthen the sanctions regime, a number of countries have also tightened their measures at a bilateral level.

Bilateral actions

Bilateral initiatives can make the implementation of sanctions more effective. Especially in the case of the US, legal enforcement and litigation provide extra leverage over third countries and foreign firms. The downside of bilateral sanctions is that they are not coordinated. In the case of North Korea, a whole range of countries have introduced bilateral measures – including South Korea, the US, EU member states, China, Australia, Japan, Switzerland, Singapore, New Zealand, Canada, the Netherlands and Russia.

The US Treasury Department's Office for Foreign Assets Control (OFAC) has set up an efficient system to complement UN sanctions. The main goals are to prevent proliferation of WMDs and related technologies and the trade of luxury goods. In 2015, OFAC began to target entities and individuals that acted on behalf of Pyongyang (Executive Order (EO) 13687), setting up a licensing system and creating a guide for interpreting sanctions. US sanctions, however, are not exclusively a concern for US

entities. For instance, EO 12938 has made it possible to sanction foreign entities that have attempted to engage in proliferation and deny them access to the US market.

This also involves the freezing of assets (EO 13382). The US Treasury's Financial Crimes Enforcement Network, acting under the Patriot Act, is entitled to demand that domestic financial institutions take measures if foreign entities are suspected of money laundering. Additionally, US inter-agency working groups are setting up lists of designated nationals who are subject to asset freezes.

South Korea has long followed a soft approach to sanctioning the North in order to leave room for reconciliation and humanitarian exchanges. However, after the torpedoing of the South Korean Vessel *Cheonan*, Seoul introduced the so-called May 24 Measures (2010): nearly all trade and investment with the North was cut off and North Korean merchant ships denied access to sea lanes. The measures hit the North hard. The Republic of Korea (ROK) is, alongside China, Pyongyang's most important trading partner and source of aid and essential commodities. Nevertheless, Seoul continued to provide humanitarian assistance and maintained the Kaesong industrial complex – a joint economic zone in the North.

As a neighbouring country, China has a special interest in developments on the Korean peninsula. Its primary aims are centred on maintaining stability and the denuclearisation of the whole peninsula. Although China has often been accused of not sufficiently using its leverage over Pyongyang, Beijing has clearly stated its objectives and even initiated the 6PT. Yet recent internal developments – such as the execution of Jang Sung Taek, who used to be a key figure in China-DPRK relations – demonstrate the increasing limits of Beijing's influence inside the country.

That said, China has supported UN sanctions towards North Korea and has fully complied with the PoE reporting system. On a bilateral level, it froze North Korean assets in Macao in 2006 and the Bank of China shut down accounts of North Korea's Foreign Trade Bank, blocking all transfers of funds in 2013.

For its part, the EU has based its sanctions on the UN measures and added a number of regulations concerning individuals, companies and government agencies in North Korea. The

Union has articulated three core priorities: non-proliferation, regional stability, and peace and human rights. But as the EU only enjoys observer status in the UN it has not been reporting to the PoE. A common export control regime, centralised reporting and common standards have not been developed within the EU thus far. And not all member states have the required capacities, to the extent that funds from the former Instrument for Stability (IFS) have been used to facilitate training in export control and licensing.

Pyongyang's resilience

To date, the North Korean regime has demonstrated an ability to endure international economic and political restrictions. This has little to do with its actual economic and industrial strength. Domestically, the DPRK's ideology is built on survival, self-reliance and external threats, something which allows a high degree of mobilisation. The leadership has managed to geographically shift economic activity and reallocate resources to major urban hubs. Small-scale trade (especially in farm products) and private businesses has been permitted and Chinese traders have been omnipresent on the North Korean market.

Over time, the country has been able to sustain minimal economic growth, estimated to be 1.1% in 2013. Growth was based on agricultural output, construction, manufacturing, mining and remittances. At the same time, the economy has been vulnerable due to crop failure and an over-reliance on aid, as well as a limited number of trading partners. Furthermore, due to the domestic reallocation of resources to urban areas, economic hardship is mainly impacting rural communities – and conditions may get even worse if UN agencies active in North Korea decide to terminate operations.

In security terms, the DPRK believes itself to be party to a conflict. As a result, the nuclear weapons programme primarily serves as a means of ensuring the survival of both the nation and the regime. Over 60 years after the Korean War, there are still no signs of a peace process, with mistrust on all sides making reconciliation and negotiations difficult.

For the leadership in Pyongyang, the nuclear programme has served multiple purposes: that of an effective deterrent, responding to post-Cold War international military developments; of a coercive tool to gain political and economic

benefits; and of a necessary instrument to achieve the transition from *Songun* (military first) to *Byungjin* policy (a focus on nuclear capabilities and economic development).

Since sanctions aim at denuclearisation and disarmament, they touch upon the core security interests of the DPRK. The demand for denuclearisation thus ultimately precludes any peace process and ignores the North's own demand for a peace treaty. It is unlikely that Pyongyang will sacrifice its security needs in return for greater international acceptance. Even less likely is a *quid pro quo* whereby it would trade the nuclear programme for aid or the lifting of sanctions. So far, it has only been possible to gain limited concessions, such as a moratorium on missile tests in exchange for food aid (Leap Day Agreement, 2012).

To date, the international community has used both sanctions and negotiations in an attempt to prevent further nuclear development in the DPRK. Due to the situation on the peninsula, however, sanctions are currently not linked to a constructive political process. Although restrictive measures are supposed to achieve the same outcomes as diplomatic talks, they risk being counterproductive: they are non-negotiable but target an equally non-negotiable DPRK interest.

The sanctions dilemma is difficult to solve, but a possible way out of the impasse is to intensify meaningful security-building measures. For Europe, closer coordination with South Korea (as the key stakeholder) and China (as a partner for stability) is as important as targeted humanitarian assistance.

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