

Present Sanctions and the Process to a Comprehensive Agreement

Keiko Nakamura

Research Center for Nuclear Weapons Abolition, Nagasaki University (RECNA)

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Throughout history, Sanctions have been considered as an effective tool of foreign policy. Taking a number of different forms, such as trade embargoes, freezing of assets, prohibition of monetary transfers, and restriction on travel, sanctions serve as punitive measures and meant to deter, coerce and compel changes in other government's unacceptable policy and behavior.

Likewise, international community has imposed numerous sanctions on the Democratic People's Republic of Korea (DPRK), both unilaterally and multilaterally, in order to put an end to its nuclear and ballistic missile aspiration. Below is a brief summary of such sanctions in place.

U.N. Sanctions

Under the Chapter VII of its Charter, the United Nations has imposed a series of incrementally tougher resolutions on the DPRK in response to its nuclear and ballistic missile related activities. Four resolutions have been adopted by the Security Council:

Following the DPRK's October 9 nuclear test, Resolution 1718 was adopted on October 13, 2006. It prohibits the DPRK from conducting further nuclear tests or ballistic missile launches and calls for a termination to efforts to pursue nuclear weapons development. The resolution prohibits a wide range of exports and imports, in particular military weapons and equipment, and freeze assets and ban travel on people and entities related to the DPRK nuclear program. This resolution also establishes a monitoring body to assess implementation of the sanctions.

Subsequently, Resolution 1874 was adopted on June 12, 2009 in response to the DPRK's second nuclear test in May. The resolution imposes restrictions on the DPRK's nuclear programs and tightens sanctions on additional goods, including all imports and exports of weapons, and additional persons and entities in relation to its nuclear program. States are authorized to inspect and detain cargo passing to or from the DPRK through their territory on land, sea, or air if the cargo is suspected of being used to develop nuclear weapons.

Satellite launch test by the DPRK on December, 2012 resulted in adoption of the third resolution, Resolution 2087 of January 22, 2013. The resolution condemned the DPRK's pursuit of ballistic missiles and calls for DPRK to resume the Six Party Talks.

The most recent Resolution 2094 was adopted after the DPRK's third nuclear test in February

2013. Building on three earlier resolutions, Resolution 2094 again demands the DPRK not to conduct any further tests and abandon all nuclear and ballistic missile program. The resolution restricts the DPRK from importing conventional weapons, luxury goods, and materials to develop its nuclear and missile programs. It also prohibits an import and export embargo on certain types of conventional and non-conventional arms, and any assistance concerning military activities, including supplying items or materials connected to ballistic missiles, nuclear programs, or other WMD. It also provided for that nations shall inspect all cargo transiting their territory and deny permission to any aircraft flights if there are reasonable grounds for believing that it is related to prohibited DPRK programs.

Unilateral Sanctions

In addition to the above, one nation can impose sanctions onto one or more other nations. Among others, the U.S. government has issued the largest number of sanctions imposing punitive measures on the DPRK. The U.S. sanctions in place are a result both of requirements incorporated into U.S. law by Congress and decisions made in the executive branch to exercise discretionary authorities.

The U.S. sanctions centers around blocking of property and restriction on import/export from/to the DPRK. These measures include:

- Blocking of property and interest in property of the DPRK or a DPRK national pursuant to the Trading with the Enemy Act (TWEA) (June 16, 2000)
- Executive Order 13466, pursuant to the International Emergency Powers Act (IEEPA), in which the President declared a national emergency to deal with the threat to the national security and foreign policy of the U.S. and continued certain restriction with the DPRK (June 26, 2008)
- Executive Order 13551, pursuant to IEEPA and the United Nations Participation Act, in which expanded the scope of the national emergency declared in Executive Order 13466 and add new restriction¹.

Effectiveness of Sanctions

So far, these sanctions have failed to coerce the DPRK to determine to abandon its entire nuclear program and the government has repeatedly challenged these resolutions with nuclear tests and ballistic missile launches. Of course there are mixed views about the effectiveness of

¹ U.S. Department of the Treasury, Office of Foreign Assets Control, North Korea: An Overview of Sanctions With Respect to North Korea, May 2011, <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/nkorea.pdf>

the sanctions. Some claim that the sanctions have successfully delayed DPRK's nuclear and missile programs by constraining its ability to acquire the components, technology, and finances to develop and expand its arsenal. For instances, in June 2013, observing the implementation of resolutions, a Panel of Experts established under the U.N. Security Council resolution concluded:

[W]hile the imposition of sanctions has not halted the development of nuclear and ballistic missile programs, it has in all likelihood considerably delayed the [North Korean] timetable and...choked off significant funding which would have been channeled into its prohibited activities.... [It] has hampered its arms sales and illicit weapon programs. The resolutions are also crucial in preventing the country from exporting sensitive nuclear and missile technology.²

On the other hand, critics against such a coercive pressure have repeatedly questioned on its effectiveness, claiming that those sanctions have more or less a symbolical function, and have little actual effects on the DPRK's policy and strategy. A recent U.N. report said that the DPRK has developed more sophisticated countermeasures and techniques to evade sanctions. There have also been concerns in respect to unintended, unacceptable humanitarian costs could have been caused by sanctions, even though in most cases, sanctions exclude humanitarian items such as medicines.

Sanction and Comprehensive Agreement

"A Comprehensive Agreement for Security in Northeast Asia" has proposed by Dr. Morton H. Halperin suggests six elements including "Termination of sanctions." It reads as follows:

"The Parties to the treaty will need to commit not to impose sanctions on any other party to the treaty or to maintain them on a list of state sponsors of terrorism. The parties would reserve the right to collectively impose sanctions on any state which violates its commitments under the treaty."

If we interpret the above sentences literally, the parties to the treaty would not reserve the right to unilaterally impose sanction on any state which violates its commitments under the treaty. This could be challenging when to encourage states to join the treaty, in particular the

² Security Council Committee established pursuant to resolution 1718 (2006),
<http://www.un.org/sc/committees/1718/panelofexperts.shtml>

U.S. which has always emphasized the importance and effectiveness of its unilateral sanctions. Also, the U.S. has imposed sanctions not only on weapon proliferation issues but also on other issues such as terrorism, narcotics trafficking, and illicit activities in international markets. Therefore, it might be better to stipulate that the parties to the treaty will not impose sanctions as long as the other state adheres to the treaty obligations. This would be also useful to encourage Japan to join the treaty. Japan has recently eased several of its unilateral sanctions on the DPRK in return for the progress in the abduction issue, which has long been a major source of tension between Japan and DPRK. As long as other issues which are possibly out of the scope of the Agreement remains on table, states in this region might continuously believe the right to impose unilateral sanction should be reserved.

In order to facilitate our thinking, I would like to quote this particular section in the earlier version of the “Comprehensive Agreement” dated on December 2012 which reads as follows³:

“The Parties to the treaty will need to commit not to impose sanctions on any other party to the treaty based on its nuclear programs as long as it fully adhered to the treaty. The parties would reserve the right to collectively impose sanctions on any state which violates its commitments under the treaty. The United States would need to reserve the right to impose sanctions based on other issues as mandated by its laws and to impose sanctions unilaterally if it believed that the DPRK was violating the terms of the treaty. This might require the US to withdraw from the treaty.”

³ Halperin, Morton, “A Comprehensive Agreement on Peace and Security in Northeast Asia: An Approach to Break the Gridlock,” prepared for the workshop in Nagasaki, December 2012, <http://www.recna.nagasaki-u.ac.jp/bd/files/Morton-H.-Halperin1.pdf>